

**STATE OF MAINE**

**Winter Point, Inc.**

**DEPARTMENT OF MARINE RESOURCES**

Aquaculture Lease Renewal Application

**NMR MC**

Bottom and suspended culture of shellfish

Mill Cove, West Bath

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION**

Winter Point, Inc. applied to the Department of Marine Resources (DMR) to renew the aquaculture lease NMR MC for a period of 20 years. The 13.48<sup>1</sup>-acre lease is issued for the bottom and suspended culture of American oysters (*Crassostrea virginica*), surf clams (*Spisula solidissima*), European oysters (*Ostrea edulis*), and quahogs (*Mercenaria mercenaria*) located in Mill Cove, Town of West Bath in Sagadahoc County. This lease was initially issued on October 22, 2001 and subsequently renewed on October 11, 2011.

#### **1. PROCEDURE**

Notice of the 30-day public comment period and opportunity to request a public hearing was published in the *Times Record* on August 20, 2021. Notice was also provided to riparian landowners within 1,000 feet of the site, the Town of West Bath, federal and other state agencies and sent to subscribers of DMR's aquaculture email list-serve. A public hearing on a lease renewal is required if DMR receives five or more requests for a public hearing during the comment period. DMR did not receive any requests for a public hearing. Therefore, no public hearing was held on the renewal request.

#### **2. STATUTORY CRITERIA**

Aquaculture lease renewals are governed by 12 M.R.S. §6072(12) and by Chapter 2.45 of DMR's rules, which provide that an aquaculture lease shall be renewed if: the lessee has complied with the lease agreement during its term; the Commissioner determines that renewal of the lease is in the best interest of the state; the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres; and the lease is not being held for speculative purposes.

---

<sup>1</sup> In some cases, especially for lease sites that have been active for many years there may be a difference between the acreage listed in a lease decision/agreement and the acreage calculated from the lease coordinates using relatively new and more accurate mapping software. The acreage for this site as listed in prior decisions and the lease agreements is 13.49 acres. However, the acreage listed in the GIS database is 13.48 acres. When such a discrepancy occurs, it is DMR's policy to use the acreage in the GIS database and update lease decisions and agreements accordingly. The difference does not change the footprint of the lease site or any other elements of the lease agreement. Using the acreage from the GIS database helps ensure that acreage is consistent across the leasing program.

**A. Compliance with lease**

The review of the case file associated with this lease indicates that there are no outstanding complaints regarding this lease. No ongoing compliance issues were noted in the lease inspection records and the lease is current with fees and bonding. **Therefore, I find** that the applicant has complied with the lease agreement during its term.

**B. Best interest of the State of Maine**

In determining whether it is in the best interest of the state to renew the lease, DMR takes into consideration, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest.

DMR provided the Maine Department of Inland Fisheries and Wildlife (MDIFW) with an opportunity to review and comment on the renewal application. On September 30, 2021, MDIFW submitted a comment, which noted that the site is located within Tidal Waterfowl and Wading Bird Habitat (TWWH). MDIFW recommended “only conducting bottom cultivation in locations of at least 3 feet.”<sup>2</sup> According to the original decision, at mean low water, depths were deepest in the southwest and central portions of the site. Depths in those areas ranged between 3 to 8 feet at mean low water. At least half of the site is located within the intertidal.

On September 6, 2021, DMR received a comment from Jim Levin. Mr. Levin was supportive of the lease renewal and noted that the business is operated well. However, the comment specified the following:

The aquaculture dock and operations include the navigable channel to access Mill Cove and the Leaseholders place aquaculture equipment in the navigable channel. We request that the Leaseholders be allowed to renew their lease with the stipulation that they be required to keep the navigation channel free and clear of equipment at all times to allow free access from and back into Mill Cove for recreational purposes of all abutting neighbors.

At the public hearing on the original application a riparian landowner requested that if the lease were granted “it include a directive that a clear navigation passage be maintained in the vicinity of the southwest corner where the depths shoal to two feet at low tide to maintain a passageway to access the docks along that shore.”<sup>3</sup>

The purpose of the proposed passageway was to provide access to the shoreline south of Winter Point and Brown Cove. According to the original decision, the applicant was willing to maintain such a passageway. In response to the concerns raised by the riparian landowner, the original decision placed a condition on the lease, which required that a marked navigational passageway be maintained across the southwest corner and deepest water area. The condition did not include the specific location of the passageway, only that it ran across the southwest corner and deepest water

---

<sup>2</sup> CF: Email from R. Settele to the Aquaculture Division dated 9/30/21.

<sup>3</sup> Pg. 9 original lease decision

area.

It was unclear to DMR whether Mr. Levin's comment was specific to the conditioned area or other navigable waters. On February 1, 2022, DMR sent an email to Mr. Levin explaining the existing passageway condition and asking him to clarify if the lease holder was deploying gear in that passageway or a different area. DMR also included an image depicting the boundaries of the lease site using 2018 low tide aerial imagery. DMR noted that although the aerial image is from 2018, it may serve as a helpful reference.

On February 20, 2022, Mr. Levin responded to DMR and marked up the image DMR had provided to show the area in question. Mr. Levin's marked up image is included below:



Mr. Levin noted that the solid red lines depicted in the image represent the navigational channel at high tide. At lower tidal stages and during low tides, the channel is further reduced. The reduced channel is represented by the red dotted line. Mr. Levin also provided the location of a shoal. Mr. Levin indicated that in the past the lease holder had raised oysters on the bottom, in sunken cages, so persons could navigate above the cages to get through the channel. Mr. Levin noted that in recent years, the holder had changed their methods, so the cages were now floating on the surface of the water. Mr. Levin specified that the floating cages obstruct the navigable channel and making it difficult to navigate around the cages while trying to avoid the shoal at lower tidal stages. Mr. Levin reiterated that he supported renewing

the lease but suggested that it clearly specify the location of the channel and that the holder not be allowed to deploy gear or other structures within that area.

On April 5, 2022, DMR sent a copy of Mr. Levin's comment and the marked-up image to the lease holder. The email explained the issue identified by Mr. Levin and that DMR believed the existing condition governing the gear free passageway should be further clarified, so it's clearer that surface gear and other equipment cannot be deployed within that channel.

DMR felt a modification to the existing condition would be necessary to provide for safe passage/access, while also clarifying the location of the channel and the type of gear that may be deployed within that area. DMR provided the lease holder with an opportunity to respond to the information Mr. Levin had provided.

On May 4, 2022, the lease holder replied noting that they had operated the lease site for over 20 years without issue. The holder noted that on occasion they had used that channel for the deployment of suspended gear, but they felt they had not obstructed navigation. The lease holder indicated that they contacted all residents within 1,000 feet of Mill Cove to let them know that they could contact the holder with any questions or concerns about the site. The lease holder did not believe that it was necessary to update the condition.

**Discussion:**

DMR reviewed MDIFW's comments, which appear to be a recommendation that bottom culture only be conducted in locations with at least 3 feet of water. According to the original decision, at mean low water, depths were deepest in the southwest and central portions of the site. Depths in those areas ranged between 3 to 8 feet at mean low water. Approximately half of the site encompasses the intertidal.

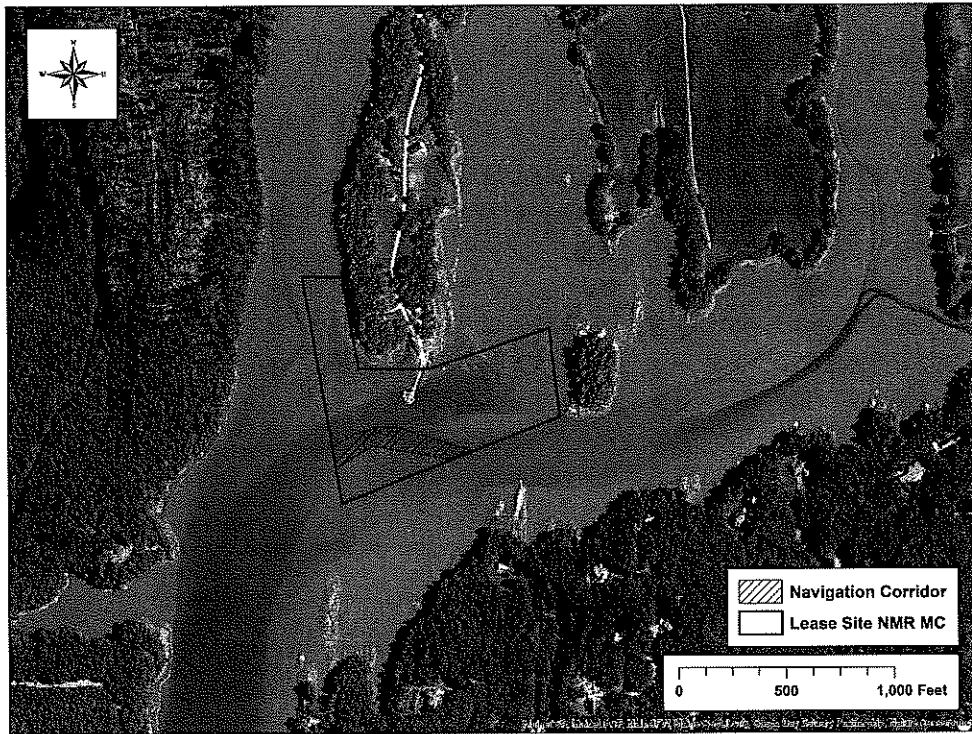
The lease has been in operation for over 20 years and is authorized for the suspended and bottom culture of shellfish. No recommendation from MDIFW concerning TWWH was received for the original lease. There is no evidence to suggest that the lease operations have adversely impacted tidal wading birds or waterfowl or that the renewal if granted would have adverse impacts on tidal wading birds or waterfowl. DMR contacted MDIFW and was advised that the recommendation was based on surveys of other aquaculture sites and was not necessarily specific to this site. In consideration of the record, DMR would advise that the holder try to follow MDIFW's recommendations to the extent practical. However, there is no evidence or other materials in the record to suggest that the lease needs to be conditioned further or otherwise modified in consideration of MDIFW's feedback.

The lease was originally conditioned to allow for a gear-free passageway across the southeast corner of the lease site and deepest water area. The intent of that condition was to provide unencumbered access to and from Mill Cove. Based on the comment submitted by Mr. Levin, gear has been deployed in this area making navigation difficult. The lease holder also acknowledged placing suspended gear in that area. The wording of the initial condition is more than 20 years old and based upon the recent deployment of suspended gear in that area, additional clarification concerning the location of passageway is warranted.

Therefore, if the renewal is granted, Condition d of the original decision will be modified to read: "A 75-foot wide navigational passageway shall be established and maintained within the coordinates provided in Figure 1 of the lease renewal near the southern portion of the site. The corridor shall remain free of all aquaculture gear, including temporary structures."

**FIGURE 1**

1.	43.874796	-69.864129	
	~ 204 feet NE to		
2.	43.875077	-69.863477	
	~340 feet SE to		
3.	43.874923	-69.862168	
	~128 feet ENE to		
4.	43.875031	-69.861761	
	~ 345 feet WNW to		
5.	43.875302	-69.862984	
	~96 feet WNW to		
6.	43.875317	-69.863381	
	~117 feet WSW to		
7.	43.875224	-69.863799	
	~130 feet SW to		
8.	43.875085	-69.864185	
	~102 feet to Point 1		



This updated wording makes the location of passageway clearer for the lease holder and other stakeholders. The lease holder is responsible for complying with all lease conditions and if the lease is renewed the lease holder would be prohibited from deploying any gear or other structures within this area.

**Therefore, given the modified condition concerning navigational passage, I find** that it is in the best interests of the State of Maine to renew this lease.

**C. Aggregate lease holdings**

According to DMR records, NMR MC, which is 13.48 acres is the only lease site held by Winter Point, Inc.

**Therefore, I find** that the renewal of this lease will not cause the lessee to hold more than 1,000 acres.

**D. Speculative purposes**

Chapter 2.45(2)(A) of DMR's regulations provides that in determining whether a renewal is being conducted for speculative purposes, DMR must consider "whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term." The renewal application indicates that American oysters and quahogs were cultivated during the previous

lease term.<sup>4</sup> This is consistent with a review of the record, which indicates aquaculture activities occurred on the site during the previous lease term.

**Therefore, I find** that the lease is not being held for speculative purposes.

### **3. LEASE CONDITIONS**

The following conditions were applied to the lease by the original decision:

- a) The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources Regulations Chapter 2.80.
- b) No dragging by persons other than the applicants or their employees is allowed.
- c) Navigation is allowed in open areas of the lease.
- d) A navigational passageway shall be maintained across the southwest corner and deepest water area; the passageway, buoy placement, and buoy color shall be approved by the U.S. Coast Guard as appropriate for marking the passageway.

Condition "a" pertains to site marking. Lease holders are required to mark sites in accordance with DMR's regulations and marking is further specified in lease agreements. Therefore, Condition "a" is removed from the lease agreement as it is already contemplated in applicable regulation. Condition "d" is modified as follows: "A 75-foot wide navigational passageway shall be established and maintained near the southern portion of the site within the coordinates provided in Figure 1 of the lease renewal decision above. The corridor shall remain free of all aquaculture gear, including temporary structures."

### **4. DECISION**

The Commissioner grants the application of Winter Point, Inc. to renew the aquaculture lease NMR MC for a period of twenty years. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by this decision.

### **5. REVOCATION OF LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S. §6072 (11) that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

---

<sup>4</sup> See page 1 of the renewal application.

**6. DATE AND SIGNATURE**

Dated: OCTOBER 6, 2022

A handwritten signature in black ink, appearing to read 'PCK', written over a horizontal line.

**Patrick C. Keliher, Commissioner,  
Department of Marine Resources**



STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
Renewal Application

Winter Point, Inc.  
Lease NMR MC  
Docket #2011-17R

## FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

On June 13, 2011, the Department received an application from Winter Point, Inc., to renew its aquaculture lease for 13.49 acres for suspended and bottom culture of American/eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), northern hard clams/quahogs (*Mercenaria mercenaria*), and surf/hen clams (*Spisula solidissima*), located in Mill Cove in the New Meadows River in West Bath, Sagadahoc County, Maine. The renewal would be for a period of ten years to October 21, 2021.

This lease was initially issued on October 22, 2001 to Winter Point, Inc. and Chance Along Farm, Inc. Chance Along Farm relinquished its interest in the lease; a new lease naming Winter Point, Inc. as sole lessee was executed on January 23, 2008, with the same expiration date as the original lease, i.e., October 21, 2011.

### 1. PROCEDURE

Notice of the application for lease renewal and the public comment period was published in the *Commercial Fisheries News* August, 2011 edition and in the *Brunswick Times Record* on July 26 and August 15, 2011. The public, riparian landowners within 1,000 feet of the lease site, and other interested persons were given 30 days to submit comments or to request a hearing on the application for lease renewal. No comments and no requests for a hearing on this application were received by the Department during the comment period.

### 2. STATUTORY CRITERIA

Applications for aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12) and by Chapter 2.45 of the Department's rules, which provide that an aquaculture lease shall be renewed if: the lessee has complied with the lease agreement during its term; the Commissioner determines that renewal of the lease is in the best interest of the state; the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres; and the lease is not being held for speculative purposes.

### **A. Compliance with lease**

My review of the records of this lease discloses that all annual reports have been filed, the rent is paid to date, the bond is current, and the site has passed inspection by DMR Marine Patrol. There are no outstanding complaints regarding this lease.

**Therefore, I find** that the applicant has complied with the lease agreement during its term.

### **B. Best interest of the State of Maine**

In determining whether it is in the best interest of state to renew the lease, the Department takes into consideration, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest. There is no evidence of conflicts with other new or existing uses of the area.

**Therefore, I find** that it is in the best interests of the State of Maine to renew this lease.

### **C. Aggregate lease holdings**

DMR records show that the applicant holds only this lease of 13.49 acres.

**Therefore, I find** that the renewal of this lease will not cause the applicant to lease more than 1,000 acres.

### **D. Speculative purposes**

In determining whether the lease is being held for speculative purposes, the Department considers whether substantially no aquaculture or research has been conducted on the lease site. The applicant has conducted aquaculture on the lease site during its term, as shown by the annual reports it has filed with the Department and by the statement of the lessee on the renewal application.

**Therefore, I find** that the lease is not being held for speculative purposes.

## **3. LEASE CONDITIONS**

The following conditions are carried over from the original lease and will apply to the renewed lease:

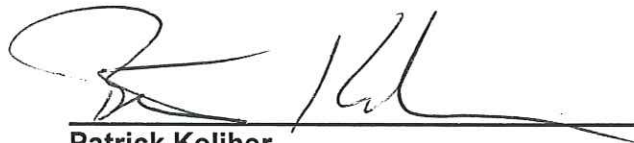
1. Navigation is allowed in the open areas of the lease.
2. No dragging by persons other than the applicants or their employees is allowed.
3. The lease area shall be marked in accordance with U.S. Coast Guard requirements and Department of Marine Resources regulations Chapter 2.80.

4. A navigational passageway shall be maintained across the southwest corner and deepest water area; the passageway, buoy placement, and buoy color shall be approved by the U.S. Coast Guard as appropriate for marking the passageway.

**4. DECISION**

The Commissioner of Marine Resources grants the application of Winter Point, Inc. to renew its aquaculture lease NMR MC for a period of ten years, to October 21, 2021. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease.

Dated: Oct 11, 2011



**Patrick Keliher**  
**Acting Commissioner**  
**Department of Marine Resources**