

**STATE OF MAINE**

**DEPARTMENT OF MARINE RESOURCES**

Aquaculture Lease Renewal Application

Bottom culture of American and European

Oysters, off Goose Ledge, Damariscotta River,

Damariscotta

**Pemaquid Oyster Company, Inc.**

**Lease DAM GL3**

Docket #2016-07-R

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

Pemaquid Oyster Company, Inc. applied to the Department to renew its aquaculture lease DAM GL3 for a period of ten years to September 1, 2026. The 10.17-acre lease located off Goose Ledge, Damariscotta River, Damariscotta, Lincoln County, Maine, is issued for bottom culture of American/Eastern and European oysters. This lease was initially issued on September 2, 2006 and represented a consolidation of three existing lease sites of the lessee, POCO GL1, POCO GL3, and POCO GL5.

#### **1. PROCEDURE**

Notice of the application for lease renewal and the 30-day public comment period and opportunity to request a public hearing was published in the *Lincoln County News* on June 9<sup>th</sup> and 30<sup>th</sup>, 2016 and the July issue of the *Commercial Fisheries News*, Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. The Maine Department of Inland Fisheries and Wildlife submitted comments but ultimately concluded they had no concerns associated with the renewal of this lease (see section 2(a) below). No other 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 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**

The 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.

Comments submitted by the Maine Department of Inland Fisheries and Wildlife indicate that "a portion of the project footprint intersects with the buffer of a mapped bald eagle nest on Hog Island" and explains the status of bald eagles as federally-protected and a Species of Special Concern in Maine. "MDIFW recommends that the applicant follow the appropriate National Bald Eagle Management Guidelines to avoid or minimize impacts to this species." Links to the Guidelines are provided in the comments, which conclude, "MDIFW expects minimal impacts to wildlife provided the applicable USFWS guidelines are met."

DMR will provide a copy of the MDIFW comments to the leaseholder. The leaseholder is responsible for determining whether the nest is visible from the lease site and following the links provided in the comments accordingly to understand which guidelines apply to the aquaculture activities.

This lease has been in place for over ten years without any reports to the DMR Aquaculture Program of interference with the bald eagles on Hog Island. Numerous other leases, both for bottom culture and for surface gear, surround Hog Island. The nearby shores are inhabited, and recreational boating and fishing occur in this part of the river. The eagles are no strangers to human activity in the vicinity. There is no evidence to indicate that renewal should be denied or limited on account of the eagle's nest at Hog Island.

**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.**

According to DMR records, the transferee holds the following leases: DAM GL2, 1.84 acres and DAM GL3, 10.17 acres for an aggregate amount of 12.01 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**

Rule 2.60 provides that in considering whether a transfer is being conducted for speculative purposes, the Department must consider “whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term.” It is clear from annual reports filed with DMR by the Lessee and by the statement of the lessee on the renewal application that aquaculture has been conducted on this lease site.

**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:

- a. The lease area must be marked in accordance with U.S. Coast Guard requirements and Department of Marine Resources regulations Chapter 2.80.
- b. lobstering and crabbing allowed on site;
- c. no mooring or placement of stationary floating structures or equipment on lease site;
- d. lobster and crab fishing, recreational fishing and boating are allowed in the open areas of the lease; and
- e. other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

**4. DECISION**

The Commissioner of Marine Resources grants the application of Pemaquid Oyster Company, Inc. to renew its aquaculture lease DAM GL3 for a period of ten years, to September 1, 2026. 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. REVOCAION OF LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072 (11) and DMR Rule Chapter 2.42 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.

Dated: 10.12.16



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