

A. SUMMARY

Norumbega Oysters, Inc applied to the Department of Marine Resources (DMR) to expand their existing standard aquaculture lease DAM PPN, located northeast of Perkins Point in the Damariscotta River in the town of Newcastle, Lincoln County, Maine. DAM PPN is 5.98 acres in size and the expansion request is for an additional 1.39 acres¹. Pursuant to 12 M.R.S.A §6072 (12-C) a leaseholder may apply to expand the area of their lease by up to 25%, but not by more than 4 acres.

B. PROCEEDINGS

The expansion application was deemed complete on March 4, 2022. DMR provided notice of the application and the 30-day public comment period to the town of Newcastle, and other state and federal agencies. As part of the request for review, DMR sent a Harbormaster Questionnaire to Bernard Delisle, Newcastle Deputy Harbormaster. The questionnaire requests local information about how the proposed expansion may affect navigation, fishing, and other considerations related to the decision criteria. Mr. Delisle completed the questionnaire on April 19, 2022. Maine Department of Inland Fisheries and Wildlife (MDIFW) provided comment on March 22, 2022. No other municipal representatives or other state and federal agencies provided comment.

Notice was also provided to all riparian landowners within 1,000 feet of the existing site and proposed expanded area. Notice of the application and comment period was published in the *Lincoln County News* on March 17, 2022. DMR did not receive any comments from members of the public on this proposal. DMR scientists visited the proposed expansion site on June 2, 2022 and published an expansion site report on August 29, 2022. The evidentiary record before DMR regarding this expansion application includes the exhibits listed below.

Exhibits²

1. Application for a lease expansion deemed complete March 4, 2022
2. Expansion case file for DAM PPN³
3. Expansion Site Report dated August 29, 2022

C. ORIGINAL LEASE DECISION and PROPOSED EXPANSION

This lease was originally granted on July 12, 1994 and a transfer of the lease from Hog Island Shellfish, Inc to Norumbega Oysters, Inc was granted on November 16, 2010 for the remainder of the 10

¹ The application requests 1.45 acres, but the coordinates provided in the application overlap with the active lease DAM PPN. Therefore, DMR adjusted the proposed SW and SE corners slightly (<20 feet) to intersect with the boundary of DAM PPN and then calculated the acreage of the revised expansion area as 1.39 acres.

² These sources specific to the expansion are cited, with page references, as App (Application), CF (case file), and SR (site report). Other materials referenced in the case file not specific to the expansion are cited to expressly in-text.

³ The original case file dates back to 1994 with original lease decision held by a different company. The lease was transferred to Norumbega Oysters, Inc in 2010 and renewed by Norumbega Oysters, Inc in 2014. Materials predating the expansion case file will be cited expressly in-text.

year term expiring on July 11, 2014. The lease was renewed on July 12, 2014 for a period of ten years for the purpose of cultivating American/Eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), surf/hen clams (*Spisula solidissima*), blue sea mussels (*Mytilus edulis*), bay scallops (*Argopecten irradians*), and sea scallops (*Placopecten magellanicus*), using suspended and bottom culture techniques. The current lease expires on July 11, 2024 (DAM PPN Renewal Decision, 2014).

The application indicates that an additional 1.39 acres would be used for additional suspended culture of oysters (App 2 and 8)⁴. The expanded area, if granted, would be seeded March through June. Bags and cages are periodically harvested and the seed would be sorted for various sizes and then redeployed back into bags and cages (App 8).

FINDINGS, CONCLUSIONS OF LAW, & DECISION on AQUACULTURE LEASE EXPANSION

Pursuant to 12 M.R.S.A §6072 (12-C)(E), a lease expansion may be granted by the Commissioner upon determining that it would satisfy the criteria set forth in 12 M.R.S.A. §6072 (7-A). Pursuant to these criteria, an expansion may be granted by the Commissioner upon determining that the project will not unreasonably interfere with the ingress and egress of riparian owners; with navigation; with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in an area; with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments.

The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will comply with visual impact criteria adopted by the Commissioner. The following discussion, findings, and conclusions are based on the Department's consideration of the information contained in the application, as well as other information relevant to the decision criteria.

D. FINDINGS

1. Riparian Access:

DMR did not receive any comments from riparian landowners concerning the proposed expansion. DMR's site report noted that there are three moorings, in addition to the mooring presumably associated with the applicant, and two docks near the proposed expansion, with the closest mooring approximately 90 feet north of the expansion and the closest dock located approximately 570 feet from the western boundary (SR 2)⁵. According to the site report, it is unlikely that a vessel consistent with the size and type of vessel typically observed on moorings in the Damariscotta River would swing into the proposed expansion area. At certain tidal stages and in inclement weather, access to and use of this mooring may be more difficult due to the proximity of the proposal, if it were granted, especially for vessels under sail (SR 8). In his responses to the Harbormaster questionnaire, Mr. Delisle indicated that the proposal would not impact the ability of riparian landowners to access their property. Because no comments were submitted and the proposed expansion may alter course but would not obstruct access to the moorings and docks in the area, the proposal does not unreasonably interfere with riparian access.

Based on this evidence, it is unlikely that the proposed expansion will unreasonably interfere with riparian ingress and egress.

⁴ The application pdf page numbering starts with 2 printed on the page. Citations will use the page printed on the page of the document, rather than the page number in the pdf page count.

⁵ The application and Harbormaster questionnaire state 70 feet and 75 feet, respectively, to the closest mooring (App 10). Actual distance will vary based on wind, current, and tidal stage.

2. Navigation:

The Harbormaster indicated that the main navigation channel is east of the proposed expansion site and that the proposed site would not interfere with access to the two recreational moorings to the north. DMR's expansion site report also notes that the proposed expansion is unlikely to interfere with navigation to the west at low tide as this area is naturally obstructed by exposed mudflats (SR 8). DMR did not receive any public comments regarding navigation. Because the proposed site does not overlap with the main navigation channel and does not prevent access to the moorings, the proposal will have no unreasonable effect on navigation in the area.

Based on this evidence, it is unlikely the proposed expansion will unreasonably interfere with navigation in the area.

3. Fishing and other water related uses:

Mr. Delisle, Deputy Harbormaster, indicated that no recreational or commercial fishing occurs in the proposed site. The site report stated no commercially important species and no commercial fishing were observed during the visit (SR 9). DMR did not receive any public comments regarding fishing or other water-related uses of the area.

Other Aquaculture Leases:

There are several aquaculture sites within the general vicinity of DAM PPN and the proposed expanded area. The two closest aquaculture sites to the proposed expanded area are both standard leases. The lease, DAM PP2, is held by Mook Sea Farms, Inc. and is currently pending renewal; it is located ~875 feet to the south of the proposed expanded area. The standard lease, DAM HI5, is held by Dodge Cove Marine Farm, LLC and is located ~750 feet from the eastern boundary of the proposed expanded area. DMR did not receive any comments from these lease holders or any other aquaculturists in the area about the proposed expansion.

Based on the evidence, it is unlikely the proposed expansion will interfere with fishing or other uses of the area, including existing aquaculture leases in the area.

4. Flora and Fauna:

DMR sent a copy of the application to the MDIFW for their review, and a wildlife biologist provided comment that the project would have minimal impacts on wildlife. Based on historical survey data, there are no mapped eelgrass beds within or near the proposed expanded area.⁶ No ecologically significant flora or fauna were observed in the video transect during DMR's visit to the proposed expansion (SR 9). No comments were received to indicate there is a concern about the proposed expansion and impact to flora and fauna in the area.

It is unlikely that the proposed expansion will unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna.

5. Public Use:

There are no public docking facilities, beaches, parks, or conserved lands owned by the municipal, state, or federal government within 1,000 feet of the proposed expansion.

Based on this evidence, it is unlikely that the proposed expansion will unreasonably interfere with public docking facilities, beaches, parks, or conserved lands owned by the municipal, state, or federal government.

⁶ 2010 Coast-wide eelgrass survey completed by DMR. For a complete description visit: <https://maine.maps.arcgis.com/home/item.html?id=25d11cbf476944bc8dc985d2454d01d6>

6. Source of Organisms:

The applicant sources seed stock from Muscongus Bay Aquaculture, which is an approved hatchery by DMR. Therefore, the applicant has demonstrated that there is an available source of stock to be cultured for the lease site.

7. Light:

The application indicates that no lights are proposed for the expanded area (App 8). Therefore, the lease expansion will not result in an unreasonable impact from lights at the boundaries of the proposed area.

8. Noise:

The application indicates that the proposed expanded area would not result in an increase in noise (App 8). Therefore, the lease expansion will not result in an unreasonable impact from noise at the boundaries of the proposed area.

9. Visual Impact:

The gear bags and cages are black. Therefore, the proposed expansion complies with the Department's visual impact criteria set forth in Chapter 2.37(1)(A)(10).

10. Conditions:

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. The conditions imposed on lease DAM PPN, pursuant to 12 M.R.S.A § 6072 (7-B) and located on page 3 of the 2014 renewal decision, are as follows:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.

Since the expanded area will be combined with the existing lease, all conditions associated with DAM PPN would apply to the expanded area.

A. CONCLUSIONS OF LAW

Based on the above, I conclude that:

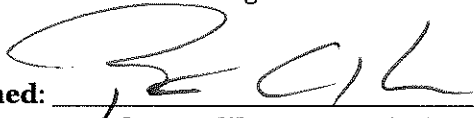
- a. The aquaculture activities proposed for this expansion will not unreasonably interfere with the ingress and egress of any riparian owner.
- b. The aquaculture activities proposed for this expansion will not unreasonably interfere with navigation.
- c. The aquaculture activities proposed for this expansion will not unreasonably interfere with fishing or other uses of the area, taking into consideration other aquaculture leases in the area.
- d. The aquaculture activities proposed for this expansion will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
- e. The aquaculture activities proposed for this expansion will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of stock to be cultured for the lease site.
- g. The aquaculture activities proposed for this expansion will not result in an unreasonable impact from light at the boundaries of the expanded area.

- h. The aquaculture activities proposed for this expansion will not result in an unreasonable impact from noise at the boundaries of the expanded area.
- i. The aquaculture activities proposed for this expansion will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

Accordingly, the application and other information supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease expansion as specified in 12 M.R.S.A §6072 (12-C).

DECISION

Based on the foregoing, the Commissioner grants the requested lease expansion of 1.39 acres to Norumbega Oysters, Inc. The expanded area is for suspended culture only and will be combined with the existing lease DAM PPN to total 7.37 acres and will expire on July 11, 2024. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. If necessary, the lessee shall post a bond or establish an escrow account that reflects the expanded acreage pursuant to DMR Rule 2.40 (2)(A), conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Signed:  _____ Date: 10/17/22

Patrick C. Keliher, Commissioner
Maine Department of Marine Resources

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Norumbega Oysters, Inc.
DAM PPN

Aquaculture Lease Renewal Application
Suspended and bottom culture of shellfish,
Damariscotta River, Newcastle, Lincoln County

Docket Number 2014-07-R
October 20, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Norumbega Oysters, Inc. applied to the Department on April 30, 2014 to renew the aquaculture lease, DAM PPN, for a period of ten years to July 10, 2024. The 5.98 acre lease is issued for bottom and suspended culture of American/eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), surf/hen clams (*Spisula solidissima*), blue sea mussels (*Mytilus edulis*), bay scallops (*Argopectin irradians*), and sea scallops (*Placopecten magellanicus*) located in the Damariscotta River, Newcastle, Lincoln County, Maine. This lease was originally granted July 12, 1994 and a transfer of a lease from Hog Island Shellfish Inc. to Norumbega Oysters Inc. was granted on November 16, 2010 for the remainder of the 10 year term expiring on July 11, 2014.

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 May 15, 2014 and again on June 5, 2014. Notice was also published in the June 2014 *Commercial Fisheries News*. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. 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

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.

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 total lease acreage held by lessee, including this lease, DAM PPN, consisting of 5.98 acres, will not exceed 1,000 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 2.45 provides that in considering whether a lease is being held 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 for speculative purposes.

3. LEASE CONDITIONS

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

- The lease area must be marked in accordance with the U.S. Coast Guard requirements and Department of Marine Resources Chapter 2.80.

4. DECISION

The Commissioner of Marine Resources grants the application of Norumbega Oyster Inc. to renew its aquaculture lease, DAM PPN for a period of ten years to July 10, 2024. 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: _____

10/20/14



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