



Government
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Pêches
et Océans

Oyster Leasing Policy in the Maritimes Region

**Prepared by
Department of Fisheries and Oceans
Resource Branch
Halifax, Nova Scotia**

Revised 1979

OYSTER

LEASE

POLICY

Oyster and Other Mollusc
Cultivation

Revised 1979

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CONTENTS

Introduction	1
Definition of Areas to be Leased	3
Administration of Leasing.	3
Lease Size	4
Types of Leases.	4
Tenure of Lease.	5
Utilization of Leases.	5
Annual Returns	7
General Fees	7
Priorities in Leasing.	8
Restrictions on Leasing.	8
General.	9
Application for an Oyster Lease.	9
Leasing Options and Procedures	10
Resurveys.	12
Appendix	13

Introduction

Modern oyster farming based on a knowledge of oyster biology began in eastern Canada in the 1930's. It has been encouraged by the leasing of oyster-growing areas and by the efforts of the Department of Fisheries and Oceans, Fisheries and Marine Service. Up to one-half of the oysters marketed today are raised for some period on oyster leases, and this percentage is expected to increase as more modern culture techniques are used.

Active oyster farming is being promoted. This is reflected by the revised policy outlined in this booklet. Emphasis is placed on the increased production and sale of oysters, and a new performance clause has been included in this revision, to insure that at least ten boxes (50 pecks) of oysters will be produced and marketed annually for every acre leased. The minimum acreage which may be leased has been increased to five acres, with the option of up to one hundred acres or more to Canadian individuals, companies, or cooperatives that can justify their requirement. Thus, it is hoped that oyster farming will be carried out on an economically viable scale. The revisions are also intended to ensure that only serious shellfish farmers will be able to lease valuable growing grounds. Provision has also been made in these regulations for the leasing of grounds for the cultivation of shellfish other than oysters.

This leasing policy has been developed for the promotion and protection of shellfish farming and will be revised as often as is necessary to reflect the needs of the industry.

Any suggestions, requests for information, or enquiries should be directed to:

Government of Canada
Fisheries and Oceans
Oyster Lease Administration
Ellerslie, Prince Edward Island
C0B 1J0

(Tel: (902) 831-2933)

or

Government of Canada
Fisheries and Oceans
Resource Branch
Shellfish Section
P.O. Box 550
Halifax, Nova Scotia
B3J 2S7

(Tel: (902) 426-3550)

Additional information on oyster farming may be obtained from: "Oyster Farming in the Maritimes" by J.C. Medcof, F.R.B. Bulletin 131, 178 pp., 1961, Queen's Printer, Ottawa, \$3.50 (also available from Department of Supply and Services, Ottawa).

Definition of Areas to be Leased

All areas should be designated as to specific use, be it public fishery, spat collection, or leasing. This is presently possible only in those areas which have been inventoried by shellfish staff of the Fisheries & Marine Service. For areas that have not been inventoried it will be necessary to use the following subjective definition: No area will be leased if, on examination by Fisheries & Marine Service personnel, it appears to contain sufficient oysters and/or other shellfish to support a public fishery, or has potential as a public spat production area. Leasing of contaminated areas will be permitted only under exceptional conditions. Ministerial approval will be a requirement for these leases.

Administration of Leasing

The Federal Government will maintain jurisdiction over oyster-ground leasing with administration conducted by the Fisheries and Marine Service of the Department of Fisheries and Oceans Canada. Lease administration will be an open-book type of operation, with the Minister specifying under what conditions leases may be issued, how and why terms may be extended, and under what conditions leases may be cancelled. These administrative procedures are being publicly promulgated in this booklet so that leaseholders and potential leaseholders need not be in doubt as to any aspect of lease administration.

Lease Size

The maximum size limit on total leased area under the control of an individual, group, company, or cooperative will be 100 acres, with provision for larger units by Ministerial approval, if cause can be shown that the larger lease is necessary and will be adequately used for the production of oysters or other shellfish species. The minimum size limit will be 5 acres, except in special circumstances approved by the Minister. In general, there will be no restrictions on leasing of areas from 5 to 100 acres in size and on consolidation under a single lease agreement of existing separate leases held by a lessee. However, when leases are assigned from the former lease policy, the assignee must enter into a new agreement with the Minister as defined by Order-in-Council (P.C. 1972-1604). That is, the new agreement will incorporate the fee structure and tenure elements as outlined in this booklet.

Type of Leases

The leases granted under this policy are for the use of the bottom only, although the lessee is protected, by his agreement, from interference in the operation of his lease by floating or fixed structures placed there by others. The lease agreement does not give the lessee control of the water column above his lease nor does it convey permission for the placement of floating or fixed structures such as oyster rafts or trays which might pose a hazard to navigation.

Since off-bottom rearing of oysters is becoming increasingly important in some areas, there is a need for some leaseholders to

control the use of the water column above their lease. For these leases, application should be made to the Ministry of Transport for the right to place these structures in the water above the lease. This right is obtained through approval under the Navigable Water Protection Act. On request, the Fisheries and Marine Service will assist the shellfish culturist in this application by providing the Ministry of Transport with a drawing and description of the lease concerned. The decision of approval for the use of the water column above a leased area will be made by the Ministry of Transport after consultation with the Fisheries and Marine Service.

Tenure of Lease

The lease period will be 20 years, so long as all performance requirements and lease obligations are met. After year 20, those lessees in good standing will have the option to renegotiate with the lessor for 10-year renewal periods. The lease may be subject to physical inspection at years 2 and 5, and every 5 years thereafter, to determine that performance requirements are being met. There will be a provision that the lessee will be notified at year 15 if the Government does not intend to grant a 10-year renewal at year 20.

Utilization of Leases

Leaseholders will adequately utilize their leased acreage under possible penalty of forfeiture. The lessee will:

1. As a minimum work effort, plant or rear at least 10 boxes (5 pecks/box) of seed or relayed oyster per acre per year, to be assessed by physical inspection and/or through checking annual returns of operations.

2. Harvest after year 5, at least 10 boxes (5 pecks/box) of oysters per acre per year averaged over a 5-year period - to be assessed at year 10 by physical inspection and/or through checking annual returns of operations.

Should another person or persons apply for an area already held under lease, and after checking the return of operation and/or after physical examination of the area, the Fisheries and Marine Service determines that the lessee has failed to meet the above requirements, the lease may be cancelled and the area re-leased to the new applicant.

The onus will rest entirely with the lessee to produce evidence that production and planting requirements have been met. The lessee should be prepared to show invoices or other proof deemed acceptable to the Fisheries and Marine Service for the sale of relayed and lease-produced oysters which he had removed from the lease during the pre-inspection period.

When a lease is granted for cultivation of other molluscs such as mussels, clams, or quahogs, an attachment will be made to the lease agreement waiving the performance clause as it pertains to oysters and substituting a performance clause for these species.

Leaseholders will, under penalty of forfeiture, be obligated to commence active working of a new lease within a 12-month period from the date of issue of the new lease.

In addition to access now provided in lease documents, the Minister will also have the prerogative to enter upon any lease at any time, and to have access to any equipment, plant, building, or books of account associated with the operation of leases.

Annual Returns

Leaseholders will be required to submit an annual return of operations, indicating the extent of operations conducted, to the Oyster Lease Administrator. This return is to be submitted at the same time as the annual rental c/o Financial Management, Fisheries & Marine Service, P.O. Box 550, Halifax, N.S. The required form will be provided by the Fisheries and Marine Service. Failure to submit an annual return of operations will result in cancellation of the lease. (See Appendix.)

General Fees

The lease rental fee on leases issued prior to April 1, 1972, will remain at \$1 per acre per year until such time as these leases expire, are cancelled, or are transferred, as outlined in paragraph 2 of 'Restrictions on Leasing'. On leases issued after April 1, 1972, a lease rental fee of \$5 per acre per year will be charged. There will be a minimum charge of \$25 per year for each lease agreement in effect.

No lease held under the old policy which has been cancelled due to non-payment of rental and/or failure to submit an annual return of operations can be reinstated. Re-application for the same area may be made by the former lessee within 30 days of the date that the notice of cancellation is mailed, but only under the conditions of the new leasing policy as defined by Order-in-Council (P.C. 1972-1604).

Priorities in Leasing

The following priorities have been established for granting new leases and for re-distribution of cancelled leases:

- i. Those lessees requiring additional holdings to make their combined total of acreage leased a viable or economical enterprise. Five acres is suggested as the minimum required for an economically viable enterprise for an individual oyster farmer. Larger areas will be required for larger companies. The minimum size for a viable unit in such cases will be judged on the merits of each individual case.
- ii. Individual new entrants; either individuals or companies.

In the event that two or more equal-priority applications for the same ground are received on the same date, preference will be given to the applicant judged most likely to fully utilize the area leased.

Restrictions on Leasing

New leases and assignment of existing leases will be restricted to Canadian citizens ordinarily resident in Canada and/or Canadian-controlled corporations [as defined in the Income Tax Act, Sec. 125 (6) (a)].

There will be no assignment of leases or portions of leases without Ministerial approval. No such assignment will be allowed for lease agreements that were in effect prior to April 1, 1972. For these leases, the new lessee must enter into a new agreement with the Minister which incorporates the lease policies as defined by Order-in-Council (P.C. 1972-1604). All other assignments will be prohibited under penalty of lease cancellation.

Lessees will have the option to consolidate their leases under a single lease agreement under the new policy.

No one company or individual shall obtain holdings by consolidation or assignment which might, in the opinion of the Minister, prove contrary to the public interest.

General

A lessee will be able to cancel his lease at any time, and with the consent of the Minister, to surrender portions of his lease. There will be no refund of fees.

Regulations provide that, on cancellation of a lease, all works, improvements, and marine resources in and upon the leased land and in the water column above become the property of the Crown.

Regulations provide for lease cancellation for the infraction of lease regulations, and for violation of other governmental regulations in respect to matters such as navigable waters and pollution control, and for other activities which are injurious to marine species in the area.

Should an objection to a leasing procedure or related grievance arise, the appellant will be heard by a board consisting of the local District Protection Officer, a fisherman, and a neutral person from industry or the general public, suitable to both parties concerned. The Fisheries and Marine Service will also be represented.

Application for an Oyster Lease

Application for an oyster lease should be submitted to the Oyster Lease Administration, Ellerslie, P.E.I. Appropriate

application forms may be obtained at any Fisheries and Oceans office.

Leasing Options and Procedures

Should you wish to obtain a lease, there are three approaches open to you. These are:

1. You may take control of an existing lease area that has been cancelled and/or vacated by the former lessee. These were formerly active leases for which maps, surveyor's return of survey, and description of the area exist. The lease on such an area has either been cancelled or allowed to lapse by the former lessee.

The Protection Offices of the Fisheries and Marine Service in your locality have maps showing all leases, generally including a number of which have been cancelled. You may choose a lease area from these maps and apply for a lease through the Ellerslie office. Application for a lease under this approach should be made on the standard leasing application form. Upon receipt of your application our leasing staff will contact you to arrange a suitable date for the examination of the area and to determine if the corners of the lease can be located properly. No survey will be required unless it is determined that the lease corners cannot be located properly. In this event, a resurvey of the area must be conducted by a Registered Public Land Surveyor, as outlined under 3, below.

2. You may take control of an existing lease by assignment from the present lessee. Under this approach you must find a lease in the area in which you wish to operate and make an agreement with the present lessee to have him assign the lease to you. Lease

assignment forms may be obtained from this office.

For lease agreements that were in effect prior to April 1, 1972, direct assignments will not be allowed. Transfer of areas leased under these agreements require that the prospective lessee enter into a new agreement incorporating the lease policies as defined by Order-in-Council (P.C. 1972-1604).

Upon receipt of your application, our leasing staff will contact you to arrange a suitable date for the examination of the area and to determine if the corners of the lease can be located properly. No survey will be required unless it is determined that the lease corners cannot be located properly. In this event, a resurvey of the area must be conducted by a Registered Public Land Surveyor.

3. You may take control of an area of presently unleased bottom which you would like to lease. You must have the area surveyed by a Registered Public Land Surveyor under the supervision of our leasing staff. Application for a lease under this approach should be made on the standard leasing application form. Upon receipt of your application, our leasing staff will contact you to arrange a suitable date for the examination of the area.

All oyster lease surveys must be conducted by a Registered Public Land Surveyor. It is your responsibility to contact the Public Land Surveyor to make the necessary arrangements for the lease survey. This office must be advised of the survey date at least 10 days before the actual date of survey.

If a survey or resurvey is required, it must be completed within 12 months. Should there be no survey or resurvey within this period, it will be assumed that you do not wish to complete

the lease and your application will be cancelled. An extension to this period may be arranged by contacting our office.

Resurveys

The Minister may require a resurvey at any time, at the lessee's expense, if for any reason the Minister considers it necessary. The costs will be borne by the leaseholder under penalty of cancellation of the lease.

Appendix

At the beginning of each calendar year, each lessee will be sent the following by mail:

- two copies of Return of Operations form [one for his own records, and one to be returned to the Financial Management, Fisheries and Marine Service, P.O. Box 550, Halifax, N.S. B3J 2S7 (Oyster Leasing)];
- two copies of Accounts Receivable Voucher [one for his own records, and one to be returned, with fee, to the Financial Management, Fisheries and Marine Service, P.O. Box 550, Halifax, N.S. B3J 2S7 (Oyster leasing)];
- one self-addressed return envelope for lessee to mail his completed Return of Operations form and lease rental fees.

Failure to submit rental fees and a Return of Operations will result in cancellation of the lease.