

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF SEA BOUNTY SEA FARM FOR AN AQUACULTURE LEASE LOCATED IN THE DAMARISCOTTA RIVER WALPOLE, LINCOLN COUNTY, MAINE))))) FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
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On February 20, 2003 Sea Bounty Sea Farm of Walpole, Maine applied for an aquaculture lease totaling .89 acre in the coastal waters of the State of Maine, located in the Damariscotta River in Walpole, Lincoln County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating American oysters (Crassostrea virginica), quahogs (Mercenaria mercenaria), sea scallops (Placo pectin magellanicus), surf clams (Spisula solidissima) and razor clams (Ensis directus) using suspended culture techniques. The application was accepted as complete on March 10, 2003. A public hearing on this application was held on December 3, 2003 at 6:00 p.m. in Walpole.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration the number and density of aquaculture leases; significant wildlife habitat and marine habitat or the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. 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 and that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the December 3, 2003 public hearing. At the public hearing, testimony was given by the applicant, Peter Blanton, the Department's Aquaculture Environmental Coordinator, Jon Lewis, and one member of the public.

The applicant testified that he currently operates an experimental aquaculture lease in the proposed lease area. According to the application and the testimony by the applicant, the proposed aquaculture lease is sought to raise American oysters, quahogs, sea scallops, surf clams, and razor clams. The applicant requested a lease site totaling .89 acre and a lease term of ten (10) years. The applicant testified that the location of the proposed site was moved further away from the shore into deeper waters during the Department's site visit. The applicant confirmed that the coordinates in the Department's site report are the correct coordinates for the lease site and the lease acreage is therefore .92 acre.

The proposed lease activities would be conducted in the same manner as under the experimental lease and would consist of growing shellfish in cages suspended from a float during the first season and in cages on the bottom of the river during the second season. The 22 ft. x 12 ft. float is divided into 15 sections. One section holds a polyurethane, 240 gallon dip tank, five sections are comprised of walkways, and nine sections are open silos where custom cages are suspended for growing oysters. A gantry on wheels rides the full length of the float with a manual chain hoist on a trolley to hoist the cages from the water. The height of the gantry is 7.5 feet above the surface of the water. The applicant testified that when the oysters are 2 mm in size they are scrubbed twice a week to control fouling. After the oysters reach 10 mm in size, they are dipped in a concentrated saline dip every 1 to 2 weeks. Additionally, the applicant

testified that at the beginning of the season the bottom cages that have been in the water for the winter are washed with a power washer. The applicant stated that he runs the power washer in the late morning for approximately 2-3 hours per week for the first month of the season. The applicant testified that the power washer has a Honda engine and the noise level is equivalent to a lawn mower. According to the applicant, his season would run from mid-May through October or November. The applicant testified that he would work on the site from approximately 7:00 a.m. until noon, usually 5 days per week. According to the application, the applicant does not plan to use lighting at the lease site. The proposed lease site would be accessed by boat from the applicant's adjacent property. According to the application, all seed shellfish would be obtained from Muscongus Bay Aquaculture in Bremen, Maine. The applicant has been operating an experimental lease in the same area for the past three years and he testified that he has not received any complaints regarding his operation.

In accordance with Department regulations, Chapter 2.10(3), the applicant provided an environmental characterization of the proposed lease area. According to the application, the river bottom at the proposed lease site consists of a deep, muddy clay. The water depths are estimated to be 20 feet at mean high water and 8 feet at mean low water. According to the application, no significant flora appears to be present in the area. Local fauna includes green crabs, red crabs, eels and striped bass. The current flow is estimated to be an average of .6 to 1.8 km/hr and flows in a north/south direction. According to the applicant, the site was chosen because of its proximity to Glidden Ledges, which appear to provide warmer growing conditions, and because of the excellent flow of nutrients on the Damariscotta River.

According to the applicant, his closest neighbor to the south, Elizabeth Kunkle, routinely uses a kayak. The applicant testified that Mrs. Kunkle's dock is close to his dock, but the lease site is located far enough away to give ample room to navigate and access her dock in a boat or kayak. When questioned regarding Mrs. Kunkle's concern regarding accessing her dock in her boat, the applicant stated that she is probably concerned with where his boat is moored, and not

where the lease is located. According to the applicant, Mrs. Kunkle has not complained directly to him and he has not observed her having difficulty maneuvering the boat in the area. According to the application, the applicant's neighbor to the north does not routinely access the water.

According to the application, recreational and commercial fishermen occasionally use the proposed lease area for fishing, but not on a routine basis. According to the applicant, when fishermen do use the area, it is for no more than 20 minutes at a time. Additionally, there are occasional powerboats that access Hunters Landing to the south of the site. According to the application, the applicant would allow lobster and crab fishing and recreational fishing and boating in the open areas of the lease site.

The Department's Aquaculture Environmental Coordinator (AEC) and his assistant conducted a site visit at the proposed lease area on October 7, 2003. During the site visit, a diver survey, utilizing an underwater video camera, was performed. The AEC created a site report summarizing the information obtained during the site visit and provided testimony regarding the site report at the public hearing.

According to the report and the AEC's testimony, the proposed site is located in the Damariscotta River, offshore of the applicant's property, in water depths ranging from approximately 3.7 to 9.4 feet at mean low water (MLW) and 13.2 to 18.9 feet at mean high water (MHW). The bottom topography of the proposed lease site consists of relatively flat, soft mud. According to the AEC's report, currents are tidally driven in a northeast/southwest direction. The two major floral and faunal components of the ecology at the proposed lease site are a brown benthic diatom mat and a large population of mud/sand shrimp. Other flora and fauna found at the site include green crabs, common periwinkles, horseshoe crabs, hermit crabs, and frilled anemones. In one small area located to the east of the proposed site, American and European oysters were observed. According to the AEC's report the proposed lease is located in an area classified as conditionally approved for the harvest of shellfish by the Department's Water

Quality Division, dependent upon the Damariscotta Sewage Treatment Facility. Additionally, the proposed lease site is not located within an Essential or Significant Wildlife Habitat.

According to the AEC, one mooring, belonging to the applicant, was observed within the boundaries of the lease area during the site visit. There were twelve moorings observed in the cove area located south of the lease site. The two closest moorings are an empty mooring located 230.05 feet from the proposed lease site and a mooring belonging to the vessel "Indefatigable" located 390.22 feet from the proposed lease site. According to the AEC, the proposed activities will not unreasonably interfere with access to the moorings. Three docks were also observed within the area. One dock belongs to the applicant and the other two docks belong to the applicant's neighbors to the north and south. The dock to the north is located 222.89 feet from the proposed lease site and Mrs. Kunkle's dock to the south is located 274.45 feet from the proposed lease site. According to the AEC, the proposed lease activities are not expected to interfere with riparian access to the docks. When questioned about Mrs. Kunkle's concerns regarding access to her dock, the AEC testified that 275 feet is plenty of room in which Mrs. Kunkle can maneuver her boat to access her dock.

According to the AEC's report, no commercial or recreational fishing was observed within the boundaries of the proposed lease site during the site visit. However, recreational striped bass fishing is expected to occur in the area. Additionally, the presence of a soft-mud bottom is likely to limit lobster fishing in the area. There are two aquaculture lease sites located within one mile of the proposed site. Both sites, ASFI PP and GPOC WP, are bottom culture lease sites.

Additionally, according to the AEC, the proposed activities will not interfere with navigation in the area. The proposed lease site is located 270 feet from the main navigational channel of the Damariscotta River. Navigation in the immediate vicinity is likely limited to riparian and mooring access and some recreational vessels. According to the AEC, all other vessels will utilize the deeper channel waters to navigate through the area. Additionally, according to the AEC's report, both the Walpole harbormaster and deputy harbormaster stated that the proposed

activities would not interfere with navigation. The Harbormasters also stated that the proposed lease activities will not interfere with the use of the town dock located approximately 900 feet from the proposed lease site.

One member of the public testified in support of the proposed activities. He stated that he is the president of the neighborhood association and that he has received no complaints regarding the applicant's experimental lease operations. Additionally, the Department received written comments regarding the lease application from Elizabeth Kunkle, the applicant's neighbor to the south. Mrs. Kunkle stated that she is primarily concerned with the impact of the proposed activities on navigation. She stated that she kayaks in the open areas of the lease, and that she also operates a 32' trawler, the "Indefatigable." She stated that she is concerned about trying to access her dock from upriver under certain conditions, due to the location of the lease site. Mrs. Kunkle did not attend the public hearing.

Findings of Fact

The proposed lease is located in the Damariscotta River, offshore of the applicant's property. Access to the proposed lease would be by boat from the applicant's property. There are three docks located near the proposed lease site. One belonging to the applicant, and two belonging to the applicant's neighbors to the north and south, located 222.89 feet and 274.45 feet, respectively, from the proposed lease site. There is one mooring, belonging to the applicant, located within the lease boundaries, and there are twelve other moorings located within the area of the proposed lease. The closest of these moorings is located 230.05 feet from the proposed lease site. The lease activities will not interfere with access to the moorings or the docks, as there is sufficient room to navigate around the proposed lease site in order to access the moorings and docks. The only use of riparian land necessary is that of the applicant. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

The proposed lease is located in water depths of approximately 3.7 to 9.4 feet at MLW, 270 feet from the main navigation channel. Navigation in the immediate area of the lease consists of vessels associated with riparian and mooring access and recreational fishing. All other vessels navigate through the area in the navigational channel. Additionally, there is sufficient distance between the proposed lease site and the nearby docks in order to navigate around the lease site. Based on the foregoing, I find that the proposed lease will not unreasonably interfere with navigation.

Fishing in the area of the proposed lease site consists of recreational fishing for striped bass. The nearest existing aquaculture lease is located with one mile from the proposed lease and is a bottom culture site. The area of the proposed lease is classified as “conditionally approved” for the harvest of shellfish. The applicant will allow lobster and crab fishing and recreational fishing and boating in the open areas of the lease site. Additionally, there is kayaking in the area of the proposed lease. As stated previously, there is sufficient room in which to navigate a vessel around the lease site, and thus a kayak as well. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing flora and fauna observed at the proposed site consists of a brown benthic diatom mat, mud/sand shrimp, crabs, common periwinkles, horseshoe crabs, hermit crabs, striped bass and frilled anemones. There are no Essential or Significant Wildlife Habitats located within the proposed lease site. The current is estimated to be .6 to 1.8 km/hr. The proposed lease activities have taken place on the lease site for the past three years pursuant to an experimental lease. Based on this evidence, I find that the proposed activities will not 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.

All seed shellfish will be obtained from the hatcheries of Muscongus Bay Aquaculture in Bremen, Maine. Based on this evidence, I find that there is an available source of American oysters, quahogs, sea scallops, surf clams and razor clams.

The proposed lease site is located approximately 900 feet from the town dock. The proposed lease activities will not interfere with the public use of the dock. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

The bottom cages that have been in the water for the winter are washed with a power washer in the late morning for approximately 2-3 hours per week for the first month of the season. The power washer has a Honda engine and the noise level is equivalent to a lawn mower. Additionally, lighting will not be used at the lease site. I find that the proposed lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture activities proposed for this site will not 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. The applicant has demonstrated that there is an available source of American oysters, quahogs, sea scallops, surf clams and razor clams;
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities; and
7. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

Based on the foregoing, the Commissioner grants the applicant's requested aquaculture lease of .92 acre from the date of this decision for the purpose of cultivating American oysters (Crassostrea virginica), quahogs (Mercenaria mercenaria), sea scallops (Placo pecten magellanicus), surf clams (Spisula solidissima) and razor clams (Ensis directus) using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$5,000 conditioned upon his performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation, lobster fishing and recreational boating and fishing shall be allowed in the open areas of the lease;
- (2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources