STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Experimental Aquaculture Lease Application
Suspended culture of American Oysters, Casco Bay

Wolf Neck Oyster Company, LLC
CAS LJIx
Docket # 2014-13-E
February 3, 2015

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Wolf Neck Oyster Company, LLC, applied on June 25, 2014 to the Department of Marine Resources ("DMR") for a three-year experimental aquaculture lease on 1.93 acres located in Casco Bay, between Cousins and Littlejohn Islands, in the Town of Yarmouth, Cumberland County, for the purpose of cultivating American oysters, (*Crassostrea virginica)* using suspended culture techniques. DMR accepted the application as complete on July 1, 2014. No one intervened in this case, and no public hearing was held on this application.

1. THE PROCEEDINGS

Notice of the application, the DMR site report, and the 30-day public comment period were provided to state and federal agencies which were requested to review the project, as well as to riparian landowners, the Town of Yarmouth and its Harbormaster, members of the Legislature, representatives of the press, aquaculture and environmental organizations, and others on the Department's mailing list. Notice of the application and comment period was published in the *Forecaster* on July 31, 2014. No comments were received by the Department.

The evidentiary record before the Department regarding this lease application includes the application (App) dated June 25, 2014, the Department's site report (SR) dated January 6, 2015, as well as the case file (CF).

2. DESCRIPTION OF THE PROJECT

Proposed Operations

According to the application, the proposed lease site is an expansion of the applicant's current Limited Purpose Licenses (LPAs) in the same cove in order to establish a commercially viable operation for oysters (App 3). The applicant is requesting permission for suspended culture of American oysters (*Crassostrea virginica),* that will be grown on the bottom in cages stacked 2 high that will protrude 18" into the water column (App 3, SR 2). Oysters will be placed in plastic mesh grow out bags inside the cages initially, then, once the oysters are large enough to adhere to the cage mesh, bags will be pulled from the cages and oysters emptied back into the cages to finish growing without bags (App 4). Stacks of two cages will be deployed eight feet apart on 280-ft. long lines along the north-south axis of the lease site with a total of 19 long lines secured to the sea floor running parallel to each other at 14-ft. intervals (App 3). The

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maximum number of cages to be deployed will be 30 stacks in 19 lines, or 570 cages. The oysters will be tended by pulling a boat along the long line from cage to cage and hauling up each stack using a hoist (App 4, 8, 9).

Site Characteristics

According to the application, the lease site is 1.93 acres and is located in Casco Bay in a cove between Cousins and Littlejohn Islands. The area of the proposed lease site is currently classified by the Department of Marine Resources Water Quality Classification Program as "open/approved for the harvest of shellfish" (App 5, SR 6). The proposed site is situated in a large, flat tidal embayment dominated by fine-grain, muddy sediments (App 5).

Water depths range at mean low water from 3.1 to 4.5 feet; at high water, depths range from 8 to 9.8 feet (SR 2). The distance from the lease to the nearest land to the north is 970 feet and to the nearest land to the South is 1100 feet, leaving a large navigational area around the lease site (App 2, SR 3).

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a lease may be granted by the Commissioner of DMR 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, or docking facilities 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.

A. Riparian Access

According to the application, the proposed lease "sits in the center of the cove, providing nearly 1000' at Mean Low Water on all sides for ingress and egress of the cove by riparian owners" (App 5). Moreover, the site report notes:

> the nearest observed dock was approximately 930 feet to the north of the proposed lease. Two additional docks were noted to the north; both located greater than 1,000 feet from the proposed activities (Cornfield Point, Cousins Island). More than 950 feet to the south of the proposed lease, on Littlejohn Island, was a fourth pier. Five moorings were identified the closest one being 280 feet to the north. If the lease were granted more than 800 feet of water of similar depth between Littlejohn Island and the proposed southeastern corner would remain. More than 850 feet of deeper, navigable water would be available between the NE corner and Cousins Island. Minimal interference with access to shorefront properties would be expected. Vessels would likely be more limited by shallow water depths at low tidal stages (SR 4).

Based on this evidence, it appears that the proposed lease site is far enough from shore that it will not affect riparian ingress and egress.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.

B. Navigation

The site report notes that "local traffic will maintain the ability to travel through and around the proposed lease area" (SR 5). In fact, access to the inner reaches of the embayment would be hindered more by low tide and shallow water depths than the proposed lease activities (SR 5). The site report does warn that shallow draft vessels could have some difficulty moving directly over the submerged cages at *lowest* tide and advises that markings be put in place to prevent potential propeller strikes (SR 4). As the applicant has indicated in his comments on the proposed decision, marking each individual submerged cage would result in a plethora of small buoys that would inhibit navigation. Instead, a condition will be included in the lease requiring marking each long line of submerged cages, in addition to the normal corner markings required for the lease.

It appears from this evidence that navigation in the area will not be unduly affected by the presence of the proposed lease site. Aquaculture lease sites are required to be marked for navigation purposes in accordance with U. S. Coast Guard requirements.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with navigation, provided that submerged gear on the lease site is marked as described above.

C. Fishing & Other Uses

At the time of the DMR site visit, no fishing was observed within the boundaries of the proposed lease site. The application notes that there is light recreational fishing in the summer. Additionally, the application states that the Yarmouth Assistant Harbormaster stated there is no apparent commercial lobstering in the lease area (SR 4, App 5).

Exclusivity. The applicant does not request exclusive use of the proposed lease area (App 5); therefore, navigation and fishing will be allowed in the open areas of the lease site.

Other aquaculture leases. The applicant holds two limited purpose aquaculture licenses (LPAs), for the suspended culture of oysters, approximately 600 feet to the southeast of the current proposal. There are no other aquaculture activities in the cove between Cousins and Littlejohn Islands (SR 5).

Therefore, considering the number and density of aquaculture leases in the area, I find that the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area. Navigation and fishing will be allowed in the open areas of the lease site.

D. Flora & Fauna

The site reports notes that the bottom consists of uniform mud bottom with little topographical variation (SR 5). The application notes that the shoreline is typical of mud flats, with marsh grass

(*Spartina alterniflora)* and a rocky ledge that extends from the shoreline to the mud (App 5). Current and historical records of eelgrass (*Zostera marina*) distribution indicate a presence in the general vicinity, but not within the boundaries of the proposed lease (SR 5).

Fisheries and Wildlife. According to the Maine Department of Inland Fisheries and Wildlife's data, there are no bald eagle nests within one mile of the proposed lease site. The intertidal zones to the north, south, and west are categorized as Tidal Wading Bird and Waterfowl Habitat under the Natural Resources Protection Act. The proposed activities would occur more than 500 feet from the nearest intertidal area (SR 6).

Based on this evidence, it appears that the activities proposed on this lease site will not interfere with the plants and animals existing in the lease area.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

E. Public Use & Enjoyment

According to the site report, there are no public docking facilities or beaches within 1,000 feet of the proposed lease (SR 8).

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.

F. Source of Organisms

According to the application, seed stock for this proposed lease site will be obtained from Mook Sea Farm.

Therefore, I find that the applicant has demonstrated that there is an available source of American oysters (*Crassostrea virginica*) to be cultured for the lease site.

4. 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. The lease site must be marked in accordance with U. S. Coast Guard requirements.

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. Navigation and fishing will be permitted in the open areas of this lease site. The lease boundaries must be marked in accordance with the requirements of DMR Rule 2.80, and each long line of submerged cages must be marked, as well.

4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

5. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.

6. The applicant has demonstrated that there is an available source of American oysters (*Crassostrea virginica*) to be cultured for the lease site.

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

5. DECISION

Based on the foregoing, the Commissioner grants the requested experimental lease of 1.93 acres to Wolf Neck Oyster Company, LLC, for three years, the term of the lease to begin within twelve months of the date of this decision, on a date chosen by the applicant; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed.

This lease is granted to the applicant for the purpose of cultivating American oysters (*Crassostrea virginica*) using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of $100.00 per acre per year. Since this is an experimental lease using suspended gear, i.e., bottom cages, with more than 400 sq. ft. of structures and no discharge, the applicant shall post a bond or establish an escrow account pursuant to DMR Rule 2.64 (10) (D) in the amount of $5,000.00, conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

6. 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, pursuant to 12 MRSA §6072-A (15). 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 lease.

The following conditions shall be incorporated into the lease:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80. Each long line of submerged cages must be marked to warn navigators of its location.

2. Navigation and fishing are allowed in the open areas of the lease site.

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7. **REVOCATION OF EXPERIMENTAL LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072-A (22) and DMR Rule Chapter 2.64 (13) that no substantial research has been conducted on the site within the preceding year, that research has been conducted in a manner injurious to the environment or to marine organisms, or that any conditions of the lease or any applicable laws or regulations have been violated.

Dated: 2·3·15

Meredith W. Mendelson, Deputy Commissioner
Department of Marine Resources