

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Experimental Aquaculture Lease Application
Suspended culture of American & European oysters
Wildcat Lobster Pound, Tenants Harbor, St. George,
Knox County

Daniel Canfield, d/b/a
Wildcat Oyster
Docket # 2008-07E
TENH-LC
March 30, 2009

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

On October 8, 2008, the Department of Marine Resources (“DMR”) received an application from Daniel Canfield, d/b/a/ Wildcat Oyster, for a three-year experimental aquaculture lease on 1.52 acres located in the coastal waters of the State of Maine, in the Wildcat Lobster Pound in Tenants Harbor, in the Town of St. George in Knox County, for the purpose of cultivating American oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*) using suspended culture techniques. The application was accepted as complete on November 20, 2008.

1. THE PROCEEDINGS

The Department of Marine Resources (“DMR”) provided notice of the application and an opportunity to submit comments or request a hearing within a period of 30 days to the following: all riparian property owners within 1,000 feet of the proposed lease site, numerous state and federal agencies, a number of educational institutions, aquaculture and environmental organizations, the Town of St. George and its Harbormaster, members of the Legislature, representatives of the press, and private individuals. DMR gave public notice of the application and comment period in an advertisement placed in the *Village Soup* newspaper on December 16, 2008. No comments or requests for hearing were received. No hearing was held.

The evidentiary record before the Department regarding this lease application includes the application and the DMR site report, plus letters and e-mails contained in the official file.

2. DESCRIPTION OF THE PROJECT

Proposed Operations

Mr. Canfield proposes to experiment to see if he can raise American and European oysters from seed in mesh bags suspended in the waters of the Wildcat Lobster Pound in Tenant’s Harbor. He will deploy a maximum of 500 floating containers of various dimensions and mesh sizes (called “floating bags”, “nursery bags”, “floating trays”, “oyster cages”, and “oyster trays”). The bags will be set out in a maximum of five arrays, each array consisting of two lines of fifty

bags each, held in place by a “pre-existing pin and shackle system” attached to the rock ledge on opposite sides of the lobster pound (application, p. 3).

The oysters will be grown in the pound until they reach one inch in size. They will then be moved to a final grow-out site in open water to grow to market size. As oysters grow large enough to be moved out of the pound, the bags will be re-stocked (application, p. 3). According to the applicant, there will be little effect on the surrounding environment; although cleaning algae and other fouling growth off the bags will “disperse sediment into the water column”, this also happens naturally during the normal movements of wind and tide.

Site Characteristics

Mr. Canfield’s site is located inside the lobster pound. The pound is surrounded on the south by the waters of Long Cove, on the west by the main road, on the north by a small road, and on the east by the same small road, a narrow spit of filled land, and more of Long Cove, beyond which is a wooded hillside with several houses along the shore.

The pound is separated from the open waters of Long Cove by a stone dike with a fence and walkway along the top. The lease site occupies the southern two-thirds of the pound (site report, p. 2). The lobster pound also includes a working wharf, with a lobster-buying station and seasonal restaurant. According to the application, the pound is used as a temporary holding site for “the daily catch of lobsters from several local lobstermen” awaiting delivery to market; the lobsters remain in crates and are not “free on the bottom” (application, p. 3).

The bottom of the pound is flat, sloping gradually to the north and ranging from mud in the center to hard gravel nearest the inlet on the south side. The bottom is clean and free from debris. Depth at mean low water is 5 ft., maintained by the dike; depth at high water can range up to 10 ft. Depth under all structures will be a minimum of 4 ft. at mean low tide. Currents within the pound run north-south, ranging on an incoming tide from 2 knots nearest to the inlet to 0.5 knots at the northern end. On an ebb tide, the currents run out to the south at 2 knots. The pound is entirely fenced with metal posts and chain-link fencing. There is no eel grass on the site. Only a few hermit crabs were reported inside the lease area (application, p. 4).

The water quality inside the pound, as well as in adjacent Long Cove, is classified by DMR as “prohibited for the harvest of shellfish”. Under the National Shellfish Sanitation laws, which DMR administers through its own rules, shellfish are allowed to be grown in prohibited waters until they are six months or more below marketable size. At that point, they must be moved to clean waters to mature and flush any toxins from their systems before being harvested for market. Mr. Canfield plans to apply for another lease or license site for this purpose, so, as the site report notes, “the pound would operate as a seed growing area, not a harvest area” (site report, p. 4).

The owners of the pound, Travis and Stephanie Simmons, have given Mr. Canfield written permission to use the pound for this project (application, p. 8).

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 if s/he determines 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

While there are shorefront property owners located within 1,000 ft. of the lobster pound, the pound itself and the lease site inside it are not accessible from the surrounding waters because of the dike on the southern end and the narrow spit of land on the east. Boats can be launched from the shore inside the pound itself, but they cannot enter or exit the pound via Long Cove. There are no docks or moorings within the pound, except those belonging to the pound itself (site report, p. 3). Thus, the ingress and egress of riparian property owners will not be affected by the proposed lease.

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 only navigation on the lease site is by vessels involved in the daily operations of the pound and the lease, and those would be hand-launched into the pound itself. Access to the open water is foreclosed by the pound's enclosure (site report, p. 3). Thus, the proposed project will not affect navigation.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with navigation.

C. Fishing & Other Uses

No fishing of any kind takes place inside the pound, so the proposed project will not interfere with fishing. The pound owners have consented to the project, so it apparently will not

interfere with their use of the pound for temporary lobster storage. The project is limited to the waters of the pound itself, so it will not affect the lobstering or other fishing activity in Long Cove and beyond (site report, p. 3). There is no evidence of any other uses being made of the waters of the pound.

The nearest aquaculture lease is located in the St. George River in Otis Cove, more than two miles (straight-line distance) from this site (site report, p. 3), so this project will not interfere with aquaculture activities.

The lease site must be marked in accordance with DMR Rule 2.80¹

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.

D. Flora & Fauna

The site is more than one-quarter of a mile from the nearest Essential Habitat, bald eagle nest BE238A, which is located about a half-mile to the north of the lobster pound in Seavey Cove, St. George. There are no other Essential or Significant Wildlife Habitats in the vicinity of the site.

Inside the pound, the fence and dike likely preclude “all but small fish and invertebrates from inhabiting the area” (site report, p. 4). The site report also notes that the floating oyster bags in the pound may provide a roosting surface for birds, but otherwise the gear will “have little impact on an area already commercialized as a lobster pound” (site report, p. 4).

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.

¹ 2.80 Marking Procedures for Aquaculture Leases

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.
2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.
3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.
4. Lease sites must be marked in accordance with the United State's Coast Guard's Aids to Private Navigation standards and requirements.

E. Public Use & Enjoyment

According to the report of the St George Harbormaster, there are no government-owned beaches, parks, or docking facilities located within 1,000 ft. of the proposed lease site (Harbormaster Questionnaire dated 12-8-08). The site report notes that a mooring field and anchorage are "located beyond the pound in Long Cove", but because the lease is contained within the privately-owned pound, it will have no effect on public use of the surrounding waters (site report, p. 4).

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

Mr. Canfield will obtain his oyster seed from several area hatcheries: Marshall Point Sea Farm in Port Clyde; Muscongus Bay Aquaculture, Inc., in Bremen; Chance Along Farm, Inc. in Freeport; and Mook Sea Farm in Walpole (application, p. 11).

Therefore, I find that the applicant has demonstrated that there is an available source of American and European oysters 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.
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. The lease boundaries must be marked in accordance with the requirements of DMR Rule 2.80.
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*) and European oysters (*Ostrea edulis*) 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 1.52 acres to Daniel Canfield d/b/a Wildcat Oyster 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 applicant²; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed. This limited-purpose (experimental) lease is granted to the applicant for the purpose of cultivating American oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*) using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$100.00 per acre per year. As this is an experimental lease with approximately 2500 square feet of structures and no discharge, the applicant shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2) (A) in the amount of \$5,000.00, conditioned upon his 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)³. 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 DMR Rule 2.80.

² DMR Rule 2.64 (14) provides:

“The term of the lease shall begin within 12 months of the Commissioner’s decision, on a date chosen by the applicant. No aquaculture rights shall accrue in the lease area until the lease term begins and the lease is signed.”

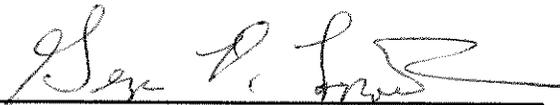
³ 12 MRSA §6072-A (15) provides that:

“The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.”

7. REVOCATION OF LEASE

The Commissioner may commence revocation procedures if s/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 is not being observed, the Commissioner may revoke the aquaculture lease.

Dated: 30 March 2009


George D. Lapointe (Commissioner)
Department of Marine Resources