

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

**IN THE MATTER OF THE APPLICATION OF DANIEL)
SCHWEITZER FOR AN AQUACULTURE LEASE)
LOCATED IN THE SALT POND OF THE SHEEPSCOT)
RIVER, WISCASSET, LINCOLN COUNTY, MAINE)** **FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

On October 1, 2004 Daniel Schweitzer of Westport, Maine applied for an aquaculture lease totaling 1.94 acres in the coastal waters of the State of Maine, located in the salt pond of the Sheepscot River in Wiscasset, Lincoln County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), hard clams (*Mercinaria mercinaria*), soft shell clams (*Mya arenaria*), razor clams (*Ensis directus*), surf clams (*Spisula solidissima*), and bay scallops (*Argopecten irradians*) using suspended and bottom culture techniques. The application was accepted as complete on October 18, 2004. A public hearing on this application was held on July 28, 2005 at 6:00 p.m. in Wiscasset. Intervenor status was granted to Mason Station LLC d/b/a Point East.

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, taking into consideration the number and density of aquaculture leases in an area, the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area; 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 public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency. 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 be in compliance with visual impact criteria adopted by the Commissioner relating to color, height, shape and mass.

**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 July 28, 2005 public hearing. At the public hearing, testimony was given by the applicant, Daniel Schwietzer, the Department's Aquaculture Environmental Coordinator, Jon Lewis, Scott Houldin, representing intervenor Mason Station LLC d/b/a Point East, and one member of the public.

According to the application, the proposed lease is sought to raise American oysters, European oysters, hard clams, soft shell clams, razor clams, surf clams, and bay scallops on a lease site totaling 1.94 acres, for a lease term of ten (10) years. The applicant testified that he currently operates an experimental aquaculture lease in the proposed lease area. The proposed lease activities would be conducted in the same manner as under the experimental lease and would consist of growing shellfish using ADPI bags on the surface, as well as in trays on the bottom, racks on the bottom and mesh panels on the bottom. There would be a maximum of 28 lines of bags on the bottom, 28 lines of bags on the surface, 100 racks, 500 trays and 12 mesh panels. According to the application, all seed oysters would be obtained from Marshall Point Sea Farm in Port Clyde, Maine, Muscongus Bay Aquaculture in Bremen, Maine, Adam and Michelle Campbell in North Haven, Maine, and Sandy Cove Hatcheries in Harrington, Maine. If Maine hatcheries are unable to supply seed, seed will be obtained from Mohegan Aquaculture in Stonington, CT.

According to the application, a boat would be used when necessary to move materials to and from the proposed lease site and a dinghy or skiff would be used to access gear at high water or when otherwise necessary. At low tide, the site would be accessed by land and the

applicant has submitted letters from riparian landowners granting permission to the applicant to cross their land to access the pond. The dinghy and skiff are powered by oars and/or small outboard motors. The proposed lease site would be visited daily for maintenance, including scrubbing silos, trays and racks, grading animals, and flipping trays. According to the applicant, a 12' x 24' x 3' float with an 8' x 4' shed would be on site and used as a work platform and as an upweller if electricity is available. The upweller would be powered by an inaudible one Hp electric motor. A gasoline powered generator enclosed in a foam baffle would be used during power outages. If electrical service is not installed, a 3 Hp electric generator enclosed in a foam baffle would be used to power an inaudible wire brush motor one day per week. The applicant does not plan to use lighting at the lease site other than the occasional use of two 100 watt incandescent lights on the float. According to the application, the floating ADPI bags are composed of black mesh and black floats. The float would be wood tone and/or gray or dark green.

In accordance with Department regulations, 2.10(3), the applicant provided an environmental characterization of the proposed lease area. According to this environmental characterization, the bottom of the proposed lease site consists of soft mud and fine sediments. Local fauna consists of minnows (common), green crabs (common), and eels (rare). Water depths are estimated to be between 1 and 6 feet at mean low water (MLW). Current runs in a northwest/southeast direction and is less than 1/2 knot.

According to the application, aside from the applicant's activities on his experimental lease, there is no commercial or recreational navigation taking place within the proposed lease area. The applicant testified that when working on his experimental lease, he has never observed anyone else using the salt pond.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on May 12, 2005. During the site visit, a visual survey of the bottom characteristics and local flora and fauna was performed. The site visit occurred shortly after low tide and thus water depths were too shallow for SCUBA diving and underwater video collection.

The AEC created a site report summarizing the information obtained during the site visit. According to the AEC's report, the proposed lease is located in a salt pond south of Birch Point in the Sheepscot River in water depths of two feet or less at low water. The AEC testified that the entire lease area was under water at the time of the site visit shortly after low tide. The bottom of the proposed site is comprised of soft mud. The currents in the area of the proposed lease are minimal due to the presence of a rock dam at the mouth of the salt pond. No flora or fauna were observed within the boundaries of the proposed lease site. According to the site report, the salt pond in which the proposed site is located has an abundance of mudflats which are expected to support an array of shorebirds and upland fauna such as deer, otters, and moose. According to the AEC, the existing experimental lease activities do not appear to have deterred shorebirds or upland fauna from using the area. Additionally, the AEC testified that oysters would be beneficial to the pond in terms of water quality and clarity and would prevent it from becoming a stagnant pool.

According to the AEC, the proposed activities will not interfere with navigation or riparian ingress and egress. Due the location of the proposed lease site within the salt pond, no boat traffic is anticipated, other than occasional recreational kayaks and canoes. The presence of an old stone dam at the mouth of the salt pond blocks access to the salt pond to all but small skiffs and hand-powered vessels with shallow drafts. According to the AEC's report, no moorings or docks were observed in the salt pond and future moorings are unlikely.

According to the AEC's report, no fishing activity was observed within the boundary of the proposed lease site during the site visit. No commercial and limited recreational fishing is expected in the area as the salt pond is isolated from the Sheepscot River, except at high tide. Additionally, no commercially exploitable species were observed within the area during the site visit. The nearest aquaculture lease (PIER SR) is located 2100 feet to the northeast, at the Mason Station Power Plant off Birch Point. According to the AEC's report the proposed lease is located in an area classified as conditionally approved for the harvest of shellfish from September 15th to May 15th of each year by the Department's Water Quality Division.

Kenneth Elowe, Director of the Bureau of Resource Management at the Maine Department of Inland Fisheries and Wildlife (IF&W) submitted a letter regarding an eagle nest located near the proposed lease site. According to Mr. Elowe, the proposed lease site is located within one quarter mile of an eagle nest and thus within an Essential Habitat. Mr. Elowe stated in his letter that the proposed lease activities will not significantly alter the Essential Habitat or violate the protection guidelines adopted by IF&W. Therefore, Mr. Elowe approved the issuance of the proposed lease within the Essential Habitat.

Sidney Gammon, the Wiscasset Harbormaster, provided written comments regarding the proposed lease. Mr. Gammon indicated that the proposed lease site would not interfere with navigation or riparian access; that there are no permitted moorings within the lease boundaries; that there are no storm anchorages within the proposed lease area; that there is no fishing in the proposed lease area; that the proposed moorings are adequate; and that there are no local, state or federally owned beaches, parks or docking facilities within 1,000 feet of the proposed lease site.

Scott Houldin, Principal and Project Manager for intervenor Mason Station LLC d/b/a Point East, provided testimony at the hearing. Mr. Houldin stated that Point East is planning to develop the adjacent property, which would include single family homes, condominiums, a hotel/conference center and a marina. Mr. Houldin testified that the proposed development will likely interfere with the applicant's ability to grow oysters. He testified that the marina will not be located in the salt pond, nor would the salt pond be used by residents for access.¹

¹ Mr. Houldin also testified regarding a letter written by their surveyor, Maine Coast Surveying, which was submitted into the record. According to the letter and Mr. Houldin, the dam that created the salt pond was built in the late 1700s. Their assumption, based upon soundings taken in the pond, is that that area of the pond emptied out completely at low tide prior to the dam being built. According to Mr. Houldin, the area of the proposed lease is therefore intertidal and cannot be leased to the applicant. As Mr. Lewis testified, today the proposed lease area is entirely under water at low tide. Whereas the proposed lease site is currently subtidal and has been so for at least

Findings of Fact

The proposed lease site is located in the salt pond of the Sheepscot River in water depths ranging from 1-6 feet at low water. There is a rock dam at the mouth of the pond which limits access to the pond. There are no known users of the pond, other than the applicant. There are no moorings or docks located in the area of the proposed lease. The proposed lease area is not used by riparian landowners to access the land. Based on this evidence, I find that the lease will not unreasonably interfere with navigation or the ingress and egress of riparian owners.

Due to the presence of the rock dam and the absence of commercially exploitable species, the pond is not used for commercial or recreational fishing. There are no other known uses of the pond. Other than the applicant's experimental lease, the nearest aquaculture lease is located approximately 2100 feet northeast of the proposed lease site. The area of the proposed lease is classified as conditionally approved for the harvest of shellfish. Based on this evidence, I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

The bottom of the proposed site is comprised of soft mud and the currents are minimal due to the presence of the rock dam at the mouth of the salt pond. There is no flora or fauna within the boundaries of the proposed lease site. The proposed activities are not expected to deter shorebirds or other upland fauna from using the extensive mudflats in the area. Additionally, oysters are beneficial to the pond in terms of water quality. The proposed lease site is located within one quarter mile of an eagle nest and therefore within an Essential Wildlife Habitat. However, the proposed lease activities will not significantly alter the Essential Habitat and therefore IF&W has approved the proposed activity. 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.

200 years, it is not located within the intertidal zone and the authority of the Department to lease the proposed area

All seed shellfish will be obtained from Marshall Point Sea Farm in Port Clyde, Maine, Muscongus Bay Aquaculture in Bremen, Maine, Adam and Michelle Campbell in North Haven, Maine, and Sandy Cove Hatcheries in Harrington, Maine. If Maine hatcheries are unable to supply seed, seed will be obtained from Mohegan Aquaculture in Stonington, CT. Based on this evidence, I find that there is an available source of American oysters, European oysters, hard clams, soft shell clams, razor clams, surf clams, and bay scallops.

The proposed lease site is not located within 1,000 feet of any public beaches, parks, docking facilities, or conserved land. 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 a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency.

The dinghy and skiff used to access the site at high water are powered by oars and/or small outboard motors. If electricity is obtained, an upweller would be used on site and would be powered by an inaudible one Hp electric motor. A gasoline powered generator enclosed in a foam baffle would be used during power outages. If electrical service is not installed, a 3 Hp electric generator enclosed in a foam baffle would be used to power an inaudible wire brush motor one day per week. The applicant does not plan to use lighting at the lease site other than the occasional use of two 100 watt incandescent lights on the float. Based on this evidence, I find that the proposed lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

The floating ADPI bags are composed of black mesh and black floats. The 12' x 24' x 3' float with an 8' x 4' float would be wood tone and/or gray or dark green. Therefore, I find that the proposed lease will comply with visual impact criteria.

Conclusions of Law

is therefore not restricted.

Based on the above findings, taking into consideration the number and density of aquaculture leases in the area, 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;
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, European oysters, hard clams, soft shell clams, razor clams, surf clams, and bay scallops;
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency;
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; and
8. The aquaculture activities proposed for this site will be in compliance with visual impact criteria.

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 1.94 acres from the date of this decision for the purpose of cultivating American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), hard clams (*Mercinaria mercinaria*), soft shell clams (*Mya arenaria*), razor clams (*Ensis directus*), surf clams (*Spisula solidissima*), and bay scallops (*Argopecten irradians*) using suspended and bottom culture techniques. The applicant shall pay the State of Maine rent in the amount of \$100.00 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.

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