

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

**IN THE MATTER OF THE APPLICATION)
OF DANIEL SCHWEITZER FOR AN)
AQUACULTURE LEASE LOCATED IN)
SQUAM CREEK SALT POND,)
WESTPORT, LINCOLN COUNTY, MAINE)**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

On November 4, 2002, Daniel Schweitzer of Westport, Maine applied for an aquaculture lease totaling 1.49 acres in the coastal waters of the State of Maine, located in Squam Creek Salt Pond, in Westport, Lincoln County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating American oysters (Crassostrea virginica), soft-shell clams (Mya arenaria), hard-shell clams (Mercenaria mercenaria), and surf clams (Spisula solidissima) using bottom and suspended culture techniques. The application was accepted as complete on November 22, 2002. A public hearing on this application was held on August 20, 2003 at 7:00 p.m. in Westport.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that an aquaculture 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; the ability of the site and surrounding 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.

**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 August 20, 2003 public hearing. At the public hearing, testimony was given by the applicant Daniel Schweitzer and Jon Lewis, the Department's Aquaculture Environmental Coordinator.

According to the application and the testimony of Daniel Schweitzer, hereafter referred to as the applicant, the proposed aquaculture lease is sought to raise American oysters, hard-shell clams, soft-shell calms and surf clams. According to the application, the applicant requests a lease totaling 1.49 acres for ten (10) years. However, the coordinates provided in the application were incorrect and were amended by the Department during the site visit. The applicant testified that the coordinates and bearings listed in the Department's site report are correct, and that the correct acreage for the proposed lease site is 1.492 acres.

The proposed lease activities would consist of growing shellfish in mesh bags that are either on one of four long lines on the bottom, placed individually on the bottom, or placed in wire-mesh racks that rest on the bottom. Shellfish seed will also be planted freely on the bottom. According to the application, the proposed lease site would be accessed by skiff, which will be carried to and from the pond by way of West Shore Road. Work at the proposed lease site will be performed during daylight hours and will vary depending on factors such as tide and weather. According to the applicant, bio-fouling will be controlled by flipping the bags over once per week and the wire racks will be air dried, off-site. Harvesting, according to the applicant, will usually involve using hand tools from a skiff and/or scuba. According to the application, a light-weight oyster dredge may be used if space and conditions permit. Maximum annual production on the proposed lease site would be 200,000 animals, beginning with a start-up production of 5,000 to

10,000 animals in year one. According to the application, seed shellfish will be obtained from Pemaquid Oyster Company, Muscongus Bay Aquaculture or Sandy Cove Hatcheries.

In accordance with Department regulations, Chapter 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 cobble stones and gravel near the West Shore Road culvert, a band of gravel and sand approximately 150' from the culvert into the pond, and soft mud and silt in the remainder of the pond. According to the application, the water depths are an average of 2-12 feet at Mean Low Water (MLW). The tidal range is approximately one foot and the current is approximately 3 knots in the immediate vicinity of the culvert and less than one knot in the majority of the pond, and flows in a north/south direction. According to the applicant, no flora was observed at the proposed lease site. Fauna observed at the proposed site consists of a common occurrence of horseshoe crabs and green crabs, and a rare occurrence of periwinkles and small bait fish.

According to the application, the proposed lease is located in a salt pond that is not accessible to marine traffic. Due to shallow water depths, only small boats are used in the pond. Over the course of three years, the applicant has not observed any commercial or recreational boaters in the pond. According to the applicant, the pond is probably used occasionally for recreational rowing and kayaking. Additionally, according to the application, there are no moorings in the pond. According to the applicant, the proposed lease activities should not interfere with the recreational uses of the pond, as all gear will be placed in the bottom.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on May 20, 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 he provided testimony regarding the site report at the public hearing.

According to the report and the AEC's testimony, the bottom topography of the salt pond in the area of the proposed lease is comprised of soft, relatively barren mud. Water depths in the

salt pond average 9 feet at MLW. A limited current runs in a north/south direction. Local flora and fauna at the proposed lease site consists of an abundance of sand shrimp, and brown and green benthic diatoms, a common occurrence of mud dog whelk and knotted wrack, and an occasional occurrence of green crabs, sea lettuce, eelgrass and horseshoe crabs. The AEC testified that the applicant should avoid placing gear on top of eelgrass, as the gear would smother the eelgrass.

According to the AEC, there are no moorings located in the area of the proposed lease site. According to the site report, restricted access to the salt pond limits vessel traffic to small skiffs, canoes and kayaks. Riparian landowners are likely to use the pond for recreational boating and swimming. According to the AEC, the vessels used in the pond should be able to navigate over the submerged gear. The AEC recommended that the applicant mark any gear that is located just under the surface.

According to the site report, no fishing activity and no commercially viable populations of fish or shellfish were observed in the salt pond during the site visit. Limited fishing is expected in the area due to the isolation of the pond. The nearest aquaculture lease site is located in the salt pond, 10 feet to the west of the proposed lease.

According to the site report, the proposed lease is located in an area classified as open for the harvest of shellfish by the Department's Water Quality Division. Also, according to the report, the proposed lease site is located in a Significant Wildlife Habitat regulated by the Department of Inland Fisheries and Wildlife (IF&W). However, according to Keel Kemper, a biologist with IF&W, the lease activities will have minimal impacts to wildlife.

Findings of Fact

The proposed lease site is located in Squam Creek Salt Pond in Westport, Maine. Access to the proposed lease would be from the West Shore Road. There are no moorings located in the area of the proposed lease site. All gear associated with the proposed lease activities will be located on the bottom. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

Due to the restricted access to the pond, vessel traffic will be limited to kayaks, canoes and small skiffs. Such vessels will be able to traverse over the submerged gear. However, should the applicant place gear that is just below the surface, it shall be marked, so as not to pose a navigational hazard. Therefore, I find that the lease will not unreasonably interfere with navigation.

Limited fishing is expected in the area of the proposed lease site. The nearest existing aquaculture lease is located 10 feet to the west of the proposed site. The area of the proposed lease is classified as open for the harvest of shellfish. 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 included sand shrimp, brown and green benthic diatoms, mud dog whelk, knotted wrack, periwinkles, green crabs, sea lettuce, eelgrass and horseshoe crabs. Due to the presence of eelgrass, the applicant shall take caution while placing the gear and shall not place any gear on top of eelgrass. Current is limited in the pond. The proposed site is located within a significant wildlife habitat, but the proposed activities will have minimal impacts on wildlife in the area. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna, as long as the gear is not placed on top of eelgrass.

All seed shellfish will be obtained from Pemaquid Oyster Company, Muscongus Bay Aquaculture or Sandy Cove Hatcheries. Based on this evidence, I find that there is an available source of American oysters, hard-shell clams, soft-shell calms and surf clams.

The proposed lease site is not located within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities. 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.

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 the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna, provided that no gear is placed on top of eelgrass;
5. The applicant has demonstrated that there is an available source of American oysters, hard-shell clams, soft-shell clams and surf clams; and
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.

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 1.492 acres from the date of this decision for the purpose of cultivating American oysters (Crassostrea virginica), soft-shell clams (Mya arenaria), hard-shell clams (Mercenaria mercenaria), and surf clams (Spisula solidissima) using bottom and 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 \$1,500 if the total square footage of all structures on the lease is less than or equal to 400 square feet or \$5,000 if the total square footage of all structures on the lease is greater than 400 square feet, conditioned upon its 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. recreational fishing and boating activities shall be allowed on the open areas of the lease;
2. no aquaculture gear shall be placed on eelgrass;
3. gear that is located just below the surface shall be marked; and
4. 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