

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Standard Aquaculture Lease Application
Suspended culture of seaweeds, Casco Bay

Ocean Approved, LLC
Docket #2012-07
CAS-LCI2
November 17, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Ocean Approved LLC, a Maine corporation, applied on August 22, 2012, to the Department of Marine Resources (“DMR”) for a standard aquaculture lease for an 0.86-acre site located in the coastal waters of the State of Maine, south of Little Chebeague Island in Casco Bay, in the Town of Long Island in Cumberland County, for the purpose of cultivating the following seaweeds:

Sugar Kelp (*Laminaria saccharina*),
Hollow-stemmed Kelp/Oarweed (*Laminaria longicuris*),
Fingered/Horsetail Kelp (*Laminaria digitata*)
Winged/Edible Kelp (*Alaria esculenta*)

DMR declared the application as complete on July 29, 2013. No one intervened in this case. A public hearing on this application was held on October 28, 2014 at the Long Island Town Hall, Long Island, Maine.

1. THE PROCEEDINGS

Notices of the hearing and copies of the application and DMR site report were provided to numerous state and federal agencies for their review, as well as to various educational institutions, aquaculture and environmental organizations, the Town of Long Island and the Long Island Harbormaster, members of the Legislature, representatives of the press, riparian landowners, and other private individuals. Notice of the hearing was published in the *Forecaster* on September 26, 2014 and October 10, 2014 and in the *Commercial Fisheries News* October 2014 edition.

Sworn testimony was given at the hearing by: Applicant, Toleff Olson from Ocean Approved and by DMR’s Aquaculture Environmental Coordinator, Jon Lewis. Mr. Olson described his proposed project. Mr. Lewis described the site visit. Jay Clement from the U.S. Army Corps of Engineering and John Wallace, Long Island Harbormaster, were in attendance. No members of the public attended. The hearing was recorded by DMR. The Hearings Officer was Gail Mackinson.

The evidentiary record before the Department regarding this lease application includes the Department Case File (CF) submitted as Exhibit 1, the revised application (App) dated July 24, 2013, submitted as Exhibit 2 and the site report (SR) dated October 10, 2014, submitted as Exhibit 3.

2. DESCRIPTION OF THE PROJECT

The applicant is applying for a standard (10 year lease) that occupies the footprint of his expiring 3-year experimental lease (CAS LCI). According to the testimony of Mr. Olson, the culture gear will consist of two 1500' lines (or less as needed to fit within the 1,500' lease site) seeded with kelp and submerged to a depth of 7 feet. Buoys or weights are added or subtracted to existing buoys to maintain proper buoyancy. Mr. Olson testified in response to a question posed by the Hearings Officer about changes to gear, that the one change he made was the addition of two center moorings to take the bow out of the lines.

A. Proposed Operations

Mr. Olson testified that the site will be seeded and harvested using a 24' pontoon barge and an 18' outboard boat. Seeding generally takes place in the fall and harvesting in the winter and spring. Seeding can be accomplished in one or two working days with juvenile kelp wrapped around the lines. Harvesting is done by lifting the lines with the barge and removing the kelp, generally completed in 10 days or less. The lines are removed after the yearly harvest. The 1500' lines can hold up to 60,000 kelp plants (App 11).

B. Site Characteristics

The Department's Aquaculture Environmental Coordinator (AEC), Jon Lewis, testified that he and Marcy Nelson conducted a site visit at the proposed lease site on July 2, 2014. During the site visit, a diver survey, using a hand-held digital video recorder, was performed. According to Mr. Lewis, the proposed lease site is located parallel to and at least 300 ft. from the southwest shore of Little Chebeague Island in Casco Bay. The site is a long, narrow rectangle, 25 ft. wide by 1,500 ft. long, with water depths on the site ranging from 19.9 ft. to 26.7 ft. at mean high water and from 11.3 ft. at the eastern edge of the site to 18.1 ft. at the western edge of the site at mean low water. The topography is generally flat, mud bottom with a gradual downward slope to the west. Little Chebeague Island is a small, undeveloped island owned by the State of Maine, Bureau of Parks and Land. It is connected to Great Chebeague Island via a sandbar exposed at low water. The shoreline adjacent to the proposed lease can be characterized as a sand beach bordered by rocky outcrops. The upland is dominated by dense shrub and forest (SR 2-3). The area around the site is currently classified by the Department's Water Quality Classification program as "open/approved for the harvest of shellfish" (SR 8).

3. STATUTORY CRITERIA AND FINDINGS OF FACT

Approval of standard aquaculture leases is governed by 12 M.R.S.A. §6072. 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, docking facilities, or conserved lands 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; 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.

A. Riparian Access

According to the site report, the only riparian owner within 1,000 feet of the proposed site is the State of Maine, Bureau of Parks and Land. Little Chebeague Island is an undeveloped island northwest of the more populated Long Island. The AEC concludes in the site report that the proposed activities will not interfere with riparian landowner access (SR 4).

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

A Harbormaster Questionnaire was sent to the Town of Long Island on August 1, 2013 but no response was received. John Wallace, Harbormaster, was present at the hearing and made the comment that there have been no concerns about the application or complaints about the three year experimental lease operated by the applicant.

According to the AEC's report, the proposed lease site is located approximately 700 feet to the northwest corner of the designated navigational channel between Little Chebeague Island and Long Island. The majority of the vessel traffic adheres to the deeper channel waters to the south and east of the proposed lease, especially at lower tides. Mr. Lewis testified that there is a sufficient navigational corridor for vessels. Fishing and recreational vessels are known to access the shallow cove between the proposed lease site and Little Chebeague Island. At low tide, a minimum of approximately 100 feet of navigable waters exist between the lease area and Little Chebeague Island. Additionally, the long lines for cultivating the kelp will be submerged 7 feet allowing shallow draft vessels to navigate directly over the farm (SR 5).

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

C. Fishing & Other Uses

AEC Jon Lewis testified that fishing in the proposed lease site is light. The majority of the traps were located south of the proposed lease site in deeper water. Mr. Lewis further testified that because the long lines are submerged 7 feet and the seaweed production cycle occurs in the fall to spring and lobster and crabbing primarily in the summer, it is unlikely that the presence of the aquaculture lease site will

interfere significantly with fishing. The applicant states that the only exclusive use required is around the long lines on which the kelp is cultivated (App 6).

Other aquaculture leases. According to the site report, a mussel farm, Trundy Point LLC., is located 632 feet to the southwest of the proposed lease site. The applicant has a lease site approximately 0.8 miles from the proposed site and two Limited Purpose License sites are 1.3 miles to the northeast (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.

D. Flora & Fauna

According to the SCUBA observations in the site report, the dominant fauna in the area were mud shrimp, mysid shrimp, crabs, and lobster/crab burrows. The site report notes that sea vase, hermit crabs, colony of bryozoans and frilled anemone were seen to a lesser extent (SR 6). Species of marine flora observed by Department biologists during the site visit included very sparsely populated and short fronds of eelgrass located outside the western boundary of the proposed lease area. Flora observations were limited to unattached pieces of kelp, Irish moss, rockweed and unidentified red algae. There is historical presence of eelgrass in the shallows between the proposed lease site and the adjacent shoreline, however, the proposed activities will be located beyond the documented historical extent of the eelgrass in the area (SR 6). Moreover, Mr. Lewis testified that there had been no problems of any kind during the operation of the three year experimental lease on the same site.

Fisheries & wildlife: Copies of the application were provided to the Maine Departments of Environmental Protection and Inland Fisheries and Wildlife for review. The site report notes that there are no Endangered and Threatened Species, Species of Concern or Seabird Nesting Islands within 1.5 miles of the proposed lease. The shoreline surrounding Little Chebeague Island (as well as Long Island, Great Chebeague, etc.) is designated as a **Significant Habitat for Tidal Waterfowl and Wading Birds**. The proposed lease site is located in sub-tidal waters greater than 300 feet from the shoreline (SR 8). Additionally, the applicant provided a letter from the Maine Department of Inland Fisheries and Wildlife, dated August 14, 2012, which states that “our records indicate no occurrences of rare, threatened or endangered animal species within the project area” (App 22). There is no evidence in the record that the applicant’s seeding and harvesting operations during the term of the experimental lease interfered with, or altered the behaviors of waterfowl and wading birds along the shoreline of Little Chebeague Island.

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 1000 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 or certain conserved lands owned by municipal, state, or federal governments.

F. Source of Organisms

The application indicates that the source of stock for this proposed lease site will be obtained from Ocean Approved, LLC, which operates other lease sites cultivating kelp (App 1).

Therefore, I find that the applicant has demonstrated that there is an available source of stock to be cultured for the lease site.

G. Light

The application indicates that no lights will be used at the proposed lease site and that night work would only take place in the case of an emergency (App 5).

Therefore, I find that the aquaculture activities proposed for these sites will not result in an unreasonable impact from light at the boundaries of the lease site.

H. Noise

The applicant testified that he employs a 24 foot non-motorized pontoon barge and 18 foot outboard power boat, with a four stroke engine, for its seeding and harvesting operation. The site report observes that four stroke engines are substantially quieter than 2-stroke outboards and the diesel engines typically found on commercial fishing vessels (SR 8).

Therefore, I find that the aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease.

I. Visual Impact

The site report notes that no buildings or surface gear are proposed for use and growth lines are submerged to a depth of 7 feet. No other structures will be placed on the site, other than any navigational aids that may be required (SR 8).

Therefore, I find that the equipment, buildings, and watercraft to be used at the proposed lease site will comply with the visual impact criteria contained in DMR Regulation 2.37 (1) (A) (10).

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 shall 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. Small-boat navigation and fishing shall be allowed within the open areas of the lease site.

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 kelp seed to be cultured for the lease site.

7. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.

8. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease site.

9. The aquaculture activities proposed for this site will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

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.

5. DECISION

Based on the foregoing, the Commissioner grants the requested lease of .86 acres to Ocean Approved LLC., for ten years for the purpose of cultivating kelp using suspended 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 account pursuant to DMR Rule 2.40 (2) (A) in the amount of \$5,000.00, conditioned upon 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 (7-B). 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:

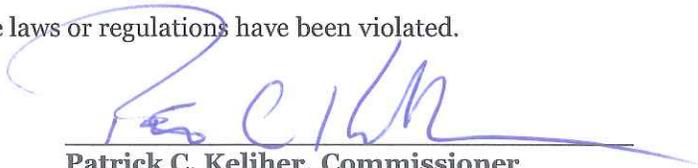
1. Fishing and boating shall be allowed on the lease site but dragging is prohibited; and
2. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.

7. REVOCAION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072 (11) and DMR Rule Chapter 2.42 that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated: _____

11/17/14


Patrick C. Keliher, Commissioner
Department of Marine Resources