

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

**IN THE MATTER OF THE APPLICATION OF MARSHALL)
POINT SEA FARM FOR AN AQUACULTURE) FINDINGS OF FACT,
LEASE LOCATED IN THE ST. GEORGE RIVER,) CONCLUSIONS OF LAW
CUSHING, KNOX COUNTY, MAINE) AND DECISION**

On July 14, 2003 Marshall Point Sea Farm of Cushing, Maine applied for an aquaculture lease totaling 15.9 acres in the coastal waters of the State of Maine, located in the St. George River in Cushing, Knox County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating American oysters (Crassostrea virginica), surf clams (Spisula solidissima), European oysters (Ostrea edulis), hard clams (Mercenaria mercinaria), and soft shell clams (Mya arenia) using suspended culture techniques. The application was accepted as complete on August 8, 2003. A public hearing on this application was held on January 7, 2004 at 6:00 p.m. in Cushing.

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 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; 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 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 and that the lease will not result in an unreasonable impact from noise or lights at the boundaries of 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 January 7, 2004 public hearing. At the public hearing, testimony was given by the applicant, Karl Eschholz, and the Department's Aquaculture Environmental Coordinator, Jon Lewis.

Mr. Eschholz, the general manager of Marshall Point Sea Farm, (hereafter referred to as the applicant), testified that he currently operates two experimental aquaculture leases in the proposed lease area. According to the application and the testimony by the applicant, the proposed aquaculture lease is sought to raise American oysters, European oysters, hard clams, surf clams and soft shell clams. The applicant requested a lease site totaling 15.9 acres and a lease term of ten (10) years. The proposed lease activities would be conducted in the same manner as under the experimental leases. Those lease activities consist of growing shellfish in floating trays and bags until they are large enough to grade. After they are graded, they are restocked and deployed to the floating lines. When they are approximately 1 ½" to 2" they are placed in bags and trays on the bottom. According to the application, grading of shellfish and cleaning of equipment occurs twice per season and the bags are turned weekly. The applicant testified that a pressure washer and water pump are used at the lease site during cleaning and grading. The equipment is muffled and is used for approximately four hours per day when cleaning and grading. The applicant testified that the noise from both the power washer and the water pump is slightly louder than a lawn mower. According to the application, the applicant does not plan to use lighting at the lease site other than those required for navigation aids. According to the application, all seed shellfish would be obtained from Marshall Point Sea Farm in Port Clyde, Maine.

In accordance with Department regulations, Chapter 2.10(3), the applicant provided an environmental characterization of the proposed lease area. According to the application, the river bottom at the proposed lease site consists of gravel and mud. The water depth is estimated to be 6 feet at low tide and 14 feet at high tide. The current flow is estimated to be 2 knots, and flows in a southeast direction. According to the application, there is little to no vegetation on the proposed lease site. The application included a table of species seen at the proposed lease site. Those species include rockweed, kelp, sculpin, Atlantic silversides, lobsters, green crabs, rock crabs, copepods, lump fish, herring gulls, blue mussels, eider ducks, clam worms and skeleton shrimp. Additionally, according to the application, the proposed lease site does not fall within an Essential or Significant Wildlife Habitat.

According to the application, there is one riparian landowner within 1,000 feet of the proposed site. The application contains a letter from that riparian landowner supporting the application. According to the applicant, there is no use of the proposed lease site by the riparian landowner to access the land. According to the application, two lobster boats tend 3-6 traps in the area of the proposed lease. Additionally, there is a low volume of recreational boating and kayaking throughout the summer in the area. According to the applicant, the location of the proposed lease will not impede boat traffic or current uses of the area. The applicant will allow fishing in the open areas of the lease.

The Department's Aquaculture Environmental Coordinator (AEC) and his assistant conducted a site visit at the proposed lease area on October 22, 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 provided testimony regarding the site report at the public hearing. According to the report and the AEC's testimony, the proposed site is located south of Bradford Point in the St. George River, in water depths ranging from approximately 4.8-10.8 feet at low water and 13.2 to 19.2 feet at high water. The bottom topography of the proposed lease site is relatively flat and consists of a deep covering of soft mud. According to the AEC's report, currents are tidally driven in a northeast/southwest

direction. The two major floral and faunal components of the ecology at the proposed lease site are a brown benthic diatom mat and a large population of mud/sand shrimp. Other flora and fauna observed at the site include and abundance of periwinkles and mussel hash, a common occurrence of hermit crabs and rock crabs, occasional lobster burrows, and red, green and brown algae. According to the AEC's report the proposed lease is located in an area classified as open for the harvest of shellfish by the Department's Water Quality Division. Additionally, according to the AEC's report, the proposed lease site is not located within an Essential or Significant Wildlife Habitat.

According to the AEC, no moorings were observed within the boundaries of the lease area during the site visit. The closest mooring and dock are located off of the southwest shore of Bradford Point. According to the AEC, the proposed activities will not unreasonably interfere with access to the mooring and dock. Additionally, according to the AEC, the proposed activities will not interfere with navigation in the area. The proposed lease site is located 375 feet west of the main navigational channel of the St. George River. Most vessel traffic would remain to the east of the proposed site, in the navigational channel. Due to shallow water depths, minimal vessel traffic is expected between the proposed lease site and the shore of Bradford Point. Vessels entering Broad Cove would have sufficient depths south of the proposed site in which to enter into the cove. Additionally, according to the AEC's report, the Cushing harbormaster stated that the proposed activities would not interfere with navigation or riparian property access. According to the AEC's report, the Department has not received any complaints regarding the applicant's experimental lease activities.

According to the AEC's report, no commercial or recreational fishing was observed within the boundaries of the proposed lease site during the site visit. Five lobster trap buoys were observed to the south and east of the proposed lease site. According to the report, the proposed lease is located to the west of the main navigational channel, where most lobster fishing takes place, and the presence of a soft-mud bottom is likely to limit lobster fishing in the area of the

lease site. Additionally, recreational striped bass fishing is expected to occur in the area. The nearest aquaculture lease site is located 626 feet west of the proposed lease site.

Findings of Fact

The proposed lease is located south of Bradford Point in the St. George River. There is one riparian landowner within 1,000 feet of the proposed lease site, who has written in support of the proposed lease. There is one mooring and dock located off the southwest shore of Bradford Point. The lease activities will not interfere with access to the mooring and dock. There is no use of the lease area by riparian landowners for purposes of access. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

The proposed lease is located in water depths of approximately 4.8 to 10.8 feet at low water, 375 feet west of the main navigation channel. Most vessel traffic will remain in the navigational channel. Vessels entering Broad Cove would have sufficient depths to the south of the proposed lease site in which to navigate. Based on the foregoing, I find that the proposed lease will not unreasonably interfere with navigation.

Fishing in the area of the proposed lease site consists of recreational fishing for striped bass. Most of the lobster fishing in the area occurs in the channel. The nearest existing aquaculture lease is located 626 feet west of the proposed lease. 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.

The proposed lease activities have been taking place on the lease site for the past three years pursuant to experimental leases. Existing flora and fauna observed at the proposed site consists of a brown benthic diatom mat, mud/sand shrimp, green crabs, lobster burrows, rock crabs, copepods, lump fish, herring gulls, blue mussels, eider ducks, hermit crabs, and periwinkles. There are no Essential or Significant Wildlife Habitats located within the proposed lease site. The current is estimated to be a maximum of 2 knots. 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.

All seed shellfish will be obtained from Marshall Point Sea Farm in Port Clyde, Maine. Based on this evidence, I find that there is an available source of American oysters, European oysters, hard clams, surf clams and soft shell 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.

The equipment will be cleaned and shellfish graded twice per season. A pressure washer and water pump will be used for cleaning and grading. Both pieces of equipment are muffled and will be used approximately four hours per day when cleaning and grading occur. Additionally, lighting will not be used at the lease site. I find that the proposed lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site

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 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, surf clams, European oysters, hard clams and soft shell clams;
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; and

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.

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 15.9 acres from the date of this decision for the purpose of cultivating American oysters (Crassostrea virginica), surf clams (Spisula solidissima), European oysters (Ostrea edulis), hard clams (Mercenaria mercinaria), and soft shell clams (Mya arenia) using 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 \$5,000 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) navigation, lobster fishing and recreational boating and fishing shall be allowed in the open areas of the lease;
- (2) 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