

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

**IN THE MATTER OF THE APPLICATION OF PAUL)
AND JANE DESAULNIERS FOR AN AQUACULTURE)
LEASE LOCATED IN THE WESKEAG RIVER, SOUTH)
THOMASTON, KNOX COUNTY, MAINE)** **FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

On November 10, 2003 Paul and Jane Desaulniers of Rockland, Maine applied for an aquaculture lease totaling 0.994 acres in the coastal waters of the State of Maine, located in the Weskeag River in South Thomaston, Knox County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating American oysters (Crassostrea virginica) using suspended culture techniques. The application was accepted as complete on December 12, 2003. A public hearing on this application was held on June 16, 2004 at 6:00 p.m. in South Thomaston.

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 June 16, 2004 public hearing. At the public hearing, testimony was given by the applicant, Paul Desaulniers, and the Department's Aquaculture Environmental Coordinator, Jon Lewis.

According to the application and the testimony by the applicant, the proposed aquaculture lease is sought to raise American oysters on a lease site totaling 0.994 acres for a lease term of ten (10) years. The applicant acknowledged that he miscalculated the total acreage and requested that the eastern edge of tract 2 be trimmed to keep the total acreage under one acre. The applicant testified that he has operated an experimental aquaculture lease in the area for the past three years. The proposed lease encompasses the two tracts of the experimental lease, referred to as tracts 4 and 5; adds three more tracts, referred to as tracts 1, 2 and 3; and increases the lease area from 0.332 acre to just under 1 acre. Tracts 1-4 are located adjacent to mudflats and tract 5 is located within a mooring field.

The proposed lease activities would be conducted in the same manner as under the experimental lease and would consist of growing oyster seed in an upweller, then transferring the seed to floating ADPI bags. Tract 3 would contain an 8' x 8' upweller in which small oyster seed would be grown. When large enough, the seed would be transferred to tracts 1, 2 and 4 for grow-out in floating ADPI bags. Each grow-out tract would contain a maximum of six to fifteen lines of ten floating bags. Tract 5 has been used for an upweller and as a site for overwintering the oysters in ADPI bags on the bottom of the tract. The applicant testified that the area in which tract 5 is located has been closed to the harvest of shellfish and therefore he will likely use tract 5 for overwintering only, but may place an upweller on the site if it is opened to harvest.

According to the application, the proposed lease site would be serviced from a 17-foot skiff that is moored in the mooring field adjacent to the South Thomaston town landing. The applicant testified that the lease site is checked weekly and the gear is scrubbed clean by hand approximately every two weeks. Oysters would be harvested by hand from the skiff. According to the applicant, no power equipment would be used on the site. The applicant testified that he would access the site in his skiff and shut it down when working on the site. Additionally, there would be no lights used on the lease site. According to the application, all seed shellfish would be obtained from Pemaquid Oyster Company in Waldoboro, 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 tracts 1-4 consists of mud with some partially exposed boulders, mixed gravel and cobble. The water depths are estimated to be 1-2 feet at neap low tide. According to the application, flora and fauna at the proposed lease consist of snails, worms, green crabs, barnacles, rockweed, and knotted wrack. The applicant testified that oysters filter the water and would therefore help to clean the Weskeag River.

According to the applicant, proposed tracts 1-4 are located outside the river channel in an area that is not navigable at low tide. The applicant testified that the proposed lease site is not currently used for moorings and it is not used by riparian owners for access. In response to questions regarding proposed development of the shore, the applicant stated that the proposed lease would not interfere with riparian access because it is in 6 inches of water at low tide, and therefore any mooring must be placed outside the area of the proposed lease site, in the channel. The applicant testified that tract 5 is located within a mooring field and has existed in that location for three years without incident. Thus, according to the applicant, ingress and egress of riparian owners would not be adversely affected. The applicant testified that the current uses of the proposed lease site are limited to the occasional kayak at tracts 1-4 and daily activity in the mooring field at tract 5. According to the application, activities that are compatible with the lease activities that do not entangle the gear would be permitted. The applicant testified

that he has not received any complaints regarding the operation of his experimental lease in the proposed lease location.

The Department's Aquaculture Environmental Coordinator (AEC) and his assistant conducted a site visit at the proposed lease area on April 22, 2004. 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, tracts 1-4 of the proposed site are located in the Weskeag River, between Combs Island and Birch Point, in water depths ranging from approximately 6 inches to 3 feet at low tide, and 6 to 9 feet at high tide. The bottom topography of tracts 1-4 consists of soft mud and mussel beds. Tidally exposed mussel beds are located immediately to the south and west of tract 1-4. Tract 5 of the proposed lease site occupies a 30-foot diameter circle within the mooring field, 898 feet from the South Thomaston boat ramp. According to the AEC's report, currents are driven in a west/southwest direction. Flora and fauna at tracts 1-4 of the proposed lease site consist of blue mussels, barnacles, periwinkles, limpets, hermit crabs, slipper shells, encrusting bryozoans, green crabs, sea lettuce and red algae. A large mussel bed occupies the area between the eastern half of tract 1, the western end of tract 2, and the northern half of tract 4. According to the AEC's report, tract 5 is located in an area classified as restricted to the harvest of shellfish, and tracts 1-4 are located in an area classified as open to the harvest of shellfish by the Department's Water Quality Division.

According to the AEC, no moorings or docks were observed within the general area of tract 1-4 of the proposed lease area during the site visit. There are moorings located in the deeper waters to the northeast and northwest. The AEC testified that due to the shallow water depths, moorings are unlikely to be located south of tracts 1-4. According to the AEC, tracts 1-4 of the proposed lease site are located approximately 250 feet from the upland. Thus, any water access to the upland would require a 250' pier that would be accessible only at high water or by a very shallow draft boat. The AEC testified that at high water, there would be plenty of room to

navigate around the proposed lease site to access a pier. According to the AEC's report, tract 5 is located within a mooring field and has contained an upweller under the applicant's experimental lease. The AEC testified that the Department has not received any complaints regarding the location of the upweller. According to the AEC, the proposed lease activities are not expected to interfere with riparian access.

Additionally, according to the AEC, the proposed activities will not interfere with navigation in the area. Tracts 1-4 of the proposed lease site are located in shallow water, approximately 60 feet south of the main navigational channel of the Weskeag River. At mean low water, a minimum of approximately 270 feet of navigable waters remains within the main channel. Due to the location of the tracts adjacent to tidally exposed ledges and mussel beds, and the shallow water depths, limited navigation in the area is expected. According to the AEC's report, the placement of an upweller within the mooring field will have no more of an impact to navigation than a moored boat.

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. At low water, depths within the proposed site are restrictive to navigation and thus fishing. According to the AEC, lobster fishing is likely limited to the deeper waters of the main navigational channel. The AEC testified that there is no evidence of anyone harvesting the mussel beds in the proposed lease area. He stated that the mussel resource in the area is comprised mostly of very large, fouled mussels that may not be acceptable for marketing. According to the AEC, he is not aware of any active fishery for blue mussels in the area of the proposed lease. In addition to the applicant's experimental lease, there are two aquaculture lease sites located in the Weskeag River. The nearest lease site is located 0.23 nautical miles east of the proposed lease site.

Findings of Fact

The proposed lease is located in the Weskeag River and consists of five separate tracts. Tracts 1-4 are located outside of the main navigational channel, adjacent to mudflats in water depths ranging from approximately 6 inches to 3 feet at low tide, and 6 to 9 feet at high tide. There are no docks or moorings located in the area of tracts 1-4. Due to the shallow water depths and 250 feet of mudflats, moorings are unlikely to be located in the area of tracts 1-4. Tract 5 is located within a mooring field and therefore does not impact navigation or riparian ingress and egress any more than a boat moored in the field. Navigation in the area of tracts 1-4 of the proposed lease is restricted due to the shallow water depths. Vessels in the area travel in the main navigational channel, approximately 60 feet north of tracts 1-4. Based on this evidence, I find that the lease will not unreasonably interfere with navigation or the ingress and egress of riparian owners.

Existing uses of the proposed lease area include occasional kayaking at tract 1-4 and daily activity in the mooring field near tract 5. The area of the proposed lease is classified as open for the harvest of shellfish at tracts 1-4 and closed at tract 5. There is no evidence of anyone harvesting the mussel beds near tracts 1-4. The nearest lease site is located 0.23 nautical miles east of the proposed lease site. 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 consist of blue mussels, barnacles, periwinkles, limpets, hermit crabs, slipper shells, encrusting bryozoans, green crabs, sea lettuce and red algae. The proposed lease activities have been taking place on part of the proposed lease site for the past three years pursuant to an experimental lease and no impact to existing flora and fauna has been found. 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 the hatcheries of Pemaquid Oyster Company in Waldoboro, Maine. Based on this evidence, I find that there is an available source of American oysters.

Tract 5 of the proposed lease site is located 898 feet from the South Thomaston boat ramp. The location of tract 5 within a mooring field will not interfere with access to or use of the boat ramp. 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.

No power equipment would be used on the proposed lease. The applicant would access the lease site in a 17' skiff and would shut the motor off when working the site. Additionally, lighting will not be used at the lease site. Therefore, I find that the proposed lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Finally, in order to bring the total acreage of the proposed lease site under one acre, tract 2 has been reconfigured to the following coordinates and metes and bounds: STARTING at the point Latitude 44° 02' 21.704"N, Longitude 69° 07' 33.598"W (datum NAD83/WGS84), and point of beginning; thence 111.74° True, a distance of 200 feet to the northeast corner (44° 02' 20.972"N, 69° 07' 31.055"W); thence 205.68° True, a distance of 70.45 feet to the southeast corner (44° 02' 20.345"N, 69° 07' 31.473"W); thence 290.48° True, a distance of 200 feet to the southwest corner (44° 02' 21.036"N, 69° 07' 34.038"W); thence 25.42° True, a distance of 74.89 feet to the northwest corner and point of beginning. The total acreage for all tracts would therefore be 0.97 acre.

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;
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 0.97 acres from the date of this decision for the purpose of cultivating American oysters (*Crassostrea virginica*) 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 their 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 and recreational boating and fishing shall be allowed in the open areas of the lease; and
- (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