

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

**IN THE MATTER OF THE APPLICATION OF PETER)
AND SUSAN MCBEAN FOR AN AQUACULTURE)
LEASE LOCATED IN THE ST. GEORGE RIVER,)
CUSHING, KNOX COUNTY, MAINE)** **FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

On June 18, 2003 Peter and Susan McBean of Cushing, Maine applied for an aquaculture lease totaling 5 acres in the coastal waters of the State of Maine, located in Broad Cove, in the St. George River in Cushing, Knox County, Maine. The applicants 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 June 25, 2003. A public hearing on this application was held on December 17, 2003 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 December 17, 2003 public hearing. At the public hearing, testimony was given by the applicant, Peter McBean, and the Department's Aquaculture Environmental Coordinator, Jon Lewis.

The applicant testified that he currently operates an experimental aquaculture lease 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. The applicants requested a lease site totaling 5 acres and a lease term of ten (10) years. The proposed lease activities would consist of growing shellfish in floating mesh bags in the same manner as conducted under the experimental lease. According to the applicants, the floating bags would be cleaned once every two weeks, using a small, gasoline-powered pump, hose and nozzle and scrub brush. The cleaning will take approximately four hours. During harvesting, more hours will be spent on site and the pump will be used more often, but for shorter periods of time. According to the applicants, the Honda pump has a good muffler and is very quiet. The oysters will be harvested by hand from a small boat. Additionally, according to the application, the oysters will be stored over the winter in cages on the bottom of the lease site. According to the application, the applicants do not plan to use lighting at the lease site. The proposed lease site would be accessed by boat from the applicants' riparian property. According to the application, all seed shellfish would be obtained from Muscongus Bay Aquaculture in Bremen, Pemaquid Oyster Company in Waldoboro and Marshall Point Sea Farm in Port Clyde.

In accordance with Department regulations, Chapter 2.10(3), the applicants provided an environmental characterization of the proposed lease area. According to the application, the

river bottom at the proposed lease site consists of smooth mud, with some lobster holes and kelp. The water depth is estimated to be 9 feet at mean low water (MLW). The current flow varies with the tide with a maximum speed of 2 knots, and flows in a northeast/southwest direction. Additionally, according to the application, the proposed lease site does not fall within an Essential or Significant Wildlife Habitat.

According to the application, the proposed lease site is located over 1,000 feet from the shore. Additionally, according to the applicants, there are no shorefront landowners who use the lease site to access their property. According to the application, there is light use of the area by recreational and commercial fishermen during the summer and early fall. The proposed lease activities, according to the applicants, will not interfere with the existing uses of the area.

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 AEC's report, the coordinates provided in the application described an area totaling 4.24 acres. Therefore, the AEC developed coordinates, starting at the applicants' northwest corner to develop a 5-acre site. Thus, the coordinates in the AEC's report represent the adjusted site location and are to be used in place of the coordinates in the application.

According to the report and the AEC's testimony, the proposed site is located in Broad Cove, on the western side of the St. George River, in water depths ranging from approximately 8.1 to 8.9 feet at low water and 16.5 to 17.3 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 American oysters (a small amount resulting from a gear failure on the experimental lease site), lobster and wry-mouth eel burrows, two lobsters, two green crabs, and the occasional piece of unattached kelp, sea lettuce and knotted wrack. 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. Broad Cove is mapped as a Coastal Wildlife Concentration area, however, according to the report, the Maine Department of Inland Fisheries and Wildlife does not oppose the application.

According to the AEC, no moorings were observed within the boundaries of the lease area during the site visit. One mooring was observed to the north of the proposed lease site. According to the AEC, the proposed activities will not unreasonably interfere with access to the mooring. Additionally, according to the AEC, the proposed activities will not interfere with navigation in the area. The proposed lease site is located 1,400 feet west of the main navigational channel of the St. George River. Vessels entering Broad Cove would have sufficient depths to the east and north of the proposed lease site in which to navigate. Exposed ledges and rock outcrops limit navigation west of the proposed lease site. Additionally, according to the AEC's report, the Cushing harbormaster stated that the proposed activities would not interfere with navigation or shorefront property access. According to the AEC's report, the Department has not received any complaints regarding the applicants' 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. Two orange and green lobster trap buoys were observed approximately 100 feet from 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 1,114 feet to the northeast of the proposed lease site.

Findings of Fact

The proposed lease is located in the St. George River, in Broad Cove, over 1,000 feet from the shore. Access to the proposed lease would be by boat from the applicants' property. There is one mooring located within the area of the proposed lease. The lease activities will not interfere with access to the mooring. The only use of riparian land necessary is that of the applicants. 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 8.1 to 8.9 feet at low water, 1,400 feet west of the main navigation channel. Vessels entering Broad Cove would have sufficient depths to the east and north 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 1,114 feet northeast 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.

Existing flora and fauna observed at the proposed site consists of a brown benthic diatom mat, mud/sand shrimp, green crabs, lobster and wry-mouth eel burrows, lobsters, and unattached kelp, sea lettuce and knotted wrack. 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. The proposed lease activities have been taking place on the lease site for the past three years pursuant to an experimental lease. 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 Muscongus Bay Aquaculture in Bremen, Pemaquid Oyster Company in Waldoboro and Marshall Point Sea Farm in Port Clyde. Based on this evidence, I find that there is an available source of American oysters.

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 floating bags will be cleaned for four hours every two weeks, using a small, muffled, gasoline-powered Honda pump. 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;
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 applicants' requested aquaculture lease of 5 acres from the date of this decision for the purpose of cultivating American oysters (Crassostrea virginica) using suspended culture techniques. The applicants shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicants 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, 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