



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION, AUGUSTA, MAINE 04333-0017

DRAFT BOARD ORDER

IN THE MATTER OF

NORDIC AQUAFARMS, INC) APPLICATIONS FOR AIR EMISSION,
Belfast and Northport) SITE LOCATION OF DEVELOPMENT,
Waldo County, Maine) NATURAL RESOURCES PROTECTION ACT, and
) MAINE POLLUTANT DISCHARGE ELIMINATION
A-1146-71-A-N) SYSTEM (MEPDES)/WASTE DISCHARGE LICENSE
L-28319-26-A-N)
L-28319-TG-B-N)
L-28319-4E-C-N) FIRST PROCEDURAL ORDER
L-28319-L6-D-N) DECISION ON PETITIONS TO INTERVENE
L-28319-TW-E-N)
W-009200-6F-A-N)

This matter comes before the Board of Environmental Protection for action on Petitions to Intervene in the matter of the applications by Nordic Aquafarms, Inc. (Nordic) to construct and operate a Recirculating Aquaculture System (RAS) for Atlantic salmon production in Belfast and Northport, Waldo County, Maine. On June 20, 2019, the Board voted to assume licensing jurisdiction over the applications and hold a hearing on the proposed project. Notice of the opportunity to petition to intervene in the Board's proceeding was published in the Bangor Daily News, Republican Journal, Camden Herald, and Courier Gazette on June 27, 2019. Notice was also mailed to the applicant, government officials, and interested persons in accordance with the Maine Administrative Procedures Act, 5 M.R.S. § 9051-A(1) and Chapter 3, § 12(A) of the Department's *Rules Governing the Conduct of Licensing Hearings*. The deadline for receipt of Petitions for Leave to Intervene was July 12, 2019.

After reviewing the petitions that were filed, hearing the recommendations of Department staff, and considering comments from representatives of the petitioners and Nordic, the Board FINDS THE FOLLOWING FACTS:

1. The Administrative Procedures Act, 5 M.R.S. § 9054(1), provides that: “[o]n timely application made pursuant to agency rules, the agency conducting the proceeding shall allow any person showing that he is [or] may be, or is a member of a class which is or may be, substantially and directly affected by the proceeding, or any other agency of federal, state or local government, to intervene as a party to the proceeding.” Additionally, the Board “may, by order, allow any other interested person to intervene and participate as a full or limited party to the proceeding.” 5 M.R.S. § 9054(2).
2. The Department's *Rules Governing the Conduct of Licensing Hearings*, Chapter 3 §11(A), requires that a petition include “identification of the petitioner, a description of the effect of the proposed activity on the petitioner; specific contentions regarding the subject matter of the hearing and the relevant review criteria; the name of the spokesperson for the petitioner;

and a statement regarding the ability of the petitioner to participate in the proceeding. If the petitioner is a group or organization, the petition shall include a general description of the purpose and membership of the group or organization. A petition shall be granted if it demonstrates that the petitioner is or may be, or is a member of a class which is or may be, substantially and directly affected by the proceeding. The Department may, at its discretion, allow any other person to intervene and participate as a party to the proceeding. A petition for leave to intervene may be granted to allow participation as a full or limited party to the proceeding.”

3. The Board received timely petitions to intervene from the following people and groups:
 - Maine Lobstering Union, Wayne Canning, and David Black;
 - Upstream Watch;
 - Jeffrey R. Mabee and Judith B. Grace;
 - Eleanor Daniels and Donna Broderick;
 - Northport Village Corporation;
 - University of New England;
 - Gulf of Maine Research Institute;
 - Trudy Miller and the School of Fish;
 - The Fish Are Okay;
 - Maine & Company; and
 - Lawrence Reichard.

4. In their petition, Maine Lobstering Union, Wayne Canning, and David Black state that the Maine Lobstering Union (IMLU) is a nonprofit fish marketing association incorporated in the State of Maine comprised of active, licensed lobstermen and sternmen. IMLU represents lobstermen in all Maine Lobster Zones from Kittery to Cutler, including Zones C and D which cover Penobscot Bay and which would be most directly impacted by the proposed project. Wayne Canning is the Zone D Lobster Council representative for District 11 lobstermen and holds a Maine commercial lobster and crab fishing license. He fishes out of Belfast in the area proposed by Nordic for placement of its intake and discharge pipelines. David Black is a Belfast resident and lobsterman, holding a Maine commercial lobster and crab fishing license. He fishes in the area proposed for placement of Nordic’s intake and discharge pipelines. IMLU, Mr. Canning and Mr. Black argue, among other things, that they would suffer direct impacts “on the abundance, distribution, health, access to and commercial value of lobsters in and from Belfast Bay and Penobscot Bay, as well as the potential adverse economic impacts from possible contamination of lobsters caused by disturbing long-buried HoltraChem mercury or discharge of contaminants in the NAF wastewater...” They state that they have retained an attorney and are prepared to present expert testimony relevant to Nordic’s applications and proposed project.

By letter dated July 18, 2019, Nordic filed a response to this Petition to Intervene requesting that the Board pose a series of questions of this group before deciding the petition. In general Nordic requests clarification of the relationship of the IMLU Petitioners to one another and

the location of the waters they fish to assess their joint and individual standing to intervene. That request is denied.

The Board also received comment on IMLU's petition from Mike Dassatt and Sheila Holland-Dassatt by letter dated July 20, 2019 objecting to inclusion of certain information in Exhibit A of IMLU's petition.

On July 22, 2019, counsel for IMLU, Mr. Canning and Mr. Black responded to Nordic's comment and request for clarification and to Mr. Dassatt and Ms. Holland-Dassatt's objection.

As representatives of lobstermen that fish in the affected area and depend upon the health of the fishery resources of Belfast and Penobscot Bay, the Board finds that IMLU, Wayne Canning and David Black may be substantially and directly affected by the proceeding and have demonstrated that they are prepared to present testimony and evidence relevant to the licensing criteria.

5. Upstream Watch states that it is a "not-for-profit, tax-exempt corporation dedicated to the restoration of Maine Mid-Coast rivers and streams to their natural state, the removal of dams and restoration of fish passages and habitat, especially (at this time) the Little River in Belfast through a program of scientific inquiry, advocacy, education and, when necessary, legal defense." Upstream Watch states that it has members from Belfast and the surrounding nearby towns, including members who live next to or near the proposed project. Upstream Watch asserts that Nordic has failed to demonstrate title, right or interest to all of the land proposed for use. Additional issues Upstream Watch would like to address in the proceeding include the following: interference with the ability to remove two dams and restore the Little River to its natural state; increased noise and truck traffic from the proposed project; deposition of process wastes into Penobscot Bay with potential adverse impacts to farming of mussels and harvesting of lobsters; fouling of beaches; management of storm water; management of air emissions; management of bio-medical waste; destruction of forests; loss of animal habitat; and loss of benefits associated with walking trails and the natural beauty of the Little River. Upstream Watch also raises issues regarding removal of structures in the event the project is not financially viable. Upstream Watch states that it has retained an attorney and persons who are prepared to present expert testimony regarding compliance with relevant licensing criteria.

The Board finds that Upstream Watch's membership includes persons who live next to or in the vicinity of the proposed project and/or utilize natural resources which may be affected by the proposed project. As such, the Board finds that Upstream Watch may be substantially and directly affected by the proceeding and has demonstrated that it is prepared to present testimony and evidence relevant to the licensing criteria.

6. Petitioners Jeffrey R. Mabee and Judith B. Grace are abutters of the proposed project and assert that they are the true owners of the intertidal land on or under which Nordic proposes to place its saltwater intake and wastewater discharge pipelines. Accordingly, the Board

finds that Mr. Mabee and Ms. Grace may be substantially and directly affected by the proceeding.

7. Petitioners Eleanor Daniels and Donna Broderick own property at 38 Perkins Road in Belfast which abuts Nordic's proposed facility. In their petition, they cite concerns about the impact of the proposed freshwater withdrawals on the aquifer and the impact of the proposed wastewater discharge on the waters of Belfast Bay. They also express concerns about the impact of the proposed project on "vulnerable species, ecosystems and local fisheries."

The Board finds that Ms. Daniels and Ms. Broderick, as owners of land abutting Nordic's proposed facility, may be substantially and directly affected by the proceeding.

8. Northport Village Corporation (NVC) states in its petition that it is "the entity that governs the incorporated municipality of the Village of Bayside, within the Town of Northport and adjacent to the City of Belfast." NVC states that Bayside's "waters, mooring field and public space are adjacent to the wastewater discharge outflow." In general, NVC cites concerns about the operation of the wastewater discharge infrastructure under various weather and climatic conditions and has questions regarding the daily and cumulative impacts of the wastewater discharge on the quality of Penobscot Bay waters.

The Board finds that NVC is a governmental body that represents the Village of Bayside whose members reside near and utilize the natural resources of Belfast Bay. As such, NVC may be substantially and directly affected by the proceeding.

9. In its petition, the University of New England states that it is the largest private higher education university in Maine. Its mission is "to provide education, research and other institutional support to Maine and international businesses, including aquaculture." It states that Nordic's application impacts "opportunities for state-of-the-art aquaculture research with faculty and applied graduate and undergraduate employment and internships for students." The petition does not include any specific contentions regarding the subject matter of the hearing and the relevant review criteria, nor does it state what evidence relevant to the licensing criteria it may bring to the proceeding.

The Board finds that the educational and research opportunities that may be provided by the proposed project if it is approved and constructed are not issues which the Board may consider in its review of Nordic's applications. The University of New England has not shown how it may be substantially and directly affected by the proceeding in areas that are relevant to the Board's review of the applications.

10. Petitioner Gulf of Maine Research Institute (GMRI) states that it is an independent, non-profit corporation whose mission is to "pioneer collaborative solutions to global ocean challenges." GMRI states that its work is "focused on the waters and fisheries, wild and farmed, of the Gulf of Maine and Bay of Fundy" and has looked at ways the State may diversify its traditional fishing economy through responsible aquaculture. The petition does not include specific contentions regarding the subject matter of the hearing and the relevant review criteria. The petitioner, however, does state that it can bring "oceanographic,

ecologic, seafood supply chain, aquaculture industry, business management, and operations knowledge and insight” to the proceeding.

The Board finds that the mission of the GMRI is closely tied to many of the issues and licensing criteria that must be considered by the Board in its review of Nordic’s applications; therefore, GMRI may arguably be directly and substantially affected by the proceeding. Additionally, regardless of how GMRI may be affected by the proceeding, GMRI offers to bring expert witnesses in subject areas that are directly related to the relevant licensing criteria.

11. In their petition, Trudy Miller and The School of Fish state that The School of Fish is “a non-incorporated grass roots group of Belfast area citizens formed to educate our wider community about the expected economic impact of the NAF project on our lives and the lives of our region.” Ms. Miller owns property in Belfast and Bayside and obtains water from the Belfast Water District. The petitioners are interested in the expected positive economic impacts of the proposed project including “local issues such as taxes and also direct and indirect job creation and the effect on related industries and education.” The petition does not include specific contentions regarding the subject matter of the hearing and the relevant review criteria, nor does it indicate what relevant evidence it would bring to the proceeding. The petition also states that expected positive impacts of the proposed project would affect “all property owners in Belfast and people who get their water from the Belfast Water District.”

The Board finds that the impact of the proposed project on property taxes and job creation are not matters which may be considered by the Board in its review of Nordic’s applications for environmental permits. The Board also finds that any such impacts would not affect the petitioners differently than the surrounding general population. Accordingly, Ms. Miller and The School of Fish have not shown how they may be substantially and directly affected by the proceeding in areas that are relevant to a review of the proposed project.

12. The Fish Are Okay states that it is a non-profit corporation formed in the spring of 2019 for the purpose of “encouraging citizens, local businesses and other organizations to become informed about NAF’s plans to construct and operate a land-based aquaculture facility...” The petition states that the organization is staffed by volunteers “who collectively are citizens, business owners and retirees spanning several generation of Waldo County residents.” The organization states that it does not propose to address technical issues but can offer “insight into the pattern of cultural, historic and environmental value associated with the project and its site” including, among other things, water supply and recreational impacts at the site. The petition states that its efforts are supported by “a half dozen or so families living in homes abutting or nearby the site...who do not oppose Nordic’s project.”

The Board finds that The Fish Are Okay was organized, in part, to facilitate citizen review of the proposed project. Its supporters and representatives include persons who own property that abuts or is in close proximity to the proposed project site. Accordingly, The Fish Are

Okay and its representatives may be substantially and directly affected by the proposed project.

13. Petitioner Maine & Company states that it is a “non-profit organization with a membership comprised of many of Maine’s largest private employers, higher education organizations, utilities, and financial and legal institutions with a mission of generating economic and employment opportunities for communities like Belfast and for the Maine & Company members.” Maine & Company argues that its members may be substantially and directly affected due to impacts on the “business, employment and economic opportunities arising from the construction and operation of the NAF facility and the attendant growth of the aquaculture industry in Maine.” The petition does not include specific contentions regarding the subject matter of the hearing and the relevant review criteria.

The Board finds that Maine & Company’s petition focuses on the potential for the creation of jobs and the benefits of economic development to its members and the Belfast community; however, general economic development and the potential creation of jobs are not review criteria to be considered by the Board in its evaluation of the project. Therefore, Maine & Company has not shown how it may be substantially and directly affected by the proceeding in areas that are relevant to a review of Nordic’s applications.

14. In his petition, Lawrence Reichard states that he is a resident of Belfast and that he swims in the waters of Belfast Bay and from the Northport pier which “lies in very close proximity to the effluent discharge pipe proposed by Nordic Aquafarms.” In addition to impacts on recreation, he expresses concerns with the total volume of the wastewater discharge, the amount of nitrogen in the discharge and its effect on algal blooms, the potential for fish to escape from the facility, and the impact of facility operations on native fish populations. Mr. Reichard also states that he is a hiker and that he utilizes the Little River Trail and the Belfast Woods which he believes would be adversely impacted by the proposed project. Mr. Reichard also comments on the carbon footprint of the proposed project.

The Board finds that Mr. Reichard, as a resident of Belfast who recreates in Belfast Bay and utilizes the public access trail in the vicinity of the proposed project, may be substantially and directly affected by the proceeding.

BASED on the above Findings of Fact, the Board GRANTS the petitions of IMLU, Wayne Canning, and David Black; Upstream Watch; Jeffrey R. Mabee and Judith B. Grace; Eleanor Daniels and Donna Broderick; Northport Village Corporation; The Fish Are Okay; and Lawrence Reichard because they have met the criteria for being granted intervenor status. The Board also, in its discretion as authorized by 5 M.R.S. § 9054(2) and Chapter 3, §11(A), grants the petition of GMRI on the basis that its mission is closely related to the issues raised in this proceeding and it has stated that it may bring its expertise to the process. The Board DENIES the petitions of University of New England; Trudy Miller and The School of Fish; and Maine & Company.

In granting intervenor status, the Board is not finding that all the issues raised by each of the petitioners are relevant or will be addressed in the hearing, only that the petitioners have made sufficient showings to intervene. Issues to be addressed at the hearing will be determined by the Presiding Officer and/or Board at a later date.

The Board establishes the following requirements and schedule:

1. To ensure that review of Nordic's applications proceeds in a timely and efficient manner, intervenors or their designated representatives must attend pre-hearing conferences and adhere to all schedules and deadlines established by the Board or the Presiding Officer in this matter. Failure to do so may result in appropriate sanctions, including the inability to object to matters decided in the context of the conference.
2. The first pre-hearing conference is tentatively scheduled for Thursday, August 15, 2019.
3. The Presiding Officer may require consolidation of intervenors in part or in whole at a later date if the intervenors' interests or contentions are substantially similar and such consolidation would expedite or simplify the hearing without prejudice to the rights of any party.

DONE AND DATED AT AUGUSTA, MAINE THIS _____ DAY OF AUGUST, 2019.

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____
Robert S. Duchesne, Presiding Officer

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