

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

**IN THE MATTER OF THE APPLICATION)
OF ADAM AND MICHELLE CAMPBELL)
FOR AN AQUACULTURE LEASE)
LOCATED IN PULPIT HARBOR SALT)
POND, NORTH HAVEN, KNOX COUNTY,))
MAINE)**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

On February 7, 2003, Adam and Michelle Campbell of North Haven, Maine applied for an aquaculture lease totaling 16.59 acres in the coastal waters of the State of Maine, located in Pulpit Harbor Salt Pond, in North Haven, 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 bottom and suspended culture techniques. The application was accepted as complete on March 10, 2003. A public hearing on this application was held on July 21, 2003 at 1:00 p.m. in North Haven.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that an aquaculture 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; the ability of the site and surrounding 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.

**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 July 21, 2003 public hearing. At the public hearing, testimony was given by Adam Campbell and Jon Lewis, the Department's Aquaculture Environmental Coordinator.

According to the application and the testimony of Adam Campbell, hereafter referred to as the applicant, the proposed aquaculture lease is sought to raise American oysters. According to the application, the applicants request to lease the entire pond, totaling 16.59 acres for ten (10) years. The proposed lease activities would consist of growing oysters in low-profile upweller rafts, and then planting the oysters on the bottom when they reach 1.5 inches. Seed oysters would be purchased from Pemaquid Oyster Company and Muscongus Bay Oyster Company and placed in the upwellers in May. The upwellers are located in the applicants' experimental lease area adjacent to the applicants' property and are powered by 220 volt electric motors. The applicant testified that he would agree to a lease condition that would limit the placement of upwellers to the current experimental lease boundaries. The seed in the upwellers would require daily cleaning by an electric saltwater pump. When the upwellers become full to capacity, the oysters would be planted on the bottom. The applicant testified that the oysters would be planted in the shallow water along the perimeter of the pond. When oysters reach marketable size, they would be harvested from a skiff by hand and by using hand tongs. The applicant acknowledged that the pond is currently classified as restricted and he would be required to relay the oysters to an open area for a minimum of fourteen days prior to going to market. All gear would be removed from the site for the winter. The proposed lease site would be accessed from the applicants' adjacent property. According to the application, the maximum production on the lease site would be one million oysters planted on the bottom each year.

In accordance with Department regulations, Chapter 2.10(3), the applicants provided an environmental characterization of the proposed lease area. According to this environmental characterization, the bottom of the proposed lease site consists of soft mud, except at rock outcroppings and in the shallow edges of the pond where the bottom consists of silt covered gravel and small rocks. According to the application, the water depths are an average of 5-6 feet, and a maximum of 10-12 feet in the center of the pond. The tidal range is approximately 9-12 inches and there is very little current. According to the applicants, flora and fauna at the proposed site consists of an abundance of jellyfish, capelin, periwinkles and mud snails, common green crabs, angel wing clams, and sea squirts and rare seaweeds.

According to the application, the salt pond is not used for navigation. Recreational uses include an occasional swimmer or kayaker. According to the applicants, the proposed lease activities should not interfere with the current uses of the pond.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on April 10, 2003. During the site visit, a survey, utilizing an underwater video camera, was performed. The AEC created a site report summarizing the information obtained during the site visit and he provided testimony regarding the site report at the public hearing.

According to the report and the AEC's testimony, the bottom topography of the salt pond is that of a barren soft mud bottom with rocky patches along the perimeter. Depths at the proposed site average 5-6 feet and the maximum depth at the center of the pond is 10 feet. Due to a dam along the western boundary of the pond, there is little tidal fluctuation and there is a limited current that runs in an east/west direction. Local fauna at the proposed lease site consists of occasional green crabs and sea peaches. No vegetation was observed during the site visit.

According to the AEC, there are no moorings located in the area of the proposed lease site. According to the site report, shallow water depths and restricted access to the salt pond limit vessel traffic to small skiffs, canoes and kayaks. Riparian landowners are likely to use the

pond for recreational boating and swimming. According to the AEC, the proposed activities should not interfere with recreational boating likely to occur on the pond. According to the site report, the town administrator, Dake Collins, and Marine Patrol Officer Rene Cloutier stated that the proposed activities would not interfere with existing uses of the salt pond.

According to the site report, no fishing was observed in the proposed lease area during the site visit. Limited fishing is expected in the area due to the isolation of the pond by the dam. The nearest aquaculture lease site, aside from the applicant's experimental lease on the salt pond, is a proposed lease located in Vinalhaven.

According to the site report, the proposed lease is located in an area classified as restricted for the harvest of shellfish by the Department's Water Quality Division. Also, according to the report, the proposed lease site is not located in an "Essential or Significant Wildlife Habitat" regulated by the Department of Inland Fisheries and Wildlife (IF&W).

Findings of Fact

The proposed lease site is located on the Pulpit Harbor Salt Pond in North Haven, Maine. Access to the proposed lease would be from the applicants' adjacent property. There are no moorings located in the area of the proposed lease site. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

Due to the shallow water depths and restricted access to the pond, vessel traffic will be limited to kayaks, canoes and small skiffs. The location of upweller rafts will be limited to the boundaries of the applicants' experimental lease. Therefore, I find that the lease will not unreasonably interfere with navigation.

Limited fishing is expected in the area of the proposed lease site. The nearest existing aquaculture lease is a proposed lease located in Vinalhaven. The area of the proposed lease is classified as restricted for the harvest of shellfish. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing fauna observed at the proposed site consists of jellyfish, capelin, periwinkles mud snails, green crabs, angel wing clams, sea squirts, sea peaches and seaweeds. Current

is limited in the pond. Harvesting of the oysters will be by hand or by using hand tongs. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

All seed shellfish will be obtained from Pemaquid Oyster Company and Muscongus Bay Oyster Company. 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.

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 the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicants have demonstrated that there is an available source of American oysters; and
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.

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 16.59 acres from the date of this decision for the purpose of cultivating American oysters (Crassostrea virginica) using bottom and 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 \$1,500 if the total square footage of all structures on the lease is less than or equal to 400 square feet or \$5,000 if the total square footage of all structures on the lease is greater than 400 square feet, 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. recreational fishing and boating activities shall be allowed on the open areas of the lease;
2. all upweller rafts and/or other aquaculture gear shall be located within the boundaries of the applicants' experimental lease, CAMP PN; and
3. 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