

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF)	
ATLANTIC SALMON OF MAINE FOR RENEWAL)	
OF AN AQUACULTURE LEASE LOCATED)	FINDINGS OF FACT,
OFF THE NORTHERN END OF LITTLE LIBBY)	CONCLUSIONS OF LAW
ISLAND IN MACHIAS BAY, MACHIASPORT,)	AND DECISION
WASHINGTON COUNTY, MAINE)	

On April 22, 2003 Atlantic Salmon of Maine, of Belfast, Maine applied for the renewal of an aquaculture lease totaling 20 acres in the coastal waters of the State of Maine, located off the northern end of Little Libby Island in Machias Bay, Machiasport, Washington County, Maine, for the purpose of raising Atlantic salmon. The applicant requested a ten-year renewal term, to November 2, 2013. Notice of the application for the lease renewal was published in the October 2003 issue of Commercial Fisheries News and the September 24, 2003 and October 8, 2003 issues of the Machias Valley News Observer. Members of the public, riparians and interested persons were given to October 24, 2003 to request a hearing on the application for lease renewal. The comment period was extended an additional 30 days because the owner of Little Libby Island, the US Fish and Wildlife Service (hereafter USFWS), did not receive notice of the original comment period. The USFWS submitted comments to the Department opposing the renewal.

Applications for aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12) and Chapter 2.45 of the Department's rules, which provide that an aquaculture lease shall be renewed if the lessee has complied with the lease agreement during its term; the Commissioner determines that renewal of the lease is in the best interest of the state; the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 250 acres; and the lease is not being held for speculative purposes.

In determining whether the lease is being held for speculative purposes, the Department looks to whether substantially no aquaculture or research has been conducted on the lease site. The applicant stocked fish on the lease site in the spring of 1994. Those fish were harvested in 1995 and the lease has not been used since that time. However, according to the applicant, the company committed funds and implemented a development plan for the lease site in 2002. In January of 2003, mooring equipment was purchased and installed on the site. However, due to a court order, the applicant was unable to stock smolts on the lease site. Additionally, according to the applicant, the lease site is a high-energy site because it is exposed to high currents. The cages used in 1994 were subject to net deflection in the high currents, resulting in the loss of some fish. According to the applicant, current technology remedies the problem of net deflection. Based on the information provided by the applicant that the lease site was used for a full grow-out cycle and a development plan to stock the site in 2003 was implemented, I find that the lease is not being held for speculative purposes. Additionally, I find that the applicant did comply with lease agreement during its term.

In determining whether it is in the best interest of state to renew the lease, the Department takes into consideration, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest. The lease site is located between Big and Little Libby Islands. Big Libby Island is owned by the Maine Department of Inland Fisheries and Wildlife and has been designated as Significant Wildlife Habitat. According to the USFWS, it acquired Little Libby Island from the US Coast Guard in 1999. The lease site is located approximately 370 feet north of Little Libby Island. Petit Manan National Wildlife Refuge owns and manages the island. According to the USFWS, Little Libby Island qualifies as a candidate site for Significant Wildlife Habitat designation under the Natural Resources Protection Act as a Seabird Nesting Island. Additionally, according to the USFWS, Little Libby Island has been selected as a location for a potential seabird restoration project. The USFWS opposes the renewal of the lease because they believe that the placement of fish pens adjacent to Little Libby and Big Libby Islands would

cause unacceptable disturbance to nesting seabirds. According to the USFWS, development of an aquaculture facility at Little Libby Island would increase gull use of the area, which are highly effective predators on tern eggs, chicks and adults, and eider ducklings. The USFWS also stated that colonial nesting seabirds are very vulnerable to human disturbances occurring on the island or in the waters surrounding the island. Based on the evidence in the record, I find that the proposed lease activities do not conflict with the current use of Little Libby Island. However, I do find that the proposed aquaculture activities would conflict with the long-term plans for the use of the island for a seabird restoration project. Therefore, I find that it is in the best interest of the State to issue a three-year lease to the applicant. Three years is sufficient to provide the applicant with one grow-out cycle on the lease site and should not interfere with the USFWS restoration plans.

The applicant holds 15 aquaculture leases, including this lease, totaling 237.16 acres. Therefore, the renewal will not cause the applicant to be a tenant of any kind in leases covering an aggregate of more than 250 acres.

Decision

The Commissioner of Marine Resources grants the application of Atlantic Salmon of Maine for renewal of the 20-acre aquaculture lease located in Machias Bay, Machiasport, Maine, for a period of three years, to November 2, 2006. In the renewal of this lease, Atlantic Salmon of Maine is subject to the same terms, conditions, and obligations as set forth in the original lease. In addition to the original conditions, the following condition shall apply: The lessee and its employees shall not trespass on Little Libby Island during the critical April 1st through August 31st nesting period of seabirds.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources

