

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Standard Aquaculture Lease Application
Suspended & bottom culture of American oysters,
Pulpit Harbor Mill Stream

Adam & Michelle Campbell
PHMS NH2
Docket # 2010-13
December 2, 2011

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Adam and Michelle Campbell of North Haven, Maine, applied to the Department of Marine Resources (“DMR”) on April 21, 2010 for a standard aquaculture lease on 2.53 acres located in the coastal waters of the State of Maine, in the Pulpit Harbor Mill Stream in the Town of North Haven in Knox County, for the purpose of cultivating American oysters (*Crassostrea virginica*) using suspended and bottom culture techniques. DMR accepted the application as complete on July 20, 2010.

Janice Hopkins, Trustee for the Estate of Ruth Beverage, owner of riparian land within 1,000 feet of the proposed lease site, intervened. A public hearing on this application was held on July 21, 2011 in North Haven.

1. THE PROCEEDINGS

Notices of the hearing and copies of the application and DMR site report were sent to numerous state and federal agencies for their review, as well as to various educational institutions, aquaculture and environmental organizations, the Town of North Haven and the North Haven Harbormaster, members of the Legislature, representatives of the press, riparian landowners, and other private individuals. Notice of the hearing was published in the *Village Soup* newspaper on June 15 and July 6, 2011 and in the *Commercial Fisheries News* July, 2011 edition.

Sworn testimony was given at the hearing by Adam Campbell and by DMR Aquaculture Environmental Coordinator Jon Lewis. Mr. Campbell described the proposed project. Mr. Lewis described the Department’s site visit on March 14, 2011 and presented a videotape of the bottom. Each witness was subject to questioning by the Department, the applicant, the intervenor, and members of the public. The hearing was recorded by DMR. The Hearing Officer was Diantha Robinson.

The evidentiary record before the Department regarding this lease application includes four exhibits introduced at the hearing (see exhibit list below) and the record of testimony at the hearing itself. The evidence from all of these sources is summarized below.¹

¹ In references to testimony, “Smith/Jones” means testimony of Smith, questioned by Jones.

LIST OF EXHIBITS²

1. Case file, #2010-13
2. Application signed and dated April 20, 2010
3. DMR site report dated May 6, 2011
4. Aerial photograph of Pulpit Harbor Mill Stream showing proposed lease site and location for bags of oyster seed as marked by Adam Campbell at hearing (enlargement of SR Fig.2)

2. DESCRIPTION OF THE PROJECT

A. Site History

Mr. and Mrs. Campbell currently lease a 16-acre site in the Pulpit Harbor Salt Pond on North Haven Island, on which they have operated an oyster farm since 1999. The Salt Pond is bounded on its west side by a dike which dams the water that creates the pond. A culvert running through the dike allows salt water from the Pulpit Harbor Mill Stream to flow in and out of the pond. Seaward of the dike, the tidal Mill Stream meanders downstream in a narrow channel toward Pulpit Harbor and Penobscot Bay to the southwest.

In this application, Mr. and Mrs. Campbell request to lease the subtidal portion of an area covering 2.53 acres of the Mill Stream. The proposed lease area extends westward and seaward from the head of the Mill Stream at the dike through the intertidal mud flats for a distance of approximately 750-800 feet (SR Figure 2, p. 3).

In 2009 and 2010, the Department granted emergency leases to the Campbells to grow American oysters in a small subtidal portion of the proposed lease area just below the dike and culvert, at the head of the Mill Stream. The 2010 emergency lease continues pending the outcome of this application (see 12 MRSA §6072-B (7)). The emergency leases were granted because unusually heavy spring rains caused salinities within the Pulpit Harbor Salt Pond to fall to levels that were too low for oyster seed in the pond to survive. Oyster seed from the pond was placed in bags in the more saline waters at the head of the Mill Stream until the waters of the pond returned to normal salinity.

B. Proposed Operations

The applicants propose to culture American oysters in the subtidal areas on the bottom of the proposed lease site and as necessary to place up to 200 bags of oyster seed at the east end of the site, next to the dike that dams the Salt Pond (see Exhibit 4 for proposed location of shellfish bags). Mr. Campbell testified that he was withdrawing the proposal described in the application

² Exhibits 1, 2, and 3 are cited below as: Case file -- "CF"; Application -- "App", site report -- "SR". Other exhibits are cited by number.

to place metal racks in the subtidal areas of the Mill Stream to hold bags of oysters. He explained that they will instead culture oysters only by bottom planting, using no gear except for the plastic mesh bags of seed oysters that he will install just below the culvert in the dike when necessary because of reduced salinity in the Salt Pond. The bags will be tied together; their weight will keep them in place below the dike in an area where the water depths are approximately six to eight inches at mean low water. Mr. Campbell noted that 200 bags installed in this way would occupy only about 2% of the lease site (Campbell, testimony).

American oysters are currently growing in subtidal portions of the Mill Stream, according to Mr. Campbell, owing to a spawning event that occurred among his Salt Pond oysters in 2006. The spawned seed washed downstream through the culvert, and some oysters attached themselves to the firmer substrate in the deeper channels of the stream. Mr. Campbell wishes to cultivate these oysters, harvest them, and continue to seed and manage these beds as part of his aquaculture operations.

Mr. Campbell testified that he will reach the site by boat from Pulpit Harbor, using a 16-ft. Carolina skiff with a 10-horsepower, 4-stroke outboard motor. He will ground the boat out as the tide falls and harvest oysters in the subtidal channels of the Mill Stream by hand, bagging them and taking them by boat back to Pulpit Harbor. Water quality in this portion of the Mill Stream is classified by DMR as seasonally closed to the harvest of shellfish between June 1st and November 30th. Mr. Campbell will be limited to harvesting oysters from the area between December 1 and May 31st of each year.

C. Site Characteristics

Because the Campbells propose to lease only the subtidal portions of the meandering Mill Stream, defining boundaries for such a lease site is difficult. Figure 2 of the DMR site report (SR 3) depicts the area with boundaries developed by Department staff with information obtained during the site visit, which was conducted at the time of low water on a mean low (o' o") tide . According to the site report,

WAAS (Wide Area Augmentation System) GPS was used to navigate the perimeter of the proposed lease site. At the time of MDMR's visit, a substantial portion of the proposed area occupied intertidal waters. The applicant has requested to use only the subtidal waters contained within the area described in the application. The coordinates provided in the application, however, do not encompass the entirety of the area described by the applicant during the Department's on-site assessment. Given the limited resolution in mapping resources and the winding, shallow nature of the subtidal waters in the area, the best description for the proposed location is all subtidal waters within the area described below (Figure 2).

... At MLW, the proposed lease site will abut the intertidal mudflats. At Mean High Water (MHW), the northern boundary of the proposed lease will be a minimum of approximately 35 feet from the nearest upland. With very little intertidal area along the southwestern boundary and deeper channel, the

proposed lease activities will be much closer to the upland (<10 feet in some locations). The eastern boundary abuts the causeway between Mill Stream and Pulpit Harbor Salt Pond (SR 3-4).

Thus, while the area to be leased will consist of the subtidal areas within the boundaries as described in the site report, those boundaries also encompass intertidal areas, which are not being leased and which will continue to be available for the activities that currently take place on and over them. The site report describes the proposed lease area:

The proposed area of Mill Stream is defined by extensive mudflats surrounding a winding and narrow (<30 feet wide) channel. The eastern boundary is delineated by a causeway that separates Pulpit Harbor Salt Pond from Mill Stream. Within the eastern 1/3rd of the proposed lease, bottom topography can best be described as a rocky scoured channel littered with shell hash and cobble and surrounded by tidally exposed mudflats. A large rock outcropping is located approximately 200 feet to the west of the dam (Figure 1); the primary channel curls around the northern extent of this protrusion. To the west of the rock outcropping sediments within the channel are a firm sand and clay mixture transitioning to soft mud toward the western end.

The surrounding uplands are a mixture of rocky shoreline graduating to mature forest or open field (SR 2).

Currents in the Mill Stream are "tidally driven in an east/west direction" (SR 2). According to the application, the tidal range is eight to nine feet with a speed of two to three knots (A4). The site report notes:

Depths within the eastern 1/3rd of the proposed lease site are less than 1-2 feet at MLW. At the time of the Department's site assessment, staff traversed on foot the entire area to the east of the large rock outcrop. The channel to the west and along the southern boundary (Figure 2) is ~3-5 feet in depth at MLW (SR 2).

Both Mr. Campbell and the site report noted that Mill Stream, particularly the mud flats in the intertidal area, "is expected to accumulate sheets of pan ice during winter months" (SR2). The site report notes that "a small area adjacent to the culvert from Pulpit Harbor Salt Pond" is not expected to ice over (SR 2). Mr. Campbell testified that oysters growing on the intertidal flats will be killed by the ice, while those on the firmer ground in the deeper subtidal areas that he proposes to cultivate will survive.

Asked if he would consider using a different location away from Mill Stream for this project, Mr. Campbell explained that, while there are potentially other areas on North Haven Island where oysters could be grown, the proposed site is ideally located for his purposes. He has boat access to the site from his mooring nearby at Pulpit Harbor, and his existing lease is located just on the other side of the dike in the Salt Pond. It is much easier for him to tend the Mill Stream site, he said, than it would be to use another site that would be much more distant to reach by boat (Campbell/Reed).

Intervenor

Mrs. Hopkins submitted her intervenor application to DMR on July 11, 2011. The application states that she is intervening to “protect the interests of the 28 heirs” to the Beverage property, which lies along the south shore of the Mill Stream, parallel to the entire southerly boundary of the proposed lease. She states in the application that the lease site would be “less than 10 feet from the Beverage shoreline in some areas” and that if the lease were granted, “the current, or future property owner would have limited access to his own shorefront, whether to launch a skiff, walk the shoreline, install a kayak or canoe platform on the bank, or moor a swim float in the upper Mill Stream.” She also noted her belief that granting the lease “would adversely affect the current value and marketability of this property” (CF, Intervenor Application of Janice Hopkins, Trustee, dated July 10, 2011).

Two days after DMR received Mrs. Hopkins’s application, Mr. Campbell notified the Department that he was withdrawing his request to place racks and bags of oysters in the Mill Stream. Except for the temporary placement of bags of seed oysters by the dike at the head of the stream, he proposed to culture oysters on the bottom in the subtidal channels of the stream without using any gear.

At the hearing, Mrs. Hopkins did not testify or present arguments. She questioned Mr. Campbell about whether his lease activities would conflict with a possible dock and float on the Beverage shore or with boating in kayaks or skiffs; he stated that there would be no conflict (Campbell/Hopkins). She noted that there would be much less impact to the Beverage property without the use of the racks and bags that were originally included in the application.

Wesley Reed, a real estate broker with whom Mrs. Hopkins had listed the Beverage property for sale, also questioned Mr. Campbell about the possibility of installing a dock on the Beverage shore (see Part 3 (A), Riparian Access, below).

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of standard aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of DMR upon determining that the project will not unreasonably interfere with the ingress and egress of riparian owners; with navigation; with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in an area; with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments. 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; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will be in compliance with visual impact criteria adopted by the Commissioner relating to color, height, shape and mass.

A. Riparian Access

According to the site report, no docks or moorings were observed within the areas adjacent to the proposed lease at the time of the site visit in March (SR 4). The application notes that the shore of Mill Stream is sparsely developed with residences and that shorefront landowners without docks often launch their rowboats and kayaks directly from the shore in the area near the proposed lease (A5). The site report observes that “The extensive intertidal mudflats are an impediment to navigation and likely limit the placement of structures in the area” (SR 4). The report notes:

Several docks and floats are located more than 1,000 feet downstream and closer to the Pulpit Harbor Bridge (Figure 1). The proposed activities will not interfere with access to these properties.

Access to any future moorings and docks in the immediate area will be limited predominantly by tidal stage versus the proposed activities. Presently, at low water, riparian landowners to the north must beach their boats and traverse on foot over tidal mudflat. At higher tidal stages adequate room would remain for safe navigation to and from shore (see “Distances to Shore” – p. 4) (SR 4-5).

Mr. Campbell testified in answer to questions from the real estate broker for the Beverage estate that should present or future owners of the Beverage property to the south of the proposed lease site install a float and runway directly attached to the ledges along the southern shore with no pilings in the mud, there would be no conflict with his aquaculture activities (Campbell/Reed). He noted that such a float would have “good mid-tide access”, resting on the mud at low water.

The aquaculture activities proposed for this lease site do not involve the use of any gear on the bottom or in the water, other than the shellfish bags deployed at the head of Mill Stream by the dam and culvert. The applicants will seed, tend, and harvest shellfish by boat and on foot in the subtidal areas of the lease. These activities will not interfere with access for riparian landowners to and from their shore.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.

B. Navigation

The site report describes navigation in the proposed lease area as follows:

The proposed lease occupies the far reaches of Mill Stream, where it terminates at the causeway defining Pulpit Harbor Salt Pond. Access to Mill Stream is limited by The Pulpit Harbor Bridge (Figure 1). Smaller commercial skiffs and recreational boats, kayaks and canoes are the predominant watercraft expected in the area. Water-based activities are expected to be light and seasonal; recreational fishing, canoeing and kayaking (SR 5).

The site report analyzes the lease's impact on navigation based on the original proposal, now withdrawn, to deploy a system of racks and bags in the channel of the Mill Stream. The report notes that the lease area is much more navigable at higher stages of tide than at mean low water, when the Mill Stream shrinks to a narrow channel of shallow subtidal water. The site report notes that there is "no navigable water to the east of the proposed lease and thus no further destination than the area proposed [to be leased] and the bordering properties" (SR 5).

A Harbormaster Questionnaire was sent to the Town of North Haven; the Harbormaster did not report any problems with the lease application in connection with navigation, fishing, or riparian access (CF).

The application notes that only small craft, such as kayaks and rowboats, can navigate the Mill Stream at very low water. Recreational boating is described as seasonal from June to October, occurring mainly in the western 500 ft. of the proposed lease site (App 5).

Mr. Campbell testified that small boats such as kayaks and skiffs can pass over the oyster beds freely and will not hamper his lease activities. His activities on the oyster beds will be conducted at lower tidal stages when navigation in the area is already reduced for lack of water and his own skiff will be grounded out while he works. The area where he does propose to use gear is at the head of the Mill Stream below the dam and culvert, where the navigable water, such as it is, comes to an end.

Based on this evidence, it is apparent that the proposed lease activities will not interfere with the type of navigation that occurs in the Mill Stream.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with navigation.

- The leaseholder must mark the site in accordance with U.S. Coast Guard requirements.

C. Fishing & Other Uses

The site report states that "Recreational fishing may be expected within Mill Stream" but indicates that commercial fishing activity is quite limited:

Commercial fishing is unlikely in the eastern reaches of Mill Stream; the availability of navigable water at lower tidal stages is a major limitation. Other than soft-shelled clams (*Mya arenaria*), and American oysters planted by the applicant, no commercially exploitable species were observed during the Department's on-site assessment on March 14, 2011. Even during the most biologically active periods (summer/fall) species such as lobster (*Homarus americanus*) and crab are unlikely to move into an area with lower salinities and limited habitat such as this.

Until recently, the area between the Pulpit Harbor Bridge and the Pulpit Harbor Salt Pond was classified by MDMR's Public Health Division as closed to the harvest of shellfish due to bacterial pollution. On September 28, 2010 that classification changed allowing for a seasonal harvest of shellfish. It is possible limited clam harvesting may now occur during the months of December – May.

The applicant is interested in using the subtidal waters of Mill Stream and would leave the intertidal mudflats free of oysters and equipment (SR 5).

The application notes that mackerel and striped bass have been caught in Mill Stream (App 4). With no gear deployed on the proposed lease site except for shellfish bags at the very head of the stream, the bottom culture of oysters in the stream's subtidal waters will not interfere with the other forms of fishing that are conducted there.

Other aquaculture leases. The nearest aquaculture site is the applicant's lease on the east side of the dam in the Pulpit Harbor Salt Pond (SR 6).

Exclusivity. Mr. Campbell requested that subtidal areas of the Mill Stream within the proposed lease site be kept free of gear so that he can grow and harvest oysters on the bottom. His testimony indicates that small-boat navigation, clam harvesting in the intertidal zone, and recreational fishing as presently conducted will not interfere with his activities on the proposed lease site.

Marking. Mr. Campbell testified that he was concerned about how best to mark the site boundaries, because ice will likely remove any buoys in the Mill Stream in winter. He proposed placing a stake with a sign on it at the southwest end of the site and another near the dike. Mr. Lewis advised placing two markers at each end of the proposed site, to better depict the extent of the leased area. Because of the difficulty of maintaining buoys at this site, these markers should be signs on stakes placed at or even slightly shoreward of the northwest and southwest corners of the lease and at the northeast and southeast corners of the lease, as shown on Figure 2 of the site report. This marking method will be included as a condition on the lease.

Therefore, considering the number and density of aquaculture leases in the area, I find that the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area.

- The lease boundaries must be marked in accordance with the requirements of DMR Rule 2.80, in this case by placing signs on stakes at or shoreward of the northwest and southwest corners of the lease and at the northeast and southeast corners of the lease, as described above.³

³DMR Rules, Chapter 2.80

2.80 Marking Procedures for Aquaculture Leases

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.
2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.

- Only the subtidal areas of Pulpit Harbor Mill Stream within the lease boundaries will be leased for cultivating oysters. The intertidal areas within the lease boundaries will not be leased.
- Fishing and navigation will be permitted within the boundaries of the lease, but shellfish harvesting will be prohibited in the subtidal areas of Pulpit Harbor Mill Stream within the lease boundaries by anyone other than the lessees and their authorized agents.
- No gear or structures may be placed in the subtidal areas of Pulpit Harbor Mill Stream within the lease boundaries, except by permission of the lessees or their authorized agents.

D. Flora & Fauna

Copies of the application were provided to the Maine Departments of Environmental Protection and Inland Fisheries and Wildlife for review, but no comments were received from either agency. The site report notes that “...there are no Essential or Significant Habitats for Endangered and Threatened Species within the general vicinity of the proposed lease.”

The site report describes the species of marine flora and fauna observed by Department biologists during the site visit as follows:

No eel grass was observed in the proposed lease area. Rockweed (*Fucus spp.*) is abundant in rocky intertidal areas.

Fauna consisted of American (or Eastern) oysters previously planted and settled in the area from the applicant’s salt pond lease site. These oysters were abundant between the culvert and the large rocky outcrop to the west. Occasionally blue mussels were observed attached to rocky substrate and soft-shell clams (*Mya arenaria*) were located in the mud flats; neither existed in commercially exploitable densities.

...Given the relatively quiet and secluded location and availability of significant tidal mudflats, shorebirds are expected to take advantage of potential food sources in the area. (SR 6)

Mr. Campbell responded to a question about the potential for oysters to spread and fill the Mill Stream by noting that while American oysters are native to North Haven, with shells “thousands of years old” being found on the island, Maine is quite far north for American oysters to grow in any volume in the wild. Oysters set on hard subtidal substrates and will freeze in winter if exposed to the air in the intertidal zone. If oysters do spawn in Mill Stream, he stated that they would not cover a large area.

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3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.
 4. Lease sites must be marked in accordance with the United State’s Coast Guard’s Aids to Private Navigation standards and requirements.

Mr. Lewis agreed and noted that oysters are beneficial to the quality of the water, particularly in upper creeks and small shallow estuaries, where they filter as much as 50 gallons per day of sea water, removing sediments and excess nutrients from runoff of land-based fertilizers and animal and human fecal matter.

From this evidence, it is apparent that not only will oysters not interfere with the ecology of the Mill Stream, but also that they will improve the quality of the water, which is currently polluted from runoff in the area and closed to shellfish harvesting for half the year.

Therefore, I find that 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.

E. Public Use & Enjoyment

According to the site report, there are no municipally, state or federally owned beaches, parks, or docking facilities within 1000 feet of the proposed lease site (SR 6).

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities or certain conserved lands owned by municipal, state, or federal governments.

F. Source of Organisms

The application indicates that the source of stock for this proposed lease site is Muscongus Bay Aquaculture in Bremen, Maine (App 1).

Therefore, I find that the applicant has demonstrated that there is an available source of stock to be cultured for the lease site.

G. Light

The application indicates that no lights will be used at the proposed lease site (App 4). The site report states that the applicant will be bound by any lighting requirements imposed by the U. S. Coast Guard for navigation purposes, although it is unlikely that lighted navigation markers would be required (SR 6).

Therefore, I find that the aquaculture activities proposed for these sites will not result in an unreasonable impact from light at the boundaries of the lease site.

H. Noise

The application states that the only motorized equipment will be the 10-hp outboard motor on Mr. Campbell's skiff, which is "very quiet" (App 4). As the site report observes, all of Mr. Campbell's activities on the lease site will be "conducted on foot, minimizing any potential noise pollution in the area." (SR 7)

Based on this evidence, it appears that any noise generated by operations on the site will not have a significant effect at the boundaries of the lease.

Therefore, I find that the aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease.

I. Visual Impact

The only gear that will be placed on the proposed lease site will be up to 200 black plastic mesh shellfish bags deployed by the culvert below the dam at the head of Mill Stream. Mr. Campbell has previously deployed such bags of oyster seed at that location under the emergency lease. The Department's visual impact rule requires structures and gear on lease sites to blend with the surroundings as much as possible. The evidence shows that this will be the case on the proposed lease site.

Therefore, I find that the equipment to be used at the proposed lease site will comply with the visual impact criteria contained in DMR Regulation 2.37 (1) (A) (10).

4. 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.
 - The lease site shall be marked in accordance with U. S. Coast Guard requirements.
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.
 - The lease boundaries must be marked in accordance with the requirements of DMR Rule 2.80, in this case by placing signs on stakes at or shoreward of the northwest and southwest corners of the lease and at the northeast and southeast corners of the lease, as described above.
 - Only the subtidal areas of Pulpit Harbor Mill Stream within the lease boundaries will be leased for cultivating oysters. The intertidal areas within the lease boundaries will not be leased.
 - Fishing and navigation will be permitted within the boundaries of the lease, but shellfish harvesting will be prohibited in the subtidal areas of Pulpit Harbor Mill

Stream within the lease boundaries by anyone other than the lessees and their authorized agents.

- No gear or structures may be placed in the subtidal areas of Pulpit Harbor Mill Stream within the lease boundaries, except by permission of the lessees or their authorized agents.

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 aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.

6. The applicant has demonstrated that there is an available source of American oysters to be cultured for the lease site.

7. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.

8. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease site.

9. The aquaculture activities proposed for this site will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

Accordingly, the evidence in the record supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

5. DECISION

Based on the foregoing, the Commissioner grants the requested lease of 2.53 acres to Adam and Michelle Campbell for ten years for the purpose of cultivating American oysters (*Crassostrea virginica*) using suspended and bottom culture techniques. The applicant shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The applicant shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2) (A) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

6. 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, pursuant to 12 MRSA §6072 (7-B)⁴. 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 lease.

The following conditions shall be incorporated into the lease:

1. The lease site must be marked in accordance with U.S. Coast Guard requirements.
2. The lease site must be marked in accordance with DMR Rule 2.80, in this case by placing signs on stakes at or shoreward of the northwest and southwest corners of the lease and at the northeast and southeast corners of the lease.
3. Only the subtidal areas of Pulpit Harbor Mill Stream within the lease boundaries are leased for cultivating oysters. The intertidal areas within the lease boundaries are not leased.
4. Fishing and navigation are permitted within the boundaries of the lease, but shellfish harvesting is prohibited in the subtidal areas of Pulpit Harbor Mill Stream within the lease boundaries by anyone other than the lessees and their authorized agents.
5. No gear or structures may be placed in the subtidal areas of Pulpit Harbor Mill Stream within the lease boundaries, except by permission of the lessees or their authorized agents.

7. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072 (11) and DMR Rule Chapter 2.42 that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated: Dec 2, 2011



Patrick C. Keliher
Acting Commissioner
Department of Marine Resources

⁴ 12 MRSA §6072 (7-B) states: "The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose."