

Hearing Probes Salmon Farm Business Deals

By Aaron Porter

TREMONT — Salmon farm ownership and tenancy was the somewhat academic focus of the final evening of an aquaculture permit hearing that started last August.

The Monday evening session ended with the closing of the record for applications by salmon farmer Erick Swanson to expand a lease site off Hardwood Island and add a new farm off Tinker Island in Blue Hill Bay.

Department of Marine Resources hearing officer Mary Costigan had held the record open in order to have questions answered as to the nature of the relationship between Swanson and multinational salmon grower Heritage Salmon.

Intervenors in the application process had questioned the adequacy of Swanson's documentation of financial capacity to carry out the expansions.

They also questioned whether Swanson's close working relationship with Heritage didn't make his farm a Heritage lease for the purposes of computing the 250-acre total lease area any aquaculture company is permitted to occupy in Maine.

Heritage's leases total about 225 acres. If Swanson's new leases were counted toward the total, the maximum would be exceeded.

On Monday night Bill Robinson, director of operations for Heritage's East Coast operations, testified that in spite of Swanson's dependence on Heritage financing, services and marketing, he is an independent farmer. Robinson called Swanson a "client" who received "working capital loans," "technical support" and "material inputs" from Heritage Salmon.

He explained that Swanson and Heritage negotiate annually as to what Swanson's budget will be, how many salmon smolt he will stock and what the harvest schedule will be.

Heritage finances the sale of its smolt to Swanson, provides feed on a credit basis, advances Swanson money monthly for farm operations, pays for an employee to work on Swanson's farm and harvests, processes, markets and sells his fish. However, Robinson said Swanson makes the final decision as to how the farm on his lease will be operated. He said it would even be technically possible for Swanson to sell the fish in his pens to a buyer other than Heritage.



Dueling attorneys Sean Mahoney, Friends of Blue Hill Bay, and Michael Nelson, Heritage Salmon, direct the testimony in the final session of an aquaculture hearing that started last summer.

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Robinson said interest is charged on all of Swanson's debts to Heritage. He explained that the debts are settled after the harvest and any remaining profit is sent to Swanson.

Under questioning by Sean Mahoney, attorney for intervenor Friends of Blue Hill Bay, Robinson said money from the sale of fish didn't always cover the loans. Such a shortfall is carried over to the following year's negotiated agreement. He said Swanson currently has such a debt to Heritage.

Mahoney insisted that the size of that debt was vital information for the Department of Marine Resources, which must assess Swanson's financial capacity to carry out his proposed expansion.

Robinson refused to attach a figure to Swanson's debt.

Robinson said all expenses Heritage incurs in association with Swanson's salmon farm are charged to him at the end of the season. That includes a 1-cent-per-pound tax levied by the Department of Marine Resources and a 1-cent-per-pound fee paid to the industry advocacy group Salmon of the Americas. It also includes veterinary services and the salary of Jody Patterson, a Heritage employee who works on Swanson's farm.

Patterson, who was at the Monday hearing, said he actually receives paychecks from Heritage and Swanson, although he is formally a Heritage employee. As Swanson's site manager, he sends inventory information to Heritage's Maine headquarters in Eastport weekly. He said he talks weekly to Dave Morang who oversees the Heritage's Maine farming operations.

Patterson said if he were concerned about part of the operation, he would talk to Swanson first and then to Morang. But Patterson stressed that Swanson can operate his farm however he wants.

"He doesn't have to follow Heritage protocol, per se," he said.

Patterson said he's in charge of the two other employees who work on Swanson's Hardwood Island farm. However, he said Swanson is in charge of all that goes on there.

In conclusion to the session, Heritage attorney Michael Nelson insisted that Heritage's interest in Swanson's farm is "solely a security interest." He said that doesn't rise to a level that would make Heritage a tenant on the lease.

He said a security interest doesn't give Heritage any right to take Swanson's assets and use them for their own purposes in the event of default on the debt. In a hypothetical bankruptcy, he said Heritage could take back the fish and sell them to offset some of the loans they have extended to Swanson. He said Heritage

would be in line behind the Bar Harbor Banking and Trust for the value of the actual lease.

He cited a 1995 bankruptcy of Maine Pride Salmon as an example of what happens when a company Heritage has a security interest in goes under. He said Heritage couldn't take the leases although the company wanted them. Instead, the leases of state waters were auctioned off to other companies.

Swanson's lease permit for the Hardwood Island farm expired last March. The Department of Marine Resources has allowed the farm to continue operations while the renewal and expansion applications are in the works.

Swanson said the 250-acre maximum was intended to give small growers a fighting chance to compete with large corporate growers. He said the cap wasn't intended to limit the relationships independent salmon farmers could pursue in keeping their operations afloat.

Mahoney agreed that the cap was intended to help small salmon farms compete. But he characterized Swanson's farm as an extension of Heritage, which gets around the 250-acre cap. He said it could be that the cap is too low and should be raised.

"That doesn't mean one should just wink at this relationship between Heritage and Mr. Swanson," he said.

"It's their money, it's their fish, it's their technical knowledge that's being used," he said of Heritage in relation to Swanson's operations.

Ultimately, the final decision in the lease application lies with Marine Resources Commissioner George Lapointe.

Swanson's renewal and expansion at Hardwood Island coupled with the new farm proposal at Tinker Island could give him 96 acres of aquaculture leases in Blue Hill Bay allowing for the separation of fish of differing ages, and for required fallowing of lease sites between harvest and stocking.

The commissioner's decision is to be delivered within 120 days of the close of the hearing.