

Blue Hill Bay

Lapointe's Salmon Farm Decision Challenged

By Aaron Porter

MOUNT DESERT — Fish farmer Erick Swanson's much contested Blue Hill Bay salmon growing operations have landed in court. While Swanson's continued leasing of state waters off Hardwood Island and proposed expansion to waters off Tinker Island have led to close scrutiny of his operations in the past, this time it's Marine Resources Commissioner George Lapointe who's in the hot seat.

The Conservation Law Foundation on Nov. 12 challenged Lapointe's Oct. 5 decision to renew Swanson's Hardwood lease and grant him a new site off Tinker.

In the Kennebec County Superior Court action, the foundation challenged Lapointe's decision, accusing him of, among other things, failing to establish Swanson's financial capacity to develop the farms, failing to adequately consider public testimony from a 2003 public hearing on the farms and failing to adequately consider Swanson's past performance as a salmon farm operator.

In addition, the complaint asserts that, in keeping with the state's finding that Canadian-based Heritage Salmon is a tenant on Swanson's site, Heritage should make the application. Similarly, the foundation alleges that granting the new lease would cause Heritage to exceed the 250-acre limit on accumulated leases that was in effect when the original application came in and at the time of the public hearing.

Roger Fleming, attorney for the Conservation Law Foundation, said last week he is disturbed by the state's lack of consideration for testimony of local property owners, business owners and fishermen who testified at the hearings and through written statements to the department. He said he's particularly concerned that the department denied Swanson an expansion of the Hardwood site because of concerns about possible bottom impacts where the currents are slower than those over the existing site, but granted him the Tinker Island lease even though flow rates are similarly slow.

Fleming is looking to have the decisions at Tinker and Hardwood reversed by the court.

Swanson, who had said when the decision was released that he might appeal the commissioner's finding that Heritage is a tenant on his site, said last week that he's not appealing anything.

He said he had met Nov. 17 with Lapointe and hearing officer Mary Costigan to discuss how he could change his relationship with Heritage to avoid the tenancy issue.

He said that after consulting with them, he'll change some practices that the state saw as "murky." For one, he will no longer have an employee who is paid by Heritage.

"All of my employees are 100 percent on my payroll," he said.

He said he's confident that with the guidelines he's been given, he can avoid a tenancy relationship.

Lapointe was less definite about defining how to restructure the business relationship between Swanson and Heritage.

"We have established a guidance document for us to look at how those issues arise," he said.

As for the challenge by the Conservation Law Foundation, he said it's not a surprise. In addition, he said he expects there will be a challenge to his federally required pollution discharge elimination permit that he has applied for through the Maine Department of Environmental Protection (DEP).

The commissioner's decision to grant the leases includes the condition that the DEP permit must be in hand before new fish can be stocked in the pens.

Don Eley, president of Friends of Blue Hill Bay, said he's in contact with DEP as it designs that permit.

"We are going to push for a DEP permit with some teeth in it," Eley said.

Friends of Blue Hill Bay was an intervenor in Swanson's applications for the leases but opted to not challenge Lapointe's decision in court.

Swanson said he currently has 200,000 fish in his Hardwood Island pens. His 10-year lease on 25 acres of bottom there ran out in March of 2003. The Department of Marine Resources permitted him to continue farming operations on the site on the strength of his pending application. Now he has a new permit, valid through March of 2013, but that's of little use until he gets the DEP permit, which will specify, among other things, monitoring and reporting requirements, in the absence of the Department of Marine Resources' Finfish Aquaculture Monitoring Program, which was cut in July.

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