

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: applications made by **GRAND PASS OYSTERS LTD.** for **NEW MARINE SHELLFISH LICENCES/LEASES** in **LA GRANDE PASS, YARMOUTH COUNTY** for the **SUSPENDED CULTIVATION** of **AMERICAN OYSTERS**.

BEFORE: Jean McKenna, Chair
Michael McKinnon, Board Member

HEARING DATE: October 20, 2020

DECISION DATE: November 17, 2020

Pursuant to s.45 of the *Fisheries and Coastal Resources Act*, S.N.S. 1996, c.25 (as amended) Grand Pass Oysters Ltd. ("Grand Pass") is applying for new marine shellfish licences, involving three contiguous blocks in "La Grande Pass", Yarmouth County. The applications are separate, (Bar Rock, Calf Island, and Fox Island) but are being considered as one, as the entire parcel would be required for the operation.

On October 20, 2020, the Nova Scotia Aquaculture Review Board held a hearing to consider the application. The documents created and reviewed pertaining to this hearing are found on the website of the Nova Scotia Aquaculture Review Board.

The process is governed by the *Aquaculture Licence and Lease Regulations* (O.I.C. 2015-338, N.S. Reg. 347/2015). Pursuant to those regulations, Grand Pass was first required to complete a "scoping process" and submit a development plan. The initial request for an option to lease was submitted on May 27, 2018. The proposal included the nature of the development, the boundaries of the proposed area, the species, method of cultivation, stages to be cultivated, scale of the operation, site size, expected annual harvest, and anticipated date of stocking. The applicant was also required to describe any benefit to the community, a description of the applicants current aquaculture activity, his knowledge and experience, a basic market plan, financial ability to carry out the development, and a plan for public engagement during the scoping process.

The Applicant proposes cultivating the American Oyster species using the suspended cultivation method.

Mr. Raymond d'Entremont, sole director and president of Grand Pass, complied with these requirements, including a community consultation meeting. His application was then submitted to the Department of Fisheries and Aquaculture (“the Department”) on February 21, 2019. At that point, a “Review Team” was assembled, which included Nathaniel Feindel, Manager of Aquaculture Development and Marine Plant Harvesting, Aquaculture Advisor Lewis Clancey, GIS Analyst Matthew King, Aquaculture Biologist Danielle St. Louis, and Dr. Anthony Snyder (Aquatic Animal Health).

That group determined that there was sufficient information to proceed to the “network review” stage. The network from which input/comments were sought consisted of:

- a) Fisheries and Oceans Canada – Maritimes Region
- b) Canadian Food Inspection Agency
- c) Transport Canada
- d) Environment and Climate Change Canada -Shellfish Water Classification Program
- e) Environment and Climate Change Canada – Canadian Wildlife Services
- f) Nova Scotia Environment - Inspection, Compliance & Enforcement
- g) Nova Scotia Environment - Protected Areas Branch
- h) Nova Scotia Agriculture
- i) Nova Scotia Community, Culture, and Heritage
- j) Nova Scotia Department of Lands and Forestry
- k) Municipality of the District of Argyle.

Mr. Feindel's affidavit filed with the Board details the steps taken to process the application and attaches the responses of the various network agencies. Mr. Feindel also testified at the Board hearing. It should be noted that Mr. Feindel's extensive education and experience qualify him as an expert in the field of aquaculture.

Mr. Raymond d'Entremont also testified before the Board, and his power point presentation was entered as an exhibit. His CV and his initial application for an option to lease are contained in Mr. Feindel's affidavit.

During and following the network review stage, the Review Team conducts its own internal review of the application, the “Verification and Evaluation Stage”. Also included in the verification and evaluation were Megan Greenwood (Licensing Coordinator for the La Grande Pass Applications), Roland Cusack (Chief Veterinary Officer), , Robert Ceschiutti (Manager of Licensing and Leasing), Dr. Gregor Reid (then Manager, Farm Operations) and Bruce Hancock (Executive Director of Aquaculture).

At this stage, the Department assesses whether the application is technically feasible.

The *Aquaculture Licence and Lease Regulations* made pursuant to the *Fisheries and Coastal Resources Act* frame and direct the factors that the Nova Scotia Aquaculture Review Board must take into consideration in its decision-making process:

Factors to be considered in decisions related to marine aquaculture sites

3 In making decisions related to marine aquaculture sites, the Review Board or Administrator must take all of the following factors into consideration:

- (a) the optimum use of marine resources;
- (b) the contribution of the proposed operation to community and Provincial economic development;
- (c) fishery activities in the public waters surrounding the proposed aquacultural operation;
- (d) the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation;
- (e) the other users of the public waters surrounding the proposed aquacultural operation;
- (f) the public right of navigation;
- (g) the sustainability of wild salmon;
- (h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation;

The “network review” process, and the responses of the reviewers, provide much of the expert evidence to assist the Board in reaching a decision. This evidence was supplemented by the viva voce evidence given by Mr. d'Entremont, Mr. Feindel, and Mr. Robert Ceschiutti, Manager of Licensing and Leasing in the Department. As well, the Board heard evidence from Mr. Stanley “Ernie” Porter, a member of the public, who is currently in the process of making his own application for an oyster production site near Antigonish.

There were no applications for intervenor status, and no other public comment.

We will address each of the s.3 criteria separately. Ms. Alison Campbell, legal counsel for the Department, correctly points out that first criteria, “the optimum use of marine resources” is essentially a finding that the Board must make, after reviewing all of the other s.3 factors.

3 (b) The contribution of the proposed operation to community and economic development

Mr. d'Entremont has identified some 29 local services and suppliers that his operation would use, mostly local, and all within the boundaries of the Province. In addition, he anticipates 3 seasonal and 3 fulltime employees will be utilized. While this is not a large employment base, the project, like many small, local, businesses will add value to the community. Many small businesses, taken together, may contribute as much or more than a single mega-business.

Mr. d'Entremont also noted the high demand for oysters, and that a neighboring site, Ruisseau Oysters, cannot keep up with demand; one of his markets will be Ruisseau. He says that some New Brunswick farmers would also provide a market.

The Municipality of the District of Argyle has been actively encouraging aquaculture development within the region; they have invested in the industry by creating a “business park on the sea”. They have gathered data on water conditions, and have created an interactive, online map for use by potential investors.

The Review Team assessed the feasibility of the production plan proposed in the La Grande Pass Applications. They reported that American oyster is a suitable species to be cultivated in Nova Scotia. Nova Scotia oyster aquaculture leases produced \$2.5 million worth of oysters in 2018. As well, the production of oysters aligns with the current provincial priorities as oysters (along with Rainbow Trout and Atlantic Salmon) are the Department's top three priority species for aquaculture.

Some concern was expressed regarding the financial viability, given that the time to reach full production is usually 4-6 years. However, it is the intention of the applicant to bring “cocktail size” oysters to market initially, as they can be harvested after 3 years.

The Board is satisfied that this criterium has been met by this proposal.

3 (c) Fishery activities in the public waters surrounding the proposed aquacultural operation;

According to Mr. Feindel's affidavit, the Department of Fisheries and Oceans (DFO) was consulted. DFO reviewed the application to assess "the death of fish by means other than fishing; the harmful alteration, disruption or destruction of fish habitat; the killing, harming or harassing of aquatic species listed under the *Species at Risk Act* (SARA) and the destruction of their critical habitat." Regarding fish habitat, DFO concluded that species likely to be affected by the proposed site included: Atlantic herring, winter flounder, American eel, American lobster, American oyster, sea scallop, and various species of clam and crab. DFO found that the installation of anchors and shading of light from the oyster cages had the potential to cause negative impacts, however, these negative effects were determined to be low. DFO also concluded that although some species listed in the *Species at Risk Act* (SARA) used the area in the vicinity of the proposed site, there was no critical habitat in the vicinity. As a result, DFO determined that there were no prohibited effects on SARA listed species likely to occur.

DFO also examined the potential impact of the proposed site on fisheries. It was noted that the proposed site is located in the lucrative and ecologically and biologically significant "Lobster Bay area". A number of fisheries operate in the vicinity including the commercial lobster fishery, inshore clam fisheries, commercial harvesting of marine plants and, recreational fisheries for groundfish.

The Applicant reported that there was lobster fishing and rockweed harvesting in the area of the La Grande Pass applications. He states there will be no great impact on these existing fisheries activities. He was required to conduct public consultation during the scoping phase and reported that no concerns were raised by lobster fishers, or any other commercial fishers during that process. The Review Team advised that the establishment of the proposed lease will pose minimal risk to the fishing industries within the area of the proposed lease space and immediate vicinity, and in fact the lease space may have positive effects on the fisheries of the area. Oyster will be filtering the water and potentially decreasing turbidity, allowing more light to penetrate the water and support the photosynthetic growth of the marine plants, like rockweed, in the area. The establishment of infrastructure for the farm can create artificial habitat for lobsters, their prey species and other lower level trophic level species that will result in the attraction of higher level trophic species like; lobster, crabs, mackerel, herring flounder, etc. therefore, potentially increasing the biodiversity of the area.

The Network Agencies did not raise any concerns regarding the impact on other fisheries.

DFO recommended that the Applicant be advised of a number of Federal Acts and Regulations that must be complied with if the Applicant's site was approved, and Grand Pass was advised.

The Board notes that there was no objection heard from commercial fishers to the proposal, nor did any commercial fishers or indigenous groups fishing commercially, or under treaty/indigenous rights, apply for intervenor status or to participate as members of the public before the Board.

The Board is satisfied that the plan as proposed will not disrupt other fishery activities in the area, although Grand Pass must consult with Lobster Fishery Area 34 Advisory Committee, and of course, upon approval of the application by the Board, it is obligated to consult and comply with Transport Canada requirements regarding other marine traffic .

3 (d) The oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation;

The Review Team assessed many aspects of the oceanographic environment, including wind data presented by the applicant, risk to the structural integrity of the operation from waves or current, water salinity, water temperature ,water depth and water quality. The details of their review, and input, are contained in the affidavit of Nathaniel Feindel, and the results satisfy the Board that the oceanographic and biophysical characteristics of the surrounding waters are suitable for this project.

3 (e) The other users of the public waters surrounding the proposed aquacultural operation and 3 (f) the public right of navigation;

As noted above, other users include commercial lobster fishery, inshore clam fisheries, commercial harvesting of marine plants and, recreational fisheries for groundfish. The Department of Fisheries and Oceans (DFO) noted that the commercial lobster fishery in the area runs from the last Monday in November to May 31 of each year, and the area is minimally fished for food, social and ceremonial purposes by Indigenous persons year round. The applicant was advised to consult with the Lobster Fishing Area 34 Advisory Committee which meets bi-annually in June and October.

Robert Ceschiutti, the Manager of Licensing and Leasing in the Department of Fisheries and Aquaculture, is responsible for consultations with Mi'kmaq communities respecting established or asserted Mi'kmaq Aboriginal or treaty rights in the context of decisions or activities relating to specific aquaculture sites. On July 12, 2019, Brennan Goreham, the Aquaculture Administrator, sent a letter of offer to consult to the following 11 communities:

- a) Acadia First Nation
- b) Annapolis Valley First Nation
- c) Eskasoni First Nation
- d) Glooscap First Nation

- e) L'sitkuk (Bear River First Nation)
- f) Membertou First Nation
- g) Paqtnkek First Nation
- h) Pictou Landing First Nation
- i) Potlotek (Chapel Island) First Nation
- j) Wagmatcook First Nation
- k) We'koqma'q First Nation

The offer to consult included some detail on the Grand Pass application, including the GPS coordinates of the proposed sites.

On August 14, 2019, a response was received from Twila Gaudet, Director of Consultation for the Kwilmu'kw Maw-klusuaqn (KMKNO), confirming they wished to proceed with consultation. The KMKNO is the body representing these communities in negotiations. Ms. Gaudet was provided with a link to the online development plan of the applicant. On February 14, 2020, Ms. Gaudet advised that “There are many recorded archeological sites inland and around Lobster Bay. It is imperative that Mi'kmaq access to fish for food, social, and ceremonial (FSC) purposes is not impeded, as well as treaty-based fisheries, including the ability to fish for a moderate livelihood. It is requested that all information and correspondence be forwarded to KMKNO to facilitate the flow of the process and communication”.

In response, on May 8, 2020, Mr. Ceschiutti advised of the status, directed her to the documents online, and confirmed that there was no information to date to indicate that there would be any impact on FSC or treaty-based fishery, and that if approved, the sites would have to comply with direction from Transport Canada to comply with the *Navigable Waters Act* which protects public right of navigation.

Ms. Gaudet responded that she trusted that KMKNO would be advised by the Department of Fisheries and Aquaculture if and when the application was approved.

Nova Scotia Communities, Culture and Heritage was also consulted. They noted “no immediate archeological concerns, although it is ascribed “elevated archeological potential” to the area, and recommended that a condition of any license be a requirement that the operator contact the Coordinator of Special Places if any Archeological artifacts are recovered or observed.

There was concern expressed by Environment and Climate Change Canada - Canadian Wildlife Service (CWS) of potential threat to critical habitat of Eastern Baccharis, a threatened plant species which is potentially in the vicinity of the applicant's land-based property. The concern is related to his possible development of a wharf and landing for his aluminum work vessel. They asked that no coastal clearing or destruction occur, and that Grand Pass use existing infrastructure. That is consistent with the applicant's plan., and the Department advises

that will incorporate those concerns and conditions in the Applicant's farm management plan, upon approval of the application.

The Board is satisfied that there will be no interference with other users of the public waters, or the public right of navigation, and as such, will be controlled by Transport Canada, as well as the required Farm Management Plan, should the application be approved.

3 (g) The sustainability of wild salmon

According to Mr. d'Entremont, there are no salmon runs in the proximity of the proposed operation, and DFO did not identify any potential risks to wild salmon. There was no evidence before the Board that the operations would have any impact on the wild salmon population.

3 (h) The number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation;

There are currently no other aquaculture sites in the public waters immediately surrounding the proposed site, although the applicant has mentioned one other facility in the area. The concern would appear to be biosecurity. Mr. Feindel advises that this can and will be addressed in the applicants Farm Management Plan.

Conclusion:

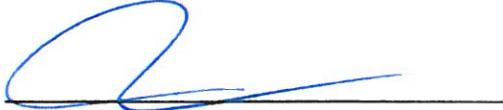
After assessing all of the required criteria, against the backdrop of the extensive expert and other evidence provided to the Board, the Board is satisfied that the proposed Grand Pass oyster plan represents the optimum use of marine resources.

IT IS ORDERED that:

The application is allowed subject to any terms and conditions imposed by Transport Canada, subject to the requirements of a Farm Management plan pursuant to the *Aquaculture Management Regulations* NS Reg. 348/2015, as amended, and subject to the terms and conditions below:

- 1. The operator must contact the Coordinator of Special Places if any archeological artifacts are recovered or observed as recommended by the Department of Communities, Culture and Heritage.**
- 2. The operator must consult with the Lobster Fishing Area 34 Advisory Committee as recommended by Fisheries and Oceans Canada.**

DATED at Halifax, Nova Scotia this 17th day of November, 2020.



Jean McKenna, Chair



Michael McKinnon, Board Member

DISTRIBUTION: Alison Campbell, Solicitor on behalf of the Department of Fisheries and Aquaculture
Raymond d'Entremont, Grand Pass Oysters Ltd.
Jean McKenna, Chair, Nova Scotia Aquaculture Review Board
Michael McKinnon, Board Member, Nova Scotia Aquaculture Review Board