

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Acadia Aqua Farms, LLC  
EAST OP2**

Aquaculture Lease Renewal Application  
Bottom culture of shellfish, Mount Desert Narrows,  
Eastern Bay, Lamoine, Hancock County

Docket Number 2014-01-R  
October 26, 2014

**FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION**

Acadia Aqua Farms applied to the Department on February 10, 2014 to renew the aquaculture lease, EAST OP2, for a period of ten years to April 28, 2024. The 31.62 acre lease is issued for the bottom culture of blue mussels (*Mytilus edulis*) in Lamoine, Hancock County, Maine. This lease was originally granted to Great Eastern Mussel Farms, Inc. on April 29, 2004 for a period of ten years. The lease was transferred to Acadia Aqua Farms on January 21, 2009 for the 7 years remaining on the original lease term.

**1. PROCEDURE**

Notice of the application for lease renewal and the 30-day public comment period and opportunity to request a public hearing was published in the *Ellsworth American* on June 19, 2014 and again on July 10, 2014. Notice was also published in the *July 2014 Commercial Fisheries News*. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. No comments and no requests for a hearing on this renewal application were received by the Department during the comment period.

**2. STATUTORY CRITERIA**

Applications for aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12) and by 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 1,000 acres; and the lease is not being held for speculative purposes.

**A. Compliance with lease**

The review of the records of this lease discloses that all annual reports have been filed, the rent is paid to date, the bond is current, and the site has passed inspection by DMR Marine Patrol. There are no outstanding complaints regarding this lease.

**Therefore, I find** that the applicant has complied with the lease agreement during its term.

**B. Best interest of the State of Maine**

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. There is no evidence of conflicts with other new or existing uses of the area.

**Therefore, I find** that it is in the best interests of the State of Maine to renew this lease.

**C. Aggregate lease holdings**

According to DMR records, the total lease acreage held by lessee, including this lease, EAST OP2, consisting of 31.62 acres, will not exceed 1,000 acres.

**Therefore, I find** that the renewal of this lease will not cause the applicant to lease more than 1,000 acres.

**D. Speculative purposes**

Rule 2.45 provides that in considering whether a lease is being held for speculative purposes, the Department must consider "whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term." It is clear from annual reports filed with DMR by the lessee and by the statement of the lessee on the renewal application that aquaculture has been conducted on this lease site.

**THEREFORE, I FIND** that the lease is not for speculative purposes.

### **3. LEASE CONDITIONS**

The following conditions are carried over from the original lease and will apply to the renewed lease for all three tracts:

- navigation, lobster and crab fishing, and recreational boating and fishing shall be allowed on the lease;
- dragging in the lease area is prohibited by persons other than the leaseholder;
- the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;
- in addition to the required corner markings, the lease boundary shall be marked by buoys every 200 feet;
- there shall be no activity on the lease site unless all markers are in place; and
- dragging along the western boundary that is shared by the adjacent lease holder shall be performed parallel to the boundary line.

### **4. DECISION**

The Commissioner of Marine Resources grants the application of Acadia Aqua Farms, LLC to renew its aquaculture lease, EAST OP2, for a period of ten years to April 28, 2024. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by this decision.

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**5. 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: 10/26/14

  
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**Patrick C. Keliher, Commissioner**  
**Department of Marine Resources**

**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**  
Transfer of Aquaculture Bottom Lease  
January 21, 2009

Great Eastern Mussel Farms,  
Inc., Transferor, to Acadia Aqua  
Farms, LLC, Transferee  
**Lease EAST OP2**  
Docket #2008-08T

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

### **1. THE PROCEEDINGS**

On November 12, 2008, the Department of Marine Resources ("DMR") received an application from Great Eastern Mussel Farms, Inc., to transfer to Acadia Aqua Farms, LLC, its 31.62-acre aquaculture lease EAST OP2, located off Old Point in Mount Desert Narrows in Eastern Bay, a portion of the coastal waters of the State of Maine situated in the Town of Lamoine in Hancock County. The lease was originally granted on April 29, 2004, for a period of ten years for the purpose of cultivating blue sea mussels (*Mytilus edulis*) using bottom culture techniques.

The transfer application was accepted as complete on November 19, 2008. Notice of the application and of the 30-day comment period was mailed on December 5, 2008 to all riparian owners, the Town of Lamoine, the general mailing list of interested persons, and the following reviewing agencies: U.S. Army Corps of Engineers, U.S. Coast Guard, National Marine Fisheries Service, Maine Dept. of Inland Fisheries & Wildlife, Maine Dept. of Conservation, and DMR Marine Patrol. Notices of the application and comment period were published in the *Ellsworth American* on December 18, 2008 and January 8, 2009, and in the *Commercial Fisheries News* January, 2009 edition. No comments were received, and no hearing was held.

### **2. STATUTORY CRITERIA & FINDINGS OF FACT**

Lease transfer requests are governed by 12 M.R.S.A. §6072 (12-A) (B) (1) and DMR Rule 2.60. They provide that the Commissioner of DMR may grant a transfer if s/he determines that: (A) the change in the lessee's identity does not cause any of the original criteria for issuing a lease to be violated; (B) the transfer is not intended to circumvent the preference guidelines for treatment of competing applications; (C) the transfer is not for speculative purposes; and (D) the transfer will not cause the transferee to be a tenant in more than 1,000 acres of aquaculture leases in Maine.

#### **A. Effect of Lessee Change on Lease Criteria**

The transferee, Acadia Aqua Farms, LLC, was incorporated as a Maine corporation in 2008. It consists of one shareholder, Mattheus J. de Koning, who is the managing member and will conduct the active aquaculture operations. Acadia Aqua Farms holds one other aquaculture

lease, FREN BI, a 32-acre bottom mussel lease located in Frenchman Bay. The company has purchased all five of the leases held by Great Eastern Mussel Farms, Inc. and is in the process of having them transferred to its name by DMR; this is the first of those transfer applications.

Mr. de Koning has extensive experience in mussel aquaculture, as evidenced by his résumé, which was submitted as part of the transfer application, and by DMR's experience in working with him on various lease applications for Great Eastern Mussel Farms and the FREN BI lease, which was recently granted. He is well-acquainted with Maine's aquaculture laws and rules. No changes in the lease operations are planned for this lease site. Nothing in the information before the Department suggests that this transfer will have any effect on the lease criteria.

No comments on the proposed lease transfer have been received from the public or from state or federal agencies.

**THEREFORE, I FIND** that the change in the identity of the lessee does not violate any of the lease issuance criteria set forth in 12 MRSA §6072 (7-A).

#### **B. Effect on Preference Guidelines**

There are no competing applications for this lease site, so the preference guidelines are not relevant to this application.

**THEREFORE, I FIND** that the lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 MRSA §6072 (8).

#### **C. Speculative Purposes**

Rule 2.60 provides that in considering whether a transfer is being conducted for speculative purposes, we are to look to "whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term". It is clear from annual reports filed with DMR by Great Eastern Mussel Farms, Inc., that aquaculture has been conducted on this lease site.

**THEREFORE, I FIND** that the lease transfer is not for speculative purposes.

#### **D. Acres Leased by Transferee**

The statute and rule require that in order to grant the lease transfer, the Commissioner must find that "the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres". According to DMR records, the total lease acreage held by Acadia Aqua Farms, LLC, with this 31.62-acre lease included, will not exceed 1,000 acres.

**THEREFORE, I FIND** that the lease transfer will not cause the transferee, Acadia Aqua Farms, LLC, to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

### **3. CONCLUSIONS OF LAW**

Based on the above findings, I conclude that:

1. The change in the identity of the lessee does not violate any of the lease issuance criteria set forth in 12 MRSA §6072 (7-A);

2. The lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 MRSA §6072 (8);

3. The lease transfer is not for speculative purposes; and

4. The lease transfer will not cause the transferee, Acadia Aqua Farms, LLC, to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

These findings of fact and conclusions of law having been made as required by 12 MRSA §6072 (12-A) (B) (1) and by DMR rule 2.60, a lease transfer may be granted.

### **4. DECISION**

Based on the foregoing, I grant the requested transfer of the aquaculture lease EAST OP2, consisting of 31.62 acres off Old Point in Mount Desert Narrows, Eastern Bay, from Great Eastern Mussel Farms, Inc. to Acadia Aqua Farms, LLC. All provisions of the existing lease shall continue in full force and effect, including the conditions on the lease, as noted below. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2) (A), conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

### **5. CONDITIONS**

Pursuant to 12 MRSA §6072 (7-B), the Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. 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. Existing conditions on this lease, which were established when the lease was first issued in 2004 and which continue in effect, are:

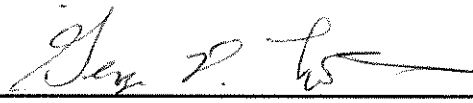
- (1) navigation, lobster and crab fishing, and recreational boating and fishing shall be allowed on the lease;
- (2) dragging in the lease area is prohibited by persons other than the leaseholder;
- (3) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;
- (4) in addition to the required corner markings, the lease boundary shall be marked by buoys every 200 feet;
- (5) there shall be no activity on the lease site unless all markers are in place; and

- (6) dragging along the western boundary that is shared by the adjacent lease holder shall be performed parallel to the boundary line.

**6. REVOCATION OF LEASE**

The Commissioner may commence revocation procedures if it is determined that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law is not being observed, the Commissioner may revoke the aquaculture lease.

Dated: 21 January 2009

  
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George D. Lapointe (Commissioner)  
Department of Marine Resources