

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Nelson Marass, Transferor
Aquaculture Lease Transfer Application

Lease NMR EMG2

Matthew Odlin, Transferee

October 25, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

1. THE PROCEEDINGS

Nelson Marass applied to the Department of Marine Resource (DMR) to transfer to Matthew Odlin, his 1.12-acre aquaculture lease NMR EMG2, located east of Middle Ground, in the New Meadows River, West Bath, Sagadahoc County, Maine. The lease was originally granted on December 5, 2019 for a period of five years for the purpose of cultivating American/eastern oysters (*Crassostrea virginica*) using suspended culture techniques. The current lease expires on December 4, 2024.

The transfer application was initially received on November 30, 2020 and accepted as complete on March 11, 2021. Notice of the completed application and 30-day comment period was published in the *Times Record* on March 30, 2021. DMR also provided notice of the completed application and the 30-day comment period to the Town of West Bath and its Harbormaster, riparian landowners within 1,000 feet of the aquaculture lease site, and to subscribers of DMR's aquaculture list-serve. During the comment period, DMR received thirteen comments. A lease transfer does not require a hearing, and no hearing was held.

A. Original Lease Decision NMR EMG2

The decision on Mr. Marass' standard aquaculture lease application, granting lease NMR EMG2, was signed by DMR's Commissioner on December 5, 2019 and found that the proposal satisfied the decision criteria as governed by 12 M.R.S.A §6072. However, evidence presented during the public hearing for the lease called into question the applicant's technical ability to adequately manage or utilize the proposed site¹. For example, the applicant and his witnesses indicated it was overwhelming trying to process

¹ The public hearing on Mr. Marass' standard aquaculture hearing was held on August 20, 2019.

product from the Limited Purpose Aquaculture (LPA) licenses that they held². Members of the public who attended the public hearing indicated that none of the LPAs had been utilized in the months leading up to the lease hearing. The applicant testified that there had not been any activity on his LPAs in the two months prior to the lease hearing, because product had exceeded market size and was being kept on the bottom of the LPAs to stunt the growth of the oysters. In addition, Mr. Marass was unable to provide details about his processing plans and volumes as they related to his proposed lease site.

The purpose of the aquaculture lease, in part, was to scale-up the LPA operations, but given the evidence presented at the public hearing it was unclear whether Mr. Marass would have the technical capability to manage and utilize the lease. Mr. Marass requested that the lease be granted for a 20-year term. Although the lease satisfied the decision criteria, it was only granted for a 5-year term. The reduced lease term was intended to provide Mr. Marass with the opportunity to “better assess the feasibility of the proposed operations, to evaluate the processing of product, and to demonstrate that he can adequately manage a lease of this size for a longer term.”³

2. STATUTORY CRITERIA & FINDINGS OF FACT

Lease transfer requests are governed by 12 M.R.S §6072 (12-A) and DMR Rule 2.60. They provide that the Commissioner of DMR may grant a transfer upon determining 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. Speculative Purposes

The term of a standard lease begins on the date the final decision is signed by the Commissioner, which was December 19, 2019 for lease NMR EMG2. However,

² The LPAs referenced by the applicant and witnesses during the hearing were all located in or nearby the proposal and were held by the applicant, Nelson Marass, his wife Laura Marass, or his neighbor Ron Vachon.

³ Pg. 8, final lease decision, NMR EMG2

aquaculture activities cannot occur on the site until the lease is fully executed, which means that pro-rated rent has been paid, a bond or escrow agreement has been secured, and the lease agreement is signed by the holder and DMR. In this case, the lease was not executed until March 30, 2020. The initial transfer application from Mr. Marass was received on November 30, 2020, a revised application was received on March 1, 2021, and the application was ultimately deemed complete by DMR on March 11, 2021.

DMR Rule 2.60 provides that in considering whether a transfer is being conducted 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.” In the completed transfer application Mr. Marass indicated that aquaculture activities had taken place on the lease site during its term, specifically that “bags and cages have been seeded and cages sunk to bottom where they are now”⁴. However, in an effort to verify the extent to which aquaculture activity was taking place on the site, DMR Aquaculture Scientists conducted a lease inspection on May 5, 2021. During this visit, no floating aquaculture gear was observed, and there were no marker buoys present at the lease corners. In addition, DMR staff did not identify the presence of submerged or bottom gear within the lease boundaries on their vessel’s sonar display.

On May 25, 2021 DMR’s Aquaculture Division Director Mrs. Marcy Nelson sent a letter to Mr. Marass to confirm whether the lease site had been utilized⁵. In a telephone call with Mrs. Nelson on June 1, 2021, Mr. Marass indicated that no aquaculture gear had been on the site during 2021, and that in September of 2020 he had started to shift gear to his lease but then decided to get out of aquaculture and began the transfer process. During that phone call, Mr. Marass further indicated that he had Limited Purpose Aquaculture (LPA) licenses that overlapped with the lease footprint, and that those had gear, but they were in existence prior to the lease. LPA licenses held by Mr. Marass, as well as his wife, Laura Marass, and neighbor, Ron Vachon that were within or near lease NME EMG2 were terminated at the end of 2020 and are no longer active⁶. In a follow up email from Mr. Marass, sent to Mrs. Nelson, on June 1, 2021, Mr. Marass confirmed the information provided in the phone call and stated “I began the lease transfer process in September 2020. At which point, I began the process of having any/all aquaculture gear

⁴ Completed transfer application, page 2, deemed complete by DMR on March 11, 2021.

⁵ Letter sent to Mr. Marass, via e-mail, on May 25, 2021 from Marcy Nelson, Acting Aquaculture Division Director

⁶ LPA’s terminated at the end of 2020 in or near lease NMR EMG2 included: RVAC216, LMAR116, LMAR216, LMAR316, LMAR416, NMAR215, NMAR415, and NMAR516.

removed, from any/all LPAs and/or leases, under my control, prior to January 1, 2021". This information contradicted what was provided in the completed transfer application which stated bags and cages had been seeded and sunk to the bottom of the lease site.

In addition, during the comment period for the transfer application, multiple public comments were received that indicated no aquaculture activity had been observed on the lease site. Commentors expressed concern about the transfer of a lease that had not yet been used to its full potential, and questioned the statement in the transfer application that seed had been sunk to the bottom, as no gear had been observed, and no buoys marking the site or indicating submerged gear were noticed by commentors.

B. Analysis:

On December 5, 2019, the lease was granted for a five-year term. The term was reduced from the requested 20 years to provide the holder with the opportunity to demonstrate that he had the capability to operate a lease of this scale. The lease was not executed until March 30, 2020, so aquaculture activities could not have been conducted on the site until after that date.

After the transfer application was deemed complete, DMR staff inspected the lease site and did not observe gear present within the boundaries of the lease site, nor site markings. Lease sites must be marked in accordance with Chapter 2.80 of DMR's regulations, which state that site markings "shall be displayed at each corner of the lease area that is occupied". Members of the public who own property near the lease site or are generally familiar with the area indicated that no aquaculture activities had been observed on the lease site. Follow up communications between Mr. Marass and DMR further clarified that Mr. Marass started to move gear from his LPA licenses in the area to the lease site in September, 2020, but that he then decided to get out of aquaculture and the lease site was never utilized to conduct aquaculture activities.

Based on the record, I find that substantially no aquaculture activities occurred on the site during its term. DMR originally granted the lease for a five-year term so that Mr. Marass would have the opportunity to demonstrate he had the capability to manage and utilize the lease. He has not done so. While DMR does not require a certain level of aquaculture activity occur on a lease site, DMR would expect to see a demonstrated effort to scale up operations on the site, or indication that planned aquaculture activity was taking place on the site if a leaseholder intended to use the site for the entire granted term. However, the record in this case shows that Mr. Marass conducted little to no aquaculture

on the site before deciding to apply for a lease transfer. If Mr. Marass no longer wishes to operate the lease site, he can request that the site be relinquished.

THEREFORE, I FIND that the lease transfer is for speculative purposes.

3. CONCLUSIONS OF LAW

Based on the above finding, I concluded that the proposed lease transfer is for speculative purposes⁷. Therefore, the application does not meet the requirements for granting the transfer as set forth in 12 M.R.S. §6072 (12-A).

4. DECISION

Based on the foregoing, the lease transfer application for NMR EMG2 is denied.

Dated: October 25th 2021



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

⁷ In response to their review of the draft decision, Mr. Odlin submitted a letter to DMR on October 7, 2021 detailing that he did not agree with the finding that the transfer is for speculative purposes. The current lessee, Mr. Marass, did not submit any comments in response to the proposed lease decision and, throughout the transfer process, did not provide DMR with any information that supported the claims raised in Mr. Odlin's letter. To clarify, DMR must consider the current lessee's use of the existing site as it relates to applicable transfer criteria. Consideration is not limited to how a new-lessee may utilize the site and whether those possible uses would be for speculative purposes, however, we must consider whether the current lessee has used the site. The analysis of speculative purposes specifically includes whether the *lessee* (i.e. Mr. Marass) has conducted substantially no research or aquaculture in the lease areas during the previous lease term. The relevant evidence in this case demonstrates that Mr. Marass conducted little to no aquaculture on the site before deciding to apply for a lease transfer. Therefore, DMR has not changed its finding that the transfer is for speculative purposes.