

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Robert Burgess and Jack Hamblen, Jr., Transferors
Aquaculture Lease Transfer Application
Penobscot Bay, northeast of Stinson Neck, Deer Isle

Lease PEN SN3
Docket # 2011-27T
Acadia Aqua Farms, LLC,
Transferee
Date of Decision: July 18, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

1. THE PROCEEDINGS

Robert Burgess and Jack Hamblen, Jr., applied to the Department of Marine Resources (“DMR”) to transfer to Acadia Aqua Farms, LLC, their 38-acre aquaculture lease PEN SN3, located in the coastal waters of the State of Maine in Penobscot Bay, in Mud Cove off the northeast shore of Stinson Neck in the Town of Deer Isle in Hancock County. Lease PEN SN3, issued for the bottom culture of blue mussels (*Mytilus edulis*), is a combination of two previous leases, PEN SN1 and PEN SN2, which were leased to the transferors and Great Eastern Mussel Farms, Inc., in 1995. The two leases were renewed in 2005. Great Eastern Mussel Farms, Inc. relinquished its aquaculture leases in 2008, leaving Mr. Burgess and Mr. Hamblen as the remaining leaseholders. The two leases were combined in 2011; the resulting lease, PEN SN3, expires on May 29, 2015.

The transfer application was accepted as complete on September 22, 2011. The Department provided a notice of the application and of the 14-day comment period to all riparian owners, the Town of Deer Isle, 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. A notice of the application and comment period was published in the *Ellsworth American* on November 17, 2011. No comments were received.

2. STATUTORY CRITERIA & FINDINGS OF FACT

Lease transfer requests are governed by 12 M.R.S.A. §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. Effect of Lessee Change on Lease Criteria

The transferee has met the same requirements for providing information about financial and technical capacity as is required for an applicant for a standard lease. The transferee has

extensive experience in bottom aquaculture of mussels and is well-acquainted with Maine's aquaculture laws and rules. According to the transfer application, the transferee plans no changes in the aquaculture activities taking place on the lease site.

No comments on this transfer application were received by the Department. There is no evidence that the change in the identity of the lessee will affect any of the statutory criteria for issuing an aquaculture lease.

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, 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 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 transferee holds the following leases: EAST OP2 (31.62 acres), EAST HP (40.45 acres), FLAN WN (14.30 acres), and FREN BI (32.33 acres). Even with the addition of PEN SN3 (38 acres), the transferee will not hold more than 1,000 leased acres.

THEREFORE, I FIND that the lease transfer will not cause Transferee 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 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) and by DMR rule 2.60, this lease transfer may be granted.

4. DECISION

Based on the foregoing, I grant the requested transfer of the aquaculture lease PEN SN3 from Robert Burgess and Jack Hamblen, Jr., to Acadia Aqua Farms, LLC. The term of the lease is not affected by the transfer, so the new lease will expire on the same date as the current lease (May 29, 2015).

All provisions of the existing lease shall continue in full force and effect, including all 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.

The existing conditions on this lease, which continue in effect following the transfer, are:

1. The lease area shall be marked in accordance with the requirements of the U.S. Coast Guard and the Department of Marine Resources.
2. No seeding, culturing, or harvesting operations in the lease tracts except between sunrise and sunset;
3. Operations shall not interfere with moorings in the lease area;
4. Lessees shall make every reasonable effort to confine the deposit and movement of seed mussels and other materials to within the boundaries of the lease area;
5. Storage is prohibited; and
6. Lobstering and crabbing to be allowed on the lease.

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: July 18, 2014



Patrick C. Keliher
Commissioner,
Department of Marine Resources