

**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**  
Aquaculture Lease Transfer Application

9/27/10

**Lease CAS CF2**  
Aqua Farms, LLC, Transferor, to  
Wild Ocean Aquaculture, LLC,  
Transferee  
Docket #2010-18T

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

### **1. THE PROCEEDINGS**

On August 12, 2010, the Department of Marine Resources (“DMR”) received an application from Aqua Farms, LLC, to transfer to Wild Ocean Aquaculture, LLC, its 1.66-acre aquaculture lease CAS CF2, located in Casco Bay, a portion of the coastal waters of the State of Maine situated in the Town of Falmouth in Cumberland County. The lease was originally granted on Sept. 27, 2004, for a period of ten years for the purpose of cultivating blue mussels (*Mytilus edulis*). A later species amendment was granted, adding sugar kelp (*Laminaria saccharina*), hollow-stemmed kelp/oarweed (*Laminaria longicuris*), fingered/horsetail kelp (*Laminaria digitata*), winged kelp (*Alaria esculenta*), dulse (*Palmaria palmata*), nori/laver (*Porphyra*), and sea lettuce (*Ulva lactuca*). All species are cultivated using suspended culture techniques.

The transfer application was accepted as complete on August 23, 2010. Notice of the application and of the 14-day comment period was mailed to all riparian owners, the Town of Falmouth, 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 *Portland Press Herald* on September 3, 2010. No comments were received.

### **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 upon determining that: (A) the change in the lessee’s identity does not cause any of the original criteria in 12 MRSA §6072 (7-A) 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**

Wild Ocean Aquaculture, LLC, was incorporated as a Maine corporation on June 30, 2010. It consists of two equal shareholders, Gary and Matthew Moretti. Both shareholders expect to be involved in the day-to-day management of the lease sites. The Department has reviewed the information submitted by the transferees demonstrating their technical and financial capacity and finds it to be sufficient. Neither Wild Ocean Aquaculture nor the Morettis holds any other aquaculture leases or licenses in Maine.

All of the lease criteria contained in 12 MRSA § 6072 (7-A) relate to the location and operation of the lease. The transferor, Aqua Farms, LLC, recently requested a variance to permit the addition of a fourth raft to the site, because the 2004 decision granting the original lease states that a condition of the lease is that no more than three 40' x 40' mussel rafts may be placed on the lease site.

This condition appears to have been added because the attorney for the owners of nearby Clapboard Island, Alfred and Dawn Hoffman, stated at the original hearing that the Hoffmans would not oppose the lease as long as no more than three rafts were located on the site. The island is located more than 1,000 feet from the lease site, so the residents are not considered riparian owners for purposes of the aquaculture lease law. The original lease decision contains no other information regarding this issue. The decision does not contain any findings of fact or conclusions of law regarding the number of rafts on the site.

Aqua Farms submitted information to the Department in support of its variance request indicating that a fourth raft can be deployed safely within the existing footprint of the lease site. The Department reviewed this information and determined this to be the case. Given this evidence, plus the absence of findings and conclusions on this issue in the original decision, the Department granted the variance by letter dated June 23, 2010.

The Department sent the Hoffmans a letter on June 23, 2010, notifying them of the variance and asking them to sign and return a copy of the letter. No response was received to the first letter. The Department sent a second letter by certified mail; a return receipt was received by DMR, but no other response was forthcoming. The Department considers that the Hoffmans have received adequate notice that the condition restricting the lease site to no more than three 40' x 40' mussel rafts is being removed.

Wild Ocean Aquaculture will therefore hold the lease without the restriction to three 40' x 40' mussel rafts. The company indicated on the transfer application that it does not intend to make changes in the aquaculture activities conducted under the lease.

Aqua Farms, LLC has certified that the lease site is in good order and is in compliance with all DMR aquaculture rules; that it is free of legal encumbrances; that there are no rent bills outstanding; that the required bond or escrow account is in place and will remain effective until the transferee obtains new coverage; and that all required annual reports have been filed.

There is no evidence that the change in the identity of the lessee will violate any of the lease issuance criteria.

**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 Aqua Farms, LLC, 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 Wild Ocean Aquaculture, LLC, with this 1.66-acre lease included, will amount to 1.66 acres and thus will not exceed 1,000 acres.

**THEREFORE, I FIND** that the lease transfer will not cause the transferee, Wild Ocean Aquaculture, 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, Wild Ocean Aquaculture, 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 CAS CF2, consisting of 1.66 acres in Casco Bay, from Aqua Farms, LLC, to Wild Ocean Aquaculture, 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 continue in effect, are:

1. Navigation, lobster fishing and recreational boating and fishing shall be allowed on the open areas of the lease.
2. The leaseholder shall provide mussel samples from the lease site to the Department's Biotoxin Monitoring staff in West Boothbay Harbor once per week when harvesting during the period of April through October and prior to each harvest during a toxic event.
3. The lease shall be marked in accordance with U. S. Coast Guard and the Department of Marine Resources requirements.

**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: 9/27/10

/s/ George Lapointe  
George D. Lapointe (Commissioner)  
Department of Marine Resources