STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Aquaculture Lease Transfer Application

COB RN2
Cobscook Bay Salmon, Transferor
Phoenix Salmon US Inc. to be renamed
Cooke Aquaculture USA, Inc., Transferee
Docket # 2010-20T

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

1. THE PROCEEDINGS

On September 22, 2010, the Department of Marine Resources ("DMR") received an application from Cobscook Bay Salmon to transfer to Phoenix Salmon US Inc. to be renamed Cooke Aquaculture USA, Inc., Transferee, its 32.14-acre aquaculture lease COB RN2, located north of Rodgers Island, in Cobscook Bay, a portion of the coastal waters of the State of Maine situated in the Town of Lubec in Washington County. The lease was originally granted on June 16, 2004 for a period of ten years for the purpose of cultivating Atlantic salmon (*Salmo salar*) and Atlantic cod (*Gadus morhua*) using net pen culture techniques. The current lease expires on June 15, 2014.

The transfer application was accepted as complete on October 29, 2010. The Department mailed a notice of the application and of the 14-day comment period to all riparian owners, the Town of Lubec, 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 *Quoddy Tides* on November 12, 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 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

Phoenix Salmon US Inc. ("Phoenix" or "Transferee") is a Maine corporation incorporated on May 5, 2005. Phoenix has undertaken to merge its corporate existence with the Transferor (the "Merger") and

upon completion of the Merger will be the surviving corporate entity and will operate the merged company and this lease. Upon completion of the Merger, Phoenix will change its corporate name to Cooke Aquaculture USA Inc. Phoenix is a wholly-owned subsidiary of True North Salmon US Inc., which in turn is owned by Cooke Aquaculture of Blacks Harbour, New Brunswick, Canada.

Phoenix currently operates eight other aquaculture leases in its own name (COB BC, COB BP, COB DC, COB MI2, COB SB, MACH CI2, MACH CIN, and MACH CW2) and numerous other leases through other subsidiary and affiliate corporations. Phoenix has extensive experience in finfish aquaculture and is well-acquainted with Maine's aquaculture laws and rules. The Department is familiar with the company's Maine management team and with its financial capability and technical capacity, which it has reviewed favorably in the past year in connection with two aquaculture lease applications, MACH CI2, granted in 2010, and SWAN BIS, granted in 2011.

According to the transfer application, Phoenix plans no changes in the aquaculture activities taking place on this lease. The lease site will be managed in the same way as before the transfer; only the name of the lessee will change.

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. <u>Effect on Preference Guidelines</u>

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. <u>Speculative Purposes</u>

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 by Transferor that aquaculture has been conducted on this lease site.

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

D. <u>Acres Leased by Transferee</u>

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 Transferee, with this lease included, will not exceed 1,000 acres.

THEREFORE, I FIND that 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.

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) (B) (1) 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 COB RN2 from Cobscook Bay Salmon to Phoenix Salmon US Inc. I approve the subsequent change of name from Phoenix Salmon US Inc. to Cooke Aquaculture USA, Inc. The lessee will be named in the new lease for this site as "Phoenix Salmon US Inc., to be renamed Cooke Aquaculture USA Inc." If this lease is subsequently renewed, the lessee's name will be changed to "Cooke Aquaculture USA Inc." 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 after the transfer, are:

(1) Navigation and recreational boating and fishing shall be allowed in the open areas of the lease;

(2) The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;

(3) Prior to conducting any activity on the lease site, the leaseholder shall terminate aquaculture lease SFML RS; and

(4) Prior to conducting any activity on the lease site, the leaseholder shall obtain a Maine Pollutant Discharge Elimination System Permit from the Maine Department of Environmental Protection.

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: _____

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Norman H. Olsen
Commissioner
Department of Marine Resources