

**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**  
Aquaculture Lease Transfer Application  
Suspended culture of shellfish  
Long Cove, Deer Isle, Penobscot Bay

**Lease PEN LD2**  
Maine Sea to Tree, LLC, Transferor  
Virginia Olsen, Transferee  
  
Docket # 2010-37T

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

### **1. THE PROCEEDINGS**

On December 15, 2010, the Department of Marine Resources (“DMR”) received an application from Maine Sea to Tree, LLC to transfer to Virginia Olsen Tract 2 of its 2-tract, 2.95-acre aquaculture lease PEN LD2, located in the coastal waters of the State of Maine in Penobscot Bay in Long Cove on Deer Isle in the Town of Deer Isle in Hancock County.

Tract 2 comprises 2.45 acres. The Transferor will retain the lease on Tract 1. The lease was originally granted on February 21, 2003 for a period of ten years for the purpose of cultivating American/eastern oysters (*Crassostrea virginica*), European flat oysters (*Ostrea edulis*), and blue sea mussels (*Mytilus edulis*) using suspended culture techniques. The lease expires on February 20, 2013.

The transfer application was accepted as complete on January 3, 2011. The Department mailed 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 *Penobscot Bay Press* on January 27, 2011. Three comments were received by the Department, all of them supporting the transfer.

### **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 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. Virginia Olsen is the co-owner of Oceanville Seafood, a seafood business located in Stonington, Maine, which she has operated for twelve years. According to the application, she has extensive experience in soft-shell clam cultivation and conservation, in addition to her experience in the seafood business. She is acquainted with Maine's aquaculture laws and rules. She is considering experimenting with culture of sea urchins and scallops on the lease site; she will apply at a later time for a species amendment to authorize culture of these species. Otherwise, she plans to continue to operate the lease in a manner similar to that in the past.

Three comments on this transfer application were received by the Department, each expressing support for Ms Olsen's acquisition of the site and appreciation for the Transferor's operation of the site in the past. It is apparent that the proposal to transfer this lease is not a cause for concern among those near the site or interested in shellfish aquaculture in the area. 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 by the Transferor 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”. The Transferee holds no interest in any other aquaculture leases.

**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 Tract 2 of aquaculture lease PEN LD2 from Maine Sea to Tree, LLC to Virginia Olsen. The lease acronym for this tract will be changed to “PEN LD3”. The lease for the remaining Tract 1 will retain the acronym “PEN LD2”. Following the transfer, both leases will expire on the same date as the original lease PEN LD2, namely, February 20, 2013.

All provisions of the existing lease shall continue in full force and effect for both leases, 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.

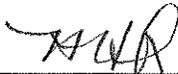
The existing conditions on this lease, which were imposed by the original decision dated February 21, 2003 and which continue in effect after the transfer for both leases, PEN LD2 and PEN LD3, are:

1. Navigation shall be allowed on the open areas of the lease; and
2. 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: 2/28/2011

  
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Norman H. Olsen  
Commissioner  
Department of Marine Resources