

**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**  
Maine Cultured Mussels, Inc., Transferor  
  
Aquaculture Lease Transfer Application

**Lease BHB HI2**  
Docket # 2013-09T  
Mussel Bound, Incorporated,  
Erick Spencer Swanson, &  
Reid Arthur Swanson, Transferees  
July 14, 2017

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

### **1. THE PROCEEDINGS**

Maine Cultured Mussels, Inc. (“Transferor”) applied to the Department of Marine Resources (“DMR”) to transfer to Mussel Bound, Incorporated, Erick Spencer Swanson, and Reid Arthur Swanson (“Transferees”) its 15-acre aquaculture lease BHB HI2, located in the coastal waters of the State of Maine, east of Hardwood Island in Blue Hill Bay in the Town of Tremont in Hancock County. The lease was originally granted in 1993 and has been renewed for two subsequent terms, most recently for the purpose of cultivating blue mussels (*Mytilus edulis*), using suspended culture techniques. The current lease expires on March 24, 2020.

The transfer application was accepted as complete on May 30, 2013. The Department provided personal notice of the application and of the 14-day comment period to all riparian owners, the Town of Tremont, 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 *Mt. Desert Islander* on June 6, 2013. No comments were received.

Because of protracted proceedings regarding the renewal of this lease to Maine Cultured Mussels, Inc., consideration of this transfer application was deferred until a decision was made on the application to renew the lease. The renewal was recently granted by decision dated June 12, 2017.

### **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.

Lease transfers are not adjudicatory proceedings, according to the statute, but a 14-day public comment period is required before a decision can be made. As noted above, no comments were received. The transferees have provided the same information about their financial and technical capacity and their corporate status as is required for an applicant for a standard lease; all information was confirmed to be current as of the date of this decision.

**A. Effect of Lessee Change on Lease Criteria**

This lease was originally issued in 1993 to Trumpet Island Salmon Farm for the net pen culture of Atlantic salmon. In 2005, the operations were changed to the suspended culture of mussels using rafts. In 2006, ownership of the lease was transferred to Maine Cultured Mussels, Inc., and operations were again changed to the culture of mussels using submerged longlines. In 2013, DMR approved the use of up to eight 70-meter polar circle fish pens for the longline culture of mussels; this method of operation is in use at the present time. The fish pens are anchored to a mooring grid. According to the transfer application, and as confirmed by the transferees as of June 15, 2017, no changes are planned in the aquaculture activities taking place on the lease site.

The transferees are the sons of the owner of Maine Cultured Mussels, Inc. and their wholly-owned corporation.

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.” According to DMR records, the transferee Erick Spencer Swanson currently holds the following lease: BHB LI3 (4.7 acres); an application to the Department to renew this lease is currently pending. No leases are held by either of the other two transferees.

**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) 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 BHB HI2 from Maine Cultured Mussels, Inc. to Mussel Bound, Incorporated, Erick Spencer Swanson, and Reid Arthur Swanson.

All provisions of the existing lease shall continue in full force and effect, including all conditions on the lease, as noted below. The term of the lease is not affected by the transfer; the lease will expire on March 24, 2020. 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), in the amount of \$25,000.00, as described in the decision renewing the lease, dated June 12, 2017. The bond or escrow account shall be conditioned upon the lessee’s 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 may impose limitations on the 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 following conditions apply to this lease:

1. **Marking.** The lease area shall be marked in accordance with U.S. Coast Guard Private Aids to Navigation (PATON) requirements and the Department of Marine Resources regulations Chapter 2.80. Additional marking requirements are listed in condition 7, below.
2. **Exclusivity.** Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.
3. **Generators.** Generators shall not be operated on the lease site at night from June 15 to September 15.
4. **Hardwood Island shore.** The leaseholder shall not use the shore of Hardwood Island, above the low water mark, in relation to the aquaculture activities, and shall remove all debris resulting from the lease operations from the surrounding waters and shores.
5. **Gear inventory & tagging.** Within the time periods stated below, the lessee must complete the following actions and provide the required information to the Director of the Aquaculture Division of the Department of Marine Resources (DMR).
  - A. By October 8, 2017, tag or mark all polar circles, mooring lines, longlines, and predator nets on the lease site with an identifying label containing the lease acronym ("Lease BHB HI2") and the lessee's name and phone number. Provide DMR with a photograph or other image of each type of tag used. All gear used on the lease site must be so tagged or marked at all times.
  - B. By October 1, 2017, provide DMR with a written inventory of all polar circles, longlines, predator nets, buoys, moorings and mooring gear, and other items of gear and equipment on the lease site, including:
    - i. Description of each item
    - ii. Dimensions of each item
    - iii. Materials of which each item is composed
    - iv. Color or colors of each item
    - v. Numbers of each type of item deployed on the lease site
    - vi. Descriptions of how each item of gear is tagged or marked
    - vii. Photograph of the tags used
    - viii. Photograph of representative item of each type of gear
  - C. By September 1, 2017, provide DMR with the most accurate possible coordinates, taken at the surface, for the location of each mooring block on the lease site. By November 15, 2017, provide actual, accurate coordinates of the location of each mooring block, with a description of the method used to determine those coordinates.

**6. Inventory Updates.** On or before March 1 of each year that the lease continues in effect, the lessee must provide to DMR:

- A. An updated inventory as described in Condition 5 (B) above as of that date and
- B. Current coordinates for any moorings whose locations have been changed and for any new moorings that have been added to the lease site.

**7. Marking buoys.** Within the time periods stated below, the lessee must complete the following actions and provide the required information to the Director of the Aquaculture Division of the Department of Marine Resources (DMR).

- A. By August 24, 2017, re-apply to the U.S. Coast Guard PATON program for correct coordinates in datum NAD83/WGS84 and inform the Coast Guard that polar circles are being used on the lease site as permanent surface structures. Copy DMR on all correspondence with USCG PATON.
- B. By August 24, 2017, notify DMR of the PATON-approved coordinates and provide evidence of PATON approval that is satisfactory to DMR.
- C. By October 1, 2017, label all corner buoys used on the lease site, including PATON buoys, with the words "Sea Farm BHB HI2" in letters at least two inches high. Buoys for PATON marking must be yellow. In addition, label PATON buoys as required by the Coast Guard, including the letters "A," "B," "C," and "D," as required. Label all other non-corner markers and floats used on the lease site with tags containing the lease acronym ("BHB HI2") and the lessee's name and phone number.
- D. By August 24, 2017, re-set the outer corner-marking buoys in accordance with NAD83/WGS84 coordinates as approved by the USCG PATON program. Advise DMR when this has been done and what size and shape the buoys are. Provide current photographs or images to DMR showing the PATON buoys in place on the lease site.
- E. If, in addition to the PATON markers, the lessee chooses to mark the area of the lease site that is actually used, as provided by DMR Rule C. 2.80, the lessee must use buoys of a color that is other than yellow and that is also different in color from other buoys used for moorings and gear on lease site. If and when this DMR marking has been done, the lessee must advise DMR and provide:
  - i. Coordinates of all DMR marking buoy locations,
  - ii. A description of the buoys used by color and size, and

iii. Photographs or images showing the DMR marking buoys in place on the lease site.

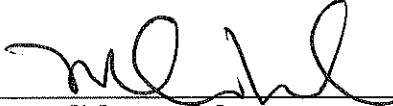
F. Notify DMR within 7 days of discovering or being notified that any PATON or DMR corner markers are missing, and specify which markers they are. Replace any missing markers within 14 days of notifying DMR. Notify DMR within 7 days of replacing any missing marker that the marker has been restored.

8. **Errant gear.** Within 14 days of being notified of errant gear or debris from the lease operations in or on the surrounding waters and shores, the Lessee must retrieve the errant gear or debris and provide satisfactory evidence of its retrieval to DMR. This condition does not alter the Lessee's obligations under DMR Rule Chapter 2.75 or the provisions of the lease pertaining to maintenance of the lease site and removal of debris from the surrounding waters and shores.

**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: 7.19.17

  
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**Meredith Mendelson**  
**Deputy Commissioner**  
**Department of Marine Resources**