

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Trundy Point, LLC, Transferor
Aquaculture Lease Transfer Application

Lease CAS BASK2

Wild Ocean Aquaculture, LLC, Transferee

August 28, 2019

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

1. THE PROCEEDINGS

Trundy Point LLC, applied to the Department of Marine Resources (“DMR”) to transfer to Wild Ocean Aquaculture, LLC, its 4.1-acre aquaculture lease CAS BASK2, located in the coastal waters of the State of Maine, east of Basket Island in Casco Bay, in the Town of Cumberland in Cumberland County. The lease was originally granted on August 12, 2016 for a period of ten years for the purpose of cultivating blue mussels (*Mytilus edulis*), American oysters (*Crassostrea virginica*), and sea scallops (*Placopecten magellanicus*) using suspended culture techniques. The current lease expires on August 11, 2026.

The transfer application was accepted as complete on June 13, 2019. The Department provided a notice of the application and of the 14-day comment period to all riparian owners, the Town of Cumberland, the general mailing list of interested persons, and various state and federal agencies. A notice of the application and comment period was published in *The Forecaster* on July 11, 2019. 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 allow a lease to be transferred from one lessee to another 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 capability and corporate status as is required for an applicant for a standard lease. The transferee has experience in shellfish and marine algae aquaculture and is 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 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 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: CAS CF3 (11 acres), CAS BA2 (2 acres), CAS CHEB2 (3.03 acres), and CAS LCI2 (0.86 acres). The Transferor and Transferee are in the process of having the Transferor’s lease, CAS LONG (1.74 acres) also transferred to the Transferee. Should this transfer (CAS BASK2 (4.1 acres)) and the pending transfer for CAS LONG both be granted, the total acreage held by the Transferee would total 22.73 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) 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 CAS BASK2 from Trundy Point, LLC, to Wild Ocean Aquaculture, 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, which is August 11, 2026.

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.

DMR placed a condition on the original lease pertaining to bonding requirements. The condition provides for scheduled increases in the bonding amount in consideration of the amount of the gear on the site and future gear deployment. Pursuant to the condition, the bond was initially set at \$5,000.00. On the anniversary of the beginning of the lease term in 2019, the required bond amount was due to increase to \$10,000.00. However, the Department has the discretion, in accordance with the condition, to review the amount of the bond considering experience under the lease and evidence of the lessee's plans for gear in the next lease term and set the amount as it deems appropriate irrespective of the scheduled increase.

Per communication with Trundy Point LLC., prior to executing this decision, the lease site has only five rafts currently on site¹. According to the transfer application, the transferee plans no changes in the aquaculture activities taking place on the lease site. The Department has evaluated the amount of the bond and based on the amount of gear currently in place, has kept the required bond amount at \$5,000.00. Pursuant to Department regulations, the transferee will be required to secure a bond, or open an escrow account in the amount of \$5,000.00. In 2022, the amount of the bond will be reevaluated as specified in the applicable condition.

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:

- a. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources Regulations Chapter 2.80.
- b. The bond initially will be set at \$5,000.00. On the anniversary of the beginning of the lease term in 2019, the required bond amount will increase to \$10,000.00; on the same date in 2022, it will increase to \$15,000.00 and in 2025, it will increase to \$20,000.00. At the time of each such increase, the lessee may demonstrate to the Department that the

¹ Case File: Email from P. Stocks to C. Burke on August 13, 2019

amount of gear has not been increased as expected, and the Department, in its sole discretion, may reconsider the amount of the bond to be required. If the lease is proposed to be renewed at the end of its term, the Department may review the amount of the bond in light of experience under the lease and evidence of the lessee's plans for gear in the next lease term and review the amount as it deems appropriate.

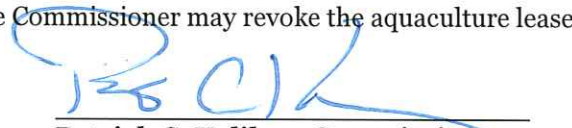
- c. Other public uses that are not inconsistent with the purpose of the lease are permitted within the lease boundaries.

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: _____

8/28/19



**Patrick C. Keliher, Commissioner
Department of Marine Resources**