

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
John Sheldon, d/b/a Marine
Bioservices Company, Transferor
Aquaculture Lease Transfer Application

Lease DAM GS2
Docket # 2012-02T
Muscongus Bay Aquaculture,
Inc., Transferee
April 24, 2012

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

1. THE PROCEEDINGS

John Sheldon, d/b/a Marine Bioservices Company, applied to the Department of Marine Resources (“DMR”) to transfer to Muscongus Bay Aquaculture, Inc., its 5-acre aquaculture lease DAM GS2, located in the coastal waters of the State of Maine in the Damariscotta River, north of the Route 1 bridge, in the Town of Damariscotta in Lincoln County. The lease was originally granted on April 22, 1993 and renewed on April 22, 2003 for a period of ten years for the purpose of cultivating American/eastern oysters (*Crassostrea virginica*), European flat oysters (*Ostrea edulis*), northern quahog/hard clams (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), and surf/hen clams (*Spisula solidissima*), using bottom and suspended culture techniques. The current lease expires on April 21, 2013.

The transfer application was accepted as complete on February 9, 2012. The Department mailed a notice of the application and of the 14-day comment period to all riparian owners, the Town of Damariscotta, 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 *Lincoln County News* on March 8, 2012. 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 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. Transferee has extensive experience in shellfish aquaculture and is acquainted with Maine’s aquaculture laws and rules. According to the transfer application Transferee plans no changes in the aquaculture activities taking place on DAM GS2.

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 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, Transferee holds the following leases: DAM HI3 (7 acres) and DAM DP (6.95 acres). The majority shareholder of Muscongus Bay Aquaculture, Inc. also owns an interest in Dodge Cove Marine Farm, LLC, which holds the following leases: DAM HI (2 acres), DAM HI2 (6.95 acres), and NMR NML (0.365 acres).

THEREFORE, I FIND that the lease transfer will not cause 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 DAM GS2 from John Sheldon, d/b/a Marine Bioservices Company, to Muscongus Bay Aquaculture, Inc. Following the transfer, the new lease will expire on the same date as the current lease.

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. Eel trapping is allowed on the lease site.
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: _____

4/24/2012



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