

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Transfer of Aquaculture Bottom Lease
August 10, 2009
Docket # 2009-03T

Great Eastern Mussel Farms,
Inc., Transferor, to Acadia Aqua
Farms, LLC, Transferee
Lease FLAN WN

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

1. THE PROCEEDINGS

On February 11, 2009, the Department of Marine Resources (“DMR”) received an application from Great Eastern Mussel Farms, Inc., to transfer to Acadia Aqua Farms, LLC, its 14.3-acre aquaculture lease FLAN WN, located off Waukeag Neck in Flanders Bay, a portion of the coastal waters of the State of Maine situated in the Town of Sorrento in Hancock County. The lease was originally granted on Sept. 16, 1997 and renewed on Sept. 16, 2007, for a period of ten years for the purpose of cultivating blue sea mussels (*Mytilus edulis*) using bottom culture techniques.

The transfer application was accepted as complete on February 12, 2009. Notice of the application and of the 30-day comment period was mailed on February 17, 2009 to all riparian owners, the Town of Sorrento, 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. Notices of the application and comment period were published in the *Ellsworth American* on March 19 and April 9, 2009, and in the *Commercial Fisheries News* April 2009 edition. One comment was received. No hearing was held.

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

The transferee, Acadia Aqua Farms, LLC, was incorporated as a Maine corporation in 2008. It consists of one shareholder, Mattheus J. de Koning, who is the managing member and will conduct the active aquaculture operations. Acadia Aqua Farms holds two other aquaculture

leases, FREN BI and EAST OP2, both bottom mussel leases located in Sorrento and Lamoine, respectively. The company has purchased all five of the leases held by Great Eastern Mussel Farms, Inc. and is in the process of having them transferred to its name by DMR; this is the second of those transfer applications.

Mr. de Koning has extensive experience in mussel aquaculture, as evidenced by his résumé, which was submitted as part of the transfer application, and by DMR's experience in working with him on various lease applications for Great Eastern Mussel Farms and the FREN BI lease, which was recently granted in January, 2009. He is well-acquainted with Maine's aquaculture laws and rules. No changes in the lease operations are planned for this lease site. Nothing in the information before the Department suggests that this transfer will have any effect on the lease criteria.

No comments on the proposed lease transfer have been received from state or federal agencies. One riparian owner, Crystal Campbell, wrote to complain of the effect of mussel dragging in western Flanders Bay, stating that the noise and activity disturb both the wildlife and the riparians. Similar comments were evaluated when this lease was renewed two years ago; the activity appeared to be conducted in accordance with the lease, and the Department did not find reason to alter the lease terms or to deny renewal. There is no evidence here that the change of ownership will materially alter the operations on the lease site. Acadia has, however, contacted the riparians to say it will not drag on Sunday mornings; the company has also offered to alter its dragging schedule to accommodate any special events riparians may have planned in the summer.

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, we are to look to "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 Great Eastern Mussel Farms, Inc., 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”. Acadia Aqua Farms’ holdings, including this lease, will consist of the following leases:

- FREN BI - 32.49 acres
- EAST OP2 – 31.62 acres
- FLAN WN – 14. 3 acres

Thus, the total lease acreage held by Acadia Aqua Farms, LLC after this transfer will be 78.41 acres.

THEREFORE, I FIND that the lease transfer will not cause the transferee, Acadia Aqua Farms, LLC , 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, Acadia Aqua Farms, LLC, 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, a lease transfer may be granted.

4. DECISION

Based on the foregoing, I grant the requested transfer of the aquaculture lease FLAN WN from Great Eastern Mussel Farms, Inc. to Acadia Aqua Farms, LLC. All provisions of the existing lease shall continue in full force and effect, 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. Existing conditions on this lease, which were established when the lease was first issued in 1997 and which continue in effect, are:

- (1) Fishing for lobster, crab, pogies, and herring, as well recreational fishing, are allowed on the lease;
- (2) The riparian landowners are to be allowed boat moorings as designated by the local Harbormaster;
- (3) Seeding and dragging activities are restricted to between the hours of 6:00 a.m. and 6:00 p.m. throughout the year; and
- (4) The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

At this time, the Department is adding the following condition, which is consistent with the nature of the lease and with the terms of similar leases:

- (5) Dragging on the lease site without prior authorization from the leaseholder is prohibited.

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: 8/14/09

/s/George Lapointe
George D. Lapointe (Commissioner)
Department of Marine Resources