

**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**  
Aquaculture Lease Transfer Application

**SWAN HS**  
Island Aquaculture Corp, Transferor  
Phoenix Salmon US Inc. a/k/a Cooke  
Aquaculture USA, Inc., Transferee  
Docket # 2010-32T  
May 3, 2011

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

**1. THE PROCEEDINGS**

On September 22, 2010, the Department of Marine Resources (“DMR”) received an application from Island Aquaculture Corp. to transfer to Phoenix Salmon US Inc. a/k/a Cooke Aquaculture USA, Inc., Transferee its 18.83-acre aquaculture lease SWAN HS, located off Scrag Island, south of Harbor Island in Toothacher Bay, a portion of the coastal waters of the State of Maine situated in the Town of Swans Island in Hancock County. The lease was originally granted on June 15, 1994 and renewed on June 15, 2004 for a period of ten years for the purpose of cultivating Atlantic salmon (*Salmo salar*), Atlantic cod (*Gadus morhua*) and haddock (*Melanogrammus aeglefinus*) using net pen culture techniques. The current lease expires on June 14, 2014.

The transfer application was accepted as complete on October 29, 2010. The Department mailed a notice of the application and of the 14-day comment period to all riparian owners, the Town of Swans Island, 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 *Ellsworth American* on November 11, 2010. One comment was received and is discussed under section 2 (A), below.

**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**

Phoenix Salmon US Inc. is a Maine corporation incorporated on May 5, 2005. Phoenix acquired all the stock of Transferor and has since operated the company and this lease. Now, Phoenix wishes to dissolve the subsidiary corporation and hold its leases in its own name. Phoenix itself is a wholly-owned

subsidiary of True North Salmon US Inc., which in turn is owned by Cooke Aquaculture of Blacks Harbour, New Brunswick, Canada. Once the leases are transferred to Phoenix and its subsidiary corporations are dissolved, Phoenix will change its name to Cooke Aquaculture USA Inc.

Phoenix currently operates eight other aquaculture leases in its own name (COB BC, COB BP, COB DC, COB MI2, COB SB, MACH CI2, MACH CIN, and MACH CW2) and numerous other leases through other subsidiary corporations. Phoenix has extensive experience in finfish aquaculture and is well-acquainted with Maine's aquaculture laws and rules. The Department is well-acquainted with the company's Maine management team and with its financial capability and technical capacity, which it has reviewed favorably twice this year alone in connection with two aquaculture lease applications, MACH CI2, granted in 2010, and SWAN BIS, granted in 2011.

According to the transfer application, Phoenix plans no changes in the aquaculture activities taking place on this lease. The lease site will be managed in the same way as before the transfer; only the name of the lessee will change.

The Friends of Blue Hill Bay submitted a comment asking the Department to deny the lease transfer because of alleged "water quality and benthic violations" by Cooke Aquaculture in Maine and New Brunswick and because of concerns about the alleged use of pesticides to control sea lice. No allegations were made of problems specific to the SWAN HS lease site. No evidence was presented regarding the company's activities in New Brunswick.

Water quality at aquaculture lease sites is monitored according to requirements of the Maine Department of Environmental Protection, which issues the discharge permit that the lessee must have in order to place fish feed, medicines, or any other substances in the water at the site. Issues involving the discharge permit are the province of DEP. As noted above, this transfer is a change only in the name of the lessee; operations at the lease site will continue as in the past. There is no evidence before this Department indicating that transfer of the lease to Phoenix Salmon US Inc. would cause any of the original criteria for issuing a lease to be violated.

**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, the total lease acreage held by Transferee, with this lease included, will not exceed 1,000 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) (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 SWAN HS from Island Aquaculture Corp to Phoenix Salmon US Inc. I approve the subsequent change of name from Phoenix Salmon US Inc. to Cooke Aquaculture USA, Inc. Both names will be reflected in the new lease for this site. 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) The leaseholder shall take all reasonable measures to submerge float rope used on the lease site;
- (2) The leaseholder shall provide at least two weeks notice to local fishermen prior to moving aquaculture gear to or from the lease site. Such notice may be given directly to the affected fishermen or by posting a public notice on Swan's Island. The notice shall include the date of the gear movement and the course through which it will be moved; and
- (3) 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: 5/3/11

/s/ Norman H. Olsen  
Norman H. Olsen  
Commissioner  
Department of Marine Resources