

STATE OF MAINE

Lessee: Cooke Aquaculture USA, Inc.

DEPARTMENT OF MARINE RESOURCES

Aquaculture Lease Renewal Application
for net-pen culture of Atlantic salmon and
suspended culture of rainbow/steelhead trout,
Atlantic halibut, Atlantic flounder, pollock, sea
scallops, soft clams, and haddock;
Comstock Point, Cobscook Bay, Lubec, ME

Lease: COB CC

Docket # 2017-13-R

July 12, 2018

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Cooke Aquaculture USA, Inc. applied to the Department to renew its lease COB CC for a period of ten years to December 15, 2027. The 15-acre lease located in Comstock Point, Cobscook Bay, Lubec, Washington County, Eastport, Maine, is issued for net-pen culture and suspended culture of Atlantic salmon (*Salmo salar*), rainbow/steelhead trout (*Oncorhynchus mykiss*), Atlantic halibut (*Hippoglossus hippoglossus*), Atlantic winter flounder (*Glyptocephalus cynoglossus*) pollock (*Pollachius virens*), sea scallops (*Placopecten magellanicus*), soft clams (*Mya arenaria*), and haddock (*Melanogrammus aeglefinus*). This lease was initially granted on December 16, 1987 to Nellie B. Fisheries, Inc.; on February 15, 1995, the lease was transferred to Treats Island Fisheries, Inc., who subsequently transferred it to Phoenix Salmon US, Inc. (to be renamed Cooke Aquaculture USA, Inc.) on May 3, 2011. There have been no other transfers, reductions in acreage, species and gear amendments, or other amendments to this lease since its inception.

1. PROCEDURE

Notice of the application for lease renewal and the 30-day public comment period and opportunity to request a public hearing was published in the *Quoddy Tides* on October 13 and 27, and in the November 2017 edition of the *Commercial Fisheries News*. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. One comment letter was received stating concerns but no objections to the renewal of the lease and no requests for a hearing on this renewal were received by the Department during the comment period.

2. STATUTORY CRITERIA

Applications for aquaculture lease renewals are governed by 12 M.R.S. §6072(12) and by Chapter 2.45 of the Department's rules, which provide that an aquaculture lease shall be renewed if: the lessee has complied with the lease agreement during its term; the Commissioner determines that renewal of the lease is in the best interest of the state; the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres; and the lease is not being held for speculative purposes.

A. Compliance with lease

The review of the records of this lease discloses that all annual reports have been filed, the rent is paid to date, the bond is current, and the site has passed inspections conducted by the Department of Maine Resources. There are no outstanding complaints regarding this lease.

Therefore, I find that the applicant has complied with the lease agreement during its term.

B. Best interest of the State of Maine

In determining whether it is in the best interest of state to renew the lease, the Department takes into consideration, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest. There is no evidence of conflicts with other new or existing uses of the area.

Therefore, I find that it is in the best interests of the State of Maine to renew this lease.

C. Aggregate lease holdings

DMR records show that this applicant holds an aggregate of 637.69 acres of aquaculture leases comprised of the following leases: COB BC (45), COB BP (33), COB CC (15), COB DC (25), COB HP (10), COB JK (22), COB LU2 (32.14), COB MI2 (30), COB PC (26.5), COB RN2 (32.14), COB SB (31.88), COB TE (15), COB TW (15), EASTW CALF (28), EASTW SCN (10), EASTW SI (10), MACH CI2 (44.7), MACH CIN (35), MACH CW2 (35), MACH II (40), MACH LI (20), MACH ST (10), SWAN BI (15), SWAN BIS (38.5), SWAN HS (18.83).

Therefore, I find that the renewal of this lease will not cause the lessee to hold more than 1,000 acres.

D. 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.” The annual reports filed with DMR by the lessee and the statement of the lessee on the renewal application indicate that aquaculture has been conducted on this lease site.

Therefore, I find that the lease is not being held for speculative purposes.

3. LEASE CONDITIONS

As provided in DMR Rules Chapter 2.37 (1) (B), the Department is including in lease conditions for renewed leases a general condition providing that other public uses that are not inconsistent with the lease purposes are permitted. In adding this condition to the renewed lease, the Department intends to make no substantive change in the public uses of the waters that are permitted to continue within the lease boundaries

Therefore, the conditions that apply to the new lease are:

- a. The lease area shall be marked in accordance with U.S. Coast Guard requirements and the Department of Marine Resources Regulations Chapter 2.80; and
- b. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

4. DECISION

The Commissioner of Marine Resources grants the application of Cooke Aquaculture USA, Inc. to renew aquaculture lease COB CC for a period of ten years, to December 15, 2027. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease.

5. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S. §6072 (11) and DMR Rule Chapter 2.42 that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated: _____

7/12/18



Patrick C. Keliher, Commissioner
Department of Marine Resources

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Aquaculture Lease Transfer Application

COB CC
Treats Island Fisheries, Inc., Transferor
Phoenix Salmon US Inc. to be renamed
Cooke Aquaculture USA, Inc., Transferee
Docket # 2010-23T
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 Treats Island Fisheries Inc. to transfer to Phoenix Salmon US Inc. to be renamed Cooke Aquaculture USA, Inc., Transferee, its 15-acre aquaculture lease COB CC, located in Comstock Point, a portion of the coastal waters of the State of Maine situated in the Town of Lubec in Washington County. The lease was originally granted on December 16, 2007 for a period of ten years for the purpose of cultivating Atlantic salmon (*Salmo salar*), rainbow trout (*Oncorhynchus mykiss*), Atlantic halibut (*Hippoglossus hippoglossus*), flounder (*Pseudopleuronectes americanus*), haddock (*Melanogrammus aeglefinus*), and pollock (*Pollachius virens*) using pen culture techniques, and sea scallops (*Placopecten magellanicus*) and soft clams (*Mya arenaria*) using suspended and net pen culture techniques. The current lease expires on December 15, 2017.

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 Lubec, 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 *Quoddy Tides* on November 12, 2010. 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 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. (“Phoenix” or “Transferee”) is a Maine corporation incorporated on May 5, 2005. Phoenix has undertaken to merge its corporate existence with the Transferor (the “Merger”) and upon completion of the Merger will be the surviving corporate entity and will operate the merged company and this lease. Upon completion of the Merger, Phoenix will change its corporate name to Cooke Aquaculture USA Inc. Phoenix 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.

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 and affiliate corporations. Phoenix has extensive experience in finfish aquaculture and is well-acquainted with Maine’s aquaculture laws and rules. The Department is familiar with the company’s Maine management team and with its financial capability and technical capacity, which it has reviewed favorably in the past year 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.

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, 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 COB CC from Treats Island Fisheries Inc. to Phoenix Salmon US Inc. I approve the subsequent change of name from Phoenix Salmon US Inc. to Cooke Aquaculture USA, Inc. The lessee will be named in the new lease for this site as “Phoenix Salmon US Inc., to be renamed Cooke Aquaculture USA Inc.” If this lease is subsequently renewed, the lessee’s name will be changed to “Cooke Aquaculture USA Inc.” 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. Signs must be placed on the boundaries of the lease area indicating the presence of submerged mooring cables and nets.
2. The lease area shall be marked in accordance with the requirements of the U. S. Coast Guard and the Department of Marine Resources.

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: _____

Norman H. Olsen
Commissioner
Department of Marine Resources