

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Aquaculture Lease Renewal Application
Blue Mussels and Kelp, Casco Bay, Chebeague Island

Lessee
Lease CAS BA2
Docket # 2012-14-R
September 26, 2013

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Wild Ocean Aquaculture applied to the Department to renew its aquaculture lease for two acres for suspended culture of blue sea mussels (*Mytilus edulis*), sugar kelp (*Laminaria saccharina*), hollow-stemmed kelp/oarweed (*Laminaria longicruris*), fingered/horsetail kelp (*Laminaria digitata*), winged kelp (*Alaria esculenta*), dulse (*Palmaria palmata*), nori/laver (*Porphyra*), and sea lettuce (*Ulva lactuca*), located west of Bangs Island, Casco Bay, Chebeague Island, Cumberland County, Maine, for a period of ten years to January 16, 2023.

This lease was initially issued to Aqua Farms, LLC on January 17, 2003. The Department approved a species amendment on February 4, 2009 to add the seven species of marine algae/kelp. DMR approved the transfer of the lease from Aqua Farms, LLC, to Wild Ocean Aquaculture, LLC, on July 14, 2011.

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 *Portland Press Herald* on November 10, 2012 and January 30, 2013 and in the February 2013 edition of *Commercial Fisheries News*.¹ Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease. Bangs Island is owned by Maine Department of Conservation (DOC) and managed by Maine Department of Inland Fisheries and Wildlife (DIFW). Both DOC and DIFW were notified of the renewal application. It is common practice that DIFW will not provide comment on applications and renewals unless they have concerns about impacts to wildlife. No comments and no requests for a hearing on this application were received by the Department during the comment period.

2. STATUTORY CRITERIA

Applications for aquaculture lease renewals are governed by 12 M.R.S.A. §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

¹ DMR rules, Chapter 2.64 (4) (C)

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

My 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 inspection by DMR Marine Patrol. 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 Wild Ocean Aquaculture, LLC, holds two leases (CAS CF2, 1.66 acres; CAS BA2, 2 acres), making their aggregate acreage 3.66 acres.

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

D. Speculative purposes

In determining whether the lease is being held for speculative purposes, the Department considers whether substantially no aquaculture or research has been conducted on the lease site. The applicant has conducted aquaculture on the lease site during its term, as shown by the annual reports it has filed with the Department and by the statement of the lessee on the renewal application.

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

3. LEASE CONDITIONS

The following conditions appear in the original lease:

1. The required lease markings shall be limited to marking of the moorings and structures in accordance with U.S. Coast Guard requirements;

2. Lobster fishing and recreational fishing shall be allowed on the open areas of the lease;
3. The leaseholder will clear all lobster gear that becomes tangled with his equipment when the owner identifies the equipment to the leaseholder;
4. The leaseholder shall remove all predator nets from the bottom of the lease area; and
5. The leaseholder shall conduct annual SCUBA dives on the lease site in order to monitor the benthic conditions of the lease area; results of the dives shall be submitted to the Department on a reporting form to be provided to the leaseholder; the report shall be due annually in the fall.

In the course of approving the transfer of the lease in 2011, the Department reviewed the conditions and eliminated condition 5 (see the transfer decision dated July 14, 2011). Therefore, conditions 1-4 will apply to the renewed lease.

4. DECISION

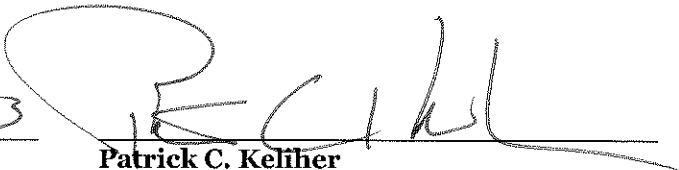
The Commissioner of Marine Resources grants the application of Wild Ocean Aquaculture, LLC to renew its aquaculture lease CAS BA2 for a period of ten years, to January 16, 2023. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the lease prior to this renewal and as described above.

5. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §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: _____

9/26/2013



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

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Aquaculture Lease Transfer Application

CAS BA2
Aqua Farms, LLC, Transferor
Wild Ocean Aquaculture, LLC,
Transferee
Docket # 2011-15T

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

1. THE PROCEEDINGS

On May 4, 2011, the Department of Marine Resources (“DMR”) received an application from Aqua Farms, LLC to transfer to Wild Ocean Aquaculture, LLC its 2-acre aquaculture lease CAS BA2, located in the coastal waters of the State of Maine in Casco Bay in the Town of Chebeague Island in Cumberland County. The lease was originally granted on January 17, 2003 for a period of ten years for the purpose of cultivating blue sea mussels (*Mytilus edulis*), sugar kelp (*Laminaria saccharina*), hollow-stemmed kelp/oarweed (*Laminaria longicruris*), fingered/horsetail kelp (*Laminaria digitata*), winged kelp (*Alaria esculenta*), dulse (*Palmaria palmata*), nori/laver (*Porphyra*), and sea lettuce (*Ulva lactuca*) using suspended culture techniques. The current lease expires on January 16, 2013.

When this lease was originally granted, the site, located west of Bangs Island, was part of the Town of Cumberland. In 2008, the Town of Chebeague Island was formed by secession from the Town of Cumberland. Bangs Island and its surrounding waters, including the lease site, were included in the boundaries of the new town.

The transfer application was accepted as complete on May 9, 2011. The Department mailed a notice of the application and of the 14-day comment period to all riparian owners, the Town of Chebeague 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 Portland Press Herald on May 18, 2011. 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. According to the transfer application, Wild Ocean Aquaculture, LLC was incorporated in Maine in 2010. The transferee currently operates one other aquaculture lease: CAS CF2, a 1.66-acre site for the culture of blue mussels and kelp in Casco Bay. The transferee is experienced in shellfish aquaculture and is acquainted with Maine's aquaculture laws and rules.

The transferee plans to continue mussel aquaculture at the lease site, although the number of mussel rafts may be increased from the current three to a total of six. The DMR Aquaculture Environmental Coordinator has confirmed that there is adequate space within the lease boundaries to accommodate three additional rafts. Since the addition of three rafts is consistent with the original decision, it requires no additional permission or review by the Department. It is likely, however, to require an amendment to the permit issued by the U.S. Army Corps of Engineers.

The fact that no comments on this transfer application were received by the Department indicates that the proposal to transfer this lease is not a cause for concern among those near the site or interested in shellfish aquaculture in the area. 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 Aqua Farms, LLC 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”.

Wild Ocean Aquaculture, LLC holds a 1.66-acre lease, CAS CF2. If this transfer is approved, the transferee will hold a total of 3.66 acres of aquaculture leases.

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 CAS BA2 from Aqua Farms, LLC to Wild Ocean Aquaculture, LLC. Following the transfer, the new lease will expire on the same date as the current lease, namely, on January 16, 2013.

All provisions of the existing lease shall continue in full force and effect, including four of the five 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 lease has five conditions:

1. The required lease markings shall be limited to marking of the moorings and structures in accordance with U.S. Coast Guard requirements;
2. Lobster fishing and recreational fishing shall be allowed on the open areas of the lease;
3. The leaseholder will clear all lobster gear that becomes tangled with his equipment when the owner identifies his equipment to the leaseholder;
4. The leaseholder shall remove all predator nets from the bottom of the lease area; and
5. The leaseholder shall conduct annual SCUBA dives on the lease site in order to monitor the benthic conditions of the lease area. Results of the dives shall be submitted to the Department on a reporting form to be provided to the leaseholder. The report shall be due annually in the fall.

The DMR Aquaculture Environmental Coordinator recommends that the fifth condition be discontinued. The purpose of the annual monitoring reports was to monitor bottom conditions under the mussel rafts to determine whether the aquaculture operations posed a threat to the environment. DMR staff studied the issue in detail just after the lease was initially granted and issued a report [<http://www.maine.gov/dmr/aquaculture/reports/musselrafts.pdf>] concluding that drop-off of mussels from rafts does not pose a threat to the environment. The monitoring was discontinued by agreement of the Department, and there is no basis for continuing the condition in the lease.

Therefore, condition 5 will be discontinued, and only conditions 1, 2 3, and 4 will apply to the new lease.

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: 7/14/11



Norman H. Olsen
Commissioner
Department of Marine Resources