

**STATE OF MAINE**

**DEPARTMENT OF MARINE RESOURCES**

Virginia Olsen, Transferor

Aquaculture Lease Transfer Application

**Lease PEN LD3**

**Docket # 2015-05-T**

Abigail Barrows, Transferee

May 15, 2015

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

**1. THE PROCEEDINGS**

On March 9, 2015, Virginia Olsen applied to the Department of Marine Resources (“DMR”) to transfer to Abigail Barrows her 2.45-acre aquaculture lease PEN LD3, located in the coastal waters of the State of Maine in Long Cove, Town of Deer Isle, Hancock County, Maine for the suspended culture of eastern /American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), blue mussels (*Mytilus edulis*), seaweed (*Saccharina latissima*) and Atlantic sea scallops (*Placopecten megellanicus*). The lease was originally granted on February 21, 2003 for 2.95 acres in two tracts to Maine Sea to Tree, LLC and designated as lease PEN LD2. Tract two of lease PEN LD2 consisting of 2.45 acres was transferred to Virginia Olsen, operating as Oceanville Seafood, on March 10, 2011 for the balance of the lease term and was designated as lease PEN LD3. A species amendment adding seaweed and sea scallops was granted on December 9, 2011. The lease was renewed on December 19, 2014 and expires on February 20, 2023.

The transfer application was accepted as complete on April 7, 2015. The Department provided a notice of the application and of the 14-day comment period to all riparian owners, the Town of Deer Isle, 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 *Penobscot Bay Press* on April 23, 2015. One comment was received from riparians James W. & Marion White stating they had no objections to the transfer of the lease.

**2. STATUTORY CRITERIA & FINDINGS OF FACT**

Lease transfer requests are governed by 12 M.R.S. §6072 (12-A) 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. The transferee has extensive experience in shellfish aquaculture and is acquainted with Maine's aquaculture laws and rules. According to the transfer application, the transferee plans no changes in the aquaculture activities taking place on the lease site.

One comment in support of this transfer application was received by the Department. No comments opposing the transfer application were received. 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 M.R.S. §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 M.R.S. §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 the 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 transferee holds no other 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 M.R.S. §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 M.R.S. §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 M.R.S. §6072 (12-A) and by DMR rule 2.60, this lease transfer may be granted.

**4. DECISION**

Based on the foregoing, I grant the requested transfer of aquaculture lease PEN LD3 from Virginia Olsen to Abigail Barrows. The term of the lease is not affected by the transfer, so the new lease will expire on the same date as the current lease, February 20, 2023.

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 M.R.S. §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:

A. Navigation shall be allowed on the open areas of the lease; and

B. The lease shall be marked in accordance with the requirements of the U. S. Coast Guard and the Department of Marine Resources.

**6. REVOCAION 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: 3/15/15



Patrick C. Keliher, Commissioner  
Department of Marine Resources