

STATE OF MAINE

Long Cove Sea Farm, LLC/Abigail

DEPARTMENT OF MARINE RESOURCES

Barrows

Aquaculture Lease Renewal and
Amendment

PEN LD4

Suspended culture of shellfish/marine algae
Long Cove, Deer Isle

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Abigail Barrows/Long Cove Sea Farm, LLC¹ applied to the Department of Marine Resources (DMR) to renew the aquaculture leases PEN LD2 and PEN LD3 for a period of 20 years. The applicant has requested the two sites be combined into one lease. The applicant also applied for the addition of *Palmaria palmata*, *Laminaria digitata*, *Alaria esculenta*, and *Porphyra umbilicalis* for suspended culture in the PEN LD3 portion of the lease.

1. PROCEDURE

PEN LD2 was initially issued to DLW Enterprises, Inc. on February 21, 2003 and consisted of two tracts totaling 2.95 acres authorized for the cultivation of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), and blue mussels (*Mytilus edulis*) using suspended culture techniques. On February 28, 2011, tract two (redesignated PEN LD3 in the decision), comprised of 2.45 acres, was transferred to Virginia Olsen. DLW Enterprises, Inc. retained tract one (0.62 acres²) as PEN LD2. PEN LD2 was renewed on October 26, 2014 for a 10 year term to February 20, 2023. On June 14, 2022, PEN LD2 was transferred to Long Cove Sea Farm, LLC.

A new lease for PEN LD3 was executed on March 10, 2011. A species amendment for the cultivation of marine algae (*Saccharina latissima*) and Atlantic sea scallops (*Placopecten magellanicus*) using existing gear, with the exception of more buoys for buoyancy if needed, was granted December 9, 2011³. On October 20, 2014, the lease was renewed for a period of ten years to February 20, 2023. On May 15, 2015, PEN LD3 was transferred from Virginia Olsen to Abigail Barrows.

¹ Abigail Barrows wholly owns Long Cove Sea Farm, LLC. Therefore, both names may be used in future lease documents.

² DMR now calculates acreage using mapping software. As a result of this new calculation method, the lease size has been updated to reflect an accurate measurement. The acreage was initially listed in the executed lease document as 0.50 acres, but the mapping software calculates the acreage at 0.62 acres.

³ In 2011, the Department approved amendments via a form submitted by the applicant. An email dated December 9, 2011 confirms the form was signed by Department staff, authorizing the proposed species addition. No formal decision document was issued at that time.

Abigail Barrows wholly owns Long Cove Sea Farm, LLC. Therefore, Ms. Barrows or her company hold PEN LD2 and LD3. On January 31, 2023, DMR deemed an application for the renewal of PEN LD2 complete for review. Subsequently, applications for a species amendment with no gear changes and to renew PEN LD3 were deemed complete on February 15, 2023. In the course of reviewing the applications, Ms. Barrows requested that PEN LD2 and PEN LD3 be combined, so that they are administered as a single lease site.

Given that the sites were previously one lease and separated to reflect ownership changes of tracts, if the renewal is granted DMR will recombine the tracts into one lease site. This means that PEN LD2 and PEN LD3, would be combined under a single site, PEN LD4, which would be jointly held by Long Cove Sea Farms, LLC and Abigail Barrows. This is an administrative change, which does not change any other aspect of the lease.

DMR included both renewal and amendment requests in the same notice, so it was clear that both sites were being considered for renewal and that operational changes were being proposed.⁴ Notice of the 30-day public comment period and opportunity to request a public hearing was published in *Penobscot Bay Press* on March 9, 2023. Notice was also provided to riparian landowners within 1,000 feet of the site, the Town of Deer Isle, federal and other state agencies and sent to subscribers of DMR's aquaculture email list-serve. A public hearing on a lease renewal is required if DMR receives five or more requests for a public hearing during the comment period. No requests for a public hearing were received by the Department.

2. STATUTORY CRITERIA

Aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12) and by Chapter 2.45 of DMR'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.

Aquaculture lease amendments are governed by 12 M.R.S.A. §6072(12)A and by Chapter 2.44 of DMR's rules, which provide that an amendment may be granted if: the lease amendment does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A) and is consistent with the Commissioner's findings on the underlying lease application in accordance with Chapter 2.37(A); and the lease amendment does not violate any of the conditions set forth in the original lease.

A. Renewals

⁴ Lease amendments are processed in accordance with Chapter 2.44 of DMR's regulations. Hearings for lease amendments are not required and the comment period is 14 days. However, since the amendment was combined with the renewal, DMR used the comment deadline for the renewal period, which is 30-days.

Compliance with lease:

No issues with compliance were noted during a review of the case file for either lease. Bonds and rent payments are current for each site.

Therefore, the applicant has complied with the lease agreements during their terms.

Best interest of the State of Maine:

In determining whether it is in the best interest of the state to renew the lease, DMR 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.

The Department did not receive any correspondence, or other documentation, concerning any potential conflicts with new or existing uses of the lease areas which are a higher use from the perspective of the public interest.

Therefore, it is in the best interests of the State of Maine to renew these leases.

Aggregate lease holdings:

According to DMR records, PEN LD2 is the only lease held by Long Cove Sea Farm, LLC and PEN LD3 is the only lease held by Abigail Barrows. Long Cove Sea Farm LLC is wholly owned by Abigail Barrows. If the renewal is granted, both sites would be recombined into PEN LD4 with an aggregate of 3.07 acres.⁶ Therefore, the renewal would not cause either the company or Ms. Barrows to exceed associated acreage limits.

Therefore, the renewal and subsequent recombination of the sites would not cause the existing lessee to hold more than 1,000 acres.

Speculative purposes

Chapter 2.45(2)(A) of DMR's regulations provides that in determining whether a renewal is being conducted for speculative purposes, DMR must consider "whether the lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term." The renewal application indicates that shellfish and marine algae were cultivated during the previous lease term.⁵ This is consistent with a review of the record, which indicates aquaculture activities occurred on the sites during the previous lease terms.

Therefore, the lease is not being transferred for speculative purposes.

B. Amendment

⁵ Page 1 of the renewal applications.

The leaseholder is requesting the addition of four species of marine algae: *Palmaria palmata*, *Laminaria digitata*, *Alaria esculenta*, and *Porphyra umbilicalis* (Amendment app, page 3).

These species will be cultured using the existing gear on-site, as approved in previous decisions, and would be added to the portion of the lease previously known as PEN LD3. *P. palmata* will be sourced from Springtide Seaweed, LLC in Gouldsboro, Maine. The remaining three species will be sourced from Atlantic Sea Farms in Biddeford, Maine. All are approved sources of stock by DMR.

As the proposed sources of stock are all approved by DMR, and because the gear proposed to culture these species has been found to be permissible, the change is consistent with the findings of the underlying lease application, would not materially alter the findings of the original decision, and would not result in a change to the original lease conditions.

3. LEASE CONDITIONS

The following conditions were applied to the leases by the original decisions:

1. Navigation shall be allowed on the open areas of the lease; and
2. The lease shall be marked in accordance with the requirements of the U.S. Coast Guard and the Department of Marine Resources.

Condition #2 pertains to site marking. Lease holders are required to mark sites in accordance with DMR's regulations and marking is further specified in lease agreements. Condition #2 was previously removed from the PEN LD2 transfer decision in 2022 and with this decision is removed from the PEN LD3 portion of the site and associated lease agreement as it is already contemplated in applicable regulation.

4. DECISION


The Commissioner grants the application of Abigail Barrows/Long Cove Sea Farm, LLC to renew and combine the aquaculture leases PEN LD2 and PEN LD3. The combined lease will now be designated PEN LD4 and is issued for a period of twenty years. The Commissioner also grants the request to cultivate four additional species of marine algae (*Palmaria palmata*, *Laminaria digitata*, *Alaria esculenta*, and *Porphyra umbilicalis*) on existing gear. PEN LD4 is subject to the same terms, conditions, and obligations as set forth in the original lease for PEN LD2 and PEN LD3, except as modified by subsequent Department decisions.

5. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S. §6072 (11) 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.

6. DATE AND SIGNATURE

Dated: 6/9/2023  _____
**Patrick C. Keliher, Commissioner,
Department of Marine Resources**

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

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Virginia Olsen
PEN LD 3

Aquaculture Lease Renewal Application
Suspended culture of shellfish,
Long Cove, Deer Isle

Docket #2012-16-R
October 20, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Virginia Olsen, d/b/a Oceanville Seafood, applied to the Department on November 15, 2012, to renew the aquaculture lease, PEN LD3, for a period of ten years to February 20, 2023. The 2.45 acre lease is issued for suspended culture of eastern /American (*Crassostrea virginica*), European oysters (*Ostrea edulis*), blue mussels (*Mytilus edulis*), seaweed (*Saccharina latissima*) and Atlantic sea scallops (*Placopecten megellanicus*), located in Long Cove, Deer Isle, Hancock County, Maine. This lease was initially issued on February 21, 2003 for 2.95 acres in two tracts to Maine Sea to Tree, LLC. Tract two, consisting of 2.45 acres, was transferred to Virginia Olsen, operating as Oceanville Seafood. The decision granting the transfer was entered on February 28, 2011 for the balance of the lease term. A new lease for PEN LD3 was executed on March 10, 2011. A species amendment adding seaweed and sea scallops was granted December 9, 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 *Island Advantages* on December 13, 2012 and on January 24, 2013. Notice was also published in the February 2013 Commercial *Fisheries News*. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. 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 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 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

According to DMR records, the total lease acreage held by lessee, including this lease, PEN LD3, consisting of 2.45 acres, will not exceed 1,000 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

Rule 2.45 provides that in considering whether a lease is being held 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 lessee and by the statement of the lessee on the renewal application that aquaculture has been conducted on this lease site.

THEREFORE, I FIND that the lease is not for speculative purposes.

3. LEASE CONDITIONS

The following conditions are carried over from the original lease and will apply to the renewed lease:

- Navigation shall be allowed on the open areas of the lease; and
- The lease area must be marked in accordance with the U.S. Coast Guard requirements and Department of Marine Resources Chapter 2.80.

4. DECISION

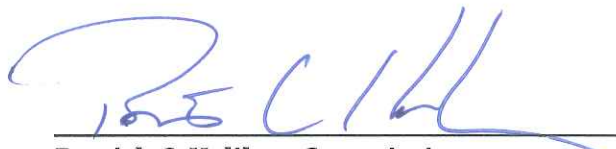
The Commissioner of Marine Resources grants the application of Oceanville Seafood, to renew its aquaculture lease, PEN LD3, for a period of ten years to February 20, 2023. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by this decision.

5. REVOCAION 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: _____

10/20/14



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

DEPARTMENT OF MARINE RESOURCES

DLW Enterprises INC, Transferor

Long Cove Sea Farm LLC, Transferee

Aquaculture Lease Transfer Application

June 14, 2022

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

1. THE PROCEEDINGS

DLW Enterprises Inc. applied to the Department of Marine Resource (DMR) to transfer the lease PEN LD2 to Long Cove Sea Farm, LLC. The lease site is 0.62¹ acres and is in Long Cove, Deer Isle, Hancock County. The lease was initially issued on February 21, 2003² and was comprised of two tracts totaling 2.95 acres. On February 28, 2011, tract two, comprised of 2.45 acres was transferred to Virginia Olsen.³ DLW Enterprises retained tract one [0.62 acres] of PEN LD2, which is authorized for the cultivation of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), and blue sea mussels (*Mytilus edulis*) using suspended culture techniques. PEN LD2 was most recently renewed on October 26, 2014. The current lease expires on February 20, 2023.

The transfer application was initially received on January 5, 2022 and accepted as complete on February 3, 2022. Notice of the completed application and 30-day comment period was published in the *Island Advantage* on February 24, 2022. DMR also provided notice of the completed application and the 30-day comment period to the Town of Deer Isle and its Harbormaster, riparian landowners within 1,000 feet of the aquaculture lease site, other state

¹ DMR now calculates acreage using mapping software and is in the process of updating lease documents to reflect this new, highly accurate method. As a result of this new calculation method, the acreage listed may be slightly different than the acreage listed in the respective lease documents. The acreage listed in the executed lease document is .50 acres, but the mapping software calculates the acreage at .62 acres. If the transfer is granted, the agreement will be updated to reflect the .62 acres.

² The lease was initially issued to Maine Sea to Tree, LLC a Maine corporation wholly owned by Danny Weed. Maine Sea to Tree was dissolved and Mr. Weed requested that the name of the lessee be changed to his new company, DLW Enterprises Inc. Mr. Weed is the sole owner of DLW Enterprises. The name change was granted by DMR and took effect on May 16, 2016.

³ The tract that was transferred to Virginia Olsen was given the site ID: PEN LD3. On May 15, 2015, PEN LD3 was transferred from Virginia Olsen to Abigail Barrows. Ms. Barrows owns Long Cove Sea Farm, LLC.

agencies, and to subscribers of DMR’s aquaculture list-serve. During the comment period, DMR received one comment. A lease transfer does not require a hearing, so no hearing was held.

2. STATUTORY CRITERIA & FINDINGS OF FACT

Lease transfer requests are governed by 12 M.R.S.A. §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

As part of the transfer application, transferees must provide documentation demonstrating that they have the financial and technical capacity to operate the lease site. Long Cove Sea Farm, LLC is wholly owned by Abigail Barrows, who holds the lease site PEN LD3.⁴ Ms. Barrows has held PEN LD3 since the lease was transferred to her, from Virginia Olsen, on May 15, 2015. Ms. Barrows has experience in aquaculture and is familiar with Maine’s aquaculture rules and laws.⁵ As part of the application, Ms. Barrows demonstrated that Long Cove Sea Farm, LLC has the financial capacity to operate the lease should the transfer be granted.⁶

On March 7, 2022, the Maine Department of Inland Fisheries (MEIF&W) submitted the following comment about the proposed transfer:

It is our understanding that this is the transfer of a previously approved existing lease. If so, this lease is located within a Shorebird Feeding Area and Tidal Waterfowl and Wading Bird Habitat, both of which are Significant Wildlife Habitats. So long as there is no expansion being proposed, we recommend that boat traffic and tending activities be minimized to the extent practicable during

⁴ Pg. 6 of the completed application and the corporate applicant form in the application.

⁵ Long Cove Sea Farm does not hold any aquaculture leases. However, since the company is wholly owned by Ms. Barrows DMR’s assessment is based on the information she provided about her technical capability.

⁶ Letter from Camden National Bank indicating that Long Cove Sea Farm, LLC has an account in good standing. Letter saved to case file and dated June 6, 2022.

the months of May 1 - June 20, and from August 1 - October 1, to minimize impacts on wildlife utilizing this habitat.⁷

Long Cove Sea Farm, LLC is not proposing to modify any elements of the existing operations authorized on PEN LD2. An expansion of the lease site is not proposed. If the transfer is granted only the holder of the lease would change. This site was initially issued on February 21, 2003 and has subsequently been renewed. On May 9, 2022, MEIF&W clarified that PEN LD2 was located outside of Tidal Waterfowl and Wading Bird Habitat and Shorebird Areas. MEIF&W further noted that so long as PEN LD2 did not intersect with mapped habitats minimal impacts were anticipated.⁸

MEIF&W's comments do not suggest that the change in lease holder would violate any of the original criteria for granting the lease. Rather, the initial comment was a recommendation that activities be minimized to the extent practical during the specified time periods to limit potential impacts to wildlife. That comment appeared to be based on the MEIF&W's assessment that the site was within a designated habitat type. MEIF&W did not provide specific guidance on what mitigation measures would be preferable and then later clarified that the site was not within the designated habitat type. DMR provided a copy of the comment to Long Cove Sea Farm, LLC. If the transfer is granted, Long Cove Sea Farm, LLC may follow-up with MEIF&W for additional guidance.

DMR did not receive any other comments concerning the lease transfer. Based on a review of the record there is no evidence to indicate that a change in lease holder would otherwise violate the original criteria for granting a standard lease.

Therefore, I find that the change in the identity of the lessee does not violate any of the issuance criteria set forth in 12 M.R.S.A. §6072(7-A).

B. Effect on Preference Guidelines

There are no competing lease applications for this lease site, so the preference guidelines are not relevant in this case.

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.A. §6072(8).

⁷ CF: Email from B. Settele to DMR Aquaculture dated 3/7/2022.

⁸ CF: Email from B. Settele to DMR Aquaculture dated May 9, 2022.

C. Speculative Purposes

DMR 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.” Based on the transfer application and a review of DMR’s records, DLW Enterprises has conducted aquaculture activities on the lease site during its term.

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

D. Acres Leased by Transferee

In accordance with rule and statute, the proposed transfer cannot result in the transferee being a tenant of any kind in leases covering an aggregate of more than 1,000 acres. Long Cove Sea Farm does not hold any aquaculture leases. If the transfer is granted, Long Cove Sea Farm would hold 0.62 acres.⁹

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:

- 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 lease transfer will not 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.A. §6072(12-A) and Chapter 2.60 of DMR’s regulations, this transfer may be granted.

4. Decision

⁹ Abigail Barrows wholly owns Long Cove Sea Farm. According to Department records, Ms. Barrows holds PEN LD3, which is 2.45 acres. Ms. Barrows is also in the process of applying for a 4.24-acre standard lease in Pickering Cove, Deer Isle.

Based on the foregoing, I grant the requested transfer of PEN LD2 from DLW Enterprises, Inc., to Long Cove Sea Farm, LLC. The term of the lease is not affected by the transfer. All provisions of the existing lease shall continue in full force and effect, including the conditions noted below unless modified by this decision. 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's regulations.

5. Conditions

The existing conditions on this lease are:

- a. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80; and
- b. Navigation shall be allowed on the open areas of the lease.

Condition "a" which pertains to site markings is contemplated in existing rule and is a requirement of all lease agreements. Therefore, condition "a" will be removed.

6. Monitoring and Revocation of Lease

In accordance with 12 M.R.S.A. §6072(11), DMR shall monitor the lease on an annual basis. The Commissioner may initiate revocation proceedings if the lease holder fails to comply the provisions set forth in 12 M.R.S.A. §6072(11) and applicable rule.

Dated: _____

6/14/2022



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

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

**Maine Sea to Tree, LLC
PEN LD 2**

Aquaculture Lease Renewal Application
Suspended culture of shellfish, Long Cove,
Deer Isle

Docket #2012-17-R
October 26, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Maine Sea to Tree, LLC applied to the Department on October 29, 2012, to renew the aquaculture lease, PEN LD2, for a period of ten years to February 20, 2023. The 0.5 acre lease is issued for suspended culture of eastern /American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*) and blue mussels (*Mytilus edulis*) located in Long Cove, Deer Isle, Hancock County, Maine. This lease was initially issued on February 21, 2003 for 2.95 acres in two tracts. Tract two, consisting of 2.45 acres was transferred to Virginia Olsen, operating as Oceanville Seafood. The decision granting the transfer was entered on February 28, 2011 and a new lease for PEN LD2 was executed on March 30, 2011 for the remainder of the lease term.

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 *Island Advantages* on December 13, 2012 and on January 24, 2013 and in the *Commercial Fisheries News* in February, 2013. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. 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 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 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

According to DMR records, the total lease acreage held by lessee, including this lease, PEN LD2, consisting of 0.5 acres, will not exceed 1,000 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

Rule 2.45 provides that in considering whether a lease is being held 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 lessee and by the statement of the lessee on the renewal application that aquaculture has been conducted on this lease site.

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

3. LEASE CONDITIONS

The following conditions are carried over from the original lease and will apply to the renewed lease:

- Navigation shall be allowed on the open areas of the lease; and
- The lease area must be marked in accordance with the U.S. Coast Guard requirements and Department of Marine Resources Chapter 2.80.


4. DECISION

The Commissioner of Marine Resources grants the application of Maine Sea to Tree, LLC, to renew its aquaculture lease, PEN LD2, for a period of ten years to February 20, 2023. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by this decision.

5. REVOCAION 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: 10/26/14



Patrick C. Keliher, Commissioner
Department of Marine Resources