



**SUFFOLK ACADEMY OF LAW**  
*The Educational Arm of the Suffolk County Bar Association*  
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## **Shellfish Aquaculture on Long Island to Produce Food, Jobs and Ecosystem Services**

### **FACULTY**

**Hon. Steve Levy, Former Suffolk County Executive**  
**Linda U. Margolin, Esq., MargolinBesunder LLP**  
**Stephanie Hampson, Town of Islip's Department of Environmental Control**

### **PROGRAM COORDINATORS**

**Isabel E. Buse, Esq,**  
**Peter D. Tamsen, Esq.**

**January 23, 2019**  
**Suffolk County Bar Association, New York**

**SHELLFISH AQUACULTURE ON LONG ISLAND**  
**Suffolk Academy of Law**  
**January 23, 2019**

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## **STEVE LEVY**

A former state and county legislator, and candidate for Governor of New York State, Steve Levy served as County Executive of Suffolk County, New York from 2004-2011. As CEO of the largest suburban county in New York State, with a population of 1.5 million, a workforce of over 10,000 and a budget of \$2.7 billion, Mr. Levy was renowned as one of the nation's leading fiscally conservative managers. His record of eight consecutive years of tax cuts or freezes was unsurpassed in New York State during his tenure.

Under Mr. Levy's leadership, Suffolk saw a record investment in open space preservation and alternative energies, an unprecedented commitment to workforce housing, over 15,000 jobs created or preserved through his economic development policies, and an over twenty percent reduction in overall crime.

Mr. Levy grew up in Holbrook, NY, and attended Sachem High School, Stony Brook University (graduating Magna Cum Laude) and St. John's Law School.

Steve Levy served fifteen years in the Suffolk County Legislature (1986-2000), rising to the Chairmanship of the Ways and Means Committee and the role of Deputy Presiding Officer. Thereafter, he served three years as a New York State assemblyman.

Steve Levy has recently been a political commentator, a columnist at Newsmax, and a contributor to the Washington Times, Washington Examiner and the Long Island Business News. His articles have appeared in the New York Post, Albany Times Union and City and State Magazine. He regularly appears on numerous cable news shows and hosted the "Steve Levy Show", a live political talk program on Long Island News Radio.

Steve Levy is also Executive Director of the Center for Cost Effective Government, a not for profit entity of business and community leaders pledged to working toward weeding out public sector waste and creating a more efficient government.

Additionally, Mr. Levy is founder and president of Common Sense Strategies, a political consulting group, that also helps governments and businesses save on their operational costs.

Mr. Levy is "Of Counsel" with the Bohemia, NY law firm, Campolo, Middleton and McCormick.

**Stephanie Hampson** is an employee of the Town of Islip's Department of Environmental Control (DEC) as a Neighborhood Aide. She is responsible for assisting in the implementation of administrative procedures for the Town's Bay Bottom Aquaculture Lease Program. In such, she interfaces with local Baymen to assist them in obtaining lease parcels. Additionally, Ms. Hampson adds to the Aquaculture Program her experience of Town policies and knowledge of municipal laws.

Stephanie's participation at the DEC includes evaluating and improving upon existing programs and enables her to be an advocate for residents' concerns relating to environmental protection, recycling and solid waste management. She holds a Bachelors in History from SUNY Stony Brook."

**Linda U. Margolin** is the managing partner of MargolinBesunder LLP, Islanti a, New York, where she focuses her practice on commercial and real estate litigation, land use and municipal law for clients across Long Island, including administrative and zoning matters before municipal agencies, and trial-level and appellate work in both state and federal courts. She was a member of the Suffolk County Bar Association's liaison task force that helped to establish the Commercial Division of the Supreme Court in Suffolk County, and served as a member of the Office of Court Administration's Commercial Division Discussion Group from 2008 to 2012. She previously served on the board of directors and various committees of SCBA.

Ms. Margolin is also active in the New York State Bar Association: she is presently a member of the House of Delegates and a member of the Executive Committee of the Real Property Section since 2005 where she co-chairs the section's Committee on Land Use and Environmental Law; she served on the Committee on Professional Discipline from 2003-2016, and is a past chair of the General Practice Section.

Ms. Margolin is also a member of the American Bar Association's Litigation Section, and she has been a presenter for various programs of the Suffolk Academy of Law and the New York State Bar Association on topics involving both commercial litigation and land use.

Ms. Margolin is currently the chair of the Board of Trustees of the Long Island Museum, where she has served as trustee since 2011.

Ms. Margolin graduated in 1975 from New York University School of Law *magna cum laude*, where she was elected to the Order of the Coif, and from William Smith College in 1970 (B.A. *cum laude*) where she was elected to Phi Beta Kappa. Ms. Margolin began her legal career as Law Clerk to the Honorable Jacob Mishler, at that time the Chief Judge of the United States District Court for the Eastern District of New York.

## Suffolk County Aquaculture Lease Program

- Implemented on 8/4/2009 - New York State ceded all rights, title and interest to certain underwater lands of Peconic and Gardiner's Bays, formerly owned by the People of the State of New York, to the County for purposes of shellfish cultivation, under New York Environmental Conservation Law § 13-0302.
- Legislature found that since 1884, New York State has repeatedly attempted to establish a statutory framework whereby the business of cultivating shellfish could be fostered and managed
- Legislature found that in New York Environmental Conservation Law § 13-0302, that failure to undertake an aquaculture leasing program for the underwater lands in Gardiner's and Peconic Bays resulted in adverse economic impacts and the loss of economic opportunity for the region, and that New York Environmental Conservation Law § 13-0302 was adopted in order to eliminate impediments, foster the establishment and obtain the economic benefits of a shellfish aquaculture lease program consistent with established conservation principles.
- This Legislature found and agreed that there will be potential economic benefits from the Suffolk County Shellfish Aquaculture Lease Program, including:  
(1) Provision of additional opportunity for commercial fishermen to maintain their economic viability. (2) An increase in employment in shellfish cultivation and marine-related industries .(3) Provision of income from sale of shellfish and increased sales tax revenue to the County.
- Legislature found that the County's Shellfish Aquaculture Lease Program was consistent with established conservation principles and will provide water quality and environmental benefits to the County and its residents, such as: (1) Augmenting the spawning potential of native shellfish populations. (2) Exerting a positive influence on water quality by helping to control nutrient cycling and preventing noxious plankton blooms. (3)Providing increased substrate for both flora and fauna on bottom structures.
- Legislature found that the Suffolk County Shellfish Aquaculture Lease Program was developed by the Department of Planning with extensive input from the Aquaculture Lease Program Advisory Committee (ALPAC), established by Suffolk County Executive Order Nos. 44-2005 and 45-2005, government officials, experts and the public, over a period of four years.

- Therefore, the purpose of this article is to establish the Suffolk County Shellfish Aquaculture Lease Program in a manner which complies with New York Environmental Conservation Law § 13-0302, SEQRA and applicable laws concerning shellfish aquaculture.

FULL LINK TO SHELLFISH AQUACULTURE LEASE PROGRAM:

<https://www.ecode360.com/14946135> - First Link

**FULL LINK TO SHELLFISH AQUACULTURE LEASE PROGRAM:**

**<https://www.ecode360.com/14946135> - First Link**

**STEVE LEVY MATERIALS - AQUACULTURE**

**<https://lshellfishrestorationproject.org/>**

**Steve Levy (third link)**

**<http://ccesuffolk.org/marine/aquaculture>**



## What is Shellfish Aquaculture?

- Shellfish Cultivation is the equivalent to Shellfish Aquaculture. Local Law 25-2009 defines Shellfish Aquaculture as the controlled, or partially controlled, raising, breeding, growing, and containment of shellfish in any marine hatchery or through on-bottom or off-bottom culture as permitted by the County of Suffolk, New York State Fish and Wildlife Law (N.Y. Environmental Conservation Law Article 11), and other applicable Federal, State and local laws, and regulations.

### Shellfish Aquaculture in Suffolk County, New York

The Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay was established by Suffolk County Local Law No. 25-2009 (Chapter 475, Article II of the Suffolk County Code). This program, which provides secure access to marine space for private, commercial shellfish aquaculture has been developed by Suffolk County for publicly-owned underwater lands in Peconic Bay and Gardiners Bay. Pursuant to Chapter 425, Laws of New York 2004 (2004 Leasing Law), as codified in New York State Environmental Conservation Law §13-0302, the State of New York ceded title to approximately 100,000 acres of underwater lands in Peconic Bay and Gardiners Bay to Suffolk County for the purpose of shellfish cultivation, and authorized the County to prepare, adopt and implement a shellfish aquaculture lease program for this region.

Suffolk County's authority is limited to the conveyance of underwater land for shellfish cultivation, and does not extend to the regulation of this activity. As such, the County controls: the location of shellfish farms through issuance of leases on underwater land within a formally adopted Shellfish Cultivation Zone; and the extent and intensity of aquaculture use through limits on lease size and number. The 29,969-acre Shellfish Cultivation Zone includes New York State Department of Environmental Conservation-issued Temporary Marine Area Use Assignment locations; historic, private oyster grants; and other contiguous areas where the impacts/conflicts of shellfish aquaculture activities on environmental resources/socio-economic concerns will be minimal. Lease applicants must still obtain all necessary regulatory permits from relevant government agencies for conducting off-bottom and/or on-bottom shellfish culture activities on their leases. In particular, a shellfish culture permit must be obtained from NYSDEC once a lease issued.

In addition to addressing the access needs of existing shellfish aquaculture businesses, the lease program will accommodate growth in the industry. Leases for new shellfish farms will consist of 5- or 10-acre parcels. New shellfish aquaculture leases will be limited to a total of 60 additional acres per year, for a maximum of 600 acres leased by the tenth year of program implementation. Including those participants currently cultivating shellfish in the estuary that will be given the opportunity continue in the program, the maximum area that could be potentially leased during the first 10 years of program implementation is 3,173.5 acres, given the structure of the program and various assumptions. This is less than 2.9% of the area under County lease jurisdiction. The program also provides municipalities, researchers, and not-for-profit entities with the opportunity to obtain non-commercial shellfish cultivation leases for experimental, educational, and shellfish resource restoration purposes.

- Implementation of the lease program is expected to increase private investment in shellfish aquaculture businesses, and shellfish farms will be established at secure locations that do not pose conflicts with commercial fishermen and other bay users. This, in turn, will expand the marine-based economy of Suffolk County and create jobs that contribute to the quality of life and sense of place in East End communities.
- The production of large numbers of oysters, hard clams and bay scallops in dense populations on shellfish farms will augment the spawning potential of native shellfish populations. The millions of filter feeding bivalves on shellfish farms will also exert a positive influence on water quality by helping to control nutrient cycling and contributing to the prevention of noxious plankton blooms, such as brown tide. These and other ecosystem services associated with shellfish farms are provided on a sustainable basis at little to no cost to the general public.

## • Long Island Clams “Quahogs”

Clams have a great history out in Long Island, before the inhabitation of foreigners, clams were a substantial source of food for many tribes

The Great South Bay of Long Island has long been known for its abundance of shellfish. During the 1970s the abundance and harvest of hard clams was so great that the bay was often called a “hard clam factory.” At one time Long Island’s Great South Bay was the world’s richest clam factory, and New York provided more than 60% of the nation’s hard clams. It was the east coast’s leading producer of littleneck, cherrystone and chowder clams. Today the annual harvest of hard clams has fallen by over 99 percent from its peak in 1976. The history of clams in the Great South Bay is one of the rise and fall.

During this time there were many different clam companies opening, but one in particular was Dorse Clam Company, it was founded by James H. Dorse, who was born in Islip in 1825. Dorse opened the first Long Island clam processing plant in Islip in 1865, which ran until 1900. The clams harvested were sold to New York City markets as well as local residents. They heavily advertised their products, including the prized clams along with clam juice, which was believed to have medicinal uses, and their world famous clam chowder. In 1900 the company ceased operations due to the depletion of clams throughout Great South Bay.

The Ocean Clam, the Narragansett Indian word “Quahog” is a much slower growing species than the Sea Clam and takes 25-30 years to mature. These clams have been calculated to live as long as 229 years! Most Ocean Clams which are sold commercially range in age from 40 to 100 years old. There are a number of different species of clams that are sold commercially. The clams which are eaten at raw bars and sold in the shell are mainly inshore clams harvested in relatively shallow waters and tidal estuaries, and mainly are two types. The first clam species is the “Surf” or “Sea Clam” and the second variety is the “Ocean Clam” or “Quahog”.

I connected Whitman with Clams “quahogs” in “Leaves of Grass” with native Americans. He spoke and wrote so much about them, that I had to include one of the big parts of his interest with Long Island Clams.

Whitman is comparing himself to a clam as he puts it in his poem. The clam lays perfectly in its callous shell, it is safe, it has nothing controlling it, it lays to be as it destined.

To be in any form, I think that explains his personality so well! he was that man who had a kindleness with his world and fellow man. Whitman had no shell protecting his personality nor did he hide his personality. He may have rewritten his work to conform to society, (conductors) but he tried to express how he felt in many ways. In some ways I feel as though Whitman hid his real personality, and was afraid to show his true nature (as a Rebel, homosexual and for his free spirited nature).

## Text of the 2011 State of the County Address given by Suffolk County Executive Steve Levy February 15, 2011 at the West Sayville Fire Department

- “You can’t come to historic West Sayville without being reminded of the important role our bays and waterways have played in our economy for centuries. Our efforts to restore our once rich shell fishing heritage are continuing to pay off. Suffolk’s investment with The Nature Conservancy has placed 4 million adult clams in the Great South Bay, and the number of baby clams is increasing for the first time in decades. And county efforts to revive scallop populations on the East End with partners like the Town of East Hampton and Cornell Cooperative Extension are showing similar signs of encouragement. With us tonight are William Zeller and Karen Rivera. Both have built their livelihoods from our waterways. William began as a clammer, working the waters just down the road from here. Today, he runs Captree Clams, the wholesaler that buys product from our baymen and brings shellfish to the marketplace. Karen runs a family-owned aquaculture operation in the Peconic Bay. Let us all commit to continuing our work to make our bays healthier and our shell fishing industry strong again so that hard-working people like William and Karen can continue their rich tradition of farming the seas.”

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# **History of Shellfish Enhancement and Aquaculture in East Hampton**



A review of over 100 years  
of shellfish aquaculture  
on the East End,  
focusing on East Hampton's  
public shellfish enhancement and  
restoration programs over the  
last two decades,  
plus future prospects for public  
and private efforts.

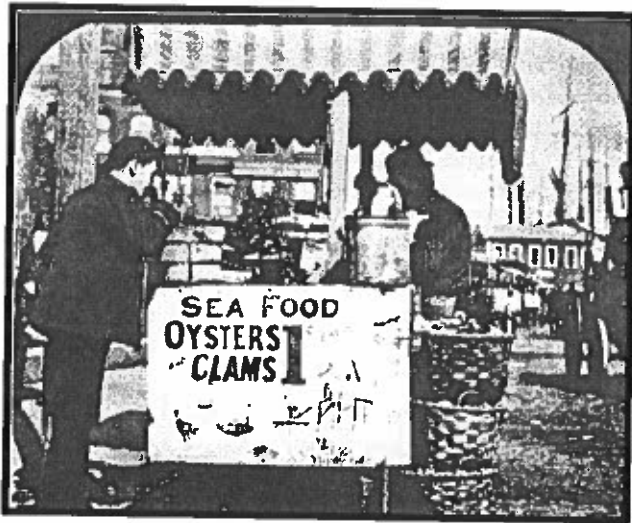


OYSTER GROWERS AND BIOLOGISTS INSPECTING A PRINCIPAL LOAD OF SHELLFISH FOR EVIDENCE OF REEF OYSTERS (REAF). INCREASED SHELLFISH OPERATIONS, BASED ON FISHING TOWNS OF THE BIOLOGIST, 1907. MUSEUM/12.

## ***Then and Now***

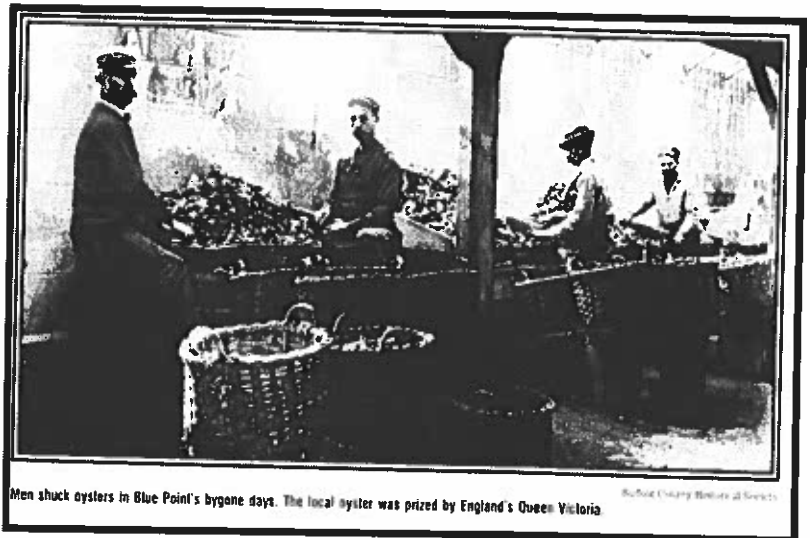


# Oyster Trade and Dwindling Natural Stocks



- 80,000-100,000 barrels/yr. exported (~1200 oysters/barrel)
- England consumed 130,000 barrels of the world's oysters/yr
- Blue Points of the Great South Bay were the English favorite

- Oyster exports from NY to Europe began in earnest after the civil war
- Harvest of natural stocks intensified



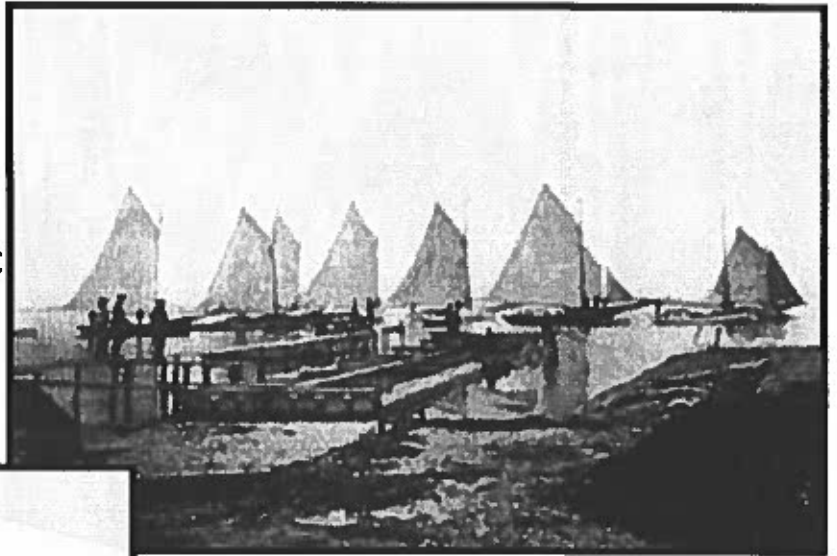
Men shuck oysters in Blue Point's bygone days. The local oyster was prized by England's Queen Victoria.

Richard L. Young, Wildlife & Society

## New York Shellfish Culture - Early

Culture of oysters began in the late 1800's as the human population increased and the oyster population decreased

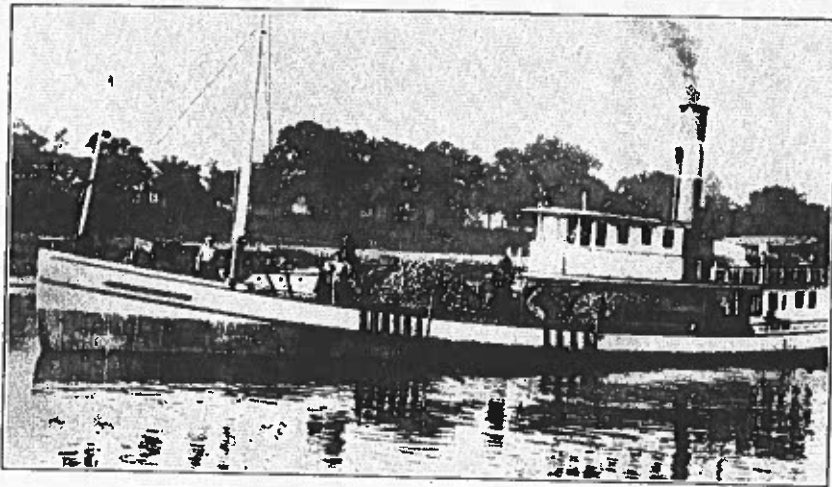
- Robust NYC and foreign markets
- Plant natural oyster seed on beds restored with shell
- NY follows a trend on the east coast of states or towns leasing or granting shellfish cultivation rights to individuals



### New York State Laws of 1884 Chapter 385

*"An act to cede lands under water of Gardiner's and Peconic bays, to Suffolk County, Long Island, for the cultivation of shellfish"*

## **1884 Grant Laws in Peconic and Gardiners Bays**



TRANSPLANTING A BOATLOAD OF YEAR-OLD OYSTERS  
FROM THE INSHORE SEED BEDS TO SELECTED GROWING AREAS IN LONG ISLAND SOUND.

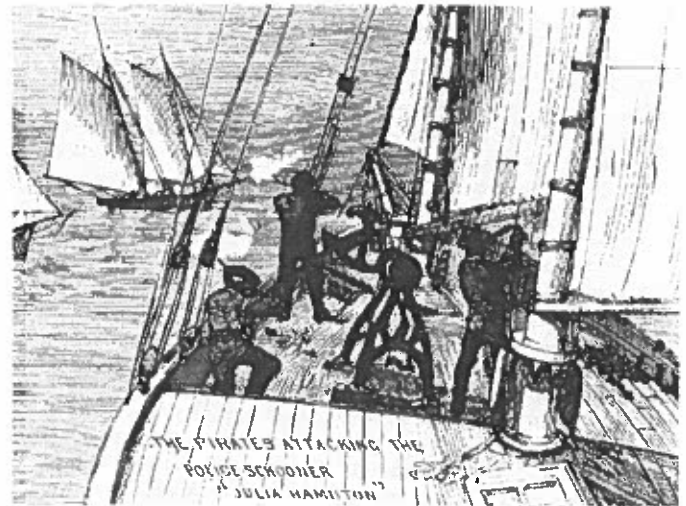


- Individuals were granted the right to cultivate oysters
- A maximum of ~45,000 ac. of an available ~110,000 ac. held as grantlands in the early 1900's
- Grants kept in perpetuity as long as taxes paid
- Original small plots were consolidated and eventually held by a few large companies
- Peak harvests occurred in the early 1950's @ ~1,000,000 bu./yr.
- 1969: the law amended to allow cultivation of other shellfish and county charged with establishing lease program
- Presently ~5,000 ac. of grants remain (~200 ac. in E.H.)
  - <1,000 ac. active, none in EH
- Currently the County is developing a shellfish culture lease program



# Problems in the Oyster Business

- Predation
- Competition between oystermen
- Pirating
- 1920 lawsuit
  - Baymen defied being excluded from these underwater lands and wanted lands returned to the County
    - Arrested for harvesting on private bottom
    - Detained for dredging between sunrise and sunset
- County in a no-win situation
- 1920's to the present: Baymen continue to urge County to return previous private bottom to public use



Violent encounters often occurred while dredging for oysters in the 19th century. Illustration from an 1884 edition of *Harper's Weekly*.

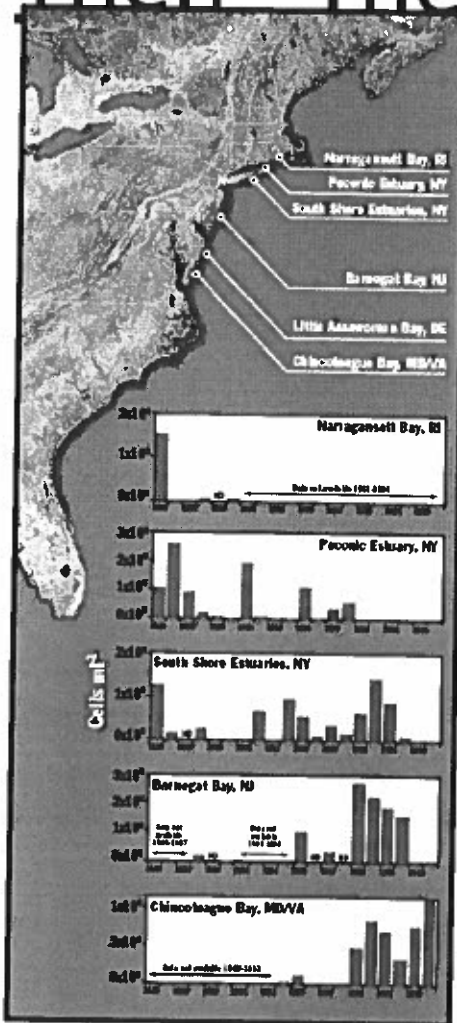
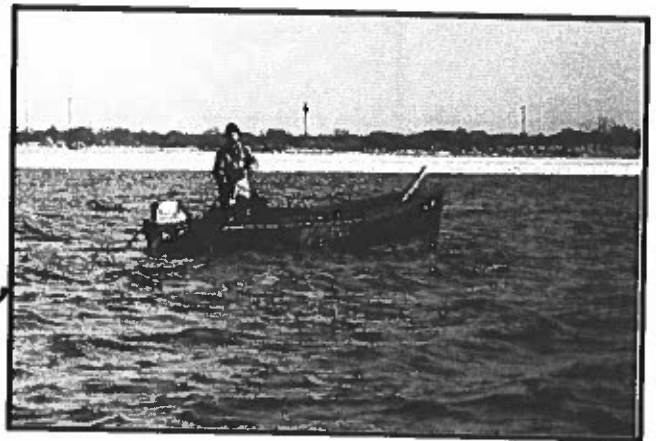
# Then - The Dreaded Brown Tide

1985

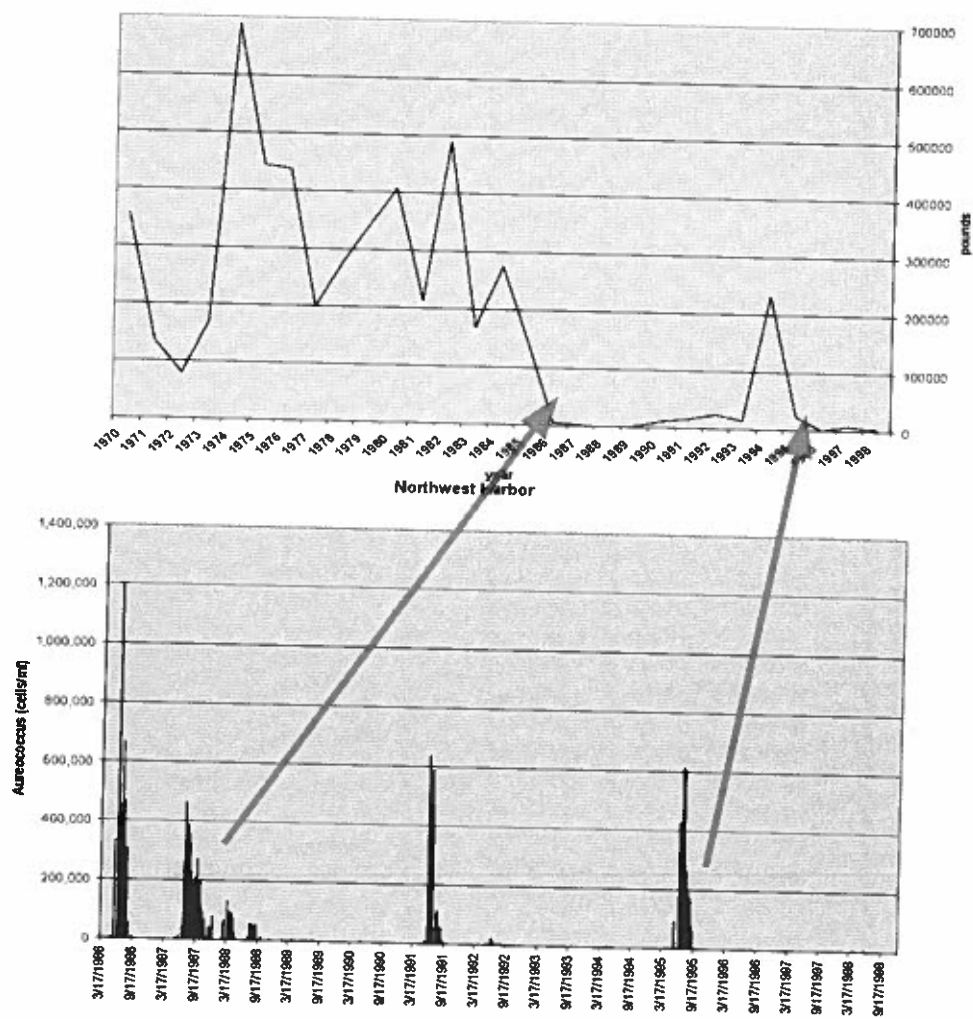
- Unicellular brown algae.  
*Aureococcus anophagefferens*.  
bloomed in NJ, NY,  
and RI waters

- Decimated  
eelgrass beds and  
shellfish  
populations.  
particularly bay  
scallops

- Landings reduced  
to 20% of  
pre-bloom levels



Scallop Landings in Peconic, Gardiners, Napeague Bays, 1970-1998



## Establishment of the Town Shellfish Hatchery

- 1986: Town obtained a WWII Navy built warehouse on the grounds of the former New York Ocean Science Lab being converted to condominiums
- Considered desirable site for hatchery due to absence of brown tide
- 1987: State grant provided seed money for building hatchery
  - in exchange, 10% of yearly production goes to state waters for 25 years

Rough Riders Landing Condos – 1980's



## Section 13-0302

### Lands underwater of Gardiner's and Peconic bays Environmental Conservation (ENV)

- 1. Underwater lands ceded to county of Suffolk. All the right, title and interest in which the people of the state of New York have in and to the lands under water of Gardiner's and Peconic bays in the county of Suffolk, except underwater lands within one thousand feet of the high water mark is hereby ceded to such county, for the purposes of shellfish cultivation, to be managed and controlled by such county, provided that such lands shall revert to the state when they shall cease to be used for shellfish cultivation. For the purposes of this section, the term "Gardiner's and Peconic bays" shall mean the waters of Gardiner's and Peconic bays and the tributaries thereof between the westerly shore of Great Peconic bay and an easterly line running from the most easterly point of Plum island to Goff point at the entrance of Napeague harbor.
- 2. Ratification. The grant of lands under the waters of Gardiner's and Peconic bays, by the commissioners of shell fisheries, in accordance with the provisions of chapter 385 of the laws of 1884, as amended, subsequently held and used by the grantees, heirs, successors, and assigns on which all taxes and assessments have been paid, are hereby ratified and confirmed. Any underwater lands in Gardiner's and Peconic Bays previously granted that revert or escheat to the state or are subject to tax deed by the county of Suffolk shall be available to the county for leasing pursuant to this section. All other lands under such waters, which pursuant to such chapters, have escheated or reverted to the state, are hereby ceded to Suffolk county for the purposes of the cultivation of shellfish, subject to existing valid grants and easements; provided however, that nothing in this section shall interfere with the right of the commissioner of general services to grant lands and easements under water to owners of adjacent uplands, pursuant to the provisions of the public lands law, or of the legislature to make such grants without regard to upland ownership, and to grant franchises to utilities, municipalities and governmental, educational, or scientific bodies for cables, outfalls, ecological studies, and experimentation with controlled marine life.

# Article II Shellfish Aquaculture Lease Program (Suffolk County Legislature Resolution)

- § 475-8 Acceptance of underwater lands.

A.

The County of Suffolk hereby accepts from the State of New York all the right, title and interest which the people of the State of New York have in and to the lands under water of Gardiner's and Peconic Bays in the County of Suffolk, except underwater lands within 1,000 feet of the high water mark, as ceded to the County of Suffolk by New York Environmental Conservation Law § 13-0302 (L. 2004, c. 425), subject to all terms and conditions thereof, for the purposes of shellfish cultivation, to be managed and controlled by the County of Suffolk, provided that such lands shall revert to the State of New York when they shall cease to be used for shellfish cultivation. "Gardiner's and Peconic Bays" shall mean the waters of Gardiner's and Peconic Bays and the tributaries thereof between the westerly shore of Great Peconic Bay and an easterly line running from the most easterly point of Plum Island to Goff Point at the entrance of Napeague Harbor.

B.

In New York Environmental Conservation Law § 13-0302 (L. 2004, c. 425), the State of New York ratified and confirmed the grant of lands under the waters of Gardiner's and Peconic Bays, by the New York State Commissioner of Shell Fisheries, in accordance with the provisions of Chapter 385 of the Laws of 1884, as amended, subsequently held and used by the grantees, heirs, successors, and assigns on which all taxes and assessments have been paid. The State of New York also provided that any underwater lands in Gardiner's and Peconic Bays previously granted that revert or escheat to the State of New York or are subject to tax deed by the County of Suffolk shall be available to the County of Suffolk for leasing, pursuant to New York Environmental Conservation Law § 13-0302 (L. 2004, c. 425). The County of Suffolk hereby accepts from the State of New York all the right, title and interest which the People of the State of New York have or shall have in and to such lands described in this Subsection B and in New York Environmental Conservation Law § 13-0302(2) (L. 2004, c. 425).



## **Lawsuit over Suffolk aquaculture site settled**

Devon Yacht Club dropped its suit in return for Suffolk County agreeing to move an underwater site leased to the Amagansett Oyster Co. to avoid interference with sailing lessons and races.

A lawsuit brought last year by an opponent of a Suffolk County plan to create a huge underwater agricultural district between the North and South Forks for oyster and seaweed cultivation has been settled.

The more than a century-old Devon Yacht Club agreed to drop its suit in return for the county agreeing to move one of its 10-acre underwater sites, leased to the Amagansett Oyster Co., to a location about a mile east so as not to interfere with the club's sailing lessons and races.

As part of the settlement, the county agreed to "take all reasonable steps" to expedite the application of the Amagansett Oyster Co. to get state approval for the new site. The county also agreed to notify the yacht club of renewals of lease sites and proposed new ones.

All parties have signed the agreement; it will be presented Wednesday to state Supreme Court Justice Joseph Pastorella, County Attorney Dennis Brown said

"This settlement is a win-win for our shellfish farmers and local residents who continue to enjoy the amenities on the East End," said County Executive Steve Bellone.

County officials say the agreement will have no financial impact on Amagansett Oyster Co. because the firm had not yet begun cultivating seed oysters at its original site, which was leased in 2017.

Frank McMahon, president of the company, based in Providence, Rhode Island, could not be reached immediately for comment.

Concern over the lawsuit and whether the proposed agricultural district could affect recreational activities led county lawmakers to reduce the size of the district from about 103,000 acres to about 25,000 acres.

Under state law, agricultural district designation is aimed at protecting aquaculture operators, many of them small-scale, from nuisance lawsuits as long as they are using standard agricultural procedures.

The state Department of Agriculture and Markets approved the agricultural district designation last September for the 25,000 underwater acres.

There are about 600 acres in cultivation in Peconic, Napeague and Gardiners bays under a 10-year aquaculture leasing program. The leasing is aimed at spurring growth of the oyster industry and helping to clean up the bays through the natural filtration systems of millions of seeded oysters.

Suffolk officials are conducting a study to assess the impact of the first 10 years of the leasing program and make recommendations to improve operations for the next decade. The county study also will recommend how many acres should be leased over the next decade.



Kurt Schade, Devon Yacht Club's commodore, said he was satisfied with the settlement.

But Schade noted that the leasing program originally envisioned that equipment would be placed on leased bay bottom. He said he hoped the county review also would deal with concerns about surface equipment used by some operators that could interfere with or pose hazards to boats.

**By Rick Brand**



## Long Island Shellfish Restoration Project

On September 6, 2017, Governor Andrew M. Cuomo announced a \$10.4 million effort to improve Long Island's water quality and bolster the economies and resiliency of coastal communities by restoring native shellfish populations to coastal waters. To restore shellfish, New York State is establishing five new sanctuary sites in Suffolk and Nassau counties to transplant seeded clams and oysters and expanding public shellfish hatcheries in the two counties through a dedicated grant program.

For more information, follow this link to the Governor's announcement: <http://on.ny.gov/2eGibPcF>

Cornell Cooperative Extension of Suffolk County's role is to spawn and grow approximately 179 million shellfish over a two year period. After grow-out in floating nurseries, the shellfish will be planted in designated sanctuary sites in both Nassau and Suffolk Counties. Consistent with our mission, we will involve the public in this effort through educational and volunteer opportunities.

## **Project Key Components:**

1. Expansion of shellfish hatchery to satisfy shellfish production targets
2. Support the Shinnecock Tribal Nation in producing spat-on-shell
3. Conduct project outreach and education to adult volunteers, students, and nursery site hosts
4. Produce all shellfish necessary to satisfy project targets for:
  1. Sanctuaries
    - Production of approximately 115 million seed clams
    - Production of approximately 35.9 million spat-on-shell oysters
    - Production of approximately 20 million oyster eyed larvae
  2. Identify and manage nursery sites for deployment of approximately 73 Floating Upwelling Systems (FLUPSYs)
    - Grow out shellfish to optimal size for planting in sanctuary sites
    - Plant shellfish at designated sanctuary sites (5 sanctuary sites)

## **Cornell Cooperative Extension Marine Program & The Long Island Shellfish Restoration Project**

As part of the Governors announcement of \$10.4 million to improve Long Island's water quality and bolster the economies and resiliency of coastal communities by restoring native shellfish populations to coastal waters, New York State is investing \$5.25 million in Cornell Cooperative Extension of Suffolk County (CCE) to expand our existing public shellfish hatcheries, and to plant shellfish at sanctuary sites. Marinas located in both Nassau and Suffolk Counties will also partner with CCE to host floating nurseries.

**Cornell Cooperative Extension of Suffolk County Mission Statement:**

OUR WATERS ARE AN INTEGRAL PART OF LIFE FOR US, MAKING LONG ISLAND A DESIRABLE PLACE TO LIVE. THE MARINE PROGRAM, WHICH BECAME PART OF CCE IN 1985, IS KNOWN AND RESPECTED NATIONALLY AND INTERNATIONALLY. ITS MISSION IS TO PROTECT OUR WATERS, PROVIDING A CLEAN ENVIRONMENT FOR OUR FISH, FOWL, AND PLANTS.

At Cornell Cooperative Extension of Suffolk County, our researchers and educators are busy working to inform Long Islanders how we can each do our part to safeguard our environment. Projects have been designed to bring back our once thriving eelgrass and shellfish populations, ensure our commercial fishing industry continues to thrive while limiting bycatch, provide public education about environmental consequences of storm water runoff, and introduce our young people to marine sciences and marine life on Long Island.

ORIGINAL

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
In the Matter of the Application of

Index No. 17-06100  
(Pastoressa, J.)

The Devon Yacht Club, Inc.,

Petitioner,

For a Judgment under Article 78 of the  
Civil Practice Laws and Rules, and for  
Declaratory and Injunctive Relief

-against-

Suffolk County Aquaculture Lease Board;  
Suffolk County Department of Planning;  
Sarah Lansdale, in her capacity as Director of the  
Suffolk County Department of Planning; Suffolk County;  
Amagansett Oyster Co., LLC; Douglas Rodgers;  
Eileen Rodgers; Daniel Hadler; Gregory Brink;  
Bryan James Hadler;

Respondents,

-and-

Town of East Hampton and New York State  
Department of Environmental Conservation,

Additional Respondents.

-----X

**MEMORANDUM OF LAW  
IN SUPPORT OF APPLICATION  
FOR PRELIMINARY INJUNCTION  
AND TEMPORARY RESTRAINING ORDER**

MARGOLIN BESUNDER LLP  
*Attorneys for Petitioner*  
1050 Old Nichols Road, Suite 200  
Islandia, New York 11749  
(631) 234-8585

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## **PRELIMINARY STATEMENT**

Petitioner Devon Yacht Club, Inc. ("Devon"), by its attorneys MargolinBesunder LLP, respectfully submits this Memorandum of Law in support of its application for a preliminary injunction and temporary restraining order. Devon seeks injunctive relief to maintain the status quo by enjoining Suffolk County agencies and individual respondents from proceeding with the implementation of ten aquaculture leases (the "Proposed Leases") for sites in Gardiners Bay and Napeague Bay which lie in close proximity to the land owned by Devon. The twenty-acre sites for each of the Proposed Leases are to be used for oyster farming. If used as intended, the Proposed Leases will remove approximately 200 acres of sheltered waters from public use thereby interfering with and severely curtailing, if not eliminating, Devon's boating activities, impeding access to the marina and ending a recreational use of these waters that has been ongoing for a century. While the loss of the ability to sail through these 200 acres will create irreparable injury to Devon, the 200 acres are a small fraction of the 110,000 acres of potential aquaculture lease sites available through the Suffolk County Aquaculture Program. We ask that the Court preserve the status quo, and enjoin the implementation of the Proposed Leases during the pendency of this Proceeding.

We show below that the sites of the Proposed Leases were not properly approved and leasing of the sites violates applicable statutes. We further show that if leased and used as expected, the oyster farms would permanently deprive the Devon members of the ability to use Napeague and Gardiners Bays for navigation and recreation, a loss which would be irreparable. We believe that none of the ten Proposed Leases have actually been executed, and therefore delaying the process of finalizing and implementing the Proposed Leases would impose only the most minor inconvenience on a few of the Respondents while preventing immeasurable harm

and disruption to Devon and its members. The relief requested would insure maintenance of the status quo pending final resolution of the instant proceeding.

In order to obtain a preliminary injunction, a movant must establish (1) the likelihood of success on the merits; (2) irreparable injury absent granting of the preliminary injunction; and (3) a balancing of the equities in the movant's favor. *See W.T. Grant Co. v Srogi*, 52 N.Y.2d 496, 517 (1981); *Lattingtown Harbor Prop. Owners Assn., Inc. v. Agostino*, 34 A.D.3d 536 (2d Dept. 2006). We show below that all three criteria have been satisfied.

### **STATEMENT OF FACTS**

The facts recited below are drawn from the Verified Petition and the accompanying affidavit of Curt W. Schade, sworn to the 2<sup>nd</sup> day of January, 2018 (the "Schade Aff."), and the Affirmation of Linda U. Margolin dated the 2<sup>nd</sup> day of January, 2018 (the "Margolin Aff.").

Devon is a domestic not-for-profit membership club incorporated in 1916, with a clubhouse and marina located on the shore of Napeague Bay, in Amagansett in the Town of East Hampton. Devon's marina consists of a dredged boat basin with 43 boat slips, where members' larger boats are kept and where facilities are available to visiting yachtsmen. The bulk of Devon's sailboat fleet, however, are smaller boats that are launched from the beach in front of Devon's facilities, ranging in size from 8-foot Optimist Prams used to teach sailing to children and for sailing races for younger children, to various centerboard and daggerboard open sailing dinghies no more than 14 feet in length. Devon has 326 member-families whose over 900 family members use Devon's facilities. Devon's members have been sailing the waters of Napeague Bay for over 100 years.

During the summer season, Devon holds weekly or more frequent races for sailboats in the westerly waters of nearby Napeague Bay. It also conducts a sailing school and children's



camp, and hosts some of the races for a regional youth sailing organization. All of these activities involve 14-foot and smaller sailing dinghies and rely on the safety of the nearby sheltered waters in the western areas of Napeague Bay. *See* Schade Aff. at ¶¶ 8-15.

In 2004, pursuant to New York State Environmental Conservation Law §13-0302, the State of New York ceded to Suffolk County (the “County”) all underwater lands of Peconic and Gardiners Bays seaward of 1,000 feet from the high-water mark (a total of 110,000 acres) for the purposes of shellfish aquaculture.

Between 2007 and 2008, the County acted as lead agency under the State Environmental Quality Review Act (“SEQRA”) to conduct a coordinated review of the proposed project of developing a program to create lease sites for shellfish aquaculture in the approximately 110,000 acres of the underwater lands acquired from the state, culminating in a Generic Environmental Impact Statement (“GEIS”) adopted in 2008. The GEIS consists of a Draft Generic Environmental Impact Statement for the Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay Suffolk County, NY, dated March 19, 2008 (“DGEIS”)<sup>1</sup> and a Final Generic Environmental Impact Statement (“FGEIS”)<sup>2</sup>. The DGEIS stated that:

it is not intended to provide a detailed analysis of the individual leases that may be undertaken by the Lease Program, but rather the purpose of this document is to perform a ‘generic’ assessment of potential impacts of implementing the program .... Any lease options proposed by this program will be fully governed by the requirements of SEQRA with respect to further environmental review, if necessary.

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<sup>1</sup> The DGEIS is available online at [http://www.suffolkcountyny.gov/Portals/0/planning/EnvPlanning/Aquaculture/alpac\\_DGEIS031908.pdf](http://www.suffolkcountyny.gov/Portals/0/planning/EnvPlanning/Aquaculture/alpac_DGEIS031908.pdf)

<sup>2</sup> The FGEIS is available online at [http://www.suffolkcountyny.gov/Portals/0/planning/EnvPlanning/Aquaculture/alpac\\_FGEIS090308.pdf](http://www.suffolkcountyny.gov/Portals/0/planning/EnvPlanning/Aquaculture/alpac_FGEIS090308.pdf)

DGEIS at 19-20. The DGEIS also recognized that the Town had a Local Waterfront Revitalization Plan ("LWRP") approved by New York State on October 8, 2007, "which must be considered in the development of the County's Lease Program." *Id.* at 82.

Thereafter, the County adopted Local Law 25 of 2009, codified as §§ 475-6 to 475-23 of Chapter 475 of the Suffolk County Administrative Code ("County Code"), to authorize and shape the design and development of a program, the Suffolk County Shellfish Aquaculture Lease Program ("Shellfish Aquaculture Lease Program"), to establish lease sites for shellfish aquaculture. The County Code established the Suffolk County Aquaculture Lease Board ("ALB"), defined as "[a] board established by this article to determine which proposed lease sites within the Shellfish Cultivation Zone will be eligible for leasing." County Code § 475-7.

The County Code also provides that the ALB shall review all proposed lease sites and determine whether the proposed lease sites shall be available for leasing, conduct meetings as necessary to provide an opportunity for oral and written testimony or evidence concerning each proposed lease site, consider such testimony or evidence in making its determinations and make its determination based upon: "(1) Whether proposed sites meet the criteria of New York Environmental Conservation Law §13-0302 and the Suffolk County Shellfish Aquaculture Lease Program; and (2) Factors affecting the desirability of the sites for shellfish cultivation, including, but not limited to, regional and environmental factors." *Id.* at § 475-18.

In addition, as a separate and independent ground for relief, approval of the Proposed Lease sites violates the County Code which provides that **"No Lease shall be granted which infringes upon an existing property right."** *Id.* at § 475- 16(E)(emphasis added). As shown below, the Proposed Leases, if implemented, will have a severe detrimental impact on Devon,

and all other recreational small boaters presently using and relying on the sheltered waters in the affected area.

In or about 2009, the County adopted an Aquaculture Lease Area Map that depicted a grid network of potential aquaculture lease sites, each 10 acres with a surrounding 10-acre buffer, 20 acres each in total. As set forth in the FGEIS, these grids represented only “potential areas for leasing and do not necessarily mean that they will be leased. All the new lease plots depicted on this map must go through the leasing process in order to be granted permission to lease, which may include limits on how many leases will be granted in a particular area.” FGEIS at MH-13.

The sites identified for the Proposed Leases are numbered 839, 842, 843, 844, 846, 849, 852, 854, 855 and 858 and were approved for leasing by the ALB on July 26, 2017. *See* Petition at Ex. A. The location of these sites is shown on Exhibit B of the Margolin Affirmation. As of August 17, 2017, Lessee applicants have been selected for these sites but none of the Proposed Leases has been executed by the Town or the lessees. *See* Margolin Aff. at ¶ 6 and Ex. C.

These lease sites were evidently approved without regard to the Town of East Hampton’s LWRP, despite the fact that the GEIS specifically recognized the existence of the Town’s recently-adopted LWRP and the need to take account of it. DGEIS at 82. We refer the Court to the Schade Affidavit for a detailed explanation of the activities of Devon, and the impact of the Proposed Leases on the recreational and navigational activities of Devon’s members. Moreover, the LWRP specifically recognized the extensive recreational boating use of Napeague Bay, including that by Devon:

Boating facilities. Devon Yacht Club is a private membership club with 43 boat slips in a dredged boat basin south of the clubhouse. The marina has its own fueling facility, and the club also maintains a pier extending into the bay. Devon conducts a sailing school and children’s camp for members, and also holds periodic sailboat

races on a course marked out in Gardiners Bay. . . . The sheltered waters of Gardiners Bay and more open exposure of Napeague Bay bordering the reach receive extensive boating use of all types, including sailing and motor boating, canoeing, kayaking and rowing, windsurfing, waterskiing and jetskis. Transient boats occasionally anchor up overnight in the bay, particularly around July 4th when Devon Yacht Club sponsors a fireworks display.

LWRP at VII-25.

The Town's LWRP specifically identifies leasing of lands by the DEC as one of the state and federal actions and programs which should be undertaken in a manner consistent with the LWRP; this caveat applied to the County once the state ceded bottom lands to the County for a shellfish aquaculture leasing program.

## **ARGUMENT**

### **A. SUCCESS ON THE MERITS**

#### **POINT 1**

#### **THE ALB DID NOT COMPLY WITH THE GEIS**

The Petition alleges that in making its determination to approve the lease sites numbered 839, 842, 843, 844, 846, 849, 852, 854, 855 and 858, the ALB failed to consider the recreational the boating activities of Devon and its members, ignoring its obligation to implement the lease program in accordance with the GEIS, which in turn obligated the ALB to "consider the Town's LWRP [Local Waterfront Revitalization Plan] in the development of the lease program." The LWRP specifically identified the wide range of recreational uses of the area where the Proposed Leases are located, and specifically acknowledged the activities of Devon and its members' recreational and educational sailing use of those waters. Any program for leasing the bay bottoms for shellfish aquaculture should have been administered in a way that was consistent with the LWRP.

We also allege that the ALB failed to consider that pursuant to the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay Program Management Plan dated August 2009,<sup>3</sup> the lessees of the Proposed Leases were expected to be engaged in off-bottom shellfish aquaculture similar to the ongoing operations already approved on TMAUAs.” *Id.* at § 5.5 page 46. The reference to TMAUAs had a very specific meaning: TMAUAs are “Temporary Marine Area Use Assignments” and were lease sites administered by the state “of state owned underwater lands to be used for shellfish cultivation purposes. **Shellfish must be held in off-bottom culture gear only.**” See NYSDEC website at <http://www.dec.ny.gov/permits/96310.html> (emphasis supplied). Thus, the County’s program documents acknowledged that the leases it would be granting would involve dock floats and perimeter buoyage which would bar boat traffic from anywhere within the 10-acre center site and extending to its surrounding 10-acre buffer.

The ALB’s failure to consider the severe negative impact on Devon, its members and recreational use of other small boats owners relying on the safe waters in question in this proceeding also violates County Code § 475-18, obliging the agency to consider regional and environmental factors in developing and administering the lease program.

The approval of the Proposed Leases also violates other aspects of the environmental impact statements. Specifically, the placement of the Proposed Leases is contrary to the way the aquaculture lease plan was supposed to be implemented. In the Generic Environmental Impact Statement that the County prepared, and which it pledged would be followed in implementing its lease program, it was noted that:

[a] concentration of leases within an area of the estuary could create significant impacts to boat navigation, as well as to recreational and commercial uses of the

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<sup>3</sup> published on the county website at:  
[http://www.suffolkcountyny.gov/Portals/0/planning/EnvPlanning/Aquaculture/AI.PAC\\_PMP\\_082009.pdf](http://www.suffolkcountyny.gov/Portals/0/planning/EnvPlanning/Aquaculture/AI.PAC_PMP_082009.pdf)

bays. A method of mitigation will be to establish buffers between leases to reduce areas the intensity of leases in an area. This will allow for navigation between lease sites and ensure the availability for recreational and commercial uses within the area.

*See* DGEIS §4.3.1.7. Moreover, as noted in the Generic Environmental Impact Statement of Findings adopted by the county after its Generic Environmental Impact Statement was complete, the shellfish aquaculture leases have the potential to both create hazards to navigation and adversely impact “recreational activities, such as boating, windsurfing, and waterskiing” because “the placement of gear in public water will preclude the use of the water column.” *See id.* §§ 6.3.1, 6.3.2.<sup>4</sup>

The Proposed leases are contiguous, they are concentrated in one area, their buffer areas are also off-limits to navigation and as detailed in the Schade Affidavit, the collection of Proposed Leases significantly and detrimentally impacts Devon’s recreational use of the waters it has historically used for the past 100 years, with no feasible alternative available, sounding the death knell for its small boat recreational sailing programs.

Therefore, the approval of the Proposed Leases utterly failed to comply with the environmental constraints and agreements imposed on the County and the ALB. The approvals cannot withstand judicial scrutiny.

## **POINT 2 APPROVAL OF THE PROPOSED LEASES VIOLATES SEQRA**

In addition, the existence of the GEIS did not excuse the ALB from performing a SEQRA review of the impact of approving the Proposed Leases, because the GEIS was truly generic, and

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<sup>4</sup> The Findings Statement is available online at [http://www.suffolkcountyny.gov/Portals/0/planning/EnvPlanning/Aquaculture/alpac\\_GEIS092208.pdf](http://www.suffolkcountyny.gov/Portals/0/planning/EnvPlanning/Aquaculture/alpac_GEIS092208.pdf)

acknowledged that it could not anticipate all of the environmental impacts that would be associated with specific lease sites. *See* DGEIS at 19-20.

The Petition alleges that the ALB failed to comply with SEQRA, pleading in the alternative in ¶¶ 40-42 that it utterly failed to perform any environmental assessment pursuant to SEQRA regulation 617.7, or erroneously classified the approval of the Proposed Leases as an Unlisted Action or as a Type II Action, thus failing to take the “hard look” that was required. Since the Proposed Leases involved the leasing of a contiguous area of over 100 acres, it should have been classified as a Type I Action,<sup>5</sup> mandating at least the use of a Full Environmental Assessment Form, which specifically asks whether the proposed action will result in “a loss of recreational opportunities or a reduction of an open space resource as designated in any adopted municipal open space plan.” The review mandated by 6 NYCRR 617.7, requires a determination as to whether the approval of Proposed Leases could reasonably be expected to result in an impact that would cause “a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing use.” The Town’s LWRP was such an open space plan, which recognized the recreational resource of the waters of Napeague Bay near Devon. There is no question that the Proposed Leases will impose a substantial change in the use of the lease sites and the waters surrounding the lease sites and result in a loss of water-based recreational opportunities.

Moreover, after granting two leases in the same area in 2016, the ALB was required under SEQRA to consider the cumulative impact of approving the Proposed Leases in conjunction with the already-approved leases. To fail to do so would be to engage in

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<sup>5</sup> *See* 6 NYCRR §6-7.4(b)(4), mandating a Type I Action designation when the proposed action to be “directly undertaken, funded or approved by an agency” involves “the acquisition, sale, lease, annexation or other transfer of 100 or more contiguous acres of land by a state or local agency.”

“segmentation,” meaning the division of the environmental review of an action such that various activities or stages are addressed “as though they were independent, unrelated activities, needing individual determinations of significance.” 6 NYCRR § 617.2. Essentially, segmentation is prohibited in order to “guard against a distortion of the approval process by preventing a project with potentially significant environmental effects from being split into two or more smaller projects, each falling below the threshold requiring full-blown review. *Long Island Pine Barrens Soc’y v. Planning Bd.*, 204 A.D.2d 548, 550-1 (2d Dep’t 1994).

Whatever methodology it followed or failed to follow, it is clear that the ALB failed to consider, or ignored, the cumulative and foreseeable effect that approving the Proposed Leases would have in conjunction with other lease sites approved or otherwise identified for leasing in the area of the waters traditionally used by Devon’s members. As shown above, the available waters that meet the safety criteria for these boaters is limited. The areas the County has approved to be devoted to oyster farming render a combined total of over 400 acres of heavily used inshore and sheltered waters off-limits to sailing or boating activities of any kind, and especially impact small boat sailors, the core of Devon’s recreational activities, denying them access to a significant portion of the limited available safe waters for their use.

The ALB also failed to consider the regional and environmental impacts that the approval of Proposed Leases would have upon the established recreational uses made of the area by Devon’s members and others using the waters for boating of all types, sailing, sailboat racing and sailing instruction.



**POINT 3**  
**LEASING OF SITES 839-859 VIOLATES COUNTY CODE**  
**SECTION 475-16(E)**

The ALB failed to consider or entirely ignored the existence of Devon as a landowner with riparian rights in the nearby waters, violating the code requiring that “[n]o Lease shall be granted which infringes upon an existing property right.” County Code § 475- 16(E).

Devon owns real property on the shore of Napeague Bay in close proximity to the proposed lease sites. For over a century the Devon property has been used as a facility from which its members could sail local waters. The waters where the Proposed Leases have been approved are located in navigable waters. Devon is a riparian land owner, and as such possesses a property right in the navigational and recreational use of navigable waters in the vicinity of its property. “Riparian owners generally are entitled to access to water for navigation, fishing and other such uses.... riparian owners still enjoy ‘their full panoply of rights.’” *Town of Oyster Bay v Commander Oil Corp.*, 96 N.Y.2d 566, 571 (2001)(citing *Adirondack League Club v. Sierra Club*, 92 N.Y.2d 591, 604 (1998)). The panoply of rights includes recreational use. *See Adirondack League Club, Inc. v Sierra Club*, 92 N.Y.2d at 604.

Briefly summarized, the Devon members’ fleet of small sailboats and student and young sailors require protected waters in order to safely engage in sailing these boats. The Court is referred to the photographs depicting these boats and the young sailors who use them as shown in Exhibits 2 and 3 to the Schade Affidavit. The implementation of Proposed Leases will deprive the Devon members of the use of nearby protected waters where they have been sailing, removing from public use what appears to be close to one-half of the protected waters currently used for small boat sailing and leaving insufficient area for Devon to safely conduct its sailing programs. *See* Petition at Ex. C. The Proposed Leases, if implemented, will severely curtail, if

not extinguish the ability of Devon and its members to use the waters essential to its sailing members, thereby depriving Devon of the navigational and recreational use of these waters. The loss of such property rights is incalculable and deprives Devon of virtually all of its riparian rights. As such, approval of the Proposed Leases violates County Code § 475- 16(E).

**POINT 4  
THE APPROVAL OF THE PROPOSED LEASES  
WAS ARBITRARY AND CAPRICIOUS**

As shown above, the ALB ignored the statutory requirements imposed on it. The approval of the Proposed Leases by the ALB was based upon deficient or no evidence, thus failing to satisfy the minimum areas of inquiry and consideration that the Shellfish Aquaculture Lease Program and the GEIS imposed upon the ALB. Accordingly, the approval of the Proposed Leases was arbitrary and capricious.

**B. IMMINENT AND IRREPARABLE HARM**

**POINT 5  
INJURY TO DEVON IS IMMINENT AND IRREPARABLE**

As fully explained in the Schade Affidavit, permitting the Proposed Leases to go forward would have a devastating impact on Devon and its members. In the absence of injunctive relief, shellfish farming will proceed and Devon's traditional use of the local waters for navigation and recreation would be curtailed entirely.

The Devon sailors, as well as other small boaters have used the affected waters for recreational sailing because they are protected from strong currents, rough seas, and high winds and are uniquely suited for small boats and young sailors. These recreational activities, constituting the major segment of Devon's sailing programs, could not be sustained outside the safe and sheltered waters slated to be sequestered by the Proposed Leases.

The Proposed Leases are for a ten-year term. The long-term deprivation of Devon's sailing programs is not calculable in dollars. Indeed, the implementation of the Proposed Leases would permanently end Devon's sailing programs, a loss that would be irreparable.

### **C. BALANCE OF EQUITIES**

#### **POINT 6 BALANCE OF EQUITIES FAVORS INJUNCTIVE RELIEF**

The requested relief affects only 200 of the 110,000 acres designated for aquaculture and only ten leases. The injunction requested would affect only a tiny fraction of the lease sites. Pursuant to § 475-14 of the County Code, the Director of the Suffolk County Division of Planning & Environment, has explicit authority to terminate and relocate leases. Respondent Sarah Lansdale, who is the Director of the Suffolk County Department of Planning, has such powers under the Shellfish Aquaculture Lease Program. The Proposed Leases have not been executed and are not yet operational. *See Margolin Aff.* at ¶ 6. The requested restraint on proceeding with the Proposed Leases is, therefore, easily accomplished, with virtually no imposition on any parties. Indeed, the leases in the Aquaculture Program may be canceled or moved at the sole discretion of the Town and, therefore, no potential lessee involved has a vested interest in any of the Proposed Lease sites, or any guaranty that the Proposed Lease sites would not be relocated at any time. Moreover, since none of the respondents in this Proceeding has actually installed the dock floats or other apparatus needed to cultivate oysters on any of the Proposed Lease sites, there is also little or no burden to be imposed on them by virtue of the requested restraints.

In the absence of the requested restraints: (1) the Proposed Leases will be finalized and shellfish farming will commence; (2) the Devon sailing programs will be shut down and

permanently discontinued; and (3) the Devon members will be denied their long-standing navigational and recreational rights. These burdens would be imposed until the final resolution of the proceeding, including any subsequent appeals. On the other hand, the requested relief seeks only to maintain the status quo. The balance of equities strongly favors granting of the requested relief.

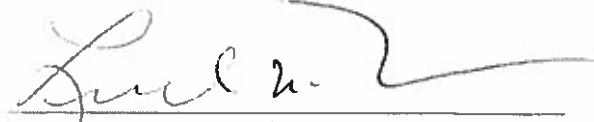
### CONCLUSION

For all of the foregoing reasons, Petitioner's application for injunctive relief should be granted in all respects.

Dated: Islandia, New York  
January 2, 2018

Respectfully submitted,

MARGOLINBESUNDER LLP

A handwritten signature in dark ink, appearing to read "Linda U. Margolin", is written over a horizontal line.

By: Linda U. Margolin  
*Attorneys for Petitioner*  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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In the Matter of the Application of

Index No. 17-06100  
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The Devon Yacht Club, Inc.,

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For a Judgment under Article 78 of the  
Civil Practice Laws and Rules, and for  
Declaratory and Injunctive Relief

**AFFIDAVIT OF SERVICE  
VIA FEDERAL EXPRESS**

-against-

Suffolk County Aquaculture Lease Board;  
Suffolk County Department of Planning;  
Sarah Lansdale, in her capacity as Director of the  
Suffolk County Department of Planning; Suffolk County;  
Amagansett Oyster Co., LLC; Douglas Rodgers;  
Eileen Rodgers; Daniel Hadler; Gregory Brink;  
Bryan James Hadler;

Respondents,

-and-

Town of East Hampton and New York State  
Department of Environmental Conservation,

Additional Respondents,

-----X

STATE OF NEW YORK)  
COUNTY OF SUFFOLK) ss.:

Susann Ingbretsen, being duly sworn, deposes and says:

Deponent is not a party to the action, is over eighteen (18) years of age, and resides at  
Kings Park, New York.

On January 11, 2018, deponent served the within *Memorandum of Law in Support  
of Application for Preliminary Injunction and Temporary Restraining Order*, upon:

Eric T. Schneiderman, Esq  
New York State Attorney General  
Suffolk Regional Office  
*Attorney for Additional Respondent*  
*New York State Department of*  
*Environmental Conservation*  
300 Motor Parkway, Suite 230  
Hauppauge, New York 11788  
Tracking No. 7712 0046 4775

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c/o Francis X. McMahon, Esq.  
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Daniel John Hadler  
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Tracking No. 7712 0063 5877

Gregory Brink  
*Respondent*  
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Bay Shore, New York 11706  
Tracking No. 7712 0066 4531

by depositing a true copy thereof, enclosed in a wrapper addressed as shown above with tracking number(s) as indicated above into the custody of **Federal Express** for overnight delivery, prior to the latest time designated by that service for overnight delivery.

Susann Ingbre Jensen  
Susann Ingbre Jensen

Sworn to before me this  
16<sup>th</sup> day of January, 2018

Carol B. Dornick  
Notary Public

CAROL B. DORNICK  
Notary Public, State of New York  
No. 01DO5075904  
Qualified in Suffolk County  
Commission Expires April 7, 2011

CAROL B. DORNICK  
Notary Public, State of New York  
No. 01DO5075904  
Qualified in Suffolk County  
Commission Expires April 7, 2011

## Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County of Suffolk

SEP 01 2009

Local Law No 25 of the year 2009

MISCELLANEOUS  
& STATE RECORDS

A **Local Law** establishing the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay.

Be it enacted by the County Legislature of the  
(Name of Legislative Body)

County of Suffolk as follows:

### **Section 1. Legislative Intent.**

This Legislature finds that New York State ceded all rights, title and interest to certain underwater lands of Peconic and Gardiners Bays formerly owned by the People of the State of New York to the County for purposes of Shellfish Cultivation, under New York Environmental Conservation Law §13-0302.

This Legislature finds that New York Environmental Conservation Law §13-0302 requires adoption of a local law in order to establish the Suffolk County Shellfish Aquaculture Lease Program for the underwater lands in Peconic and Gardiners Bays.

This Legislature further finds that since 1884, New York State has repeatedly attempted to establish a statutory framework whereby the business of cultivating shellfish could be fostered and managed.

This Legislature finds that in New York Environmental Conservation Law §13-0302, it was found that failure to undertake an Aquaculture leasing program for the underwater lands in Gardiners and Peconic Bays resulted in adverse economic impacts and the loss of economic opportunity for the region, and that New York Environmental Conservation Law §13-0302 was adopted in order to eliminate impediments, foster the establishment and obtain the economic benefits of a Shellfish Aquaculture lease program consistent with established conservation principles.



This Legislature finds and agrees that there will be potential economic benefits from the Suffolk County Shellfish Aquaculture Lease Program, including:

- Provision of additional opportunity for commercial fisherman to maintain their economic viability;
- An increase in employment in shellfish cultivation and marine related industries;
- Provision of income from sale of shellfish and increased sales tax revenue to the County.

This Legislature finds that the County's Shellfish Aquaculture Lease Program is consistent with established conservation principles and will provide water quality and environmental benefits to the County and its residents, such as:

- Augmenting the spawning potential of native shellfish populations;
- Exerting a positive influence on water quality by helping to control nutrient cycling and preventing noxious plankton blooms;
- Providing increased substrate for both flora and fauna on bottom structures.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program will provide cultural benefits, by strengthening the historic tradition of shellfishing in Suffolk County waters.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program will provide the additional public benefit of increasing access to underwater lands in the Peconic and Gardiners Bays for raising shellfish, while minimizing conflicts with commercial fishermen and other bay users.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program was developed by the Department of Planning with extensive input from the Aquaculture Lease Program Advisory Committee (ALPAC), established by Suffolk County Executive Orders No. 44-2005 and 45-2005, government officials, experts and the public, over a period of 4 years.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program was reviewed pursuant to the State Environmental Quality Review Act, New York Environmental Conservation Law Article 8 (SEQRA) as a Type I action, that a positive declaration was issued, and that a Draft and Final Generic Environmental Impact Statement were prepared.

This Legislature finds that the SEQRA process was completed by adoption of Res. No. 1028-2008, Adopting the State Environmental Quality Review Act Statement of Findings for the Final Generic Environmental Impact Statement on the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program, as adopted herein, fully complies with the requirements of New York Environmental Conservation Law §13-0302.

Therefore, the purpose of this law is to establish the Suffolk County Shellfish Aquaculture Lease Program in a manner which complies with New York Environmental Conservation Law §13-0302, SEQRA and applicable laws concerning Shellfish Aquaculture.

## **Section 2. Definitions.**

As used in this law, the following terms shall have the meanings indicated:

- A.) **Administrative Guidance:** The document entitled "Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay Administrative Guidance," dated May 20, 2009, prepared by the Department, incorporated by reference and made a part hereof as Exhibit A, as adopted herein and as may be amended from time to time. The Administrative Guidance contains administrative procedures and forms for implementation of the Suffolk County Shellfish Aquaculture Lease Program and directives for conducting Shellfish Aquaculture under the Program.
- B.) **Approved Waters:** Waters which have been classified by the New York State Department of Environmental Conservation (NYSDEC) as certified for the taking of shellfish for human consumption on a regular basis.
- C.) **Aquaculture:** Shellfish cultivation for human use, consumption and resource restoration.
- D.) **Aquaculture Lease Board:** A board established by this local law to determine which proposed lease sites within the Shellfish Cultivation Zone will be eligible for leasing.
- E.) **Department:** Suffolk County Department of Planning.
- F.) **Director:** The Director of the Suffolk County Department of Planning.
- G.) **Person:** Individuals, corporations of all types, partnerships, joint ventures, associations, trusts, educational institutions, governments, trusts, trustees, and any other lawful entity.
- H.) **Private Oyster Grant:** The underwater lands previously granted to private individuals by Suffolk County during the mid 1800s to the early 1900s, for purposes of oyster cultivation, pursuant to Chapter 385, Laws of 1884, and subsequent amendments.
- I.) **Shellfish:** Oysters, scallops, and all kinds of clams and mussels.
- J.) **Shellfish Aquaculture Lease ("Lease"):** The document that conveys a leasehold interest and the right to conduct Shellfish Aquaculture activities on Suffolk County owned underwater lands in Gardiners and Peconic Bays.
- K.) **Shellfish Cultivation:** The controlled, or partially controlled, raising, breeding, growing, and containment of shellfish in any marine hatchery or through on-bottom or off-bottom culture as permitted by the County of Suffolk, New York State Fish and Wildlife Law (New York Environmental Conservation Law Article 11), and other applicable Federal, State and local laws and regulations. Shellfish Cultivation is the equivalent of Shellfish Aquaculture.
- L.) **Shellfish Cultivation Zone:** The area in Peconic Bay and Gardiners Bay within which Shellfish Aquaculture leases can be issued by the County of Suffolk. These areas are shown on the Shellfish Cultivation Zone Map adopted herein.
- M.) **Shellfish Cultivation Zone Map:** The map, dated May 20, 2009, prepared by the Department and the Suffolk County Department of Environment and Energy, depicting the Shellfish

Cultivation Zone, incorporated by reference and made a part hereof as Exhibit B, as adopted herein and as may be amended from time to time.

- N ) Substantial Shellfish Aquaculture Activity: A good faith effort to prepare an aquaculture site, acquire financing, permits, equipment and/or seed, plant, cultivate, or harvest cultivated product, or other shellfish aquaculture-related activity related to a Shellfish Aquaculture lease.
- O ) Suffolk County Shellfish Aquaculture Lease Program: The program established herein for conveyance of Shellfish Aquaculture Leases, and all written County policies, as amended, concerning the Program, including, without limitation, this law and the Administrative Guidance.
- P ) Temporary Marine Area Use Assignment (TMAUA): An approval document issued by the New York State Department of Environmental Conservation for use of a circular parcel of underwater land with a diameter of 500 feet (approximately five acres) for the purposes of Shellfish Cultivation. All TMAUAs are for temporary use only, expiring on December 31 of the year issued.

### **Section 3. Acceptance of Underwater Lands in Peconic and Gardiners Bays.**

- A ) The County of Suffolk hereby accepts from the State of New York all the right, title and interest in which the people of the State of New York have in and to the lands under water of Gardiners (a/k/a Gardiner's) and Peconic Bays in the County of Suffolk, except underwater lands within one thousand feet of the high water mark, as ceded to the County of Suffolk by New York Environmental Conservation Law §13-0302 (L. 2004, c. 425), subject to all terms and conditions thereof, for the purposes of shellfish cultivation, to be managed and controlled by the County of Suffolk, provided that such lands shall revert to the State of New York when they shall cease to be used for shellfish cultivation. Gardiners (a/k/a Gardiner's) and Peconic Bays shall mean the waters of Gardiners (a/k/a Gardiner's) and Peconic Bays and the tributaries hereof between the westerly shore of Great Peconic Bay and an easterly line running from the most easterly point of Plum Island to Goff Point at the entrance of Napeague Harbor.
- B ) In New York Environmental Conservation Law §13-0302 (L. 2004, c. 425), the State of New York ratified and confirmed the grant of lands under the waters of Gardiners (a/k/a Gardiner's) and Peconic Bays, by the New York State Commissioners of Shell Fisheries, in accordance with the provisions of chapter 385 of the laws of 1884, as amended, subsequently held and used by the grantees, heirs, successors, and assigns on which all taxes and assessments have been paid. The State of New York also provided that any underwater lands in Gardiners (a/k/a Gardiner's) and Peconic Bays previously granted that revert or escheat to the State of New York or are subject to tax deed by the County of Suffolk shall be available to the County of Suffolk for leasing, pursuant to New York Environmental Conservation Law §13-0302 (L. 2004, c.425). The County of Suffolk hereby accepts from the State of New York all the right, title and interest in which the people of the State of New York have or shall have in and to such lands described in this Subsection 3(B) and in New York Environmental Conservation Law §13-0302(2) (L. 2004, c 425).
- C ) Pursuant to New York Environmental Conservation Law §13-0302 (L. 2004, c. 425), all lands other than those described in Subsection 3(B) hereof under the waters of Gardiners (a/k/a Gardiner's) and Peconic Bays, which have escheated or reverted to the State of New York

were ceded to the County of Suffolk for the purposes of the cultivation of shellfish, subject to existing valid grants and easements; provided however, that nothing in New York Environmental Conservation Law §13-0302 shall interfere with the right of the New York State Commissioner of General Services to grant lands and easements underwater to owners of adjacent uplands, pursuant to the provisions of the public lands law, or of the New York State Legislature to make such grants without regard to upland ownership, and to grant franchises to utilities, municipalities and governmental, educational, or scientific bodies for cables, outfalls, ecological studies, and experimentation with controlled marine life. The County of Suffolk hereby accepts from the State of New York all the right, title and interest in which the people of the State of New York have in and to such lands described in this Subsection 3(C) and in New York Environmental Conservation Law §13-0302(2) (L. 2004, c. 425).

- D ) The Director, in consultation with the County Attorney, is hereby authorized, empowered and directed to take any and all steps necessary to protect the County's interest in the land accepted by this law.

#### **Section 4. Establishment of the Suffolk County Shellfish Aquaculture Lease Program.**

- A ) There is hereby established the Suffolk County Shellfish Aquaculture Lease Program, in order to foster shellfish aquaculture and restore and conserve the natural resources in Peconic and Gardiners Bays, and to implement the leasing program authorized by § 13-0302 of the New York Environmental Conservation Law.
- B ) Under the Suffolk County Shellfish Aquaculture Lease Program, the County of Suffolk may issue leases to underwater lands within the Shellfish Cultivation Zone for the purpose of shellfish aquaculture.
- C ) The Suffolk County Shellfish Aquaculture Lease Program shall be implemented in compliance with this law and New York Environmental Conservation Law §13-0302, notwithstanding any provision of the New York County Law or the Suffolk County Administrative Code or any other provisions to the contrary.
- D ) The Suffolk County Shellfish Aquaculture Lease Program shall be implemented in accordance with the conditions, thresholds and criteria adopted in Res. No. 1028-2008, Adopting the State Environmental Quality Review Act Statement of Findings for the Final Generic Environmental Impact Statement on the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay, and the Final Generic Environmental Impact Statement.
- E ) The Suffolk County Shellfish Aquaculture Lease Program shall be implemented in accordance with the New York State Fish and Wildlife Law (New York Environmental Conservation Law Article 11) and the New York Navigation Law.

#### **Section 5. Requirements.**

- A ) Prior to commencement of shellfish aquaculture on the underwater lands subject to the Suffolk County Shellfish Aquaculture Lease Program, any person conducting shellfish aquaculture shall obtain a Lease from the County of Suffolk.
- B ) A person shall conduct shellfish aquaculture in compliance with this law, the Administrative Guidance as defined herein, the Lease and any other written policies adopted by the County of Suffolk or the Director.

- C ) A person shall conduct shellfish aquaculture in compliance with all applicable Federal, State and local laws and permits.
- D ) This section shall not apply to Private Oyster Grant holders who are cultivating oysters only without a Lease.

#### **Section 6. Prohibition.**

- A.) No person shall conduct shellfish aquaculture on underwater lands ceded to the County of Suffolk by New York Environmental Conservation Law §13-0302 (L. 2004, c. 425), and accepted by this law, without a Lease from the County of Suffolk.
- B ) This section shall not apply to Private Oyster Grant holders who are cultivating oysters only without a Lease.

#### **Section 7. Administration of Suffolk County Shellfish Aquaculture Lease Program; Administrative Guidance.**

- A ) The document entitled "Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay Administrative Guidance," dated May 20, 2009, prepared by the Department, incorporated by reference and made a part hereof as Exhibit A, is hereby approved and shall constitute, in substantial form, the regulations of the Suffolk County Shellfish Aquaculture Lease Program, including the model forms and documents therein.
- B ) The Administrative Guidance may be amended from time to time by local law. After adoption of any amendments, the Director shall mail notice of such amendments (by regular or electronic mail) to the Supervisors of the Towns of Riverhead, Southampton, East Hampton, Southold and Shelter Island, the New York State Department of Environmental Conservation and all lessees.
- C ) The Department is hereby authorized, empowered and directed to administer, oversee and provide staff support for the Suffolk County Shellfish Aquaculture Lease Program and the Aquaculture Lease Board in accordance with this law and the Administrative Guidance.
- D.) The Department may establish procedures, timelines and additional model forms and documents, and may make non-substantive changes to the model forms and documents included in the Administrative Guidance, as necessary for implementation of the program or as deemed necessary by the Suffolk County Department of Law.
- E ) The Director shall maintain an official copy of the Administrative Guidance and shall post the document on the Suffolk County website.

#### **Section 8. Suffolk County Shellfish Cultivation Zone Map.**

- A ) The Shellfish Cultivation Zone Map, dated May 20, 2009, prepared by the Department and the Suffolk County Department of Environment and Energy, incorporated by reference and made a part hereof as Exhibit B, is hereby approved. The Shellfish Cultivation Zone Map shall depict the Shellfish Cultivation Zone.

- B ) The Shellfish Cultivation Zone Map shall be subject to review and update at least every five (5) years and a report thereon shall be submitted by the Director to the County Legislature and County Executive. The Shellfish Cultivation Zone Map shall be updated and amended by resolution of the Suffolk County Legislature.
- C ) The Director and the Suffolk County Clerk shall maintain official copies of the Shellfish Cultivation Zone Map and shall make the Map available for inspection. The Director shall also post the document on the Suffolk County website.

#### **Section 9. Suffolk County Shellfish Aquaculture Lease Premises.**

A ) The premises leased by a Lease under the Suffolk County Shellfish Aquaculture Lease Program shall meet the following criteria:

- 1.) Lease premises shall be located within the Shellfish Cultivation Zone.
  - 2.) Lease premises shall meet the criteria in New York Environmental Conservation Law §13-0302(4).
  - 3.) Lease premises shall be located in Approved Waters and shall meet all regulatory criteria.
  - 4.) The Aquaculture Lease Board shall determine which sites shall be available for leasing, in accordance with Section 13 of this law. Lease premises shall be located within a site approved by the Aquaculture Lease Board.
- B ) Maximum size of Lease premises shall be limited to 10 acres, except for the premises of Leases on Private Oyster Grants and Leases for *bona fide* non-commercial experimental, educational or resource restoration purposes.
  - C ) The boundaries of premises leased hereunder shall be surveyed by a licensed land surveyor and a survey map shall be prepared by the surveyor and included in the Lease.
  - D ) No more than 600 acres shall be leased at any one time over the first ten (10) year period of the program, exclusive of Leases issued for former Temporary Marine Area Use Assignment sites, Private Oyster Grants and Leases for experimental, educational and resource restoration purposes.

#### **Section 10. Lease Approval, Renewal, Denial and Termination.**

- A ) A Lease shall only be granted or renewed upon written application on forms furnished by the Department, properly executed and signed by the applicant, and submitted with the required fee.
- B ) The Director is hereby authorized, empowered and directed to take the following actions on behalf of the County of Suffolk where authorized by and in accordance with the standards, criteria and procedures in this law, the Administrative Guidance and the Suffolk County Shellfish Aquaculture Lease Program:
  - 1 ) Enter into and renew Leases.

- 2 ) Expand the size of or relocate the Lease premises.
- 3 ) Deny or terminate a Lease.

The Director is hereby authorized, empowered and directed to execute any documents necessary to implement this law.

C.) To be eligible for a Lease, a person must meet the following criteria:

- 1 ) An applicant for a lease shall be at least 18 years of age.
- 2 ) An applicant or lessee shall not have been convicted of significant or repeated civil, criminal or administrative violations of the New York Environmental Conservation Law or other Federal, State or local law, as it pertains to shellfish, finfish, other marine resources, environmental protection, food sanitation, navigation or operation of a vessel by the applicant or lessee. Such determination shall be made by the Director in accordance with the New York Correction Law Article 23-A.
- 3 ) A lessee shall obtain and be in compliance with permits or other approvals required by Federal, State or local law, as necessary for the activities on the Lease premises.
- 4.) An applicant or lessee shall be in compliance, and shall have complied with, the Suffolk County Shellfish Aquaculture Lease Program, as expressed in this law, the Administrative Guidance and any written policies adopted by the County of Suffolk.
- 5 ) An applicant or lessee shall be, and shall have been, in compliance with the terms of any existing or previous lease.
- 6 ) An applicant or lessee shall not have submitted false or fraudulent information or made misrepresentations to the Department.
- 7 ) An applicant or lessee shall have submitted the documentation required for an applicant or lessee.
- 8 ) An applicant or lessee shall have submitted fees and rent required by the Suffolk County Shellfish Aquaculture Lease Program.

The applicant or lessee shall have the opportunity to submit written comments regarding these criteria or on any other relevant topic to the Director.

D.) When the number of applicants for Leases exceeds the number of available Leases, the potential lessees shall be selected and prioritized through a random selection process of the applicants.

#### **Section 11. Additional Terms and Conditions of Lease.**

A ) A lease may be issued for a maximum term of 10 years, with one (1) option to renew for an additional ten (10) years, within the discretion of the County. A renewal shall be subject to the terms and conditions of the Suffolk County Shellfish Aquaculture Lease Program, the

Administrative Guidance, the application fee and the annual Lease rental fee as they exist at the time of renewal.

- B ) A lessee shall be required to conduct Substantial Shellfish Aquaculture Activity unless excused by a hardship exemption.
- C ) Activities on lands leased under this Program (including, but not limited to, shellfish cultivation, boundary marking, placement of equipment and navigation) shall be subject to all laws, rules, and regulations of, and permits required by, the Federal, State and local governments and agencies having jurisdiction.
- D ) Issuance of all Leases shall be subject to public notice. Notices shall be published and posted, and shall be available for inspection and copying, as required by New York Environmental Conservation Law §13-0302.
- E ) No Lease shall be granted which infringes upon an existing property right.
- F ) A Lease shall require that in the event that fees, taxes, assessments or other governmental charges are imposed upon the County of Suffolk as a result of the Lease or the lessee's shellfish cultivation activities, the lessee shall be required to reimburse the County for such fees, taxes, assessments or other governmental charges.
- G ) A lessee shall be required to indemnify the County of Suffolk and defend it against all liabilities, fines, judgments and damages arising out of the acts, omissions or negligence of the lessee, arising out of or in connection with lessee's use of the Lease site. The form of the indemnification shall be subject to approval by the County Attorney.
- H ) A Lease shall contain provisions for assignment and subletting.
- I ) Each Lease, or a Memorandum of Lease thereof, shall be recorded by the lessee in the Office of the Suffolk County Clerk.
- J ) A Lease shall be substantially the same as the model Lease in the Administrative Guidance, subject to approval by the County Attorney.
- K ) A lessee shall not be required to post a bond.
- L ) Upon the failure of a lessee to pay the annual Lease rental fee when due or upon revocation, the County may, after written notice to the lessee, declare the Lease cancelled as of the date set forth in such notice and may immediately thereafter evict the lessee from such lands. The provisions of article seven of the New York Real Property Actions and Proceedings Law shall apply and govern the procedure in such cases. The Lease may specify other remedies.

## **Section 12 . Fees and Rent.**

- A ) The Lease application fee shall be one hundred (\$100.00) dollars and shall be non-refundable, except that the fee shall be refunded if an applicant is eliminated in the random selection process referred to in Subsection 10(D) of this law. An application fee shall be paid for initial Lease applications and applications to renew a Lease, expand the Lease premises



acreage, and assign or sublet a lease. When a lessee desires to change the location of the Lease premises at its convenience, an application fee shall also be paid.

- B ) The annual Lease rental fee shall be two hundred (\$200.00) dollars plus five (\$5.00) dollars per acre except for oyster grant lands which shall not be charged an additional fee for acreage.
- C ) The State of New York and towns and villages within the County of Suffolk shall be exempt from payment of an application fee and the annual Lease rental fee.
- D ) The application fees and annual Lease rental fees may be amended by resolution of the Suffolk County Legislature.
- E ) Fees and rent shall be deposited in the County's general fund.

### **Section 13. Aquaculture Lease Board.**

- A ) The Aquaculture Lease Board is hereby established.
- B ) The members of the Aquaculture Lease Board shall consist of the Director (who shall act as chairperson), the Commissioner of the Department of Environment and Energy and the Commissioner of the Department of Economic Development and Workforce Housing, or their designees.
- C ) The Aquaculture Lease Board shall review all proposed Lease sites and determine whether the proposed Lease sites shall be available for Leasing. The Aquaculture Lease Board shall conduct meetings as necessary to provide an opportunity for oral and written testimony or evidence concerning each proposed Lease site. The Aquaculture Lease Board shall consider such testimony or evidence in making its determinations. The Aquaculture Lease Board shall make its determination based upon:
  - 1.) Whether proposed sites meet the criteria of New York Environmental Conservation Law §13-0302 and the Suffolk County Shellfish Aquaculture Lease Program.
  - 2.) Factors affecting the desirability of the sites for shellfish cultivation, including, but not limited to, regional and environmental factors.
- D ) If an objection based on natural hard clam (*Mercenaria mercenaria*) productivity is deemed credible by the Aquaculture Lease Board, the Aquaculture Lease Board may find that a proposed Lease site is conditionally eligible, as provided in the Administrative Guidance. In this event, the Aquaculture Lease Board shall provide the Director with specific instructions for further disposition, in accordance with the Administrative Guidance.
- E ) The Aquaculture Lease Board shall act by resolution adopted by a majority of its members, shall keep minutes of its proceedings, and may establish its own meeting procedures.

#### **Section 14. Monitoring Program.**

Subject to available funding, the Department shall implement an environmental monitoring program and shall seek the cooperation of the Suffolk County Departments of Health Services and Environment and Energy in formulating and implementing the monitoring program. The monitoring program shall include collection of data on water quality and other ecological factors to assess potential beneficial or adverse impacts of the Shellfish Aquaculture Lease Program on the Peconic Estuary.

#### **Section 15. Enforcement; Penalties; Other Remedies.**

- A ) The Director shall enforce this law.
- B ) A violation of Subsection 6(A) of this law shall be subject to a civil penalty of one thousand (\$1,000.00) dollars for the first violation, and a civil penalty of five thousand (\$5,000.00) dollars for a subsequent violation. Such penalties may be obtained by an action brought in a court of competent jurisdiction.
- C ) Enforcement by imposition of civil penalties and/or equipment removal shall be in addition to, and not in lieu of, any other remedies available to the County of Suffolk at law or in equity, or available pursuant to a Lease.

#### **Section 16. Equipment Removal.**

- A ) Any equipment determined by the Department to be on underwater lands ceded to the County of Suffolk by New York Environmental Conservation Law §13-0302 (L. 2004, c. 425), and accepted by this law without a Lease in violation of this law shall be subject to removal. Upon such removal, the County shall hold the equipment for ten (10) calendar days. Upon the expiration of such ten (10) day period, if no claims of ownership are received and no attempt is made to secure return of the equipment, the equipment shall be deemed abandoned and may be disposed of by the County in any manner the County deems fit, including, but not limited to, sale, donation or destruction of such property. The County shall retain any sale proceeds.
- B ) Upon such removal, if the equipment is legibly tagged with the name of the owner and an address, the Department shall notify the owner by regular mail.
- C ) The owner may commence the process for return of the equipment by contacting the Department in writing to claim ownership. The written claim must be received before the expiration of the ten (10) day period in Subsection A. hereof. The Department shall return the equipment to the owner/claimant upon claimant's payment of the County of Suffolk's costs to remove, transport and store the equipment. The storage cost for such equipment shall be fifty (\$50) dollars per day.
- D ) The claimant shall have twenty (20) calendar days after the Department's receipt of a claim of ownership to complete all steps necessary for return of the equipment. After such twenty (20) day period, the equipment shall be deemed abandoned and may be disposed of in any manner the County deems fit, including, but not limited to, sale, donation or destruction of such property. The County shall retain any sale proceeds.
- E ) The County of Suffolk shall not be obligated to keep the equipment beyond the time periods described herein.

- F ) In the event of such equipment removal, the County shall not be liable for loss or damage to the equipment or to any contents thereof, or for disposal or destruction in accordance with this law.

**Section 17. SEQRA Determination.**

Res No 1028-2008, Adopting the State Environmental Quality Review Act Statement of Findings for the Final Generic Environmental Impact Statement on the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay, completed the process for review of this action under the State Environmental Quality Review Act, New York Environmental Conservation Law article 8 (SEQRA). The Suffolk County Shellfish Aquaculture Lease Program shall comply with the conditions, thresholds and criteria of Res. No. 1028-2008. Accordingly, this Legislature, as SEQRA lead agency, hereby determines that this resolution constitutes a Type II action, pursuant to Volume 6 of New York Code of Rules and Regulations (NYCRR) §§617.5(c)(20) and (27), in that the resolution pertains to routine or continuing agency administration and management, and implementation of a Program that was previously reviewed. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determinations.

**Section 18. Severability.**

If any clause, sentence, paragraph subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not effect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**Section 19. Applicability.**

This law shall apply to actions occurring on or after the effective date of this law.

**Section 20. Effective Date.**

This law shall take effect immediately upon filing in the Office of the Secretary of State.

**Section 21. Termination.**

If a Lease for Shellfish Aquaculture is not executed by December 31, 2010, the Suffolk County Shellfish Aquaculture Leasing Program shall terminate.

DATED: August 4, 2009

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. 25 of 20 09 of the (County) of Suffolk \_\_\_\_\_ was duly passed by the County Legislature \_\_\_\_\_ on August 4, 09, and was approved  
(Name of Legislative Body)  
by the County Executive \_\_\_\_\_ and was deemed duly adopted  
(Elective Chief Executive Officer\*)  
on August 19, 2009, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum).**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)  
(Name of Legislative Body)  
(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_.  
(Elective Chief Executive Officer\*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum).**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)  
(Name of Legislative Body)  
(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was submitted to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_ 2\_\_\_\_, above.

\_\_\_\_\_  
Clerk of the County legislative body, City, Town, or Village Clerk or officer designated by local legislative body

Date: \_\_\_\_\_

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_ Suffolk \_\_\_\_\_

I, the undersigned, hereby certify that the foregoing local law contains the correct text and the all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature \_\_\_\_\_

County Attorney \_\_\_\_\_  
Title \_\_\_\_\_

County \_\_\_\_\_  
of \_\_\_\_\_ Suffolk \_\_\_\_\_

Date: Aug. 27, 2009 \_\_\_\_\_

## NY CLS ECL § 13-0302

Current through 2017 released chapters 1-505

***New York Consolidated Laws Service > Environmental Conservation Law > Article 13 Marine and Coastal Resources > Title 3 Marine Fisheries***

### **§ 13-0302. Lands underwater of Gardiner's and Peconic bays**

1. Underwater lands ceded to county of Suffolk. All the right, title and interest in which the people of the state of New York have in and to the lands under water of Gardiner's and Peconic bays in the county of Suffolk, except underwater lands within one thousand feet of the high water mark is hereby ceded to such county, for the purposes of shellfish cultivation, to be managed and controlled by such county, provided that such lands shall revert to the state when they shall cease to be used for shellfish cultivation. For the purposes of this section, the term "Gardiner's and Peconic bays" shall mean the waters of Gardiner's and Peconic bays and the tributaries thereof between the westerly shore of Great Peconic bay and an easterly line running from the most easterly point of Plum Island to Goff point at the entrance of Napeague harbor.
2. Ratification. The grant of lands under the waters of Gardiner's and Peconic bays, by the commissioners of shell fisheries, in accordance with the provisions of chapter 385 of the laws of 1884, as amended, subsequently held and used by the grantees, heirs, successors, and assigns on which all taxes and assessments have been paid, are hereby ratified and confirmed. Any underwater lands in Gardiner's and Peconic Bays previously granted that revert or escheat to the state or are subject to tax deed by the county of Suffolk shall be available to the county for leasing pursuant to this section. All other lands under such waters, which pursuant to such chapters, have escheated or reverted to the state, are hereby ceded to Suffolk county for the purposes of the cultivation of shellfish, subject to existing valid grants and easements; provided however, that nothing in this section shall interfere with the right of the commissioner of general services to grant lands and easements under water to owners of adjacent uplands, pursuant to the provisions of the public lands law, or of the legislature to make such grants without regard to upland ownership, and to grant franchises to utilities, municipalities and governmental, educational, or scientific bodies for cables, outfalls, ecological studies, and experimentation with controlled marine life.
3. Leases. Suffolk county may lease lands under water ceded to it by the state for the purpose of shellfish cultivation. Provided if no such leases have been executed by December thirty-first, two thousand ten, such authority to lease pursuant to this section shall terminate.
  - a. Leases may be issued only within areas designated as shellfish cultivation zones on a map or maps to be prepared and approved by the county of Suffolk.
  - b. No lease shall be granted except upon written application on forms furnished by the county of Suffolk, and properly executed and signed by the applicant.
  - c. Before a lease is approved, notice shall be provided for at least two months by posting such notice at the bureau of marine resources in the department, the office of the county clerk, and the office of the town clerk in which all or any part of the lands to be leased are located. Such notice shall also be published in the official newspaper of the county. The notice shall include the name of the lessee, the boundaries of the lease, and the area of the lease. A copy of the proposed lease shall be available for public inspection and copying in the office of the county clerk.
4. Establishment of shellfish cultivation zones. Before leasing or using the lands hereby ceded to it, the county of Suffolk shall cause an accurate survey to be made of such lands, and a map or maps to be

prepared therefrom. Such map or maps shall establish shellfish cultivation zones within Gardiner's and Peconic bays. Such map or maps shall be approved by local law. After such map or maps have been adopted, the county shall have the authority to issue leases for shellfish cultivation within the shellfish cultivation zones, as provided herein. Such map or maps shall be updated by the county of Suffolk every five years.

- a. Underwater lands within one thousand feet of the high water mark shall not be included in a shellfish cultivation zone.
  - b. Underwater lands where bay scallops are produced regularly and harvested on a commercial basis shall not be included in a shellfish cultivation zone.
  - c. Underwater lands where there is an indicated presence of shellfish in sufficient quantity and quality and so located as to support significant hand raking and/or tonging harvesting shall not be included in a shellfish cultivation zone.
  - d. Underwater lands where the leasing will result in a significant reduction of established commercial finfish or crustacean fisheries shall not be included in a shellfish cultivation zone.
5. Regulations. The county shall, by local law, before leasing any such underwater lands, adopt regulations governing:
- a. applications for leases;
  - b. notices to be given;
  - c. the form and terms of leases;
  - d. standards for the approval or denial of leases;
  - e. administration of leases;
  - f. the transfer or renewal of leases;
  - g. marking grounds and testing;
  - h. fees;
  - i. recording of leases;
  - j. bonds; and
  - k. such other matters as are appropriate to the leasing program.
6. Department authority. Notwithstanding any of the provisions of this section:
- a. any person engaging in the cultivation or harvesting of shellfish in a shellfish cultivation zone pursuant to this section shall obtain a permit in accordance with section 13-0316 of this title; and
  - b. the department shall regulate and control the use of certain types of vessels and equipment for harvesting shellfish, requirements for reseeding, the right to enter upon such leased lands for reseeding or making shellfish population surveys, and enforce all other applicable state laws relating to said underwater lands.
7. Duties of the county clerk. Leases issued pursuant to this section shall be recorded in the office of the county clerk in the manner and form to be determined by local law as provided in subdivision five of this section.
8. Summary proceedings. Upon the failure of a lessee to pay the rental on any date due under the terms of the lease or upon revocation as provided for by local law pursuant to subdivision five of this section, the county may, after written notice to the lessee declare the lease cancelled as of the date set forth in such notice, and may immediately thereafter evict the lessee from such lands. The provisions of article seven of the real property actions and proceedings law shall apply and govern the procedure in such case.

9. Disposition of fees and rents. All fees and rents received shall be deposited into the general fund of the county. However, in the alternative, nothing shall prohibit the county of Suffolk, by local law, from establishing a special fund for the promotion of aquaculture where such fees and rents shall be deposited.
10. [Repealed eff July 1, 2026] Suffolk county shall be authorized to allow the underwater lands at Gardiner's and Peconic Bays within the shellfish cultivation zone to be used for the implementation of a pilot program to conduct research and scientific assessment of the feasibility of seaweed cultivation. Such pilot program shall be limited to persons holding a lease from Suffolk county for shellfish cultivation and shall be limited to a total of five acres of such cultivation zone provided that any one person may be authorized to conduct seaweed cultivation on no more than one acre of the lease. Suffolk county shall provide a report to the legislature and the department on the pilot program no later than January first, two thousand twenty-six.

## History

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Add, L 2004, ch 425, § 3, eff Sept 14, 2004; amd, L 2016, ch 322, § 1, eff Sept 9, 2016.

### Annotations

## Notes

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### Editor's Note:

Laws 2004, ch 425, §§ 1 and 4, eff Sept 14, 2004, provide as follows:

Section 1. Legislative findings. Pursuant to chapter 385 of the laws of 1884, as amended, and chapter 990 of the laws of 1969, the legislature ceded to the county of Suffolk the underwater lands of Gardiner's and Peconic bays as described in such chapters and provided for a statutory framework whereby the business of cultivating shellfish could be managed and regulated. Chapter 990 of the laws of 1969 gave the county of Suffolk the right to lease such underwater lands to persons engaged in shellfish cultivation. Such chapter also ratified and confirmed the title to underwater land grants pursuant to chapter 385 of the laws of 1884, as amended, in which taxes had been paid.

After more than thirty years, the county of Suffolk still has not undertaken a leasing program to persons cultivating shellfish as was intended by chapter 990 of the laws of 1969. Such a program has not been established in spite of the fact that the potential economic benefits from promoting aquaculture to the county of Suffolk and the state of New York are substantial.

A leasing program has not been enacted by the county of Suffolk because a shellfish cultivation program as permitted by the provisions of chapter 990 of the laws of 1969 would be too costly and cumbersome to implement. The failure to undertake an aquaculture leasing program for these underwater lands in Gardiner's and Peconic bays has resulted in adverse economic impacts and the loss of economic opportunity for the region.

The county of Suffolk has worked diligently to study ways to foster shellfish cultivation in Gardiner's and Peconic bays. By Resolution 487-2001, Suffolk county established a fourteen member Suffolk county aquaculture committee. In June 2002 such committee issued a report entitled "Policy Guidance for Suffolk County on Shellfish Cultivation in Peconic and Gardiner's Bays". Such report made recommendations on policy issues relating to the lease of underwater lands for the cultivation of shellfish.

Based upon such report, Suffolk county approved Resolution 1229-2002 which directed the county's agencies to prepare a more specific survey plan for shellfish cultivation leasing in Peconic and Gardiner's bays. Such report was completed in April 2003. Such report, prepared by the county addresses policy issues related to shellfish cultivation, and identified several changes to state law, specifically chapter 990 of the laws of 1969, which would be required to implement a successful shellfish cultivation leasing program. Suffolk county, by Scnsc Resolution 39-



2003 requested that the state make such legislative amendments. In addition, in July 2001, the Nature Conservancy of Long Island formed the Peconic Bay Aquaculture Advisory Committee to study and make recommendations with regard to the numerous issues involved in establishing a viable and environmentally sustainable aquaculture program in the Peconic region. This advisory committee identified eighteen specific recommendations for the aquaculture program. Those recommendations are incorporated as part of the findings of this act. Such recommendations will be critical to the success of the county's shellfish cultivation leasing program.

It is the purpose of this act to amend the existing law regarding the leasing of underwater lands in Gardiner's and Peconic bays in order to foster the establishment and obtain the economic benefits of a shellfish cultivation leasing program consistent with established conservation principles. It is also the purpose of this act to ratify, confirm, and clarify the rights to cultivate shellfish underwater land grants issued under previous statutes.

§ 4. Effect of other laws. Any provision of chapter 385 of the laws of 1884, as amended, or any other general or special law to the contrary notwithstanding, this act shall be controlling, but all other provisions of such laws, specific, general, or special, not inconsistent herewith shall remain in full force and effect.

Laws 2016, ch 322, § 2, eff September 9, 2016, expires and deemed repealed on July 1, 2026, provides:

§ 2. This act shall take effect immediately and shall expire and be deemed repealed on July 1, 2026.

#### **Amendment Notes**

The 2016 amendment by ch 322, § 1, added 10.

#### **State Notes**

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#### **Research References & Practice Aids**

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##### **Hierarchy Notes:**

NY CLS ECL

NY CLS ECL, Art. 13

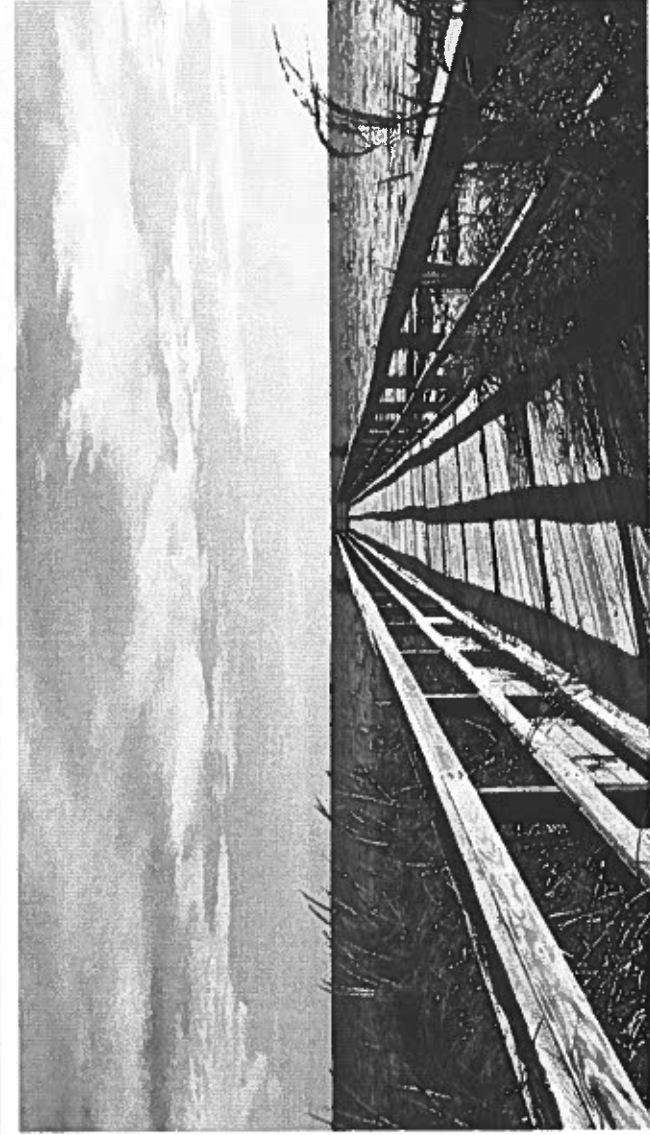
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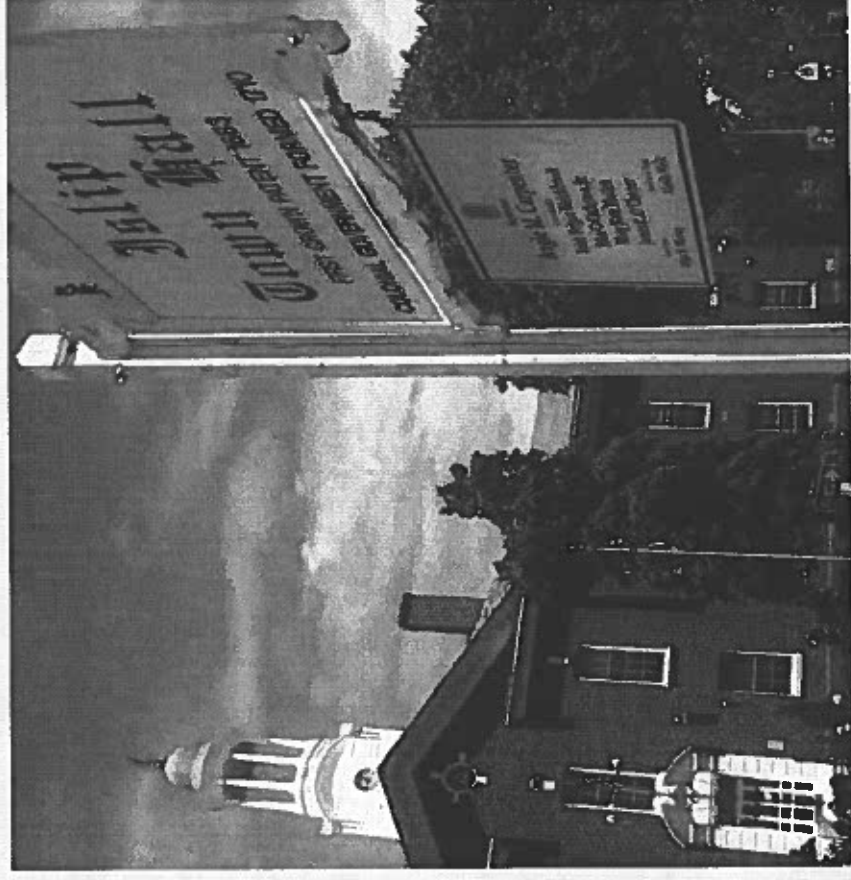


# *Town of Islip Bay Bottom Aquaculture Program*



# Mission Statement

The Town of Islip is dedicated to the responsible development of the aquaculture industry, while expanding our marine-based economy, enhancing our shellfish production and improving the water quality of the Great South Bay.

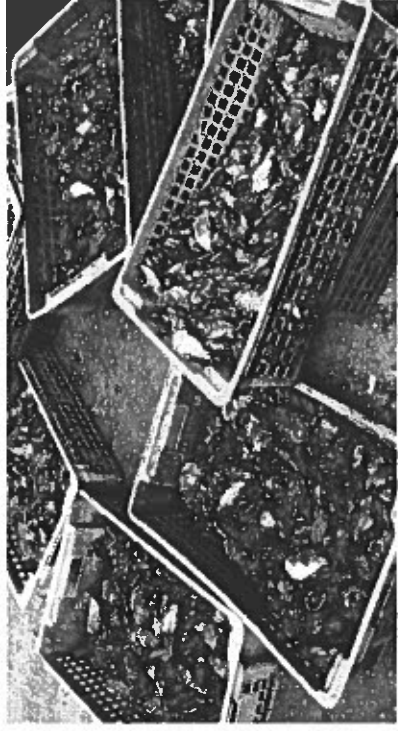




The Great South Bay was once a thriving environment for shellfish, producing more than half of the nation's shellfish. The Aquaculture Program focuses on restoring the value of the Great South Bay's historical success. Additionally, the local marine-based economy benefits from the opportunities the Aquaculture Program provides.

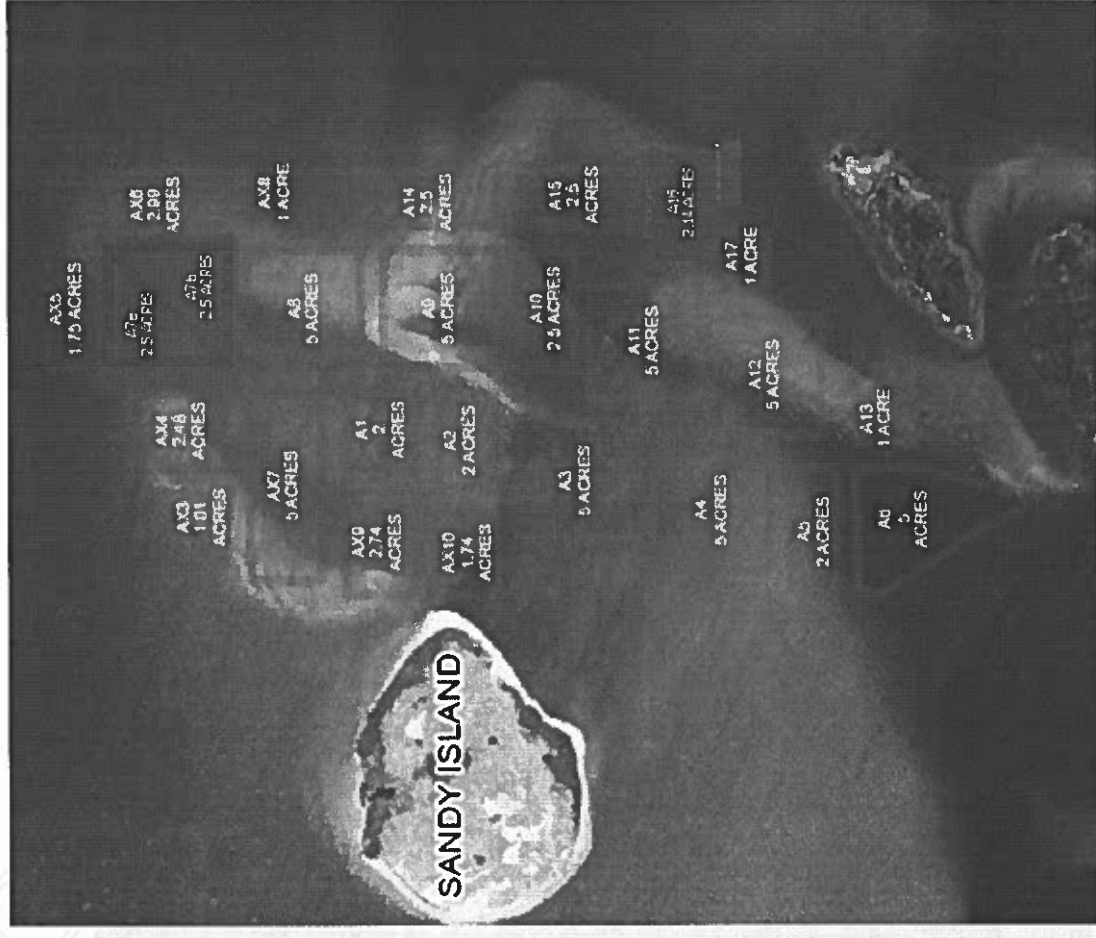
# The Town's Role in the Issuance, Approval & Oversight of Aquaculture Licenses

- The Town Department of Environmental Control performs all functions of regulating the underwater lease parcels within the formally adopted Shellfish Cultivation Zone.
- The shellfish farmers are responsible for obtaining all necessary regulatory permits from relevant government agencies.



# Lease Parcels

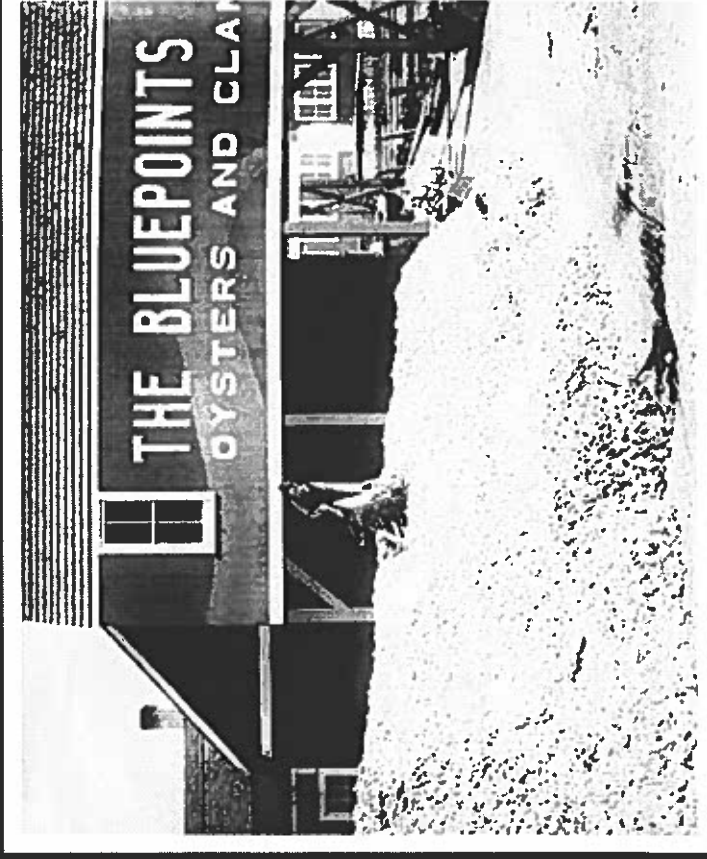
- The Town of Islip currently has 26 active lease parcels.
- The parcels are positioned northwest of Sexton Island and east of Sandy Island.
- The parcels range in size from 1 to 5 acres.



# Application and Permitting

## Procedures

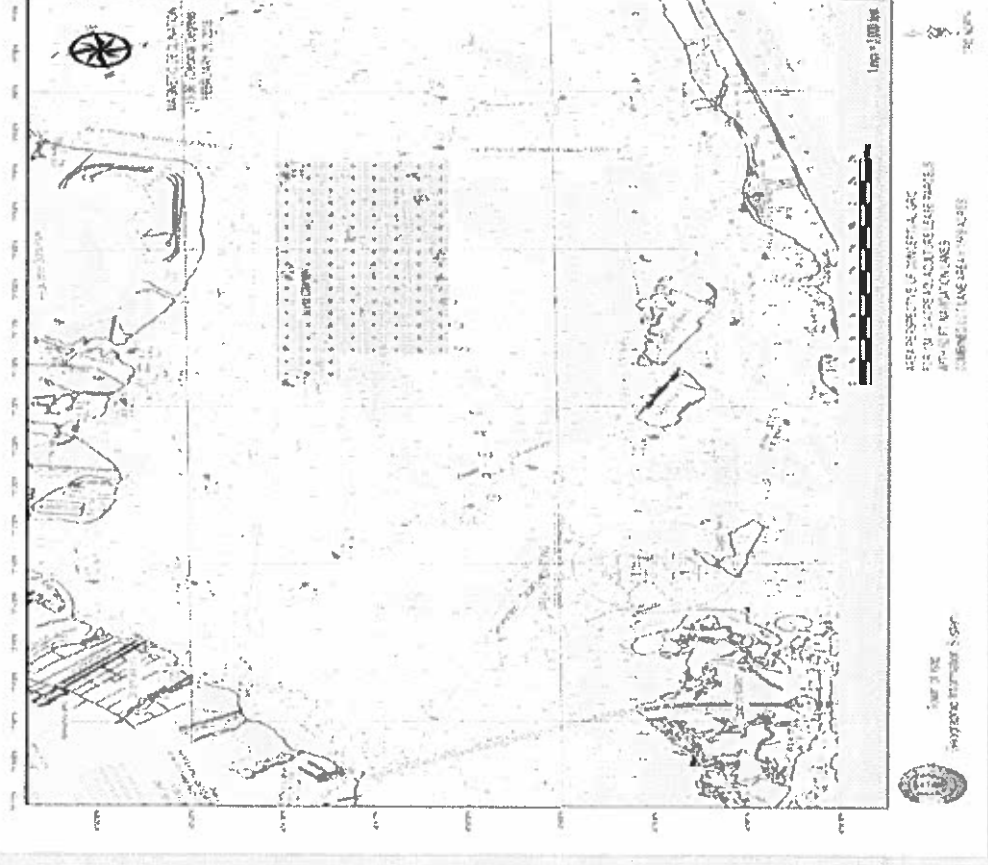
1. Waiting List
2. Application Meeting
3. Town Board Approval
4. Requirements Once a Lease  
is Issued
5. Preparation of Lease





# Future Expansion

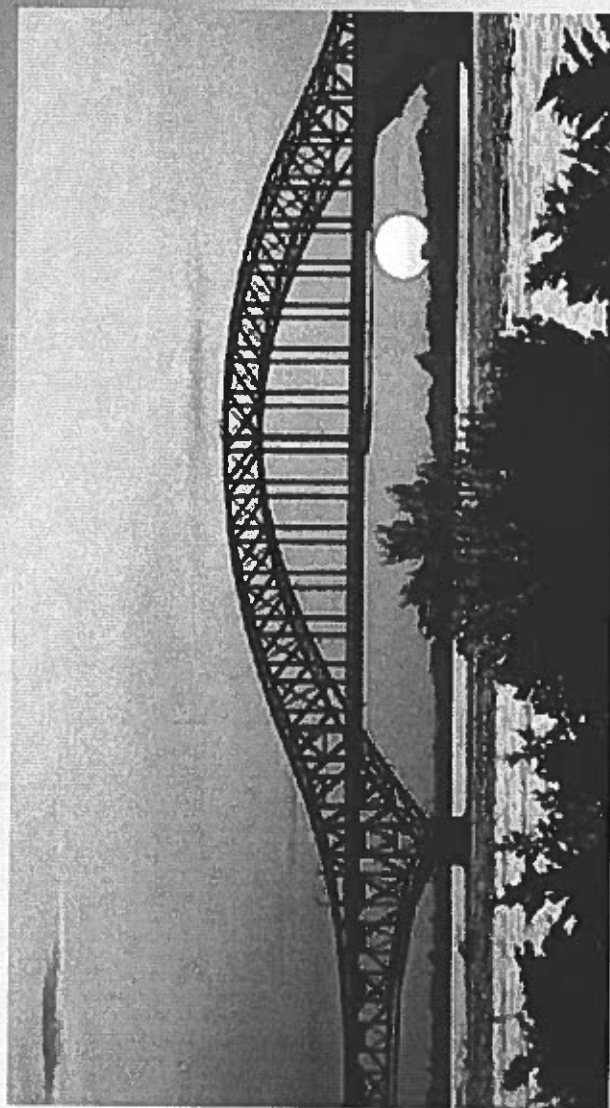
- The Town is working to expand the program to include an additional 1,500 acres located in deeper waters off the coast of Heckscher State Park.
- The purpose of this expansion would be to satisfy the demand by parties that have expressed interest in cultivating larger parcels in the Bay.







# THANK YOU



**LICENSE FOR SHELLFISH CULTIVATION  
IN THE BAY BOTTOM OF THE GREAT SOUTH BAY**

This LICENSE (hereinafter the "LICENSE"), dated and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Town of Islip, a municipal corporation, having its offices at 655 Main Street, Islip, NY 11751 ( hereinafter the "Town" or "Licensor") and \_\_\_\_\_, a corporation and/or individual having its principal offices at \_\_\_\_\_ (hereinafter the "Licensee").

This License is for that certain Town owned land located on the Bay Bottom of the Great South Bay, having a total area of \_\_\_\_\_ acres and identified as Parcel # \_\_\_\_\_, on the map annexed hereto and made a part hereof as Appendix A (hereinafter, the "Cultivation Site"). The Cultivation Site is to be used for the sole purpose of commercial shellfish, seaweed, and/or sugar kelp.

NOW, THEREFORE, in consideration of the representations contained in this License, and for other good and valuable consideration received by the parties each from the other,

IT IS AGREED as follows:

The Town hereby permits the Licensee to use and occupy the Cultivation Site for conducting the business of commercial aquaculture only.

**ARTICLE I  
TERMS AND DEFINITIONS**

- 1.01. For all purposes of this License and all future supplements and or amendments thereto (unless otherwise specified or unless the context otherwise requires), the following terms shall have the meanings set forth below:

**Cultivation Site:** That certain Town owned land located on the Bay Bottom of the Great South Bay, having a total area of \_\_\_\_\_ acres and identified as Parcel # \_\_\_\_\_, on the map annexed hereto and made a part hereof as Appendix A.

**Default:** A condition or event which is subject to this License regardless of notice or time in which would result in a breach of the License.

**Effective Date:** Shall be the date at the top of this page and or the latest date affixed to the signature page.

**License Commencement Date:** That date on which Licensee opts to proceed with this License Agreement. This date shall occur on or before the expiration of the Option.

**Extension Option:** Option to extend the License beyond the initial five year term for an additional five years.

**Expiration Date:** That date which immediately precedes the sixth anniversary of the

TOWN OF ISLIP  
LICENSE FOR THE USE OF THE BAY BOTTOM

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Commencement Date, as same may be extended pursuant to Article II.

**Governmental Requirements:** Any present or future law, statute, ordinance, regulation, code, judgment, injunction, arbitral award, order, rule, directive, proclamation, decree, common law or other requirements, ordinary or extraordinary, foreseen or unforeseen, of The Town of Islip and all of its agencies including the Town Board, any federal, state, county, municipal or other governmental or regulatory authority, agency, board, department, bureau, body, commission, instrumentality or quasi-governmental authority, and any court, arbitrator or other administrative, judicial or quasi-judicial tribunal, or any other public or quasi-public authority, having jurisdiction over the Premises or the matter at issue.

**Hazardous Materials:** Any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such under any Governmental Requirements. This shall include, but is not limited to, any material, substance or waste which is defined as a hazardous substance under §311 of the Federal Water Pollution Control Act (33 U.S.C. §1317) as the same may be amended, hazardous waste under §1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C §6901 *et seq.*) as same may be amended or a hazardous substance under §101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq.*), as may be amended.

**Person:** An individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county, local or other governmental entity or any bureau, department or agency thereof or any other legally-cognizable entity.

**Use Fee:** All amounts payable by Licensee to the Town pursuant to the terms of this License.

**Sublet:** The licensing of the Cultivation Site by the Licensee named hereinabove to person that is not a party to this License ("sub licensee"), whether or not for compensation.

**Licensee:** The Person who entered into and is bound by the terms of this License.

**Term:** Five years (60 months) after the Commencement Date as defined hereinabove, with one option for a three year extension.

**ARTICLE II  
LICENSE TERMS**

2.01 The Term of this License is five years, commencing on \_\_\_\_\_, \_\_\_\_\_, (the "Commencement Date") and expiring on the last day of \_\_\_\_\_, \_\_\_\_\_ (the "Expiration Date"), unless sooner terminated by mutual written consent.

I. **Extension Option.** The Term may be extended for one five year term.

- A. The Extension Option may be exercised at any time during the term of the License, but must be exercised within sixty (60) days of the Expiration Date.
- B. The Extension Option must be exercised by the Licensee by written notice delivered personally or forwarded by registered or certified mail, return receipt requested, to the Town to the Notice Address.
- C. If the Extension Option is not exercised timely then the License shall terminate pursuant to Article XV.
- D. If this License is terminated for any reason, the Extension Option granted in this Article with respect to periods subsequent to such termination or expiration shall be deemed null and void.
- E. The Extension Term shall be upon all of the terms and conditions of this License, except as follows and as otherwise hereinafter provided:
  - a. At the end of the Extension Term the provisions of this Article shall be deemed null and void and there shall be no further extension of the term of this License pursuant to this Article.

### **ARTICLE III SECURITY DEPOSIT, USE FEE AND REAL PROPERTY TAXES**

- 3.01 On signing of this License, Licensee must deposit with Town \$375.00 per acre of Cultivation Site, which will be held by Town as security for Licensee's performance of its obligations under this License.
  - A. If Licensee defaults in respect of any of its obligations under this License, the Town may use, apply or retain all or any part of the security deposit to pay any sum as to which Licensee is in default, or to reimburse Town for any amount which the Town may expend or may be required to expend by reason of Licensee's default, including the cost of inspections.
  - B. The security deposit may **not** be applied by Licensee toward payment of the Use Fee.
- 3.02 The annual Use Fee will be \$750.00 per acre of Cultivation Site. The first year Use Fee is due and payable at the signing of this License Agreement. Each subsequent Use Fee is due and payable each year, prior to the anniversary of the Commencement Date. All use Fees shall be paid without notice, demand, deduction, abatement or setoff, except as otherwise expressly provided in this License.
- 3.03 Acceptable forms of payment for the security deposit and Use Fee include official corporate check, official bank check or money order payable to the order of the Town of Islip and delivered to the Town of Islip Comptroller, 401 Main Street, Room 102, Islip, New York 11751, or any such other address as designated by the Town. The Town may

**TOWN OF ISLIP**  
**LICENSE FOR THE USE OF THE BAY BOTTOM**

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charge a \$50.00 administrative fee for each check returned to the Town as being dishonored after presentment for payment.

- 3.04 If any payment is not made within 15 days of the due date, a \$50.00 late fee will be applied to the Use Fee and shall be in addition to and not in lieu of any other remedy the Town may have.
- 3.05 Any real property taxes assessed and levied on the Cultivation Site are the responsibility of Licensee. Taxes or assessments will be charged to Licensee as additional Use Fee, payable to the Receiver of Taxes, or such other Person designated by Town, without penalty, on or before the due date for payment of such taxes or assessments, together with applicable penalties if paid late. Licensee may grieve and seek review of real property taxes and assessments at their sole cost and expense.

**ARTICLE IV**  
**PERMITTED USE**

- 4.01 Licensee will have use and occupancy of the Cultivation Site throughout the Term, subject to the Town's reasonable right of access and right to inspect pursuant to Article VII.
- 4.02 Licensee's permitted use is strictly limited to conducting the business of commercial shellfish, seaweeds, and/or sugar kelp aquaculture, and for no other use unless Licensee receives written approval by the Town.
- 4.03 Licensee is obligated to take every reasonable means to minimize the effect of its use and occupancy on the topography, environment and ecosystem of the Great South Bay.
- 4.04 Harvesting by motorized mechanical means is prohibited.
- 4.05 Licensee may not dredge any waterway, without first complying with all applicable Governmental Requirements and obtaining written consent from Town.

**ARTICLE V**  
**OPERATIONS AT THE CULTIVATION SITE**

- 5.01 Except as otherwise provided in this License, the Licensee hereby accepts the Cultivation Site in its "as is" condition and acknowledges that the Town will not furnish any services, nor have any duty or obligation whatsoever to make any alteration, change, improvement, replacement, restoration or repair to the Cultivation Site.
- 5.02 Species allowed to be field planted at the Cultivation Site are limited to: bay scallop, hard clam, American oyster, blue mussel, soft shell clam, razor clam, seaweed, sugar kelp and seaweed culture. No other species may be introduced.
- 5.03 Any Shellfish Seed, seaweed, sugar kelp and seaweed culture that is field-planted at the Cultivation Site must be purchased within the State of New York, to the extent that such

**TOWN OF ISLIP  
LICENSE FOR THE USE OF THE BAY BOTTOM**

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Shellfish Seed is available for purchase within the State. Shellfish Seed, seaweed, sugar kelp and seaweed culture shall be acquired from sources outside the State of New York when unavailable from the State of New York will require that Licensee follow the importation procedure annexed hereto and made a part hereof as Appendix B.

- 5.04 At the Cultivation Site, only the following practices may be used: depuration, seed and stock grow-out, and wet storage. Any other practice must obtain written approval from the Commissioner of the Town of Islip Department of Environmental Control, prior to being used at the Cultivation Site. The Licensee is responsible for all security and enforcement measures to protect the site, shellfish, seaweeds, and/or sugar kelp.
- 5.05 Plastic tags that bear the name, phone number, and NYSDEC Permit number of the Project, must be attached to all gear, cages, rafts, netting and other equipment at the Cultivation Site.
- 5.06 Aquaculture activities under this License must be conducted in a manner that does not disrupt, damage, or otherwise cause harm to other Town-owned land, to persons using the Great South Bay or to the environment. Noise generated from operating or harvesting activities must be minimized to the extent possible.
- 5.07 The Cultivation Site must be marked with uniform buoys, as approved by the United States Coast Guard (USCG and/or US Army Corps. of Engineers (USACE) and the Town, around the perimeter of the site, and at each corner of the site. Each buoy must permanently display the name of the Licensee and NYSDEC Permit number. Said markings must be maintained so as to be readable. The cost of purchasing and installing the buoys shall be fully borne by the Licensee. The Town shall not be responsible for maintaining the buoys.
- 5.08 Buoy markers must be deployed around the site using parcel coordinates designated in Appendix A.
- 5.09 New York Environmental Conservation Law and the Department of Environmental Conservation require that the Cultivation Sites be kept in adequate sanitary control. The Town as such requires a bird deterrent to be used or similar aquaculture netting to meet such expectations. *See Appendix C attached hereto and made a part hereof for examples of deterrents.*
  - (a) If Licensee does not have the required adequate sanitary controls in place at the Cultivation Site such will be considered a breach of this License and fines may be imposed up to \$25.00 a day until such sanitary controls have been taken.

**ARTICLE VI  
MAINTENANCE, REPAIRS AND IMPROVEMENTS**

- 6.01 At the sole cost and expense of the Licensee, the Cultivation Site must be maintained in good order and clean and free from flotsam, rubbish and obstructions, all to the Town's

reasonable satisfaction.

- 6.02 Other than carrying out minor maintenance or repairs that do not result in alteration of any physical aspect of the Cultivation Site, or activities for which no Town building permit is required, Licensee may not make any physical changes, alterations or improvements without the Town's written consent.

#### **ARTICLE VII RIGHT OF ACCESS AND INSPECTION**

- 7.01 The Town and its duly authorized representatives shall have the right to enter the Cultivation Site, or any part thereof, upon 48 hours notice and between the hours of 9 a.m. and 5 p.m for the purpose of inspecting same upon reasonable advance notice. Notice shall not be required in the event of an emergency.
- 7.02 Licensee has examined the Cultivation Site and accepts possession of the Cultivation Site in its "as is" condition on the Commencement Date. Nothing in this Article or elsewhere in this License shall imply any duty or obligation on the Town to do any work on the Cultivation Site, and performance of work on the Cultivation Site by the Town shall not constitute an assumption of such a duty or obligation.
- 7.03 Licensee acknowledges that no representations, statements or warranties, express or implied, have been made by or on behalf of the Town with respect to the Cultivation Site, this transaction, or the laws applicable to this transaction, except as set forth in this License. Licensee is not relying on any representations, statements or warranties other than as set forth in this License.

#### **ARTICLE VIII INSURANCE**

- 8.01 Licensee shall promptly, prior to execution of the License and at its sole cost and expense, obtain insurance in the type and amounts as set forth below. All insurance required by this License shall be maintained with insurance underwriters authorized to do business in the State of New York satisfactory to the Town and cover Licensee's use and occupancy of the Cultivation Site. All policies shall name the Town, its officers, employees, servants and agents as additional insured and shall be primary. Any insurance provided by the Town will be in excess and non-contributory. Licensee shall promptly furnish the Town with duplicate insurance policies and certificates of insurance from its insurance underwriters showing such insurance policies to be in compliance with the License and in full force and effect during the entirety of this License. Licensee agrees to procure an endorsement on the policy stating that the policy may not be cancelled or materially changed except upon thirty (30) days prior written notice to the Town. The policy must state that such insurance provides primary coverage for both defense and indemnity. Licensee's liability insurance shall be considered primary and the Town's liability insurance, if any, shall be considered excess liability for each and every claim.

8.02 Licensee must obtain the following types of insurance:

- A. Comprehensive general liability insurance in form acceptable to Town, including public liability and property damage, covering its activities hereunder, in an amount no less than Three Hundred Thousand Dollars (\$300,000.00) for bodily injury and Three Hundred Thousand Dollars (\$300,000.00) for property damage, including blanket contractual liability, independent contractors, and products and completed operations; and
- B. All marine vessels used by Licensee, shall have Comprehensive bodily injury and property damage insurance in a form acceptable to the Town for business uses covering any and all marine vessels to be operated by Licensee, its officers, directors, agents and employees in connection with its activities hereunder, whether owned by Licensee, or otherwise, with a combined single limit of not less than Three Hundred Thousand Dollars (\$300,000.00); and
- C. New York State Disability Insurance and Workers compensation insurance as required by statute for Licensee's employees, if applicable.
  - a. In the event that the Licensee does not have any employees, Licensee may provide a Certificate of Attestation of Exemption (Form CE-200) obtained from New York State to the Town in lieu of such insurance.

8.03 In addition, Licensee shall assume all risks incident to, or in connection with, the services to be performed under this License, and shall be responsible for all accidents or injuries of any kind or nature, to persons or property caused by, resulting from, arising out of or occurring in connection with the services performed hereunder. Licensee agrees that it shall indemnify, defend and hold harmless the Town and its officers, officials, employees, contractors, agents and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, arising out of the acts or omissions, or violation of any law by Contractor, or the negligence of the Contractor in connection with the services described or referred to in this License.

8.04 Evidence of the required insurance coverage, the Town of Islip Affirmation of Insurance Coverage, together with proof of payment of the premium, must be provided to Town.

8.05 All such insurance certificates shall contain an agreement by the insurance companies issuing the policies that the policies will not be cancelled without thirty (30) days prior written notice to the Town. At least four (4) weeks prior to the expiration of the original policy or any renewals thereof, a new certificate of the renewal of such insurance at the sums required hereinabove and containing an agreement by the insurance company, authorized to do business in the State of New York that the insurance may not be cancelled without thirty (30) days prior written notice provided to Licensor, shall be delivered to Town.



**ARTICLE IX  
NO EMERGENCY SERVICES**

- 9.01 The Town is not legally obligated and does not intend to provide any emergency services.

**ARTICLE X  
ASSIGNMENT AND SUBLETTING PROHIBITED**

- 10.01 Licensee may, upon consent of the Town Board, which consent shall not be unreasonably withheld, assign this License, subject to this Article, to a person or entity whose principal business is commercial aquaculture and who acquired all the assets of the Licensee's business.
- 10.02 The License may not be sublet or assigned, or included in a series of assignments, a merger, or stock, if as a result of such sublet, assignment or transfer, the resulting holder of the License would hold interests in other Licenses with the Town of Islip which, taken together, affect more than five acres of Town land, unless Town Board consent is granted.
- 10.03 Upon approval of an assignment, assignee shall assume all of the obligations of Licensee under this License and Licensee will be relieved of all of its obligations under this License.
- 10.04 Upon the approval of the Town for such assignment or sublicense the Licensee's security deposit will not be refunded and will become part of such consideration for the assignment of the lease.

**ARTICLE XI  
LIENS**

- 11.01 Nothing contained in this License shall be deemed or construed to mean the Town has granted to Licensee any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interests, lien, charge or other encumbrance upon the Cultivation Site.
- 11.02 Town shall have first rights and may put a lien upon any insurance awards applicable to the License, for the Use Fee, any additional fees, any damages, and for costs associated with Licensee's default.

**ARTICLE XII  
TOWN NOT LIABLE FOR INJURY, LOSS OR DAMAGE**

- 12.01 Unless caused directly by a gross negligent or intentional acts of the Town, the Town will not be liable for injury or damage to the person or property of any Person, including Licensee, on the Cultivation Site. The Town is not responsible for theft, vandalism, other weather-induced effects, or any other loss of shellfish, seaweeds, and/or sugar kelp

on the License site.

- 12.02 The Town will not be liable to Licensee, or any other Person, for injury or damage that occurs on the Cultivation Site, including injury to any property thereon owned by Licensee or to any Person, which damage is caused by or results from fire, hurricane, tornado, flood, wind, similar storms or by any Act of God.

### **ARTICLE XIII INDEMNIFICATION**

- 13.01 Licensee shall assume all risks incident to, or in conjunction with, its business to be conducted hereunder and shall be solely responsible for all accidents or injuries of whatever nature or kind to persons or property caused by its operations and shall indemnify, defend, and hold harmless the Town, its authorized agents and representatives, from any penalties for violation of any law, ordinance or regulation affecting its operation, and from any and all claims, suits, losses, damages, or injuries to persons or property of whatsoever kind or nature arising for any and all actions or inactions by the Licensee or its employees, invitees etc.. The indemnification in this paragraph includes without limitation costs incurred in connection with this License, including, but not limited to, any environmental investigation of site conditions or any cleanup, remedial removal or restoration work required by any Governmental Authority. Licensee's obligations under this paragraph are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this License.

### **ARTICLE XIV EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS AND REMEDIES**

- 14.01 At the election of Town, each of the following will be an Event of Default:
- (a) Failure to pay the Use Fee, any applicable late fees, or any other payment required to be paid by Licensee to Town under this License when same shall be due and payable.
  - (b) Failure to provide and maintain insurance coverage or provide proof of insurance coverage and payment of the premium as required by this License.
  - (c) Abandonment of the Cultivation Site, which abandonment must be assumed if Licensee fails during any year of the Term to make timely payment of the Use Fee and any late fees, timely provide proof of insurance or, without written consent of the Commissioner of the Department of Environmental Control, fails to engage in the activity contemplated by this License.
  - (d) Failure to comply with any Governmental Requirements.
  - (e) Failure to maintain the Cultivation Site in an environmentally-clean condition pursuant to NYCRR Title 6 §42.2, including but not limited to, the failure to

maintain bird deterrents at the Cultivation Site.

- (f) Use, occupancy, change, alteration or improvement of the Cultivation Site in a manner not authorized by this License.
- (g) Sublet of, or assignment of, this License in violation of Article X.
- (h) Licensee's failure to timely and fully perform any of its obligations under this License.

14.02 If the Event of Default consists of an occurrence of 15.01(a) or (b), this License will terminate without further notice on the close of business (5:00 p.m.) of the latest day on which the Event in Default occurred.

14.03 If the Event of Default consists of an occurrence of 15.01 (d), (e), (f), (g) or (h), the Town must give Licensee written notice stating that this License will terminate on the date specified in the notice, which date will be not less than thirty (30) days after the date of the notice. If the Event of Default remains uncured as of the date specified in the notice, or if Licensee is not diligently pursuing the cure of an Event of Default or the Event of Default is inherently incapable of being cured within the stated period, then this License shall terminate without further notice.

14.04 If this License is terminated as a result of an Event of Default, the Town may elect one or more of the following:

- (a) Enter into a License for use of the Cultivation Site with a Licensee on the most current waiting list for the Bay Bottom Program;
- (b) Proceed by appropriate judicial proceedings to enforce Licensee's obligations under this License and/or recover damages for Licensee's default;
- (c) Retain the Cultivation Site unoccupied;
- (d) Use the Cultivation Site for any Town purpose.

14.05 If this License is terminated as a result of an Event of Default, Licensee must pay to the Town all Use Fees and additional fees to the date of Town's repossession and, on demand, all costs and expenses, including but not limited to reasonable attorney's fees and disbursements, incurred by the Town in any action or proceeding to recover possession of the Cultivation Site, and the cost of removal of any equipment or ligan. 14.06 Any continued occupancy of the Licensee at the cultivation site after notice of such Default or termination, as stated below, the Town will have the option to remove all equipment after thirty (30) days and hold the Licensee responsible for fees until possession is surrendered.

- (a) All property removed by the Town pursuant to any provisions of this License or

by law may be handled, removed, or stored in a commercial warehouse or otherwise by the Town at the risk, cost and expense of the Licensee, and the Town shall in not event be responsible for the value, preservation or safekeeping thereof.

- (b) Licensee shall pay the Town, upon demand, any and all expenses incurred by the Town in such removal and storage charges against such property so long as the same shall be in the Town's possession or under the Town's control.
- (c) All property not removed from the Cultivation Site within thirty (30) days after the end of the Term or upon the Default, however terminated, shall, if the Town so elects, be conclusively deemed to have been forever abandoned by Licensee.

#### 14.06 Procedure for Default, Breach or Violation of Agreement

Upon the Licensee's default or breach of the Agreement, at the Town's discretion, the Town may implement the following procedures when deemed necessary in combination with any remedies listed in Article XIV:

- a. Verbal Warning: The Town may give a verbal warning to the Licensee to correct the default, breach or violation immediately. The verbal warning may also address corrective actions that should be taken to ensure the site is in full compliance.
- b. Meeting with DEC Commissioner: The Town may require the Licensee to meet with the Commissioner of the DEC to discuss any defaults, breaches or violations and work on a solution and deadline to bring the site into compliance.
- c. Final Written Warning: The Town may at their discretion issue a final written warning identifying the default, violation, or breach and serve such notice pursuant to Article XIX.
- d. Fines: The Town may implement a fine of \$25.00 for each day the site is in noncompliance under this Agreement in conjunction with Article V.

### ARTICLE XV

#### SURRENDER UPON EXPIRATION DATE OR UPON EARLIER TERMINATION

- 15.01 On the Expiration Date or earlier termination of the License, for any reason whatsoever, Licensee must surrender and deliver the Cultivation Site to Town in good order and condition, free of all lian. All aquaculture gear, lian and equipment introduced to the Cultivation Site are the responsibility of the Licensee.
- 15.02 All such materials or equipment must be removed from the Cultivation Site within thirty (30) days of the termination of the License. All property not removed from the Cultivation Site within thirty (30) days after the end of the Term or earlier termination, however terminated, shall, if the Town so elects, be conclusively deemed to have been

forever abandoned by Licensee.

- 15.03 In the event the Licensee does not remove all materials or equipment the Town may at its discretion apply the Security Deposit to the cost of any such removal. In addition, the Town may recover any costs that are in excess of the Security Deposit from the Licensee.
- 15.04 Any continued occupancy by the Licensee at the cultivation site after such surrender, termination or early termination shall be considered a month to month tenancy at the same terms and conditions of this License and Licensee shall be responsible for all Use Fees on a monthly basis during the period of holdover.
- 15.05 To the extent practicable, Licensee must restore, the Cultivation Site as determined to be necessary by the Commissioner of Environmental Control, and the Division of Shellfish Management, and return the Cultivation Site to a natural condition with no ligan, and no evidence of Licensee's use and occupancy, except as otherwise permitted by the Town.
- 15.06 The Licensee must six (6) months prior to the termination of this License notify the New York State Department of Environmental Conservation (NYS DEC) and the US Army Corps. of Engineers (USACE) of such termination with a copy to the Town of Islip Department of Environmental Control.

#### **ARTICLE XVI REQUIREMENTS OF GOVERNMENTAL AUTHORITIES**

- 16.01 Licensee, at its sole cost and expense, must promptly comply with all Governmental Requirements applicable to the use and occupancy of the Cultivation Site.
- 16.02 Licensee will promptly provide the Town with copies of any notices of violation of any Governmental Requirements and all notices of inspection received by Licensee.
- 16.03 The Licensee must obtain, provide and document to the Town, DEC, all federal, state, and local permits necessary for aquaculture, shellfish, seaweeds, and/or sugar kelp sale to prior to the commencement of any activities at the Cultivation Site.
- 16.04 The Licensee must comply with all federal, state and local laws and regulations including but not limited to, those relating to harvesting, handling, tagging, storage, sale, sanitary control and aquaculture of shellfish, seaweeds, and/or sugar kelp.

#### **ARTICLE XVII HAZARDOUS MATERIALS**

- 17.01 Licensee will be responsible for Hazardous Materials located on the Cultivation Site during Licensee's use and occupancy.
- 17.02 Hazardous Materials may not be located, stored, used, discharged or disposed of on, in, or about the Cultivation Site.

- 17.03 Licensee must defend, indemnify and hold the Town harmless from and against any and all claims, losses, damages and expenses, including but not limited to, reasonable attorney's fees and disbursements, the Town may incur as a result of Licensee's act or omission arising out of a violation of Article XVII.
- 17.04 Any costs, penalties, fines, and/or expenses paid or incurred by the Town arising out of Licensee's failure to comply with the provisions of this Article may constitute, at the Town's option, an additional Use Fee and must be paid by Licensee to Town on demand.
- 17.05 Town will be entitled to injunctive relief against Licensee with respect to any threatened location, storage, use, discharge or disposal of Hazardous Materials on, in, or about the Cultivation Site.
- 17.06 The provisions of this Article will survive the Expiration Date of the Term, or any other such termination of this License, and are intended to supplement the Town's rights and remedies against Licensee at law with respect to Hazardous Materials.
- 17.07 As of the Expiration Date or other termination of this License, at Licensee's option and sole expense, Licensee may cause an environmental audit of the Cultivation Site and/ to be made by a qualified New York State licensed professional engineer, satisfactory to the Town, to determine the presence of Hazardous Materials on, in or about the Cultivation Site. If Licensee elects to have the environmental audit performed and if the environmental audit reveals there are no Hazardous Materials on, in or about the Cultivation Site, or that Hazardous Materials found can conclusively be demonstrated to be attributable to an incident or source other than one for which Licensee is responsible, then upon the Town's written acceptance of and concurrence with such report Licensee must have no continuing obligation under this Article following the Expiration Date or other termination of this License. If the environmental audit reveals the presence of Hazardous Materials for which Licensee may be responsible on, in or about the Cultivation Site, Licensee will have the obligation to remediate the Cultivation Site by the removal of the Hazardous Materials immediately following the completion of the environmental audit. In the event Licensee elects to cause such environmental audit to be made, Licensee will instruct the professional engineer making the audit to provide a copy of the audit to the Town at the same time that a copy is provided to Licensee.

#### **ARTICLE XVIII QUIET ENJOYMENT**

- 18.01 Subject to the rights of access herein reserved, Town covenants that for so long as Licensee faithfully performs its obligations under this License, Licensee may peaceably and quietly have, hold and enjoy the Cultivation Site for the Term, without molestation or disturbance by or from the Town.

#### **ARTICLE XIX NOTICES**

TOWN OF ISLIP  
LICENSE FOR THE USE OF THE BAY BOTTOM

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- 19.01 Notices must be given in writing and mailed by certified mail, postage prepaid, return receipt requested, to the mailing addresses provided below, or to such other Person or address as either party may from time to time designate by like notice. Any such notice or other communication shall be deemed given and received when delivered or refused or when delivery is attempted on a Business Day during normal business hours.

If Notice to Town:

Department of Environmental Control  
Attn: Commissioner  
401 Main Street  
Islip, New York 11751

With a copy to:

Office of the Islip Town Attorney  
655 Main Street  
Islip, NY 11751

If Notice to Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**ARTICLE XX**  
**JURISDICTION AND VENUE**

- 20.01 This License shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to conflict laws rules or principles. The state courts located in the County of Suffolk, State of New York and Federal courts located in the County of Suffolk, State of New York have exclusive jurisdiction with respect to any proceedings which may arise in connection with this License, which courts have personal jurisdiction and venue over the Company and the Town for purposes hereof (to the extent necessary, the Licensee consents to such personal jurisdiction and venue).

**ARTICLE XXI**  
**ENTIRE LICENSE, NO ORAL MODIFICATIONS**

- 21.01 This License represents the entire agreement of the parties with respect to the Cultivation Site, and, accordingly, all prior understandings and agreements between the parties with respect to the Cultivation Site are merged into this License, which along fully and completely expresses the agreement of the parties.
- 21.02 This License may not be altered or modified except by a subsequent writing signed by the

Licensee and a member of the Town Board. All alterations and modifications are subject to review by the Town Attorney.

## **ARTICLE XXII SEVERABILITY**

- 22.01 If any term or provision of this License or the application thereof to any Person or circumstances shall, to any extent, be invalid or enforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and be enforced to the fullest extent permitted by Law.

## **ARTICLE XXIII MISCELLANEOUS**

- 23.01 **Captions.** The captions of this License are for convenience of reference only and in no way define, limit or describe the scope or intent of this License; the License must be interpreted based upon its entire context.
- 23.02 **Interpretation.** All terms and words used in this License shall be deemed to include any other number and any other gender as the context may require.
- 23.03 **Legal Advice.** The Licensee hereby acknowledges that he/she/it has been advised that the Town does not represent the Licensee with respect to this agreement or any other matter whatsoever and further, the Town hereby advises the Licensee that it is in his/her/its best interest to consult an attorney prior to entering into the Option and License regarding the Cultivation Site. Licensee hereby acknowledges receipt of the Option with a copy of the License attached hereto.

## **ARTICLE XXIV INTERESTED PERSONS AND ANNUAL REPORTS**

- 24.01 If the Licensee is a corporation, a partnership or other business entity, at the time the Licensee executes this License it must provide proof of formation, corporate by-laws or operating agreement, whichever is applicable, and a Resolution of the corporation or a written Consent of the members of the LLC authorizing the entity to enter into the License and authorizing the signatory to bind the entity.
- 24.02 At the time the Licensee exercises its option hereunder, a detailed work plan including the intended number of shellfish, seaweeds, and/or sugar kelp to be cultured, the type of gear to be used, and the methods that will be employed must be submitted in writing to the Town. After the initial submission of the work plan, any additional modifications or amendments requires immediate notification to the Town in writing before such changes are implemented.
- 24.03 On or before each annual anniversary of the License, the Licensee must file an annual



report in the format approved by the Town. Failure to provide the annual report or including fraudulent information in such report will be grounds for termination. The report must include, at a minimum:

- (a) Description of the Licensee's activities on the Cultivation Site in the twelve (12) months preceding the report;
- (b) Breakdown of the results of the activities (type of product grown, amount, size, estimated mortality rate, quality); and
- (c) Summary comments as to the overall conditions of the Bay for cultivation.

24.04 If the Licensee wishes the summary report to be excluded from public documents subject to the NYS Freedom of Information Law, Licensee must mark each page that contains proprietary information, the release of which might damage Licensee's business.

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TOWN OF ISLIP  
LICENSE FOR THE USE OF THE BAY BOTTOM

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**IN WITNESS WHEREOF**, the Town and Licensee hereto have duly executed this License as of the day and year first above written.

LICENSOR:  
TOWN OF ISLIP

LICENSEE:

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By: \_\_\_\_\_  
Name: Angie Carpenter  
Title: Supervisor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEW YORK )

ss.:

COUNTY OF SUFFOLK )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year of 2018, before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his /her /their signatures(s) on the instrument, the individual(s), or the person upon behalf of which the individuals, acted, executed the instrument.

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Notary Public

STATE OF NEW YORK )

ss.:

COUNTY OF SUFFOLK )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year of 2018, before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his /her /their signatures(s) on the instrument, the individual(s), or the person upon behalf of which the individuals, acted, executed the instrument.

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Notary Public

**APPENDIX A**

*[ATTACH MAP OF CULTIVATION SITE(S) COVERED BY THIS LICENSE.]*

## **APPENDIX B**

### **IMPORTATION REQUEST PROCEDURE**

- 1) A shellfish importation request shall be made in writing to the Commissioner of the Town of Islip Department of Environmental Control for approval to import marine plant or animal products for cultivation on town leased property.
- 2) A shellfish importation request must be obtained by the holder of a valid town shellfish lease prior to each importation event.
- 3) Requests shall be submitted in time to afford an adequate period for Department review.
- 4) Each importation request shall include the following information:
  - a) species identification to be imported.
  - b) species quantity and average size to purchased for importation.
  - c) the specific location, the State and body of water the product will be harvested (taken).
  - d) anticipated harvest date and /or delivery date.
  - e) origin of the seed broodstock / hatchery that spawned seed.
  - f) the person or Company accepting imported product.
  - g) the NYSDEC permit number to where the product will be deployed and cultured.
  - h) a copy of Pathology report.

## APPENDIX C

### EXAMPLES OF ACCEPTABLE DETERRENTS

The following methods have been used in preventing birds from using floating grow-out gear as a perching or roosting platform. Modifications to these methods may be needed to adapt to changing conditions or desired increase in efficiency in order to successfully deter birds from perching on gear. These methods are suggested methods only and will require individual adjustments to be effective on various sites.

1. PVC or bamboo poles staked into the sand around the perimeter of the site. Fishing line is strung to the top of the poles, from one pole to the next around the site. Attached to the fishing line is streamers or cable ties to flap in the breeze. The poles should be of sufficient height to allow normal vessel movement in and out of the site under the strung fishing line.
2. Floats on the OysterGro® system or similar grow-out cages can be fitted with large (3 foot long) cable ties. At least three are fitted to each float. They are secured tight so the ends stick up off the float and flap around. On smaller grow-out systems floats can be fitted with smaller cable ties that stick up to deter bird landings.
3. Floating gear can be fitted with a section of Bird-Coil® anti-perching wire coil. Each float can be wrapped with the coil. Each section of coil can be secured to a length of wood to provide a base for the wire to sit evenly spaced. This unit is then placed on top of each float and secured with a bungee or cable tied to the float.
4. Commercial Gull Sweep Bird deterrents can be purchased and affixed to the top and bottom of cages. The arms rotate 360 degrees to repel birds. They could be attached with bungee cord so that when cages get flipped the sweeps can be detached and re-attached to the other side.
5. Predatory bird kites and hawk decoys have been used with some success. The kite is anchored in the center of the site as the kite flies over head protecting the area. The hawk decoys are staked at several location on PVC poles around the site. The Town **does not** recommend owl decoys.
6. Floating gear should be submerged during the nesting and migrating season or when birds are visibly in high numbers.

*Town of Islip, NY  
Monday, January 14, 2019*

## Chapter 44. Shellfish

[HISTORY: Adopted by the Town Board of the Town of Islip 9-22-64; amended in its entirety 8-19-80. Subsequent amendments noted where applicable.]

### **GENERAL REFERENCES**

Issuance of licenses and permits — See Ch. 31.

Trawling and eel dredging — See Ch. 56.

### **§ 44-1. Title.**

This chapter shall be known as the "Shellfish Ordinance of the Town of Islip."

### **§ 44-2. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings indicated:

#### **CERTIFIED AREA**

An area designated by the New York State Department of Environmental Conservation to be in such sanitary condition that shellfish therein may be taken for use as food.

#### **MANAGEMENT AREA**

An area set aside by the Town Board for the conservation, preservation, protection, rehabilitation, seeding and/or growth of shellfish.

#### **NIGHT**

The period between sunset and sunrise.

#### **RESIDENT**

A person who has his or her principal place of abode in the Town of Islip and/or a person who owns real property in the Town of Islip.

#### **SHELLFISH**

Includes all types and varieties of oysters; *Crassostrea virginica*, mussels, scallops; *Pecten irradians*, hard clams; *Mercenaria mercenaria*, soft clams; *Mya arenaria*; and any combination thereof.

#### **TAKING**

Includes the actual removal of shellfish from Town lands underwater and/or the area above Town lands underwater and all lesser acts, such as attempting to remove shellfish, disturbing shellfish and using any implement or device to remove shellfish, regardless of whether such acts result in the removal of shellfish.

**TOWN LANDS UNDERWATER**

Includes all land underwater in and owned by the Town of Islip except land underwater leased by the Town to others for shellfish cultivation.

**UNCERTIFIED AREA**

An area designated by the New York State Department of Environmental Conservation to be in such unsanitary condition that shellfish therein may not be taken for use as food.

**§ 44-3. Permit required.**

No person shall take shellfish from Town lands underwater unless such person has obtained a permit therefor as prescribed by this chapter.

**§ 44-4. Exceptions to permit requirement.**

- A. A resident of the Town of Brookhaven who has duly obtained a permit for the taking of shellfish from lands underwater in and owned by the Town of Brookhaven, in accordance with the Town of Brookhaven Shellfish Law, may take shellfish from Town lands underwater which have not been designated by the Town Board as open only to residents of the Town of Islip.
- B. A resident of the Town of Brookhaven desiring to avail himself of the privileges hereinbefore stated shall display evidence of the permit issued to him by the Town of Brookhaven, in conspicuous places, either upon his person or the vessel used in taking.
- C. A resident of the Town of Babylon who has duly obtained a permit for the taking of shellfish from lands underwater in and owned by the Town of Babylon, in accordance with the Town of Babylon Shellfish Ordinance, may take shellfish from Town lands underwater, which have not been designated by the Town Board as open only to residents of the Town of Islip.
- D. A resident of the Town of Babylon desiring to avail himself of the privileges hereinbefore stated shall display evidence of the permit issued to him by the Town of Babylon, in conspicuous places, either upon his person or the vessel used in taking.

**§ 44-5. Types of permits.**

[Amended 5-5-1981; 11-18-1986]

- A. Personal permit. A personal permit shall allow the person to whom it is issued to take shellfish from Town lands underwater, for the personal or family use of such person only, in an amount permitted under § 44-10, by use of feet, hands or a rake with a head no wider than 14 inches measured perpendicularly to the tines and a straight handle no longer than 10 feet, except that a person to whom a personal permit has been issued, may take scallops by any means permitted by § 44-9.  
[Amended 6-19-2012]

- B. Commercial permit. A commercial permit shall allow the person to whom it is issued to take shellfish, except hard clams (*Mercenaria mercenaria*), from Town lands underwater for any purpose by any means permitted by § 44-9.

[Amended 1-26-2010; 12-13-2011; 6-19-2012]

- C. Commercial permit hard clam endorsement. A hard clam endorsement shall allow the person to whom it is issued to harvest no more than 2,000 hard clams (*Mercenaria mercenaria*) per day, in addition to other shellfish harvested in accordance with the provisions herein.

[Added 1-26-2010;<sup>[1]</sup> amended 12-13-2011; 6-19-2012]

[1] *Editor's Note: This ordinance also provided for the redesignation of former Subsections C, D and E as Subsections D, E and F, respectively.*

- D. Senior citizen personal permit. A senior citizen personal permit shall be issued to any applicant for a personal permit, aged 60 years or older. A senior citizen permit shall allow the person to whom it is issued to take shellfish from Town lands underwater for any purpose by any means permitted by § 44-9.
- E. The Town Clerk shall not issue more than one type of permit to any person, nor shall the Town Clerk issue a personal permit or a senior citizen personal permit to any person holding a New York State commercial permit.
- F. No person shall hold more than one type of permit at a time. A person to whom a New York State commercial permit has been issued shall not have a personal permit or a senior citizen personal permit at the same time.

## § 44-6. Application for and issuance of permits; fees.

- A. Permits shall be issued to residents only.
- B. Each permit application shall be made in duplicate, in writing, on the form prescribed by the Town Clerk and shall include the applicant's name, residence, mailing address, date of birth, weight, height, color of hair and eyes, signature and all other information requested by the Town Clerk.
- C. An application for a permit for a person under the age of 17 years shall be cosigned by that person's parent or guardian.
- D. Prior to the issuance of a permit, the Town Clerk shall be satisfied as to the identification and residency of the applicant.
- E. Each permit application shall be accompanied by the appropriate fee:  
[Amended 6-19-2012]
- (1) Personal permit: \$5, except that there shall be no fee for a persons 60 years of age or older, or for any person serving in the United States Military.
- (2) Commercial permit: \$75, except that the fee shall be \$25 for persons 60 years of age or older, or for any person serving in the United States Military.
- F. Each commercial permit application shall be accompanied by the applicant's New York State Department of Environmental Conservation permit.
- G. Each commercial permit application shall be accompanied by three full-face photos of the applicant taken within two months prior to the application date.  
[Amended 5-5-1981]



- H. The number of commercial permit hard clam endorsements issued by the Town Clerk in any one year shall be limited to an annual cap of 50. The annual cap may be adjusted to reflect changes in the health of the hard clam population based on the results of the most recent population surveys and harvest statistics available for Town waters and set, on a biyearly basis, by Town Board resolution and proper publication of notice thereof.

[Added 1-26-2010;<sup>[1]</sup> amended 3-2-2010; 12-13-2011; 6-19-2012]

- (1) An individual interested in obtaining a commercial permit hard clam endorsement shall annually apply to the Town Clerk before March 1. Commercial permit hard clam endorsements will be issued only to those individuals who provide documentation demonstrating compliance with one of the following:
- (a) The applicant was issued and held in good standing a commercial permit hard clam endorsement in the previous year; or
  - (b) The applicant was issued a commercial shellfish harvester permit during any consecutive five-year period while maintaining residency in the Townships of Islip, Babylon or Brookhaven; or
  - (c) The applicant was eligible for a commercial permit hard clam endorsement in the previous year but was unable to apply due to active-duty military service; or
  - (d) The applicant is age 60 or older at the time of application.
- (2) Those individuals who do not fall into § 44-6H(1) will be issued a commercial permit hard clam endorsement based solely on availability and will be placed on a waiting list. If, by the end of the annual renewal period as determined by the Town Clerk, there are sufficient commercial permit hard clam endorsements remaining under the cap, all individuals on the waiting list shall be issued a commercial permit hard clam endorsement based upon the applicant's position on the waiting list.
- (3) All commercial permit hard clam endorsement holders shall maintain monthly summary reports of their harvest activities. This report shall include daily dated entries indicating quantities of harvested hard clams by market size category, the harvest date, an identification of the areas from which the shellfish were harvested, as required to be recorded under New York State Department of Environmental Conservation regulation Chapter 1, § 42.7.

[1] *Editor's Note: This ordinance also provided for the redesignation of former Subsection H as Subsection I.*

- I. The Town Clerk may refuse to issue a permit pursuant to the rules set forth in § 44-24G.  
[Added 5-3-1983]

## § 44-7. Form of permit; nontransferability; display of permit.

- A. Each permit shall be in the form prescribed by the Town Clerk and shall contain the matters set forth upon the application.
- B. The original application shall be filed in the Town Clerk's office, and the duplicate application shall be filed in the Harbormaster's office.
- C. A person to whom a permit has been issued shall not transfer, assign or allow any other

person to use the permit.

- D. No person shall use, display or possess a permit issued to another person.  
[Amended 5-5-1981]
- E. A person engaged in taking shellfish from Town lands underwater shall locate his permit so that it shall be prominently displayed and clearly visible.  
[Amended 5-5-1981]
- F. (Reserved)<sup>[1]</sup>  
[1] *Editor's Note: Former Subsection F, Temporary permit, added 12-16-1980, was repealed 6-19-2012.*
- G. A person whose permit or display card is lost or stolen shall report same to the Town Clerk's office immediately.  
[Added 5-5-1981]

## § 44-8. Expiration of permits.

- A. Each permit and endorsement shall be valid from the date of issuance and, unless sooner voided, suspended or revoked, shall expire on the 31st day of December of the same calendar year in which it is issued.  
[Amended 3-2-2010]
- B. A permit shall expire immediately when the person to whom it is issued ceases to be a resident.  
[Amended 5-5-1981]

## § 44-9. Permitted means of taking shellfish.

[Amended 5-5-1981; 3-2-2010]

- A. Oysters and mussels. Oysters and mussels shall be taken from Town lands underwater by means of tongs or rakes, without supplementary mechanical power.
- B. Hard clams.
- (1) No person shall take any hard clams for commercial purposes from Town lands underwater within the Great South Bay unless that person is in possession of a commercial permit hard clam endorsement.  
[Amended 12-13-2011; 6-19-2012]
- (2) No implement or device shall be used in taking hard clams from Town lands underwater except:
- (a) Tongs without supplementary mechanical power and having not less than one inch of clear space between teeth and between the teeth and the basket.
- (b) Rakes without mechanical power and having not less than one inch of clear space between teeth and between the teeth and the basket.
- C. No wire netting or other substance shall be used in the basket of any implement used to

take shellfish except as otherwise provided herein.

- D. No person shall use any type of dredge to take shellfish from Town lands underwater, except as provided herein.
- E. Bay scallops may be taken with a dredge or scrape having an opening at the mouth not to exceed 36 inches in width when towed by a boat operated by mechanical power or other means, provided that such dredge or scrape is brought aboard by hand power without the use of a mechanical device or by use of hands, feet or a hand net.
- F. The Town shall recognize the rights granted to an individual who is in possession of a vessel endorsement as authorized under New York Environmental Law § 13-0311.  
[Added 6-19-2012]

## § 44-10. Restrictions on taking shellfish.

- A. No unauthorized person shall take shellfish from an uncertified area.
- B. No person shall take shellfish from Town lands underwater or from land underwater leased by the Town to others for shellfish cultivation during the night.
- C. A person to whom a personal permit is issued shall not take more than 100 total shellfish per day.  
[Amended 5-5-1981; 6-19-2012]
- D. A person to whom a commercial permit is issued shall not take shellfish from Town lands underwater on Sunday.

## § 44-11. Restrictions on sizes of shellfish.

- A. No shellfish of less than the following sizes shall be taken, bought, sold or possessed within the Town of Islip:
  - (1) Hard clams: No more than 3% of each bushel, package or other container shall consist of clams less than one inch (2.54 centimeters) in thickness.
  - (2) Oysters: No more than 5% of any bushel, package or container shall consist of oysters less than three inches (7.62 centimeters) measured at the longest diameter. The size limit shall not apply to oysters transplanted or cultured under permit from the New York State Department of Environmental Conservation, subject to the provisions of §§ 13-0316, 13-0319 and 13-0321 of the New York State Environmental Conservation Law.  
[Amended 6-19-2012]
  - (3) Bay scallops. No more than 2% of each bushel, package or other container shall consist of scallops which do not have an annual growth line or that measure less than 2 1/4 inches (5.715 centimeters) from the middle of the hinge to the middle of the bill.  
[Amended 5-5-1981; 6-19-2012]
  - (4) Soft clams or steamers: not less than 1 1/2 inches (3.81 centimeters) in the longest dimension.

- B. A person who takes the shellfish which are smaller than the required shall immediately return such shellfish to the location from which they were taken.
- C. Shellfish shall be sorted as to size in the immediate area from which they are taken and as soon as possible after they are taken.
- D. All devices used to sort shellfish as to size, including but not limited to cull racks, shall have no less than one inch (2.54 centimeters) of space between bars. Such device shall be designed and affixed to the vessel in such a manner as to allow shellfish to pass through the cull bars to fall directly and unimpaired to the water from which they were taken.  
[Amended 3-2-2010]
- E. Those engaged in the taking of hard clams with tongs shall have no more than three bushels of bay cull (shellfish and assorted bottom material unavoidably taken during harvesting) on board at any time, and shall have none on board while underway.  
[Added 3-2-2010]

## § 44-12. Seasons during which shellfish may be taken.

### A. Oysters.

- (1) No oysters or oyster sets shall be taken from Town lands underwater from May 15 to August 31, both inclusive, in any year.
- (2) A person who takes oysters from Town lands underwater out of season shall immediately return such oysters.

### B. Scallops.

- (1) Scallops shall be taken from Town lands underwater during the period from the first Monday in November through March 31, both inclusive, of each year.  
[Amended 5-5-1981; 6-19-2012]
- (2) A person who takes scallops from Town lands underwater out of season shall immediately return such scallops.

## § 44-13. Limitation on taking scallops with a commercial permit.

[Amended 5-5-1981]

- A. A person to whom a commercial permit has been issued shall not take more than 10 bushels of bay scallops from Town lands underwater per day.
- B. Two or more persons to whom commercial permits have been issued and who are utilizing the same vessel concurrently shall not take more than 20 bushels of bay scallops per vessel per day.

## § 44-14. Beam trawls and otter trawls prohibited.

[Amended 5-5-1981]

No beam trawls or otter trawls shall be used in any of the waters of the Town of Islip.

## § 44-15. Management areas.

- A. The Town Board may, in its discretion, designate any portion of Town lands underwater a management area.
- B. An uncertified area shall be a management area.
- C. The Commissioner of Environmental Control may prohibit, restrict and regulate the taking of shellfish from a management area. In making a determination whether to prohibit, restrict or regulate the taking of shellfish from a management area, the Commissioner of Environmental Control shall give due consideration to the following:
  - (1) Whether the shellfish in the management area have been sufficiently purified to be suitable as food for human consumption;
  - (2) Whether the first spawning period has passed for the shellfish in the management area; and
  - (3) Whether a minimum quantity of shellfish is available within the management area for spawning until such time as desired quantities of shellfish are maintained.
- D. A description of each management area and all prohibitions, restrictions and regulations with regard to the taking of shellfish from a management area shall be posted in the office of the Town Clerk and all Town marinas.
- E. No person shall violate the Commissioner of Environmental Control's prohibitions, restrictions or regulations with regard to the taking of shellfish from a management area.

## § 44-16. Interference with shellfish, markers and leased and management areas.

- A. No person shall take, interfere with or otherwise disturb shellfish possessed, planted or cultivated by another.
  - B. No person shall remove stakes, buoys or other devices used to mark land under water leased by the Town to another for shellfish cultivation, a management area or Town lands under water.
  - C. No person shall place any device used to take shellfish on or in water above land under water leased by the Town to another for shellfish cultivation.
- [Amended 5-5-1981]

## § 44-17. Commercial buyer's or buyer's helper permit required.

No person shall buy, sell, possess or otherwise deal with shellfish for commercial purposes unless such person has obtained a commercial buyer's permit or buyer's helper permit as

prescribed by this chapter.

## **§ 44-18. Application for commercial buyer's permit.**

- A. Each commercial buyer's permit application shall be made in duplicate, in writing, on the form prescribed by the Town Clerk and shall include the applicant's name; residence; mailing address; date of birth; weight; height; color of hair and eyes; signature; the description, license plate number and name and address of the owner of each motor vehicle to be used by the applicant in dealing with shellfish for commercial purposes; and all other information requested by the Town Clerk.
- B. Each commercial buyer's permit application shall be accompanied by a fee of \$300.
- C. Each commercial buyer's permit application shall be accompanied by a New York State Department of Environmental Conservation permit authorizing the applicant to deal with shellfish for commercial purposes.
- D. The Town Clerk shall issue to each person to whom a commercial buyer's permit is issued one decal for each motor vehicle to be used by such person in dealing with shellfish for commercial purposes.

## **§ 44-19. Application for buyer's helper permit.**

- A. Each buyer's helper permit application shall be made in duplicate, in writing, on the form prescribed by the Town Clerk and shall include the applicant's name, residence, mailing address, date of birth, weight, height, color of hair and eyes, signature, name and address of the applicant's employer and all other information requested by the Town Clerk.
- B. Each buyer's helper permit application shall be accompanied by a fee of \$50.
- C. Each buyer's helper permit application shall be accompanied by the applicant's employer's commercial buyer's permit.

## **§ 44-20. Form of commercial buyer's permit and buyer's helper permit; nontransferability; carrying of permit; display of decals.**

- A. Each commercial buyer's permit and buyer's helper permit shall be in the form prescribed by the Town Clerk and shall contain the matters set forth upon the application.
- B. The original application shall be filed in the Town Clerk's office, and the duplicate application shall be filed in the Harbormaster's office.
- C. A person or entity to whom a commercial buyer's permit or buyer's helper permit has been issued shall not transfer, assign or allow any other person or entity to use the permit.
- D. No person or entity shall use a commercial buyer's permit or buyer's helper permit issued

to another person or entity.

- E. A commercial buyer's permit or buyer's helper permit shall be carried by a person dealing with shellfish for commercial purposes.
- F. A decal issued with a commercial buyer's permit shall be prominently displayed and clearly visible on the motor vehicle for which such decal is issued.

## **§ 44-21. Expiration of commercial buyer's permit and buyer's helper permit.**

Each commercial buyer's permit and buyer's helper permit shall be valid from the date of issuance and, unless sooner voided, suspended or revoked, shall expire on the 31st day of December next ensuing.

## **§ 44-22. Restrictions on dealing with shellfish for commercial purposes.**

- A. No person shall deal with shellfish for commercial purposes on property owned by the Town, during the period commencing 1/2 hour after sunset and ending at sunrise.  
[Amended 5-5-1981]
- B. A person dealing with shellfish for commercial purposes shall be in possession of a device for the sorting of shellfish as to size; such device shall have openings of not less than one inch (2.54 centimeters).
- C. No person shall buy or otherwise receive shellfish for commercial purposes from a person who has not obtained a Town of Islip commercial permit, Town of Islip commercial buyer's permit or Town of Islip buyer's helper permit.
- D. No person shall sell or otherwise transfer shellfish for commercial purposes to a person who has not obtained a commercial buyer's permit, buyer's helper permit or New York State Department of Environmental Conservation permit authorizing the person to whom it is issued to deal with shellfish for commercial purposes.

## **§ 44-23. Starfish, drills, periwinkles and whelks.**

[Amended 8-30-1983]

Starfish, drills, periwinkles and whelks, when taken, shall not be returned alive to Town lands underwater.

## **§ 44-24. Penalties for offenses.**

- A. Any person convicted of taking shellfish without a permit as required by § 44-3 or dealing with shellfish for commercial purposes without a permit as required by § 44-17 shall be guilty of a violation and punishable as follows:  
[Amended 6-19-2012]

- (1) For a first conviction: by a fine of not less than \$200 nor more than \$500.
  - (2) For a second or subsequent conviction within five years of a previous conviction for a like offense: by a fine of \$1,000.
- B. Any person convicted of taking shellfish on Sunday in violation of § 44-10D shall be guilty of a violation and punishable as follows:
- (1) For a first conviction: by a fine of not less than \$50 nor more than \$250.
  - (2) For a second or subsequent conviction within five years of a previous conviction for a like offense: by a fine of not less than \$250 nor more than \$500.
- C. Any person convicted of taking shellfish from an uncertified area in violation of § 44-10A or violating prohibitions, restrictions or regulations with regard to taking shellfish from a management area in violation of § 44-15E shall be guilty of the following:
- (1) A violation for a first conviction, punishable by a fine of not less than \$250 nor more than \$500 or by imprisonment for not less than three months nor more than one year, or by both such fine and imprisonment.
  - (2) A misdemeanor for a second or subsequent conviction within five years of a previous conviction for a like offense, punishable by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than one year, or by both such fine and imprisonment.
- D. Any person convicted of taking shellfish from Town lands underwater during the night in violation of § 44-10B or dealing with shellfish for commercial purposes on property owned by the Town during the night in violation of § 44-22A shall be guilty of the following:
- (1) A violation for a first conviction, punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment for not less than two months nor more than one year, or by both such fine and imprisonment.
  - (2) A misdemeanor for a second or subsequent conviction within five years of a previous conviction for a like offense, punishable by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than one year, or by both such fine and imprisonment.
- E. Any person convicted of taking shellfish by other than permitted means in violation of § 44-9 shall be guilty of a misdemeanor and punishable as follows:
- (1) For a first conviction: by a fine of not less than \$500 nor more than \$750 or by imprisonment for not less than six months nor more than one year, or by both such fine and imprisonment.
  - (2) For a second or subsequent conviction within five years of a previous conviction for a like offense: by a fine of not less than \$800 nor more than \$1,000 or by imprisonment for not less than six months nor more than one year, or by both such fine and imprisonment.
- F. Any person convicted of violating any provisions of this chapter, except as otherwise provided in § 44-24A, B, C or D shall be guilty of the following:
- (1) A violation for a first conviction, punishable by a fine of not less than \$50 nor more than \$200.



- (2) A misdemeanor for a second or subsequent conviction within five years of a previous conviction for a like offense, punishable by a fine of not less than \$200 nor more than \$400 or by imprisonment for not less than three months nor more than six months, or by both such fine and imprisonment.

- G. The Town Clerk, upon recommendation of the Commissioner of the Department of Environmental Control, may refuse to issue a permit or may suspend or revoke any permit issued under this chapter to any person convicted of one or more violations of this chapter or of any person convicted of a crime or of any partnership where any partner has been convicted of one or more violations of this chapter or convicted of a crime or of any corporation if any person having an interest in the corporation is convicted of one or more violations of this chapter or convicted of a crime.  
[Amended 5-3-1983; 6-19-2012]

## § 44-25. Seizures.

- A. Any peace or police officer shall have the power to seize as evidence without a warrant, any rake, tong, dredge or device other than a boat or vehicle, which he has cause to believe is being used or is possessed for the taking of shellfish in violation of the Town Shellfish Ordinance, provided that Subsection C requirements are fulfilled.  
[Amended 5-5-1981]
- B. Any peace or police officer shall have the power to seize without a warrant for conservation, health or evidentiary purposes, any shellfish taken or possessed in violation of the Town Shellfish Ordinance, provided that Subsection C requirements are fulfilled:  
[Amended 5-5-1981]
- (1) Shellfish seized for conservation purposes shall be returned to the bay.
- (2) Shellfish seized for health or evidentiary purposes shall be dealt with as provided in Subsection D.
- C. Seizures of shellfish and devices without a warrant are allowable, provided that there is not ample opportunity to obtain a warrant or when seizure of such shellfish or devices is reasonable to prevent their concealment or destruction. Ample opportunity includes advance knowledge of the existence and precise location of the shellfish or devices to be seized.
- D. Any peace or police officer shall have the power to retain custody of and provide for the safekeeping of anything seized as provided in Subsection A or B, as he deems appropriate, subject to the regulations of the Town, and subject to an order of any court having jurisdiction, until a determination of any prosecution arising from the violation or alleged violation with respect to which they are evidence.  
[Amended 5-5-1981]

## § 44-26. Forfeitures.

- A. Should the defendant be found guilty in any prosecution, civil or criminal, of a violation of any provision of this chapter, the defendant's interest in any and all shellfish rakes, tongs, dredges or devices, other than a boat or vehicle, taken or used for the purpose of taking shellfish in violation of such provision, shall be forfeited to the Town. Unless a claim of

ownership of such device shall be made to the Town by some other person within 30 days thereafter and shall be established by order of a court or to the satisfaction of the Town, such device shall be disposed of as the Town shall direct.

**B. Claim of ownership.**

- (1) For the purposes of this section a "claim of ownership" shall mean any lawful interest, including a part interest or security interest.
- (2) A claim of ownership shall not prevent vesting or revesting of ownership and right of possession in the Town pursuant to Subsection A of this section unless the person establishing it either establishes a right of ownership exclusive of any interest in the defendant or shall purchase or redeem from the Town any interest of the defendant by payment to the Town of the value thereof, together with the reasonable expenses of safekeeping of such property between the time of seizure and such redemption. Establishment of a claim of ownership shall not, in any event, prevent such revesting in the Town if the Town shall establish that the illegal use or possession of which the defendant is held liable or found guilty was expressly or impliedly permitted by the person establishing the claim of ownership.
- (3) Establishment of a claim of ownership consisting of a part ownership or a security interest shall not entitle the person establishing it to delivery of property as to which the interest of the defendant is declared confiscated or forfeited as provided in Subsection A of this section unless the person establishing it shall redeem any interest of the defendant by payment to the Town of the value thereof, together with the reasonable expenses of safekeeping of such property between the time of seizure and such redemption. Establishment of a claim of ownership shall not in any event entitle the person establishing it to delivery of the property if the Town shall establish that the illegal use or possession of such property, in the manner or for the purposes or in the circumstances making such use or possession illegal, was expressly or impliedly permitted by the person establishing such claim of ownership.
- (4) Where a person establishing a claim of ownership is required to purchase or redeem any interest of the defendant in a civil or criminal prosecution in order to be entitled to delivery of property in which such claim of ownership is established, such interest of the defendant must be so purchased or redeemed not less than 10 days after the price of purchase or redemption shall have been fixed by order of the court or agreed between the person whose claim is so established and the Town. If a person establishing a claim of ownership shall fail to purchase or redeem the interest of the defendant within the time provided in this subsection, or such longer time as may be provided by order of the court or agreement of the Town, he shall be deemed to have abandoned his claim of ownership, and the property may be disposed of as if no such claim had been asserted.
- (5) A person asserting a claim of ownership as provided in this section shall have the burden of proof.
- (6) In any action or proceeding in which any person asserts a claim of ownership with respect to property in which the interest of the defendant is declared confiscated and forfeited as provided in Subsection A of this section, the testimony of such person or of the defendant in the civil or criminal prosecution, or of both, shall not be deemed sufficient to establish his claim unless corroborated by documentary evidence or by testimony of some other person not interested in the event.

## § 44-27. Severability.

If any term, part, provision, section, subdivision or paragraph of this chapter shall be held unconstitutional or ineffective, in whole or in part, then, to the extent that it is not unconstitutional or ineffective, this chapter and such term, part, provision, section, subdivision or paragraph thereof shall be in full force and effect; and such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions or paragraphs thereof.

## **BIBLIOGRAPHY and RESOURCES on SHELLFISH AQUACULTURE**

### **LAWS**

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### **BACKGROUND CASE**

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