

# STATE OF NEW YORK

S. 7729

A. 9828

## SENATE - ASSEMBLY

February 14, 2018

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to permitting seaweed cultivation in underwater lands at Gardiner's and Peconic bays

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 13-0302 of the environmental conservation law, as  
2 added by chapter 425 of the laws of 2004, subdivision 10 as added by  
3 chapter 322 of the laws of 2016, is amended to read as follows:

4 § 13-0302. Lands underwater of Gardiner's and Peconic bays.

5 1. Underwater lands ceded to county of Suffolk. All the right, title  
6 and interest in which the people of the state of New York have in and to  
7 the lands under water of Gardiner's and Peconic bays in the county of  
8 Suffolk, except underwater lands within one thousand feet of the high  
9 water mark is hereby ceded to such county, for the purposes of shellfish  
10 or seaweed cultivation, to be managed and controlled by such county,  
11 provided that such lands shall revert to the state when they shall cease  
12 to be used for shellfish and seaweed cultivation. For the purposes of  
13 this section, the term "Gardiner's and Peconic bays" shall mean the  
14 waters of Gardiner's and Peconic bays and the tributaries thereof  
15 between the westerly shore of Great Peconic bay and an easterly line  
16 running from the most easterly point of Plum island to Goff point at the  
17 entrance of Napeague harbor.

18 2. Ratification. The grant of lands under the waters of Gardiner's and  
19 Peconic bays, by the commissioners of shell fisheries, in accordance  
20 with the provisions of chapter 385 of the laws of 1884, as amended,  
21 subsequently held and used by the grantees, heirs, successors, and  
22 assigns on which all taxes and assessments have been paid, are hereby  
23 ratified and confirmed. Any underwater lands in Gardiner's and Peconic

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 Bays previously granted that revert or escheat to the state or are  
2 subject to tax deed by the county of Suffolk shall be available to the  
3 county for leasing pursuant to this section. All other lands under such  
4 waters, which pursuant to such chapters, have escheated or reverted to  
5 the state, are hereby ceded to Suffolk county for the purposes of the  
6 cultivation of shellfish, subject to existing valid grants and ease-  
7 ments; provided however, that nothing in this section shall interfere  
8 with the right of the commissioner of general services to grant lands  
9 and easements under water to owners of adjacent uplands, pursuant to the  
10 provisions of the public lands law, or of the legislature to make such  
11 grants without regard to upland ownership, and to grant franchises to  
12 utilities, municipalities and governmental, educational, or scientific  
13 bodies for cables, outfalls, ecological studies, and experimentation  
14 with controlled marine life.

15 3. Leases for shellfish cultivation. Suffolk county may lease lands  
16 under water ceded to it by the state for the purpose of shellfish culti-  
17 vation. Provided if no such leases have been executed by December thir-  
18 ty-first, two thousand ten, such authority to lease pursuant to this  
19 section shall terminate.

20 a. Leases may be issued only within areas designated as shellfish  
21 cultivation zones on a map or maps to be prepared and approved by the  
22 county of Suffolk.

23 b. No lease shall be granted except upon written application on forms  
24 furnished by the county of Suffolk, and properly executed and signed by  
25 the applicant.

26 c. Before a lease is approved, notice shall be provided for at least  
27 two months by posting such notice at the bureau of marine resources in  
28 the department, the office of the county clerk, and the office of the  
29 town clerk in which all or any part of the lands to be leased are  
30 located. Such notice shall also be published in the official newspaper  
31 of the county. The notice shall include the name of the lessee, the  
32 boundaries of the lease, and the area of the lease. A copy of the  
33 proposed lease shall be available for public inspection and copying in  
34 the office of the county clerk.

35 4. Establishment of shellfish cultivation zones. Before leasing or  
36 using the lands hereby ceded to it, the county of Suffolk shall cause an  
37 accurate survey to be made of such lands, and a map or maps to be  
38 prepared therefrom. Such map or maps shall establish shellfish culti-  
39 vation zones within Gardiner's and Peconic bays. Such map or maps shall  
40 be approved by local law. After such map or maps have been adopted, the  
41 county shall have the authority to issue leases for shellfish culti-  
42 vation within the shellfish cultivation zones, as provided herein. Such  
43 map or maps shall be updated by the county of Suffolk every five years.

44 a. Underwater lands within one thousand feet of the high water mark  
45 shall not be included in a shellfish cultivation zone.

46 b. Underwater lands where bay scallops are produced regularly and  
47 harvested on a commercial basis shall not be included in a shellfish  
48 cultivation zone.

49 c. Underwater lands where there is an indicated presence of shellfish  
50 in sufficient quantity and quality and so located as to support signif-  
51 icant hand raking and/or tonging harvesting shall not be included in a  
52 shellfish cultivation zone.

53 d. Underwater lands where the leasing will result in a significant  
54 reduction of established commercial finfish or crustacean fisheries  
55 shall not be included in a shellfish cultivation zone.

1 5. Regulations for shellfish cultivation. The county shall, by local  
2 law, before leasing any such underwater lands, adopt regulations govern-  
3 ing:

- 4 a. applications for leases;
- 5 b. notices to be given;
- 6 c. the form and terms of leases;
- 7 d. standards for the approval or denial of leases;
- 8 e. administration of leases;
- 9 f. the transfer or renewal of leases;
- 10 g. marking grounds and testing;
- 11 h. fees;
- 12 i. recording of leases;
- 13 j. bonds; and
- 14 k. such other matters as are appropriate to the leasing program.

15 6. Department authority over shellfish cultivation. Notwithstanding  
16 any of the provisions of this section:

17 a. any person engaging in the cultivation or harvesting of shellfish  
18 in a shellfish cultivation zone pursuant to this section shall obtain a  
19 permit in accordance with section 13-0316 of this title; and

20 b. the department shall regulate and control the use of certain types  
21 of vessels and equipment for harvesting shellfish, requirements for  
22 reseeding, the right to enter upon such leased lands for reseeding or  
23 making shellfish population surveys, and enforce all other applicable  
24 state laws relating to said underwater lands.

25 7. Leases for seaweed cultivation.

26 a. Suffolk county may lease lands under water ceded to it by the state  
27 for the purpose of seaweed cultivation after approval by the county  
28 legislature of a seaweed cultivation viability study. Provided if no  
29 such leases have been executed by December thirty-first, two thousand  
30 twenty, such authority to lease pursuant to this section shall termi-  
31 nate. For the purposes of this section, "seaweed" means any species of  
32 marine macroalgae approved by the commissioner for cultivation in the  
33 waters of Gardiner's and Peconic bays.

34 b. Leases may be issued only within areas designated as seaweed culti-  
35 vation zones on a map or maps to be prepared and approved by the county  
36 of Suffolk.

37 c. No lease shall be granted except upon written application on forms  
38 furnished by the county of Suffolk, and properly executed and signed by  
39 the applicant.

40 d. Before a lease is approved, notice shall be provided for at least  
41 two months by posting such notice at the bureau of marine resources in  
42 the department, the office of the county clerk, and the office of the  
43 town clerk in which all or any part of the lands to be leased are  
44 located. Such notice shall also be published in the official newspaper  
45 of the county. The notice shall include the name of the lessee, the  
46 boundaries of the lease, and the area of the lease. A copy of the  
47 proposed lease shall be available for public inspection and copying in  
48 the office of the county clerk.

49 e. Before leasing or using the lands hereby ceded to it for seaweed  
50 cultivation, the county of Suffolk shall cause an accurate survey to be  
51 made of such lands, and a map or maps to be prepared therefrom. Such map  
52 or maps shall establish seaweed cultivation zones within Gardiner's and  
53 Peconic bays. Such map or maps shall be approved by local law. After  
54 such map or maps have been adopted, the county shall have the authority  
55 to issue leases for seaweed cultivation within the seaweed cultivation

1 zones, as provided herein. Such map or maps shall be updated by the  
2 county of Suffolk every five years.

3 f. Underwater lands within one thousand feet of the high water mark  
4 shall not be included in a seaweed cultivation zone.

5 g. Underwater lands where bay scallops are produced regularly and  
6 harvested on a commercial basis shall not be included in a seaweed  
7 cultivation zone.

8 h. Underwater lands where there is an indicated presence of shellfish  
9 in sufficient quantity and quality and so located as to support signif-  
10 icant hand raking and/or tonging harvesting shall not be included in a  
11 seaweed cultivation zone.

12 i. Underwater lands where the leasing will result in a significant  
13 reduction of established commercial finfish or crustacean fisheries  
14 shall not be included in a seaweed cultivation zone.

15 j. The county shall, by local law, before leasing any such underwater  
16 lands, adopt regulations governing:

17 (1) applications for leases;

18 (2) notices to be given;

19 (3) the form and terms of leases;

20 (4) standards for the approval or denial of leases;

21 (5) administration of leases;

22 (6) the transfer or renewal of leases;

23 (7) marking grounds and testing;

24 (8) fees;

25 (9) recording of leases;

26 (10) bonds; and

27 (11) such other matters as are appropriate to the leasing program.

28 k. Notwithstanding any of the provisions of this section:

29 (1) any person engaging in the cultivation or harvesting of seaweed in  
30 a seaweed cultivation zone pursuant to this section shall obtain all  
31 permits required by this chapter;

32 (2) the department shall regulate and control the use of certain types  
33 of vessels and equipment for harvesting seaweed, requirements for  
34 reseeding, the right to enter upon such leased lands, and enforce all  
35 other applicable state laws relating to said underwater lands; and

36 (3) any person engaging in the cultivation or harvesting of seaweed in  
37 a seaweed cultivation zone pursuant to this section shall receive  
38 species approval from the commissioner.

39 8. Duties of the county clerk. Leases issued pursuant to this section  
40 shall be recorded in the office of the county clerk in the manner and  
41 form to be determined by local law as provided in subdivision five of  
42 this section.

43 [~~8-~~] 9. Summary proceedings. Upon the failure of a lessee to pay the  
44 rental on any date due under the terms of the lease or upon revocation  
45 as provided for by local law pursuant to subdivision five or seven  
46 of this section, the county may, after written notice to the lessee declare  
47 the lease cancelled as of the date set forth in such notice, and may  
48 immediately thereafter evict the lessee from such lands. The provisions  
49 of article seven of the real property actions and proceedings law shall  
50 apply and govern the procedure in such case.

51 [~~9-~~] 10. Disposition of fees and rents. All fees and rents received  
52 shall be deposited into the general fund of the county. However, in the  
53 alternative, nothing shall prohibit the county of Suffolk, by local law,  
54 from establishing a special fund for the promotion of aquaculture where  
55 such fees and rents shall be deposited.

1 ~~[10. Suffolk county shall be authorized to allow the underwater lands~~  
2 ~~at Gardiner's and Peconic Bays within the shellfish cultivation zone to~~  
3 ~~be used for the implementation of a pilot program to conduct research~~  
4 ~~and scientific assessment of the feasibility of seaweed cultivation.~~  
5 ~~Such pilot program shall be limited to persons holding a lease from~~  
6 ~~Suffolk county for shellfish cultivation and shall be limited to a total~~  
7 ~~of five acres of such cultivation zone provided that any one person may~~  
8 ~~be authorized to conduct seaweed cultivation on no more than one acre of~~  
9 ~~the lease. Suffolk county shall provide a report to the legislature and~~  
10 ~~the department on the pilot program no later than January first, two~~  
11 ~~thousand twenty six.]~~

12 § 2. If any clause, sentence, paragraph, section or part of this act  
13 shall be adjudged by any court of competent jurisdiction to be invalid,  
14 such judgment shall not affect, impair or invalidate the remainder ther-  
15 eof, but shall be confined in its operation to the clause, sentence,  
16 paragraph, section or part thereof directly involved in the controversy  
17 in which such judgment shall have been rendered.

18 § 3. This act shall take effect immediately.