

# STATE OF NEW YORK

10442

## IN ASSEMBLY

May 18, 2020

Introduced by COMMITTEE ON RULES -- (at request of 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 Assem-  
bly, 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  
24 Bays previously granted that revert or escheat to the state or are  
25 subject to tax deed by the county of Suffolk shall be available to the  
26 county for leasing pursuant to this section. All other lands under such  
27 waters, which pursuant to such chapters, have escheated or reverted to

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

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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 for shellfish cultivation. 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 for shellfish cultivation. 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 over shellfish cultivation. 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. Leases for seaweed cultivation.

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

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

c. 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.

d. 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.

e. Before leasing or using the lands hereby ceded to it for seaweed cultivation, 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 seaweed 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 seaweed cultivation within the seaweed cultivation zones, as provided herein. Such map or maps shall be updated by the county of Suffolk every five years.

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

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

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

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

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

13 (1) applications for leases;

14 (2) notices to be given;

15 (3) the form and terms of leases;

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

17 (5) administration of leases;

18 (6) the transfer or renewal of leases;

19 (7) marking grounds and testing;

20 (8) fees;

21 (9) recording of leases;

22 (10) bonds; and

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

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

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

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

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

35 8. Duties of the county clerk. Leases issued pursuant to this section  
36 shall be recorded in the office of the county clerk in the manner and  
37 form to be determined by local law as provided in subdivision five of  
38 this section.

39 ~~[8-]~~ 9. Summary proceedings. Upon the failure of a lessee to pay the  
40 rental on any date due under the terms of the lease or upon revocation  
41 as provided for by local law pursuant to subdivision five or seven of  
42 this section, the county may, after written notice to the lessee declare  
43 the lease cancelled as of the date set forth in such notice, and may  
44 immediately thereafter evict the lessee from such lands. The provisions  
45 of article seven of the real property actions and proceedings law shall  
46 apply and govern the procedure in such case.

47 ~~[9-]~~ 10. Disposition of fees and rents. All fees and rents received  
48 shall be deposited into the general fund of the county. However, in the  
49 alternative, nothing shall prohibit the county of Suffolk, by local law,  
50 from establishing a special fund for the promotion of aquaculture where  
51 such fees and rents shall be deposited.

52 ~~[10- Suffolk county shall be authorized to allow the underwater lands~~  
53 ~~at Gardiner's and Peconic Bays within the shellfish cultivation zone to~~  
54 ~~be used for the implementation of a pilot program to conduct research~~  
55 ~~and scientific assessment of the feasibility of seaweed cultivation.~~  
56 ~~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.]~~

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

§ 3. This act shall take effect immediately.