

STATE OF NEW YORK

7833

IN SENATE

January 12, 2022

Introduced by Sen. KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to permitting seaweed cultivation in underwater lands at Gardiner's and Peconic bays and commercial fishing licenses; and to amend a chapter of the laws of 2021 amending the environmental conservation law relating to permitting kelp cultivation in underwater lands at Gardiner's and Peconic bays and commercial fishing licenses, as proposed in legislative bills numbers S. 6532-A and A. 7547-A, in relation to permitting seaweed cultivation in underwater lands at Gardiner's and Peconic bays and commercial fishing licenses

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

1 Section 1. The fourth undesignated paragraph of section 1 of a chapter
2 of the laws of 2021 amending the environmental conservation law relating
3 to permitting kelp cultivation in underwater lands at Gardiner's and
4 Peconic bays and commercial fishing licenses, as proposed in legislative
5 bills numbers S.6532-A and A.7547-A, is amended to read as follows:

6 States including Connecticut, Massachusetts, Maine, and Rhode Island
7 have already established kelp and commercial seaweed aquaculture
8 programs. In New York, there is an opportunity to promote this industry
9 by providing access for kelp and other types of seaweed aquaculture to
10 state owned underwater lands ceded to Suffolk County.

11 § 2. Subdivisions 1, 2, 7, 8, 9 and 10 of section 13-0302 of the envi-
12 ronmental conservation law, as amended by a chapter of the laws of 2021,
13 amending the environmental conservation law relating to permitting kelp
14 cultivation in underwater lands at Gardiner's and Peconic bays and
15 commercial fishing licenses, as proposed in legislative bills numbers
16 S.6532-A and A.7547-A, are amended to read as follows:

17 1. Underwater lands ceded to county of Suffolk. All the right, title
18 and interest in which the people of the state of New York have in and to
19 the lands under water of Gardiner's and Peconic bays in the county of
20 Suffolk, except underwater lands within one thousand feet of the high
21 water mark is hereby ceded to such county, for the purposes of shellfish

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

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1 or [~~kelp~~] seaweed cultivation, to be managed and controlled by such
2 county, provided that such lands shall revert to the state when they
3 shall cease to be used for shellfish or seaweed cultivation. For the
4 purposes of this section, the term "Gardiner's and Peconic bays" shall
5 mean the waters of Gardiner's and Peconic bays and the tributaries ther-
6 eof between the westerly shore of Great Peconic bay and an easterly line
7 running from the most easterly point of Plum island to Goff point at the
8 entrance of Napeague harbor.

9 2. Ratification. The grant of lands under the waters of Gardiner's and
10 Peconic bays, by the commissioners of shell fisheries, in accordance
11 with the provisions of chapter 385 of the laws of 1884, as amended,
12 subsequently held and used by the grantees, heirs, successors, and
13 assigns on which all taxes and assessments have been paid, are hereby
14 ratified and confirmed. Any underwater lands in Gardiner's and Peconic
15 Bays previously granted that revert or escheat to the state or are
16 subject to tax deed by the county of Suffolk shall be available to the
17 county for leasing pursuant to this section. All other lands under such
18 waters, which pursuant to such chapters, have escheated or reverted to
19 the state, are hereby ceded to Suffolk county for the purposes of the
20 cultivation of shellfish or seaweed, subject to existing valid grants
21 and easements; provided however, that nothing in this section shall
22 interfere with the right of the commissioner of general services to
23 grant lands and easements under water to owners of adjacent uplands,
24 pursuant to the provisions of the public lands law, or of the legisla-
25 ture to make such grants without regard to upland ownership, and to
26 grant franchises to utilities, municipalities and governmental, educa-
27 tional, or scientific bodies for cables, outfalls, ecological studies,
28 and experimentation with controlled marine life.

29 7. Leases for [~~kelp~~] seaweed cultivation. [~~a.~~] Suffolk county may
30 lease lands under water ceded to it by the state for the purpose of
31 [~~kelp~~] seaweed cultivation, provided if no such leases have been
32 executed by December thirty-first, two thousand thirty-one, such author-
33 ity to lease pursuant to this section shall terminate. Nothing shall
34 preclude the county from issuing a single lease to an applicant for both
35 shellfish and [~~kelp~~] seaweed, provided that the application complies
36 with all the requirements of this section. For the purposes of this
37 section, [~~"kelp"~~] "seaweed" means any [~~of the brown seaweeds of the~~
38 order of Laminariales] marine macroalgae that is native or indigenous to
39 the marine and coastal district and approved by the commissioner for
40 cultivation in the waters of Gardiner's and Peconic bays.

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

44 [~~c.~~] b. No lease shall be granted, except upon written application on
45 forms furnished by the county of Suffolk, and properly executed and
46 signed by the applicant.

47 [~~d.~~] c. Before a lease is approved, notice shall be provided for at
48 least two months by posting such notice at the [~~bureau~~] division of
49 marine resources in the department, the office of the county clerk, and
50 the office of the town clerk in which all or any part of the lands to be
51 leased are located. Such notice shall also be published in the official
52 newspaper of the county. The notice shall include the name of the
53 lessee, the boundaries of the lease, and the area of the lease. A copy
54 of the proposed lease shall be available for public inspection and copy-
55 ing in the office of the county clerk.

1 ~~[e-]~~ 8. Establishment of seaweed cultivation zones. Before leasing or
2 using the lands hereby ceded to it for ~~[kelp]~~ seaweed cultivation, the
3 county of Suffolk shall cause an accurate survey to be made of such
4 lands, and a map or maps to be prepared therefrom. Such map or maps
5 shall establish ~~[kelp]~~ seaweed cultivation zones within Gardiner's and
6 Peconic bays. Such map or maps shall be approved by local law. After
7 such map or maps have been adopted, the county shall have the authority
8 to issue leases for ~~[kelp]~~ seaweed cultivation within the ~~[kelp]~~ seaweed
9 cultivation zones, as provided herein. Such map or maps shall be updated
10 by the county of Suffolk every five years.

11 ~~[f-]~~ a. Underwater lands within one thousand feet of the high water
12 mark shall not be included in a ~~[kelp]~~ seaweed cultivation zone.

13 ~~[g-]~~ b. Underwater lands where bay scallops are produced regularly and
14 harvested on a commercial basis shall not be included in a ~~[kelp]~~ seaw-
15 eed cultivation zone.

16 ~~[h-]~~ c. Underwater lands where there is an indicated presence of
17 shellfish in sufficient quantity and quality and so located as to
18 support significant hand raking and/or tonging harvesting shall not be
19 included in a ~~[kelp]~~ seaweed cultivation zone.

20 ~~[i-]~~ d. Underwater lands where the leasing will result in a signif-
21 icant reduction of established commercial finfish or crustacean fisher-
22 ies shall not be included in a ~~[kelp]~~ seaweed cultivation zone.

23 ~~[j-]~~ 9. Regulations for seaweed cultivation. The county shall, by
24 local law, before leasing any such underwater lands, adopt regulations
25 governing:

26 ~~[(i)]~~ a. applications for leases;

27 ~~[(ii)]~~ b. notices to be given;

28 ~~[(iii)]~~ c. the form and terms of leases;

29 ~~[(iv)]~~ d. standards for the approval or denial of leases;

30 ~~[(v)]~~ e. administration of leases;

31 ~~[(vi)]~~ f. the transfer or renewal of leases;

32 ~~[(vii)]~~ g. marking grounds and testing;

33 ~~[(viii)]~~ h. fees;

34 ~~[(ix)]~~ i. recording of leases;

35 ~~[(x)]~~ j. bonds; and

36 ~~[(xi)]~~ k. such other matters as are appropriate to the leasing
37 program.

38 ~~[k-]~~ 10. Department authority over seaweed cultivation. Notwithstand-
39 ing any of the provisions of this section:

40 ~~[(i)]~~ a. any person engaging in the cultivation or harvesting of
41 ~~[kelp]~~ seaweed in a ~~[kelp]~~ seaweed cultivation zone pursuant to this
42 section shall obtain all permits required by this chapter;

43 ~~[(ii)]~~ b. the department ~~[shall]~~ may regulate and control the use of
44 certain types of vessels and equipment for harvesting ~~[kelp]~~ seaweed,
45 requirements for reseeding, the right to enter upon such leased lands,
46 and enforce all other applicable state laws relating to said underwater
47 lands; and

48 ~~[(iii)]~~ c. any person engaging in the cultivation or harvesting of
49 ~~[kelp]~~ seaweed in a ~~[kelp]~~ seaweed cultivation zone pursuant to this
50 section shall ~~[receive approval from the commissioner]~~ obtain a permit
51 in accordance with section 13-0316 of this title.

52 ~~[8-]~~ 11. Duties of the county clerk. Leases issued pursuant to this
53 section shall be recorded in the office of the county clerk in the
54 manner and form to be determined by local law as provided in subdivision
55 five of this section.

1 ~~[9-]~~ 12. Summary proceedings. Upon the failure of a lessee to pay the
2 rental on any date due under the terms of the lease or upon revocation
3 as provided for by local law pursuant to subdivision five or seven of
4 this section, the county may, after written notice to the lessee declare
5 the lease cancelled as of the date set forth in such notice, and may
6 immediately thereafter evict the lessee from such lands. The provisions
7 of article seven of the real property actions and proceedings law shall
8 apply and govern the procedure in such case.

9 ~~[10-]~~ 13. Disposition of fees and rents. All fees and rents received
10 shall be deposited into the general fund of the county. However, in the
11 alternative, nothing shall prohibit the county of Suffolk, by local law,
12 from establishing a special fund for the promotion of aquaculture where
13 such fees and rents shall be deposited.

14 § 3. Subdivision 10 of section 13-0302 of the environmental conserva-
15 tion law, as added by chapter 322 of the laws of 2016, is amended to
16 read as follows:

17 ~~[10-]~~ 14. Suffolk county shall be authorized to allow the underwater
18 lands at Gardiner's and Peconic Bays within the shellfish cultivation
19 zone to be used for the implementation of a pilot program to conduct
20 research and scientific assessment of the feasibility of seaweed culti-
21 vation. Such pilot program shall be limited to persons holding a lease
22 from Suffolk county for shellfish cultivation and shall be limited to a
23 total of five acres of such cultivation zone provided that any one
24 person may be authorized to conduct seaweed cultivation on no more than
25 one acre of the lease. Suffolk county shall provide a report to the
26 legislature and the department on the pilot program no later than Janu-
27 ary first, two thousand twenty-six.

28 § 4. Notwithstanding the provisions of article 5 of the general
29 construction law, the provisions of subdivision 10 of section 13-0302 of
30 the environmental conservation law, as amended by section three of this
31 act, are hereby revived and shall continue in full force and effect as
32 such provisions existed on the day before the date of a chapter of the
33 laws of 2021, amending the environmental conservation law relating to
34 permitting kelp cultivation in underwater lands at Gardiner's and Pecon-
35 ic bays and commercial fishing licenses, as proposed in legislative
36 bills numbers S.6532-A and A.7547-A, takes effect.

37 § 5. This act shall take effect on the same date and in the same
38 manner as a chapter of the laws of 2021, amending the environmental
39 conservation law relating to permitting kelp cultivation in underwater
40 lands at Gardiner's and Peconic bays and commercial fishing licenses, as
41 proposed in legislative bills numbers S.6532-A and A.7547-A, takes
42 effect; provided that the amendments to subdivision 10 of section
43 13-0302 of the environmental conservation law made by section three of
44 this act shall not affect the repeal of such subdivision and shall be
45 deemed repealed therewith.