

# STATE OF NEW YORK

S. 4028

A. 4213

2021-2022 Regular Sessions

## SENATE - ASSEMBLY

February 1, 2021

IN SENATE -- Introduced by Sen. PALUMBO -- 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,

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

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

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

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

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

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

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

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

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

52 c. Underwater lands where there is an indicated presence of shellfish  
53 in sufficient quantity and quality and so located as to support signif-  
54 icant hand raking and/or tonging harvesting shall not be included in a  
55 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-three, 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

1 such map or maps have been adopted, the county shall have the authority  
2 to issue leases for seaweed cultivation within the seaweed cultivation  
3 zones, as provided herein. Such map or maps shall be updated by the  
4 county of Suffolk every five years.

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

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

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

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

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

19 (1) applications for leases;

20 (2) notices to be given;

21 (3) the form and terms of leases;

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

23 (5) administration of leases;

24 (6) the transfer or renewal of leases;

25 (7) marking grounds and testing;

26 (8) fees;

27 (9) recording of leases;

28 (10) bonds; and

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

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

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

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

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

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

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

53 ~~[9.]~~ 10. Disposition of fees and rents. All fees and rents received  
54 shall be deposited into the general fund of the county. However, in the  
55 alternative, nothing shall prohibit the county of Suffolk, by local law,

1 from establishing a special fund for the promotion of aquaculture where  
2 such fees and rents shall be deposited.

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

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

20 § 3. This act shall take effect immediately.