STATE OF NEW YORK

6532--A

Cal. No. 984

2021-2022 Regular Sessions

IN SENATE

May 5, 2021

Introduced by Sens. KAMINSKY, MANNION, PALUMBO -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the environmental conservation law, in relation to permitting kelp 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:

Section 1. Legislative findings. The state of New York has made a significant investment in combating nitrogen pollution, low dissolved oxygen, harmful algal blooms and a variety of other water quality impairments that threaten our coastal waters and fisheries and human health.

Kelp, which is native to New York waters, plays an important role in the fight to restore the health of our waterways. Kelp acts as a natural sink for carbon and nitrogen in our bays while increasing oxygen levels and reducing acidification. Kelp serves as a natural habitat for fish and shellfish in the state's waters. As New York continues to fight climate change and nitrogen pollution, sustainable kelp farming can provide substantial environmental benefits for the state. Kelp farming has a very low environmental impact footprint, requiring no additional water or fertilizer use, but yields a valuable product.

In addition to the environmental benefits, there are economic benefits for New York state by entering the emerging kelp farming market. Kelp is an edible and nutritious food with a growing market. It is also utilized in cosmetic and personal care products and used in fertilizer and animal feed.

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

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

LBD11095-05-1

The cultivation of kelp is a growing industry with significant economic, health, and environmental benefits. The enactment of this legislation would promote kelp aquaculture in Gardiner's and Peconic Bays, create economic benefits in New York state, and restore water quality and fish habitat in the state's waterways.

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

§ 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 **or kelp** 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 **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 kelp cultivation.**

a. Suffolk county may lease lands under water ceded to it by the state for the purpose of kelp cultivation, provided if no such leases have been executed by December thirty-first, two thousand thirty-one, such authority to lease pursuant to this section shall terminate. Nothing

shall preclude the county from issuing a single lease to an applicant for both shellfish and kelp, provided that the application complies with all the requirements of this section. For the purposes of this section, "kelp" means any of the brown seaweeds of the order of Laminariales 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 kelp 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 kelp 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 kelp 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 kelp cultivation within the kelp 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 kelp cultivation zone.

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

h. 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 kelp cultivation zone.

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

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

(i) applications for leases;

(ii) notices to be given;

(iii) the form and terms of leases;

(iv) standards for the approval or denial of leases;

(v) administration of leases;

(vi) the transfer or renewal of leases;

(vii) marking grounds and testing;

(viii) fees;

(ix) recording of leases;

(x) bonds; and

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

k. Notwithstanding any of the provisions of this section:

(i) any person engaging in the cultivation or harvesting of kelp in a kelp cultivation zone pursuant to this section shall obtain all permits required by this chapter;

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

(iii) any person engaging in the cultivation or harvesting of kelp in a kelp cultivation zone pursuant to this section shall receive approval from the commissioner.

8. 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.~~] 9. 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 or seven 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.~~] 10. 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. 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.~~]

§ 3. Subdivisions 1, 2, 3, 4 and 5 of section 13-0328 of the environmental conservation law, subdivision 1 as amended by chapter 21 of the laws of 2019, paragraphs a and b and the opening paragraph of paragraph c of subdivision 1 as amended by section 1 of item R of subpart A of part XXX of chapter 58 of the laws of 2020, subparagraph (iv) of paragraph c of subdivision 1 as amended by chapter 490 of the laws of 2019, and subdivisions 2, 3, 4 and 5 as amended by section 2 of item R of subpart A of part XXX of chapter 58 of the laws of 2020, are amended to read as follows:

1. Commercial food fish licenses. Commercial food fish licenses provided for by section 13-0335 of this title shall be issued as follows:

a. for the period beginning January first, two thousand eighteen through December thirty-first, two thousand [~~twenty-one~~] twenty-two, the number of resident commercial food fish licenses and the number of non-resident commercial food fish licenses shall not exceed the following annual limits:

(i) for two thousand eighteen, the number of licenses shall be limited to the number of licenses issued in two thousand seventeen, plus fifty percent of any difference between the number of licenses issued in two thousand seventeen and nine hundred sixty-nine;

(ii) for two thousand nineteen, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(iii) for two thousand twenty, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph; [~~and~~]

(iv) for two thousand twenty-one, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph**; and**

(v) for two thousand twenty-two, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph.

b. for the period beginning January first, two thousand [~~twenty~~] **twenty-one** through December thirty-first, two thousand [~~twenty-one~~] **twenty-two**, persons who were issued a commercial food fish license in the previous year shall be eligible to be issued such license.

c. for the period beginning January first, two thousand [~~twenty~~] **twenty-one** through December thirty-first, two thousand [~~twenty-one~~] **twenty-two**, the department shall issue commercial food fish licenses to persons who were not issued such license in the previous year provided that the total number of such licenses issued to such persons does not exceed the difference between the number of licenses established in paragraph a of this subdivision and the number of such licenses issued pursuant to paragraph b of this subdivision, subject to the following:

(i) licenses shall be issued in the order in which the applications were received, except that where multiple applications are received by the department on the same day, applicants for whom the department has received notice of successful completion of an apprenticeship pursuant to subdivision seven of this section shall be considered by the department prior to other applicants;

(ii) licenses may be issued to individuals only;

(iii) licenses shall be issued to applicants who are sixteen years of age or older at the time of the application; and

(iv) licenses shall be issued only to persons who demonstrate in a manner acceptable to the department that they received an average of at least fifteen thousand dollars of income over three consecutive years from commercial fishing or fishing, or who successfully complete a commercial food fish apprenticeship pursuant to subdivision seven of this section. As used in this subparagraph, "commercial fishing" means the taking and sale of marine resources including fish, shellfish, crustacea or other marine biota and "fishing" means commercial fishing and carrying fishing passengers for hire. Individuals who wish to qualify based on income from "fishing" must hold a valid marine and coastal district party and charter boat license. No more than ten percent of the licenses issued each year based on income eligibility pursuant to this paragraph shall be issued to applicants who qualify based solely upon income derived from operation of or employment by a party or charter boat. For the income evaluation of this subdivision, the department may consider persons who would otherwise be eligible but for having served in the United States armed forces on active duty, provided that such individual (1) has received an honorable or general discharge, or (2) has a qualifying condition, as defined in section three hundred fifty of

the executive law, and has received a discharge other than bad conduct or dishonorable from such service, or (3) is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, shall not be deemed ineligible.

2. Commercial lobster permits. Commercial lobster permits provided for by section 13-0329 of this title shall be issued as follows:

for the period beginning January first, two thousand [~~twenty~~] twenty-one, through December thirty-first, two thousand [~~twenty-one~~] twenty-two, only persons who were issued a commercial lobster permit in the previous year shall be eligible to be issued such permit.

3. Commercial crab permits. Commercial crab permits provided for by section 13-0331 of this title shall be issued as follows:

a. for the period beginning January first, two thousand eighteen through December thirty-first, two thousand [~~twenty-one~~] twenty-two, the number of resident commercial crab permits and the number of non-resident commercial crab permits shall not exceed the following annual limits:

(i) for two thousand eighteen, the number of permits shall be limited to the number of permits issued in two thousand seventeen, plus fifty percent of any difference between the number of permits issued in two thousand seventeen and five hundred sixty-three;

(ii) for two thousand nineteen, the number of permits shall be limited to the number of permits established in subparagraph (i) of this paragraph;

(iii) for two thousand twenty, the number of permits shall be limited to the number of permits established in subparagraph (i) of this paragraph; [~~and~~]

(iv) for two thousand twenty-one, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph; and

(v) for two thousand twenty-two, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph.

b. for the period beginning January first, two thousand [~~twenty~~] twenty-one through December thirty-first, two thousand [~~twenty-one~~] twenty-two, persons who were issued a commercial crab permit in the previous year shall be eligible to be issued such permit.

c. for the period beginning January first, two thousand [~~twenty~~] twenty-one through December thirty-first, two thousand [~~twenty-one~~] twenty-two, the department shall issue commercial crab permits to persons who were not issued such permit in the previous year provided that the total number of such permits issued to such persons does not exceed the difference between the number of permits established in paragraph a of this subdivision and the number of such permits issued pursuant to paragraph b of this subdivision, subject to the following:

(i) permits shall be issued in the order in which the applications were received, except that where multiple applications are received by the department on the same day, applicants for whom the department has received notice of successful completion of an apprenticeship pursuant to subdivision seven of this section shall be considered by the department prior to other applicants;

(ii) permits may be issued to individuals only;

(iii) permits shall be issued to applicants who are sixteen years of age or older at the time of the application; and

(iv) permits shall be issued only to persons who demonstrate in a manner acceptable to the department that they received an average of at least fifteen thousand dollars of income over three consecutive years from commercial fishing or fishing, or who successfully complete an apprenticeship pursuant to subdivision seven of this section. As used in this subparagraph, "commercial fishing" means the taking and sale of marine resources including fish, shellfish, crustacea or other marine biota and "fishing" means commercial fishing and carrying fishing passengers for hire. Individuals who wish to qualify based on income from "fishing" must hold a valid marine and coastal district party and charter boat license. No more than ten percent of the permits issued each year based on income eligibility pursuant to this paragraph shall be issued to applicants who qualify based upon income derived from operation of or employment by a party or charter boat.

4. Commercial whelk or conch licenses. Commercial whelk or conch licenses provided for by section 13-0330 of this title shall be issued as follows:

a. for the period beginning January first, two thousand eighteen through December thirty-first, two thousand [~~twenty-one~~] twenty-two, the number of resident commercial whelk or conch licenses and the number of non-resident commercial whelk or conch licenses shall not exceed the following annual limits:

(i) for two thousand eighteen, the number of licenses shall be limited to the number of licenses issued in two thousand seventeen plus fifty percent of any difference between the number of licenses issued in two thousand seventeen and two hundred fifty-two;

(ii) for two thousand nineteen, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(iii) for two thousand twenty, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph; [~~and~~]

(iv) for two thousand twenty-one, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph; and

(v) for two thousand twenty-two, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph.

b. for the period beginning January first, two thousand [~~twenty~~] twenty-one through December thirty-first, two thousand [~~twenty-one~~] twenty-two, persons who were issued a commercial whelk or conch license in the previous year shall be eligible to be issued such license.

c. for the period beginning January first, two thousand [~~twenty~~] twenty-one through December thirty-first, two thousand [~~twenty-one~~] twenty-two, persons who were not issued a commercial whelk or conch license in the previous year shall be eligible to be issued such license provided that the total number of such licenses issued to such persons shall not exceed the difference between the number of licenses established in paragraph a of this subdivision and the number of such licenses issued pursuant to paragraph b of this subdivision, subject to the following:

(i) licenses shall be issued in the order in which the applications were received, except that where multiple applications are received by the department on the same day, applicants for whom the department has received notice of successful completion of an apprenticeship pursuant to subdivision seven of this section shall be considered by the department prior to other applicants;

(ii) licenses may be issued to individuals only;

(iii) licenses shall be issued to applicants who are sixteen years of age or older at the time of the application; and

(iv) licenses shall be issued only to persons who demonstrate in a manner acceptable to the department that they received an average of at least fifteen thousand dollars of income over three consecutive years from commercial fishing or fishing, or who successfully complete an apprenticeship pursuant to subdivision seven of this section. As used in this subparagraph, "commercial fishing" means the taking and sale of marine resources including fish, shellfish, crustacea or other marine biota and "fishing" means commercial fishing and carrying fishing passengers for hire. Individuals who wish to qualify based on income from "fishing" must hold a valid marine and coastal district party and charter boat license. No more than ten percent of the licenses issued each year pursuant to this paragraph shall be issued to applicants who qualify based upon income derived from operation of or employment by a party or charter boat.

5. Marine and coastal district party and charter boat licenses. Marine and coastal district party and charter boat licenses provided for by section 13-0336 of this title shall be issued as follows, except that this subdivision shall not apply to the owner or operator of a party boat or charter boat whose vessel is classified by the United States Coast Guard as an Inspected Passenger Vessel and which is licensed to carry more than six passengers:

a. for the years two thousand [~~twenty~~] twenty-one through two thousand [~~twenty-one~~] twenty-two, the annual number of marine and coastal district party and charter boat licenses issued shall not exceed five hundred seventeen.

b. for the years two thousand [~~twenty~~] twenty-one through two thousand [~~twenty-one~~] twenty-two, persons who were issued a marine and coastal district party and charter boat license in the previous year shall be eligible to be issued such license.

c. for the years two thousand [~~twenty~~] twenty-one through two thousand [~~twenty-one~~] twenty-two, the department shall issue marine and coastal district party and charter boat licenses to persons who were not issued such license in the previous year, provided that the total number of licenses issued does not exceed five hundred seventeen, subject to the following:

(i) licenses shall be issued in the order in which the applications were received;

(ii) licenses shall be issued only to persons who hold an Uninspected Passenger Vessel license issued by the United States Coast Guard.

§ 4. 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.

§ 5. This act shall take effect immediately; provided that the amendments to subdivision 10 of section 13-0302 of the environmental conservation law made by section two of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith; and provided that the amendments to section 13-0328 of the environmental conservation law made by section three of this act shall take effect December 31, 2021.