§ 13-0301. Lease of state-owned underwater lands for shellfish cultivation.

1. Leases. a. Except as provided in paragraph b of this subdivision, the department may lease state-owned underwater lands within the marine and coastal district for the cultivation of shellfish. The written approval of the office of general services shall be obtained for the lease of land within five hundred feet of the high water mark.

b. The following lands underwater shall not be leased: (i) lands where there is an indicated presence of shellfish in sufficient quantity and quality and so located as to support significant hand raking or tonging harvesting; (ii) lands where the leasing will result in a significant reduction to established commercial finfish or crustacean fisheries; (iii) lands where bay scallops are produced regularly on a commercial basis; and (iv) lands underwater 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 Napeaque harbor.

2. Regulations. a. Regulations adopted by the department for the implementation and administration of this section shall include regulations with respect to leasing forms and procedures; public notice of leasing; execution of leases; minimum rental fees; bidding procedures; posting and forfeiture of financial security, renewals, termination and assignment of leases; marking and testing of grounds; maintenance of boundary markers; collection of rental and recording fees; submission and approval of cultivation plans; harvesting gear; acreage of lands to be let and term of leases and other matters pertinent to underwater land use and shellfish cultivation.

b. Regulations adopted by the department for the implementation and administration of this section shall include the following requirements: (i) leases shall be awarded after public auction following due notice; (ii) leases shall be awarded to the highest responsible bidder; (iii) bidders shall provide a detailed cultivation plan; and (iv) cultivation of shellfish shall commence within one year of the award of the lease.

3. Summary proceedings. Upon failure to pay the rental on any date due under the terms of the lease or upon revocation, the department 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 cases.

4. Limitations. The commissioner of general services shall not grant or lease lands for shellfish cultivation. The public shall not be excluded from the taking of shellfish from underwater lands granted or leased by such commissioner for other purposes; provided, however, that should any grant or lease made by such commissioner for such other purposes include lands leased by the department for shellfish cultivation the lessee for shellfish cultivation shall have the exclusive right to use and take shellfish from such leased lands for a period of two years from the date of the grant or lease by such commissioner or until the expiration of the shellfish cultivation lease, whichever is the earliest, and may prior to the expiration of such period, remove and transplant the shellfish from such lands to other lands leased, owned or controlled by such lessee.