

**Suffolk County Shellfish Aquaculture Lease Program  
in Peconic Bay and Gardiners Bay**

**Administrative Guidance**

This draft document was prepared by the Suffolk County Department of Planning and Cashin Associates, P.C. When finalized, it will be incorporated into the *Program Management Report*, which will document the preparation and all details of the Shellfish Aquaculture Lease Program for subsequent Suffolk County policy review and action.

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## **Introduction**

The Suffolk County Shellfish Aquaculture Lease Program (Lease Program) in Peconic Bay and Gardiners Bay is designed to fulfill the requirements set forth in New York State Environmental Conservation Law §13-0302 (2004 Leasing Law) by establishing a framework for the leasing of underwater lands for the purpose of shellfish aquaculture that will minimize environmental impacts and user conflicts while supporting the growth of the shellfish aquaculture industry. The development of this program required the collective knowledge and input from numerous individuals, agencies, organizations, businesses, and other interested parties. Obtaining this knowledge was facilitated by the participation of the Aquaculture Lease Program Advisory Committee (ALPAC) at its meetings, which included public input sessions. In addition to ALPAC meetings, individual and group meetings were held that involved site visits to aquaculture operations and interviews with over 70 individuals including local government representatives, shellfish growers, baymen, fishermen, environmental organizations, professional/trade groups, recreational boaters, and marine scientists.

Significant data on the environmental characteristics and features of Peconic Bay and Gardiners Bay including wetlands, submerged aquatic vegetation, water quality, natural resources, and sediments were collected as part of the program development. In addition to the environmental information, data on socio-economic conditions and maritime traditions were also collected and analyzed to assess any impacts on resources that may occur through implementation of a lease program.

In accordance with the 2004 Leasing Law and in support of the maritime tradition of shellfish aquaculture in Peconic Bay and Gardiners Bay, Suffolk County has developed a Lease Program that will not only support the continuation of existing shellfish aquaculture in the bays, but also encourage moderate growth of the shellfish industry. This program provides individuals with an opportunity to obtain access to the underwater lands of Peconic Bay and Gardiners Bay for the purpose of commercial shellfish aquaculture. The program also provides municipalities, researchers and not-for-profit entities with the opportunity to obtain non-commercial shellfish cultivation leases for experimental/educational purposes and for shellfish resource restoration.

This document contains a full description of all aspects of the Lease Program. As such, it provides the basis for adoption of the program into law. It also contains all of the required information that is needed by a potential applicant to apply for a commercial or non-commercial shellfish aquaculture lease in Peconic Bay and Gardiners Bay, Suffolk County, New York.

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## **Definitions**

This section includes the definitions of various words and phrases that are used in this guidance document.

- ♦ **Annual Acreage Cap Limit:** Leases for new shellfish aquaculture operations will consist of 5- or 10-acre parcels. New shellfish aquaculture leases will be limited to a total of 60 additional acres per year, for a maximum of 300 acres within the first five years of the program, and a total of 600 acres by the 10<sup>th</sup> year of the program. Sixty acres/year of new leases represents a growth rate of 1% per year based on the total amount of underwater land acreage permitted for TMAUAs, and held under private oyster grant ownership that could potentially be used for cultivation, as of December 31, 2007.
- ♦ **Approved Waters:** waters of the County which have been classified by the New York State Department of Environmental Conservation (NYSDEC) as certified for the taking of shellfish for human consumption on a regular basis.
- ♦ **Aquaculture:** the cultivation of aquatic life for habitat restoration, human use and consumption.
- ♦ **Aquaculture Lease Advisory Board:** The County will establish a board known as the Aquaculture Lease Advisory Board that will consist of: the Director of the Department of Planning or his/her designee; the Commissioner of the Department of Environment and Energy or his/her designee; and the Commissioner of the Department of Economic Development and Workforce Housing or his/her designee. The Aquaculture Lease Advisory Board, chaired by the Director of the Department of Planning, will be responsible for reviewing lease applications and issuing decisions on lease issuance or denial; termination of leases; requests for changes in lease location, and related administrative actions required for implementation of the Lease Program.
- ♦ **Equipment:** rakes, cages, traps, floats, racks, rafts and nets and any other goods, supplies, furnishings, apparatus, etc., used for and in support of shellfish cultivation.
- ♦ **Fallow Grant:** If a grant has had no permitted shellfish cultivation activity involving species other than oysters for the 10-year period between January 1, 1999 and December 31, 2008, it

will be considered “fallow” and may only enter the Lease Program in a limited phased process. A fallow grant holder may apply for up to two 10-acre leases on his/her site during the first five years of the Lease Program and will be subject to the full application process including public review and comment. The program will be evaluated after five years, and at that time, the determination will be made to possibly expand leases on these formerly fallow grants.

- ♦ **On-Bottom Culture:** means the raising, breeding, growing or planting of marine plant or animal life on, or in, any natural underwater lands of the state.
- ♦ **Off-Bottom Culture:** means the raising, breeding or growing of marine plant or animal life, including containment on, or in, any raft, rack, float, cage, box or other similar device or structure in any natural waters of the state.
- ♦ **Private Oyster Grant:** the underwater lands previously granted to private individuals by Suffolk County during the mid 1800s to the early 1900s, for purposes of oyster cultivation.
- ♦ **Shellfish:** “*Shellfish*” means oysters, scallops, and all kinds of clams and mussels (ECL Article 11, §11-0103).
- ♦ **Shellfish Aquaculture Lease:** the document that conveys the right to conduct shellfish aquaculture activities on Suffolk County owned underwater lands or in the water column. Lease issuance by Suffolk County is discretionary.
- ♦ **Shellfish Aquaculture Lease Lands:** those lands conveyed by Suffolk County under a shellfish aquaculture lease document.
- ♦ **Shellfish Aquaculture Lease Map:** the map that shows the Shellfish Cultivation Zone, portions of which have been subdivided by a grid system into 20-acre plots, each of which has been assigned a unique identifying number. Ten-acre leases are located within each plot. The grid system on this map does not apply to oyster grants, which have been identified using a separate numbering system.
- ♦ **Shellfish Cultivation:** means the controlled, or partially controlled, raising, breeding, growing, and containment of Shellfish in any marine hatchery or through on-bottom or off-

bottom culture as permitted by the County, State Fish and Wildlife Law, federal agencies, and any other applicable local laws and ordinances.

- ♦ **Shellfish Cultivation Zone:** the area in Peconic Bay and Gardiners Bay within which shellfish aquaculture leases can be issued. These areas are shown on the Shellfish Cultivation Zone Map adopted by Suffolk County. The zone includes Temporary Marine Area Use Assignment (TMAUA) locations, private oyster grants, and other contiguous areas where the impacts of shellfish aquaculture activities on environmental and socio-economic conditions will be minimal. The zone includes some isolated 5-acre TMAUA locations, as well as isolated oyster grant parcels of varying size.
- ♦ **Shellfish Seed:** any shellfish measuring less than legal size as established under New York State law or regulation.
- ♦ **Structures and Appurtenances:** monuments, stakes, buoys, anchoring devices, and markers on the leased premises, unless installed by Suffolk County.
- ♦ **Substantial Shellfish Aquaculture Activity:** a good faith effort to prepare an aquaculture site; acquire financing, equipment and/or seed; plant, cultivate, or harvest product; or show some sort of active aquaculture activity on a shellfish aquaculture lease.
- ♦ **Temporary Marine Area Use Assignment (TMAUA):** A circular parcel of underwater land with a diameter of 500 feet (approximately five acres) issued by NYSDEC for the purposes of shellfish cultivation. All TMAUAs are for temporary use only, expiring on December 31 of the year issued. A TMAUA must be renewed each year with the NYSDEC Division of Fish, Wildlife, and Marine Resources. All TMAUAs are permitted for off-bottom shellfish culture only. All TMAUAs that meet the requirements set forth in this program and that have associated permits issued by the NYSDEC to cultivate shellfish prior to December 31, 2007 will be eligible to participate in the Lease Program, and will not be considered as part of the annual acreage cap limit.
- ♦ **Wild Stock:** natural shellfish resources which grow within the waters of the Peconic Estuary and are not cultured in any way.

## Lease Application Process

### 1. Eligibility for Shellfish Aquaculture Leases

Individuals eligible for a shellfish aquaculture lease shall be at least 18 years of age. Each lease applicant is required to provide a federal tax ID number. All shellfish aquaculture leases must be located within the Shellfish Cultivation Zone. The Shellfish Aquaculture lease form is shown in Appendix A.

### 2. Lease Program Participants

#### a.) *NYSDEC Temporary Marine Area Use Assignments*

The County Lease Program will provide for the incorporation of the existing Temporary Marine Area Use Assignments (TMAUAs) previously issued by NYSDEC into the leasing program. To the extent possible under the Lease Program, TMAUA holders will be permitted to remain at their current location and will be given preference to those sites. It should also be noted that once the program is implemented, TMAUAs located in the area that is under County jurisdiction must be converted to a lease in order to continue aquaculture activities on that site. (Leases established from TMAUAs issued prior to December 31, 2007 will not be considered in the annual acreage cap for new lease development, i.e., 60 acres per year.)

i.) Holders of TMAUAs located within grids shown on the Aquaculture Lease Map will be required to submit a Lease Application to the Suffolk County Department of Planning (Department) as described in Appendix B of this guidance document. The applicant can request that the existing operation (5-acre circular plot) be continued without change, or he/she can request an expansion (10-acre square lease) or modification of the current operation, at the same location. The application will be subject to the public review process and other lease requirements prior to issuance of a lease by Suffolk County. A TMAUA holder can request a 5- or 10-acre lease at a different location in the Shellfish Cultivation Zone. If issued at the new location, the lease holder would have to relocate operations to the new location and vacate the former TMAUA location.

ii.) Holders of isolated TMAUAs shown on the Aquaculture Lease Map will be permitted to remain at that location, but must also submit a Lease Application to the Department. These TMAUA locations are regarded as out-lying plots in the

Shellfish Cultivation Zone because they have been used for cultivation at these locations without apparent conflicts. These holders have to convert their TMAUA site into a County lease; however, they cannot expand or alter their permitted operations. The County lease will provide for only a continuation of operations allowed under the TMAUA program for that site. A holder of an isolated TMAUA can relocate operations to an available grid site within the Shellfish Cultivation Zone, and can either remain a 5-acre off-bottom cultivation activity, or expand to a 10-acre on-/off-bottom activity in accordance with Lease Program requirements.

- iii.) Several existing TMAUAs appear to be located entirely or partially within 1,000 feet of the shoreline. The County has no leasing authority within this area. To allow for the participation of these sites in the Lease Program, a TMAUA holder will be given the opportunity to relocate operations to a plot outside of the 1,000 foot line as close to his/her original location as possible. The holder of such TMAUAs would have to fulfill the requirements of the lease application process. If the new nearby site is in a sensitive area, the operations would be limited to those permitted under the current TMAUA. The holder of a TMAUA entirely or partially within 1,000 feet from shore will also be given the opportunity to relocate to an available grid site, and will be subject to the lease review process. The holder can either remain a 5-acre off-bottom cultivation activity, or expand to a 10-acre on-/off- bottom activity.

b.) *Existing Private Oyster Grants*

- i.) Oyster grant owners do not need to apply for a shellfish aquaculture lease if their farm operations are limited to oyster cultivation only. Oyster grant owners must apply for a lease if they wish to cultivate shellfish species other than oysters. Any such leases issued do not count toward the annual acreage cap limit for new leases during the first two, five-year periods of Lease Program implementation.
- ii.) An oyster grant holder can apply for a lease on his/her grant, or a portion thereof, if the owner can document a prior historical or current use of the grant for shellfish aquaculture involving species other than oysters. To be considered active, the grant holder will need to provide documentation that aquaculture operations have been conducted on the grant within the 10-year period between January 1, 1999 and

December 31, 2008. Documentation can consist of: receipt for purchase of seed stock; proof of revenue from shellfish sales from the subject parcel; or other documentation confirming that viable aquaculture activity has taken place on the grant. Copies of relevant NYSDEC permits will also need to be provided. Active grant holders can apply for a lease on their grant subject to the procedures outlined in the Lease Application.

- iii.) The Department has identified a number of grants with title conflicts. Leases will not be issued on such grants until all title conflicts are resolved and documentation/proof of same has been submitted to the Department. If during the title vetting process, it is found that a grant is truly in public ownership and reverts to the County, the underwater lands involved may only then be leased if located outside of an environmentally/socio-economically sensitive area as mapped in Figure 2 of the Lease Program *Draft Generic Environmental Impact Statement*. However, it should be noted that the reverted grant lands will not be leased as a grant parcel, but shall be divided into 10-acre grid parcels, and shall be subject to new lease area requirements.
- iv.) Any privately owned oyster grant that is taken by the County through tax default procedures shall not be sold at auction. Said parcels shall be retained for general County purposes and may be leased for shellfish cultivation if located outside of an environmentally/socio-economically sensitive area as mapped in Figure 2 of the Lease Program *Draft Generic Environmental Impact Statement*.
- v.) If a grant has had no permitted aquaculture activity involving species other than oysters for the 10-year period between January 1, 1999 and December 31, 2008, it will be considered “fallow” and may only enter the Lease Program in a limited phased process. A fallow grant holder may apply for up to two 10-acre leases on his/her site during the first five years of the Lease Program and will be subject to the full application process including public review and comment. The program will be evaluated after five years, and at that time the determination will be made to possibly allow expansion of leases on these formerly fallow grants.

c.) *Leases Subject to Annual Acreage Cap Limit*

Those portions of the Shellfish Cultivation Zone that do not include TMAUAs or grants can also be leased subject to the Annual Acreage Cap Limit that applies during the first two, five-year periods of the program. These leases will be limited to 5 or 10 acres in size, with a cap of 60 acres leased during each year. After five years, up to 300 acres could be leased, and after 10 years, the maximum area that could be leased would total 600 acres. Applications for these leases will be accepted and processed in accordance with the requirements given in Appendix B.

d.) *Non-commercial Lease*

These leases include Experimental/Educational and Shellfish Resource Restoration Leases. These leases will be limited in scope and duration and must be located in the Shellfish Cultivation Zone as mapped. They will be reviewed on a case-by-case basis by the Department and will not be considered as part of the annual acreage cap limit on leases.

3. Lease Application Period

Applications for leases must be submitted between January and February of the year in which the applicant wishes to apply for the lease. (This application period may be different during the first year of program implementation.) Applications submitted after that time period will only be reviewed at the discretion of the Department. All applications received by the Department will be stamped with date and time in the order in which they are received, and preference for a particular site will go to the first complete application received for that site. The date of the receipt of a complete application will serve as the documented date for receipt of the application by the Department.

4. Identification of Desired Lease Area

For non-grant lease applications, an applicant must identify a preferred lease location and two alternative locations on the Shellfish Aquaculture Lease Map. The map will indicate available locations broken down into 20-acre parcels (a 10-acre lease area with a buffer zone). Each parcel will be identified with a number designation. The Department will provide latitude/longitude coordinates for the four corners of the 10-acre site. The

Aquaculture Lease Map will be available for viewing on the Suffolk County website and at the Department office. Preference for a particular lease site will be given to the first applicant requesting that site in a submitted, complete application. Those TMAUA holders prior to December 31, 2007 that wish to participate in the Lease Program will be given preference to the lease area where their TMAUA site is located. The Lease Map Identification Numbers are as follows:

- New lease sites that are part of the annual acreage cap limit will be identified by a designated grid letter and number (i.e., A1), as determined on the Aquaculture Lease Map.
- TMAUAs that remain at their current location, which will be used for off-bottom culture only, will be identified by the center point coordinates of the existing 5-acre circular plots, and by a designated grid letter and number on the Aquaculture Lease Map.
- TMAUAs that are located either partially or totally within the 1,000 foot shoreline buffer must move to nearby locations that are identified by designated numbers ATM1 through ATM4 as shown on the Aquaculture Lease Map.
- Isolated TMAUAs located in an area with environmental and/or socio-economic conflicts will be identified by numbers TM1 through TM16 as shown on the Aquaculture Lease Map.
- All private grants will be labeled GR1 through GR65 as shown on the Aquaculture Lease Map.

The Department reserves the right to deny a site requested by an applicant for leasing.

5. Pre-Application Meeting

Prior to completion of an application, the lease applicant is required to contact the Department to set up a pre-application meeting. The purpose of this meeting is to determine, prior to acceptance of the application, that there are no known existing conflicts in the proposed area or the alternative lease area sites. If no known conflicts exist, and the proposed sites are still available, the latitude and longitude coordinates of the lease area within the 20-acre parcel, and the two alternative sites, if applicable will be made available to the lease applicant. Applications submitted without a pre-application meeting will not be considered complete. NYSDEC will be invited to attend the pre-application meeting.

6. Submission of Application

The Department will provide application forms which must be completed and returned to the Department. Once an application has been submitted to the Department, a determination will be made as to whether the application is complete. The applicant will receive notice from the Department indicating that the application is complete, or incomplete. If incomplete, the Department will indicate the additional information required.

7. Number of Leases Permitted

Under the Lease Program, applicants will be limited to two leases. Separate applications must be submitted for each lease. The application for a second lease will be considered by the Department only if there is lease acreage available after all other applications requesting one (initial) lease have been processed. If the annual acreage cap limit has been met, the second lease application will be returned to the applicant. The same criteria for issuing a second lease will apply for the application process in the following year.

Subleasing is permitted, as described in Appendix G, but is limited to a total of one sublease per lease. The sublessee must obtain all permits required by NYSDEC or any other regulatory agency prior to conducting shellfish cultivation operations on the leased parcel. The sublease site boundaries must be surveyed by a licensed land surveyor and included on a survey filed with the County along with the sublease agreement. The applicant/lease holder must provide a copy of an endorsement to each and all required insurance policies naming the sublessee as an additionally insured. This application does not relieve the lease holder from the covenants, obligations, duties, and responsibilities existing pursuant to its shellfish aquaculture lease, which shall remain in full force and effect. There shall only be one (1) sublease allowed to exist at any time on a leased parcel.

8. Public Notice

Upon acceptance of the completed lease application, the Department will issue a public notice regarding the proposed lease site and the two alternative lease sites, in accordance with ECL § 13-0302. A copy of the proposed lease shall be available for public inspection and copying in the Office of the County Clerk. In addition, the Department will issue a public notice to each of the five East End town clerks. The public notice will have a 60-day

written comment period during which the public, regulatory agencies, and municipalities may submit written comments on the proposed operation and location of the lease and alternative lease sites. The Aquaculture Lease Advisory Board will take into consideration all comments received during the public comment period when making its decision to approve or deny a lease application. (See County Administrative Requirements section.)

9. Site Review/Ground Truthing

The creation of the Shellfish Cultivation Zone was a laborious multi-phased process taking over a year to complete. Meetings and interviews were conducted with various bay users, scholars and regulatory agencies to establish recent and historical clamming and bay scallop grounds. Interviewees were asked to outline those areas of Peconic Bay and Gardiners Bay in which they felt shellfish aquaculture would be inappropriate. In addition to the qualitative analysis conducted, there was a thorough review of existing data on various environmental resource conditions including eelgrass distribution and essential fish habitat. Once compiled and evaluated, all relevant environmental and socio-economic data were mapped using ArcGIS software. These areas were then removed from consideration and the remaining area seaward of 1,000 feet from mean high water was established as the Shellfish Cultivation Zone, which includes these areas suitable for the potential issuance of future shellfish aquaculture leases.

If an objection regarding the proposed lease area is raised during the public comment period, the Department will make a determination as to whether the objection is credible. The Department will notify the lease applicant of any objections. For an objection to be considered credible, the objector must provide to the Department proper notarized documentation as described below. If the objection is credible, the lease applicant will have the option to select one of his/her alternative sites, or if involving an alleged commercial shellfish or finfish fishery, will cause a benthic survey to be conducted at his/her own expense.

- Credible Objection Criteria

For the Department to deem an objection regarding natural productivity and commercial fishery as credible, the concerned party must include a copy of his/her commercial

harvest license and documented proof on what was harvested and sold. A notarized letter from the concerned party must be sent stating that harvest activity in the area in question within the previous five years disqualifies the leasing of the subject property because the following criteria in the 2004 Leasing Law are not met: “underwater lands where bay scallops are produced regularly and harvested on a commercial basis”; “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”; or “underwater lands where the leasing will result in a significant reduction of established commercial finfish or crustacean fisheries.” In addition to commercial interests, municipal, academic or other technical representatives who can demonstrate specialized knowledge of the estuary may also comment. All objections require a notarized letter highlighting the issue in question.

- Benthic Survey

If a credible objection is raised on an applicant’s primary lease site, he/she can then choose to lease one of the remaining alternate lease sites. If a lease applicant wishes to dispute the objection pertaining to the existence of wild shellfish stocks, he/she must conduct a benthic survey at his/her own expense. An accepted scientific method for performing a benthic survey appropriate for assessing shellfish abundance must be utilized, and a report of findings must be completed by qualified personnel and submitted to the Department. The survey methodology to determine the existence of shellfish density will depend on the species in question.

For hard clams, a mean density of less than two commercially harvestable size clams per square meter (greater than 1 inch shell thickness) would be considered low density and low productivity for clams. This estimate is based on the clam densities found during clam surveys from Long Island water bodies, including Peconic Bay and Gardiners Bay. (See Appendix H.)

Bay scallops are notorious for appearing in different locations from one year to the next, so area restrictions are difficult to apply without extensive data available on short time scales. Because of the transient nature of bay scallop populations, a density estimate is not a reliable way to address scallop productivity. Instead, the presence of scallops

would have to be addressed on a case-by-case basis to render a decision as to whether an area is productive for scallops.

Accepted methods for determining shellfish abundance would be bottom grab samples, dredge samples and/or diver surveys, performed in a scientific manor. Statistically reliable estimates of shellfish abundance would need to be calculated from field survey work for the lease area in question.

The County reserves the right to consider any relevant data or information pertaining to a site's productivity in making its decision regarding lease site approval.

10. Decision

The Department will prepare a staff report on the lease application, including the findings of fact, and submit same to the Aquaculture Lease Advisory Board.

The Aquaculture Lease Advisory Board reserves the right to approve or deny a lease after appropriate review of a lease application. Denial of a lease could be based on one or more of the following conditions:

- Lease site is documented to contain significant quantities of naturally productive shellfish.
- There is a clear and documented conflict with an existing use of the site.
- Evidence of significant or repeated violation of the Environmental Conservation Law as it pertains to shellfish, finfish and/or marine resources.

A copy of all executed Shellfish Aquaculture Leases will be recorded in the Office of the County Clerk.

## **Lease Requirements and Procedures**

### **1. Lease Required**

It is unlawful for an entity that does not have a shellfish aquaculture lease issued by the County to conduct any type of shellfish aquaculture operation situated on lands under the jurisdiction of the County, with one exception. Owners of oyster grants retain their right to conduct oyster culture on their grant lands, and do not need a lease from Suffolk County for this type of culture activity. All private oyster grant owners wishing to cultivate shellfish species other than oysters, and all TMAUA holders who wish to enter the Lease Program will have to follow the lease requirements and restrictions described in Section 2. Lease Program Participants a.) and b.) above. The process required to phase out TMAUAs and convert those sites into the program involves coordination between the County and NYSDEC. During the transition period, lease applicants will be able to continue to operate under the same conditions as required by NYSDEC's TMAUA program until lease agreements have been executed.

### **2. Site Location and Survey**

The County of Suffolk shall cause to be prepared by a licensed land surveyor, an accurate survey of each lease boundary prior to lease issuance, and shall establish and mark lease boundaries in the field in accordance with the coordinates determined from the Shellfish Aquaculture Lease Map. Preparation of the survey by the County depends upon the availability of funding from the County for this purpose. Once established, it is the lessee's responsibility to maintain the prior marking of the lease area boundaries with appropriate buoys. The buoys must be placed at each corner of a square or rectangular lease, or at all corners of irregular shaped leases. The United States Coast Guard (USCG) is the regulatory agency that determines the type of buoy required to alert mariners of the submerged or floating structures on a shellfish aquaculture lease. The USCG requires buoys that are 36" in height, white in color, with two horizontal retro reflective orange bands placed completely around the circumference of the buoy and two vertical open faced diamonds placed 180 degrees apart between the two orange bands. The buoys are required to have a daytime visibility range of one nautical mile and be radar reflective for night time and low visibility navigation. The lease holder must contact the local US Coast Guard Private Aids to

Navigation Office for approval of marking devices. Gear buoys will be at the discretion of the lessee. Gear buoys must be permanently marked with the lease number.

3. Annual Lease Rental Fee

Lease holders will be required to pay an annual rental fee, as described below. The first annual lease rental fee will be due upon signing of the lease by the applicant. For subsequent years, payment will be due 30 days before the lease anniversary date, i.e., if the lease was issued on February 1<sup>st</sup>, the annual lease rental fee would be due 30 days before that date of each year. Lease rental and application fees will be waived for public entities (state agencies, towns, villages, etc.).

	<b>Non-Commercial Lease</b>	<b>Commercial Lease</b>
Acreage Limit	Case-by-case basis	Generally, 5 or 10 acres; could vary for active grants
Duration	Case-by-case basis	10 years
Public Notice and Comment Period	Mandatory	Mandatory
Decision	Within 120 days after the end of public comment period	Within 120 days after the end of public comment period
Annual Rental Fee	\$200 plus \$5 per acre, and a \$100 non-refundable application fee	\$200 plus \$5 per acre, and a \$100 non-refundable application fee

4. Annual Reporting/Operation Plan

In addition to complying with all NYSDEC shellfish aquaculture regulations, the lessee is responsible for submitting an annual report of lease activities to the Department 30 days before the lease anniversary date. The annual report shall include the following information pertaining to the lease site: description of the site and activities conducted, types of structures, species being cultivated, quantity of species being cultivated, source of seed stock, and quantities brought to market. A lease holder must file a Shellfish Aquaculture Lease Program Annual Reporting Form (Appendix C) with the Department in order to maintain a lease. The annual report must be submitted with payment of the annual lease rental fee.

5. Lease Modification

Upon annual reporting, certain lessees may opt for expansion of lease acreage. Such an action will require a full application process, including a public review and comment period

and application fee. This option would be available to those individuals who entered the Lease Program as a continuation of a previous NYSDEC TMAUA located outside of an environmentally and socio-economically sensitive area as mapped, and initially chose to remain at five acres in size. These former TMAUA holders may expand their operation to 10 acres inclusive of the original TMAUA area. Grant holders with leases on only a portion of their site may also request an expansion of aquaculture activities within the boundary of their grant. This provision does not apply to 10-acre leases issued on fallow grants. Lessees requesting a lease modification can submit a Lease Application to the Department with the annual reporting form.

6. Lease Assignment

A lessee may assign his/her lease to another entity for the remaining lease term. The assignee is subject to the same standards that are applied to the initial lease applicant. A lease transfer must undergo a complete application process with public comment. A Lease Assignment Application (Appendix D) must be submitted, along with the required application fee.

7. Lease Termination/Non-renewal by the County

The Aquaculture Lease Advisory Board may terminate or deny renewal of a lease based on failure to comply with the terms of the lease, including but not limited to, failure to pay fees. A lease may also be terminated or denied renewal if it is determined that substantial shellfish aquaculture activity, as defined earlier, has not been conducted on the lease site within the preceding year, or if it is documented that the lease activities caused substantial damage to existing environmental conditions. Violation of the New York State ECL as it relates to shellfish activities shall also be cause for termination or non-renewal of a lease.

For those individuals who cannot demonstrate substantial shellfish aquaculture activity, a hardship allowance will be instituted, provided appropriate evidence can be shown as to why no activity has been conducted on the lease site. Suitable evidence includes, but is not limited to, medical records, financial statements and water quality data.

8. Lease Renewal

A lessee must file a Lease Renewal Application (Appendix E) with the Department in order to renew a lease at the end of the lease term. Renewal requests should be submitted no later than three months prior to the expiration of the lease term, and will be subject to review and approval by the Aquaculture Lease Advisory Board. Renewals will be made based upon the then-current terms and conditions of the Lease Program. The Department will issue a letter to the lease holder informing them of the approval or termination for cause. The lease holder will be required to submit the annual lease rental fee payment to the County upon receiving the lease renewal approval notice from the Department.

9. Lease Termination by Lessee

If a lessee wishes to terminate his/her lease prior to or at the end of the lease term, he/she must submit a Lease Termination Application (Appendix F). The lease shall be terminated by the County upon final execution of a lease termination document by both parties, payment of all fees due and owing, and removal of all aquaculture equipment on the lease site. Once the lease is terminated, the lessee shall not be responsible for annual payments for the remainder of the 10-year lease term. Fees already due and owing shall not be refunded at termination.

10. Noise and Lighting

All lessees shall be required to conduct shellfish aquaculture activities in a manner that is respectful of other marine users and the environment.

- Restrict noise and light to harvesting activities, normal operational practices and maintenance of safety;
- Make every reasonable effort to minimize noise during regular farming activities. Ensure well-maintained sound suppression devices, i.e., mufflers are used while operating equipment;
- Ensure that all non-navigation lighting be aimed and of a brightness so as not to cause unnecessary adverse affects on other users and the marine environment, and where possible, should be shielded from all but essential directions; and

- Make every reasonable effort to minimize light during night time operations. Night time operations are limited to the maintenance of buoys and other non-shellfish related activities, pursuant to ECL §13-0309.

#### 11. General Enforcement Policy

The County has the authority to enforce shellfish aquaculture lease policies, regulations and applicable statutes which shall include the following:

- Authority to enter and inspect – The County has the authority to enter and inspect any and all areas subject to a shellfish aquaculture lease agreement for the purpose of determining compliance with the terms and provisions of the lease.
- Violations – Unless otherwise provided, violations of and/or noncompliance with lease stipulations or regulations set forth in the Lease Program will be subject to termination or non-renewal of the County lease agreement. Upon failure to pay the annual fee or upon other grounds for termination, the lessee may be subject to summary eviction proceedings.
- Markings – All shellfish aquaculture gear, e.g., cages, buoys, must be marked with the lessee’s name and lease plot identification number as identified from the Aquaculture Lease Map. Said markings must be clearly visible and maintained at all times. The lessee is responsible for obtaining all necessary permits and licenses under federal and state law, including any permits for buoys and private aid markers required by the USCG and/or US Army Corps of Engineers (USACE).
- Maintenance and Removal – All shellfish aquaculture gear and the contents thereof are the possession and responsibility of the lessee, who shall be responsible for maintenance and eventual removal of same. If the equipment is not removed upon termination, revocation, or expiration of the lease, the lessee shall be liable to the County for the cost of the removal.

#### 12. Shellfish Regulations

A lessee must comply with all applicable federal, state and local laws and regulations, including, but not limited to, those relating to harvest handling, tagging, storage, sale, sanitary control and aquaculture of shellfish.

The harvest and landing of wild shellfish may only be allowed when such harvest is unavoidable and incidental to the harvest of cultured shellfish. No person shall possess wild undersize shellfish on a lease site without the prior written authorization from NYSDEC. The lessee must also comply with all laws and regulations including, but not limited to, those relating to food storage, sanitation and navigation.

13. Approved Waters

Shellfish may only be harvested from approved waters, as determined by NYSDEC.

14. Water Quality Changes

Water quality and water quality classifications of waters within New York State are subject to change due to various environmental conditions as determined by the NYSDEC, and in some cases, the lessee may be required to respond to those changes. If such a response is warranted, the County shall not assume any liability for any changes in classification and shall assume no liability to the lessee for damages incurred due to such actions. However, the lessee may terminate the lease or apply to relocate it.

15. Harvest of Shellfish Transferred from Other Waters

The transfer or relay of shellfish from uncertified waters to lease areas for natural cleansing will be permitted under the County's Lease Program, so long as all regulatory requirements from the NYSDEC relating to this type of shellfish aquaculture are met.

16. Handling of Shellfish

Lessees shall conduct all shellfish aquaculture activities and operations involving or relating to the possession and handling of cultivated shellfish to prevent contamination and decomposition of such shellfish in accordance with all applicable New York State laws, rules and regulations for sanitary control over shellfish and aquaculture.

17. Corporate Applicants

If the lease applicant is a corporate entity, the following information must be submitted as part of the Lease Application.

1. The date and State of incorporation and copy of the Certificate of Incorporation;

2. The names, addresses and titles of all officers;
3. The name and addresses of all directors;
4. Whether the corporation, or any stockholder, director, or officer had applied for a shellfish aquaculture lease for underwater lands in Peconic Bay or Gardiners Bay in the past, and the outcome or current status of that application or lease;
5. The names and addresses of all stockholders, who own or control at least 5% of the outstanding stock and the percentage of the outstanding stock currently owned or controlled by each such stockholder;
6. The names and addresses of stockholders, directors, or officers owning an interest, either directly or beneficially, in any other New York State shellfish aquaculture operation, as well as the quantity of acreage attributed to each such person.
7. Whether the corporation or any officer, director, or shareholder listed in item 5 above has ever been convicted or found guilty of a civil, criminal, or administrative violation of any marine resources or environmental protection law, whether state or federal.

An officer of the corporation must sign the Lease Application. The application must be accompanied by a corporate resolution authorizing the application.

18. Partnership Applicants

If the lease applicant is a partnership, the following information must be submitted as part of the Lease Application.

1. The date and state in which the partnership was formed and a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership;
2. The names, addresses, and ownership shares of all partners;
3. Whether the partnership or any partner has applied for a shellfish aquaculture lease for the underwater lands of Peconic Bay or Gardiners Bay in the past and the outcome or current status of that application or lease;
4. Whether the partnership or any partner owns an interest, either directly or beneficially, in any other New York State shellfish aquaculture operation, as well as the quantity of acreage from the existing operation;

5. Whether the partnership or any partner has ever been convicted or found guilty of a civil, criminal or administrative violation of marine resources or environmental protection law, whether state or federal; and
6. The application must be signed by a partner.

19. Local Waterfront Revitalization Program Consistency

Towns and villages should respond to lease application public notices and provide the Department with information and comment as to whether or not proposed activities described in public notices are consistent with approved Local Waterfront Revitalization Programs.

## **County Administrative Requirements**

The Department will be responsible for administering the Lease Program upon its adoption into law. In this role, the Department will assist the Aquaculture Lease Advisory Board in its decision making activities, as well as seek the cooperation and support of the Suffolk County Departments of Law; Environment and Energy; Public Works; and Health Services in various aspects of the Lease Program implementation as described below.

- The Department will be responsible for day-to-day administration of the Lease Program. This will involve activities such as providing information to the public on the Lease Program; guiding interested parties through the lease application process; responding to inquires on the Lease Program from government agencies; tracking leases through approval; recordkeeping; and serving as staff to the Aquaculture Lease Advisory Board.
- The Aquaculture Lease Advisory Board will be established when the Lease Program is adopted into law by the County. This Board will be responsible for making decisions on all administrative actions concerning the Lease Program, such as lease issuance or denial; lease termination; requests for changes in lease plot location, lease transfer or sub-leasing, etc., and for making policy recommendations for any needed legislative action on the program.
- The Department will seek the cooperation and assistance of the Department of Law in the review of all legal aspects of the Lease Program, including review and execution of shellfish aquaculture leases.
- The Department will seek technical support from the Department of Energy and Environment (Real Property Acquisition Division) and the Department of Public Works (Bridges, Structures & Waterways Division, Hydrographic Survey Section) in securing the services of a licensed land surveyor and the preparation of survey maps showing the boundaries and location of plots to be leased for shellfish cultivation under the Lease Program. Initial funding for this work has been provided under Capital Project No. 8710.111.
- The Department will seek the cooperation of the Department of Health Services (Office of Ecology) to address the recommendation that an environmental monitoring program be implemented in conjunction with the Lease Program. This monitoring program will include collection of data on those specific water quality and ecological parameters that

are needed to assess any potential beneficial or adverse impacts on the Peconic Estuary associated with shellfish farms on plots leased by the County. The details of this monitoring program and required resources have not yet been determined. Coordination with ongoing monitoring activities conducted under the Peconic Estuary Program will be essential.

There are a number of actions that are required on a periodic basis to effectively monitor the Lease Program, make adjustments where necessary to assure that the Lease Program is being implemented to meet anticipated goals, and to address the requirements in the 2004 Lease Law, as discussed below.

- The Department will issue an annual report in February of each calendar year that summarizes the status of the Lease Program; actions taken by the Aquaculture Lease Advisory Board, data on lease activities, i.e., number of leases in effect, etc. for the previous year.
- An administrative review will be conducted after five years to affirm or modify program components that would govern program implementation after 10 years. This review would include the following:
  - a. Assessment of the Shellfish Cultivation Zone Map to determine if the boundaries of said zone should be changed as a result of socio-economic, environmental and fishery-related considerations. If it becomes necessary to change the boundary of the Shellfish Cultivation Zone, the amended map must be adopted into law.
  - b. Determine whether or not the expansion of leases on formerly fallow grants should be allowed.
  - c. Evaluate the prudence of issuing leases larger than 10 acres, but not exceeding 50 acres.
- If significant changes in the Lease Program are warranted after 10 years such as expansion of total lease area; increase in the number of new leases; change in lease location, an environmental review will be conducted to assess the potential impacts of such changes.

Existing staff personnel in the Department will be assigned to conduct the administrative work required to implement the Lease Program. This workload is expected to be intensive

during the first two to three years of the program, given the need to familiarize shellfish farmers with program procedures and enable them to secure access for use of TMAUA sites and private grants for shellfish cultivation under leases issued by the County. After the initial period, attention will be devoted to annual lease review, and processing the limited number of new lease applications each year that will accommodate moderate, controlled growth in the industry under the Annual Acreage Cap Limit. Monitoring lessee performance will be a continuing duty conducted by the staff.

Additional resources will be needed for special program needs over the first decade of implementation, e.g., enhanced monitoring of positive and negative impacts on shellfish culture activities on the marine environment; conduct of lease boundary surveys and field operations that may become necessary; Shellfish Cultivation Zone Map boundary review; and programmatic environmental review after 10 years. It is anticipated that the principal source for support for addressing these needs will be the Suffolk County Water Quality Protection and Restoration Program and Land Stewardship Initiative. Projects that implement the Lease Program are eligible for water quality/land stewardship funding since they relate directly and explicitly to “the management of underwater lands subject to the Suffolk County Shellfish Aquaculture Leasing Authority” as indicated in the Suffolk County Charter, Section 12-2 B.) (1.) (a.) (2) (c.).

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**Appendix A**  
**Lease Agreement**

COUNTY OF SUFFOLK



SHELLFISH AQUACULTURE LEASE PROGRAM SHELLFISH  
AQUACULTURE LEASE

THIS LEASE AGREEMENT (“Lease”) made this \_ day of \_\_\_\_\_, \_\_\_\_\_ between the parties identified as the Lessor, the County of Suffolk, New York, administered through the offices of the Suffolk County Department of Planning, located at H. Lee Dennison Building, Hauppauge, New York (“County”) and \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ (“Lessee”).

WITNESSETH

WHEREAS, the New York State Legislature ceded all rights, title and interest to certain underwater lands of Peconic and Gardiner Bays owned by the People of the State of New York to Suffolk County for purposes of shellfish cultivation, according to Environmental Conservation Law (“ECL”) §13-0302; and

WHEREAS, the County is leasing parcels of these underwater lands for purposes of shellfish cultivation pursuant to such statutory authority and the County’s Shellfish Aquaculture Lease Program; and

WHEREAS the purpose of this Lease is to provide the Lessee with a possessory interest in certain parcel(s) for its purposes of Shellfish Cultivation as defined herein, and according to the conditions and for the Term of years as defined herein; and

WHEREAS, the execution of this Lease complies with all statutory preconditions to granting Shellfish Cultivation leases according to ECL §13-0302, including but not limited to the notice requirements of ECL §13-0302.3.(c).

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I  
DEFINITIONS

1. "Aquaculture" means the cultivation of aquatic life for habitat restoration, human use, and consumption.
2. "Equipment" means rakes, cages, traps, floats, racks, rafts, nets, and any other goods, supplies, furnishings, apparatus, etc., used for and in support of Shellfish Cultivation.
3. "Fish and Wildlife Law" means Article 11 together with Article 13 of the NY Environmental Conservation Law (ECL §13-0101).
4. "Shellfish" means oysters, scallops, and all kinds of clams and mussels as defined in ECL § 11-0103.9.
5. "Shellfish Cultivation" means the controlled, or partially controlled, raising, breeding, growing, and containment of Shellfish in any marine hatchery or through on-bottom or off-bottom culture as permitted by the County, State Fish and Wildlife Law, federal agencies, and any other applicable local laws and ordinances.

ARTICLE II  
LEASEHOLD INTEREST

The County, as Lessor, hereby lets and leases unto the Lessee under this Lease, for a Term of years as defined under Article IV herein, all that parcel of underwater land, situated and lying in the County of Suffolk and State of New York, more particularly described as the "Leased Parcel" on Schedule A annexed hereto. The Lessee agrees to comply with the County's Site Location and Survey, and any other associated requirements as defined in the County's "Suffolk County Shellfish Aquaculture Lease Program Administrative Guidance," ("LPAG") a copy of which is attached as Appendix A and is incorporated herein as part of this Lease by reference, and any subsequent revisions to the County's LPAG issued during the Term of this Lease.

ARTICLE III  
TERMS AND CONDITIONS OF OCCUPANCY AND USE

Lessee knowingly and expressly agrees, covenants, warrants, and represents that it will occupy and use the Leased Parcel only for Shellfish Cultivation, and for no other purposes, according to: the terms and conditions contained herein this Lease; the policies, conditions, reporting, and documentation requirements set forth in the County's LPAG (Appendix A) incorporated as part of this Lease; any subsequent revisions to the County's LPAG issued during the Term of this Lease; any and all written County notices, County directives and modifications annexed to this Lease; and in accordance with any permit requirements, applicable regulations, federal and state laws, local laws and ordinances. Lessee agrees, covenants, warrants, and represents knowing that County is entering into this Lease in reliance thereon, and that such agreements, covenants, warranties, and representations are the essence of this Lease.

ARTICLE IV  
LEASE TERM

The Term is defined as the term of years for this Lease which shall commence on the date of execution of this Lease (the “Commencement Date”) and terminate on \_\_\_\_\_ (“Expiration Date”), unless sooner Terminated as defined and described herein ARTICLE VII; or extended for another term as an Extension or Renewal of this Lease, as provided herein ARTICLE VI.

ARTICLE V  
ANNUAL RENT FEE

Lessee agrees to pay to the County a Rent Fee which is \_\_\_\_\_ for the Term defined herein, payable in equal annual installments as an Annual Rent Fee in the amount of \_\_\_\_\_, according to the following: the first annual installment due on the Commencement Date, at the time of execution of this Lease; and thereafter each remaining annual installment shall be due 30 (thirty) days prior to the anniversary date of the Commencement Date for each year within the Term of this Lease. If the due date for the Annual Rent Fee occurs on a weekend or County holiday, the due date shall be on the next business day thereafter.

ARTICLE VI  
LEASE EXTENSION AND RENEWAL

(a) EXTENSION OF LEASE- If Lessee is not in Default under this Lease, as defined herein Article VII and is in full compliance with all applicable state, federal and local statutes and regulations, and if Lessee’s good faith performance of Shellfish Aquaculture Lease is in any way substantially prevented, interrupted or delayed by causes beyond its control, such as: acts of the County other than appropriate actions taken to enforce this Lease; acts of any other party; acts of god; acts of the public enemy; acts of the government; strikes; riots; freight embargoes; unusually severe weather; storms; floods; pollution; fires; shellfish diseases; epidemics; quarantine restrictions; or any other substantial delays, interruptions or impediments to the purposes for this Lease not caused by an act or failure to act by Lessee, then the Term of this Lease may be extended for a period of time equal to the length of time the Lessee’s operations are so prevented, interrupted or delayed. Lessee shall be entitled to request an Extension of this Lease which shall comply with and satisfy the procedural requirements of the County’s LPAG (Appendix A) for notification and approval by the County. If the Lessee’s request is approved by the County as set forth in the LPAG, Lessee and County shall execute a written modification and Extension of this Lease for an additional agreed upon amount of time, with such Extension incorporating the terms and conditions set forth in this Lease, any additional terms and conditions set forth in the written modification, and shall be subject to any permit requirements, applicable regulations, federal and state laws, and local laws and ordinances. The County reserves the right to determine whether delays, interruptions or impediments to the purposes of the Lessor are substantial enough to warrant an Extension to the Lease, and may withhold and or deny approval for an Extension of this Lease if the Lessee is in Default [Article

VII(b)], pursuant to the reasons identified in the LPAG, or for any other reason within its discretion, and as permitted by law.

(b) RENEWAL OF LEASE- If Lessee is not in Default under this Lease, as defined herein Article VII and is in full compliance with all applicable state, federal and local statutes and regulations, Lessee shall be entitled to request a Renewal of this Lease which shall comply with and satisfy the procedural requirements of the County's LPAG (Appendix A) for notification and approval by the County. If the Lessee's request is approved by the County as set forth in the LPAG, Lessee and County shall execute a written modification and Renewal of this Lease for an additional term of years, of up to \_\_\_\_\_ years, which will incorporate the terms and conditions set forth in this Lease, any additional terms and conditions set forth in the written modification, and shall be subject to any permit requirements, applicable regulations, federal and state laws, and local laws and ordinances. The County reserves the right to withhold and or deny approval for a Renewal of this Lease if the Lessee is in Default as defined in Article VII(b) herein, pursuant to the reasons identified in the LPAG, or for any other reason within its discretion, and as permitted by law.

#### ARTICLE VII TERMINATION

This Lease may be Terminated, as defined herein this Article upon notice, or for cause, without prejudice to any other remedies that the terminating party may have against the other party.

(a) LEASE TERMINATED UPON NOTICE BY LESSEE- The Lessee may Terminate this Lease at anytime, at its convenience, in the manner prescribed, and on the proper County forms as defined in the LPAG, including subject to any and all notification and County approval requirements therein. The County shall be entitled to any fees, fines, assessments, and or taxes owed at the time of termination; and the lessee shall comply with the Article VIII Removal and Restoration requirements recited herein. Under these aforementioned circumstances, the County reserves the option to exercise its rights and apply any portion or all of the remaining Rent Fee in it's possession to recover its costs due to the County, relating to Termination of this Lease. The County shall provide the Lessee with a written notice detailing the amounts withheld and the procedures for responding to the County's actions.

(b) LEASE TERMINATED FOR CAUSE- The following circumstances and actions by the Lessee shall constitute a Default under this Lease, which may result in the Termination for Cause, subject to the procedures pertaining to notice and administrative review contained in the LPAG (Appendix A):

- i. Failure to pay any portion of the Rent Fee, or any other County fee, assessment or tax relating to the Lessee's Shellfish Cultivation activities;
- ii. Failure to perform or comply with any term or condition of this Lease, the LPAG, and written County notices and directives;

- iii. Abandonment and failure to perform any Shellfish Cultivation Activities on the Leased Parcel for more than one (1) year as defined in the LPAG;
- iv. Lessee is found in violation of the Fish and Wildlife Law or any governing federal, state, County, or local statutes, rules and regulations;
- v. Lessee is adjudicated bankrupt or insolvent in any proceeding, or if a trustee or receiver is appointed for all or substantially all of the Lessee's assets; or
- vi. Lessee's conduct of Shellfish Cultivation activities is contrary to the County's Aquaculture policies, are found to be injurious to the public, marine life, marine habitats, and natural resources.

In the event of a Termination for Cause, the County shall be entitled to any fees, fines, assessments, and or taxes owed at the time of termination; and the lessee shall comply with the Article VIII Removal and Restoration requirements recited herein. Under these aforementioned circumstances, the County reserves the option to exercise its rights and apply any portion or all of the remaining Rent Fee in its possessions to monies due to the County relating to Termination of this Lease. The County shall provide the Lessee with a written notice detailing the amounts withheld and the procedures for responding to the County's actions.

ARTICLE VIII  
REMOVAL AND RESTORATION

At the termination of this Lease for the reasons provided in Articles IV and VII, or for any other reason, Lessee covenants and agrees to, at its sole cost and expense, remove any structures, vessels, containers, Equipment, materials, hazardous materials, trash, and other deleterious matter (as determined by the County) attached to, placed upon or incorporated into the Leased Parcel of underwater land in compliance with the requirements stated in the LPAG. The Lessee agrees to vacate the Leased Parcel of underwater land leaving it in a condition which is either generally beneficial to the Aquaculture activities of the County, or at the very least in the same condition as it was on the Commencement Date. The County reserves the right to enter the Leased Parcel and complete the Removal and Restoration requirements with its own forces and recover its costs, including any attorney fees, from the Lessee according to all rights available in a court of law and or equity.

ARTICLE IX  
INDEMNIFICATION

Lessee assumes all risks associated with its Shellfish Cultivation activities under this Lease, including, but not limited to the operation, use, alteration, repair, replacement, maintenance and removal of the Equipment, and will be solely responsible in damages for any and all incidents, accidents and injuries to persons (including death), property and natural resources. Lessee covenants and agrees to indemnify and hold harmless the County and its respective officials, officers, agents, and employees, from any and all claims, suits, actions,

judgments for damages, and costs of every nature and description arising out of or relating to Shellfish Cultivation, and the construction, reconstruction, inspection, operation, use, alteration, repair, replacement maintenance, and removal of the Equipment, or the violation by Lessee, its agents, employees, invitees or contractors of any law, code, order, ordinance, rule or regulation in connection therewith. Lessee agrees, upon being requested to do so, to respond to, investigate and assume the defense at its own cost and expense any action brought at any time against the County and/or its respective officials, officers, agents and employees in connection with the claims, suits and losses stated above.

ARTICLE X  
INSURANCE

Lessee will carry liability insurance for personal injury and property damage, with an aggregate limit of not less than \$\_\_\_\_\_to cover the liability assumed under the indemnity provisions of this Lease. All insurance required by this Lease will be (i) obtained at the sole cost and expense of the Lessee; (ii) maintained with insurance carriers licensed to do business in New York State or as otherwise approved by Lessor; (iii) be primary and noncontributing to any insurance or self insurance maintained or approved by the Lessor; and (iv) endorsed to provide written notice be provided to Lessor at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies. Lessee covenants and agrees to keep such insurance in full force and effect during the continuance of this Lease for the protection and indemnification of the Lessor and up to three (3) other indemnified parties. Lessee will furnish Lessor with a certified copy of the policy or policies for the insurance, together with an endorsement evidencing the fact that said policy or policies insure the liability assumed. Lessee's failure to obtain and maintain the insurance coverage required by this Lease will not relieve Lessee of its obligation to protect and indemnify the Lessor as hereinabove provided. Lessor may review the liability insurance coverage annually for the purpose of assuring the adequacy of the protection and indemnification and may demand additional insurance coverage if reasonably necessary.

ARTICLE XI  
ASSESSMENTS; COMPLIANCE WITH THE LAW

(a) Lessee will be responsible for and pay when due all federal, state, city, county, school taxes or other local taxes including all real property taxes, assessments, levies, fees, and other governmental charges whether general or special, ordinary or extraordinary, all sales and use taxes and all utility charges levied rendered or used about the Leased Parcel.

(b) Lessee will promptly comply with every law, statute, rule, local law, ordinance, regulation and notice of any municipal, county, state, federal or other authority having jurisdiction pertaining to or affecting the Leased Parcel.

ARTICLE XII  
ASSIGNMENT AND SUBLETTING

(a) Lessee shall not assign the Lease or sublet the Leased Parcel without the County's prior written approval which the County may withhold in its sole discretion. Approval by the County will not be issued unless the County determines that the Lessee is not in Default under this Lease, is in full compliance with Article III of this Lease, and complies with policies and procedures provided in the LPAG for an assignment or sublease. Lessee shall not, voluntarily, involuntarily or by operation of law, mortgage, or encumber this Lease in whole or part, or permit any other persons to occupy the Leased Parcel. The acceptance of rent from any other person in and of itself will not be deemed to be a waiver of any of the provisions of this Lease or to be consent to the assignment of this Lease or subletting of the Leased Parcel.

(b) This Lease shall not be Terminated until an assignment has been approved by the County. Any transfer of this Lease from Lessee by merger, consolidation or liquidation, or any change in ownership or power to vote of a majority of the outstanding voting stock or equity interests of Lessee from the current owners of such stock or equity interests or those controlling the power to vote of such stock or equity interests as of the date of this Lease will constitute an assignment for the purpose of this Lease, subject to the conditions and requirements set forth herein.

(c) Notwithstanding any sublease approved by the County during the Term, the Lessee shall remain liable to the County hereunder and shall guarantee the full and faithful execution of the sublessee's compliance with all covenants, terms and conditions contained in this Lease, and shall cause all agreements between the Lessee and its sublessee to expressly incorporate this Lease by reference into the terms and conditions therein. Further, the County will not be required to first look to any sublessee of Lessee for the performance of any obligations of Lessee under this Lease, and the County shall not be required to assume any affirmative obligations with respect to any subtenant. However, in the event of a Default by the Lessee relating to these provisions, the County reserves all rights and remedies at law or in equity to enforce the obligations and duties of the sublessee through this Lease.

(d) Lessee accepts that it is limited to no more than one (1) sublease of all or a portion of the Leased Parcel at any time during the Term of this Lease.

ARTICLE XIII  
INSPECTION

Upon the request by the County, Lessee Covenants and agrees to permit the County, or its delegated representatives to enter and have full and free access to the Leased Parcel and all vessels, yards, buildings, structures of every name, nature character and description used in connection with this Lease, and provide to the County upon request with full and free access for the audit, inspection and examination of all records and books of account kept in connection with Shellfish Cultivation. The County will use its best efforts not to unreasonably interfere with Lessee's operation during inspection and examination.

ARTICLE XIV  
NO WAIVER

Any failure by a party to insist upon strict performance by the other of any of the provisions of this Lease will not be deemed a waiver of any of the provisions hereof, irrespective of the number of violations or breaches which may occur, and notwithstanding any such failure, such party will have the right thereafter to insist upon strict performance by the other of any and all of the provisions of this Lease to be performed by them.

ARTICLE XV  
NOTICE

Unless a provision of this Lease or the LPAG provides specifically for notice to be set in a different manner, all notices under this Lease must be given in writing and must be personally delivered with proper receipt therefore, or sent by one day express delivery service from the United States Postal Service, Federal Express, or other reputable national overnight courier service, to the other party at the address in the preamble of this Lease.

ARTICLE XVI  
GOVERNING LAW AND SEVERABILITY

This Lease will be construed and governed in all respects by the laws of the State of New York applicable to leases made and to be performed wholly therein. If any provision of this Lease is determined to be unenforceable or invalid, that determination will not affect the remaining provisions of this Lease, as the provisions of this Lease are intended to be and will be severable. It is the intention of the parties that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provisions will have the meaning which render it valid.

ARTICLE XVII  
SECTION HEADINGS

The section headings used herein are for convenience of reference only and will not limit or define the provisions of this Lease.

ARTICLE XVIII  
MERGER AND LEASE MODIFICATIONS

All prior understandings and agreements made between the parties relating to this Lease shall be merged herein, which now fully and completely contains the entire terms and conditions of this Lease. This Lease may not be changed or terminated orally. Modifications to this Lease are permissible according to the provisions contained herein, or as otherwise permitted by the County, if such modifications are in the form of a written instrument executed by the parties and attached as an amendment to this lease.

**ARTICLE XIX  
RECORDING**

Lessee will pay all fees to record this Lease with the Office of the Clerk of Suffolk County.

IN WITNESS WHEREOF, the parties hereto have subscribed their names as of the date first above written.

Lessor:

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Lessee:

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy County Attorney



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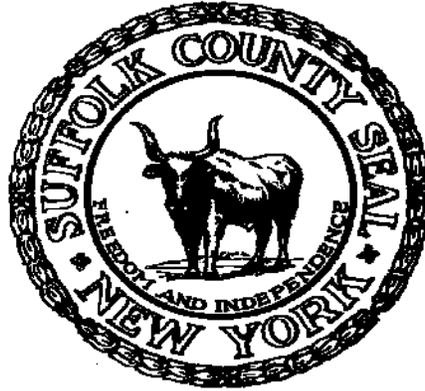
**SCHEDULE A**  
**LEGAL DESCRIPTION OF LEASED UNDERWATER LANDS**

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**Appendix B**  
**Lease Application**

COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM  
LEASE APPLICATION**

This is an application for a shellfish aquaculture lease for the underwater lands within the Peconic Bay/Gardiners Bay Shellfish Cultivation Zone. This application is for on-bottom and off-bottom commercial shellfish cultivation activities, as well as non-commercial shellfish cultivation for experimental/educational or shellfish habitat restoration purposes. A lease must be executed before the applicant can conduct any shellfish cultivation activities. Once the County approves the lease, the applicant may apply for required permits from the NYSDEC and other regulatory agencies.

**EACH LEASE APPLICANT IS REQUIRED TO ATTEND A PRE-APPLICATION MEETING WITH THE COUNTY PRIOR TO COMPLETING AN APPLICATION. PLEASE CALL THE AQUACULTURE ADMINSTRATOR AT THE COUNTY DEPARTMENT OF PLANNING AT 631-853-5191 TO SET UP A MEETING. AN APPLICATION WILL NOT BE CONSIDERED COMPLETE UNTIL A PRE-APPLICATION MEETING IS HELD.**

Suffolk County requires a **non-refundable** application fee for shellfish aquaculture lease program applications, which shall not be applied towards the annual lease rental fee due upon execution of the Lease Agreement of \$200 plus \$5 per acre for the first year of the lease.

**Shellfish Aquaculture Lease Program Application Fee: \$100**  
Please make your check or money order payable to the Suffolk County Treasurer.

**Mailing Instructions:**

Provide one copy of your application to the Suffolk County Department of Planning address at the listed below. **Applications for a lease must be submitted to the County no later than February 28<sup>th</sup> of the year in which the applicant wishes to obtain a lease.** The applicant shall be notified upon receipt when the application has been reviewed and accepted as complete by the County.

SUFFOLK COUNTY DEPARTMENT OF PLANNING  
ATTN: Aquaculture Administrator  
P.O. Box 6100  
Hauppauge, NY 11788-0099

**DESCRIPTION OF THE LEASE APPLICATION PROCESS**

The following information outlines the process leading to the approval of a shellfish aquaculture lease.

- 1. Pre-application Meeting:** Prior to completing an application, each lease applicant must contact the Suffolk County Department of Planning to set up a pre-application meeting. Applications submitted without a pre-application meeting will not be considered complete.
- 2. Public Comment Period:** Before the lease is approved, notice shall be provided for at least two months by posting such notice at the New York State Department of Environmental Conservation Bureau of Marine Resources, in the Suffolk County Department of Planning, the Office of the County Clerk, and the Clerk's Office in all East End towns. 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.
- 3. Decision:** The County will make a determination as to whether or not the application is approved. Input and comments provided by the towns, NYSDEC, and public will be taken into consideration by the County during the lease application review process. If not approved, the applicant will receive a letter denying the application, asking for further information or requesting the relocation of the proposed lease site. If completed and approved, Suffolk County will send a letter of approval and a copy of the lease agreement to the applicant. The lease agreement must then be signed and returned to the County for final execution.
- 4. Requirements Once a Lease is Issued:** The lessee must obtain all permits required by NYSDEC or any other regulatory agency prior to conducting shellfish cultivation operations on the lease site. Lease site boundaries must be adequately marked according to requirements and permitting set forth by the US Coast Guard Private Aids to Navigation.



If the subject lease is on a private oyster grant, please list the grant owner's name and contact information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If the proposed lease site is on a private oyster grant and the application is not being submitted by the grant owner, provide proof of the grant owner's permission for the applicant to conduct shellfish cultivation activities under a lease issued by Suffolk County.**

Total Acreage Requested

- 5 Ac       10 Ac       Other (oyster grant)

If other, please indicate acreage: \_\_\_\_\_Ac

Type of Culture Operation:

- ON-BOTTOM       OFF-BOTTOM

List of Species to be Cultivated:

- Eastern Oyster       Razor Clam  
 Hard Clam       Bay Scallop  
 Blue Mussel       Other: \_\_\_\_\_

Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Harvest Method:

\_\_\_\_\_  
\_\_\_\_\_

Shellfish Stock Source:

	<u>Hatchery Name</u>	<u>Location</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Explanation of Non-Commercial lease project (purpose and design, expected length of study):

\_\_\_\_\_  
\_\_\_\_\_

(Attach additional information if necessary.)

Planned use of shellfish cultured from non-commercial lease site (e.g., left in-place, harvested for off-site analysis, etc.):

\_\_\_\_\_  
\_\_\_\_\_

Has the lease applicant been arrested, indicted or convicted of or adjudicated to be responsible for any violation of marine or environmental protection law, whether state or federal?

Yes     No

If yes, explain: \_\_\_\_\_

\_\_\_\_\_

\$ 100 application fee enclosed:

Please make check or money order payable to the Suffolk County Treasurer.

Lease Application Status Form enclosed (Attachment B):

I hereby state that the information included in this application is true and correct and that I have read and understand regulations of the New York State Department of Environmental Conservation, and the requirements of the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay governing shellfish aquaculture.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The Application must be executed by an authorized party. If a corporation, the form should be signed by an officer and a corporate resolution authorizing the application should be attached. If a partnership, the form should be signed by a partner.

**McKinney’s Penal Law § 175.35 Offering a false instrument for filing in the first degree**

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

**McKinney’s Penal Law § 175.30 Offering a false instrument for filing in the second degree**

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

**Attachment A – Corporate or Partnership Lease Applicants**

**I. Corporate Applicants**

Please provide the following additional information if you are a corporate entity applying for a lease.

C-1. The date and state in which incorporated (include a copy of the Articles of Incorporation): \_\_\_\_\_

C-2. The names, addresses and titles of all officers:  
\_\_\_\_\_  
\_\_\_\_\_

C-3. The name and addresses of all directors:  
\_\_\_\_\_  
\_\_\_\_\_

C-4. Has the corporation, or any stockholder, director, or officer applied for a shellfish aquaculture lease for underwater lands in Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:  
\_\_\_\_\_

C-5. Names and addresses of all stockholders, who own or control at least 5% of the outstanding stock and the percentage of the outstanding stock currently owned or controlled by each such stockholder:  
\_\_\_\_\_  
\_\_\_\_\_

C-6. Names and addresses of stockholders, directors, or officers owning an interest, either directly or beneficially, in any other New York State shellfish cultivation operation as well as the quantity of acreage attributed to each such person:  
\_\_\_\_\_  
\_\_\_\_\_

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C-7. Whether the corporation or any officer, director or shareholder has ever been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal?

Yes  No

If yes, explain: \_\_\_\_\_

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Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The Application must be executed by an officer and must be accompanied by a corporate resolution authorizing the application .

**McKinney’s Penal Law § 175.35 Offering a false instrument for filing in the first degree**

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

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**McKinney’s Penal Law § 175.30 Offering a false instrument for filing in the second degree**

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Offering a false instrument for filing in the second degree is a class A misdemeanor.

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**II. Partnership Applicants**

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Please provide the following additional information if you are a partnership applying for a lease.

P-1. The date and state in which the partnership was formed (include a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership): \_\_\_\_\_

P-2. The names, addresses, and ownership shares of all partners:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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P-3. Has the partnership or any partner applied for a shellfish cultivation lease for the underwater lands of Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:

\_\_\_\_\_  
\_\_\_\_\_

P-4. State whether the partnership (or any partner) owns an interest, either directly or beneficially, in any other New York State shellfish cultivation operation as well as the quantity of acreage from the existing operation:

\_\_\_\_\_  
\_\_\_\_\_

P-5. Has the partnership or any partner been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal?  Yes  No

If yes, explain: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The Application must be executed by a partner.

**McKinney’s Penal Law § 175.35 Offering a false instrument for filing in the first degree**

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

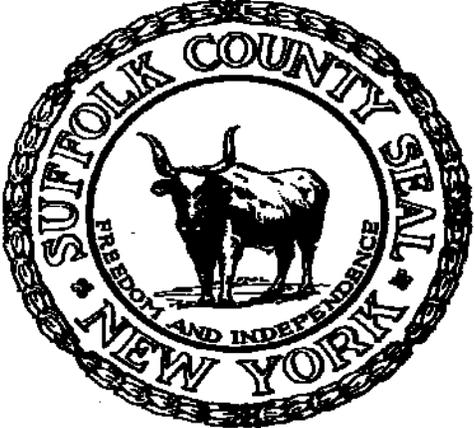
**McKinney’s Penal Law § 175.30 Offering a false instrument for filing in the second degree**

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

Attachment B – Lease Application Status Form

COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM  
LEASE APPLICATION STATUS FORM**

Date: \_\_\_\_\_

Name of Applicant(s): \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Suffolk County Shellfish Aquaculture Lease Map Grid ID# (List 3 Preferred Lease Sites)

1<sup>st</sup> Pref: \_\_\_\_\_

2<sup>nd</sup> Pref: \_\_\_\_\_

3<sup>rd</sup> Pref: \_\_\_\_\_

**DO NOT WRITE BELOW THIS LINE**

**TO BE COMPLETED BY S.C. DEPARTMENT OF PLANNING**

Date & Time Application Received by County: \_\_\_\_\_

County Representative: \_\_\_\_\_

Contact Information: \_\_\_\_\_

Status:

Complete: \_\_\_\_\_

Incomplete: \_\_\_\_\_\*

\* See Attached Summary of Reasons for Incomplete & Directions for Submitting Additional Information, if Applicable.

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**Appendix C**  
**Annual Reporting Form**

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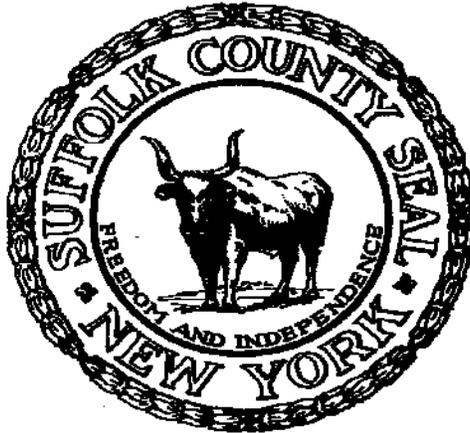
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COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM  
ANNUAL REPORTING FORM**

Lessees must provide a report on their lease activities on an annual basis and submit it to the County with the annual lease rental fee, 30 days before the lease anniversary date. The report submitted by a lessee should include information on activities conducted on any sublease involving the leased premise.

**Annual Lease Rental Fee: \$200 plus \$5 per acre**

Mailing Instructions:

Provide one copy of the Annual Reporting Form, along with a check or money order made payable to the Suffolk County Treasurer for the annual lease rental fee described above, to the Suffolk County Department of Planning at the address below 30 days before the lease anniversary date.

SUFFOLK COUNTY DEPARTMENT OF PLANNING  
ATTN: Aquaculture Administrator  
P.O. Box 6100  
Hauppauge, NY 11788-0099



Shellfish Stock Source:

D

Hatchery Name

Location

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Harvest Method:

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\_\_\_\_\_

Provide a brief description of the shellfish aquaculture activities on the lease site:

\_\_\_\_\_

\_\_\_\_\_

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Provide a description and the location of structures on the lease site:

\_\_\_\_\_

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Describe any anti-fouling techniques conducted on aquaculture gear used at the lease site:

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\_\_\_\_\_

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Describe predator control measures conducted on the lease site:

\_\_\_\_\_

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Describe the sanitation and maintenance measures of the shellfish aquaculture operation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Report the quantity of each species of cultured shellfish landed from the lease for this reporting year:

	<u>Species</u>	<u>Bushels/Counts</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

**A lessee may modify his/her lease activities upon approval from the County. Lease modifications include but are not limited to: a change in the type of culture, a change in lease size, a change in species cultivated, or a change in gear type. All lease modifications are subject to a full application process, including public notice and comment.**

Annual lease rental fee enclosed:   
Please make check or money order payable to the Suffolk County Treasurer.

I hereby state that the information included in this application is true and correct and that I have read and understand regulations of the New York State Department of Environmental Conservation, and the requirements of the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay governing shellfish aquaculture.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The Application must be executed by an authorized party. If a corporation, the form should be signed by an officer and a corporate resolution authorizing the application should be attached. If a partnership, the form should be signed by a partner.

**McKinney’s Penal Law § 175.35 Offering a false instrument for filing in the first degree**  
A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

**McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree**

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

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**Appendix D**  
**Lease Assignment Application**

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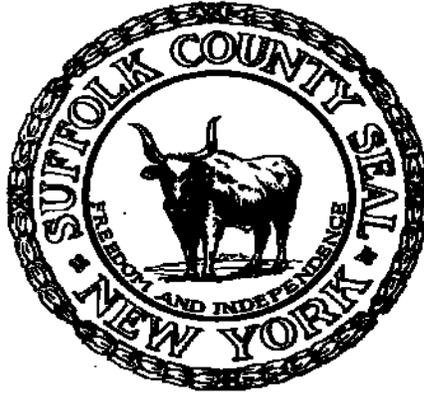
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COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM  
LEASE ASSIGNMENT APPLICATION**

This is an application for the assignment of an existing and operating shellfish aquaculture lease. A lease must be executed before the applicant can conduct any shellfish cultivation activity. Once the County approves the assignment, the applicant may apply for required permits from NYSDEC and other regulatory agencies.

**EACH LEASE HOLDER, AS THE APPLICANT, AND THE PROPOSED ASSIGNEE ARE REQUIRED TO ATTEND A PRE-APPLICATION MEETING WITH THE COUNTY PRIOR TO COMPLETING AN APPLICATION. PLEASE CALL THE AQUACULTURE ADMINSTRATOR AT THE COUNTY DEPARTMENT OF PLANNING AT 631-853-5191 TO SET UP A MEETING. AN APPLICATION WILL NOT BE CONSIDERED COMPLETE UNTIL A PRE-APPLICATION MEETING IS HELD.**

Suffolk County requires a **non-refundable** application fee for shellfish aquaculture lease assignment applications which shall not be applied towards the annual lease rental fee for the first year of the lease.

Shellfish Aquaculture Lease Assignment Fee: \$100  
Please make your check or money order payable to the Suffolk County Treasurer.

Mailing Instructions:

Provide one copy of your application to the Suffolk County Department of Planning at the address listed below. The applicant shall be notified upon receipt when the application has been reviewed and accepted as complete by the County.

SUFFOLK COUNTY DEPARTMENT OF PLANNING  
ATTN: Aquaculture Administrator  
P.O. Box 6100  
Hauppauge, NY 11788-0099

**DESCRIPTION OF THE LEASE ASSIGNMENT APPLICATION PROCESS**

The following information outlines the process leading to the approval of an assignment of a shellfish aquaculture lease.

1. **Pre-application Meeting:** Prior to completing an application, each lease applicant must contact the Suffolk County Department of Planning to set up a pre-application meeting between the Department, the applicant and the proposed assignee. Applications submitted without a pre-application meeting will not be considered complete.
2. **Public Comment Period:** Before the assignment is approved, notice shall be provided for at least two months by posting such notice at the New York State Department of Environmental Conservation Bureau of Marine Resources, in the Suffolk County Department of Planning, the Office of the County Clerk, and the Clerk's Office in all East End towns. 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.
3. **Decision:** The County will make a determination as to whether or not the assignment is approved. Input and comments provided by the towns, NYSDEC, and the public will be taken into consideration by the County during the lease application review process. If not approved, the applicant will receive a letter denying the application, asking for further information or requesting the relocation of the proposed lease site. If completed and approved, Suffolk County will send a letter of approval and a copy of the lease agreement to the applicant. The lease agreement must be signed by the applicant and the proposed assignee and returned to the County for final execution.
4. **Requirements Once a Lease is Assigned:** The party to whom the lease is being assigned must obtain all permits required by NYSDEC or any other regulatory agency prior to conducting shellfish cultivation operations on the lease site. The

Assignee must contact the local US Coast Guard Private Aids to Navigation Office for approval of any significant changes to marking devices on the lease site.

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**SHELLFISH AQUACULTURE LEASE PROGRAM**  
**LEASE ASSIGNMENT APPLICATION**

**Current Lease Holder Information**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
County: \_\_\_\_\_  
State, Zip: \_\_\_\_\_  
Telephone: business \_\_\_\_\_ home \_\_\_\_\_ cell \_\_\_\_\_  
Email address: \_\_\_\_\_  
Suffolk County Lease Number: \_\_\_\_\_

**Prospective Assignee Information** (attach additional information on separate sheets):

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
County: \_\_\_\_\_  
State, Zip: \_\_\_\_\_  
Telephone: business \_\_\_\_\_ home \_\_\_\_\_ cell \_\_\_\_\_  
Email address: \_\_\_\_\_

Identify shellfish cultivation leases, if any, presently held by the assignee:

\_\_\_\_\_  
Location of lease site: \_\_\_\_\_  
(town) (waterbody)

Suffolk County Shellfish Aquaculture Lease Map ID#: \_\_\_\_\_

Site Status:

- TMAUA                       Oyster Grant                       N/A

If a private oyster grant, please indicate Suffolk County Tax Map number: \_\_\_\_\_  
Please also provide a copy of the grant survey, if available.

If the subject Leased Parcel is on a private oyster grant, please list the grant holder's  
name and contact information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If the proposed lease site is on a private oyster grant and the application is not being submitted by grant owner, provide with this application, proof of the grant owner's permission for the applicant to assign this lease to the prospective assignee to conduct shellfish cultivation activities under a lease issued by Suffolk County.**

Total acreage of lease: \_\_\_\_\_

Current type of culture operation:

- ON-BOTTOM                       OFF-BOTTOM

List of Species Currently Cultivated:

- Eastern Oyster                       Razor Clam  
 Hard Clam                               Bay Scallop  
 Blue Mussel                               Other: \_\_\_\_\_

Current Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Current Shellfish Stock Source:

D

Hatchery Name

Location

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Proposed lease operations:

R

Type of culture operation:

- ON-BOTTOM       OFF-BOTTOM

List of Species to be Cultivated:

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- Eastern Oyster                       Razor Clam
- Hard Clam                               Bay Scallop
- Blue Mussel                           Other: \_\_\_\_\_

Culture Gear:

Gear Type

Amount

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Shellfish Stock Source:

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Hatchery Name

Location

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Has the prospective Assignee been arrested, indicted or convicted of or adjudicated to be responsible for any violation of marine or environmental protection law, whether state or federal?     Yes     No

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If yes, explain: \_\_\_\_\_

\$ 100 assignment application fee enclosed:

Please make check or money order payable to the Suffolk County Treasurer.

I hereby state that the information included in this application is true and correct and that I have read and understand regulations of the New York State Department of Environmental Conservation, and the requirements of the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay governing shellfish aquaculture.

Signature of Assignor: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Assignee: \_\_\_\_\_ Date: \_\_\_\_\_

The Application must be executed by an authorized party. If a corporation, the form should be signed by an officer and a corporate resolution authorizing the application should be attached. If a partnership, the form should be signed by a partner.

**McKinney’s Penal Law § 175.35 Offering a false instrument for filing in the first degree**

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

**McKinney’s Penal Law § 175.30 Offering a false instrument for filing in the second degree**

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Offering a false instrument for filing in the second degree is a class A misdemeanor.

**Attachment A – Corporate or Partnership Lease Applicants**

**I. Corporate Applicants**

Please provide the following additional information if you are a corporate entity applying for an assignment of a lease.

C-1. The date and state in which Incorporated (include a copy of the Articles of Incorporation): \_\_\_\_\_

C-2. The names, addresses and titles of all officers:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C-3. The name and addresses of all directors:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C-4. Has the corporation, or any stockholder, director, or officer applied for a shellfish aquaculture lease for underwater lands in Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:  
\_\_\_\_\_

C-5. Names and addresses of all stockholders, who own or control at least 5% of the outstanding stock and the percentage of the outstanding stock currently owned or controlled by each such stockholder:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C-6. Names and addresses of stockholders, directors, or officers owning an interest, either directly or beneficially, in any other New York State shellfish aquaculture operation as well as the quantity of acreage attributed to each such person:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C-7. Whether the corporation or any officer, director or shareholder has ever been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal:  Yes  No

If yes, explain: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The Application must be executed by a partner.

**McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree**

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

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Offering a false instrument for filing in the second degree is a class A misdemeanor.

**II. Partnership Applicants**

Please provide the following additional information if you are a partnership applying for an assignment of a lease.

P-1. The date and state in which the partnership was formed (include a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership): \_\_\_\_\_

P-2. The names, addresses, and ownership shares of all partners:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

P-3. Has the partnership or any partner applied for a shellfish cultivation lease for the underwater lands of Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:

\_\_\_\_\_

P-4. State whether the partnership (or any partner) owns an interest, either directly or beneficially, in any other New York State shellfish cultivation operation as well as the quantity of acreage from the existing operation:

\_\_\_\_\_  
\_\_\_\_\_

P-5. Has the partnership or any partner been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal:  Yes  No

If yes, explain: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The Application must be executed by an authorized party. If a corporation, the form should be signed by an officer and a corporate resolution authorizing the application should be attached. If a partnership, the form should be signed by a partner.

**McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree**

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

**McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree**

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

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**Appendix E**  
**Lease Renewal Application**

COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM  
LEASE RENEWAL APPLICATION**

This is a renewal application for a shellfish aquaculture lease for the underwater lands within the Peconic Bay/Gardiners Bay Shellfish Cultivation Zone. This application is for on-bottom and off-bottom commercial shellfish culture activities, as well as non-commercial shellfish cultivation for experimental/educational or shellfish habitat restoration purposes.

Suffolk County requires a **non-refundable** application fee for shellfish aquaculture lease applications which shall not be applied towards the annual lease rental fee.

**Shellfish Aquaculture Lease Renewal Application Fee: \$100**

Please make your check or money order payable to the Suffolk County Treasurer.

Mailing Instructions:

Provide one copy of your application to the Suffolk County Department of Planning at the address listed below. **Applications for a lease renewal must be submitted to the County as early as possible in the last year of the lease.** The applicant shall be notified upon receipt when the application has been reviewed and accepted as complete by the County.

SUFFOLK COUNTY DEPARTMENT OF PLANNING  
ATTN: Aquaculture Administrator  
P.O. Box 6100  
Hauppauge, NY 11788-0099

**DESCRIPTION OF THE LEASE RENEWAL APPLICATION PROCESS**

The following information outlines the process leading to the approval of a shellfish aquaculture lease renewal.

- 1) **Public Comment Period:** Before the lease is renewed, notice shall be provided for at least two months by posting such notice at the New York State Department of Environmental Conservation Bureau of Marine Resources, in the Suffolk County Department of Planning, the Office of the County Clerk, and the Office of the Clerk in all East End towns. 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.
- 2) **Decision:** The County will make a determination as to whether or not the application is approved. Input and comments provided by the towns, NYSDEC, and public will be taken into consideration by the County during the lease application review process. If not approved, the applicant will receive a letter denying the application, asking for further information or requesting the relocation of the proposed lease site. If completed and approved, Suffolk County will send a letter of approval and a copy of the lease agreement to be signed by the applicant. The lease agreement must then be signed and returned to the County for final execution.
- 3) **Requirements Once a Lease is Issued:** The lessee must provide copies of all existing permits required by NYSDEC or any other regulatory agency with the lease renewal application.



If the lease renewal is on a private oyster grant and the application is not being submitted by the grant owner, provide proof of the grant owner's permission for the applicant to renew this lease and conduct shellfish cultivation activities under a lease issued by Suffolk County.

Total Acreage Requested

- 5 Ac       10 Ac       Other (oyster grant)

If other, please indicate acreage: \_\_\_\_\_Ac

Type of Culture Operation:

- ON-BOTTOM       OFF-BOTTOM

List of Species to be Cultivated:

- Eastern Oyster       Razor Clam  
 Hard Clam       Bay Scallop  
 Blue Mussel       Other: \_\_\_\_\_

Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Harvest Method:

\_\_\_\_\_  
\_\_\_\_\_

Shellfish Stock Source:

	<u>Hatchery Name</u>	<u>Location</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Non-commercial Lease:

Experimental/Educational       Habitat Restoration       N/A

Explanation of project (purpose and design, expected length of study):

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(Attach additional information if necessary.)

Planned use of shellfish cultured from non-commercial lease site  
(e.g., left in-place, harvested for off-site analysis, etc.):

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Has the prospective Assignee been arrested, indicted or convicted of or adjudicated to be responsible for any violation of marine or environmental protection law, whether state or federal?     Yes     No

If yes, explain: \_\_\_\_\_  
\_\_\_\_\_

\$ 100 Shellfish Aquaculture Lease Renewal fee enclosed:      
Please make check or money order payable to the Suffolk County Treasurer.

I hereby state that the information included in this application is true and correct and that I have read and understand regulations of the New York State Department of Environmental Conservation, and the requirements of the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay governing shellfish aquaculture.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The Application must be executed by an authorized party. If a corporation, the form should be signed by an officer and must be accompanied by a corporate resolution authorizing the application. If a partnership, the form should be signed by a partner.

**McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree**  
A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

**McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree**

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

**Attachment A – Corporate or Partnership Lease Applicants**

**I. Corporate Applicants**

Please provide the following additional information if you are a corporate entity applying for a lease renewal.

C-1. The date and state in which Incorporated (include a copy of the Articles of Incorporation): \_\_\_\_\_

C-2. The names, addresses and titles of all officers:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C-3. The name and addresses of all directors:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C-4. Has the corporation, or any stockholder, director, or officer applied for a shellfish aquaculture lease for underwater lands in Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:  
\_\_\_\_\_

C-5. Names and addresses of all stockholders, who own or control at least 5% of the outstanding stock and the percentage of the outstanding stock currently owned or controlled by each such stockholder:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C-6. Names and addresses of stockholders, directors, or officers owning an interest, either directly or beneficially, in any other New York State shellfish aquaculture operation as well as the quantity of acreage attributed to each such person:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C-7. Whether the corporation or any officer, director or shareholder has ever been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal:  Yes  No

If yes, explain: \_\_\_\_\_  
\_\_\_\_\_

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The Application must be executed by an officer and must be accompanied by a corporate resolution authorizing the application.

**McKinney’s Penal Law § 175.35 Offering a false instrument for filing in the first degree**

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

**McKinney’s Penal Law § 175.30 Offering a false instrument for filing in the second degree**

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

**II. Partnership Applicants**

Please provide the following additional information if you are a partnership applying for a lease.

P-1. The date and state in which the partnership was formed (include a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership): \_\_\_\_\_

P-2. The names, addresses, and ownership shares of all partners:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

P-3. Has the partnership or any partner applied for a shellfish aquaculture lease for the underwater lands of Peconic Bay or Gardiners Bay in the past, and if so, state the outcome or current status of that application or lease:  
\_\_\_\_\_

P-4. State whether the partnership (or any partner) owns an interest, either directly or beneficially, in any other New York State shellfish aquaculture operation as well as the quantity of acreage from the existing operation:

\_\_\_\_\_  
\_\_\_\_\_

P-5. Has the partnership or any partner been convicted or found guilty of a civil, criminal or administrative violation of any marine resources or environmental protection law, whether state or federal:  Yes  No

If yes, explain: \_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The Application must be executed by a partner.

**McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree**

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

**McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree**

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

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**Appendix F**  
**Lease Termination Application**

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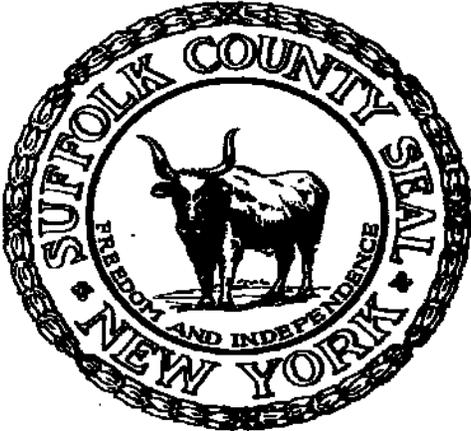
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**COUNTY OF SUFFOLK**



**SHELLFISH AQUACULTURE LEASE PROGRAM  
LEASE TERMINATION APPLICATION**

Lease holders wishing to terminate their lease must submit the following information to the Department.

Mailing Instructions:

Provide one copy of the Lease Termination Application to the Suffolk County Department of Planning.

SUFFOLK COUNTY DEPARTMENT OF PLANNING  
ATTN: Aquaculture Administrator  
P.O. Box 6100  
Hauppauge, NY 11788-0099



List of Species to be Cultivated:

- Eastern Oyster
- Hard Clam
- Blue Mussel
- Razor Clam
- Bay Scallop
- Other: \_\_\_\_\_

Date of Equipment Removal: \_\_\_\_\_

Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Please provide an explanation for lease termination request:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I hereby state that the information included in this form is true and correct.  
I hereby certify that all equipment installed by the lessee within the boundaries of the leased areas has been removed.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The termination request must be executed by authorized parties. If a corporation, the form should be signed by an officer and must be accompanied by a corporate resolution authorizing the application. If a partnership, the form shall be signed by a partner.

**McKinney's Penal Law § 175.35 Offering a false instrument for filing in the first degree**

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

**McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree**

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

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**Appendix G**  
**Sublease Application**

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COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM  
SUBLEASE APPLICATION**

This is an application pursuant to the Lease Holder's requirements for notifying the County and seeking its approval to sublease all or a portion of the Lease Parcel according to Article XII of the Lease. A sublease must be executed before the sublessee can conduct any shellfish cultivation activities. Once the County approves the sublease, the applicant may apply for required permits from NYSDEC and other regulatory agencies.

**EACH LEASE HOLDER, AS THE APPLICANT, AND THE PROPOSED SUBLEASE HOLDER/SUBLESSEE ARE REQUIRED TO ATTEND A PRE-APPLICATION MEETING WITH THE COUNTY PRIOR TO COMPLETING AN APPLICATION. PLEASE CALL THE AQUACULTURE ADMINISTRATOR AT THE COUNTY DEPARTMENT OF PLANNING AT 631-853-5191 TO SET UP A MEETING. AN APPLICATION WILL NOT BE CONSIDERED COMPLETE UNTIL A PRE-APPLICATION MEETING IS HELD.**

Suffolk County requires a **non-refundable** application fee for shellfish aquaculture sublease applications which shall not be applied to the annual lease rental fee.

**Sublease Application Fee: \$100**

Please make your check or money order payable to the Suffolk County Treasurer.

Mailing Instructions:

Provide one copy of your application to the Suffolk County Department of Planning at the address listed below. **Application for the approval of a sublease may be submitted to the County anytime during the Term of the Lease.** The applicant shall be notified upon receipt when the application has been reviewed and accepted as complete by the County.

SUFFOLK COUNTY DEPARTMENT OF PLANNING  
ATTN: Aquaculture Administrator  
P.O. Box 6100  
Hauppauge, NY 11788-0099

**DESCRIPTION OF THE SUBLEASE APPLICATION PROCESS**

The following information outlines the process leading to the approval of a shellfish aquaculture sublease.

- 1. Pre-application Meeting:** Prior to completing an application, each sublease applicant and prospective sublessee must contact Suffolk County Department of Planning to set up a pre-application meeting. Applications submitted without a pre-application meeting will not be considered complete.
- 2. Public Comment Period:** Before the authorization to sublease is approved, notice shall be provided for at least two months by posting such notice at the New York State Department of Environmental Conservation Bureau of Marine Resources, in the Suffolk County Department of Planning, the Office of the County Clerk, and the Clerk's Office of all East End towns. Such notice shall also be published in the official newspaper of the County. The notice shall include the name of the lessee, the name of the sublessee, the boundaries of the lease, and the area of the sublease on the lease. A copy of the proposed sublease shall be available for public inspection and copying in the Office of the County Clerk.
- 3. Decision:** The County will make a determination as to whether or not the application is approved. Input and comments provided by the towns, NYSDEC, and public will be taken into consideration by the County during the sublease application review process. If not approved, the applicant will receive a letter denying the application; either asking for further information or providing reasons for denying the application. If completed and approved, Suffolk County will send a letter of approval to the applicant. The applicant must then submit a copy of the sublease agreement to the County for review, along with a site plan showing the location of the sublease on the lease. The County will review the draft document and notify the applicant of its approval or rejection after appropriate revisions are made, if necessary. The approved sublease agreement may then be executed by the applicant and the sublessee. The applicant must submit a copy of the executed sublease agreement to the County for its records.

- 4. Requirements Once a Sublease is Approved:** The sublessee must obtain all permits required by NYSDEC or any other regulatory agency prior to conducting shellfish cultivation operations on the lease. The sublease site boundaries must be surveyed by a licensed land surveyor and adequately marked according to requirements and permitting set forth by the U.S. Coast Guard Private Aids to Navigation. (The cost for preparation of a boundary is the responsibility of the applicant and prospective sublessee.) The applicant must file a site plan with the County, along with the sublease application. The applicant/lease owner must provide a copy of an endorsement to each and all required insurance policies naming the sublessee as an additionally insured.
- 5. This Application does not relieve the lease owner from the covenants, obligations, duties, and responsibilities existing pursuant to his/her Shellfish Aquaculture Lease which shall remain in full force and effect. There shall only be one (1) sublease allowed to exist at any time on a lease.**

**SHELLFISH AQUACULTURE LEASE PROGRAM**  
**SUBLEASE APPLICATION**

**Current Lease Owner Information**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

County: \_\_\_\_\_

State, Zip: \_\_\_\_\_

Telephone: business \_\_\_\_\_ home \_\_\_\_\_ cell \_\_\_\_\_

Email address: \_\_\_\_\_

Suffolk County Lease Number: \_\_\_\_\_

**Prospective Sublessee Information (Attach Additional Information on Separate Sheets):**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

County: \_\_\_\_\_

State, Zip: \_\_\_\_\_

Telephone: business \_\_\_\_\_ home \_\_\_\_\_ cell \_\_\_\_\_

Email address: \_\_\_\_\_

Identify shellfish cultivation lease(s), if any, presently held by the prospective Sublessee:

\_\_\_\_\_

Location of lease site(s): \_\_\_\_\_  
(town) (waterbody)

Suffolk County Shellfish Aquaculture Lease Map ID#: \_\_\_\_\_

**Additional Information for the Leased Parcel to be Subleased**

Site Status:

- TMAUA                       Oyster Grant                       N/A

If a private oyster grant, please indicate Suffolk County Tax Map number: \_\_\_\_\_  
Please also provide a copy of the grant survey, if available.

If the subject lease is on a private oyster grant, please list the grant owner's name and contact information: \_\_\_\_\_  
\_\_\_\_\_

**If the proposed sublease site is on a private oyster grant and the application is not being submitted by the grant owner, provide proof of the grant owner's permission for the applicant to sublease the parcel to the prospective sublessee for the purpose of conducting shellfish cultivation activities.**

Total acreage of lease: \_\_\_\_\_

Current type of culture operation:

- ON-BOTTOM                       OFF-BOTTOM

List of species currently cultivated:

- Eastern Oyster                       Razor Clam  
 Hard Clam                               Bay Scallop  
 Blue Mussel                               Other: \_\_\_\_\_

Current Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Current Shellfish Stock Source:

	<u>Hatchery Name</u>	<u>Location</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Proposed lease operations:

Type of culture operation:

- ON-BOTTOM       OFF-BOTTOM

List of Species to be Cultivated:

- Eastern Oyster                       Razor Clam  
 Hard Clam                               Bay Scallop  
 Blue Mussel                             Other: \_\_\_\_\_

Culture Gear:

	<u>Gear Type</u>	<u>Amount</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Shellfish Stock Source:

	<u>Hatchery Name</u>	<u>Location</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Has the prospective Sublessee been arrested, indicted or convicted of or adjudicated to be responsible for any violation of marine or environmental protection law, whether state or federal?     Yes     No

If yes, explain: \_\_\_\_\_

\$ 100 sublease application fee enclosed:

Please make check or money order payable to the Suffolk County Treasurer.

Each of the undersigned parties hereby states individually that the information included in this application is true and correct and that they have read and understand regulations of the New York State Department of Environmental Conservation rules governing shellfish aquaculture, and the requirements of the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay.

The undersigned parties to this application agree to include the following provision in their sublease agreement, to be reviewed by the County as part of this application:

“INCORPORATION OF THE PRIME LEASE

The Sublessee, insofar as is applicable to this Sublease Agreement, shall be bound to the Sublessor and shall assume toward Sublessor all of the obligations and responsibilities subject to the limits set forth in the Prime Lease Agreement between the Sublessor (as the “Lessee”) and the County of Suffolk (“County” as the Lessor) that Sublessor, as the Lessee, assumes towards the County under the provisions of the Prime Lease Agreement for the Leased Parcel, identified as: *Insert Suffolk County Lease Number Here*; which is incorporated by reference herein this Sublease Agreement. The Sublessor, as applicable, shall have the benefits of all rights, remedies and redress against the Sublessee which the County, by the Lease Agreement, has against the Lessee. In the event of a conflict between the terms of this Sublease Agreement and the Prime Lease Agreement, including any and all attachments thereto and amendments thereof, the terms of the Prime Lease Agreement shall control.”

Signature of Lease Owner: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Prospective Sublessee: \_\_\_\_\_

Date: \_\_\_\_\_

The Application must be executed by authorized parties. If a corporation, the form should be signed by an officer and must be accompanied by a corporate resolution authorizing the application. If a partnership, the form shall be signed by a partner.

**McKinney’s Penal Law § 175.35 Offering a false instrument for filing in the first degree**  
A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he

offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree is a class E felony.

**McKinney's Penal Law § 175.30 Offering a false instrument for filing in the second degree**

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or other wise become part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

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**Appendix H**  
**Shellfish Productivity Survey**

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**Suffolk County Aquaculture Lease Program  
Gardiners Bay and Peconic Bay  
Shellfish Productivity Survey**

**Background Information**

The intent of the Lease Program is to provide access for shellfish aquaculture on non-productive underwater lands within the Shellfish Cultivation Zone. Establishment of the Shellfish Cultivation Zone was based on a comprehensive review of available information regarding where commercial fishing activities have recently and historically been conducted. Nevertheless, the program recognizes that there is still the possibility that a lease could be proposed where a viable commercial stock exists. The program has provisions for public review of proposed lease sites and for the submission of additional data relevant to fisheries at proposed sites. In some cases, a benthic survey could be required as a part of the lease review and approval process, in order to confirm whether a viable “commercial stock” exists. If a site is proven to have a “natural stock” capable of supporting a shellfish or finfish harvest activity, it would not be eligible for lease issuance.

In some cases a benthic survey will be required to determine if a proposed lease site has viable populations of commercially valuable shellfish. For hard clam populations, a density of 2 clams per square meter (/sqm) has been established as the minimum density for indicating a viable commercial clam resource. (Note: it is recognized that clam density alone is not the only factor determining if a site has commercially viable stocks; other factors include substrate type and depth, both of which affect ability to harvest clams.) This criteria was established by considering clam densities found in previous studies of the Peconic/Gardiners Bay system, as well as densities found in other productive Long Island embayments. A density standard for other species harvested from Peconic and Gardiners Bays (i.e., bay scallops, whelks) was considered not applicable because populations of those species are mobile, compared to the relatively sessile hard clam populations. Furthermore, hard clam stocks were cited as a concern expressed in public comment during the lease program development process.

### **Existing Data on Shellfish in Peconic Bay and Gardiners Bay**

Available data on hard clam populations in the Peconic and Gardiners Bays are limited. Anecdotal information about where clams have been harvested in recent years has been reviewed and incorporated into the establishment of the Shellfish Cultivation Zone. The findings of three prior shellfish inventories were also reviewed. These studies were:

- Shellfish survey of deep waters of the Peconic Estuary by NYSDEC in 1979 and 1980 (NYSDEC 1982)
- Assessment of shellfish resources in the deep water areas of the Peconic Estuary in 1995 (Lewis et al. 1997)
- Assessment of shellfish resources in the tributaries and embayments of the Peconic Estuary, 1997 (Lewis and Rivara 1998)

The 1995 deep water survey (Lewis et al. 1997) was performed to assess the status of the shellfish stock in deeper waters of the estuary (2 meters to 9.1 meters deep), beyond the near shore areas, embayments and tributaries. The survey provided data to compare to the findings of NYSDEC (1982). Areas of the estuary from Flanders Bay east to Gardiners Bay were surveyed. The study area of this survey generally coincides with the Shellfish Cultivation Zone in that it also does not include near shore areas and embayments. The survey consisted of benthic sampling at 124 stations with the use of a hydraulic dredge. The survey found that clams were generally distributed throughout the estuary; 61 of the 124 stations were recorded to have clams. The average density of hard clams was 0.16 clams/sqm, with a maximum recorded density at one station of 4.3 clams/sqm. The following conclusions were made in the report:

- Abundance of clams was less in open bay areas, and somewhat higher in fringe areas nearer to shore.
- Chowder clams comprised the most abundant size class of clams, indicating that stock recruitment has been extremely low.
- The deep water of the estuary “is not currently productive of the commercially harvested species of shellfish” and the deep waters of the estuary are “empty not naturally productive with respect to commercial shellfish.”

- Shellfish aquaculture “may be feasible and would not interfere with natural shellfish production which is extremely low in the deep waters.”
- Abundance of shellfish decreased significantly between the 1979/80 survey and the 1995 survey.
- “The deep waters of the Peconic Estuary are not naturally productive shellfish areas but could support mariculture activities... .”
- Greatest concentrations of shellfish were found at stations within 1,000 feet of the shoreline in most cases.
- Only a small number of scallops were found; this was attributed in part to the conclusion that “most of the deep water areas do not contain suitable scallop habitats.”
- No soft clams were recorded; this was attributable to the conclusions that soft clams tended to inhabit shallow waters.
- The majority of stations had no clams or clams at very low density, and only several stations had clams at densities considered moderate (above 2 clams/sqm).

Lewis and Rivara (1998) documented shellfish abundance in shallow waters (1 foot to 6 feet deep). The report indicated that clams were found at 75 percent of the stations sampled. At those stations where clams were found, the overall abundance was approximately 0.5 clams/sqm. Seventeen stations had clam abundance over 1 clams/sqm. The report made the following conclusions:

- Overall abundance of clams was greater than that found in the deep water survey, but must still be considered low.
- No significant numbers of bay scallops were found.
- Chowder clams were the most dominant size category.
- “Good water quality in many of the creeks with low abundance of naturally occurring stock suggest the ability to continue or expand the shellfish mariculture in those areas.”  
“Numerous areas exist that could support shellfish mariculture activities... .”

### **Shellfish Abundance in Other Areas**

One of the most productive clam harvest areas on Long Island over the past 10 years has been the Oyster Bay Harbor/Cold Spring Harbor Complex on Long Island’s north shore. The

Town of Oyster Bay performed a comprehensive shellfish survey in the harbor in 2007 (Town of Oyster Bay, September 2007). The survey only included the public grounds, and not those conveyed under lease to a private shellfish company. The density of clams for the study area was found to be 6.3 clams/sqm, with a maximum of 87 clams/sqm. Areas characterized as low clam abundance had clam densities ranging from 0 to 3.1 clams/sqm. Areas utilized by commercial clambers generally show concentrations in the moderate range (3.2 to 9.5 clams/sqm) and high range (above 96 clams/sqm). The overall density of legal sized clams was approximately 4.3 clams/sqm. An earlier survey of Oyster Bay Cold Spring Harbor performed in 1999, when the bay was considered somewhat less productive, showed an overall density of 3.5 clams/sqm (Town of Oyster Bay, February 2000). A study of Huntington and Northport Bay in 1998 by the Town of Huntington found an average clam density of 7.7 clams/sqm. The Huntington area was considered to be a productive harvest area at the time (Town of Oyster Bay, February 2000). A study of hard clam populations in South Oyster Bay in 2004 found an average density of 3.5 clams per sqm (Town of Oyster Bay, April 2007).

In the 1980s when clam production in the bay was near its peak, a comprehensive clam density survey of the Great South Bay System was performed. This survey found average densities in various sub-areas of the bay ranging from 3.3 clams/sqm to 7.8 clams/sqm in the most productive zones (United States Environmental Protection Agency, October 1981). The overall average of all waters from South Oyster Bay to Moriches Bay was found to be 5.5 clams/sqm. Discussions with Town of Brookhaven Division of Environmental Control and The Nature Conservancy have indicated that clam densities in the Brookhaven portion of Great South Bay have undergone a general, consistent decline since the productive years of the 1970s and 1980s. Clam density in much of Great South Bay under jurisdiction of the Town of Brookhaven and The Nature Conservancy is well below 3 clams/sqm. The Nature Conservancy is working on a hard clam restoration program for the bay and has set a restoration goal of 6 clams/sqm. Clam densities in the Town of Islip and Babylon portions of Great South Bay have also experienced major declines, and the clam fishery is presently at minimal levels.

A report on clam densities recorded in the Town of Islip portion of Great South Bay from 1986 to 2003 is provided by Kraeuter et al. (2005). Clam density for clams over 1 year old was approximately 6.5 clams/sqm in 1978, when the clam fishing was near its peak production (Kraeuter et al. 2005). Densities have shown a consistent dramatic decline since then, to a level

of approximately 1 clam/sqm in 2003, when the clam fishing was essentially in collapse. The report also provides density data for other East Coast embayments, and densities ranged from 0.23 clams/sqm (Sinepuxet Bay, MD) to 7.72 clams/sqm (Raritan Bay, NJ).

### **Guideline for Assessing Potential Productivity**

Review of the above information indicates that productive clam areas typically have densities of 5 clams/sqm and higher. Densities below 2 or 3 clams/sqm are generally characterized as relatively low abundance. Available data for the Peconic and Gardiners Bays indicate that most of the open waters have low abundance of clams, although it is reported that harvestable quantities are present in certain areas.

A density of 2 clams/sqm was selected as the guideline to assess whether an area has harvestable quantities of clams. The 2 clams/sqm guideline is for legal size clams only. The presence of seed clams, although indicative of clam spawning and setting success, does not necessarily mean that an area will ultimately be productive for legal size clams. Predator and mortality can drastically reduce populations of seed clams before they reach harvestable size. The 2 clams/sqm guideline was selected as a reasonable, conservative approximation of potentially harvestable clam stocks, since actual surveys indicate that productive harvest areas typically have a greater density of clams.

As stated above, density criteria were not established for bay scallops and other mobile species. Evidence that an area is productive for species other than clams must be based on documentation that harvestable stock is present, from documented information from harvesters, or data from regulatory/governmental authorities. The program must have a degree of flexibility to account for resources that are not as stable and fixed as hard clam populations.

The County reserves the right to consider any relevant data and information pertaining to a site's productivity in making its decision regarding lease site approval.

### **Ground Truthing Survey Methodology**

If a potential lessee applicant opts to ground truth a controversial proposed lease site, a field survey must be performed to determine the density of clams within the subject area. The survey must include benthic sampling suitable to calculate a mean clam density for the subject area. The survey must include an adequate number of sample stations within the subject area to

calculate a mean density that is statistically significant. Sampling methods can include bottom grabs, suction benthic samplers, diver surveys, or other scientifically acceptable methods. The number of samples to be taken would depend on the methodology utilized and the area of each sample. Sample sites must be randomly distributed throughout the study area. The survey would have to be conducted by a credentialed investigator who can validate the survey findings and issue a report documenting the methodology, data analysis, and findings.

### **Examples of Possible Sampling Methodologies**

A sample methodology could include the use of a diver survey to collect data on clam abundance. A diver survey would be conducted by utilizing a SCUBA diver to collect all shellfish from a series of stations within the proposed 10-acre lease area. Shellfish should be collected within a fixed sample area (e.g., 1 sqm) by means of a diver-operated suction dredge and/or hand raking. Approximately 10 stations could be sampled within the 10 acre parcel. Stations should be selected at random within the area. One method to randomly select sample locations is to divide the parcel into a grid, assign a number to each grid square, and utilize a random number generator to pick sample locations. Legal size clams recovered for each station should be used to calculate a density. The mean densities recorded can be calculated by averaging the density for each station. Station locations should be recorded in the field by GPS to an accuracy of approximately 10 feet.

A survey can also be performed by methods previously used by NYSDEC, Marine Science Research Center and Cornell Cooperative Extension (Lewis and Rivara 1998). In this method, a hydraulic clam dredge towed from a boat would be utilized to sample clams within a proposed lease parcel. To standardize the length of the tow, a 200 foot weighted line was released from the boat during the tow to determine the length of the tow. A hydraulic dredge with an opening of one foot, a bar spanning of  $\frac{3}{4}$  inch and a cutting edge set at a dredge penetration depth of 3 inches, was used. The number of clams and other shellfish caught in each tow should be recorded. The catch per tow can be converted into a square meter density based on the total area of bay bottom covered by each tow (calculated as 9.29 square meters in the Cornell Cooperative Extension work). In the 10 acre parcel, it is estimated that 5 tows should be performed in randomly selected areas, in order to calculate a mean clam density.

Another sampling method could utilize a mechanical clam shell bucket operated by a barge mounted crane. Typical buckets cover an area of approximately 1 sq meter. The sediment materials retrieved by the bucket should be washed through a series of grates in order to recover clams and other shellfish from the sediment. Shellfish caught by each grab can be recorded and a density measurement calculated. The density recorded at each station can be utilized to calculate a mean density for the lease parcel. With a sample size of approximately 1 sqm, a total of 10 stations should be sampled within the lease area, at randomly selected positions within the parcel.

A findings report, which provides detailed information on methodology, shellfish density at each station, and mean clam density (with standard duration and confidence limits) should be prepared by a qualified environmental professional.

#### References

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**Appendix I**  
**Contact Information**

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**Contact Information**

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**United States Army Corps of Engineers, New York District**

Attention: CENAN-OP-R  
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