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## SUFFOLK COUNTY SHELLFISH AQUACULTURE LEASE PROGRAM IN PECONIC BAY AND GARDINERS BAY



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### Introduction

Suffolk County (County) has adopted a shellfish aquaculture lease program (Lease Program) pursuant to Resolution No. 646-2009 that provides secure access to publicly owned underwater lands in Peconic Bay and Gardiners Bay, New York for the purpose of shellfish cultivation. The Lease Program has been designed to fulfill the requirements set forth in New York State Environmental Conservation Law §13-0302 by establishing a framework for the leasing of underwater lands that minimizes environmental impacts and user conflicts while supporting the growth of the shellfish aquaculture industry.

The development of the Lease Program was a formidable undertaking that required the collective knowledge and input from commercial fishermen, shellfish farmers, regulatory agencies, organizations, businesses and other parties familiar with the Peconic Estuary. Obtaining this knowledge was facilitated by the participation of the Aquaculture Lease Program Advisory Committee (ALPAC) over a four year period.

### Suffolk County's Role in Shellfish Aquaculture

Historically, the County had certain authorities pertaining to shellfish cultivation in Peconic Bay and Gardiners Bay under New York State law, and was actively engaged in the administration of a program that issued grants of underwater lands for private oyster farming. Pursuant to New York State Environmental Conservation Law (ECL) §13-0302 and as authorized under the Laws of New York 2004, Chapter 425 (2004 Leasing Law), the State of New York ceded underwater lands in Peconic and Gardiners Bays seaward of the 1,000 foot high water mark to Suffolk County for the purpose of shellfish cultivation. The 2004 Leasing Law contains provisions that eliminate onerous requirements, but also adds safeguards to assure that the legitimate concerns of all bay user groups were considered during development of the Lease Program. Requirements set forth in the 2004 Leasing Law to reduce the impacts of the Lease Program include restrictions specifying where leases cannot be located. Such areas defined by the 2004 Leasing Law are as follows:

- "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"
- "underwater lands where the leasing will result in a significant reduction of established commercial finfish or crustacean fisheries."

## The Need for a Shellfish Aquaculture Lease Program

The Lease Program has been developed to provide a mechanism that allows shellfish aquaculturists to continue and expand the cultivation of shellfish. The cultivation of the common oyster (*Crassostrea virginica*) and the hard clam (*Mercenaria mercenaria*) has been and still is an important part of the maritime tradition in Peconic Bay and Gardiners Bay. Presently, shellfish aquaculture activities are conducted in these bays on private underwater land grants (oyster grants) and Temporary Marine Area Use Assignments (TMAUAs) administered by the New York State Department of Environmental Conservation (NYSDEC). The Lease Program supports the continuation of these existing shellfish aquaculture operations, and also encourages moderate growth of the shellfish industry by providing individuals with an opportunity to obtain access to underwater lands. It also provides further stability and security to existing and future shellfish aquaculture operations by issuing 10-year leases. The Lease Program is expected to expand the marine-based economy and create related job opportunities.

## The Lease Program

The County's authority is limited to the conveyance of underwater land for shellfish cultivation, and does not extend to the regulation of this activity. As such, the County controls: the *location* of shellfish farms through issuance of leases on underwater land within an adopted Shellfish Cultivation Zone; and the *extent and intensity* of aquaculture use through limits on lease size and number. However, lease applicants must still obtain all necessary regulatory permits from relevant government agencies for conducting off-bottom or on-bottom shellfish culture activities on their leases. In particular, a shellfish culture permit must be obtained from NYSDEC. The dual functions of the County and NYSDEC will help to ensure that the Lease Program is carried out in accordance with proper environmental mitigation measures to protect marine resources and activities in Peconic and Gardiners Bays.

The Lease Program replaces the existing, *ad hoc* system of providing access to marine resources for shellfish cultivation with a modern approach that assures certainty in terms of its administration, accountability on the part of lessees, and equity among the diverse users of Peconic Bay and Gardiners Bay.

The County has adopted Lease Program regulations governing: applications for leases; notices to be given; the form and term of leases; standards for the approval or denial of leases; administration of leases; the transfer or renewal of leases; recording of leases; and other matters that are appropriate to the Lease Program.



## Shellfish Cultivation Zone

The Shellfish Cultivation Zone map (see pages 4 and 5) shows the area within which shellfish leases can be issued. The Shellfish Cultivation Zone meets all criteria in the 2004 Leasing Law. This 29,969-acre zone includes NYSDEC TMAUA locations; private oyster grants; and other contiguous areas where the impacts/conflicts of shellfish aquaculture activities on environmental resources/socio-economic concerns will be minimal. Leases for new shellfish farms will consist of 5- or 10-acre parcels. New shellfish aquaculture leases are limited to a total of 60 additional acres per year, for a maximum of 300 acres during the first five years of the program, and a total of 600 acres by the tenth year of program implementation. Including those participants that will be given the opportunity to grandfather into the program, the maximum area that could be potentially leased during the first 10 years of program implementation is 3,173.5 acres. This accounts for less than 2.9% of the 110,000 acres of underwater land area subject to the County's shellfish leasing authority. The program also provides municipalities, researchers, and not-for-profit entities with the opportunity to obtain non-commercial shellfish cultivation leases for experimental, educational, and resource restoration purposes.

The Lease Program will be implemented in a way that will allow for program adjustments to mitigate any unforeseen impacts. The Shellfish Cultivation Zone will be reviewed every five years and amended, as necessary. The Lease Program is subject to review during the second 5-year period of implementation to establish program components after 10 years. This review will be based on an environmental assessment, which will include, but is not limited to: data on environmental conditions of the bays; results of the Lease Program to date; need/demand for additional lease space; and town, public and industry input.

## Lease Program Website

The County's Shellfish Aquaculture Lease Program website has been maintained since the initiation of the work on the specification of technical aspects of the program since June 2005. Complete records of all ALPAC meetings (notices, agendas, meeting summaries, presentations); consultant work task draft reports and associated maps; and all final program reports and related documentation are accessible on this website. The website will be used to post announcements of events and dates and in general, keep the public informed of all meetings and actions that are taken during the public notice and lease site review process, and subsequent execution of lease agreements between Suffolk County and shellfish farmers.

The program website address is listed below.

<http://www.suffolkcountyny.gov/aquaculture>



# SUFFOLK COUNTY SHELLFISH AQUACULTURE LEASE PROGRAM IN PECONIC BAY AND GARDINERS BAY



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Real Property Taxmap panel Inework used with permission of Suffolk County Real Property Tax Service Agency (S.C.R.P.T.S.A.). This rendering is a DRAFT MAP in that: 1) the data displayed is an interagency or intra agency work produced for the purpose of identifying and correcting data. It is not a final agency determination. It is not statistical or factual completion of data. In some cases correct data has been left out and questionable or inaccurate data has been exaggerated to help identify errors. In short, this is a DRAFT MAP produced in an effort to aid in the correction of data and is not held out as being complete or accurate in any way.

\*Excerpted from (F.G.I.L.) the provisions of the Freedom of Information Law [Public Officers Law Article 6 Section 84-90] by section 87.2 (g)

This map is a compilation of data from:  
 1. The New York State Digital Orthographic Aerials;  
 2. The Suffolk County Real Property Tax Map Record Line Work;  
 3. The Suffolk County Real Property Tax Service GIS Base Map;  
 4. Field GPS Locations and Verifications.

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New York State Land Surveyor License Number 049567



**Legend**

- Lease Program Boundary (NYSECL 13-0302)
- Town Boundary (SC Real Property Tax Map Agency)
- 1000 ft High Water Mark Buffer
- Shellfish Cultivation Zone
- Village

Shellfish Cultivation Zone Total Area = 29,969 Acres

Approximate scale of total acreage of new leases that could be leased over the first 5 years (300 Acres)

Approximate scale of total acreage of new leases that could be leased by the 10th year (600 Acres)

## MAP 1: SHELLFISH CULTIVATION ZONE

Suffolk County, New York



SUFFOLK COUNTY  
DEPARTMENT OF  
ENVIRONMENT & ENERGY

## Summary of the Lease Application Process

Existing TMAUAs in the Shellfish Cultivation Zone must be converted into County leases in accordance with the provisions outlined in the Suffolk County Shellfish Aquaculture Lease Program. A private 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. 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. Leases will not be issued on oyster grants with a title conflict until all such conflicts are resolved and documentation/proof of same has been submitted to the County. In addition, the Lease Program allows for future growth of the industry by providing additional use of underwater land for aquaculture on up to 600 acres over the first 10 years of the program. A summary of the leasing process follows:

### *Lease Program Participants:*

Holders of TMAUAs; private oyster grant owners; applicants for new leases subject to annual acreage cap limit (60 acres per year for the first 10 years of the program); and applicants for non-commercial leases (municipalities, researchers, etc.).

### *Pre-Application Meeting:*

All prospective lease applicants are required to attend a mandatory pre-application meeting with the Suffolk County Department of Planning prior to submitting their applications.

### *Submission and Review of Application:*

All lease program participants must submit an application to the Department of Planning during the application period established by the County. Lease applicants, other than private oyster grant owners, must identify a preferred lease site location and two alternative lease sites. The Department will review all completed applications received, and make a determination on applicant eligibility.

### *Number of Leases Permitted:*

Each applicant will be limited to two leases; separate applications are required for each lease. Second applications for new leases will only be considered when acreage is available and the annual acreage cap limit has not been met.

### *Public Notice:*

The Department of Planning will issue a public notice on all proposed lease sites. The public, regulatory agencies and municipalities will have 60 days to submit written comments on proposed lease sites to the Department in response to this public notice. All comments received will be summarized and submitted to the Aquaculture Lease Board.

### *Aquaculture Lease Board:*

The County Aquaculture Lease Board will conduct a public meeting after the public notice period, at which all potential lease sites in a given application cycle will be presented for consideration from a regional perspective. The public will be given the opportunity to make comments on all potential lease sites at this meeting. Subsequent to this meeting, the Lease Board will convene and make a determination on those lease sites that will be available for leasing; those lease sites that will be conditionally eligible; and those lease sites that will be eliminated from further consideration.

### *Preparation of Lease:*

The Department of Planning will then process lease applications, and lease documents will be prepared in conjunction with the Department of Law for execution, including a certified survey of the lease site. For conditionally eligible lease sites, the applicant must conduct a benthic survey to objectively determine the population density of hard clams on the lease site. If the survey documents a hard clam density of 2.0 or more legal sized hard clams per square meter, the site in question cannot be leased.

### *Fees:*

For an initial lease, applicants must submit a lease application fee of \$100. An application fee is also required when applying for a lease renewal, expansion of acreage, relocation of the lease (if not required by a governmental entity), and lease subletting or assignment. An annual lease rental fee of \$200 plus \$5 per acre is required at the beginning of each year during the 10-year lease on public land. For private grant land owners, the lease rental fee would be \$200 per year during the 10-year lease.

A complete description of all aspects of the County’s Shellfish Aquaculture Lease Program is contained within the “*Lease Program Management Plan*” document (available on the Program’s website). This document also contains all administrative and procedural requirements that must be addressed by prospective lease applicants.

## Lease Program Benefits

-  The County secures ownership title to approximately 100,000 acres of underwater land in Peconic Bay and Gardiners Bay. The County retains its authority to designate locations in these bays for the conduct of compatible shellfish aquaculture activities in the future.
-  Private investment in shellfish aquaculture businesses increases and shellfish farms are established at secure locations that do not pose conflicts with commercial fishermen and other bay users. This, in turn, expands the marine-based economy of Suffolk County and creates jobs that contribute to the quality of life and sense of place in East End communities.
-  The production of large numbers of oysters, hard clams and bay scallops in dense populations on shellfish farms augments the spawning potential of native shellfish populations. Increased numbers of filter feeding bivalves on shellfish farms exerts a positive influence on water quality by helping to control nutrient cycling, which in turn contributes to the prevention of noxious plankton blooms, such as brown tide. These and other ecosystem services associated with shellfish farms are provided on a sustainable basis at little to no cost to the general public.
-  Leasing is institutionalized as a Suffolk County government responsibility and function. The Lease Program is implemented using administrative mechanisms that provide for continuing input from Towns of Southold, Riverhead, Southampton, Shelter Island and East Hampton and consideration of local interests.



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## PROGRAM DEVELOPMENT

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