

COUNTY OF SUFFOLK



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The First Draft – May 14, 2008 – of the ***Suffolk County Shellfish Aquaculture Lease Program Administrative Guidance*** document is attached.

Please note that this draft document will be subject to extensive revisions in the near future. Please continue to view this website for subsequent drafts of this document as they become available.

Suffolk County
Shellfish Aquaculture Lease Program
Administrative Guidance

Prepared for:
Suffolk County Department of Planning

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First Draft
May 14, 2008

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Introduction

In accordance with the New York 2004 Leasing Law and in support of the maritime tradition of shellfish aquaculture in Peconic Bay and Gardiners Bay, Suffolk County has developed a Shellfish Aquaculture 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. The program provides individuals an opportunity to obtain access to the underwater lands of Peconic Bay and Gardiners Bay for the purpose of shellfish aquaculture.

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 shellfish farmer to apply for a shellfish aquaculture lease in Peconic Bay and Gardiners Bay, Suffolk County, New York.

Definitions

As used in this guidance document, the following words and phrases have the following meaning:

- ♦ **“Approved Waters”** means waters of the County which have been classified by the New York State Department of Environmental Conservation as certified for the taking of shellfish for human consumption on a regular basis. These classifications may be subject to change as water quality conditions dictate.
- ♦ **“Private Oyster Grant”** refers to the underwater lands previously granted to private individuals by Suffolk County during the mid 1800s to the early 1900s, for purposes of oyster shellfish cultivation.
- ♦ **“Shellfish Aquaculture”** means the cultivation of shellfish species (*i.e.* hard clam, American oyster, blue mussels, soft clam, bay scallops, and sea scallops) under natural or artificial conditions.
- ♦ **“Shellfish Aquaculture Lease”** is 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”** refers to those lands conveyed by Suffolk County under a shellfish aquaculture lease document.
- ♦ **“Shellfish Aquaculture Lease Map”** is the map that shows the areas in which a shellfish aquaculture lease can be located. These areas have been divided into 20-acre plots. Leases will be located within these plots. Each plot will be designated with a corresponding lease number and location coordinates (not applicable to private oyster grants).
- ♦ **“Shellfish Cultivation Zone”** is the area located in Peconic Bay and Gardiners Bay where shellfish aquaculture leases will be allocated. This area has been designated as an area where the impacts of shellfish aquaculturing activities on environmental and socio-economic conditions will be minimal.

- ♦ **“Shellfish Seed”** any shellfish measuring less than legal size as established under State law or regulation.
- ♦ **“Wild Stock”** means natural shellfish resources which grow within the waters of the Peconic Estuary, and are not cultured in any way.

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Lease Application Process

1. Eligibility

Individuals eligible for a shellfish aquaculture lease shall be least 18 years of age with no prior significant violations of the Environmental Conservation Law (ECL) as it pertains to shellfish. Each lease applicant is required to provide a federal tax ID number.

2. 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 Lease Map will be available for viewing on the County website and at the Suffolk County Department of Planning office during the lease application period described below. Preference of a particular lease site will be available to the first application received requesting that site.

3. Pre-Application Meeting

Prior to completion of an application, the potential lease holder is required to contact the County 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, the longitude and latitude coordinates of the lease area within the 20-acre parcel (and the alternative sites) will be made available to the potential lease holder. Applications submitted without a pre-application meeting will not be considered complete.

4. 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. Applications submitted after that time period will only be reviewed at the discretion of the County. All applications received by the County 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 application received for that site.

5. Number of Leases Permitted

Two leases per applicant will be available under the Lease Program. If a lease holder wishes to apply for a second lease, a full application process will be required. The application process for a second lease will be considered by the County only if there is lease acreage available after other applicants requesting one (initial) lease have been submitted. If there is no left over acreage available for a second lease site, the application (for the second lease only) will be filed by the County for submission during the application process for the following year. The same criteria for issuing a second lease will apply for the application process of the following year.

6. Submission of Application

The County will furnish the applicant with written application forms which must be completed and returned to the County. Once an application has been submitted to the County, the County will make a determination as to whether the application is complete. If deemed incomplete, the applicant shall receive a letter from the County requesting additional information.

7. Public Notice

Upon acceptance of the completed lease application by the County, the County will issue a public notice regarding the proposed lease site and the two alternative lease sites, in accordance with ECL § 13-0302. The public notice will have a 60-day comment period during which the public, regulatory agencies and municipalities may submit written comments on the location of the lease and the alternative lease sites. The County will take into consideration all comments received during the public comment period when making its decision to approve or deny a lease application.

8. Site Review/Ground Truthing

The Shellfish Cultivation Zone, as mapped and adopted by Suffolk County, identifies appropriate areas within the Peconic Bay and Gardiners Bay where leases may be allocated.

According to ECL § 13-0302, the County may not lease underwater lands which meet the following criteria:

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; and

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

The County has made an initial determination that the Shellfish Cultivation Zone excludes the land in these three categories. The boundary of the Shellfish Cultivation Zone was not established arbitrarily, but rather was formed as a result of an extensive effort involving meetings and interviews with knowledgeable individuals, data analysis, and a review of various environmental resource conditions. Areas that support multiple commercial fisheries were delineated based on data compiled from Aquaculture Lease Program Committee (ALPAC) meetings, interviews with local commercial fishermen, existing documented research, and conversations with New York State Department of Environmental Conservation (NYSDEC) staff.

If an objection regarding the proposed lease area is raised during the public comment period, the County will make a determination as to whether the objection is credible. The County will notify the lease applicant of any objections. If the objection is credible, the lease applicant will be requested to select one of its alternative sites.

If an objection during the public comment period identifies the proposed lease site as an area having a sustainable wild stock of commercial value, the lease applicant may select one of the alternative undisputed lease sites, or prove that the proposed site does not support a commercial shellfish industry. If there is a credible report that a potential lease area has been identified as an area supporting significant wild shellfish stock, it is the responsibility of the concerned party to provide proper documentation to the County. The process would be performed as follows:

- If, during the public comment portion of the leasing process, the County receives documentation that the proposed lease area is supportive of a sustainable commercial shellfish fishery, the County will notify the lease applicant that there is a concern. Acceptable documentation would be a notarized letter from the concerned party stating they have harvested shellfish within the last five years, from the proposed lease area at a catch rate that is considered sustainable. In addition, the concerned party must include a copy of their commercial shellfish harvest license and proof what was harvested and sold to demonstrate a basis for comment. Parties with a basis for comment will also include municipal, academic or other technical representatives who can demonstrate specialized knowledge.
- If a lease applicant wishes to dispute the objection pertaining to wild stocks, the lease applicant must conduct a ground truthing survey at his/her own expense to confirm the findings. Currently, there are only two shellfish species of concern within the project area: hard clam and bay scallop. 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 and submitted to Suffolk County by qualified biologists or ecologists. The survey methodology to determine a sustainable catch rate will depend on the species being surveyed. For example, if hard clam was to be surveyed, a determined number of legal size clams per square meter (possibly 2 clams/sqm) via accepted sampling methodology must be present in the survey area.

This section remains to be completed. Information regarding description of suitable methodology yet to be inserted.

9. Decision (This section will be amended to reflect review by SC Dept of Law)

The County will prepare a report on the lease application including the findings of fact, and submit same to the Suffolk County Shellfish Aquaculture Lease Review Board. The County's proposed decision will be sent to all interested parties, who will have ten (10) days to comment on the proposed decision. The County will make a final decision to approve or deny the lease application within 120 days of the public notice posting.

The County may deny a lease if the lease applicant does not comply with the qualifications stated above.

Requirements and Restrictions Once Lease is Granted

10. Lease Required

It is unlawful for an entity that does not have a lease issued from the County to conduct any type of shellfish aquaculture operation either on/in bottom or in an off-bottom structure within the underwater lands under the jurisdiction of the County (unless on an existing oyster grant). Owners of oyster grants; however, 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.

11. Leases on Grant Lands

An oyster grant holder can apply for a lease on his/her grant, or a portion of which, if the owner can document a prior historical or current use of the grant for shellfish aquaculture. Grants with title conflicts will not be eligible for a lease until the conflict is resolved by the grant holder. If a grant has been fallow (*i.e.* if no shellfish aquaculture activities have been conducted for the past 10 years), it can enter the Lease Program in a limited phased process (*i.e.* a 5 or 10 acre lease). Leases on fallow grants shall not exceed two 10-acre leases for the first five years of the Lease Program, at which time a review of the Lease Program will determine if the lease on the former fallow grant may be expanded. Leases on fallow grants would be subject to the full application process, including public review.

12. Site Location

Once the boundaries are established, it is the lease holder's responsibility to maintain the marking of lease area boundaries with appropriate buoys. The US Coast Guard (USCG) is the regulatory agency that makes the determination on 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", white in color, with two horizontal retro reflective orange bands placed completely around the buoy circumference, with 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. The lease holder must contact the local US Coast Guard Private Aids to Navigation Office for approval of marking devices.

13. Annual Reporting/Operation Plan

In addition to complying with all NYSDEC shellfish aquaculture regulations, the lease holder is responsible for submitting an annual report of lease activities to the County Department of Planning 30 days before the date of issuance. The annual report shall include the following information pertaining to the lease site: description of the design 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 Annual Reporting Form with the County in order to maintain a lease. The annual report must be submitted with the annual lease rental fee (sample form is provided in Appendix C).

14. Lease Modification

Lease modification involving the expanding of lease acreage or operations will require a full application process, including a public review and application fee. Lease expansions shall only be applicable to previous NYSDEC-issued Temporary Marine Area Use Assignment holders that initially entered the Lease Program as a continuation of existing operations (*i.e.* an off-bottom 5-acre shellfish culture operation), and that wish to expand their operations to 10 acres; and to grant holders with a lease on only a portion of their grant land. Lease modification requests may be submitted to the County with the annual reporting form.

15. Transfer

A lease holder may apply to the County for the approval of a transfer of his/her lease to another entity for the remaining portion of the lease term. Leases on grant lands are transferable if the grant is sold to another individual. The lessee in which the lease is being transferred to (transferee) must obtain all permits required by NYSDEC or any other regulatory agency prior to conducting shellfish aquaculture operations on the lease site, and is subject to the same standards that are applied to an initial lease applicant. A lease transfer

must include filing the appropriate paper work and lease rental fee and be approved by the County (sample form is provided in Appendix D).

16. Termination/Non-renewal

The County may terminate a lease (or a lease may not be renewed) based on failure to comply with the terms of the lease, including, but not limited to, failure to pay fees. Also, the County may terminate or not renew a lease, if it is determined that substantial shellfish aquaculture activity has not been conducted on the lease site within the preceding year, or if it is documented that the lease activities are determined as substantially injurious to existing environmental conditions. Provision will be made for hardship allowance, based on information provided and considered by the County. Cause for termination or non-renewal will also include a significant violation of the Environmental Conservation Law relating to shellfish activities (e.g. illegal harvesting of shellfish; conducting shellfish aquaculture activities without valid required NYSDEC permits). Substantial aquaculture activities will be defined as the following condition:

- Documentation that the lease holder has made a significant expenditure of money for shellfish used for planting on the subject lease.

17. Annual Lease Rental Fee

Lease holders will be required to pay an annual lease rental fee as described below. Payment will be due 30 days before the date of issuance (*i.e.*, if the lease was issued on February 1st, the annual lease rental fee would be due 30 days before that date of each year).

	Non Commercial Lease	Standard Commercial Lease
Acreage Limit	Case by case basis	5 or 10 acres
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 Fee	\$200 plus \$5 per acre, including a \$100 non-refundable application fee	\$200 plus \$5 per acre for lease, including a \$100 non-refundable application fee

18. Option to Renew/Terminate Lease

A lease holder must file a Shellfish Aquaculture Lease Renewal Form (sample form in Appendix E) with the County in order to renew a lease at the end of the lease term. Renewal requests should be submitted no later than six months prior to the anniversary date of the lease, and will be subject to review and approval by the County. Renewals will be made based upon the then-current terms and conditions of the lease, as well as at the current annual lease rental fee. The Department of Planning 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 of Planning.

If a lease holder wishes to terminate his lease prior to or at the end of the lease term, he/she must submit a Request for Lease Termination Form (sample form in Appendix F). The lease shall be terminated by the County upon final execution of a least 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 lease holder 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.

19. Surveys

All leaseholds being issued on underwater lands ceded to the County for shellfish aquaculture will be surveyed. For the introductory of the Lease Program, the County will provide for the performance of the survey for each lease. The lease holder will be responsible for maintaining all markers once the boundaries are established based on latitude/longitude coordinates provided by the County.

20. Noise and Lighting

All lease holders shall be required to conduct shellfish aquaculture activities in a manner that is respectful of other marine users and the environment, which shall include the following:

- Restricting noise and light to harvesting activities, normal operational practices or maintenance of safety;

- Making every reasonable effort to minimize noise during regular farming activities, including ensuring well-maintained sound suppression devices (*i.e.*, mufflers) are used while operating equipment;
- Ensuring that all non-navigation lighting must 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
- Making 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.

21. 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 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 lease holder may be subject to summary eviction proceedings.
- Markings – All shellfish aquaculture apparatus (e.g. cages, bags, buoys) must be marked with the lease owner’s name and lease identification number and said markings must be clearly visible and maintained at all times. The lease holder is responsible for obtaining all necessary permits or licenses under federal and state law including any permits for buoys and private aid markers required by the US Coast Guard and/or US Army Corps of Engineers.
- Maintenance and Removal – All shellfish aquaculture gear and the contents of which are the possession and responsibility of the lease holder, who shall be responsible for its maintenance and eventual removal. If the equipment is not removed within 60 days after expiration, termination or revocation of the lease, the lease holder shall be liable to the County for the cost of the removal.

22. Shellfish Regulations

A leaseholder must comply with all applicable federal, state and local laws and regulations, including, but not limited to, NYSDEC regulations relating to:

- importation of shellfish seed;
- buying, selling, trading and aquaculture of shellfish;
- taking or possession of wild stock shellfish; and,
- sale of shellfish for human consumption.

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 lease holder must also comply with all laws and regulations including, but not limited to, those relating to food storage, sanitation and navigation.

23. Approved Waters

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

24. 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 lease holder 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 lease holder for damages incurred due to such actions. However, the lease holder may terminate the lease or apply to relocate it.

25. 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.

26. Handling of Shellfish

Lease holders 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 state rules and regulations and ECL for sanitary control over shellfish and aquaculture.

27. Corporate Applicants

If the lease applicant is a corporate entity, the following information must be submitted as part of the shellfish aquaculture lease application form.

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.

28. Partnership Application

If the lease applicant is a partnership, the following information must be submitted as part of the shellfish aquaculture 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.
6. The application must be signed by a partner.

29. County Administrative Requirements

To be completed

**Appendix A
Lease Agreement**

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COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
LEASE AGREEMENT**

THIS LEASE AGREEMENT made this _ day of _____, 2008 between _____ (“Lessor”), having an office at _____ and _____ (“Lessee”) having an office at _____.

WITNESSETH

WHEREAS, Environmental Conservation Law (“ECL”) §13-0302 ceded title to certain underwater lands owned by the People of the State of New York in Peconic and Gardiner Bays to Suffolk County for purposes of shellfish cultivation and permits the County to lease such underwater lands for purposes of shellfish cultivation and to issue leases for structures and equipment on or above State owned lands underwater and;

WHEREAS the purpose of this Lease is to provide access to the underwater lands of the Peconic and Gardiner Bays to cultivate shellfish and to encourage private investment in aquaculture and supporting businesses.

WHEREAS, notice of this lease has been posted at the New York State DEC Bureau of Marine Resources, in the Office of the Town Clerk of the Town of _____, and in the _____ newspaper in accordance with ECL §13-0302.

NOW, THEREFORE, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS**

1. “Aquaculture” means the seeding, reseeding, stocking, cultivating, farming, relaying and harvest of shellfish.

2. "Structures and Appurtenances" means monuments, stakes, buoys, anchoring devices and markers, on the leased premises, unless installed by the Owner.
3. "Shellfish" means any aquatic animal whose external covering consists of a shell, either crustaceous or testaceous, including, but not limited to, shrimp, lobsters, crabs, clams, mussels, crawfish, oysters, scallops and snails.
4. "Equipment" means rakes, cages, traps, floats, racks, rafts and nets.

ARTICLE II
DEMISED PREMISES

Lessor hereby demises and Leases unto the Lessee, all that certain piece or Parcel of lands underwater, situate and lying in the County of Suffolk and State of New York, more particularly described on Schedule A annexed hereto (the "Demised Premises").

ARTICLE III
USE

Lessee expressly covenants, represents, warrants and agrees that it will use and occupy the Demised Premises only for Aquaculture, as defined below, including the operation, construction and placement of Structures, Appurtenances and Equipment, seeding, cultivating, transplanting, farming and harvesting of shellfish, ancillary products and the use of the vessels to service the Demised Premises in accordance with applicable regulations, local laws and ordinances and permits and for no other purposes. Lessee makes these covenants, warranties, represents knowing that Lessor is entering into this Lease in reliance thereon and that such covenants, warranties, representations and agreements are the essence of this agreement.

ARTICLE IV
TERM

The term of this Lease will commence on _____ (the "Commencement Date") and end on _____ (the "Term", with each period covering _____ of one calendar year to _____ of the same calendar year being a "Lease Year"); unless sooner terminated as hereinafter provided.

ARTICLE V
RENT

A. BASE RENT

Lessee agrees to pay to the Landlord, without any offset or deduction whatsoever, base annual rent ("Base Rent") with respect to the Demised Premises in monthly installments payable on the first day of each month, according to the following schedule, during the Term. Lessee shall pay the sum of _____ on the effective date of this Lease.

Lease Year	Annual Base Annual Rent	Monthly Base Monthly Rent
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

ARTICLE VI
PERFORMANCE STANDARDS

- (a) Minimum Performance Standards
- (b) Hardship Applications

ARTICLE VII
RENEWAL

If Lessee is not in default under this Lease and is in full compliance with all applicable state, federal and local statutes and regulations, Lessee will have the option to renew this Lease by giving written notice to Lessor, no later than three (3) months prior to the expiration of the Term, of Lessee intention to extend the Term for a period of up to 10 years, upon the same terms and conditions as set out in the Lease (the “Extended Term”) except that Lessee will have no further right to extend the Term. The Base Rent for the Extended Term will be paid in monthly installments payable on the first day of each month, according to the schedule below.

Lease Year	Annual Rent	Base Monthly Rent	Base
1			
2			
3			

4
5
6
7
8
9
10

ARTICLE VIII
DEFAULT

(a) If Lessee defaults in the payment of any of the sums that it is required to pay under this Lease, the minimum performance standards are not met and not hardship application has been granted or in the performance and observance of any of the terms and conditions of this Lease or if the proposed structures or appurtenances or equipment are not maintained or used for a period of one (1) year as determined by inspection by Lessor and Lessee fails to cure such default or lack of use within thirty (30) days of receipt of a written notice of default from Lessor, Lessor may terminate this Lease and the provisions for removal of said Structures and Appurtenances set forth in Article VIII will apply. For the purposes of this Article, one (1) year “abandonment” period will begin upon the placement of the first seedlings.

(b) In addition to the foregoing, the following events will constitute a default under this Lease.

- a. If Lessee fails to perform or comply with any provision of this Lease and does not remedy and cure such non-performance or noncompliance within thirty (30) days after Lessor sends a notice of such nonperformance or noncompliance to Lessee (or where such nonperformance or noncompliance cannot be cured within thirty (30) days by the use of diligent good faith efforts, the failure of Lessee to undertake to cure such nonperformance or noncompliance within said thirty (30) days and to continuously and diligently thereafter prosecute the cure or remedy to completion as soon as is reasonably possible).
- b. If Lessee is adjudicated bankrupt or insolvent in any proceeding;
- c. If a receiver or a trustee is appointed for all or substantially all of the assets of Lessee;
- d. If Lessee abandons any portion of the Demised Premises;
- e. If Lessee fails to meet minimum levels of performance as defined herein and a hardship allowance is not approved by the County.
- f. If Lessee conducts no Aquaculture on the Demised Premises for one (1) year;

g. If Lessee's conduct of Aquaculture activities is performed in a manner which in Lessor's judgment, that is injurious to marine organisms; and

h. If Lessee fails to comply with any governing statutes, rules and regulations.

(c) If Lessee's performance and observance of any of the terms and conditions under this Lease is prevented, interrupted or delayed by causes beyond its control, such as strike, riot, storm, flood, acts of God, or of the public enemy, acts of the government, acts of the other party, fires, epidemics, quarantine restrictions, freight embargoes and unusually severe weather or delays of subcontractors due to such causes, and not caused by an act or failure to act by Lessee the date or time or times for the performance of such term or condition by Lessee will be extended for a period of time equal to the number of days the performance of such covenant, agreement or obligation by Lessee is so prevented, interrupted or delayed.

ARTICLE IX REMOVAL

At the termination of this Lease, Lessee covenants and agrees, at its sole cost and expense, to remove the Structures, Appurtenances and Equipment placed upon the Demised Premises within ninety (90) days of termination and restore the Demised Premises to substantially the same condition as it was on the Commencement Date.

ARTICLE X INDEMNIFICATION

Lessee assumes all risk in the operation, use alteration, repair, replacement, maintenance and removal of the Structures and Appurtenances and will be solely responsible in damages for any and all accident and injuries to persons and property (including death). Lessee covenants and agrees to indemnify and hold Lessor and its respective officials, officers, agents and employees harmless from any and all claims, suits, actions, damages, costs of every nature and description arising out of or relating to or arising from the construction, reconstruction, inspection, operation, use, alteration, repair, replacement maintenance and removal of the Structures and Appurtenances 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 assume the defense and to defend at its own cost and expense any action brought at any time against the Lessor and/or its respective officials, officers, agents and employees in connection with the claims, suits and losses as aforesaid.

ARTICLE XI INSURANCE

Lessee will carry liability insurance for personal injury and property damage, with an aggregate limit 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 given 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 three 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 XII
ASSESSMENTS; COMPLIANCE WITH 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 Demised Premises.

(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 Demised Premises, including all local land use regulations.

(c) Lessee covenants and agrees, that at all times during the term of this Lease, it will comply with all applicable Environmental Conservation Law and regulations as necessary, including, but not limited to, ECL Art. 13, 6 NYCRR Parts 41, 42, 43, 45, 48 and 49. Specifically, but not by way of limitation, this Lease, and Lessee's obligations hereunder, are subject to the terms and conditions of the Department of Environmental Conservation Permit No. _____, and Town of _____ Permit Nos. _____, and these permits are attached hereto as Appendix "B" and made a part hereof.

(d) If Lessee is in default of its obligations under this Article XI, and fails to cure said default within thirty (30) days of receipt of a written notice of default, then this Lease may be terminated at the option of Lessor and the provisions for removal of Structures and Appurtenances in Article VIII will apply.

ARTICLE XIII
ASSIGNMENT AND SUBLETTING

(a) Lessee is prohibited from assigning the Lease or subletting the Demised Premises without Lessor's prior written consent which Owner may withhold in its sole discretion. Consent of the Owner will not be issued unless the Owner has determined, in its sole discretion, that the Sub-Lessee will meet all of the conditions of this lease. Lessee will not, voluntarily,

D involuntarily or by operation of law assign, mortgage, or encumber this Lease in whole or in part, or sublet the whole or any part of the Demised Premises, or permit any other persons to occupy same, references, if any, elsewhere herein to assignees, subtenants or other persons notwithstanding. The acceptance of rent from any other person 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 Demised Premises. D

R (b) 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. R

R (c) Lessee agrees to pay all of Lessor's costs, charges and expenses, including attorneys' fees, incurred in connection with a proposed sublease or assignment upon submission of bills therefore, and that the failure to pay the same upon demand will be a default under the Lease. R

A (d) If there is an assignment of all of Lessee's rights and duties under this Lease, the assignee will assume all of the obligations of this Lease by an assumption agreement in form and with terms reasonably acceptable to Lessor. Lessee will submit the proposed assumption agreement to Lessor for its comments and/or approval at least (30) days prior to the execution thereof. A

F (e) Notwithstanding such assignment or subletting or licensing during the Term, the Lessee will remain liable to Lessor hereunder and will guarantee the full and faithful execution of the compliance with all covenants, terms and conditions contained in this Lease. Further, Lessor will not be required to look to any assignee or subtenant or licensee of Lessee for the performance of any obligations of Lessee under this Lease, and Lessor will not be deemed to have assumed any affirmative obligation with respect to any assignee, subtenant or licensee. F

F (f) Lessee accepts that it is limited to a total of two subleases throughout the duration of any Lease of underwater lands. F

ARTICLE XIV
INSPECTION

T Lessee covenants and agrees to permit Lessor or its delegated representative to have full and free access to the Demised Premises and all vessels, yards, buildings, structures of every name, nature character and description used in connection with this Lease and will provide Lessor with full and free inspection and examination of all records and books of account kept in connection with said operation. Lessor will use its best efforts not to unreasonably interfere with Lessee's operation during inspection and examination. T

ARTICLE XV
BANKRUPTCY

Neither this Lease, nor any interest therein nor any estate thereby created will pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law.

If the estate created hereby is taken in execution or by other process of law, or if Lessee is adjudicated insolvent or bankrupt pursuant to the provisions of any state or federal insolvency or bankruptcy act, or if a receiver or trustee of the property of Lessee is appointed by reason of Lessee's insolvency or inability to pay its debts, or if any assignment is made of Lessee's property for the benefit of creditors, then and in any of such events, Lessor may at its option terminate this Lease and all rights of Lessee hereunder, by giving notice to Lessee in writing.

ARTICLE XVI
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 XVII
LESSOR'S INTEREST

This Lease and its terms, covenants and conditions are intended to affect only the right, title and interest of the Lessor in the Demised Premises.

ARTICLE XVIII
NOTICE

Unless a provision of this Lease 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, with a copy to the attorney for such party as follows:

If to Lessor:

If to Lessee:

Notices will be deemed given upon receipt or first refusal thereof. Notices may be sent by the attorneys for the party sending such notice with the same force and effect as if sent by the actual party. Any party may change its address for notices by notice to the other party given in accordance with this Lease.

ARTICLE IX
GOVERNING LAW

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. This Lease will be deemed to be jointly drafted by the parties and any rule of law or legal decision that requires ambiguities to be construed against the drafting party will be inapplicable. This Lease may not be changed or terminated orally.

ARTICLE XX
MAINTENANCE

- (a) Lessee will mark the Demised Premises with buoys and will maintain the markings when the area is not covered with ice.
- (b) Lessee will not operate in any way that will be detrimental to public health, personal property, marine resources or in a way that will create a threat to the marine environment.
- (c) Lessee, at its sole cost and expense, will keep the Demised Premises free of garbage, refuse and similar material and will maintain all improvements on the Demised Premises in good condition and repair.

ARTICLE XXI
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 XXII
COUNTERPART EXECUTION

This Lease may be executed in counterparts, each of which will constitute an original and all of which, when taken together, will constitute one and the same lease.

ARTICLE XXIII
JURY TRIAL WAIVER: ATTORNEY'S FEES.

The parties hereto waive trial by jury in any action, proceeding or counterclaim arising out of this Contract, provided such waiver is not prohibited by any laws of the State of New York. The provisions of this paragraph will survive the delivery of the deed.

ARTICLE XXIV
ALTERATIONS

Lessee may not make any alterations the Demised Premises without obtaining prior written consent of Lessor.

ARTICLE XXV
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:

Lessee:

APPROVED AS TO FORM:

Deputy County Attorney

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year ____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year ____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Schedule A

Legal Description of Demised Premises

[We must discuss how the Demised Premises will be marked (stakes, buoys etc.)

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Appendix B
Lease Application

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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 culture activities, as well as non-commercial shellfish cultivation for experimental/educational or shellfish habitat restoration purposes. Written authorization from the County and approval for required permits from NYSDEC (and other regulatory agencies) are required prior to conducting any shellfish culture activities on a lease.

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 deposit fee for shellfish aquaculture lease applications which shall be applied towards the annual fee for the first year of the lease.

Shellfish Aquaculture Lease Deposit Fee: \$100

Mailing Instructions:

Provide one copy of your application to the Suffolk County Department of Planning address listed below. **Application for a lease must be submitted to the County between January and February 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. Please make your check or money order payable to the Suffolk County Treasurer.

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 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 SC Bureau of Marine Resources, in the SC Department of Planning, the Office of the County Clerk, and the Office of the Town in which all or part of the lands to be leased are located. Such notice shall also be published in the official newspaper of the County. The notice shall include the name of the lessee, the boundaries of the lease, and the area of the lease. A copy of the proposed lease shall be available for public inspection and copying in the Office of the County Clerk.
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 submit a letter of approval and a copy of the lease agreement to be signed by the applicant 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 aquaculture operations on the lease site. The lease site boundaries must be surveyed by a licensed land surveyor and adequately marked according to County specifications. The lease holder must contact the local US Coast Guard Private Aids to Navigation Office for approval of marking devices.

APPLICATION FOR A SHELLFISH AQUACULTURE LEASE

Name: _____
(corporation or partnership applicants please also complete Attachment A)

Address: _____

City: _____

County: _____

State, Zip: _____

Telephone: business _____ home _____ cellular _____

Email address: _____

Federal Tax ID No. _____

Date of Pre-application meeting: _____

Type of lease (standard lease, experimental/education lease, or habitat restoration):

Location of lease site: _____
(town) (waterbody)

Suffolk County Shellfish Aquaculture Lease Map ID#: _____

Alternate Lease Map ID#s (pick 2): _____

Additional site description (e.g. former NYSDEC temporary marine area use assignment, private oyster grant):

Is assignment or grant currently being cultivated? _____

Suffolk County Tax Map number, if a private oyster grant (please also provide a copy of the grant survey, if available): _____

If the proposed lease site is on a private oyster grant and application is not being submitted by grant holder, please list the grant holder's representatives name and contact information:

Total acreage requested (standard shellfish aquaculture leases not on active oyster grants are limited to 5-10 acre leases):

Type of culture operation (circle all that apply): ON-BOTTOM OFF-BOTTOM

List of species to be cultivated (common and scientific names):

Amount and type of culture gear to be used:

Method of shellfish harvest to be used:

List of potential sources of shellfish stock (hatchery name and location):

Non-commercial Leases (Experimental/Educational and Habitat Restoration Leases)

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

Explanation of planned use of shellfish cultured from the 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? _____

\$ 100 application deposit fee enclosed: _____

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 County rules governing selffish 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

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 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 (state or federal): _____

If so, explain: _____

Applicant Signature: _____ Date: _____

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

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: _____

If so, explain: _____

Applicant Signature: _____ Date: _____

A partner of the partnership must sign the application. The application must be accompanied by a partnership resolution authorizing the application.

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**Appendix C
Annual Reporting Form**

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COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
ANNUAL REPORTING FORM**

Lease holders must provide the following information for their lease(s) on an annual basis and submit it to the County with the annual lease rental fee, thirty days before the date of issuance.

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 thirty (30) days before the date of issuance.

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

Lease Holder Contact Information

Name/Entity: _____

Address: _____

City: _____

County: _____

State, Zip: _____

Telephone: business _____ home _____ cell _____

Email address: _____

Lease Type

Type of lease (standard lease, experimental/education lease, or habitat restoration):

Location of lease site: _____
(town) (waterbody)

Suffolk County Shellfish Aquaculture Lease Map ID#: _____

Total lease acreage: _____

Type of culture operation (circle all that apply): ON-BOTTOM OFF-BOTTOM

List of species cultivated (common and scientific names) and quantities and sizes of each species planted or cultured on the lease site:

Name, address and phone number of the source of shellfish stock cultivated:

Method of shellfish harvest used on lease (for on-bottom operations):

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

Provide a description and the location of structures associated with the lease operations:

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

Describe predation control measures conducted on the lease site:

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

R Report the quantity of each species of cultured shellfish landed from the lease for this reporting year (bushels): **R**

A Please list any requested modifications to the lease agreement. Modifications of a lease agreement during the lease term are limited to: a change in species cultivated; a change in the type of culture operation (*i.e.* on-bottom or off-bottom); or an expansion of the lease area. A request for lease expansion is limited to 5-acre lease sites wishing to expand to a 10-acre lease site or leases on a portion of an active grant (*i.e.* a grant that was not fallow prior to the lease agreement with the County). A lease acreage expansion request is subject to a full application process and a Lease Application Form is required to be submitted to the County. Modifications to a lease agreement are subject to approval by the County prior to implementing such changes on a lease. **A**

Annual lease rental fee enclosed: \$ _____

I hereby state that the information included in this form is true and correct and have not been convicted or found guilty of a civil, criminal or administrative violation of marine or environmental protection law, whether state or federal within the last year.

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 otherwise 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
Transfer Application**

COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
LEASE TRANSFER APPLICATION**

This is an application for the transfer of an existing and operating standard commercial shellfish aquaculture lease. Written authorization from the County and approval for required permits from NYSDEC and other regulatory agencies are required prior to conducting any shellfish culture activities on a lease.

EACH LEASE APPLICANT IS 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** deposit fee for shellfish aquaculture lease transfer applications which shall be applied towards the annual fee for the first year of the lease.

Shellfish Aquaculture Lease Transfer Deposit Fee: \$100

Mailing Instructions:

Provide one copy of your application to the Suffolk County Department of Planning 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 TRANSFER APPLICATION PROCESS

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

1. **Submit Application:** Transfer applicant submits application to Suffolk County.
2. **Decision:** The County will make a determination as to whether or not the transfer application is approved. Before a lease is approved, notice shall be provided for at least two months by posting such notice at SC Bureau of Marine Resources, the Office of the County Clerk, and the Office of the Town Clerk in which all or any part of the lands to be leased are located. Such notice shall also be published in the official newspaper of the County. The notice shall include the name of the lessee, the boundaries of the lease, and the area of the lease. A copy of the proposed lease shall be available for public inspection and copying in the office of the County Clerk. If not approved, the applicant will receive a letter denying the request for a lease transfer asking for further information or requesting the relocation of the proposed lease site. If complete, the County will submit a letter of approval and a copy of the signed lease agreement to the lease applicant. All comments should be submitted to the Suffolk County Department of Planning at the address listed in Appendix G.
3. **Requirements Once a Lease is Issued:** The lessee in which the lease is being transferred to (transferee) must obtain all permits required by NYSDEC or any other regulatory agency prior to conducting shellfish aquaculture operations on the lease site. The lease holder 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.

**APPLICATION FOR THE TRANSFER OF A
SHELLFISH AQUACULTURE LEASE**

Current Lessee Information

Name: _____

Address: _____

City: _____

County: _____

State, Zip: _____

Telephone: business _____ home _____ cell _____

Email address: _____

Transferee Information

Name and address of person to whom the lease is requested to be transferred to:

Identify shellfish aquaculture leases, if any, presently held by the transferee:

Location of lease site: _____
(town) (waterbody)

Suffolk County Shellfish Aquaculture Lease Map ID#: _____

Additional site description (e.g. former NYSDEC temporary marine area use assignment, private oyster grant):

Suffolk County Tax Map number, if a private oyster grant (please also provide a copy of the grant survey, if available): _____

If the proposed lease site is on a private oyster grant, please list the grant holder's name and contact information: _____

Total acreage of lease: _____

Current type of culture operation (circle all that apply): ON-BOTTOM OFF-BOTTOM

List of species currently cultivated (common and scientific names):

Proposed changes in current lease operations (*i.e.* species cultivated, type of culture operation, gear used, harvest methods):

List of potential sources of shellfish stock (hatchery name and location):

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?

\$ 100 transfer application deposit fee enclosed: _____

I hereby state that the information included in this application is true and correct and that I have read and understand the requirements of the County's rules governing shellfish aquaculture.

Signature of Lessee: _____ Date: _____

Signature of Transferee: _____ 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
Renewal Application**

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COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
LEASE RENEWAL**

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. Copies of all written authorizations from the County and required permits from NYSDEC (and other regulatory agencies) must accompany this lease renewal form.

Suffolk County requires a **non-refundable** deposit fee for shellfish aquaculture lease applications which shall be applied towards the annual fee for the first year of the lease.

Shellfish Aquaculture Lease Deposit Fee: \$100

Mailing Instructions:

Provide one copy of your application to the Suffolk County Department of Planning address listed below. **Application for a lease must be submitted to the County between January and February of the year in which the lease is to expire.** The applicant shall be notified upon receipt when the application has been reviewed and accepted as complete by the County. Please make your check or money order payable to the Suffolk County Treasurer.

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) **Public Comment Period:** Before the lease is renewed, notice shall be provided for at least two months by posting such notice at SC Bureau of Marine Resources, in the SC Department of Planning, the Office of the County Clerk, and the Office of the Town in which all or part of the lands to be leased are located. Such notice shall also be published in the official newspaper of the County. The notice shall include the name of the lessee, the boundaries of t 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 submit a letter of approval and a copy of the lease agreement to be signed by the applicant and returned to the County for final execution.
- 3) **Requirements Once a Lease is Issued:** The lessee must provide copies of all permits required by NYSDEC or any other regulatory agency with the lease renewal application.

APPLICATION FOR A SHELLFISH AQUACULTURE LEASE
RENEWAL

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Name: _____
(corporation or partnership applicants please also complete Attachment A)

Address: _____

City: _____

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County: _____

State, Zip: _____

Telephone: business _____ home _____ cellular _____

Email address: _____

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Type of lease (standard lease, experimental/education lease, or shellfish restoration):

Location of lease site: _____
(town) (waterbody)

Suffolk County Shellfish Aquaculture Lease Map ID#: _____

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Suffolk County Shellfish Lease Agreement ID#: _____

Additional site description (e.g. former NYSDEC temporary marine area use assignment, private oyster grant):

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Suffolk County Tax Map number, if a private oyster grant (please also provide a copy of the grant survey, if available): _____

If the lease renewal is on a private oyster grant and application is not being submitted by grant holder, please list the grant holder's representatives name and contact information:

Total acreage being cultivated (standard shellfish aquaculture leases not on active oyster grants are limited to 5-10 acre leases): _____

Type of culture operation (circle all that apply): ON-BOTTOM OFF-BOTTOM

List of species being cultivated (common and scientific names):

Amount and type of culture gear being used:

Method of shellfish harvest being used:

List of sources of shellfish stock (hatchery name and location):

Non-commercial Leases (Experimental/Educational and Shellfish Restoration Leases)

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

Explanation of planned use of shellfish cultured from the 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? _____

\$ 100 application deposit fee enclosed: _____

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 County rules governing selffish 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

Corporate Applicants

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

C-8. The date and state in which Incorporated (include a copy of the Articles of Incorporation): _____

C-9. The names, addresses and titles of all officers:

C-10. The name and addresses of all directors:

C-11. 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-12. 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-13. 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-14. 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 (state or federal): _____

If so, explain: _____

Applicant Signature: _____ Date: _____

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

Partnership Applicants

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

P-2. 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-3. The names, addresses, and ownership shares of all partners:

P-6. 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-7. 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-8. 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 of Federal: _____

If so, explain: _____

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Applicant Signature: _____

Date: _____

A partner of the partnership must sign the application.

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Appendix F
Request for Lease Termination

COUNTY OF SUFFOLK



**SHELLFISH AQUACULTURE LEASE PROGRAM
REQUEST FOR LEASE TERMINATION FORM**

Lease holders wishing to terminate their lease must submit the following information in addition to the annual information require in Appendix basis and submit it to the County with the annual lease rental fee, thirty days before the date of issuance.

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 thirty (30) days before the date of issuance.

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

REQUEST FOR LEASE TERMINATION

Please fill out and sign this form only if you wish to terminate your lease agreement with the County prior to the completion of the lease term. The lessee will not be liable for annual lease fees for the remainder of the lease term once the lease is terminated. **The lessee is responsible for the removal of all shellfish aquaculture equipment from the lease area prior to the request for lease termination .**

Name/Entity: _____

Address: _____

City: _____

County: _____

State, Zip: _____

Telephone: business _____ home _____ cell _____

Email address: _____

Lease Type

Type of lease (standard lease, experimental/education lease, or habitat restoration):

Location of lease site: _____
(town) (waterbody)

Suffolk County Shellfish Aquaculture Lease Map ID#: _____

Total lease acreage: _____

Type of culture operation (circle all that apply): ON-BOTTOM OFF-BOTTOM

List of species cultivated (common and scientific names):

Amount and type of culture gear used on lease site:

Please provide an explanation for lease termination request:

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

Signature: _____ Date: _____

Termination request must be executed by an authorized party. If a corporation, the form should be signed by an officer and a corporate resolution authorizing the termination 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 G
Additional Contact Information

Additional Contact Information

Suffolk County Department of Planning

Attention: Aquaculture Administrator
P.O. Box 6100
Hauppauge, NY 11788-0099
(631) 853-5191

New York State Department of Environmental Conservation

Bureau of Marine Resources
Division of Fish, Wildlife and Marine Resources
205 North Belle Mead Road, Suite 1
East Setauket, New York 11733
(631) 444-0475

United State Army Corps of Engineers, New York District

Attention: CENAN-OP-R
26 Federal Plaza
New York, New York 10278-0090
(971) 790-8411
FAX: (212) 264-4260

United States Coast Guard

Private Aids to Navigation Division
First Coast Guard District
408 Atlantic Avenue
Boston, MA 02110
(617) 223-8347

Cornell Cooperative Extension of Suffolk County

Aquaculturist Specialist
3690 Cedar Beach Road
Southold, NY 11971
(631) 852-8660

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Appendix H
Lease Program Components
(to be included)