

SENATE BILL 271

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9lr0224
CF HB 312

By: **The President (By Request - Administration) and Senators Colburn, Conway, Forehand, Harrington, Lenett, Middleton, Pinsky, ~~and Raskin~~ Raskin, and Klausmeier**

Introduced and read first time: January 23, 2009

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 27, 2009

CHAPTER _____

1 AN ACT concerning

2 **Aquaculture - Shellfish - Leasing**

3 FOR the purpose of repealing certain restrictions, eligibility requirements,
4 authorizations, and procedures relating to leasing certain areas in certain
5 waters of the State for the purpose of protecting, sowing, bedding, or cultivating
6 certain shellfish; repealing certain provisions relating to revenue derived from
7 private oyster culture; repealing a certain recording fee; requiring the
8 Department of Natural Resources to designate a public shellfish area in the
9 Chesapeake Bay and prohibiting its leasing for shellfish aquaculture; requiring
10 the Department to establish certain zones for growing shellfish for commercial
11 purposes in the Chesapeake Bay; limiting the location of the zones; requiring
12 the Department to hold a public hearing before establishing the zones and
13 authorizing the Department to issue certain types of leases in the zones for
14 certain purposes under certain circumstances; establishing a set-aside for
15 certain leases to active tidal fish holders; designating the uses of leased areas;
16 authorizing the issuance of submerged land leases in certain waters of the
17 Chesapeake Bay; limiting the locations of submerged land leases and
18 designating their uses in the Chesapeake Bay; authorizing the issuance of
19 submerged land leases in the Atlantic Coastal Bays; limiting the locations of
20 submerged land leases and designating their uses in the Atlantic Coastal Bays;
21 establishing a process for designating in the Atlantic Coastal Bays areas
22 preapproved for submerged land leasing, not approved for submerged land
23 leases, and approved for leasing only on certain application; ~~providing for a~~
24 ~~setback from the Assateague Island National Seashore~~; establishing an

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 application process for aquaculture and submerged land leases; requiring
 2 surveys of leased areas; defining and requiring active use of a leased area;
 3 establishing a lease term; requiring payment of rent and an aquaculture
 4 development surcharge; requiring the Department to transfer funds derived
 5 from the surcharge to the State Department of Agriculture to be used for certain
 6 purposes; establishing a process for advertising submerged land lease
 7 applications and considering protests of such applications; identifying
 8 leaseholder responsibilities for leased areas; providing for a waiver of the active
 9 use requirement under certain circumstances; prohibiting a leaseholder from
 10 engaging in certain activities; authorizing inspection of shellfish planted or
 11 harvested under aquaculture or submerged land leases; providing for renewal
 12 and termination of a lease; establishing a demonstration lease and defining its
 13 purposes, requirements, and limitations; prohibiting the harvest of shellfish for
 14 commercial or consumption purposes in areas subject to a demonstration lease;
 15 providing for a setback from the Assateague Island National Seashore for
 16 certain submerged land and demonstration leases; requiring a record of each
 17 lease; designating a fund for payments of fees and revenues from aquaculture
 18 and submerged land leases; authorizing closure of areas to the catching or
 19 harvesting of shellfish in certain areas; prohibiting importation of shellfish
 20 without approval; requiring reports of lease activities; repealing certain
 21 restrictions relating to nonresident leasing in Somerset County; prohibiting
 22 interference with a lease under certain circumstances and increasing an
 23 administrative penalty for such interference; eliminating the prohibition on
 24 leasing on natural oyster bars; repealing certain provisions relating to the
 25 classification of submerged bottom for the purpose of shellfish harvest;
 26 repealing certain provisions governing the authority of the Department to open
 27 and close submerged bottom for shellfish harvest; ~~providing for certain~~
 28 ~~provisions relating to the sale of~~ altering certain restrictions and requirements
 29 ~~governing seed oysters; repealing provisions related to aquaculture seed areas~~
 30 ~~in certain counties;~~ exempting certain leasing activities from a certain licensing
 31 requirement; requiring the Department of the Environment to revise certain
 32 regulations by a certain date; establishing certain requirements for existing
 33 shellfish leases; specifying a certain legislative intent; defining certain terms;
 34 making certain technical corrections; requiring the Department to monitor the
 35 abundance and health of submerged aquatic vegetation in the Atlantic Coastal
 36 Bays with a certain intent; making the provisions of this Act severable; and
 37 generally relating to shellfish aquaculture leasing in the Chesapeake Bay and
 38 the Atlantic Coastal Bays.

39 BY repealing and reenacting, without amendments,
 40 Article – Environment
 41 Section 16–202(a)
 42 Annotated Code of Maryland
 43 (2007 Replacement Volume and 2008 Supplement)

44 BY repealing and reenacting, with amendments,
 45 Article – Environment
 46 Section 16–202(d)

1 Annotated Code of Maryland
 2 (2007 Replacement Volume and 2008 Supplement)

3 BY repealing

4 Article – Natural Resources
 5 Section 4–1102 and 4–11A–04 through 4–11A–11
 6 Annotated Code of Maryland
 7 (2005 Replacement Volume and 2008 Supplement)

8 BY repealing and reenacting, with amendments,
 9 Article – Natural Resources
 10 Section ~~4–1102~~, 4–1103, 4–11A–01, 4–11A–12, 4–11A–13, and 4–11A–15
 11 Annotated Code of Maryland
 12 (2005 Replacement Volume and 2008 Supplement)

13 ~~BY repealing~~

14 ~~Article – Natural Resources~~
 15 ~~Section 4–11A–04 through 4–11A–11~~
 16 ~~Annotated Code of Maryland~~
 17 ~~(2005 Replacement Volume and 2008 Supplement)~~

18 BY adding to
 19 Article – Natural Resources
 20 Section 4–11A–04 through 4–11A–11
 21 Annotated Code of Maryland
 22 (2005 Replacement Volume and 2008 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article – Environment**

26 16–202.

27 (a) A person may not dredge or fill on State wetlands without a license.

28 (d) The provisions of this section do not apply to any operation for:

29 (1) Dredging and filling being conducted as of July 1, 1970, as
 30 authorized under the terms of an appropriate permit or license granted under the
 31 provisions of existing State and federal law;

32 (2) Dredging of seafood products by any licensed operator, harvesting
 33 of seaweed, or mosquito control and abatement as approved by the Department of
 34 Agriculture;

1 (3) Improvement of wildlife habitat or agricultural drainage ditches as
2 approved by an appropriate unit; [or]

3 (4) Routine maintenance or repair of existing bulkheads, provided that
4 there is no addition or channelward encroachment; **OR**

5 (5) **AQUACULTURE ACTIVITIES OCCURRING IN AQUACULTURE**
6 **ENTERPRISE ZONES ESTABLISHED UNDER TITLE 4, SUBTITLE 11A OF THE**
7 **NATURAL RESOURCES ARTICLE UNDER AN AQUACULTURE LEASE ISSUED BY**
8 **THE DEPARTMENT OF NATURAL RESOURCES.**

9 **Article - Natural Resources**

10 ~~4-1102.~~

11 (a) (1) ~~The Department may resurvey any submerged area of the State to~~
12 ~~determine the position and extent of any natural oyster or clam bar and barren~~
13 ~~bottom. If the Department finds, upon resurvey, that any natural oyster or clam bar is~~
14 ~~located incorrectly on existing charts, or that the existing charts do not reflect the~~
15 ~~actual condition of submerged lands, the Department shall amend the existing charts~~
16 ~~or prepare new charts. In addition, the Department shall mark as accurately as~~
17 ~~possible the correct location and bounds of each natural oyster or clam bar, then~~
18 ~~existing in the area being surveyed, on any amended or new chart.~~

19 (2) ~~A reclassification of submerged areas of the State to clam bars may~~
20 ~~not be made unless an environmental impact study indicates that a hydraulic clam~~
21 ~~dredge will not impair the bottom or adversely affect other marine life. The~~
22 ~~Department shall perform the environmental impact study based on survey data,~~
23 ~~public hearings, and other available information. An initial environmental impact~~
24 ~~study shall be carried out by the Department, in cooperation with qualified scientific~~
25 ~~organizations, for reclassification actions at sites in the waters of Anne Arundel,~~
26 ~~Calvert, Kent, Queen Anne's, and St. Mary's counties to evaluate the environmental~~
27 ~~impact of hydraulic clam dredging.~~

28 (b) ~~Within 90 days after the resurvey, a copy of the amended or new charts~~
29 ~~shall be deposited with the Department and another copy sent to the clerk of the~~
30 ~~circuit court where the resurveyed area is located or the county nearest this area. This~~
31 ~~resurvey shall supersede the Oyster Survey of 1906 to 1912, and its amendments, and~~
32 ~~any decision of any circuit court rendered prior to the completed resurvey.~~

33 ~~A resurvey may not be effective until 30 days have lapsed after the filing date.~~
34 ~~During this 30 day period, public notice of the filing of the amended chart shall be~~
35 ~~given once a week for three successive weeks in a newspaper of general circulation in~~
36 ~~every county.~~

37 (c) ~~Before the Department reclassifies any submerged area of the State from~~
38 ~~natural oyster bar[, excluded from leasing,] to barren bottom [permitted to be leased~~

1 ~~under the provisions of this subtitle], it shall advertise the time, place, and purpose for~~
 2 ~~reevaluation, once a week for three successive weeks, in a newspaper of general~~
 3 ~~circulation in every county. The public may be present at the reevaluation. If any~~
 4 ~~person present then offers to make further tests in the presence of employees~~
 5 ~~designated by the Department, the employees shall witness and make note of the~~
 6 ~~findings. If upon reevaluation the Department proposes to reclassify the area from~~
 7 ~~natural bar to barren bottom, it first shall hold a public hearing, and the time, place,~~
 8 ~~and purpose shall be advertised pursuant to the provisions of this subsection. The~~
 9 ~~Department shall show any reclassification it determines to make on the amended or~~
 10 ~~new chart which the Department shall file in accordance with subsection (b) of this~~
 11 ~~section.~~

12 ~~(d) (1) Within 30 days of the filing of the amended or new chart under~~
 13 ~~subsection (b) of this section, any person adversely affected by the decision of the~~
 14 ~~Department to reclassify any submerged area of the State from natural oyster bar to~~
 15 ~~barren bottom may file a petition with the Department protesting the reclassification.~~

16 ~~(2) Proceedings on appeal shall be pursuant to those procedures set~~
 17 ~~forth in § [4-11A-06(e)] 4-11A-08 of this title with the same rights of appeal from~~
 18 ~~the decision of the Department.~~

19 ~~[(3) A lease of the reclassified area, in whole or part, may not be~~
 20 ~~granted until the new or amended chart has been filed pursuant to subsection (b) of~~
 21 ~~this section and until 30 days have expired from date of filing.~~

22 ~~(e) Notwithstanding any provisions of this section, a lease may not be~~
 23 ~~invalidated in any way by facts determined in any resurvey unless the lessee forfeits~~
 24 ~~his lease voluntarily or fails to pay rental or other fees.]~~

25 4-1103.

26 (a) The Department shall take measures which in its judgment seem best
 27 calculated to increase the productivity or utility of ~~any part of the natural oyster bars~~
 28 ~~of~~ OYSTER RESOURCES IN the State, including:

29 (1) Identifying and using effective methods of cleaning diseased oyster
 30 bars;

31 (2) Providing clean shell for the bars;

32 (3) Using hatchery produced oysters to replant sites; and

33 (4) Applying for a permit to dredge buried oyster shells.

34 (b) ~~The Department may close in any year no more than 30 percent of the~~
 35 ~~natural oyster bars in the waters of the State. The Department may prohibit or~~
 36 ~~restrict the catching of oysters on natural oyster bars whenever in its judgment these~~

1 ~~measures will increase the productivity or utility of these areas. The Department may~~
 2 ~~plant oysters, shells, or other cultch or take any other restorative measures, which it~~
 3 ~~deems advisable, on natural oyster bars. The Department shall, before publication,~~
 4 ~~deliver to the Joint Committee on Administrative, Executive, and Legislative Review a~~
 5 ~~notice of intent to close an area of a natural oyster bar, including all applicable~~
 6 ~~reasons for the Department's act, and publish the notice not less than 30 days prior to~~
 7 ~~the proposed closing date in one or more newspapers of general circulation in the~~
 8 ~~State, in one or more newspapers of general circulation in each county in which the~~
 9 ~~affected waters are located, and on the website of the Department. The Department~~
 10 ~~shall schedule a public hearing on the proposal not less than 15 days before the~~
 11 ~~proposed closing date. The hearing shall be held at the county seat of the county in~~
 12 ~~which the affected waters are located. If the affected waters are located in more than~~
 13 ~~one county then the hearing shall be held in that county seat closest to the affected~~
 14 ~~waters. If the area affected is totally within State waters, then the hearing shall be~~
 15 ~~held in Annapolis.~~

16 ~~(e) The Department may reopen an area if it determines reopening is~~
 17 ~~advisable. An area shall be reopened by notice of reopening published in the same~~
 18 ~~newspapers that published any closing notices. However, an area may not be reopened~~
 19 ~~until a lapse of 48 hours from the publication of the notice of reopening.~~

20 ~~(d)~~ The Department may select and reserve for its own use areas, to be
 21 known as seed areas, within the waters of the State for the propagation of seed
 22 oysters. The number, size, and location of these areas shall be determined from time to
 23 time by the Department. ~~However, no more than 5 percent of the natural oyster bars~~
 24 ~~of the State shall be designated as seed areas.~~ [The first million bushels of seed
 25 oysters produced in seed areas shall be planted on the natural oyster bars of the
 26 State.] The Department shall, before publication, deliver a notice of reservation,
 27 including all applicable reasons for the Department's act, to the Joint Committee on
 28 Administrative, Executive, and Legislative Review and publish the notice not less
 29 than 30 days before the closing date of any seed area in one newspaper of general
 30 circulation in the State and at least one newspaper of general circulation in each
 31 county in which the affected waters are located, and on the website of the Department.
 32 The Department shall schedule a public hearing on the proposal not less than 15 days
 33 before the proposed closing date. The hearing shall be held at the county seat of the
 34 county in which the affected waters are located. If the affected waters are located in
 35 more than one county, the hearing shall be held in that county seat closest to the
 36 affected waters, but if the area affected is totally within State waters, the hearing
 37 shall be held in Annapolis.

38 ~~(e)~~ (C) [Except as provided in subsection (f) of this section, the] **THE** State
 39 may sell [no more than 50 percent of] seed oysters [in excess of one million bushels
 40 produced annually in seed areas to citizens] **TO PERSONS** who hold **A** valid [leases
 41 under the provisions of this subtitle] **AQUACULTURE OR SUBMERGED LAND LEASE**
 42 for no less than the prevailing price of seed oysters of similar quality in nearby states.
 43 Conditions of sale may be prescribed by rule or regulation of the Department. The

1 proceeds from these sales shall be credited by the Comptroller to the Fisheries
2 Research and Development Fund.

3 ~~(D)~~ (1) In addition to the provisions of subsections ~~(d) and (e)~~ **(B)**
4 **AND (C)** of this section concerning the establishment of oyster seed areas and the sale
5 of seed oysters to a leaseholder, the Department may:

6 (i) ~~Establish aquaculture seed areas [not exceeding a total~~
7 ~~aggregate of 90 acres] in the State; **SELL OR REMOVE SEED OYSTERS FROM**~~
8 ~~**OYSTER SEED AREAS IF THE SALE OR REMOVAL IS MADE UNDER DISEASE**~~
9 ~~**PROTOCOLS; AND**~~

10 (ii) ~~Designate the seed oysters produced in those aquaculture~~
11 ~~seed areas for sale to a [resident of the State] **PERSON** who holds a valid~~
12 ~~**AQUACULTURE OR SUBMERGED LAND** lease or an aquaculture permit to cultivate~~
13 ~~shellfish; and~~

14 ~~(iii)~~ Adopt regulations necessary to implement the provisions of
15 this subsection.

16 (2) The Department shall credit the proceeds of any sale of seed
17 oysters under this subsection to the Fisheries Research and Development Fund in the
18 Department [for the benefit of the public oyster fishery].

19 (3) The Department shall:

20 (i) Sell, at prevailing market prices, seed oysters produced in
21 an aquaculture oyster seed area to a [resident of the State] **PERSON** who holds a valid
22 **AQUACULTURE OR SUBMERGED LAND** lease or an aquaculture permit to cultivate
23 shellfish; **AND**

24 (ii) Use any revenue derived from the sale of seed oysters to
25 reimburse the Fisheries Research and Development Fund for any expenditure needed
26 to create the aquaculture oyster seed areas under this subsection[;

27 (iii) Credit any net proceeds from the sale of seed oysters
28 remaining, after reimbursement is made under subparagraph (ii) of this paragraph, to
29 the exclusive use of the public oyster fishery;

30 (iv) Maintain for each aquaculture seed area a record detailing
31 all expenditures required to create and maintain the seed area and all proceeds of the
32 sale of seed oysters produced in the seed area;

33 (v) In establishing and maintaining the aquaculture seed areas,
34 limit expenditures to \$200,000 annually, and after the first year, any expenditure

1 required to maintain the seed areas shall be funded only from revenues derived from
2 the sale of seed oysters produced in the seed areas; and

3 (vi) Consult with the County Oyster Propagation Committee in
4 establishing an aquaculture seed area in that county].

5 [(4) The Department may not create aquaculture seed areas within the
6 jurisdictional boundaries of Dorchester, Kent, Queen Anne's, Somerset, or Talbot
7 counties, or in the tidewater tributaries of Charles County, except the Patuxent
8 River.]

9 4-11A-01.

10 (a) In this subtitle the following words have the meanings indicated.

11 (b) "Aquaculture" means the commercial rearing of fish or aquatic plants for
12 sale, trade, barter, or shipment.

13 (c) **"AQUACULTURE ENTERPRISE ZONE" OR "~~AEZ~~" MEANS AN AREA OF**
14 **~~THE~~ MEANS AN AREA OF THE CHESAPEAKE BAY APPROVED FOR THE LEASING**
15 **OF SUBMERGED LAND ~~AND~~ OR THE WATER COLUMN BY THE DEPARTMENT IN**
16 **CONSULTATION WITH THE DEPARTMENT OF THE ENVIRONMENT AND THE**
17 **WETLANDS ADMINISTRATOR OF THE STATE BOARD OF PUBLIC WORKS.**

18 (d) **"AQUACULTURE LEASE" MEANS A LEASE OF ANY SUBMERGED LAND**
19 **~~AND~~ OR THE WATER COLUMN LOCATED IN AN AQUACULTURE ENTERPRISE**
20 **ZONE FOR CULTIVATING OYSTERS ~~AND~~ OR OTHER SHELLFISH FOR**
21 **COMMERCIAL PURPOSES.**

22 (e) **"ATLANTIC COASTAL BAYS" MEANS THE WATERS OF THE**
23 **ASSAWOMAN, ISLE OF WIGHT, SINEPUXENT, NEWPORT, AND CHINCOTEAGUE**
24 **BAYS AND THEIR TRIBUTARIES.**

25 [(c)] (f) "Chesapeake Bay" means the waters commonly known as the
26 Chesapeake Bay[, as defined by the charts of the Oyster Survey of 1906 to 1912, and
27 its amendments].

28 (g) **"DEMONSTRATION LEASE" MEANS A LEASE OF SUBMERGED LAND**
29 **FOR THE PURPOSE OF DEMONSTRATING THE ECOLOGICAL BENEFITS OF**
30 **GROWING SHELLFISH OR FOR RESEARCH OR EDUCATION.**

31 [(d)] (h) "Dredge" includes any dredge, scoop, handscrape, or similar device
32 used in catching oysters and clams by dragging.

1 [(e) “Leased oyster bottom” means any land lying beneath the waters of the
2 State leased by the State to any person for the purpose of protecting, sowing, bedding,
3 or cultivating oysters and other shellfish.]

4 [(f)] (I) “Natural clam bar” means any area of submerged tidal bottom not
5 classified as a natural oyster bar which has a population of clams of any species judged
6 by the Secretary to have significant commercial value.

7 [(g)] (J) “Natural oyster bar” means any submerged oyster bar, reef, rock,
8 or area represented as an oyster bar on the charts of the Oyster Survey of 1906 to
9 1912, and its amendments, or any area declared by any circuit court to be a natural
10 oyster bar, or any area on which the Department plants oysters or shells. [A natural
11 oyster bar also means any bar beneath the waters of the State where the natural
12 growth of oysters abounds to the extent that the public has resorted to the bar for a
13 livelihood, whether continuously or at intervals, during any oyster season within 5
14 years prior to the filing of any application for a lease of the area in question, or within
15 5 years prior to making of a resurvey under § 4–1102 of this title. The actual condition
16 of the area in question at any time within the 5–year period shall be considered in
17 determining whether or not the area is a natural oyster bar.]

18 (K) **“PERSON” MEANS AN INDIVIDUAL, RECEIVER, TRUSTEE, GUARDIAN,
19 PERSONAL REPRESENTATIVE, FIDUCIARY, OR REPRESENTATIVE OF ANY KIND
20 AND ANY PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY.**

21 (L) **“PUBLIC SHELLFISH FISHERY AREA” MEANS AN AREA IN WHICH
22 SHELLFISH IS HARVESTED FOR COMMERCIAL PURPOSES.**

23 (M) **“SAV PROTECTION ZONE” MEANS AN AREA OF SUBMERGED
24 AQUATIC VEGETATION WITH A DENSITY GREATER THAN 10% AS MAPPED IN
25 AERIAL SURVEYS BY THE VIRGINIA INSTITUTE OF MARINE SCIENCES IN 1 OR
26 MORE OF THE 3 YEARS PRECEDING THE DESIGNATION OF AN ~~AEZ~~
27 AQUACULTURE ENTERPRISE ZONE OR AN APPLICATION FOR AN AQUACULTURE,
28 SUBMERGED LAND, OR DEMONSTRATION LEASE.**

29 (N) **“SUBMERGED LAND LEASE” MEANS ANY LAND LYING BENEATH THE
30 WATERS OF THE STATE LEASED BY THE STATE TO ANY PERSON FOR
31 CULTIVATING OYSTERS AND OTHER SHELLFISH FOR COMMERCIAL PURPOSES.**

32 [(h)] (O) “Tong” means any pincers, nippers, tongs, or similar device
33 operated entirely by hand and consisting of 2 shafts or handles and a metal body
34 composed of 2 opposable and complementary baskets used in catching oysters and
35 clams.

36 [(i)] (P) “Transgenic” means an organism into which genetic material from
37 another organism has been experimentally transferred, so that the host acquires the
38 genetic traits of the transferred genes.

1 **(Q) “WATER COLUMN LEASE” MEANS A LEASE OF THE COLUMN OF**
2 **WATER ON OR UNDER THE SURFACE OF THE WATER AND ABOVE THE SURFACE**
3 **OF THE SUBMERGED LAND.**

4 [4-11A-04.

5 The Department may set aside for each tidewater public high school no more
6 than 5 acres of submerged barren tidewater lands to be used for the sole purpose of
7 experimental oyster farming or for the cultivation of other shellfish in conjunction
8 with regular scholastic conservation studies. These areas shall be set aside pursuant
9 to the procedures established in § 4-1103 of this title and marked in the manner
10 provided in § 4-11A-10 of this subtitle. These high schools may introduce and use
11 modern methods of planting, harvesting, or marketing fishery products without regard
12 to the restrictive provisions of this subtitle. If a subject school does not use a barren
13 bottom for its studies for three years or if studies are discontinued, the submerged
14 lands shall revert to the State.]

15 [4-11A-05.

16 (a) (1) The Department may lease, in the name of the State, tracts or
17 parcels of land beneath the waters of the State to residents of the State for protecting,
18 sowing, bedding, or cultivating oysters or other shellfish, subject to the provisions of
19 this section. These submerged lands when leased shall be known as leased oyster
20 bottoms.

21 (2) (i) Except as provided in this paragraph, a corporation or joint
22 stock company may not lease or acquire by assignment or otherwise any submerged
23 land of the State for the purposes of this section.

24 (ii) A 4-H club in the State may lease or acquire not more than
25 10 acres of submerged land for the purposes of this section.

26 (iii) 1. An incorporated college or university within the State
27 having an enrollment of at least 700 undergraduate, degree-seeking students may
28 acquire, by assignment, gift, or bequest, submerged land for education and research
29 purposes only.

30 2. An incorporated college or university may not transfer
31 or attempt to transfer any interest in submerged land acquired under the provision of
32 item 1 of this subparagraph to any person, corporation, or joint stock company.

33 3. Any transfer or attempt to transfer an interest in
34 submerged land acquired under the provisions of item 1 of this subparagraph shall be
35 void, and the interest in submerged land shall revert to the State without the
36 necessity of any action by the State.

1 (iv) 1. A. A nonstock, nonprofit corporation organized
2 under the laws of this State exclusively for educational purposes may lease or acquire
3 not more than two leases consisting of not more than 30 acres each of submerged land
4 in the Severn River for educational or ecological purposes.

5 B. A nonstock, nonprofit corporation may renew a lease
6 acquired under this subparagraph.

7 2. A. Except as provided in sub-sub-subparagraph B
8 of this sub-subparagraph, a nonstock, nonprofit corporation organized exclusively for
9 educational purposes may not transfer or attempt to transfer any interest in
10 submerged land acquired under the provisions of sub-subparagraph 1 of this
11 subparagraph to any person, corporation, or joint stock company.

12 B. The nonprofit, nonstock corporation may harvest
13 oysters in accordance with a harvesting program approved by the Department
14 provided that any revenues from harvesting are maintained by the nonstock, nonprofit
15 corporation exclusively for educational or ecological purposes and for the maintenance
16 and preservation of submerged lands leased by the nonprofit, nonstock corporation.

17 (v) 1. A. A nonstock, nonprofit corporation organized
18 under the laws of this State exclusively for conservation or ecological purposes may
19 lease or acquire by lease not more than 30 acres of submerged land in Anne Arundel
20 County for the purpose of oyster restoration.

21 B. A nonstock, nonprofit corporation may renew a lease
22 acquired under this subparagraph.

23 2. The nonstock, nonprofit corporation shall adhere to a
24 management plan approved by the Department for the leased submerged land.

25 3. The nonstock, nonprofit corporation shall plant a
26 minimum of 250,000 oysters at a density of 1,000,000 oysters per acre.

27 4. A. A nonstock, nonprofit corporation may not
28 transfer or attempt to transfer any interest in submerged land acquired under item 1
29 of this subparagraph to any person, corporation, or joint stock company.

30 B. Any transfer or attempt to transfer an interest in
31 submerged land acquired under item 1 of this subparagraph shall be void, and the
32 interest in submerged land shall revert to the State without the necessity of any action
33 by the State.

34 (3) Under regulations that the Department adopts, and in conjunction
35 with the 4-H advisory board in a county, the Department may make equal and
36 matching grants of up to \$1,000 a county for any number of 4-H clubs in a county
37 that:

1 (i) Are actively involved in oyster cultivation research;

2 (ii) Are leasing or acquiring any submerged land under
3 paragraph (2) of this subsection; and

4 (iii) Have received or have a guarantee to receive a research
5 grant from the county for oyster cultivation research.

6 (b) The Department may not lease any of the submerged areas of the State
7 within the jurisdictional boundaries of Dorchester, Kent, Queen Anne’s, Somerset and
8 Talbot counties for oyster cultivation. The Department also may not lease any of the
9 submerged areas of the State in the tidewater tributaries of Charles County, except
10 the Patuxent River, for oyster cultivation. This subsection does not affect any existing
11 lease in Somerset County made prior to and effective on June 1, 1952; any lease in
12 Dorchester County made prior to and effective on June 1, 1957; in Charles County
13 made prior to and effective on July 1, 1968 and in Kent, Queen Anne’s and Talbot
14 counties made prior to July 1, 1973. This subsection also does not prevent any lessee
15 from renewing, assigning, devising by will or prohibit the descendents of any lessee,
16 his heirs, or next of kin, from inheriting rights by the operation of the laws of descent
17 and distribution. If an existing lease does not provide for renewal, the Department
18 may grant renewal when the lease terminates unless good cause to the contrary is
19 shown. However, a person may not lease more acreage than now authorized by law
20 regardless of the manner in which the lease or the rights under the lease are obtained.

21 (c) A lease may not be granted for any of the following submerged areas of
22 the State, and a person may not acquire by lease, assignment, appropriation, or
23 otherwise any of the enumerated areas: any area beneath any creek, cove, bay, or inlet
24 less than 300 feet wide at its mouth at mean low tide; any natural oyster or natural
25 clam bar as defined in this subtitle; any area within 150 feet of any natural oyster or
26 natural clam bar in any county; any area within 600 feet of any natural oyster or clam
27 bar in the Chesapeake Bay; any clam bed as defined by the charts of the Oyster
28 Survey of 1906 to 1912 and its amendments. Any lease granted in violation of the
29 provisions of this subsection is null and void and the land described in the lease shall
30 revert to the State as though a lease had not been made.

31 (d) (1) A leased oyster bottom shall be as rectangularly shaped as
32 possible. A tract or parcel of land may not be leased in any of the following waters if it
33 falls short of the minimum area or exceeds the maximum area specified below:

- 34 Waters of the Chesapeake Bay
- 35 lying outside county
- 36 waters..... 5 acres to 500 acres
- 37 Tangier Sound 1 acre to 100 acres
- 38 All other counties..... 1 acre to 30 acres

39 (2) (i) 1. In Worcester County, a leased oyster bottom shall be
40 as rectangularly shaped as possible, and shall be between 1 acre and 50 acres in size.
41 Except as provided in item 2 of this subparagraph, the Department may not lease to

1 one person a total amount of leased oyster bottom in Worcester County exceeding 50
2 acres.

3 2. In Worcester County, 2 or more individuals may work
4 in concert and have operative control over a total amount of leased oyster bottom not
5 exceeding 200 acres. If a lessee works in concert with other individuals so that the
6 lessee exercises operative control over more than 200 acres of leased oyster bottom, the
7 interest of the lessee shall revert to the State as if a lease had not been made.

8 (ii) Notwithstanding the provisions of item 2 of subparagraph
9 (i), an individual who works in concert with other individuals and has operative
10 control over more than 200 acres of leased oyster bottom in Worcester County on June
11 1, 1986, may continue to work and have operative control over those acres of leased
12 oyster bottom.

13 (e) (1) Notwithstanding any provision of subsection (b) of this section, the
14 Department may issue or renew a lease for any leased oyster bottom that previously
15 was leased for purposes of oyster cultivation under this subtitle if:

16 (i) Application for the new, renewed, or transferred lease was
17 made before December 31, 1984; and

18 (ii) The proposed site of the leased oyster bottom:

19 1. Has not become a natural oyster bar or clam bar; and

20 2. Is otherwise suitable for oyster cultivation.

21 (2) Any lease issued or renewed under this subsection is considered
22 legitimate for all purposes.

23 (f) (1) If a person applies to the Department for a lease of submerged land
24 for oyster cultivation, the Department shall determine if the submerged land is a
25 productive natural clam bar.

26 (2) Notwithstanding any other provision of this subtitle, if the
27 Department determines that the submerged land is a productive natural clam bar, the
28 Department may not lease the submerged land for purposes of oyster cultivation.

29 (3) For purposes of this subtitle, the Department may adopt
30 regulations establishing criteria to denote natural clam bars as having significant
31 commercial value.

32 (4) Before the Department proposes any regulation under paragraph
33 (3) of this section, the Department shall hold a public hearing on the proposed
34 regulation.]

1 [4-11A-06.

2 (a) Any person wishing to lease submerged lands of the State shall apply to
3 the Department for a blank application form. The applicant shall indicate on the
4 application his place of residence, the estimated area of the submerged land for which
5 a lease is sought, and a detailed description of the location of the land. The applicant
6 prior to filing the application with the Department shall mark the area applied for
7 with at least one stake bearing his name.

8 (b) (1) There is an application fee of \$300. The fee is not refundable and
9 shall be used to pay for the Department's costs associated with processing applications
10 and recording leases.

11 (2) Upon receiving the application and a \$300 fee, the Department
12 shall conduct a resource survey of the proposed lease site. The Department shall deny
13 a lease application without further action on the application if the survey results
14 indicate that the site is a natural clam or oyster bar as specified by the criteria in the
15 Department's regulations or this subtitle.

16 (3) If the results of the survey conducted under paragraph (2) of this
17 subsection do not indicate that the site is a natural clam or oyster bar, the Department
18 shall proceed with advertising the application once a week for 4 successive weeks in a
19 newspaper published in the county or counties where the proposed lease is to be
20 located. The advertisement shall describe the location of the area applied for, the
21 location of the stake marker, and give the name and residence of the applicant.

22 (c) (1) Within 30 days of publication of the last advertisement under
23 subsection (b) of this section, any person whose rights, statutory entitlements, or
24 privileges may be affected adversely by the issuance of a proposed lease may file a
25 petition with the Department protesting the issuance of the lease.

26 (2) The protest shall be heard in accordance with the contested case
27 provisions of the Administrative Procedure Act under §§ 10-201 through 10-217 of the
28 State Government Article.

29 (d) Immediately after the termination of the respective periods prescribed for
30 the filing of petitions or appeals, or immediately after the final decision upon any
31 protest or appeal the Department shall notify the applicant by letter that it is ready to
32 issue the lease. The Department shall conduct a survey and mark the location of the
33 leased area, execute a lease, enter the lease upon a book to be known as the "Register
34 of Titles to Oyster Lands," and mail the lease to the applicant for his signature.

35 (e) If the applicant accepts the lease, he shall sign and return it together
36 with the first annual rental. If the applicant fails to accept the lease and pay within 60
37 days all required fees, the application and the lease are null and void, and all
38 payments previously made by the applicant to the Department are forfeited. The

1 Department may extend the time for acceptance of the lease for an additional period of
2 60 days for good cause.]

3 [4-11A-07.

4 (a) Except as provided in subsection (c)(2) of this section the term of leases
5 for submerged lands shall be 20 years at an annual rent the Department deems proper
6 and commensurate with the value of the leased land.

7 (b) If the Department ascertains that any leased area is affected by
8 environmental factors which destroy or seriously impede the culture and growth of
9 oysters and threaten the potential of the area for continued oyster production, it may
10 reduce or abate the annual rent by an amount and for a period the Department deems
11 equitable and reasonable in view of the degree of damage.

12 (c) (1) In this subsection, "utilize" includes the planting or harvesting of
13 not less than 25 bushels of oysters or 25 bags of clams per lease during 1 year of each
14 3-year period.

15 (2) If any part of the rent required by a lease remains unpaid for more
16 than 60 days after it becomes due, the Department may declare the lease null and void
17 in accordance with subsection (e) of this section and the land shall revert to the State
18 and may be leased again. The Department may cancel any lease, either in whole or in
19 part, and may diminish or cancel the annual rental to an extent commensurate with
20 the area remaining under lease on the written request of the lessee.

21 (3) The Department shall adopt regulations and condition each lease
22 to require a leaseholder to actively utilize the leased area within any 3-year period
23 commencing July 1, 1990, or the effective date of a lease after July 1, 1990. The
24 Department may allow a longer period than 3 years upon a showing that natural
25 conditions, including unavailability of oyster shell or seed, prevented utilization.

26 (4) If a leaseholder fails to actively utilize leased bottom in accordance
27 with regulations promulgated under paragraph (2) of this subsection, the leasehold
28 shall revert to the State and may be leased again. A leaseholder shall maintain
29 records documenting activities which show that the lease is being used for shellfish
30 production as required by the Department.

31 (d) A lease may not be invalidated in any way by facts determined in any
32 resurvey under § 4-1102 of this title unless the lessee forfeits his lease voluntarily,
33 fails to pay rental or other fees, or fails to actively utilize the lease areas within a
34 period of 3 years.

35 (e) (1) The provisions of Title 8 of the Real Property Article do not apply
36 to leases under this subtitle.

1 (2) Upon a determination under subsection (c) of this section, the
2 Department shall notify a lessee of the lessee's opportunity to contest the
3 Department's action in a hearing under Title 10, Subtitle 2 of the State Government
4 Article.]

5 [4-11A-08.

6 Every fee, fund, and revenue derived from the administration of the provisions
7 of this subtitle relating to private oyster culture shall be paid to the Comptroller of the
8 Treasury to be credited to the Fisheries Research and Development Fund.]

9 [4-11A-09.

10 (a) A recording fee of \$5 shall accompany every application for assignment or
11 transfer of any interest acquired under this subtitle.

12 (b) A person may not assign or transfer any interest acquired by this subtitle
13 to a nonresident of the State. An assignment to a nonresident is not valid for any
14 purpose and, if attempted, any interest of the grantor or assignor reverts to the State
15 as if a lease had not been made.

16 (c) If a person attempts to assign any interest created by this subtitle to any
17 corporation or joint-stock company, the interest of the grantor or assignor shall revert
18 to the State as if a lease had not been made. If a person attempts to assign any
19 interest created by this subtitle to any person so that the assignee holds acreage
20 exceeding the maximum limits permitted by § 4-11A-05 of this subtitle, the interest of
21 the grantor or assignor shall revert to the State as if a lease had not been made.]

22 [4-11A-10.

23 (a) Immediately upon entering into a lease, every lessee shall designate
24 leased oyster bottoms by plainly marking them as specified by regulations issued by
25 the Department in consultation with the Tidal Fisheries Advisory Committee and
26 Aquaculture Coordinating Council. The initials of the lessee shall be marked on at
27 least four markers. The lessee shall exercise reasonable diligence in maintaining
28 markers but the temporary loss or destruction of any markers shall not operate to
29 permit any unauthorized person to trespass on or remove, destroy, or disturb oysters
30 on any areas.

31 (b) If any leased oyster bed does not have markers at the 4 corners of the
32 bed, a person, including the lessee, may not catch oysters from the bed. If the markers
33 are not in order on any leased oyster bed, the Natural Resources Police have a duty
34 not to allow a person to operate or catch oysters in the bed until the corner markers
35 are replaced.]

36 [4-11A-11.

1 (a) The lessee of any leased oyster bottom shall have exclusive ownership of
2 and title to all the oysters planted by him or existing on the leasehold. Lessees shall
3 have the rights to use their lease subject to the following conditions:

4 (1) Land leased under this subtitle shall be used only for the purpose
5 of planting and cultivating oysters;

6 (2) Persons may fish on all leased oyster bottoms, if they do not
7 remove or destroy oysters on the areas; and

8 (3) A person may not redeem or purchase any leased oyster bottom.

9 (b) A lessee may catch oysters at any time from his leased oyster bottom for
10 private use, planting or cultivating, or for sale for planting by other lessees.

11 (c) (1) In Wicomico and Somerset counties, any State resident holding a
12 current tonging license may catch oysters on any leased oyster bottom if the State
13 resident first obtains the written permission of the lessee of the leased oyster bottom.

14 (2) A lessee or a bona fide representative of a lessee who has written
15 permission from the lessee is not required to have a tonging license in the Manokin
16 River.

17 (d) The season for catching oysters from leased oyster bottoms of the State
18 for sale shall be between sunrise and sunset of any day, except Sunday, throughout
19 the year, if the leased oyster bottoms are marked as prescribed in this subtitle.]

20 **4-11A-04.**

21 (A) **IN CONSULTATION WITH THE OYSTER ADVISORY COMMISSION, THE**
22 **DEPARTMENT SHALL IDENTIFY BY REGULATION THE PUBLIC SHELLFISH**
23 **FISHERY AREA IN THE CHESAPEAKE BAY BASED ON COMMERCIAL HARVESTING**
24 **ACTIVITY DURING THE 3 YEARS PRECEDING JUNE 1, 2009, ANY SURVEYS**
25 **CONDUCTED BY THE DEPARTMENT, AND OTHER QUANTITATIVE DATA KNOWN**
26 **OR MADE AVAILABLE TO THE DEPARTMENT.**

27 (B) **THE PUBLIC SHELLFISH FISHERY AREA MAY NOT BE LEASED FOR**
28 **SHELLFISH AQUACULTURE.**

29 **4-11A-05.**

30 (A) **THIS SECTION APPLIES TO LEASING IN AN AQUACULTURE**
31 **ENTERPRISE ZONE IN THE CHESAPEAKE BAY.**

32 (B) (1) **IN CONSULTATION WITH THE DEPARTMENT OF THE**
33 **ENVIRONMENT AND THE WETLANDS ADMINISTRATOR OF THE BOARD OF**

1 PUBLIC WORKS, THE DEPARTMENT SHALL ESTABLISH AQUACULTURE
2 ENTERPRISE ZONES IN THE CHESAPEAKE BAY.

3 (2) AN AQUACULTURE ENTERPRISE ZONE MAY NOT BE LOCATED:

4 (I) WITHIN A MINIMUM OF 50 FEET OF SHORELINE OR ANY
5 PIER WITHOUT THE WRITTEN PERMISSION OF THE RIPARIAN OWNER AT THE
6 TIME OF DESIGNATION OF THE AQUACULTURE ENTERPRISE ZONE;

7 (II) WITHIN 150 FEET OF THE PUBLIC SHELLFISH FISHERY
8 OR A REGISTERED POUND NET SITE;

9 (III) WITHIN 150 FEET OF AN OYSTER SANCTUARY OR
10 OYSTER RESERVE;

11 (IV) WITHIN 150 FEET OF A FEDERAL NAVIGATIONAL
12 CHANNEL;

13 (V) IN ANY CREEK, COVE, BAY, OR INLET LESS THAN 300
14 FEET WIDE AT ITS MOUTH AT MEAN LOW TIDE; OR

15 (VI) IN AN SAV PROTECTION ZONE.

16 (3) IN DETERMINING THE LOCATION OF AN AQUACULTURE
17 ENTERPRISE ZONE, THE DEPARTMENT SHALL CONSIDER POTENTIAL
18 CONFLICTS PRESENTED BY OTHER USES OF THE PROPOSED AREA, TO INCLUDE
19 NAVIGATION, RECREATION, AND COMMERCIAL FISHING.

20 (4) BEFORE ADOPTING REGULATIONS ESTABLISHING AN
21 AQUACULTURE ENTERPRISE ZONE, THE DEPARTMENT SHALL HOLD A PUBLIC
22 HEARING IN THE COUNTY OR COUNTIES IMMEDIATELY ADJACENT TO THE
23 PROPOSED LOCATION OF THE AQUACULTURE ENTERPRISE ZONE.

24 (C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
25 DEPARTMENT MAY ISSUE TO ANY PERSON AN AQUACULTURE LEASE IN AN
26 AQUACULTURE ENTERPRISE ZONE.

27 (2) (I) THE DEPARTMENT SHALL SET ASIDE 25% OF EACH
28 AQUACULTURE ENTERPRISE ZONE FOR LEASING TO PERSONS WHO HOLD TIDAL
29 FISH LICENSES UNDER SUBTITLE 7 OF THIS TITLE AND WHO HAVE ACTIVELY
30 USED THOSE LICENSES DURING THE 3 YEARS PRECEDING JUNE 1, 2009.

31 (II) AN APPLICANT FOR A LEASE UNDER THIS PARAGRAPH
32 SHALL COMPLY WITH THE PROVISIONS FOR LEASING SET FORTH IN THIS
33 SUBTITLE.

1 (III) THE SET-ASIDE PROVIDED FOR IN SUBPARAGRAPH (I)
2 OF THIS PARAGRAPH SHALL EXPIRE JUNE 1, 2011.

3 (3) THE DEPARTMENT MAY ESTABLISH A BUFFER BETWEEN
4 LEASED AREAS WITHIN AN AQUACULTURE ENTERPRISE ZONE.

5 (D) A PERSON WHO LEASES AN AREA IN AN AQUACULTURE
6 ENTERPRISE ZONE MAY CULTIVATE SHELLFISH:

7 (1) ON THE SUBMERGED LAND;

8 (2) IN ~~MESH OR NYLON BAGS~~ TEMPORARY PROTECTIVE
9 ENCLOSURES APPROVED BY THE DEPARTMENT ON THE SURFACE OF THE
10 SUBMERGED LAND;

11 (3) SUBJECT TO APPROVAL BY THE UNITED STATES ARMY
12 CORPS OF ENGINEERS, ON OR UNDER THE SURFACE OF THE WATER IN A
13 FLOATING STRUCTURE OR IN A STRUCTURE ON THE SUBMERGED BOTTOM,
14 EXCEPT THAT THE HEIGHT OF THE STRUCTURE MAY NOT EXCEED 18 INCHES; OR

15 (4) IN ANY OTHER MANNER AUTHORIZED BY THE DEPARTMENT.

16 4-11A-06.

17 (A) THIS SECTION APPLIES TO A SUBMERGED LAND LEASE IN THE
18 CHESAPEAKE BAY THAT IS NOT IN AN AQUACULTURE ENTERPRISE ZONE.

19 (B) (1) THE DEPARTMENT MAY ISSUE TO A PERSON A SUBMERGED
20 LAND LEASE IN WATERS OF THE CHESAPEAKE BAY THAT MEET APPLICABLE
21 WATER QUALITY REQUIREMENTS FOR SHELLFISH CULTIVATION AS
22 DETERMINED BY THE DEPARTMENT OF THE ENVIRONMENT.

23 (2) A SUBMERGED LAND LEASE MAY NOT BE LOCATED:

24 (I) WITHIN A MINIMUM OF 50 FEET OF SHORELINE OR ANY
25 PIER WITHOUT THE WRITTEN PERMISSION OF THE RIPARIAN OWNER AT THE
26 TIME OF INITIAL APPLICATION FOR THE LEASE;

27 (II) WITHIN 150 FEET OF THE PUBLIC SHELLFISH FISHERY
28 OR A REGISTERED POUND NET SITE;

29 (III) WITHIN 150 FEET OF AN OYSTER SANCTUARY OR
30 OYSTER RESERVE;

1 (IV) WITHIN 150 FEET OF A FEDERAL NAVIGATIONAL
2 CHANNEL;

3 (V) IN ANY CREEK, COVE, BAY, OR INLET LESS THAN 300
4 FEET WIDE AT ITS MOUTH AT MEAN LOW TIDE; OR

5 (VI) IN AN SAV PROTECTION ZONE.

6 (C) A PERSON WITH A SUBMERGED LAND LEASE IN THE CHESAPEAKE
7 BAY MAY CULTIVATE SHELLFISH ON THE SUBMERGED LAND, IN ~~MESH OR~~
8 ~~NYLON BAGS~~ TEMPORARY PROTECTIVE ENCLOSURES APPROVED BY THE
9 DEPARTMENT ON THE SURFACE OF THE SUBMERGED LAND, OR IN ANY OTHER
10 MANNER AUTHORIZED BY THE DEPARTMENT.

11 4-11A-07.

12 (A) THIS SECTION APPLIES TO A SUBMERGED LAND LEASE IN THE
13 WATERS OF THE ATLANTIC COASTAL BAYS.

14 (B) THE DEPARTMENT MAY ISSUE TO A PERSON A SUBMERGED LAND
15 LEASE IN WATERS OF THE ATLANTIC COASTAL BAYS THAT MEET APPLICABLE
16 WATER QUALITY REQUIREMENTS FOR SHELLFISH CULTIVATION AS
17 DETERMINED BY THE DEPARTMENT OF THE ENVIRONMENT.

18 (C) A SUBMERGED LAND LEASE MAY NOT BE LOCATED:

19 (1) WITHIN A MINIMUM OF 50 FEET OF SHORELINE OR ANY PIER
20 WITHOUT THE WRITTEN PERMISSION OF THE RIPARIAN OWNER AT THE TIME OF
21 INITIAL APPLICATION FOR THE LEASE;

22 (2) WITHIN 150 FEET OF THE PUBLIC SHELLFISH FISHERY OR A
23 REGISTERED POUND NET SITE;

24 (3) WITHIN 150 FEET OF ANY OYSTER SANCTUARY OR OYSTER
25 RESERVE;

26 (4) WITHIN 150 FEET OF A FEDERAL NAVIGATIONAL CHANNEL;

27 (5) IN ANY CREEK, COVE, BAY, OR INLET LESS THAN 300 FEET
28 WIDE AT ITS MOUTH AT MEAN LOW TIDE; ~~OR~~

29 (6) IN AN SAV PROTECTION ZONE; OR

30 (7) IN A SETBACK OR BUFFER FROM THE ASSATEAGUE ISLAND
31 NATIONAL SEASHORE ESTABLISHED BY THE DEPARTMENT.

1 (D) A PERSON WITH A SUBMERGED LAND LEASE IN THE ATLANTIC
 2 COASTAL BAYS MAY CULTIVATE SHELLFISH ON THE SUBMERGED LAND, IN
 3 ~~MESH OR NYLON BAGS~~ TEMPORARY PROTECTIVE ENCLOSURES APPROVED BY
 4 THE DEPARTMENT ON THE SURFACE OF THE SUBMERGED LAND, OR IN ANY
 5 OTHER MANNER AUTHORIZED BY THE DEPARTMENT.

6 (E) (1) THE DEPARTMENT MAY ESTABLISH SUBMERGED LAND AREAS
 7 IN THE ATLANTIC COASTAL BAYS THAT:

8 (I) ARE PREAPPROVED FOR LEASING;

9 (II) MAY NOT BE LEASED;

10 (III) MAY BE APPROVED FOR LEASING ONLY ON SPECIFIC
 11 APPLICATION AND REVIEW BY THE DEPARTMENT.

12 (2) IN ESTABLISHING AREAS THAT ARE PREAPPROVED FOR
 13 LEASING OR THAT MAY NOT BE LEASED UNDER PARAGRAPH (1) OF THIS
 14 SUBSECTION, THE DEPARTMENT SHALL:

15 ~~(F) CONSIDER~~ CONSIDER POTENTIAL CONFLICTS
 16 PRESENTED BY OTHER USES OF THE PROPOSED AREA, INCLUDING NAVIGATION,
 17 RECREATION, AND COMMERCIAL FISHING; ~~AND~~

18 ~~(H) PROVIDE FOR A SETBACK OR BUFFER FROM THE~~
 19 ~~ASSATEAGUE ISLAND NATIONAL SEASHORE.~~

20 4-11A-08.

21 (A) (1) A PERSON WHO WISHES TO OBTAIN AN AQUACULTURE OR
 22 SUBMERGED LAND LEASE SHALL PAY A NONREFUNDABLE APPLICATION FEE
 23 ESTABLISHED BY THE DEPARTMENT AND COMPLETE AND SUBMIT AN
 24 APPLICATION TO THE DEPARTMENT.

25 (2) A PERSON WHO WISHES TO OBTAIN A WATER COLUMN LEASE
 26 THAT DOES NOT APPLY IN AN AQUACULTURE ENTERPRISE ZONE SHALL APPLY
 27 FOR A TIDAL WETLANDS LICENSE FROM THE DEPARTMENT OF THE
 28 ENVIRONMENT.

29 (B) AN APPLICATION FOR AN AQUACULTURE OR SUBMERGED LAND
 30 LEASE SHALL INCLUDE:

31 (1) A DECLARATION THAT THE APPLICANT INTENDS TO ACTIVELY
 32 USE THE LEASED AREA FOR COMMERCIAL PURPOSES; AND

1 (2) A PROPOSED PLAN FOR ACTIVE USE OF THE LEASE THAT
2 SHALL INCLUDE:

3 (I) THE LESSEE'S SOURCE AND QUANTITY OF SHELLFISH
4 SEED;

5 (II) THE METHODS AND MEANS THE APPLICANT WILL USE
6 TO GROW SHELLFISH;

7 (III) THE QUANTITY OF SHELLFISH THAT THE LESSEE
8 EXPECTS TO PLANT AND HARVEST, AND THE TIME FOR PLANTING AND
9 HARVESTING, DURING THE INITIAL 3 YEARS OF THE LEASE; AND

10 (IV) A DESCRIPTION OF THE LABOR, MATERIALS, AND
11 EQUIPMENT TO BE USED BY THE LESSEE.

12 (C) THE REQUIREMENTS FOR ACTIVE USE OF A LEASE SHALL INCLUDE:

13 (1) ANNUALLY PLANTING AT LEAST ONE-FOURTH OF THE LEASED
14 AREA AT A MINIMUM DENSITY OF 1,000,000 SHELLFISH SEED PER ACRE; ~~AND OR~~

15 (2) COMPLYING WITH ANY OTHER REQUIREMENTS ESTABLISHED
16 BY THE DEPARTMENT.

17 (D) (1) THE TERM OF A LEASE IS 20 YEARS.

18 (2) A EXCEPT FOR A DEMONSTRATION LEASE UNDER § 4-11A-10
19 OF THIS SUBTITLE, A LEASE MAY BE OF ANY SIZE PROVIDED THAT THE
20 LEASEHOLDER ACTIVELY USES THE AREA.

21 (3) THE DEPARTMENT SHALL ESTABLISH AN ANNUAL AMOUNT OF
22 RENT AND AN AQUACULTURE DEVELOPMENT SURCHARGE FOR AN
23 AQUACULTURE OR SUBMERGED LAND LEASE.

24 (4) THE DEPARTMENT ~~MAY INCLUDE~~, AS IT CONSIDERS
25 NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE, MAY:

26 (I) DENY A LEASE APPLICATION FOR REASONABLE CAUSE;
27 OR

28 (II) INCLUDE ANY CONDITIONS IN AN AQUACULTURE A
29 LEASE THAT IT DEEMS NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY,
30 AND WELFARE.

1 (E) IF AN APPLICATION FOR AN AQUACULTURE LEASE MEETS THE
2 REQUIREMENTS OF THIS SUBTITLE, THE DEPARTMENT SHALL SURVEY THE
3 LEASED AREA AND ISSUE A LEASE TO THE APPLICANT.

4 (F) IF AN APPLICATION FOR A SUBMERGED LAND LEASE IN AN AREA
5 PREAPPROVED FOR LEASING IN THE ATLANTIC COASTAL BAYS MEETS THE
6 REQUIREMENTS OF THIS SUBTITLE, THE DEPARTMENT SHALL SURVEY THE
7 LEASED AREA AND ISSUE A SUBMERGED LAND LEASE TO THE APPLICANT.

8 (G) (1) IF AN APPLICATION FOR A SUBMERGED LAND LEASE IN THE
9 CHESAPEAKE BAY OR IN THE ATLANTIC COASTAL BAYS MEETS THE
10 REQUIREMENTS OF THIS SUBTITLE:

11 (I) THE APPLICANT FOR THE LEASE SHALL MARK THE
12 PROPOSED AREA WITH A STAKE; AND

13 (II) THE DEPARTMENT SHALL ~~ADVERTISE~~:

14 1. ADVERTISE THE APPLICATION ON THE WEBSITE
15 OF THE DEPARTMENT AND ONCE A WEEK FOR 4 SUCCESSIVE WEEKS IN A
16 NEWSPAPER PUBLISHED IN THE COUNTY OR COUNTIES WHERE THE PROPOSED
17 LEASE IS TO BE LOCATED;

18 2. NOTIFY THE OWNERS OF PROPERTY DIRECTLY IN
19 FRONT OF THE PROPOSED ACTIVITY; AND

20 3. NOTIFY THE CHAIR OF THE OYSTER COMMITTEE
21 IN THE COUNTY IN WHICH THE PROPOSED ACTIVITY IS LOCATED.

22 (2) (I) WITHIN 30 DAYS OF PUBLICATION OF THE LAST
23 ADVERTISEMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION, ANY PERSON
24 WHO HAS A SPECIFIC RIGHT, DUTY, PRIVILEGE, OR INTEREST THAT IS
25 DIFFERENT FROM THAT HELD BY THE GENERAL PUBLIC AND MAY BE
26 ADVERSELY AFFECTED BY THE PROPOSED LEASE MAY FILE A PETITION WITH
27 THE DEPARTMENT PROTESTING THE ISSUANCE OF THE LEASE.

28 (II) THE PROTEST SHALL BE HEARD IN ACCORDANCE WITH
29 THE REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT UNDER TITLE
30 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

31 (III) THE DEPARTMENT SHALL HOLD A PUBLIC
32 INFORMATIONAL MEETING ON THE ISSUANCE OF A LEASE ON THE REQUEST OF
33 ANY PERSON.

1 (IV) IMMEDIATELY AFTER TERMINATION OF THE PERIOD
2 PRESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH FOR FILING A
3 PETITION OR AFTER A FINAL DECISION DISMISSING A PROTEST, THE
4 DEPARTMENT SHALL SURVEY THE PROPOSED LEASED AREA AND ISSUE A
5 SUBMERGED LAND LEASE TO THE APPLICANT.

6 **4-11A-09.**

7 (A) A LEASEHOLDER SHALL:

8 (1) SUBJECT TO SUBSECTION (B) OF THIS SECTION, ACTIVELY
9 USE THE LEASE AND COMPLY WITH ANY STANDARDS FOR PLANTING,
10 HARVESTING, AND USE OF THE LEASED AREA ESTABLISHED BY THE
11 DEPARTMENT;

12 (2) MARK EACH LEASE AREA WITH AN 8-INCH BY 12-INCH
13 MARKER DISPLAYING THE INITIALS OF THE ~~LESSEE~~ LEASEHOLDER AND POSTED
14 ON A MINIMUM OF FOUR POLES;

15 (3) COMPLY WITH ANY OTHER MARKING REQUIREMENTS
16 ESTABLISHED BY THE DEPARTMENT FOR THE PROTECTION OF NAVIGATION;

17 (4) COMPLY WITH THE REGULATIONS ESTABLISHED BY THE
18 DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN CONSULTATION WITH THE
19 DEPARTMENT OF THE ENVIRONMENT TO CARRY OUT THE MANDATE OF THE
20 NATIONAL SHELLFISH SANITATION PROGRAM; AND

21 (5) PAY THE RENT AND THE AQUACULTURE DEVELOPMENT
22 SURCHARGE FOR THE LEASE ~~IN AN AMOUNT AND~~ AT THE TIME ESTABLISHED BY
23 THE DEPARTMENT.

24 (B) THE DEPARTMENT MAY WAIVE THE REQUIREMENTS FOR ACTIVE
25 USE OF A LEASE ON A SHOWING THAT CONDITIONS NOT PRESENT AT THE TIME
26 OF EXECUTION OF THE LEASE, INCLUDING THE UNAVAILABILITY OF SHELLFISH
27 SEED, PREVENT ACTIVE USE OF THE LEASED AREA.

28 (C) A LEASEHOLDER MAY NOT:

29 (1) PLACE SHELLFISH, BAGS, NETS, OR STRUCTURES ON
30 SUBMERGED AQUATIC VEGETATION;

31 (2) PLANT OR HARVEST SHELLFISH WITHIN 500 YARDS OF ANY
32 STATIONARY BLIND OR BLIND SITE THAT IS OCCUPIED AND BEING USED FOR
33 HUNTING MIGRATORY WATERFOWL;

1 (3) ~~ASSIGN SUBLEASE A SUBMERGED LAND LEASE;~~

2 (4) TRANSFER A ~~SUBMERGED LAND~~ LEASE WITHOUT THE
3 APPROVAL OF THE DEPARTMENT; OR

4 (5) HARVEST SHELLFISH BETWEEN THE HOURS OF SUNSET AND
5 SUNRISE.

6 (D) SHELLFISH PLANTED OR HARVESTED IN ACCORDANCE WITH ~~AN~~
7 ~~AQUACULTURE~~ A LEASE ISSUED UNDER THIS SUBTITLE ARE SUBJECT TO
8 INSPECTION BY THE DEPARTMENT.

9 (E) (1) A PERSON WHO WISHES TO RENEW AN AQUACULTURE LEASE,
10 A SUBMERGED LAND LEASE, OR AN EXISTING SHELLFISH LEASE OR OYSTER
11 LEASE SHALL SUBMIT AN APPLICATION THAT MEETS THE REQUIREMENTS FOR
12 AN INITIAL APPLICATION IN § 4-11A-08 OF THIS SUBTITLE.

13 (2) BEFORE THE TERMINATION OR EXPIRATION OF A LEASE
14 ISSUED UNDER THIS SUBTITLE, THE LEASEHOLDER SHALL HAVE THE RIGHT OF
15 FIRST REFUSAL WITH RESPECT TO FUTURE LEASES OF THE LEASED AREA.

16 (F) (1) THE DEPARTMENT MAY TERMINATE A LEASE ISSUED UNDER
17 THIS SUBTITLE FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS
18 SUBTITLE.

19 (2) THE DEPARTMENT SHALL NOTIFY A LEASEHOLDER BY
20 REGISTERED MAIL OF ITS INTENTION AND PROPOSED DECISION TO TERMINATE
21 A LEASE FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS
22 SUBTITLE.

23 (3) A LEASEHOLDER WHO WISHES TO CONTEST THE
24 DEPARTMENT'S PROPOSED DECISION MAY REQUEST A REVIEW OF THE
25 DECISION BY THE SECRETARY, WHICH SHALL BE FILED NOT LATER THAN 30
26 DAYS AFTER RECEIPT OF THE DEPARTMENT'S DECISION.

27 (4) FAILURE OF A LEASEHOLDER TO RESPOND TO THE
28 DEPARTMENT'S PROPOSED DECISION WITHIN 30 DAYS OF THE DATE OF THE
29 DECISION SHALL CAUSE THE LEASEHOLD TO REVERT TO THE STATE.

30 4-11A-10.

31 (A) THIS SECTION APPLIES TO DEMONSTRATION LEASES.

32 (B) (1) THE DEPARTMENT MAY ISSUE A DEMONSTRATION LEASE TO A
33 PUBLIC HIGH SCHOOL, AN INCORPORATED COLLEGE OR UNIVERSITY WITHIN

1 THE STATE, A 4-H CLUB, OR A NONSTOCK, NONPROFIT CORPORATION
2 ORGANIZED UNDER THE LAWS OF THE STATE EXCLUSIVELY FOR EDUCATIONAL,
3 CONSERVATION, OR ECOLOGICAL PURPOSES.

4 (2) AN APPLICATION FOR A DEMONSTRATION LEASE SHALL
5 INCLUDE A DECLARATION THAT THE APPLICANT INTENDS TO ACTIVELY USE
6 THE LEASED AREA FOR DEMONSTRATION PURPOSES AND A PROPOSED PLAN
7 FOR ACTIVE USE OF THE LEASE.

8 (C) THE SIZE OF THE LEASE MAY NOT EXCEED 5 ACRES.

9 (D) THE PROPOSED LEASE AREA MAY NOT BE LOCATED:

10 (1) WITHIN A MINIMUM OF 50 FEET OF SHORELINE OR ANY PIER
11 WITHOUT THE WRITTEN PERMISSION OF THE RIPARIAN OWNER AT THE TIME OF
12 APPLICATION FOR THE LEASE;

13 (2) WITHIN 150 FEET OF THE PUBLIC SHELLFISH FISHERY OR A
14 REGISTERED POUND NET SITE;

15 (3) WITHIN 150 FEET OF AN OYSTER SANCTUARY OR OYSTER
16 RESERVE;

17 (4) WITHIN 150 FEET OF A FEDERAL NAVIGATIONAL CHANNEL;

18 (5) IN ANY CREEK, COVE, BAY, OR INLET LESS THAN 300 FEET
19 WIDE AT ITS MOUTH AT MEAN LOW TIDE; ~~OR~~

20 (6) IN AN SAV PROTECTION ZONE; OR

21 (7) IN A SETBACK OR BUFFER FROM THE ASSATEAGUE ISLAND
22 NATIONAL SEASHORE ESTABLISHED BY THE DEPARTMENT.

23 (E) (1) A DEMONSTRATION LEASE MAY NOT BE ASSIGNED OR
24 TRANSFERRED.

25 (2) ANY TRANSFER OR ASSIGNMENT OR ATTEMPT TO TRANSFER
26 OR ASSIGN A LEASE SHALL BE VOID AND THE INTEREST IN SUBMERGED LAND
27 SHALL REVERT TO THE STATE WITHOUT THE NECESSITY OF ANY ACTION BY THE
28 STATE.

29 (F) (1) (I) A LESSEE OF A DEMONSTRATION LEASE
30 DEMONSTRATION LEASEHOLDER SHALL ACTIVELY USE THE LEASE FOR THE
31 PURPOSE OF DEMONSTRATING THE ECOLOGICAL BENEFITS OF GROWING
32 SHELLFISH OR FOR RESEARCH OR EDUCATION.

1 ~~(2)~~ **(II) FAILURE TO ACTIVELY USE THE LEASE MAY RESULT IN**
2 **TERMINATION OF THE LEASE.**

3 **(2) A PERSON MAY NOT HARVEST SHELLFISH FOR COMMERCIAL**
4 **OR CONSUMPTION PURPOSES FROM AN AREA THAT IS SUBJECT TO A**
5 **DEMONSTRATION LEASE.**

6 **4-11A-11.**

7 **(A) THE DEPARTMENT SHALL MAINTAIN A RECORD OF LEASES ISSUED**
8 **UNDER THIS SUBTITLE.**

9 **(B) ~~ALL~~ (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
10 **SUBSECTION, ALL FEES, FUNDS, AND REVENUES DERIVED FROM THE**
11 **ADMINISTRATION OF ~~THE PROVISIONS OF~~ THIS SUBTITLE SHALL BE PAID TO**
12 **THE COMPTROLLER OF THE TREASURY AND CREDITED TO THE FISHERIES**
13 **RESEARCH AND DEVELOPMENT FUND.**

14 **(2) THE DEPARTMENT SHALL TRANSFER ANY FUNDS DERIVED**
15 **FROM THE AQUACULTURE DEVELOPMENT SURCHARGE TO THE STATE**
16 **DEPARTMENT OF AGRICULTURE TO BE USED FOR DEVELOPMENT OF, AND**
17 **TRAINING AND GRANTS FOR, SHELLFISH AQUACULTURE.**

18 **(C) IN ACCORDANCE WITH ~~THE PROVISIONS OF~~ § 4-742 OF THIS TITLE,**
19 **THE DEPARTMENT OF THE ENVIRONMENT MAY CLOSE TO THE CATCHING,**
20 **PLANTING, OR HARVESTING OF SHELLFISH WATERS IN:**

21 **(1) THE SHELLFISH PUBLIC FISHERY AREA;**

22 **(2) AN AQUACULTURE ENTERPRISE ZONE;**

23 **(3) AN AREA PREAPPROVED FOR LEASING IN THE ATLANTIC**
24 **COASTAL BAYS; OR**

25 **(4) AN AREA ~~OF~~ SUBJECT TO AN AQUACULTURE LEASE,**
26 **SUBMERGED LAND LEASE, OR DEMONSTRATION LEASE.**

27 **(D) IN CONSULTATION WITH THE DEPARTMENT OF THE ENVIRONMENT**
28 **AND THE WETLANDS ADMINISTRATOR OF THE BOARD OF PUBLIC WORKS, THE**
29 **DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT ~~THE PROVISIONS OF~~**
30 **THIS SUBTITLE.**

31 **4-11A-12.**

1 (a) [A] **EXCEPT AS PROVIDED IN § 4-1008 OF THIS TITLE, A lessee**
 2 **LEASEHOLDER** may plant, cultivate, sow, or protect oysters only of the species known
 3 as *Crassostrea virginica* in the waters of the State.

4 (b) (1) [A person may not import from the waters of Northampton or
 5 Accomack counties, Virginia, oysters or seed oysters infected with oyster drills, screw
 6 borers, or their eggs for planting in the waters of the State. During the period between
 7 May 1 and September 30, the Department shall inspect all imported oysters intended
 8 for planting in the waters of the State and shall issue a certificate attesting that the
 9 oysters are free of drills or their eggs. The Department may seize, condemn, and
 10 destroy any oyster infected with oyster drills or its eggs.] **IN THIS SUBSECTION, THE**
 11 **WORD “SHELLFISH” INCLUDES LIVE OYSTERS, SEED OYSTERS, OYSTER SHELLS,**
 12 **LIVE HARD-SHELL CLAMS, LIVE SOFT-SHELL CLAMS, AND CLAM SHELLS.**

13 (2) **A PERSON MAY NOT IMPORT OR POSSESS WITHIN THE STATE**
 14 **SHELLFISH TAKEN FROM WATERS OUTSIDE THE WATERS OF THE STATE FOR**
 15 **PLANTING IN THE WATERS OF THE STATE WITHOUT THE APPROVAL OF THE**
 16 **DEPARTMENT.**

17 4-11A-13.

18 (a) ~~A (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~
 19 ~~SUBSECTION, A lessee LEASEHOLDER~~ may cultivate or remove ~~oysters~~ **SHELLFISH**
 20 planted on his [leased oyster bottom] **AQUACULTURE OR SUBMERGED LAND LEASE**
 21 **AREA** in any manner he deems proper[, if he complies with the provisions of this
 22 subtitle relating to dredging and tonging when transplanting oysters or catching them
 23 for commercial purposes].

24 (2) **A PERSON MAY NOT USE A HYDRAULIC ESCALATOR DREDGE**
 25 **TO HARVEST SHELLFISH IN THE ATLANTIC COASTAL BAYS.**

26 (b) Each ~~lessee~~ **LEASEHOLDER** shall keep accurate records concerning the
 27 seeding and planting of cultch and oysters on, and the harvesting, and selling of
 28 oysters from his [leased oyster bottom] **AQUACULTURE OR SUBMERGED LAND,**
 29 **SUBMERGED LAND, OR DEMONSTRATION LEASE AREA.** Each ~~lessee~~
 30 **LEASEHOLDER** shall report this information to the Department on forms the
 31 Department prescribes.

32 [(c) (1) In that water area in Somerset County of Pocomoke Sound and
 33 Pocomoke River, east of Tull’s Point, and Marumsco natural oyster bar eastward to
 34 William’s Point, a lessee may authorize a nonresident to take oysters by tong as
 35 provided by this section.

36 (2) The nonresident shall:

1 (i) Exhibit the written authorization of the lessee to the
2 Department on demand;

3 (ii) Obtain a special permit to take oysters from the leased
4 grounds from the Department; and

5 (iii) Comply with the appropriate provisions of this article.

6 (3) The license fee shall be \$25 a year, and these fees shall be credited
7 to the Fisheries Research and Development Fund of the Department.

8 (4) The license shall be restricted to the leased oyster ground under
9 the written authorization of the lessee.

10 (5) The Department may cancel the license at any time if cancellation
11 is for the benefit of:

12 (i) Conservation;

13 (ii) The proper cultivation of oysters; and

14 (iii) Residents of the State.]

15 (c) (1) **ON OR BEFORE JANUARY 1 OF EACH YEAR, A LEASEHOLDER**
16 **SHALL PROVIDE TO THE DEPARTMENT A REPORT DOCUMENTING THE USE OF**
17 **THE LEASE DURING THE PRIOR YEAR.**

18 (2) **A LEASEHOLDER SHALL PROVIDE TO THE DEPARTMENT ANY**
19 **OTHER REPORT THAT THE DEPARTMENT MAY REQUIRE.**

20 (3) **FAILURE TO FILE A REPORT MAY RESULT IN TERMINATION OF**
21 **THE LEASE.**

22 (4) **FAILURE TO ACTIVELY USE A LEASE MAY RESULT IN**
23 **TERMINATION OF THE LEASE.**

24 4-11A-15.

25 (a) (1) A person, other than the ~~lessee~~ **LEASEHOLDER**, may not willfully
26 and without authority catch oysters on any [leased oyster bottom] **AQUACULTURE OR**
27 **SUBMERGED LAND LEASE AREA**, or willfully destroy or transfer oysters on this land
28 in any manner.

29 (2) The Department shall request the office of the local State's
30 Attorney **OR THE ATTORNEY GENERAL** to bring a criminal action under § 7-104 of
31 the Criminal Law Article against a person found to be in violation of this subsection

1 **PROVIDED THAT THE LEASED AREA IS DESIGNATED AND MARKED WITH BUOYS**
 2 **AND OTHER SIGNAGE OR THE PERSON KNEW OR SHOULD HAVE KNOWN THAT**
 3 **THE HARVEST OF OYSTERS FROM THE AREA WAS UNLAWFUL.**

4 (3) (i) On conviction of a person for a violation of this subsection,
 5 the Department may suspend all existing **TIDAL FISH** licenses [to take or catch
 6 oysters] issued to that person for a period not to exceed:

7 1. 1 year for a first conviction; or

8 2. 2 years for a second or subsequent conviction.

9 (ii) Before suspending any license [to take or catch oysters]
 10 under this section, the Department shall give the licensee written notice of the right to
 11 request a hearing.

12 (iii) A licensee may request a hearing within 15 days from the
 13 date that the notice required by this section is mailed.

14 (iv) The Department shall hold a hearing within 30 days of the
 15 date of the request and render a decision within 30 days of the hearing.

16 (b) A person, other than a ~~lessee~~ **LEASEHOLDER**, may not remove, alter,
 17 transfer, or destroy any marker, **SHELLFISH, EQUIPMENT, OR STRUCTURES** on any
 18 [leased oyster bottom] **AQUACULTURE OR SUBMERGED LAND LEASE AREA.**

19 (c) A person, other than [a lessee of leased oyster bottoms, or a] **AN**
 20 **AQUACULTURE OR SUBMERGED LAND** ~~lessee~~ **LEASEHOLDER**, while he is in default
 21 in payment of any rent or fee, may not use for any purpose any submerged land of the
 22 State. [However, any person may use any submerged land subject to lease and not
 23 already leased for the temporary bedding of oysters for a period not exceeding three
 24 months.]

25 **SECTION 2. AND BE IT FURTHER ENACTED,** That on or before October 1,
 26 2009, the Department of Natural Resources, in consultation with the Department of
 27 the Environment and the Wetlands Administrator of the Board of Public Works, shall
 28 adopt regulations to:

29 (a) Establish initial Aquaculture Enterprise Zones; and

30 (b) Implement the provisions of this Act.

31 **SECTION 3. AND BE IT FURTHER ENACTED,** That on or before October 1,
 32 2009, the Department of the Environment, in consultation with the Wetlands
 33 Administrator of the Board of Public Works, shall adopt regulations to streamline the

1 processing of water column leases that do not apply in an Aquaculture Enterprise
2 Zone.

3 SECTION 4. AND BE IT FURTHER ENACTED, That:

4 (a) Except as provided in subsection (b) of this section, this Act may not be
5 construed to apply to submerged bottom leases formerly known as shellfish leases or
6 oyster leases existing on the effective date of this Act.

7 (b) An existing leaseholder shall:

8 (1) Actively use the lease and comply with any standards for planting,
9 harvesting, and use of the leased area established by the Department of Natural
10 Resources. The Department may at the request of the leaseholder:

11 (i) Reduce the size of the leased area to enable the leaseholder
12 to comply with the active use requirement; or

13 (ii) Allow a leaseholder to continue other reasonable uses of a
14 leased area;

15 (2) Comply with the National Shellfish Sanitation Program
16 requirements established by the Department of Health and Mental Hygiene; and

17 (3) On or before January 1 of each year, provide a report to the
18 Department documenting the use of the lease during the previous year, and provide
19 any other report that the Department may require during the year.

20 (c) (1) Failure to use a lease actively as required under subsection (b)(1)
21 of this section may result in its termination.

22 (2) Failure to file a report as required under subsection (b)(3) of this
23 section may result in termination of the lease.

24 SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the
25 General Assembly that:

26 (1) This Act be the first step in a continuing effort to establish
27 Maryland as a leading producer of aquaculturally grown, high quality shellfish for
28 commercial purposes; and

29 (2) Through legislative, regulatory, and administrative action, the
30 State continue to develop, promote, and implement any additional measures necessary
31 to facilitate the growth of the aquaculture industry in Maryland.

32 SECTION 6. AND BE IT FURTHER ENACTED, That the Department shall
33 continue to monitor the abundance and health of submerged aquatic vegetation in the
34 Atlantic Coastal Bays with the intent of reevaluating the appropriate baseline level of

1 submerged aquatic vegetation for establishing the SAV Protection Zone in the Atlantic
2 Coastal Bays.

3 SECTION 7. AND BE IT FURTHER ENACTED, That if any provision of this
4 Act or the application thereof to any person or circumstance is held invalid for any
5 reason in a court of competent jurisdiction, the invalidity does not affect other
6 provisions or any other application of this Act which can be given effect without the
7 invalid provision or application, and for this purpose the provisions of this Act are
8 declared severable.

9 SECTION ~~7~~ 8. AND BE IT FURTHER ENACTED, That this Act shall take
10 effect June 1, 2009.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.