

CHAPTER 173

(Senate Bill 271)

AN ACT concerning

Aquaculture – Shellfish – Leasing

FOR the purpose of repealing certain restrictions, eligibility requirements, authorizations, and procedures relating to leasing certain areas in certain waters of the State for the purpose of protecting, sowing, bedding, or cultivating certain shellfish; repealing certain provisions relating to revenue derived from private oyster culture; repealing a certain recording fee; requiring the Department of Natural Resources to designate a public shellfish area in the Chesapeake Bay and prohibiting its leasing for shellfish aquaculture; requiring the Department to establish certain zones for growing shellfish for commercial purposes in the Chesapeake Bay; limiting the location of the zones; requiring the Department to hold a public hearing before establishing the zones and authorizing the Department to issue certain types of leases in the zones for certain purposes under certain circumstances; establishing a set-aside for certain leases to active tidal fish holders; designating the uses of leased areas; authorizing the issuance of submerged land leases in certain waters of the Chesapeake Bay; limiting the locations of submerged land leases and designating their uses in the Chesapeake Bay; authorizing the issuance of submerged land leases in the Atlantic Coastal Bays; limiting the locations of submerged land leases and designating their uses in the Atlantic Coastal Bays; establishing a process for designating in the Atlantic Coastal Bays areas preapproved for submerged land leasing, not approved for submerged land leases, and approved for leasing only on certain application; ~~providing for a setback from the Assateague Island National Seashore~~; establishing an application process for aquaculture and submerged land leases; requiring surveys of leased areas; defining and requiring active use of a leased area; establishing a lease term; requiring payment of rent and an aquaculture development surcharge; requiring the Department to transfer funds derived from the surcharge to the State Department of Agriculture to be used for certain purposes; establishing a process for advertising submerged land lease applications and considering protests of such applications; identifying leaseholder responsibilities for leased areas; providing for a waiver of the active use requirement under certain circumstances; prohibiting a leaseholder from engaging in certain activities; authorizing inspection of shellfish planted or harvested under aquaculture or submerged land leases; providing for renewal and termination of a lease; establishing a demonstration lease and defining its purposes, requirements, and limitations; prohibiting the harvest of shellfish for commercial or consumption purposes in areas subject to a demonstration lease; providing for a setback from the Assateague Island National Seashore for

certain submerged land and demonstration leases; requiring a record of each lease; designating a fund for payments of fees and revenues from aquaculture and submerged land leases; authorizing closure of areas to the catching or harvesting of shellfish in certain areas; prohibiting importation of shellfish without approval; requiring reports of lease activities; repealing certain restrictions relating to nonresident leasing in Somerset County; prohibiting interference with a lease under certain circumstances and increasing an administrative penalty for such interference; eliminating the prohibition on leasing on natural oyster bars; repealing certain provisions relating to the classification of submerged bottom for the purpose of shellfish harvest; repealing certain provisions governing the authority of the Department to open and close submerged bottom for shellfish harvest; providing for certain provisions relating to the sale of altering certain restrictions and requirements governing seed oysters; repealing provisions related to aquaculture seed areas in certain counties; exempting certain leasing activities from a certain licensing requirement; requiring the Department of the Environment to revise certain regulations by a certain date; establishing certain requirements for existing shellfish leases; specifying a certain legislative intent; defining certain terms; making certain technical corrections; requiring the Department to monitor the abundance and health of submerged aquatic vegetation in the Atlantic Coastal Bays with a certain intent; making the provisions of this Act severable; and generally relating to shellfish aquaculture leasing in the Chesapeake Bay and the Atlantic Coastal Bays.

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

BY repealing and reenacting, with amendments,
 Article – Environment
 Section 16–202(d)
 Annotated Code of Maryland
 (2007 Replacement Volume and 2008 Supplement)

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

BY repealing and reenacting, with amendments,
 Article – Natural Resources
 Section ~~4–1102~~, 4–1103, 4–11A–01, 4–11A–12, 4–11A–13, and 4–11A–15
 Annotated Code of Maryland

(2005 Replacement Volume and 2008 Supplement)

~~BY repealing~~

~~Article – Natural Resources~~

~~Section 4-11A-04 through 4-11A-11~~

~~Annotated Code of Maryland~~

~~(2005 Replacement Volume and 2008 Supplement)~~

BY adding to

Article – Natural Resources

Section 4-11A-04 through 4-11A-11

Annotated Code of Maryland

(2005 Replacement Volume and 2008 Supplement)

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

Article – Environment

16-202.

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

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

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

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

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

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

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

Article – Natural Resources

~~4-1102.~~

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

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

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

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

~~(c) Before the Department reclassifies any submerged area of the State from natural oyster bar[, excluded from leasing,] to barren bottom [permitted to be leased under the provisions of this subtitle], it shall advertise the time, place, and purpose for reexamination, once a week for three successive weeks, in a newspaper of general circulation in every county. The public may be present at the reexamination. If any person present then offers to make further tests in the presence of employees designated by the Department, the employees shall witness and make note of the findings. If upon reexamination the Department proposes to reclassify the area from natural bar to barren bottom, it first shall hold a public hearing, and the time, place, and purpose shall be advertised pursuant to the provisions of this subsection. The Department shall show any reclassification it determines to make on the amended or new chart which the Department shall file in accordance with subsection (b) of this section.~~

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

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

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

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

4-1103.

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

- (1) Identifying and using effective methods of cleaning diseased oyster bars;
- (2) Providing clean shell for the bars;
- (3) Using hatchery produced oysters to replant sites; and
- (4) Applying for a permit to dredge buried oyster shells.

~~(b) The Department may close in any year no more than 30 percent of the natural oyster bars in the waters of the State. The Department may prohibit or restrict the catching of oysters on natural oyster bars whenever in its judgment these measures will increase the productivity or utility of these areas. The Department may plant oysters, shells, or other cultch or take any other restorative measures, which it deems advisable, on natural oyster bars. The Department shall, before publication, deliver to the Joint Committee on Administrative, Executive, and Legislative Review a notice of intent to close an area of a natural oyster bar, including all applicable reasons for the Department's act, and publish the notice not less than 30 days prior to the proposed closing date in one or more newspapers of general circulation in the State, in one or more newspapers of general circulation in each county in which the affected waters are located, and on the website of the Department. The Department shall schedule a public hearing on the proposal not less than 15 days before the proposed closing date. The hearing shall be held at the county seat of the county in~~

~~which the affected waters are located. If the affected waters are located in more than one county then the hearing shall be held in that county seat closest to the affected waters. If the area affected is totally within State waters, then the hearing shall be held in Annapolis.~~

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

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

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

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

(i) ~~Establish aquaculture seed areas [not exceeding a total aggregate of 90 acres] in the State;~~ **SELL OR REMOVE SEED OYSTERS FROM**

OYSTER SEED AREAS IF THE SALE OR REMOVAL IS MADE UNDER DISEASE PROTOCOLS; AND

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

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

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

(3) The Department shall:

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

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

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

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

(v) In establishing and maintaining the aquaculture seed areas, limit expenditures to \$200,000 annually, and after the first year, any expenditure required to maintain the seed areas shall be funded only from revenues derived from the sale of seed oysters produced in the seed areas; and

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

[(4) The Department may not create aquaculture seed areas within the jurisdictional boundaries of Dorchester, Kent, Queen Anne's, Somerset, or Talbot

counties, or in the tidewater tributaries of Charles County, except the Patuxent River.]

4-11A-01.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[4–11A–04.

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

[4–11A–05.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Are actively involved in oyster cultivation research;

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

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

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

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

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

Waters of the Chesapeake Bay	
lying outside county	
waters.....	5 acres to 500 acres
Tangier Sound	1 acre to 100 acres
All other counties.....	1 acre to 30 acres

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

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

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

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

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

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

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

1. Has not become a natural oyster bar or clam bar; and
2. Is otherwise suitable for oyster cultivation.

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

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

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

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

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

[4-11A-06.

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

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

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

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

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

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

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

(e) If the applicant accepts the lease, he shall sign and return it together with the first annual rental. If the applicant fails to accept the lease and pay within 60 days all required fees, the application and the lease are null and void, and all

payments previously made by the applicant to the Department are forfeited. The Department may extend the time for acceptance of the lease for an additional period of 60 days for good cause.]

[4-11A-07.

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

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

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

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

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

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

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

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

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

[4-11A-08.

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

[4-11A-09.

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

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

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

[4-11A-10.

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

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

[4-11A-11.

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

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

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

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

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

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

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

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

4-11A-04.

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

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

4-11A-05.

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

(B) (1) IN CONSULTATION WITH THE DEPARTMENT OF THE ENVIRONMENT AND THE WETLANDS ADMINISTRATOR OF THE BOARD OF PUBLIC WORKS, THE DEPARTMENT SHALL ESTABLISH AQUACULTURE ENTERPRISE ZONES IN THE CHESAPEAKE BAY.

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

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

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

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

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

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

(VI) IN AN SAV PROTECTION ZONE.

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

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

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

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

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

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

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

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

(1) ON THE SUBMERGED LAND;

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

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

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

4-11A-06.

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

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

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

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

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

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

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

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

(VI) **IN AN SAV PROTECTION ZONE.**

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

4-11A-07.

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

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

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

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

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

- (3) WITHIN 150 FEET OF ANY OYSTER SANCTUARY OR OYSTER RESERVE;
- (4) WITHIN 150 FEET OF A FEDERAL NAVIGATIONAL CHANNEL;
- (5) IN ANY CREEK, COVE, BAY, OR INLET LESS THAN 300 FEET WIDE AT ITS MOUTH AT MEAN LOW TIDE; ~~OR~~
- (6) IN AN SAV PROTECTION ZONE; OR
- (7) IN A SETBACK OR BUFFER FROM THE ASSATEAGUE ISLAND NATIONAL SEASHORE ESTABLISHED BY THE DEPARTMENT.

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

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

- (I) ARE PREAPPROVED FOR LEASING;
- (II) MAY NOT BE LEASED;
- (III) MAY BE APPROVED FOR LEASING ONLY ON SPECIFIC APPLICATION AND REVIEW BY THE DEPARTMENT.

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

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

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

4-11A-08.

(A) (1) A PERSON WHO WISHES TO OBTAIN AN AQUACULTURE OR SUBMERGED LAND LEASE SHALL PAY A NONREFUNDABLE APPLICATION FEE

ESTABLISHED BY THE DEPARTMENT AND COMPLETE AND SUBMIT AN APPLICATION TO THE DEPARTMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4-11A-09.

(A) A LEASEHOLDER SHALL:

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

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

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

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

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

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

(C) A LEASEHOLDER MAY NOT:

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

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

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

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

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

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

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

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

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

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

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

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

4-11A-10.

(A) THIS SECTION APPLIES TO DEMONSTRATION LEASES.

(B) (1) THE DEPARTMENT MAY ISSUE A DEMONSTRATION LEASE TO A PUBLIC HIGH SCHOOL, AN INCORPORATED COLLEGE OR UNIVERSITY WITHIN THE STATE, A 4-H CLUB, OR A NONSTOCK, NONPROFIT CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE EXCLUSIVELY FOR EDUCATIONAL, CONSERVATION, OR ECOLOGICAL PURPOSES.

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

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

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

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

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

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

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

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

(6) IN AN SAV PROTECTION ZONE; OR

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

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

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

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

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

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

4-11A-11.

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

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

(2) THE DEPARTMENT SHALL TRANSFER ANY FUNDS DERIVED FROM THE AQUACULTURE DEVELOPMENT SURCHARGE TO THE STATE

DEPARTMENT OF AGRICULTURE TO BE USED FOR DEVELOPMENT OF, AND TRAINING AND GRANTS FOR, SHELLFISH AQUACULTURE.

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

- (1) THE SHELLFISH PUBLIC FISHERY AREA;
- (2) AN AQUACULTURE ENTERPRISE ZONE;
- (3) AN AREA PREAPPROVED FOR LEASING IN THE ATLANTIC COASTAL BAYS; OR
- (4) AN AREA ~~OF~~ SUBJECT TO AN AQUACULTURE LEASE, SUBMERGED LAND LEASE, OR DEMONSTRATION LEASE.

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

4-11A-12.

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

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

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

4-11A-13.

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

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

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

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

(2) The nonresident shall:

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

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

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

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

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

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

(i) Conservation;

(ii) The proper cultivation of oysters; and

(iii) Residents of the State.]

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

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

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

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

4-11A-15.

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

(2) The Department shall request the office of the local State's Attorney **OR THE ATTORNEY GENERAL** to bring a criminal action under § 7-104 of the Criminal Law Article against a person found to be in violation of this subsection **PROVIDED THAT THE LEASED AREA IS DESIGNATED AND MARKED WITH BUOYS AND OTHER SIGNAGE OR THE PERSON KNEW OR SHOULD HAVE KNOWN THAT THE HARVEST OF OYSTERS FROM THE AREA WAS UNLAWFUL.**

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

1. 1 year for a first conviction; or
2. 2 years for a second or subsequent conviction.

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

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

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

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

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

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

- (a) Establish initial Aquaculture Enterprise Zones; and
- (b) Implement the provisions of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That on or before October 1, 2009, the Department of the Environment, in consultation with the Wetlands Administrator of the Board of Public Works, shall adopt regulations to streamline the processing of water column leases that do not apply in an Aquaculture Enterprise Zone.

SECTION 4. AND BE IT FURTHER ENACTED, That:

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

(b) An existing leaseholder shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 7, 2009.