

LEGAL NOTICE

DNREC – Wetlands and Subaqueous Lands

Pursuant to the provisions of 7 Del. C., 7203, and the Department's Regulations Governing the Use of Subaqueous Lands, the Wetlands and Subaqueous Lands Section of the Division of Water, Department of Natural Resources and Environmental Control (Department) proposes to adopt a Statewide Activity Approval (SAA) for Shellfish Aquaculture in specific, designated "Shellfish Aquaculture Development Areas (SADA)". This Statewide Activity Approval (SAA) may be used to authorize shellfish aquaculture activities within specific portions of the SADA previously established by the Division of Fish and Wildlife under 7 **DE Admin Code** 3800 Shellfish Aquaculture Regulation.

The areas include Indian River Bay (IR-A), Rehoboth Bay (RB-A, RB-B, RB-C), and Little Assawoman Bay (LA-B and LA-D), specifically. The intent of the SAA is to facilitate the issuance of subaqueous lands permits in these specific areas in support of the Division of Fish and Wildlife's commercial shellfish aquaculture program.

Maps of the specific areas and the associated application form and proposed permit conditions are available for inspection, or copies may be obtained by contacting:

Gayle Calder
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, DE 19901
(302) 739-9943 FAX (302) 739-6304

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Statewide Activity Approval for Shellfish Aquaculture Activities in designated Shellfish Aquaculture Development Areas (SADA)

Authorized Activity

This Statewide Activity Approval (SAA) may be used to authorize shellfish aquaculture activities within portions of the Shellfish Aquaculture Development Areas (SADA) established under 7 DE Admin Code, 3800 Shellfish Aquaculture. These areas, as identified on the attached maps, are located on public subaqueous lands jurisdictional under 7 Del. Code, Chapter 72, The Subaqueous Lands Act.

All activities must meet the eligibility criteria identified below, and must comply with all SAA (Permit) Conditions, in order to use this SAA. Projects which cannot comply with the Criteria or Permit Conditions will not be considered for authorization under this SAA.

Effective Period: Five (5) year term

Authorizing Authority

This SAA has been adopted pursuant to the provisions of 7 Del. C., 7203, and the Department's Regulations Governing the Use of Subaqueous Lands § 2.5 "Statewide Activity Approvals", as administered by the Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Wetlands and Subaqueous Lands Section (WLSL).

Eligibility Criteria

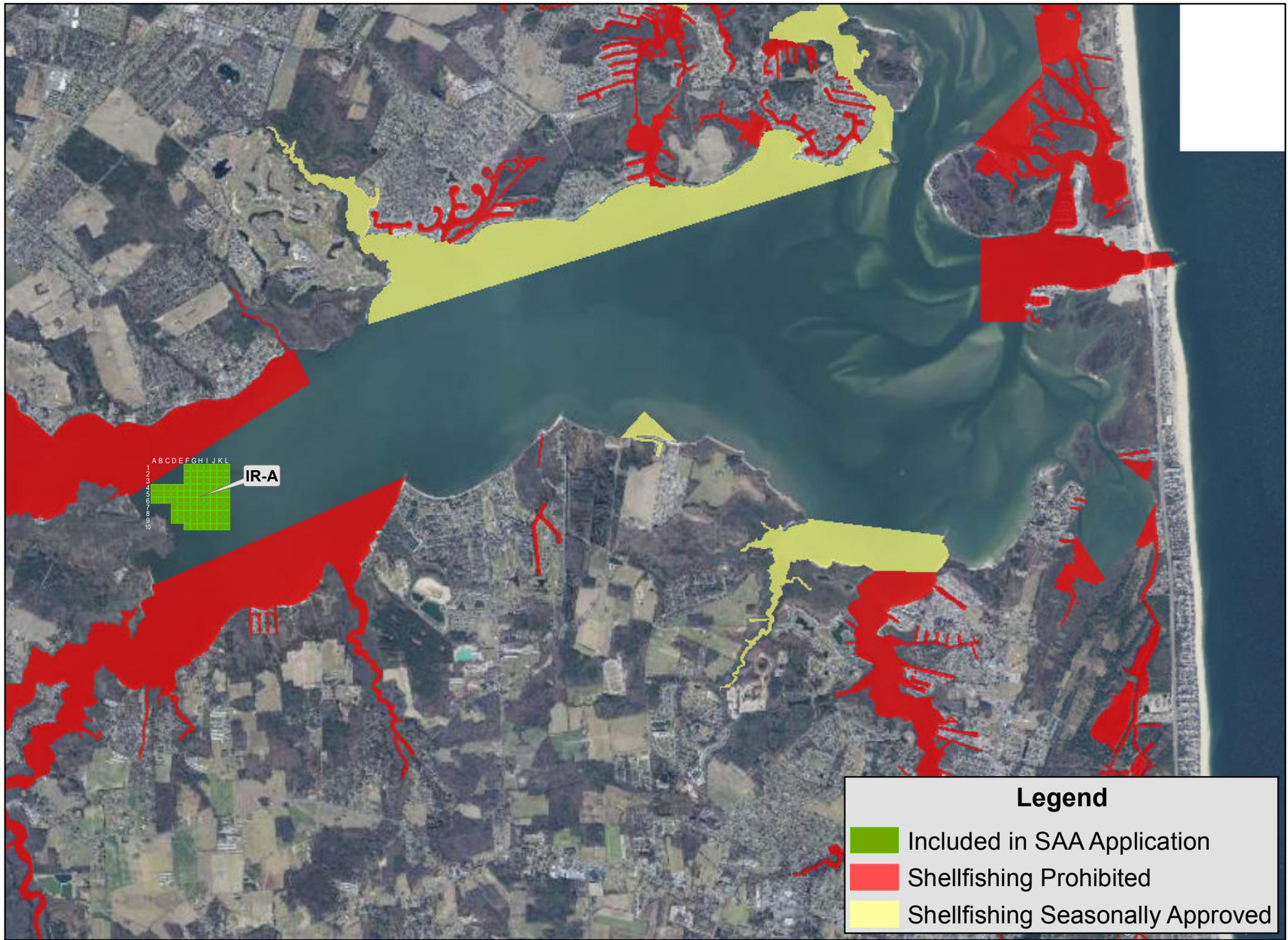
1. The applicant shall possess a valid lease issued by the Delaware Division of Fish and Wildlife for the Subaqueous Lands identified in the SAA (Permit) Application
2. The proposed shellfish aquaculture activities will be located on leased tracts within the portions of the SADA identified on the attached maps.

The recipient of this SAA, hereto referred to as the permittee, is authorized to perform shellfish aquaculture activities within those identified areas, under the terms of their lease, and accordance with the following conditions:

SAA (Permit) Conditions

1. The permittee shall abide by all terms and conditions of the shellfish aquaculture lease issued by the Delaware Division of Fish and Wildlife.

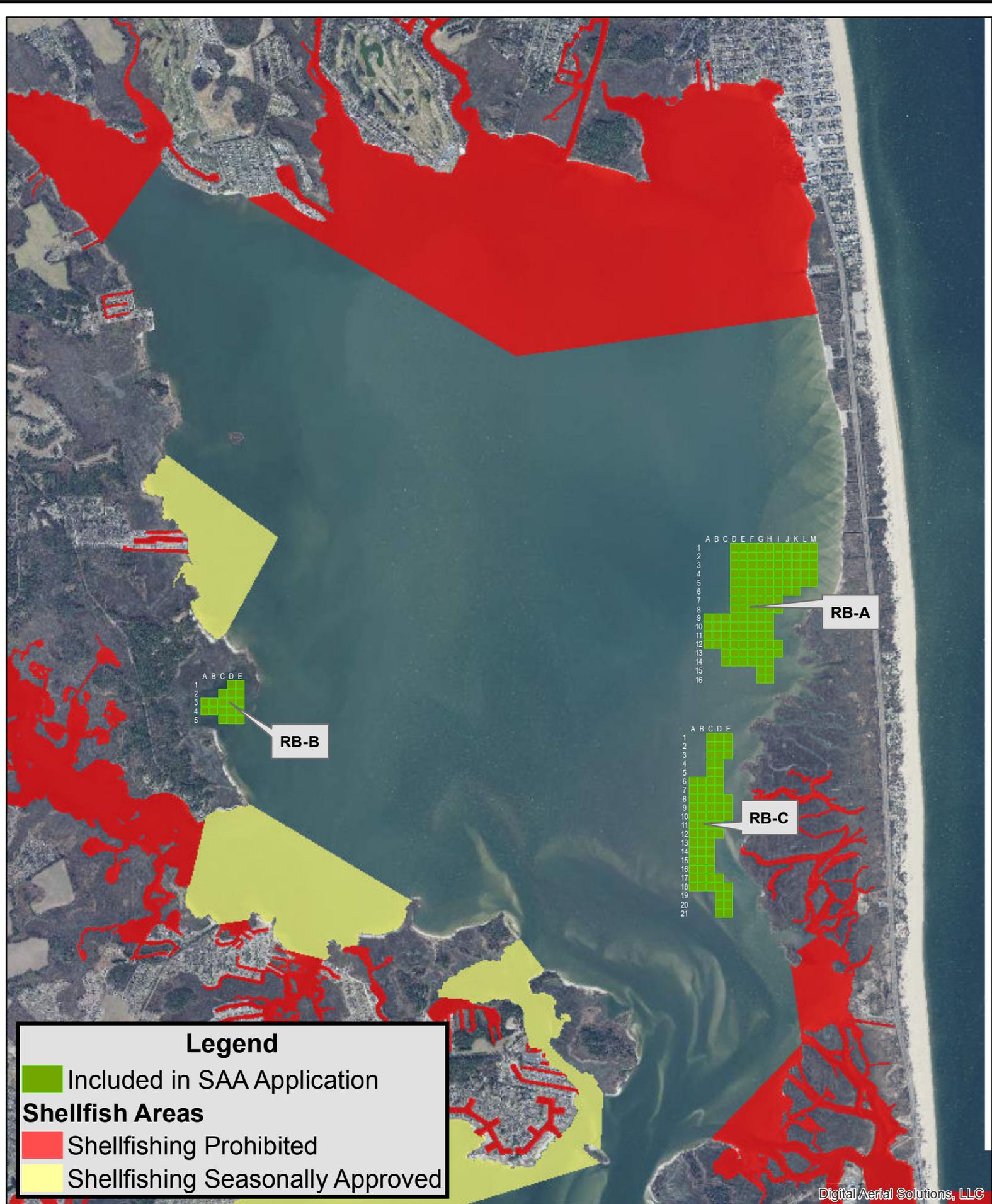
2. This permittee is only authorized to perform the requested shellfish aquaculture activities within the specific area(s) identified in the application as recorded in the associated lease(s) issued by the Division of Fish and Wildlife.
3. This SAA is personal and may only be transferred pursuant to the Assignment terms present in the associated lease issued by the Division of Fish and Wildlife (Term #7).
4. The permittee shall abide by all terms and conditions of Nationwide Permit Number 48 issued by the U.S. Army Corps of Engineers.
5. Disturbance of subaqueous lands or wetlands adjacent to the authorized activities is prohibited. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance conditions.
6. Representatives of the Department of Natural Resources and Environmental Control shall be allowed to access the property to collect any samples or conduct any tests that are deemed necessary.
7. The issuance of this SAA does not constitute approval for any activities that may be required by any other local, state or federal government agency.
8. The permittee shall protect and hold the State of Delaware harmless from any loss, cost or damage resulting from the activities authorized herein.
9. Any actions, operations or installations which are found by the Department to be contrary to the public interest may constitute reason for the discontinuance and/or removal of said action, operation or installation. Removal and restoration shall be at the expense of the permittee within thirty (30) days of receipt of written notice of revocation and demand for removal.



Legend

- Included in SAA Application
- Shellfishing Prohibited
- Shellfishing Seasonally Approved

Figure 1. Indian River Bay Shellfish Aquaculture Statewide Activity Approval (SAA) Request.



Legend

- Included in SAA Application

Shellfish Areas

- Shellfishing Prohibited
- Shellfishing Seasonally Approved

Figure 2. Rehoboth Bay Shellfish Aquaculture Statewide Activity Approval (SAA) Request.

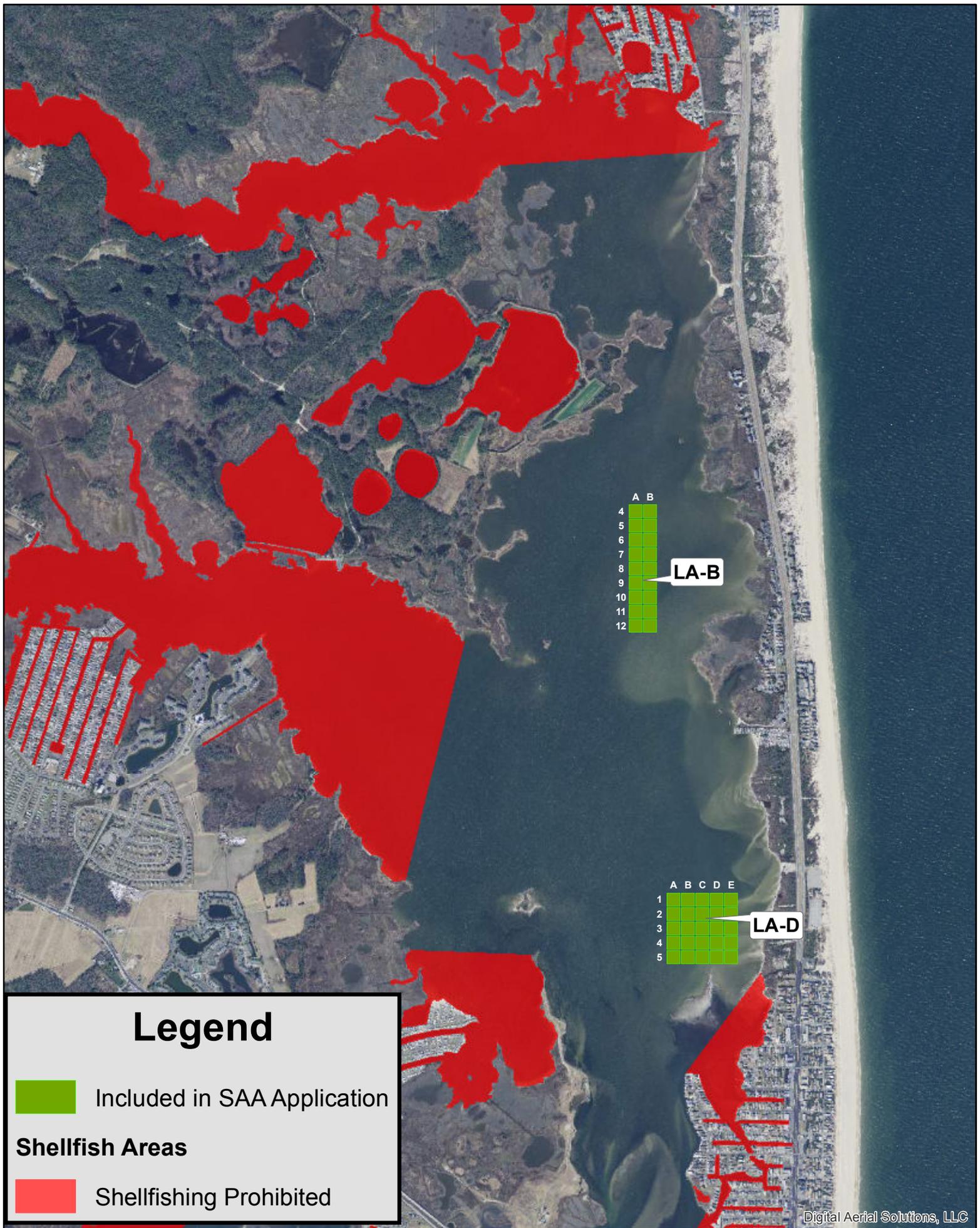


Figure 3. Little Assawoman Bay Shellfish Aquaculture Statewide Activity Approval (SAA) Request.

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**REQUEST FOR AUTHORIZATION FORM
FOR THE STATE OF DELAWARE
FOR STATEWIDE ACTIVITY APPROVAL (SAA)
FOR SHELLFISH AQUACULTURE ACTIVITIES
IN SHELLFISH AQUACULTURE
DEVELOPMENT AREAS (SADA)**



Applicant/Company Name and Address

Applicant Phone () _____

Activity Location Information

SADA Area(s)

Rehoboth Bay

- RB – A**
- RB – B**
- RB – C**

Indian River Bay

- IR – A**

Little Assawoman Bay

- LA – B**
- LA – D**

Lease Acre Identification

A. Associated Div. of Fish and Wildlife Shellfish Aquaculture Land Lease No.: _____

B. Total # of plots leased: _____
(Please attach location plan)

C. Do you currently have other Shellfish Aquaculture approvals (SAA or Permit) issued by the Wetlands and Subaqueous Lands Section for other locations? **Y** **N**

If yes, list the Shellfish Aquaculture Approval/Permit Number(s):

Applicant's Signature: _____

Date: _____

I hereby certify that the information on this form and on the attached plans are true and accurate to the best of my knowledge. I understand that the Department may request information in addition to that set forth herein if deemed necessary to appropriately consider this application. I grant Permission to the authorized Department representative(s) to enter upon the premises for inspection purposes during working hours.

Manager's Signature: _____

Date: _____

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STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE
89 Kings Highway
Dover, DE 19901

**OFFICE OF THE
DIRECTOR**

Phone: (302) 793-9910
Fax: (302) 739-6157

February 26, 2016

Steven M. Smailer, Section Manager
Wetlands and Subaqueous Lands Section
Division of Water
89 Kings Highway
Dover, DE 19901

Dear Mr. Smailer:

The Delaware Division of Fish & Wildlife, Fisheries Section is hereby requesting that the Division of Water, Wetlands and Subaqueous Lands Section establish a Statewide Activity Approval (SAA) to facilitate the issuance of permits for commercial shellfish aquaculture activities on public subaqueous lands in Delaware's Inland Bays to be leased pursuant to 7 **DE Admin Code** 3800 Shellfish Aquaculture, a copy of said regulation attached hereto.

The SAA would be applicable to the areas indicated in the attached Figures 1, 2 and 3 and Table 1, representing a subset and portions of Shellfish Aquaculture Development Areas (SADA) adopted by regulation 7 **DE Admin Code** 3800 Shellfish Aquaculture. Shellfish aquaculture would be conducted in accordance with regulation 7 **DE Admin Code** 3800 Shellfish Aquaculture.

Thank you for your consideration of our request.

Sincerely,

David E. Saveikis
Director

pc: Virgil Holmes, Director, Division of Water
John Clark, Administrator, Fisheries Section

attachments

*We Bring You Delaware's Great Outdoors
through Science and Service*

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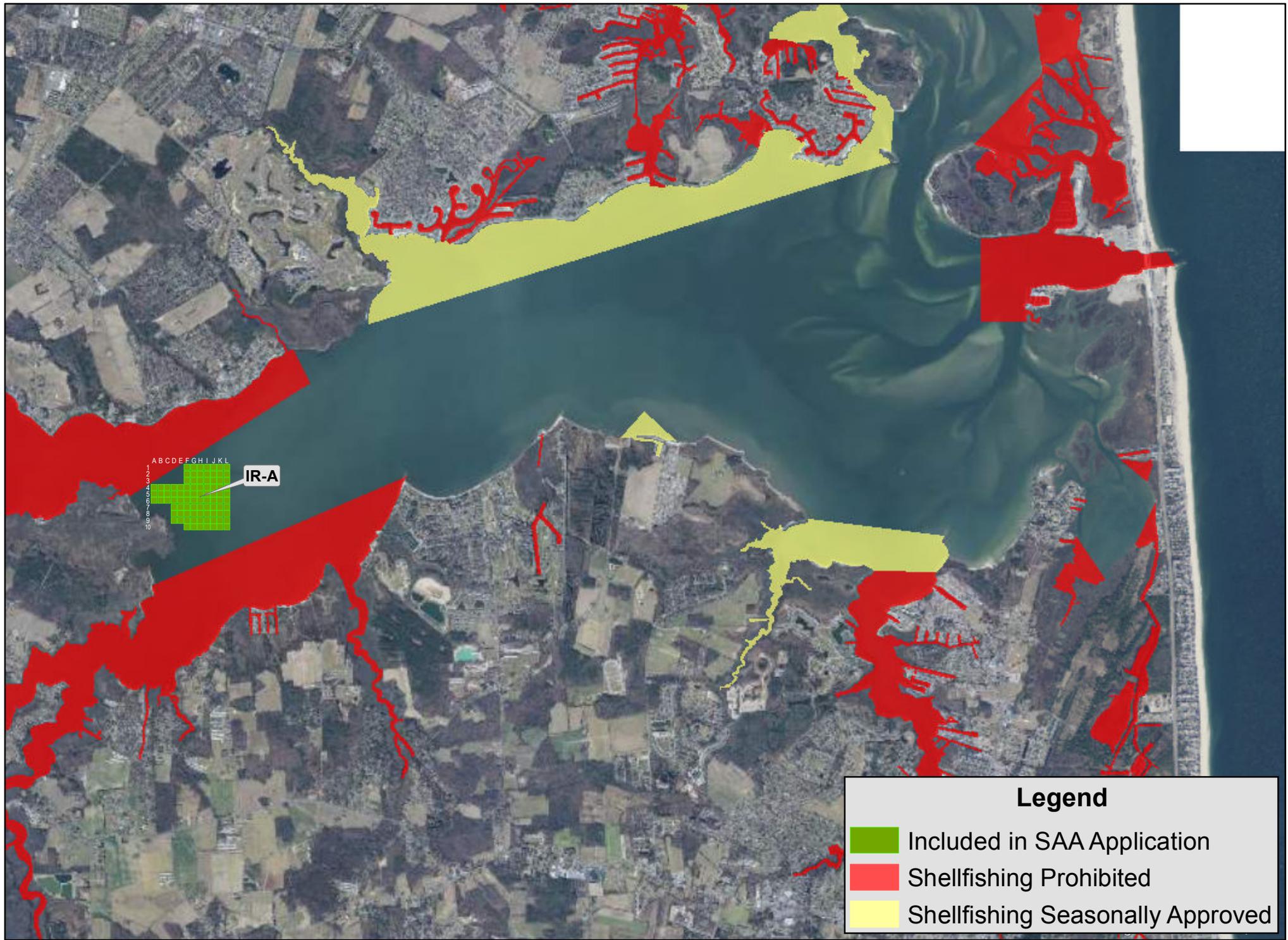
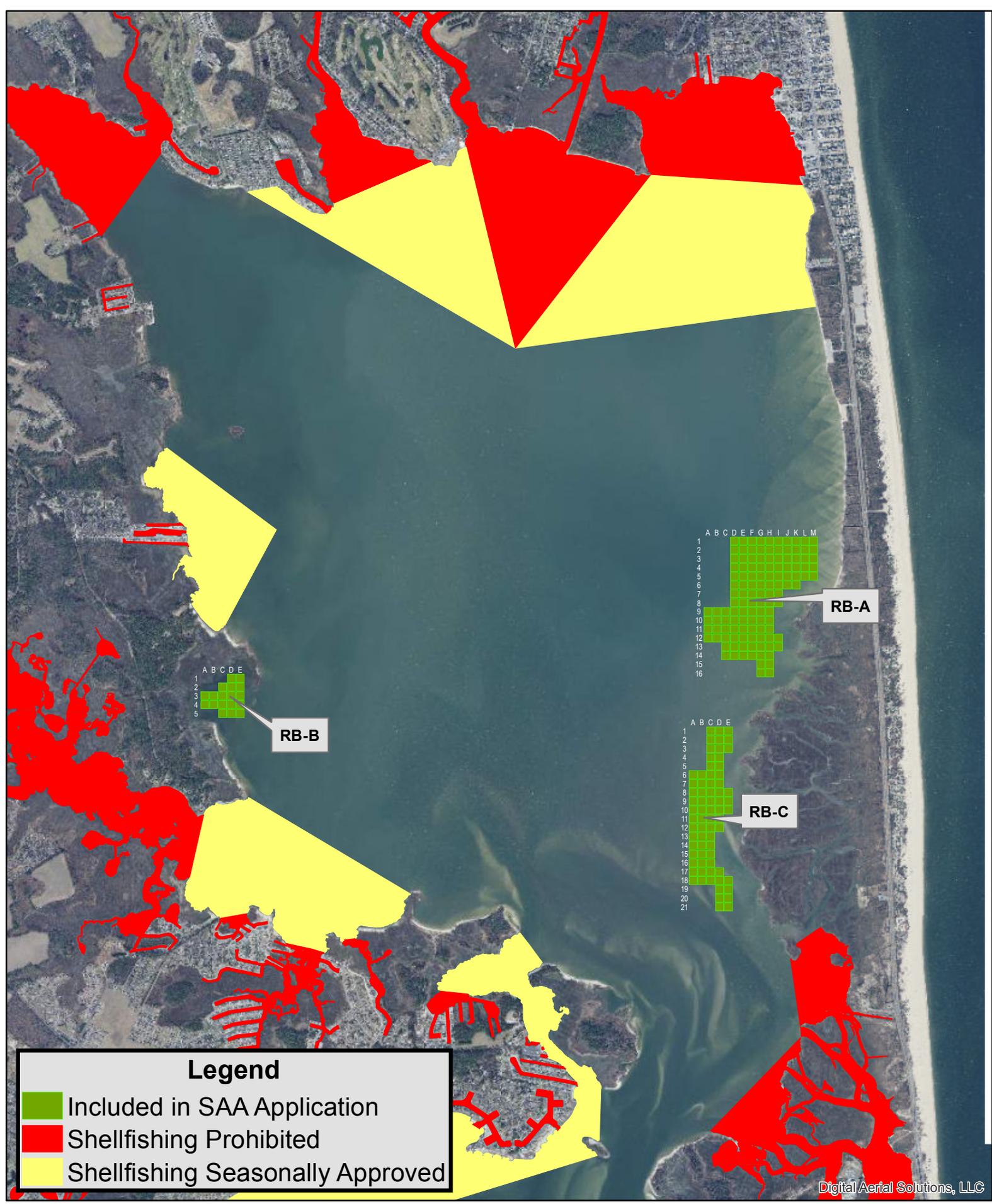


Figure 1. Indian River Bay Shellfish Aquaculture Statewide Activity Approval (SAA) Request.



Legend

- Included in SAA Application
- Shellfishing Prohibited
- Shellfishing Seasonally Approved

Digital Aerial Solutions, LLC

Figure 2. Rehoboth Bay Shellfish Aquaculture Statewide Activity Approval (SAA) Request.

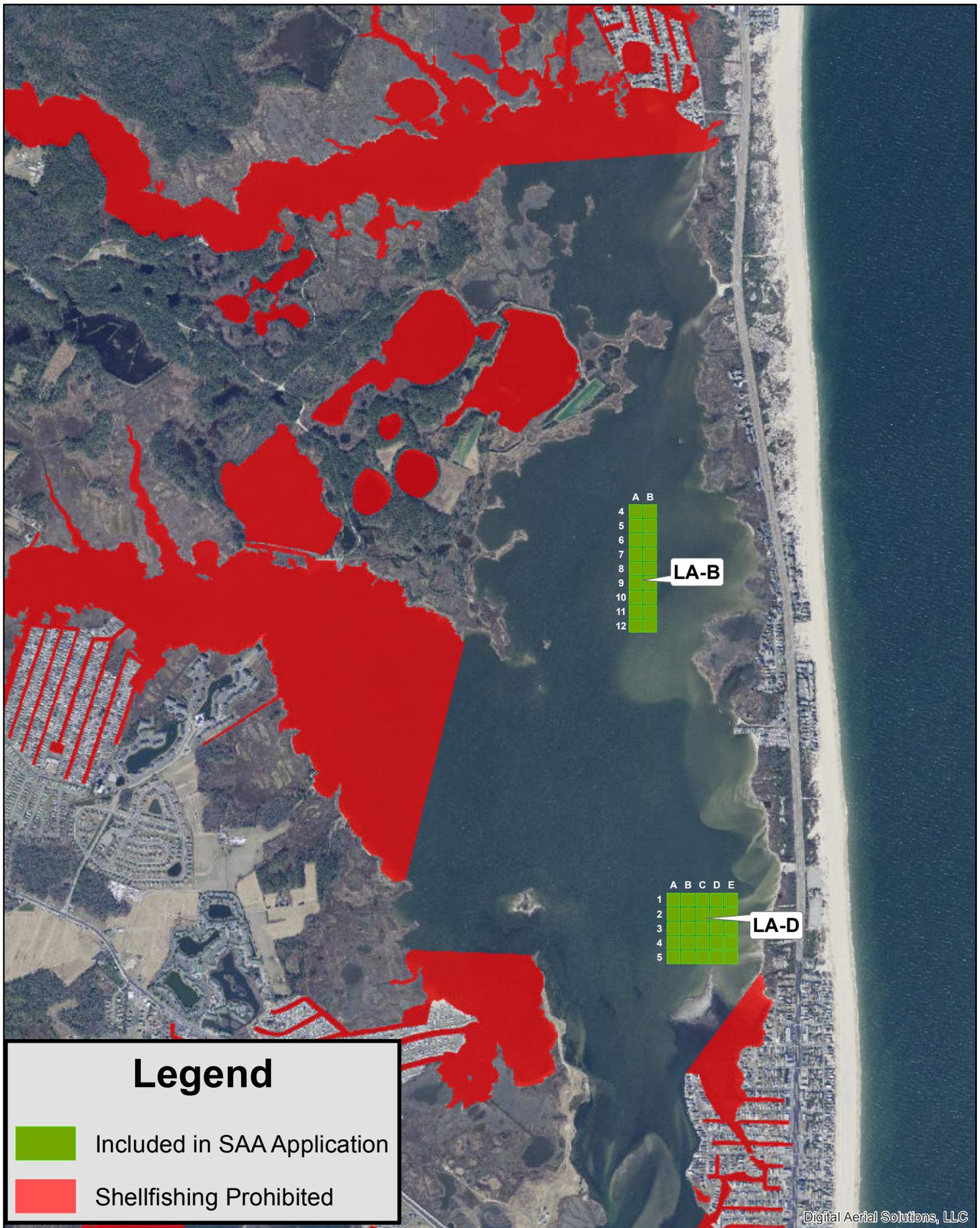


Figure 3. Little Assawoman Bay Shellfish Aquaculture Statewide Activity Approval (SAA) Request.

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Table 1. Coordinates for all areas included in the Shellfish Aquaculture Statewide Activity Approval (SAA) Request.

Inland Bay	SADA	Coordinate Boundaries Included in SAA
Rehoboth Bay	RB-A	<p>38°39'24.0983"N, 075°04'42.58199"W and 38°39'17.11895"N, 075°04'42.61481"W and 38°39'17.11061"N, 075°04'39.73191"W and 38°39'12.78715"N, 075°04'39.75229"W and 38°39'12.79550"N, 075°04'42.6351"W and 38°39'06.01377"N, 075°04'42.66701"W and 38°39'06.02967"N, 075°04'48.18045"W and 38°39'10.55082"N, 075°04'48.15929"W and 38°39'10.58385"N, 075°04'59.69059"W and 38°39'15.10500"N, 075°04'59.66963"W and 38°39'15.12139"N, 075°05'05.43538"W and 38°39'23.96600"N, 075°05'05.39457"W and 38°39'23.94138"N, 075°04'56.74566"W and 38°39'42.02597"N, 075°04'56.66160"W and 38°39'41.94333"N, 075°04'28.08202"W and 38°39'30.83816"N, 075°04'28.13487"W and 38°39'30.85499"N, 075°04'33.90096"W and 38°39'28.59442"N, 075°04'33.91166"W and 38°39'28.61117"N, 075°04'39.67771"W and 38°39'24.09002"N, 075°04'39.69902"W.</p>
	RB-B	<p>38°38'58.38782"N, 075°07'50.24403"W and 38°39'02.71130"N, 075°07'50.22684"W and 38°39'02.69716"N, 075°07'44.46135"W and 38°39'04.95775"N, 075°07'44.45231"W and 38°39'04.95065"N, 075°07'41.56953"W and 38°39'07.21124"N, 075°07'41.56047"W and 38°39'07.19761"N, 075°07'36.04698"W and 38°38'56.09237"N, 075°07'36.09174"W and 38°38'56.11310"N, 075°07'44.48767"W and 38°38'58.37369"N, 075°07'44.47863"W.</p>
	RB-C	<p>38°38'53.28583"N, 075°05'04.59609"W and 38°38'53.26192"N, 075°04'56.20029"W and 38°38'46.67787"N, 075°04'56.23089"W and 38°38'46.68610"N, 075°04'59.11345"W and 38°38'37.44610"N, 075°04'59.15628"W and 38°38'37.43787"N, 075°04'56.27383"W and 38°38'30.85382"N, 075°04'56.30442"W and 38°38'30.86205"N, 075°04'59.18680"W and 38°38'26.34089"N, 075°04'59.20776"W and 38°38'26.34909"N, 075°05'02.09010"W and 38°38'17.10907"N, 075°05'02.13282"W and 38°38'17.10087"N, 075°04'59.25059"W and 38°38'14.84028"N, 075°04'59.26106"W and 38°38'14.83206"N, 075°04'56.37886"W and 38°38'05.98742"N, 075°04'56.41995"W and 38°38'06.00314"N, 075°05'01.93211"W and 38°38'12.78489"N, 075°05'01.90075"W and 38°38'12.80939"N, 075°05'10.54730"W and</p>

		38°38'41.99926"N, 075°05'10.41327"W and 38°38'41.98294"N, 075°05'04.64826"W.
Indian River Bay	IR-A	38°35'20.40778"N, 075°10'28.80060"W and 38°34'57.99926"N, 075°10'28.87580"W and 38°34'58.03995"N, 075°10'48.78422"W and 38°35'00.30057"N, 075°10'48.77681"W and 38°35'00.31217"N, 075°10'54.53694"W and 38°35'07.09404"N, 075°10'54.51485"W and 38°35'07.11126"N, 075°11'03.13978"W and 38°35'13.69546"N, 075°11'03.13405"W and 38°35'13.66661"N, 075°10'48.73298"W and 38°35'20.44847"N, 075°10'48.71073"W.
Little Assawoman Bay	LA-B	38°29'16.87142"N, 075°03'39.95005"W and 38°29'16.85469"N, 075°03'34.44911"W and 38°28'56.70667"N, 075°03'34.54853"W and 38°28'56.72340"N, 075°03'40.04904"W.
	LA-D	38°28'15.47068"N, 075°03'18.50567"W and 38°28'04.36517"N, 075°03'18.56112"W and 38°28'04.40853"N, 075°03'32.68683"W and 38°28'15.51403"N, 075°03'32.63198"W.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Division of Fish and Wildlife

3800 Shellfish Aquaculture

3801 Shellfish Aquaculture

1.0 Introduction

These regulations provide for a shellfish aquaculture industry in Delaware's Inland Bays that is compatible with commercial and recreational finfishing and shellfishing, boating navigation and public safety, public water access and use, and native biota. Specifically, the regulations provide a structured process and set conditions for leasing of subaqueous bottom within Delaware's Inland Bays for the culture of bivalve shellfish. The regulations include requirements for lease: application, locations, issuance, marking, renewal, transfer, expiration, termination, condemnation and emergency relocation. The regulations further propose measures related to: shellfish aquaculture gear and marking, shellfish nursery permitting and structures, harvester license qualifications, bivalve species authorized for aquaculture, activities within subaqueous lease areas, and shellfish aquaculture reporting requirements.

2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

"Aquaculture activities" means those activities which include the purchase, monitoring, planting, sale, possession, harvest, production, breeding, transportation, and processing of shellfish.

"Culture" means to cultivate bivalve shellfish at any life stage.

"Farm gate" means the dollar value paid for a cultivated product upon harvest.

"Lessee" or **"leaseholder"** means that person, persons, or entity, lawfully granted a Shellfish Aquaculture Subaqueous Land Lease in Delaware's Inland Bays.

"Navigation corridor" means the 20-foot tract of subaqueous land that is established between two adjacent one (1) acre shellfish aquaculture leases.

"Non-Shellfish Aquaculture Development Area" or **"Non-SADA"** means that area of Delaware's Inland Bays outside of the boundaries of the SADA designated by the Department for the purpose of shellfish aquaculture.

"Shellfish Aquaculture Development Area" or **"SADA"** means those areas of Delaware's Inland Bays designated by the Department for the purpose of shellfish aquaculture. These distinct areas are named and their corner coordinates described for the Inland Bays as follows:

Rehoboth Bay

RB-A 38°39'24.0983"N, 075°04'42.58199"W and 38°39'17.11895"N, 075°04'42.61481"W and
38°39'17.11061"N, 075°04'39.73191"W and 38°39'12.78715"N, 075°04'39.75229"W and
38°39'12.79550"N, 075°04'42.6351"W and 38°39'06.01377"N, 075°04'42.66701"W and
38°39'06.02967"N, 075°04'48.18045"W and 38°39'10.55082"N, 075°04'48.15929"W and
38°39'10.58385"N, 075°04'59.69059"W and 38°39'15.10500"N, 075°04'59.66963"W and
38°39'15.12139"N, 075°05'05.43538"W and 38°39'23.96600"N, 075°05'05.39457"W and
38°39'23.94138"N, 075°04'56.74566"W and 38°39'42.02597"N, 075°04'56.66160"W and
38°39'41.94333"N, 075°04'28.08202"W and 38°39'30.83816"N, 075°04'28.13487"W and
38°39'30.85499"N, 075°04'33.90096"W and 38°39'28.59442"N, 075°04'33.91166"W and
38°39'28.61117"N, 075°04'39.67771"W and 38°39'24.09002"N, 075°04'39.69902"W.

RB-B 38°38'58.38782"N, 075°07'50.24403"W and 38°39'02.71130"N, 075°07'50.22684"W and
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38°39'07.19761"N, 075°07'36.04698"W and 38°38'56.09237"N, 075°07'36.09174"W and
38°38'56.11310"N, 075°07'44.48767"W and 38°38'58.37369"N, 075°07'44.47863"W.

RB-C 38°38'53.28583"N, 075°05'04.59609"W and 38°38'53.26192"N, 075°04'56.20029"W and
38°38'46.67787"N, 075°04'56.23089"W and 38°38'46.68610"N, 075°04'59.11345"W and
38°38'37.44610"N, 075°04'59.15628"W and 38°38'37.43787"N, 075°04'56.27383"W and
38°38'30.85382"N, 075°04'56.30442"W and 38°38'30.86205"N, 075°04'59.18680"W and
38°38'26.34089"N, 075°04'59.20776"W and 38°38'26.34909"N, 075°05'02.09010"W and

TITLE NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DELAWARE ADMINISTRATIVE CODE

38°38'17.10907"N, 075°05'02.13282"W and 38°38'17.10087"N, 075°04'59.25059"W and
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 38°38'12.78489"N, 075°05'01.90075"W and 38°38'12.80939"N, 075°05'10.54730"W and
 38°38'41.99926"N, 075°05'10.41327"W and 38°38'41.98294"N, 075°05'04.64826"W.

Indian River Bay

IR-A 38°35'20.40778"N, 075°10'28.80060"W and 38°34'57.99926"N, 075°10'28.87580"W and
 38°34'58.03995"N, 075°10'48.78422"W and 38°35'00.30057"N, 075°10'48.77681"W and
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 38°35'07.11126"N, 075°11'03.13978"W and 38°35'13.69546"N, 075°11'03.13405"W and
 38°35'13.66661"N, 075°10'48.73298"W and 38°35'20.44847"N, 075°10'48.71073"W.

IR-B 38°35'00.26136"N, 075°04'02.56002"W and 38°34'49.15605"N, 075°04'02.61381"W and
 38°34'49.16463"N, 075°04'05.49372"W and 38°34'46.90403"N, 075°04'05.50465"W and
 38°34'46.92040"N, 075°04'11.01257"W and 38°34'49.18100"N, 075°04'11.00170"W and
 38°34'49.18952"N, 075°04'13.88161"W and 38°34'51.45012"N, 075°04'13.87076"W and
 38°34'51.45863"N, 075°04'16.75070"W and 38°34'58.04274"N, 075°04'16.71917"W and
 38°34'58.02571"N, 075°04'10.95914"W and 38°35'00.28631"N, 075°04'10.94827"W.

Little Assawoman Bay

LA-B 38°28'45.39471"N, 075°03'31.72841"W and 38°28'45.42021"N, 075°03'40.10457"W and
 38°29'19.13206"N, 075°03'39.93894"W and 38°29'19.12332"N, 075°03'37.06268"W and
 38°29'23.64459"N, 075°03'37.04041"W and 38°29'23.61901"N, 075°03'28.66303"W and
 38°29'16.83711"N, 075°03'28.69665"W and 38°29'16.81946"N, 075°03'22.94418"W and
 38°29'01.19271"N, 075°03'23.02199"W and 38°29'01.21916"N, 075°03'31.65017"W.

LA-C 38°28'33.59037"N, 075°03'29.66689"W and 38°28'33.55579"N, 075°03'18.41536"W and
 38°28'22.45029"N, 075°03'18.47082"W and 38°28'22.48487"N, 075°03'29.72187"W.

LA-D 38°28'15.47068"N, 075°03'18.50567"W and 38°28'04.36517"N, 075°03'18.56112"W and
 38°28'04.40853"N, 075°03'32.68683"W and 38°28'15.51403"N, 075°03'32.63198"W.

"**Shellfish aquaculture gear**" means any cage, rack, tray, or other similar device for holding and protecting oysters or clams, including any bags, containers, nets, or floating container.

"**Shellfish Nursery Structures**" means any structure or container, such as an upweller, downweller or raceway in Delaware's Inland Bays used to culture 1,000 or more bivalve shellfish at one physical address, and not located in a lawful Shellfish Aquaculture Subaqueous Land Lease.

"**Submerged aquatic vegetation**" or "**SAV**" means any rooted, vascular submerged plants.

3.0 Shellfish Aquaculture Subaqueous Land Lease Issuance

- 3.1 The Department shall not issue a shellfish aquaculture land lease within the boundaries of a SADA without:
- 3.1.1 a complete and accepted SADA Shellfish Aquaculture Subaqueous Land Lease Application;
 - 3.1.2 required field assessments of each proposed one-acre plot indicating a mean density of less than two (2) hard clams per square yard per acre;
 - 3.1.3 evidence of the required performance bond;
 - 3.1.4 evidence of the required liability coverage;
 - 3.1.5 an Army Corps of Engineers permit; and
 - 3.1.6 full payment of all application and lease fees.
- 3.2 The Department shall not issue a Shellfish Aquaculture Subaqueous Land Lease for areas extending beyond or entirely outside the boundaries of a SADA without:
- 3.2.1 a complete and accepted Non-SADA Shellfish Aquaculture Subaqueous Land Lease Application;
 - 3.2.2 required field assessments of each proposed one-acre plot indicating a mean density of less than two (2) hard clams per square yard per acre;
 - 3.2.3 consideration of public comment;
 - 3.2.4 all required state and federal permits;
 - 3.2.5 evidence of the required performance bond;
 - 3.2.6 evidence of the required liability coverage;

- 3.2.7 evidence that the proposed lease boundaries are at least 150 feet from existing marked navigational channels; and
- 3.2.8 full payment of all application and lease fees.
- 3.3 The Department shall not issue a Shellfish Aquaculture Subaqueous Land Lease to persons under 18 years of age.
- 3.4 Applicants denied leases may contest the Department's decision by requesting a review by the Environmental Appeals Board, to be filed no later than 30 days after the Department's written denial of lease.

4.0 SADA Shellfish Aquaculture Subaqueous Land Lease Application

- 4.1 The components of a SADA Shellfish Aquaculture Subaqueous Land Lease Application must include and fully address subsections 4.2 through 4.4.
- 4.2 A complete and accurate Shellfish Aquaculture Subaqueous Land Lease Application form.
- 4.3 A complete and accurate operations plan:
 - 4.3.1 An operations plan shall include a complete and accurate description of the location and size of the proposed lease area.
 - 4.3.2 An operations plan shall identify the species being managed or cultivated within the proposed lease area and over which the applicant shall have exclusive right to culture bivalve shellfish over the term of the lease.
 - 4.3.3 An operations plan shall provide a complete and accurate description of the method and manner of management or cultivation to be performed within the proposed lease area.
 - 4.3.4 An operations plan shall provide a complete and accurate description of gear to be used within the proposed lease area and include a schematic of the overhead view and cross-sectional elevation view of the gear and mooring equipment being deployed within the proposed lease area.
 - 4.3.5 An operations plan shall address compatibility of the proposed operation with other existing uses to include navigation, recreation and fisheries, as well as compatibility with existing Shellfish Aquaculture Subaqueous Land Leases adjacent to the proposed lease area.
 - 4.3.6 An operations plan shall completely and accurately identify the safety and security equipment used on the lease, including appropriate markings of the equipment and lease boundaries.
- 4.4 A complete and accurate shellfish aquaculture business plan.
 - 4.4.1 A shellfish aquaculture business plan shall include a timeline indicating anticipated planting of shellfish stock, tending and grow-out period, and the anticipated time of harvest.
 - 4.4.2 A shellfish aquaculture business plan shall include the anticipated cost of shellfish stock by species, a full description of shellfish aquaculture equipment, and a full description of any off-lease facilities that might be used.
 - 4.4.3 A shellfish aquaculture business plan shall demonstrate that sufficient financial resources are available to operate and maintain all aspects of the proposed aquaculture activities. Any one (1) of the following are acceptable submissions for assessing financial capabilities:
 - 4.4.3.1 A letter from a financial institution or funding agency showing intent or willingness to commit a specified amount of funding to support the proposed aquaculture activities.
 - 4.4.3.2 The most recent corporate annual financial report and supporting documents indicating sufficient funds to finance the proposed aquaculture activities.
 - 4.4.3.3 Copies of bank statements or other evidence indicating availability of unencumbered funds.
 - 4.4.3.4 Proof that equipment or shellfish stock are available to the applicant to support the proposed aquaculture activities.
 - 4.4.4 A shellfish aquaculture business plan shall include a resume or other documentation as evidence of technical expertise and capability to accomplish the proposed project.
- 4.5 The Department may not release or make public any shellfish aquaculture business plan financial information submitted to the Department for application review, except in aggregate or summary form which does not directly or indirectly disclose the business of any person who submits such information, or as provided by court order.
- 4.6 The Department shall evaluate the SADA Shellfish Aquaculture Subaqueous Land Lease Application.
 - 4.6.1 Upon acceptance of a complete SADA Shellfish Aquaculture Subaqueous Land Lease Application, the Department shall perform a field assessment of the proposed lease site.

TITLE NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DELAWARE ADMINISTRATIVE CODE

- 4.6.2 The Department shall provide the basis for rejection of a SADA Shellfish Aquaculture Subaqueous Land Lease Application in writing.

5.0 Non-SADA Subaqueous Land Lease Application

- 5.1 The Department shall consider lease applications for subaqueous lands situated wholly or partially beyond the boundaries of a SADA; however, the applicant bears the burden and full monetary responsibility for demonstrating to the Department's satisfaction that the proposed activities on the subaqueous lands applied for are compatible with commercial and recreational fishing, boating navigation and safety, public water access and use, and native biota.
- 5.2 The components of a Non-SADA Shellfish Aquaculture Subaqueous Land Lease Application shall include and fully address subsections 5.2.1 through 5.2.4.
- 5.2.1 A complete and accurate Shellfish Aquaculture Subaqueous Land Lease Application form.
- 5.2.2 A complete and accurate operations plan according to the criteria identified under subsection 4.3.
- 5.2.3 A complete and accurate shellfish aquaculture business plan according to the criteria identified under subsection 4.4.
- 5.2.4 A complete and accurate Non-SADA Supplemental Materials Attachment which shall include:
- 5.2.4.1 A map or nautical chart depicting the boundaries of the proposed lease, associated depths at mean low water, and coordinates (latitude and longitude dd/mm/ss.ss) for the proposed lease corners.
- 5.2.4.1.1 Proposed Non-SADA lease boundaries must be designed as individual square one-acre plots.
- 5.2.4.1.2 Proposed Non-SADA leases greater than one acre must reflect a 20 foot navigation channel between adjacent square one-acre parcels.
- 5.2.4.2 A full description of the proximity of the proposed lease area to any marked or maintained navigation channels and the nearest shoreline.
- 5.2.4.3 The names and addresses of riparian land owners whose property is within 150 feet of the proposed lease area.
- 5.2.4.4 A full description of the proximity of the proposed lease site to submerged aquatic vegetation (SAV), including a description and estimate of coverage of any SAV within the boundaries of the proposed lease.
- 5.2.4.5 A full description of the proximity of the lease site to any prohibited, conditionally approved, or seasonally approved Shellfish Growing Areas, as classified by Delaware Shellfish and Recreational Water Programs.
- 5.2.4.6 A written assessment of existing recreational and commercial uses of the proposed lease area.
- 5.2.5 The Department shall evaluate the Non-SADA Shellfish Aquaculture Subaqueous Land Lease Application.
- 5.2.5.1 Upon acceptance of a complete Non-SADA Shellfish Aquaculture Subaqueous Land Lease Application, the Department shall perform a field assessment of the proposed lease site.
- 5.2.5.2 The Department shall provide the basis for rejection of a Non-SADA Shellfish Aquaculture Subaqueous Land Lease Application to the applicant in writing.
- 5.2.6 A copy of a lawfully issued U.S. Army Corps of Engineers permit authorizing shellfish aquaculture activities within the boundaries of the proposed lease site is required to be submitted to the Department before an aquaculture lease will be issued.
- 5.2.7 A copy of a lawfully issued Delaware Wetlands and Subaqueous Lands Lease authorizing shellfish aquaculture activities within the boundaries of the proposed lease site is required to be submitted to the Department before an aquaculture lease will be issued.

6.0 Shellfish Aquaculture Subaqueous Land Lease Application Field Assessment

- 6.1 Upon the Department's acceptance of a complete SADA or Non-SADA Shellfish Aquaculture Subaqueous Land Lease Application, the Department shall perform a field evaluation of the naturally occurring hard clam resource within any proposed lease area outside of Little Assawoman Bay.
- 6.2 The Department shall prepare a written summary of their methods and findings of their field assessment for the applicant.

- 6.2.1 The Department shall not issue a Shellfish Aquaculture Subaqueous Land Lease for any acreage where the Department determines the presence of a mean density of two (2) or more hard clams per square yard per acre.
 - 6.2.1.1 The Department may remove, for an indefinite period, any potential lease area where the Department determines the presence of a mean density of two (2) or more hard clams per square yard per acre.
- 6.3 The Department may issue a SADA Shellfish Aquaculture Subaqueous Land Lease where the Department determines that there is a mean density of less than two (2) hard clams per square yard per acre.
- 6.4 The Department may issue a Non-SADA Shellfish Aquaculture Subaqueous Land Lease where the Department determines that the mean density of clams is less than two (2) hard clams per square yard per acre.
- 6.5 Applicants may modify a proposed lease area(s) within a SADA and their operations plan without an additional application fee for acreage where the Department has determined that mean density of two (2) or more hard clams per square yard per acre exist, provided the total acreage accounted for in the modified application does not exceed the total acreage of the initial application and provided the proposed modification occurs within one (1) year of the date of written field assessment findings.

7.0 Shellfish Aquaculture Bonds and Liability

- 7.1 Prior to obtaining a SADA Shellfish Aquaculture Subaqueous Land Lease, or a Non-SADA Shellfish Aquaculture Subaqueous Land Lease, the prospective leaseholder shall provide evidence of, and maintain for the duration of the lease, a performance bond of \$2,000 per acre leased, to provide for aquaculture equipment removal cost-recovery in the event that the prospective leaseholder fails to perform according to the conditions of the lease, or fails to maintain the lease.
- 7.2 Prior to obtaining a SADA Shellfish Aquaculture Subaqueous Land Lease or a Non-SADA Shellfish Aquaculture Subaqueous Land Lease, the prospective leaseholder shall provide evidence of, and maintain for the duration of the lease, liability insurance of at least \$1 million each occurrence and \$2 million annual aggregate against loss or liability for bodily injury, death, property damage or destruction occurring within the leased area, or arising out of the use of the lease by the leaseholder or its agents, employees, officers, and visitors. Said policy shall be written so as to provide that the insurer waives all rights of subrogation against the State in connection with any loss or damage covered by the policy.

8.0 Modifications to Operations Plan

- 8.1 Proposed modifications to an operations plan may be made at any time and shall be submitted to the Department in written form by the leaseholder or a party lawfully authorized to act on behalf of the leaseholder.
- 8.2 An approved operations plan will remain in effect until it is terminated, amended, or otherwise changed by the leaseholder or a party lawfully authorized to act on behalf of the leaseholder and said modifications are approved in writing by the Department.

9.0 Shellfish Nursery Permits and Nursery Structures

- 9.1 It is unlawful to operate any upweller, downweller or raceway in or on Delaware's Inland Bays without a Department-issued Shellfish Nursery Permit. (Penalty Section 7 Del.C. §2012)
- 9.2 A Shellfish Nursery Permit:
 - 9.2.1 Requires an approved lease issued by the Department's Wetlands & Subaqueous Lands Section for each shellfish nursery structure.
 - 9.2.2 A complete and accurate operations plan:
 - 9.2.2.1 An operations plan shall include a complete and accurate description of the location and size of the proposed shellfish nursery structures and area.
 - 9.2.2.2 An operations plan shall identify which species are being cultivated in the shellfish nursery structures.
 - 9.2.2.3 An operations plan shall provide a complete and accurate description of the method and manner of management or cultivation to be performed within the proposed shellfish nursery structures.
 - 9.2.3 May not be transferred.
- 9.3 The Department may revoke or suspend a Shellfish Nursery Permit at any time for any violation of Sections 12.0 or 17.0.

TITLE NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DELAWARE ADMINISTRATIVE CODE

- 9.4 Permitted Shellfish Nurseries may be located in waters classified by Delaware Shellfish and Recreational Water Programs as approved, seasonally approved, or prohibited.
- 9.5 It is unlawful for shellfish nursery structures to contain any oysters greater than 25 mm shell length or any hard clams greater than 15 mm shell length without written authorization from the Department.
- 9.6 The shellfish nursery permittee shall:
 - 9.6.1 Follow the requirements of Delaware Shellfish and Recreational Water Programs.
 - 9.6.2 Notify the Department immediately upon discovery of any disease or mass mortality event affecting the shellfish at the facility that has the potential to contaminate native or naturalized animals.

10.0 Shellfish Aquaculture Harvester License

- 10.1 The Department will provide a shellfish aquaculture harvester license to each shellfish aquaculture leaseholder upon issuance of the aquaculture lease by the Department and full payment of all lease and license fees to the Department.
- 10.2 The Department may issue shellfish aquaculture harvester licenses only to individuals aged 16 years and older.
- 10.3 A shellfish aquaculture harvester license is not transferrable.
- 10.4 It is unlawful for any leaseholder, or licensed shellfish aquaculture harvester, or persons working in the physical presence of a shellfish aquaculture license holder, to engage in shellfish aquaculture activities that are inconsistent with Delaware Shellfish and Recreational Water Programs regulations. (Penalty Section 7 Del.C. §2012 and §2013(d))

11.0 Shellfish Aquaculture Gear

- 11.1 A Shellfish Aquaculture Subaqueous Land Leaseholder shall bear the burden and responsibility for properly marking, rigging, and maintaining all shellfish aquaculture gear.
- 11.2 It is unlawful for the aquaculture lessee to not conspicuously, legibly and permanently mark the lease number on all equipment, gear, or manmade materials placed on an aquaculture lease site.
- 11.3 It is unlawful to use any equipment or gear that is known to leach toxic materials or violate any water quality standards on a Shellfish Aquaculture Subaqueous Land Lease.
- 11.4 It is unlawful for any gear containing oysters to hold the oysters closer than four inches from the bottom.
- 11.5 It is unlawful for the aquaculture lessee to not mark each shellfish aquaculture container with an all-white buoy measuring at least three (3) inches by three (3) inches by three (3) inches.
- 11.6 Notwithstanding subsection 11.5, shellfish aquaculture containers stacked vertically in the water column shall be marked with a single all-white buoy measuring at least three (3) inches by three (3) inches by three (3) inches, per vertical stack.
- 11.7 It is unlawful for buoys marking shellfish aquaculture containers to not have the leaseholder's lease number either on the buoy, or on a waterproof tag attached to the buoy.
- 11.8 It is unlawful for an individual gear or shellfish aquaculture container to exceed 70 cubic feet in volume.
- 11.9 It is unlawful to store equipment, materials, or any shellfish gear that do not contain live shellfish within the boundaries of a Shellfish Aquaculture Subaqueous Land Lease site.
- 11.10 It is unlawful to clean, maintain or repair, except by hand tools operated without electric or hydraulic power, any shellfish aquaculture gear while it remains fully or partially submerged in the water.
- 11.11 It is unlawful to rinse or clean any shellfish aquaculture gear while on the water, except within the boundaries of one's own lease site.
- 11.12 The leaseholder is responsible for all equipment, gear, cultured shellfish, or materials placed on the lease site for aquaculture purposes, and remains responsible for gear that has been found adrift or unattended outside the boundaries of the lease.
(Penalty Section 7 Del.C. §2012)

12.0 Importation of Shellfish for Shellfish Aquaculture

- 12.1 It is unlawful to collect wild stock shellfish for the purposes of shellfish aquaculture from Delaware waters, except as authorized in writing by the Department.
- 12.2 It is unlawful to possess, place, or cause to be placed, undersized wild stock shellfish except as authorized in writing by the Department.
- 12.3 It is unlawful for a person to import or possess shellfish from outside of the State, for the purpose of shellfish aquaculture, without first obtaining a permit from the Department.

TITLE 7 NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DELAWARE ADMINISTRATIVE CODE

7

(Penalty Section 7 Del.C. §2012)

13.0 Shellfish Aquaculture Species

- 13.1 It is unlawful to produce or culture bivalve shellfish species other than *Crassostrea virginica*, the eastern oyster, in Rehoboth Bay, Indian River and Indian River Bay and their respective tidal tributaries.
- 13.2 It is unlawful to produce or culture bivalve shellfish species other than *Crassostrea virginica*, the eastern oyster, and *Mercenaria mercenaria*, the hard clam, in Little Assawoman Bay and its tidal tributaries.
(Penalty Section 7 Del.C. §2012)

14.0 Lease Marking

- 14.1 Following the issuance of a Shellfish Aquaculture Subaqueous Land Lease by the Department, and prior to placing any shellfish aquaculture gear or shellfish, each corner of each leased one (1) acre plot must be surveyed and marked by a professional land surveyor as defined in 24 Del.C. §2702(6), or may be surveyed and marked by the Department as resources allow.
 - 14.1.1 The relative accuracy of the corner marker locations shall be equal to or less than three (3) feet. Locations of all corner markers in latitude and longitude shall be provided in an eight (8) digit format, as well as information on the method of measurement, make and model of equipment, on a certificate form supplied by the Department and signed by the professional surveyor or Department surveyor after the boundary survey and marking of the lease.
 - 14.1.2 The leaseholder shall be responsible for supplying the anchors, lines, buoys, and poles required to mark the corner boundaries.
 - 14.1.3 The leaseholder shall be responsible for all costs of professional land surveys not performed by the Department.
- 14.2 It is unlawful for the aquaculture lessee to not mark each corner of a Shellfish Aquaculture Subaqueous Land Lease with a PVC pole or PVC pole buoy at least six (6) inches in diameter and extending at least five (5) feet above the surface of the water at mean high water. (Penalty Section 7 Del.C. §2012)
- 14.3 The leaseholder shall affix an orange reflective diamond placard, measuring a minimum of 12 inches by 12 inches to each corner pole.
 - 14.3.1 The leaseholder shall mark each corner pole with at least 24 inches of white or orange reflective material above the water line, a portion of which must be visible from all directions.
 - 14.3.2 The leaseholder shall mark each corner placard with the corresponding lease number in three (3) inch black block lettering.
- 14.4 A buoy, float, sign, or other device used to mark a lease may not contain a sign, display, light, structure, figure, painting, drawing, message, plaque, placard, poster, billboard, or device that is designed, intended, or used to advertise a product or service offered by a private entity or inform the general public of anything other than that the buoy, float, sign, or other device marks the location of a shellfish aquaculture lease.
- 14.5 The leaseholder shall maintain and meet any standard for corner and perimeter marker structures throughout the duration of the lease.
- 14.6 It shall be unlawful to not maintain proper lease markings in accordance with this subsection. (Penalty Section 7 Del.C. §2012)

15.0 Harvesting a Shellfish Aquaculture Subaqueous Land Lease

- 15.1 It is unlawful for any person to use any device attached to a vessel powered by sail or mechanical means, or any mechanical gear in the harvesting of Shellfish Aquaculture Subaqueous Land Lease sites in Delaware's Inland Bays, except that powered winches may be used to raise and lower cages. (Penalty Section 7 Del.C. §2012)
- 15.2 Anyone lawfully engaged in planting, tending, or harvesting cultured shellfish in Delaware's Inland Bays shall not be bound by the seasonal restrictions of 7 DE Admin. Code 3772.
 - 15.2.1 Notwithstanding subsection 15.2, the leaseholder, and any approved workers on the lease site shall adhere to Delaware Shellfish and Recreational Water Programs' regulations regarding *Vibrio* and shellfish harvest.
- 15.3 The leaseholder, their licensed harvester, or anyone lawfully harvesting in the direct presence of same, may harvest oysters of any size from a Shellfish Aquaculture Subaqueous Land Lease site for which they are licensed.

TITLE NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DELAWARE ADMINISTRATIVE CODE

16.0 Active Use of Shellfish Aquaculture Subaqueous Land Lease Sites

- 16.1 The Department shall conduct an annual review of each shellfish aquaculture lease in order to determine active use of the lease in the previous year.
- 16.2 In the event that an aquaculture lease is determined by the Department not to be active for a period of one (1) year (12 months), the lease shall be terminated and the lease site may revert to the inventory of available lease sites.
- 16.3 An active lease in Delaware's Inland Bays must meet the following conditions:
 - 16.3.1 After two (2) years (24 months) from the date of lease issuance or transfer, leaseholders must provide evidence to the Department's satisfaction that they annually plant at least 100,000 shellfish per acre leased.
 - 16.3.2 After the first three years of the lease, each leaseholder shall annually harvest and produce proof of sale for an average of at least 10 bushels of oysters per acre or 5,000 clams per acre, or an equivalent combination.
- 16.4 Notwithstanding subsection 16.3, the minimum planting requirement shall not apply to the initial two (2) years (24 months) of a lease, but lessees must plant sufficient shellfish to ensure that the production requirement can be met by the end of the third year (36 months), and annually thereafter.
- 16.5 The Department may, at its discretion, grant written exemptions from the planting, harvest or sale requirement due to catastrophic loss or low shellfish stock availability.

17.0 Reporting Requirements for Shellfish Aquaculture Subaqueous Land Leases and Shellfish Aquaculture Nursery Structures

- 17.1 It is unlawful for the leaseholder to not file monthly reports by the tenth day of the following month indicating if any clam or oyster planting or harvest activity occurred or did not occur, including the farm gate prices paid, on forms provided by the Department.
- 17.2 It is unlawful for leaseholders and shellfish aquaculture nurseries to not completely and accurately answer a yearly questionnaire provided by the Department within 45 days from the date of receipt.
- 17.3 It is unlawful for shellfish aquaculture nursery permittees to not file yearly reports indicating species and numbers of shellfish grown and planted or sold.
(Penalty Section 7 Del.C. §2010(b))

18.0 Annual Shellfish Aquaculture Subaqueous Land Lease Renewal

- 18.1 Leaseholders renewing their leases shall submit the annual lease fee and form by December 31 of their current year's lease.
 - 18.1.1 Renewal of the lease is subject to the leaseholder and operations plan meeting all criteria for leasing.
 - 18.1.2 If the Department finds that it is contrary to public interest to renew a lease, then the lease may not be renewed.
- 18.2 If a leaseholder does not renew their lease by the payment deadline, the lease may be terminated for non-payment, and the leased area described in the terminated lease shall revert to the inventory of available lease sites.

19.0 Shellfish Aquaculture Subaqueous Land Lease Transfers

- 19.1 A leaseholder may apply to transfer a lease by completing a Lease Transfer Form supplied by the Department, and signed and notarized by the parties making and receiving the transfer, provided that the aquaculture operation remains the same, including size, species, gear, and method of culturing.
- 19.2 The Department shall not transfer a Shellfish Aquaculture Subaqueous Land Lease without a complete and accepted Shellfish Aquaculture Subaqueous Land Lease Application from the party to whom the lease is being transferred, a boundary survey as specified in subsection 14.1, evidence of bond and liability coverage as specified in Section 7.0, and full payment of all application and lease fees.
- 19.3 The party to whom the lease is being transferred shall be responsible for paying the lease application fee prior to the completion of the transfer.

20.0 Shellfish Aquaculture Subaqueous Land Lease Expiration, Surrender, Termination and Sale

- 20.1 A leaseholder may surrender their lease to the State, in whole, or in one (1) acre increments, at any time during their lease tenure; however, the leaseholder will remain liable for the removal of shellfish aquaculture gear and cultured shellfish on the lease consistent with subsection 20.4.
- 20.2 The Department may terminate a Shellfish Aquaculture Subaqueous Land Lease at any time where the Department determines that continuing the lease does not serve the public interest of the State. Criteria for termination includes, but is not limited to:
 - 20.2.1 Failure to pay the annual lease fee in advance of the year.
 - 20.2.2 Failure to file information required by the Department, or filing false information to the Department.
 - 20.2.3 Failure by new leaseholder to apply for a lease transfer.
 - 20.2.4 Failure to keep the lease boundaries marked as required in Section 14.0.
 - 20.2.5 Failure to comply with the regulations governing the use of shellfish aquaculture leases in Delaware's Inland Bays.
 - 20.2.6 Failure to file reports as required in Section 17.0.
 - 20.2.7 Evidence that the leaseholder willfully extends or causes to extend the lease boundaries.
 - 20.2.8 Failure to adhere to the operations plan.
- 20.3 The Department shall notify an aquaculture leaseholder by registered mail of its decision to terminate a lease.
 - 20.3.1 A leaseholder may contest the Department's proposed decision by requesting a review by the Environmental Appeals Board, to be filed no later than 30 days after receipt of the Department's termination decision.
 - 20.3.2 Failure of a leaseholder to respond to the Department's notification within 30 days of receipt of the notification shall cause the lease to revert to the State.
- 20.4 In the event of expiration, surrender, or termination, the leaseholder is responsible for restoring the lease area to pre-lease conditions within thirty (30) days from the date of expiration, surrender, or termination. This shall include the removal of all cultured shellfish, structures, rafts, floats, markers, buoys, lines, cages, anchors, netting, stakes, and other equipment brought to the site.
 - 20.4.1 A leaseholder who does not restore the area to pre-lease condition within 30 days shall surrender their performance bond, in order to enable the Department to remediate the site.
 - 20.4.2 Equipment that is not cleared from the site within 30 days from expiration, surrender, or termination of the lease shall be considered abandoned. Abandoned equipment will be disposed of in the manner described in 7 Del.C. §2013(f).
- 20.5 Any person, corporation, or entity who has had their lease terminated, or has abandoned their lease may not apply for a new lease or a transfer of lease for a period of five (5) years.
- 20.6 It is unlawful to sublease, rent, or sell a Shellfish Aquaculture Subaqueous Land Lease.
(Penalty Section 7 Del.C. §2012)

21.0 Shellfish Aquaculture Subaqueous Land Lease Condemnation

- 21.1 Any subaqueous lands leased for shellfish aquaculture in Delaware's Inland Bays and subsequently classified as prohibited, seasonally closed, or conditionally closed by the Department for the harvest of shellfish shall be governed by the following:
 - 21.1.1 Leases falling under episodic closure shall adhere to the Delaware Shellfish and Recreational Water Programs guidelines.
 - 21.1.1.1 It is unlawful to harvest shellfish from an area that Delaware Shellfish and Recreational Water Programs has declared closed. Leaseholders may tend their shellfish if their lease falls under episodic closure. (Penalty Section 7 Del.C. §2012)
 - 21.1.1.2 Leaseholders may resume harvesting shellfish when the Delaware Shellfish and Recreational Water Programs reopens the area for shellfish harvest.
 - 21.1.2 Should a lease area remain under a lengthy closure, the Delaware Shellfish and Recreational Water Programs will consider options for relay or harvest of shellfish, at their discretion.
 - 21.1.2.1 Prior to moving any shellfish, the leaseholder shall apply for and receive a no-cost permit for this purpose issued by the Department.
 - 21.1.2.2 The Department shall not assume any liability for any changes in classification of lease area, and shall assume no liability to the lessee for damages incurred due to such actions.

TITLE NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DELAWARE ADMINISTRATIVE CODE

22.0 Emergency Shellfish Lease

- 22.1 The Department may issue an emergency shellfish lease where a leaseholder provides evidence to the Department's satisfaction that the health and safety of their current cultured shellfish are in imminent danger due to the lease location and such threat may be ameliorated by a change in location, provided the following:
- 22.1.1 The leaseholder completes an Emergency Shellfish Relocation Application.
- 22.1.2 Emergency shellfish relocations will be made to an available location, selected at the Department's sole discretion, within an approved SADA.
- 22.2 Within 60 days of emergency shellfish relocation approval by the Department, a leaseholder must return to their original lease site, file an application for a new lease, or submit an Emergency Shellfish Relocation Application.
- 22.2.1 An emergency shellfish relocation lease is valid for no more than two 60-day lease periods.

23.0 Prohibited Activities

- 23.1 It is unlawful to alter the existing condition of any area for which a Shellfish Aquaculture Subaqueous Land Lease has been issued, including but not limited to, adding or removing fill, shell, or other material, without first obtaining the Department's written approval.
- 23.2 It is unlawful to culture oysters unless they are fully contained in gear.
- 23.3 It is unlawful for a Shellfish Aquaculture Subaqueous Land Leaseholder or shellfish aquaculture license holder, or those individuals working under the physical presence of a licensed shellfish harvester, to operate in any manner that is inconsistent with the operations plan governing the use of a Shellfish Aquaculture Subaqueous Land Lease.
- 23.4 It is unlawful to engage in shellfish aquaculture activities in Delaware's Inland Bays except according to the terms and conditions specified in a Department-issued Shellfish Aquaculture Subaqueous Land Lease, a Shellfish Nursery Permit, or an Emergency Shellfish Lease.
- 23.5 It is unlawful to harvest or take wild bivalve shellfish from permitted lease sites and any navigation corridors.
- 23.6 It is unlawful to culture any non-native shellfish species in Delaware's Inland Bays; however, triploid varieties of native species are permitted.
- 23.7 It is unlawful to prevent the public from traversing or hook and line fishing in a Shellfish Aquaculture Subaqueous Land Lease.
- 23.8 It is unlawful for boats traversing a marked navigation corridor or a marked lease to exceed a Slow-No-Wake speed, as defined in 7 Admin. Code 3100 (2.0).
- 23.9 It is unlawful to interfere with the lawful tending or harvest of a Shellfish Aquaculture Subaqueous Land Lease.
- 23.10 It is unlawful for boats, other than those operated by the leaseholder, or their employees, to anchor within a shellfish aquaculture lease site or to tie off to any shellfish aquaculture gear or lease boundary marking.
- 23.11 It is unlawful for boats to anchor within a marked navigation corridor or to tie off to any shellfish aquaculture gear or lease boundary marking.
- 23.12 It is unlawful for anyone to culture more than 1,000 shellfish unless lawfully operating under a Shellfish Aquaculture Subaqueous Land Lease or Shellfish Nursery Permit.
- 23.13 It is unlawful to fish or crab with any gear other than hook and line within the boundaries of an active and marked Shellfish Aquaculture Subaqueous Land Lease or navigation corridor.
- 23.14 It is unlawful to use canopy predator nets, or any barrier netting out of the water on a Shellfish Aquaculture Subaqueous Land Lease or shellfish nursery structure.
- 23.15 It is unlawful to use supplemental algae to culture shellfish in Delaware's Inland Bays.
(Penalty Section 7 Del.C. §2012 and §2013(d))

18 DE Reg. 151 (08/01/14)



Delaware Department of Natural Resources and Environmental Control
Division of Fish and Wildlife

Delaware Inland Bays Shellfish Aquaculture

Shellfish Aquaculture Lands Lease No.: _____
Acre Identification: _____
Original Date of Lease Agreement: _____
Lease Renewal Date: _____
Lease Expiration Date: _____

SHELLFISH AQUACULTURE SUBAQUEOUS LANDS LEASE AGREEMENT

PARTIES:

Pursuant to the provisions of 7 Del. Ch. 20 and the Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife's Regulations Governing Shellfish Aquaculture, 7 DEL. ADMIN. CODE § 3800, "Shellfish Aquaculture Regulations," this lease agreement is hereby made and entered into on this _____ day of _____ A.D. 20_____, by and between: The State of Delaware, Department of Natural Resources and Environmental Control, Division of Fish & Wildlife, 89 Kings Highway, Dover, DE 19901, hereinafter referred to as **LESSOR** and [ENTITY] [NAME] [ADDRESS], Hereinafter referred to as **LESSEE**.

WHEREAS, LESSOR is the owner of ungranted subaqueous lands lying beneath the waters of the Rehoboth Bay, Indian River Bay, and Little Assawoman Bay;

WHEREAS, LESSEE applied for permission to conduct a shellfish aquaculture operation and to lease subaqueous lands from **LESSOR** for the sole purposes of conducting shellfish aquaculture, as defined by 7 Del. C. §§ 1901(22); 2001 (12), in the manner specified in **LESSEE'S** application dated _____, which application was approved by **LESSOR** on _____.

WHEREAS, LESSOR, pursuant to the provisions of 7 Del. Ch. 20 and 7 DEL. ADMIN. CODE § 3800, the Secretary of the Department of Natural Resources and Environmental Control, through his duly authorized designee, finds that it is consistent with the public interest if this lease agreement is entered into subject to the terms and conditions set forth herein:

WHEREAS, this LEASE AGREEMENT is in accordance with the Operations Plan and Application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part of this **LEASE AGREEMENT**.

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Delaware Department of Natural Resources and Environmental Control
Division of Fish and Wildlife

Delaware Inland Bays Shellfish Aquaculture

LOCATION & ACRE(S) LEASED:

THE STATE OF DELAWARE hereby agrees to lease to **LESSEE** the following approved Shellfish Aquaculture Land(s), defined by the Latitude and Longitude points of its four corners, in the following Bay(s), in the following acre amounts:

LEASE TRACT(S):

_____ Bay:

Northeast Corner: _____

Northwest Corner: _____

Southwest Corner: _____

Southeast Corner: _____

TOTAL ACRE(S): _____

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Delaware Department of Natural Resources and Environmental Control
Division of Fish and Wildlife

Delaware Inland Bays Shellfish Aquaculture

TERMS & CONDITIONS

- 1. TERM.** This Lease shall be renewable annually for a term of **Fifteen (15) Years** from the original date of this **LEASE AGREEMENT**, or as long as the terms and conditions applicable to this **LEASE AGREEMENT** are adhered to, whichever is shorter in time. Upon the expiration of the Fifteen-Year (15) term, this **LEASE AGREEMENT** shall expire and become null and void. **LESSEE** shall have first right to renew the Lease for another **Fifteen-Year (15)** term within **Sixty (60) days** following the expiration date of this **LEASE AGREEMENT**.
- 2. ANNUAL SHELLFISH AQUACULTURE SUBAQUEOUS LAND LEASE RENEWAL.** In order for **LESSEE** to renew this Lease annually, **LESSEE** shall submit to **LESSOR** the annual Lease fee and renewal form by December 31st of their current year's Lease. Renewal of the lease is subject to compliance with all of the terms and conditions set forth in this **LEASE AGREEMENT**. If **LESSOR** determines in its sole discretion that it is contrary to the public interest to renew this Lease, then this **LEASE AGREEMENT** may not be renewed. **LESSEE'S** failure to renew its Lease by the payment deadline of December 31st may result in this **LEASE AGREEMENT** being terminated for non-payment.
- 3. RENT.** The annual Lease fee shall be payable as follows: [One hundred dollars (\$100)/one thousand dollars (\$1,000)] per acre per year payable on or before each December 31st throughout the term of this **LEASE AGREEMENT**; rent for the first year (or any fraction of the current year) being due and payable upon execution of this **LEASE AGREEMENT**.
- 4. INSURANCE.** **LESSEE** shall maintain for the duration of the Lease, liability insurance of at least \$1 million each occurrence and \$2 million annual aggregate against loss or liability for bodily injury, death, property damage or destruction occurring within the leased area, or arising out of the use of the Lease by the **LESSEE** or its agents, employees, officers, and visitors. **LESSEE** shall provide a copy of this policy to **LESSOR** before this **LEASE AGREEMENT** becomes valid, and before **LESSEE** commences any shellfish aquaculture activities on the Leased Tract(s). In the event of a change or cancellation of said policy, **LESSEE** will provide written notice and a copy of a new policy within 30 days of either event to **LESSOR**. Said policy shall be written so as to provide that the insurer waives all rights of subrogation against The State of Delaware in connection with any loss or damage covered by the policy. In no event shall the State of Delaware be named as an additional insured on any policy required under this **LEASE AGREEMENT**. **LESSEE** shall maintain for the duration of the Lease any other insurance which is required by law.
- 5. PERFORMANCE BOND.** **LESSEE** shall post, provide evidence of, and maintain for the duration of the Lease a performance bond as required by 7 DEL. ADMIN. CODE § 3800-7.1 in the amount of \$2,000 per acre leased, conditioned upon **LESSEE'S** performance of its obligations under this **LEASE AGREEMENT** or if **LESSEE** fails to maintain the Lease. **LESSEE** shall provide evidence of the required performance bond to **LESSOR** before



Delaware Department of Natural Resources and Environmental Control
Division of Fish and Wildlife

Delaware Inland Bays Shellfish Aquaculture

this **LEASE AGREEMENT** becomes valid, and before **LESSEE** commences any shellfish aquaculture activities on the Leased Tract(s).

6. **MAINTENANCE.** **LESSEE** shall mark the Lease Tract(s) in the manner described in 7 DEL. ADMIN. CODE § 3800-14, and **LESSEE** must maintain the required markings throughout the term of the Lease.
7. **ASSIGNMENT.** The rights leased herein may not be assigned or sublet by **LESSEE**. This Lease is personal and may not be transferred without the prior written approval of **LESSOR**. Prior to the transfer of the subaqueous lands Lease, **LESSEE** shall apply for and obtain **LESSOR'S** written approval to transfer the Lease to a new lessee, as provided by 7 *Del. C.* §2008(c). Failure to obtain such approval may result in the revocation of this **LEASE AGREEMENT** and the removal of all gear and equipment authorized by this **LEASE AGREEMENT** at the expense of the **LESSEE**. **LESSOR** shall not approve the transfer of this **LEASE AGREEMENT** without a complete and accepted Shellfish Aquaculture Subaqueous Land Lease Application from the party to whom the lease is being transferred; a boundary survey as specified in 7 DEL. ADMIN. CODE § 14.1; evidence of the required performance bond and liability insurance coverage as specified in 7 DEL. ADMIN. CODE § 3801-7; and full payment of all application and lease fees.
8. **PERFORMANCE.** Failure to comply with any of the terms or conditions of this **LEASE AGREEMENT** may result in an enforcement action, which could include the revocation of this Lease and subsequent restoration of the Lease Tract(s) to pre-lease conditions. In the event of expiration, surrender, or termination, the **LESSEE** is responsible for restoring the Lease Tract(s) to pre-lease conditions within thirty (30) days from the date of expiration, surrender, or termination. This shall include the removal of all cultured shellfish, structures, rafts, floats, markers, buoys, lines, cages, anchors, netting, stakes, and any other equipment brought to the site. If **LESSEE** fails to restore the Lease Tract(s) to pre-lease condition within thirty (30) days from the date of expiration, surrender, or termination, **LESSEE** shall forfeit its Performance Bond, in order to enable **LESSOR** to remediate the Lease Tract(s). Equipment that is not cleared from the Lease Tract(s) within 30 days shall be considered abandoned, and disposed of in the manner described in 7 *Del. C.* § 2013(f).
9. **GOVERNING LAW.** This **LEASE AGREEMENT** shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. **LESSEE** consents to jurisdiction and venue in the State of Delaware.
10. **RESERVATION OF RIGHTS.** Nothing in this **LEASE AGREEMENT** shall be construed as a waiver of The State of Delaware's sovereign immunity. The State of Delaware fully retains all immunities and defenses provided by law with regard to any action based on this **LEASE AGREEMENT**.



Delaware Department of Natural Resources and Environmental Control
Division of Fish and Wildlife

Delaware Inland Bays Shellfish Aquaculture

11. This **LEASE AGREEMENT** is not valid until **LESSEE** provides evidence of the required performance bond; provides a copy of the required liability coverage policy; provides full payment of all application and lease fees; and secures a United States Army Corps of Engineers permit for the Lease Tract(s) and shellfish culture operation described herein.
12. **LESSEE** shall indemnify and hold The State of Delaware and all its agencies harmless from and against any all claims for injury, loss of life, or damage to or loss of use or property caused or alleged to be caused by acts or omissions of **LESSEE**, its employees, and invites on or about the Leased Tract(s). In no event shall the State of Delaware be named as an additional insured on any of **LESSEE'S** insurance policies.
13. Any and all notices, including any change in address, required by the provisions of this agreement shall be in writing and shall be by mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO **LESSOR**: THE STATE OF DELAWARE, DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FISH AND WILDLIFE
89 KINGS HIGHWAY, DOVER, DE 19901

TO **LESSEE** _____

14. Nothing contained in this **LEASE AGREEMENT** shall create any relationship between the **LESSOR** and **LESSEE** other than that of a lessor and lessee, and it is acknowledged and agreed that **LESSOR** does not in any way or for any purpose become a partner of **LESSEE** in the conduct of **LESSEE'S** business, or a joint venturer or a member of a joint or common enterprise with **LESSEE**.
15. **LESSEE** acknowledges and agrees that it has not relied upon any statement, representation, agreement or warranty except such as may be expressly set forth in this **LEASE AGREEMENT** and it is agreed by **LESSOR** and **LESSEE** that no amendment or modification of this **LEASE AGREEMENT** shall be valid or binding unless in writing executed by **LESSOR** and **LESSEE**. Paragraph headings contained in this **LEASE AGREEMENT** are for convenience only and shall in no way enlarge or limit the scope or meaning of the provisions of this **LEASE AGREEMENT**.



Delaware Department of Natural Resources and Environmental Control
Division of Fish and Wildlife

Delaware Inland Bays Shellfish Aquaculture

16. Each and every covenant and agreement contained in this **LEASE AGREEMENT** is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this **LEASE AGREEMENT** or the application thereof on any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this **LEASE AGREEMENT**, or the application of such term or provision to persons or circumstances other than those as to which is invalid or unenforceable, shall not be affected.
17. All covenants, agreements, terms and conditions contained in this **LEASE AGREEMENT** shall apply to and be binding upon **LESSOR** and **LESSEE** and their respective heirs, executors, administrators, successors and assigns.
18. No mention in this **LEASE AGREEMENT** of any specific right or remedy shall preclude either party from exercising any other right or from having any other remedy or from maintaining any action to which it may be otherwise entitled either at law or in equity; and the failure of either party to insist in any one or more instances upon a strict performance of any covenant of the other party under this lease or to exercise any option or right herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, right, or option, but the same shall remain in full force and effect unless the contrary is expressly waived in writing.
19. Under no circumstances is there indemnification by **LESSOR** or The State of Delaware of **LESSEE**. Any references to any form of indemnification by **LESSOR** or The State of Delaware is null and void.
20. **SPECIAL TERMS & CONDITIONS:**

LESSEE, and **LESSEE'S** agents, contractors, employees, and invitees are hereby authorized to use the Leased Tract(s) to cultivate the shellfish species specified hereunder, using techniques specified hereunder, as stated in the approved Lease Application. Any other use or deviation without prior approval by **LESSOR** shall constitute cause to terminate this **LEASE AGREEMENT**:

- i. *Listed conditions and specifications from the Operations Plan Pertinent to this Lease Agreement*
- ii. *Type of Shellfish Grown;*
- iii. *Type/Size of Containers/Gear;*
- iv. *#/Arrangement of Gear.*

21. **GENERAL TERMS & CONDITIONS:**

- i. **LESSEE**, its employees, and anyone lawfully working or harvesting on the Lease Tract(s) shall at all times comply with all applicable local, state, and federal laws and regulations. **LESSEE** is presumed to know and shall strictly comply with all National, State, or County Laws, and City or Town ordinances and regulations in any manner affecting **LESSEE'S** Shellfish Aquaculture



Delaware Department of Natural Resources and Environmental Control
Division of Fish and Wildlife

Delaware Inland Bays Shellfish Aquaculture

Activities. **LESSEE** shall indemnify and save harmless **LESSOR**, the State of Delaware, and all its agencies against any claim or liability arising from or based upon the violation of any such laws, ordinances, regulations, orders, or decrees whether by **LESSEE** or its employees. In no event shall the State of Delaware be named as an additional insured on any of **LESSEE'S** insurance policies.

- ii. **LESSEE** shall undertake the activities authorized herein in accordance with the **LEASE AGREEMENT** conditions, the final stamped and approved Operations Plans, and with the information provided in the Lease Application.
- iii. **LESSEE** shall ensure that any workers or employees performing activities authorized by this Lease have full knowledge of, and abide by, the terms and conditions of this **LEASE AGREEMENT**.
- iv. **LESSEE** shall protect and save **LESSOR** harmless from any loss, cost or damage resulting from the activities authorized by this **LEASE AGREEMENT**.
- v. **LESSEE** shall secure any other approvals that may be necessary or required by any other local, state, or federal government agency(ies) before conducting the Shellfish Aquaculture Activities described in this **LEASE AGREEMENT**.
- vi. This **LEASE AGREEMENT** authorizes only the activities described herein. Modifications to the project will require supplemental approval by **LESSOR**, prior to any change(s) in operations. Failure to contact **LESSOR** prior to executing changes to the project shall constitute cause to terminate this **LEASE AGREEMENT**.
- vii. By executing this **LEASE AGREEMENT**, **LESSEE** consents that Representatives of **LESSOR** and the Delaware Department of Natural Resources and Environmental Control shall be authorized to access the Lease Tract(s) to ensure compliance with this **LEASE AGREEMENT** and applicable laws at any time and without prior notice to **LESSEE**.
- viii. **LESSEE** shall conduct the activities authorized by this **LEASE AGREEMENT** so as not to violate the State of Delaware's Surface Water Quality Standards, as most recently amended.
- ix. **LESSEE** shall not disturb subaqueous lands or wetlands adjacent to the authorized subaqueous Lease Tract(s).
- x. **LESSEE** and any authorized workers on the Lease Tract(s) shall employ measures to prevent spills of fuels, lubricants or other hazardous substances. In the event of a spill, **LESSEE** and any



Delaware Department of Natural Resources and Environmental Control
Division of Fish and Wildlife

Delaware Inland Bays Shellfish Aquaculture

authorized workers shall make every effort to stop the leak and contain the spill, and shall immediately contact the Hazardous Spill Response Team (HAZMAT) at 1-800-662-8802 and the Division of Fish and Wildlife at (302) 735-2960. **LESSEE** and any authorized workers are responsible to comply with all directives to contain and clean up the spilled material(s) as stipulated by the HAZMAT team, and to restore the site as may be required by the Division of Fish and Wildlife.

- xi. None of the activities authorized by this **LEASE AGREEMENT** shall occur after the expiration of this **LEASE AGREEMENT**.
- xii. **LESSEE** is responsible for maintaining all authorized shellfish gear and containers placed on the Lease Tract(s).
- xiii. Any actions, operations or installations which are found by the **LESSOR** to be contrary to the public interest of the State may constitute reason for the discontinuance and/or removal of said action, operation, or installation. Removal and restoration shall be at the expense of **LESSEE** within thirty (30) days of receipt of written notice from **LESSOR** of revocation and demand for removal.

IN WITNESS WHEREOF, I, _____, have caused this instrument to be executed on this _____ day of _____, 20____.

Lessee Name (Lessee)

Notary

IN WITNESS WHEREOF, I, David Small, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this _____ day of _____, 20____

David Small, Secretary
Department of Natural Resources and
Environmental Control



Delaware Department of Natural Resources and Environmental Control
Division of Fish and Wildlife

Delaware Inland Bays Shellfish Aquaculture

Shellfish Aquaculture Lands Lease No.: _____
Acre Identification: _____
Original Date of Lease Agreement: _____
Lease Renewal Date: _____
Lease Expiration Date: _____

SHELLFISH AQUACULTURE SUBAQUEOUS LANDS ANNUAL LEASE
RENEWAL AGREEMENT

Notice: DNREC Division of Fish & Wildlife conducts an annual review to determine the Lessee’s compliance with the Original Lease terms and conditions, and any written modifications thereto, including but not limited to meeting planting requirements, meeting harvest requirements, marking requirements, and the payment of all applicable fees.

I, _____, hereby acknowledge that by execution of this document that all information in it is true, and that if any information contained herein is false, DNREC Division of Fish & Wildlife may revoke the consent to use the state-owned submerged lands, and that Lessee must remove any shellfish, equipment and/or structures on such land at Lessee’s expense. I also acknowledge that I am authorized to execute this application, and to perform the aquaculture activities as authorized by the Original Lease Agreement and any written modifications thereto.

All terms and conditions of the Original Lease Agreement, executed between the parties on [DATE], and any written modifications thereto, shall remain in full force and effect.

This **LEASE RENEWAL AGREEMENT** may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall constitute one and the same document.

Date: _____

Signature of Lessee

Printed Name of Lessee or Name and Title of Corporate Officer of Lessee

Date: _____

Signature of Director of Fish & Wildlife

Lessee has provided documentation of the required Insurance and Performance Bond: **Yes** or **No**

*Lease cannot be renewed without Lessee first providing documentation of required Insurance and Performance Bond.

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STATE OF DELAWARE
SHELLFISH AQUACULTURE PERFORMANCE BOND

Bond Number: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, [NAME OF LESSEE], as principal (“**Principal**”), and [NAME OF SURETY], a corporation legally authorized to conduct business in The State of Delaware¹, as surety (“**Surety**”), are obligated and firmly bound unto The State of Delaware, Department of Natural Resources and Environmental Control, Division of Fish & Wildlife, 89 Kings Highway, Dover, DE 19901 (“**Owner**”) in the amount of [Two-Thousand Dollars per Acre Leased (\$ 2,000/per acre leased)], pursuant to 7 DEL. ADMIN. CODE § 3801-7.0, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole, firmly by these presents.

Sealed with our seals and dated this _____ day of _____, 20____. (Date must be same or earlier than date of the Lease Agreement)

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if **Principal**, who has applied for a Shellfish Aquaculture Lands Lease pursuant to Delaware Code, Title Seven, Chapter 20 and Delaware Administrative Code, Title Seven, Chapter 3801, be awarded and enter into with **Owner** that certain Shellfish Aquaculture Lands Lease (“**Lease Agreement**”), which **Lease Agreement** shall be incorporated herein by reference and which authorizes **Principal** to conduct a shellfish aquaculture operation in accordance with the terms and conditions of the **Lease Agreement** or any changes or modifications thereto made as therein provided, shall default or otherwise fail to perform according to the conditions of the **Lease Agreement**, or fail to maintain the leased areas as determined in **Owner’s** sole discretion, then **Surety** shall, within thirty (30) days of receiving written notice from **Owner** that the **Principal** has defaulted on its obligation, make good and tender to **Owner**, or to any party or parties identified by **Owner**, sufficient funds, as determined in **Owner’s** sole discretion, not to exceed [\$TOTAL AMOUNT OF BOND CALCULATED ABOVE], to pay the costs associated with aquaculture equipment removal and restoration of the leased areas that **Owner** may incur by reason of the **Principal’s** failure or default, to continue for one year following the expiration or termination of the **Lease Agreement**; then this obligation shall be void, otherwise to be and remain in full force and effect.

Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of **Surety** and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition or change in or to any portion of the **Lease Agreement**, including to the Operations Plan submitted by the **Principal**, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or any monies due or to become due thereunder; and **Surety** hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to **Surety** as though done or omitted to be done by or in relation to **Principal**.

¹ NOTE: All surety insurers must be licensed and authorized to transact business in the State of Delaware in accordance with Delaware Code, Title 18, Insurance Code.

Any proceeding, legal or equitable, under this Bond shall be brought in a court of competent jurisdiction in the State of Delaware. Notices to **Surety** or **Principal** may be mailed or delivered to them at their respective addresses shown below.

IN WITNESS WHEREOF, **Principal** and **Surety** have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers.

PRINCIPAL

(Corporate Seal)

Witness or Attest:

Name: _____
Address: _____

By: _____ (SEAL)
Name: _____
Title: _____
Address: _____

Phone: _____

SURETY

(Corporate Seal)

Witness or Attest:

Name: _____
Address: _____

By: _____ (SEAL)
Name: _____
Title: _____
Address: _____

Phone: _____