

**Testimony Presented To the Connecticut Environment Committee by the  
Connecticut Department of Agriculture**

**3/20/15**

**Committee Bill No. 357 AN ACT CONCERNING THE PROMOTION OF THE SHELLFISH INDUSTRY  
IN CONNECTICUT.**

The Department of Agriculture is opposed to this bill.

As defined by state statute under Sec. 26-192a, the Department of Agriculture shall be the lead agency on shellfish in Connecticut. To read directly from the statute, the department: “(1) Shall coordinate the activities of other state agencies with regard to shellfish; (2) shall act as a liaison on shellfish matters between the state and municipalities, including local shellfish commissions; (3) shall take steps necessary to ensure compliance with federal standards for the shellfish sanitation program and compliance with the National Shellfish Sanitation Program Model Ordinance.”

The policies and procedures of the Connecticut Department of Agriculture pertaining to its Bureau of Aquaculture are overseen by the United States Food and Drug Administration (FDA) through the formal procedure of the Program Element Evaluation in order to ensure effective administration of a statewide shellfish safety and sanitation program. The scope of state shellfish authority administration required to regulate a shellfish sanitation program includes the following from the [NSSP Guide for the Control of Molluscan Shellfish 2013 Revision](#) (under Section II. Chapter I. Shellfish Sanitation Program Requirements. @.01. Administration.):

*A. Scope.*

- (1) The classification of shellfish growing areas;*
- (2) The harvesting of shellfish;*
- (3) Shellfish processing procedures and facilities;*
- (4) Product labeling;*
- (5) Storage, handling and packing;*
- (6) Shellfish shipment in interstate commerce;*
- (7) Shellfish dealers; and*
- (8) Bivalve aquaculture.*

*B. State Laws and Regulations. The Authority shall have laws and regulations which provide an adequate legal basis for the safety and sanitary control of all program elements including but not limited to the elements outlined in @.01 A.*

*C. Records. The Authority shall maintain records to demonstrate the effective administration of a statewide shellfish safety and sanitation program. These records shall be maintained in a central file and made available physically and/or electronically to any interested person upon request, consistent with appropriate state and federal law.*

*D. Shared Responsibilities. If more than one agency is involved in the administration of the statewide shellfish safety and sanitation program, memoranda of agreement shall be developed between the agencies to define each agency's responsibilities.*

*E. Administrative Procedures. The Authority shall have administrative procedures sufficient to:*

*(1) Regulate shellfish harvesting, sale, or shipment; and*

*(2) Ensure that all shellfish shipped in interstate commerce originate from a dealer located within the state from which the shellstock are harvested or landed, unless the Authority has a memorandum of understanding with the Authority in another State to allow dealers from its state to purchase the shellstock.*

*(3) Detain, condemn, seize, and embargo shellfish.*

*(4) Assure compliance with Shellfish Plant Inspection Standardization.*

*F. Epidemiologically Implicated Outbreaks of Shellfish-Related Illness. The Authority shall have procedures for investigating incidents of shellfish borne disease.*

Via their participation in the Interstate Shellfish Sanitation Conference (ISSC), Connecticut's shellfish Industry has a forum through which to resolve issues related to the National Shellfish Sanitation Program (NSSP) Model Ordinance guidance, policy and procedures. The ISSC was formed in 1982 to foster and promote shellfish sanitation through the cooperation of state and federal control agencies, the shellfish industry, and the academic community. To achieve this purpose the ISSC:

- Adopts uniform procedures, incorporated into an Interstate Shellfish Sanitation Program, and implemented by all shellfish control agencies;
- Gives state shellfish programs current and comprehensive sanitation guidelines to regulate the harvesting, processing, and shipping of shellfish;
- Provides a forum for shellfish control agencies, the shellfish industry, and academic community to resolve major issues concerning shellfish sanitation;

If the intent is to ensure that the industry is involved in shellfish policy implemented and followed by the Department, it should be noted that four members (all of whom are from

companies that are proponents of this legislation) are current members of the ISSC. One of those members recently served as the Region 2 industry representative on the Executive Board. The shellfish industry currently has representation equal to that of the State Shellfish Authority's (Bureau of Aquaculture) on the ISSC board. A link to the ISSC can be found at <http://www.issc.org/Committees/Default.aspx>.

An "Aquaculture Coordinating Council" will jeopardize the ability of the State Shellfish Authority to function as necessary to protect public health by ensuring that the NSSP Model Ordinance is effectively administered, particularly the language of Section 1. (b) (1) which states:

*"The Aquaculture Coordinating Council shall: (1) Direct the policies and procedures of the Department of Agriculture's Bureau of Aquaculture;*

In order to fulfill its administrative obligations as the State Shellfish Authority in Connecticut, the Department of Agriculture, through its Bureau of Aquaculture, must be able to effectively direct its own policies and procedures in order to ensure the continued safety of shellfish harvested and produced in Connecticut. An Aquaculture Coordinating Council such as defined in this bill would not have the flexibility and responsiveness necessary for the State Shellfish Authority to act quickly during a public health crisis such as an illness outbreak in order to prevent additional illnesses from occurring.

The Department of Agriculture staff who implements the National Shellfish Sanitation Program has had specific training in the Model Ordinance requirements and associated FDA requirements. The Department staff is trained in these requirements and standardized by the FDA in inspections. Department staff is provided with both broad public health training in basic public health principles, food law statutes and ordinances, microbiology, as well as shellfish specific training in shellfish sanitation principles and inspection and shellfish growing area classification. Our staff comes from a variety of backgrounds including Agriculture, Marine Policy, Biology, Environmental Health, Marine Ecology, and Earth Science; which allows our staff to bring a diverse background to the formulation of policy and procedures necessary to support the administration of such a complex program as the shellfish sanitation program.

As proposed by Committee Bill 357, the Aquaculture Coordinating Council would be heavily weighted towards appointees who have minimal or no knowledge or training in the implementation of the National Shellfish Sanitation Program.

This bill is inherently risky to the Connecticut's shellfish industry, taxpayers, and consumers of shellfish to propose that a council such as this should be directing the policy and procedures necessary to ensure compliance with a complex program such as the National Shellfish Sanitation Program. Among the potential unintended consequences of such an action are:

- increased severity of illness outbreaks due to a handicapped response to such outbreaks;

- risk of a deficient FDA Program Element Evaluation which determines that our State's shellfish sanitation program is unable to effectively administer the National Shellfish Sanitation Program
- potential de-listing of Connecticut's shellstock shippers status on the Interstate Certified Shellfish Shipper's List
- determination by the FDA that since Connecticut's administration of the National Shellfish Sanitation Program has been compromised by this statutory action, Connecticut shellfish would no longer be able to be sold outside of Connecticut
- long-term damage to Connecticut's shellfish industry from the effects of delisting of Connecticut's shippers and negative media coverage associated with such an action.

The Department is strongly opposed to the adoption of Committee Bill 357 in its current form which includes the language of Section 1. (A) (1), which would compromise the Department's Administrative obligations as the State's Lead Shellfish Authority, potentially placing public health in jeopardy and doing long-term damage to Connecticut's shellfish industry.

The Department of Agriculture also opposes Section 2 of SB 357 which attempts to extend state whistleblower protections to state shellfish grounds lessees. Specifically, the bill prohibits the state from taking personnel actions against, or terminating lease agreements with, shellfish bed lessees in retaliation for disclosure of information by the lessees to certain entities.

"Retaliatory personnel action" is defined elsewhere in statute as "any termination, suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, disciplinary action or other adverse employment action taken by an employer against an employee or a service worker." As the State does not stand in an employer/employee relationship with shellfish bed lessees, it simply does not have the authority to take adverse employment actions against these individuals. Furthermore, appropriate reasons for termination of shellfish bed leases are specifically set forth in the lease contracts themselves, and any violation of those terms is already actionable in court.

For the Committee's information and reference, attached to this testimony is the lease form that was settled after court proceedings between a shellfish lessee and the State of Connecticut. Below is a summary from the Attorney General's Office of the proceedings:

*"In August, 2014, Empire Fisheries filed suit against the Commissioner of Agriculture and the head of the Bureau of Aquaculture seeking an ex parte temporary injunction and a mandamus in an attempt to restrain the Commissioner from implementing revisions to an outdated shellfish lease in the matter of Empire Fisheries, LLC v. Reviczky et. al. The court immediately denied the ex parte temporary injunction request, and set the matter down for a hearing in early September, 2014. In advance of the hearing, we filed a motion to dismiss the matter on grounds of sovereign immunity and standing. After oral argument on our motion, and although*

*we believed that the Department would have prevailed on the motion to dismiss, the Department agreed to enter into negotiations with the company. Negotiations resulted in an agreement entered on November 18, 2014 in which the Department agreed to minor modifications of the lease language in exchange for a withdrawal of the action. Empire withdrew its action on November 21, and was issued a lease for the disputed beds under the revised lease terms. Two additional shellfish companies joined the settlement, which allowed the Department to avoid further litigation with those shellfish companies...”*

In summary, the Department of Agriculture strongly opposes this bill for the reasons stated. We urge that the committee not take action on this bill.

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**LEASE—SHELLFISH GROUNDS-NO.**

This lease, is made between the STATE OF CONNECTICUT, acting herein by \_\_\_\_\_, the Commissioner of the Department of Agriculture (hereinafter “the State” or “the Commissioner”), as amended, and \_\_\_\_\_ of the Town of \_\_\_\_\_, County of \_\_\_\_\_, Connecticut (hereinafter “the Lessee(s)”).

WHEREAS the Lessee has made application to the State for a lease for the sole purpose of planting and cultivating shellfish in and upon the grounds hereinafter described; and

WHEREAS, no valid objection has been made thereto, and said grounds having been surveyed, located and delineated on the map of the State as on file at the Bureau of Aquaculture, Department of Agriculture, Milford, CT. (hereinafter “the Bureau”); and

NOW THEREFORE, as set forth, the State, in consideration of the rents, covenants and stipulations hereinafter does hereby lease to the Lessee for a term of \_\_\_\_\_ years, with the start date being the date of signatory approval as to form by the Connecticut Attorney General’s Office (“term” or “the term”), at the annual rate of \_\_\_\_\_ dollars (\$\_\_\_\_) per acre, per annum. The first annual payment is due within fourteen (14) days of signatory approval by the Attorney General’s Office and the remaining payments are each to be paid annually, in advance of the annual anniversary of the start date provided in the term, at the office of the Bureau of Aquaculture, Department of Agriculture, P.O. Box 97, Rogers Avenue, Milford, CT., from the effective date of this lease, each and every year of the lease term, the underwater grounds bounded and described as follows to wit:

[Insert Property Description]

Comprising \_\_\_\_\_ acres and located within the meridian boundaries of the Town of \_\_\_\_\_ (**\_\_\_\_\_ Jurisdiction**). The above Premises and anything on or under the surface, excluding, shellfish placed in or on the Premises by the Lessee, shall remain the sole property of the State at all times during the period of this Lease. During the term of this lease and subject to the restrictions of this lease, any equipment and shellfish placed in or on the Premises (or other oysters, clams or mussels on the Premises) shall be the property of the Lessee. Lessee’s right to occupy the Premises shall continue only so long as the Lessee shall comply strictly and promptly with each and all of the undertakings, provisions, covenants, agreements, stipulations, and conditions contained herein. The rent due shall be paid by the Lessee to the State without abatement, offset, or deduction.

TO HAVE AND TO HOLD the same unto the said Lessee, provided that the said Lessee shall actually use and occupy said Premises for the purpose of planting and cultivating shellfish and for no other purpose; and that this Lease is accepted by said Lessee, subject to all the provisions of the statutes, and any written amendments thereto, and also subject to any laws, regulations or rules now in effect or hereafter made by the State of Connecticut or the Commissioner, regarding the marking to said grounds by buoys or otherwise, and subject to such other and further laws, regulations, or rules as may be, from time to time, made by the State of Connecticut or the Commissioner.

#### **A. Assignment**

It is further provided that subject to the approval of the Commissioner, the Lessee or its legal representatives may assign or transfer this Lease, provided that such assignment or transfer shall be recorded and kept in the official records of the Commissioner on forms provided by the Commissioner, and kept at the Bureau. Any assignment or transfer which is made without the approval of the Commissioner or is not recorded by the Lessee shall, at the option of the Commissioner, terminate this Lease.

#### **B. Good Faith Effort to Cultivate and Harvest**

The Lessee is required to make a good faith effort to cultivate and harvest shellfish from the Premises as determined by the Commissioner. A good faith effort to cultivate and harvest shellfish shall, at a minimum, be demonstrated by documentation evidencing the wholesale transaction(s) of shellfish and/or the planting or cultivation of shellfish by the Lessee on the Premises within the leased term. The Lessee is prohibited from entering into a contract whereby the Lessee agrees not to cultivate and harvest shellfish for any period of time. The Lessee may not enter an agreement with a third party that will prevent the Lessee from carrying out the Lessee's obligations under the lease unless the Department of Agriculture and the Attorney General have approved such agreement.

#### **C. Termination by the State of Connecticut**

1. This Lease may be terminated by the State upon default by Lessee, without prejudice to any other remedies that the State of Connecticut may have against Lessee or another party.
2. The occurrence of any one of the following events shall constitute a default or event of default (the "Default") by Lessee, and shall be grounds for termination:
  - a. Lessee's failure to pay the annual rent within ten (10) days after the same shall be due and payable;
  - b. The failure by the Lessee to make a good faith effort to plant, cultivate or harvest shellfish from the Premises as determined by the Commissioner, unless excused by a hardship exception provided for in writing by the Commissioner;

- c. Lessee's shellfish operation have caused or will cause injury to the public, marine life (other than the shellfish subject to this lease) and habitats, water quality, natural resources or other environmental conditions, as determined in writing by the Commissioner. The occurrence of this event of Default may subject the Lessee to immediate termination, with no prior notice;
  - d. The occurrence of any act which operates to deprive the Lessee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the Premises;
  - e. If Lessee is a corporate entity and it fails to remain in legal existence in the State of incorporation;
  - f. If Lessee is adjudicated bankrupt or insolvent in any proceeding, or makes an assignment for the benefit of creditors, or if a trustee or receiver is appointed for all or substantially all of the Lessee's assets;
  - g. For the activities hereunder, lessee's failure to comply with any Federal, State, or local law or regulation, or failure to comply with any permit, license or authorization. The occurrence of this event of Default may, as determined by the Commissioner, subject the Lessee to immediate termination, with no prior notice;
  - h. Lessee's use of the aforesaid described grounds for any purpose other than those expressly permitted by this lease whatsoever;
  - i. Any assignment or transfer which is made without the written approval of the Commissioner as provided in Section A;
  - j. Lessee's failure to observe or perform any of the covenants, agreements, terms or conditions provided for in this Lease to be observed or performed by Lessee and Lessee does not cure, except as provided in C.2.c. or C.2.g., such failure within thirty (30) days after written notice thereof by or on behalf of the State. If such failure, except as provided in C.2.c. or C.2.g., is incapable of being cured with diligence within thirty (30) days, it shall be an event of Default if Lessee does not commence to cure such failure within (30) days, or to diligently prosecute such cure to completion within a reasonable period of time to the satisfaction of the Commissioner.
3. Subject to the right to cure in Paragraph C.2.j. above, if any Default or event of Default occurs, then in addition to and without prejudice to any other right or remedy hereunder or by law or equity and notwithstanding any waiver or any former breach of covenant, the State may treat the occurrence of such Default or event of Default as a breach of this Lease, and at the option of the Commissioner at any time thereafter, the Lease may be terminated pursuant to paragraph D.1.

4. No monies paid for said lease by the Lessee shall be refunded. The Lessee hereby surrenders his right to notice to quit.

#### **D. Remedies**

1. In the event of a Default, and subject to the right to cure set forth in Paragraph C.2.j. above, unless otherwise stated herein, the State may terminate this lease by giving to Lessee a Notice of Termination, specifying a termination date of this Lease no fewer than thirty (30) days after the date on which such Notice is given. The Notice shall be by registered or certified mail, postage prepaid and addressed to the Lessee at its address as set out in this Lease or at such other address as the Lessee may file with the Bureau subsequent to the signing hereof. After the giving of such Notice of Termination, at close of business on the termination date specified therein, the term of this Lease and all right, title, and interest of the Lessee hereunder shall expire as fully and completely on the day so specified as if that day were the date herein specifically fixed for the expiration of the term.
2. Upon the date of termination specified in the Notice of Termination or the date of expiration of the Lease term, Lessee shall immediately surrender the Premises to the State and all rights in and to the grounds shall revert to the State. Lessee shall remove all equipment and personal property at Lessee's sole cost and expense, and vacate the Premises.
3. In the event of a termination, the State may, but shall have no obligation to, re-let the Premises or any part thereof to another person or entity.
4. The parties agree that Lessee's covenant to pay rent or any other payments required hereunder is independent of all other covenants and agreements herein contained.
5. Unless and until this Lease has been terminated, Lessee shall remain fully liable and responsible to perform all of the covenants and to observe all the conditions of this Lease throughout the remainder of the term, and, in addition, Lessee shall pay to the State, upon demand as additional rent, the total sum of all costs, losses, damages and expenses, including reasonable attorneys fees, as the State incurs, directly or indirectly, because of the occurrence of any Default or event of Default.
6. If the State shall commence any proceeding for non-payment of rent, or any other payment of any kind which the State may be entitled or which it may claim hereunder, the Lessee shall not be entitled to counterclaim or set off its legal obligations with any equipment or personal property left or abandoned on the Premises.

#### **E. Removal of Equipment and Personal Property**

- a. If Lessee shall fail to remove equipment or personal property within 60 days from the date of expiration of the term of this Lease or sooner termination date of the Lease, such equipment or personal property, including any and all shellfish, shall be deemed

permanently abandoned by Lessee. For the 60 days that the Lessee has to remove its personal property from the subject shellfish ground, the Lessee shall pay use and occupancy to the State. Such use and occupancy shall be calculated at a rate of one twelfth of the annual lease amount for the subject shellfish bed per month for any month or part of the month for which the Lessee still claims personal property on the subject ground and seeks to remove it.

The State shall not be liable for any damage to, or loss of, any equipment or personal property belonging to any party upon or occupying said Premises or any part thereof from any causes whatsoever by reason of such removal or by the re-leasing of the Premises. Lessee expressly waives any and all claims for damages and loss against the State or its officers, employees, and agents for or on account of any act done or caused to be done in exercising this right. The State shall bear no risk and have no liability for the condition of any equipment, personal property, including shellfish remaining on the Premises after the termination or expiration of this Lease.

#### **F. Renewal**

Upon the expiration of the term of this lease, Lessee, has the option to apply for a renewal of said lease upon the terms and conditions as set out in Section 26-194, Chapter 491 of General Statutes of Connecticut, as amended. It is further provided however that the aforesaid option to renew shall be null and void in the event that the Lessee herein at the time of filing such application for renewal is in Default in the payment of rent or in Default in any of the other covenants or obligations herein.

#### **G. Boundaries**

In case any dispute shall arise concerning the boundaries of the aforesaid Premises, the Lessee agrees and stipulates that such dispute shall be determined by the Commissioner, and the determination made by Commissioner shall be binding upon all the parties in interest unless an appeal as provided by statute is taken within ten days of such determination of the Commissioner.

#### **H. Annual Reporting**

Lessee shall be responsible for submitting a report of lease activities on the Premises to the Bureau, annually, by December 31<sup>st</sup> of each year of the term. Such report shall be submitted prior to the approval of a lease renewal or assignment, and prior to termination or expiration. The format of this annual report shall be defined by the Commissioner and shall include (at a minimum) the harvest dates, quantity and species of any and all shellfish harvested from the leased grounds, or in the case of relayed or transplanted shellfish, the date, quantity and species of shellfish relayed or transplanted.

## **I. Audit and Inspection**

- a. The State may, but shall not be obligated to, enter and inspect the Premises at any time. The State will use its best efforts not to unreasonably interfere with Lessee's shellfish operation during inspection.
- b. The State shall have the right to conduct monitoring or sampling in, upon or over the Premises. The State is not obligated to provide any notice.
- c. This Lease shall not impair any of the State's regulatory authority.
- d. The Lessee shall maintain accurate and complete records associated with this Lease and associated Lessee licenses and the Lessee shall make all of its records available at all reasonable hours for audit and inspection by the State. The State shall make all requests for records associated with this Lease for an audit or inspection of records in writing and shall provide the Lessee with at least twenty-four (24) hours' notice. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any notice.
- e. All audits and inspections shall be at the State's expense.
- f. The Lessee shall cooperate fully with the State in connection with an audit or inspection.

## **J. Indemnification**

The Lessee shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assign from and against any and all claims arising, directly or indirectly, including reasonable attorneys' fees, arising out of the acts, omissions or negligence of Lessee, its officers, officials, members, employees, servants, agents, invitees or other persons, in connection with Lessee's use of the Premises. This Section shall survive the termination of the Lease.

## **K. Warranties**

- a. Lessee understands and agrees that Lessee has full knowledge of all matters pertaining to the Premises, including, but not limited to, the condition of title and the physical condition, and that the Lessee is leasing the Premises "As Is."
- b. Lessee understands and agrees that the Premises herein leased are subject to such prior rights as may exist with the State or with littoral property owners.
- c. The State makes no warranty of any nature, express or implied or otherwise, or any representations of any kind, regarding the suitability of the Premises for shellfish cultivation as determined by any governmental agency.

#### **L. Risk of Loss**

The risk of loss or destruction from any peril to equipment or other personal property of the Lessee shall be born entirely by the Lessee. Lessee waives any right to subrogation against the State for loss or destruction to equipment or other personal property of the Lessee while on the Premises.

#### **M. Lien or Encumbrances**

Lessee shall not, without the State's prior written consent, permit the creation or imposition of any liens or encumbrances upon the Premises. In the event said lien(s) has been created by or permitted by Lessee in violation of this provision, Lessee, at its sole cost and expense, will immediately discharge as of record any such lien or encumbrance.

#### **N. Interference; Eminent Domain**

- a. Except as otherwise provided by statute, Lessee shall have no claim against the State for any damage, should Lessee's possession of the Premises or any part thereof be disturbed or interfered with or affected in any manner by reason of the acts or omissions of any person, or by reason of the enactment or adoption of any law, ordinance or regulation or by reason of any other act of any governmental authority, or for any other reason not in the State's control.
- b. If, as a result of the exercise of the power of eminent domain or a conveyance in lieu thereof (hereinafter referred to as a "Proceeding"), a majority or more of the entire Premises ("materially all"), shall be taken, this Lease and all right and interest of the Lessee hereunder shall cease and come to an end on the earlier of the date on which possession is taken by the condemning authority or the date of vesting of title pursuant to such Proceedings. The value of the State and Lessee's respective interests in the Premises shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award.

#### **O. Non-Discrimination**

The Lessee agrees and warrants that in the performance of this Lease, the Lessee will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical

disability, including, but not limited to, blindness, unless it is shown by such Lessee that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Lessee further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including but not limited to, blindness, unless it is shown by the Lessee that such disability prevents performance of the work involved.

**P. Time of the Essence**

Time is of the essence with respect to all provisions of this Lease that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Lease.

**Q. Compliance with Law and Permits**

- a. This lease is subject to all applicable provisions of law. Use of the Premises shall be subject to all statutes, laws, ordinances, rules, regulations and requirements of all governmental authorities having jurisdiction thereof, including, but not limited to, laws and regulations relating to:
  - i. Harvest, handling, tagging, storage, sale, sanitary control of shellfish;
  - ii. The transfer or relay of shellfish from uncertified or restricted waters to lease areas for natural cleansing;
  - iii. Harvest and possession of illegally obtained shellfish;
  - iv. Food storage, sanitation and handling to prevent contamination and decomposition of shellfish; and
  - v. Navigation.
- b. Prior to the commencement of shellfish operations, Lessee shall, at its sole cost and expense, procure, maintain and comply with during the term all permits, authorizations, and licenses necessary for Lessee's use or operation of Premises or any portion thereof, including, without limitation, any permit necessary for shellfish seeding, cultivation, harvesting or relay.

**R. Governing Law; Venue**

Except as otherwise provided by statute, the parties shall deem the Lease to have been entered into in Hartford, Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Lease to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflict of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made

returnable to the Judicial District of Hartford, only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Lessee waives any objection which it may have or will have to the laying of venue of any claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

**S. Lessee's Authority to Enter Lease**

Lessee represents that it has full power and has been duly authorized by all necessary action, to execute and deliver this Lease and to perform its obligations under this Lease.

**T. Waiver**

No waiver of any breach of this Lease shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Lease shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Lease or at law or in equity.

A party's failure to insist on strict performance of any provision of the Lease shall only be deemed a waiver of rights and remedies concerning that specific instance of performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

**U. Sovereign Immunity**

The Parties acknowledge and agree that nothing in this Lease shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut or to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Lease. To the extent that this section conflicts with any other section, this section shall govern.

**V. Business Day**

If the day for performing any action required under this Lease does not occur on a State business day, the due date shall be on the next day when the State is open for official business.

**W. Not in Default**

Lessee warrants, to the best of its knowledge and belief, that it is not in arrears to the State for taxes or upon debt or contract and is not in default as surety, contractor or otherwise on any obligation to the State.

**X. Severability**

If any term or provision of the Lease or its application to any person, entity or circumstance shall, to any extent, be held or be invalid or unenforceable, the remainder of the Lease or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Lease shall be valid and enforced to the fullest extent possible by law.

## **Y. Executive Orders**

This Lease is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Lease as if they had been fully set forth in it. The Lease may also be subject to Executive Order 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Lease as if they had been fully set forth in it. At the Lessee's request, the Commissioner shall provide a copy of these orders to the Contractor.

## **Z. Campaign Contribution Restriction**

For all State contracts as defined in Conn. Gen. Stat. section 9-612(g)(1)(C), the authorized signatory to this Lease expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of the state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. See attached Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contributions and Solicitation Limitations.

## **AA. Merger; No Oral Changes; No Representations**

It is expressly understood that this Lease represents the entire agreement of the parties, and all previous understandings are merged in this Lease. No modification of this Lease shall be valid unless written in the form of an Amendment and executed by both parties.

No amendment to or modification or other alteration of the Contract shall be valid or binding upon the State unless made in writing, signed by both parties and, if applicable, approved by the Connecticut Attorney General.

**BB. Further Assurances**

The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Lease and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Lease, in order to give full effect to the Lease and to carry out the intent of the Lease.

**CC. Notices**

All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Lease (“notices”) shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight delivery service that provides for a return receipt. All such notices shall be in writing and shall be delivered as follows:

Director, Bureau of Aquaculture  
Department of Agriculture  
P.O. Box 97  
190 Rogers Avenue  
Milford, CT 06460

**This lease only becomes final and binding upon the approval of the Attorney General.**

IN WITNESS WHEREOF, the parties have set their hands and seals.

WITNESSES:

(sign) \_\_\_\_\_

By

\_\_\_\_\_

(print) \_\_\_\_\_

\_\_\_\_\_, Commissioner  
Department of Agriculture

(sign) \_\_\_\_\_

(print) \_\_\_\_\_

**LESSEE:**

**WITNESSES:**

(sign) \_\_\_\_\_  
\_\_\_\_\_ **L.S.**

(print) \_\_\_\_\_

(sign) \_\_\_\_\_

(print) \_\_\_\_\_

STATE OF CONNECTICUT

ss: Hartford

COUNTY OF HARTFORD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014

By \_\_\_\_\_, Commissioner of the Department of Agriculture.

\_\_\_\_\_

**Notary Public**

**My**

**Commission Expires:**

\_\_\_\_\_

STATE OF

ss:

COUNTY OF

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by

\_\_\_\_\_.

\_\_\_\_\_

**Notary Public**

**My Commission**

**Expires:**

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
**Attorney General**

**Dated** \_\_\_\_\_

**Received for record** \_\_\_\_\_