

Maryland Aquaculture Legal Conflicts and Resolutions

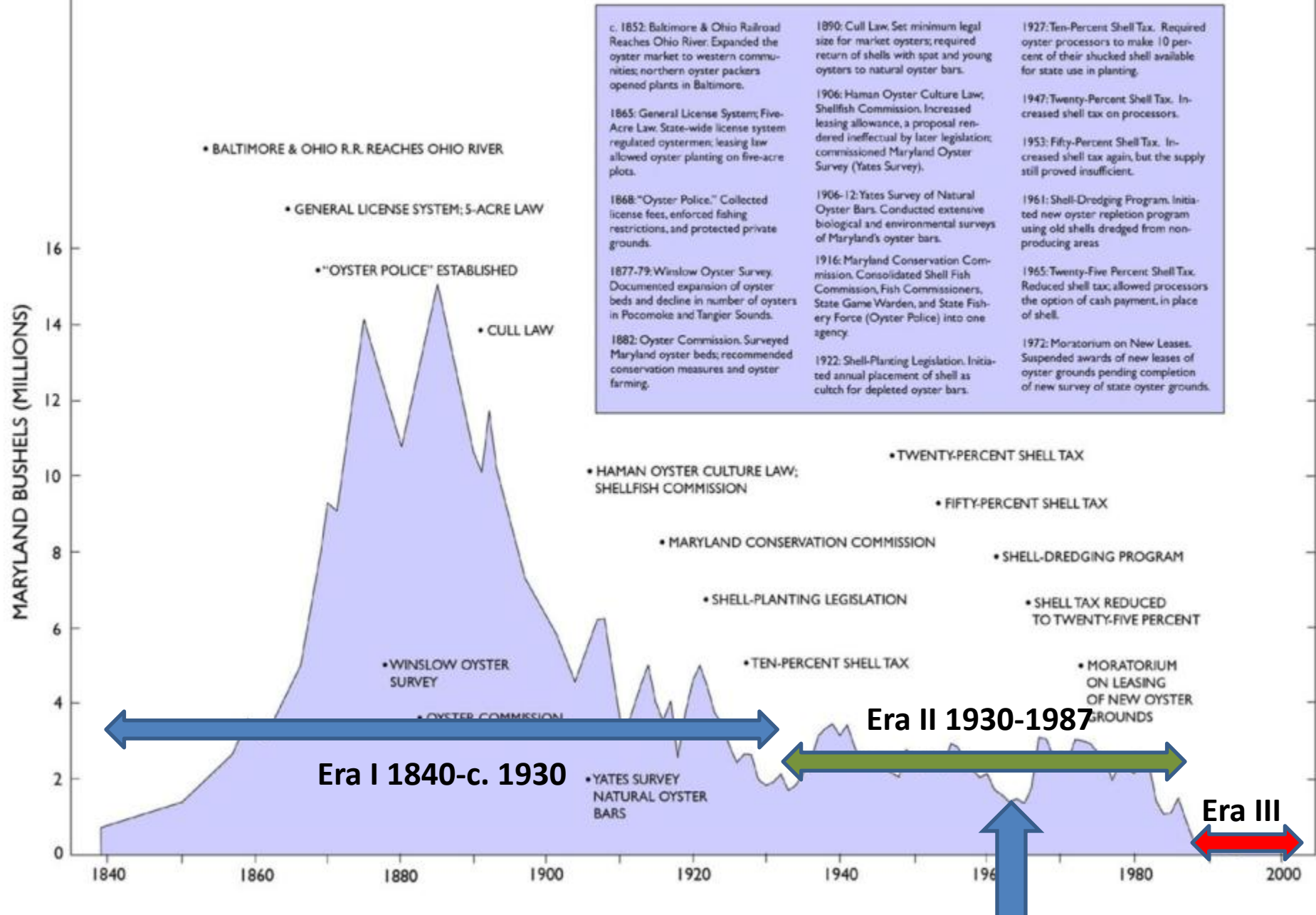
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A History of Oyster Harvests and Laws in Maryland



Changing Laws

- **1830 “One Acre Law”**: first aquaculture
- **1865 “Five Acre Law”**: licensing system and expanded aquaculture program
- **1884 Oyster Commission**: survey of grounds; recommendations for conservation and expanding aquaculture
- **1906 Haman Oyster Law**: Shellfish Commission; renovated leasing; authorized Yates Survey

Into Next Century

- 1912 Price-Campbell Bill: improved Haman; increased acreage; allowed dredges
- **1914 Shepherd Bill: protests allowed to block leases; effectively stopped many leases from being issued**
- Many other commissions and task forces recommended expanding leasing but could not make political headway

Revising Maryland's Lease Program

August 2008

State of Maryland decides lease laws must be revised to provide for shellfish aquaculture development



May 2009

Revised lease legislation is signed after unanimous passage by both houses of the General Assembly



September 2010

Regulations are approved, the new leasing program is implemented by DNR and new applications are received



Lease Law Provisions

- Changed from **legislative to regulatory** framework for management flexibility
- Deleted **county prohibitions** on leasing
- Deleted **acreage limitations**
- Allowed **corporations** to hold leases
- Allowed **nonresident** leasing
- Added “**active use**” program with oversight and production requirements

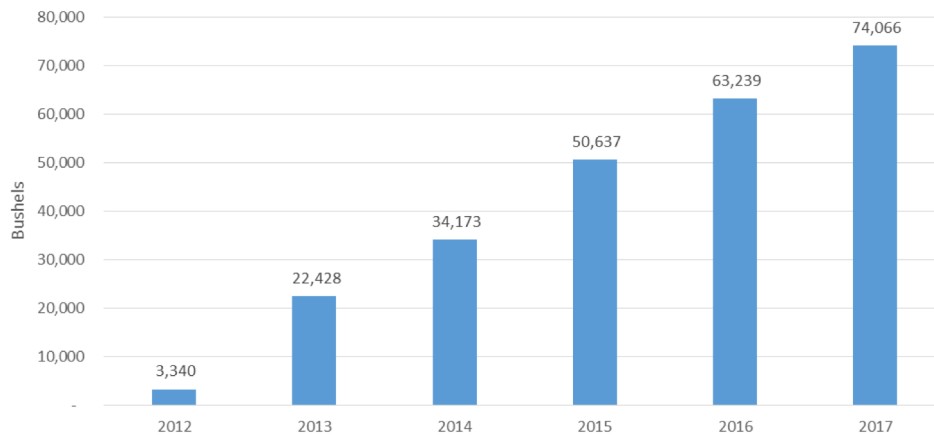
2011 General Assembly

- Consolidated authority for all leases to DNR
- Aquaculture Coordinator became Director of DNR Aquaculture and Industry Enhancement Division
- Moved Review Board and Coordinating Council to DNR and modified membership
- Authorized leasing in oyster sanctuaries up to 10% of the total area and not on Yates Bars

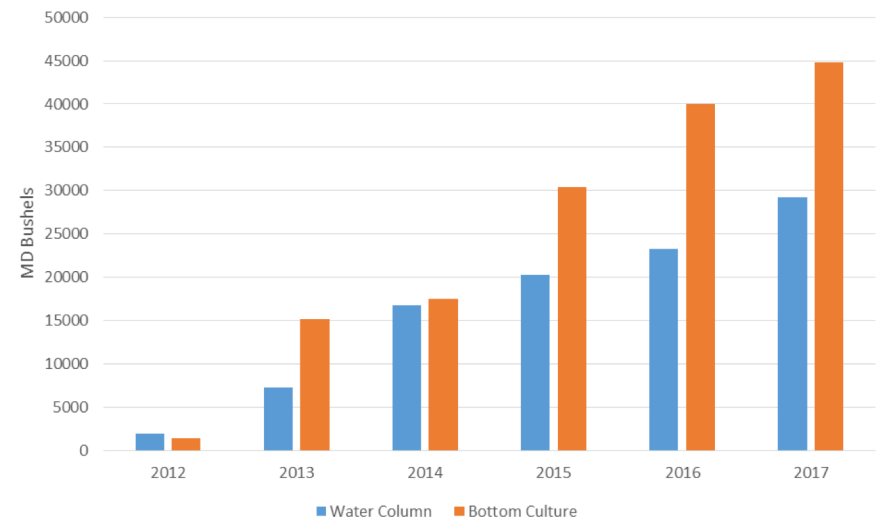
Harvest Increasing Annually



Total Maryland Oyster Aquaculture Harvest



Maryland Oyster Aquaculture Harvests



Increasing Lease Number and Acreage

- **SUBMERGED LAND LEASES**

- 339 AND 6,403 ACRES

- **WATER COLUMN LEASES**

- 82 AND 421 ACRES

- **LEADING COUNTIES:** DORCHESTER, WICOMICO, ST. MARY'S, SOMERSET AND TALBOT



“THE OYSTER TEAM”

**Agencies, institutions and NGOs working together to
rebuild the Maryland oyster aquaculture industry**



SUPPORT PROGRAMS

- **FINANCING – LOW INTEREST LOANS AND GRANTS**
 - MARBIDCO, NRCS AND FSA
- **STREAMLINED PERMITS AND REGULATIONS**
 - DNR AQUACULTURE AND INDUSTRY ENHANCEMENT DIVISION
- **OYSTER AQUACULTURE EDUCATION & TRAINING PROGRAM**
 - EXTENSION CONFERENCES, WORKSHOPS AND EDUCATIONAL MATERIALS
- **REMOTE SETTING TRAINING PROGRAM – SPAT ON SHELL SEED PRODUCTION**
 - NOAA, DNR, ORP, RADCLIFFE FOUNDATION, UMCES-HPL & UME
- **PROMOTION AND MARKETING**
 - DNR/MDA FISHERIES MARKETING PROGRAMS

REMOTE S

- SYSTEMS FOR SEED PRODU



AGEMENT DECISIONS



REMOTE SETTING TRAINING (RST) PROGRAM

- **GROWER PROVIDES AGED, CLEAN CONTAINERIZED SHELL; LABOR TO MOVE THROUGH THE PROCESS AND CLEAN TANKS AT END**
- **BAGGED SHELL OFFERED AT LOW COST TO PARTICIPANTS; OTHER OPTIONS AVAILABLE**
- **ASSISTANCE FOR SETTING AND MEASURING RESULTS**
 - 2011 – 5 LOCATIONS; 12 GROWERS; 38 SETS; 33 MILLION SEED
 - 2012 – 6 LOCATIONS; 18 GROWERS; 113 SETS; 212 MILLION SEED
 - 2013 – 9 LOCATIONS, 27 GROWERS; 167 SETS; 278 MILLION SEED
 - 2014 – 9 LOCATIONS; 31 GROWERS; 130 SETS; 186 MILLION SEED
 - 2015 – 9 LOCATIONS; 40 GROWERS; 172 SETS; 146 MILLION SEED
 - 2016 – 8 LOCATIONS; 45 GROWERS; 212 SETS; 235 MILLION SEED
 - 2017 – 8 LOCATIONS; 45 GROWERS; 212 SETS; 290 MILLION SEED
 - 2018 – 8 LOCATIONS; 46 GROWERS; 212 SETS; 258 MILLION SEED

PROBLEMS THAT HAVE BEEN ADDRESSED

- ✓ REMOVED RESTRICTIONS AND MADE OUR LAWS ATTRACTIVE FOR INVESTMENT
- ✓ CREATED SINGLE POINT AGENCY AND SUPPORT PROGRAMS FOR APPLICANTS
- ✓ LOWERED LEGAL SIZE LIMITS FOR AQUACULTURE OYSTERS TO MEET DEMAND
- ✓ REVISED ACTIVE USE PROVISIONS AND PERMITS TO BE MORE USER FRIENDLY
- ✓ GAINED AUTHORITY TO EXEMPT SHELLFISH NURSERIES FROM PERMITS
- ✓ ATTORNEY GENERAL GAINED IMPORTANT LEGAL PRECEDENTS

OUTCOMES --

- ✓ STRONG INDUSTRY GROWTH; MANY COMPANIES EXPANDING
- ✓ WATERMEN ARE PART OF ALMOST HALF OF LEASES
- ✓ CONTINUED FILING OF APPLICATIONS – CURRENTLY 137 IN PROCESS



CURRENT ISSUES – LEASES AND SAV

✓ **AQUACULTURE COORDINATING COUNCIL 2017 WORKGROUP**

- ✓ NEW LEASES SCREENED TO NOT ALLOW IN DOCUMENTED SAV BEDS
- ✓ EXISTING LEASES FACE RESTRICTIONS IF SAV ENCROACHES IN 1 OF 5 YEARS
- ✓ CAN DISRUPT LEASE ACTIVITIES AND AFFECT PROFITABILITY OF THE BUSINESS

✓ **WORKGROUP FINDINGS**

- ✓ SAV AND SHELLFISH HAVE COMPARABLE ENVIRONMENTAL BENEFITS; ONE DOES NOT OUTWEIGH THE OTHER
- ✓ WATER COLUMN LEASES DO NOT COVER 100% OF BOTTOM AREAS
- ✓ RECOMMENDED MODIFICATION OF LAWS TO ALLOW MORE FLEXIBILITY FOR DNR TO ALLOW EXISTING LEASES TO CONTINUE OPERATIONS ON THEIR LAND
- ✓ SEEK LEGISLATIVE CHANGE IN 2019 GENERAL ASSEMBLY SESSION

CURRENT ISSUES – THEFT PREVENTION

- ✓ **AQUACULTURE COORDINATING COUNCIL 2018 WORKGROUP AT REQUEST OF LEGISLATORS**
- ✓ **IT IS NOT 'POACHING'....IT IS THEFT OF PROPERTY**
- ✓ **PROBLEM IDENTIFIED IN INDUSTRY SURVEYS SINCE 1979 AND HAS NATIONAL AND INTERNATIONAL DIMENSIONS**
- ✓ **PRIVATE PROPERTY AND PUBLIC HEALTH RELATED ISSUES**
- ✓ **CURRENT DISCUSSIONS**
 - ✓ **DEVELOPMENT OF TECHNOLOGY FOR MONITORING & PROTECTION**
 - ✓ **MORE ENFORCEMENT PROJECTION IN KNOWN PROBLEM AREAS**
 - ✓ **BETTER COORDINATION OF COURT CASES**
 - ✓ **STRICTER PUNISHMENT FOR VIOLATORS**

CURRENT ISSUES – LEASE PROCESS AND PROTEST

✓HOW TO MOVE APPLICATIONS FORWARD MORE RAPIDLY

- ✓CURRENTLY OVER 130 IN PROCESS; CONTINUED RECEIPT MONTHLY AS INDUSTRY BUILDS AND EXPANDS
- ✓PROCESS INCLUDES AGENCY REVIEW, COORDINATION WITH ACOE AND PUBLIC NOTIFICATION
- ✓IF PROTESTED A PROCESS OF FACILITATION, PUBLIC INFORMATION MEETING BEFORE GOING TO ADMINISTRATIVE LAW JUDGES
- ✓OAH DECISION CAN BE APPEALED TO HIGHER COURT BUT PAST CASES HAVE ESTABLISHED STRONG PRECEDENT SUPPORTING THE ESTABLISHED PROCESS EVALUATING APPLICATIONS AND ISSUING LEASES

✓DISCUSSIONS ON EARLIER PUBLIC NOTIFICATION AND DEFINITION OF WHO SHOULD HAVE 'STANDING' TO BRING PROTESTS

✓MOST PROTESTS HAVE INVOLVED PROPERTY OWNERS AND WATERMEN

CURRENT ISSUES – PERCEIVED USER CONFLICTS

✓ SHORELINE PROPERTY OWNERS AND (MOSTLY) WATER COLUMN LEASES

- ✓ ST MARY'S RECENT MOVE TO RESTRICT NEW LEASEHOLDERS FROM USING COMMERCIAL DOCKS IN COUNTY; PUBLIC HEARING HELD; SUPPORT FOR INDUSTRY
- ✓ WATER COLUMN LEASES ARE MORE VISIBLE BUT HAVE BEEN DOCUMENTED TO CONTROL SHORELINE EROSION
- ✓ PUBLIC RESOURCES BELONG TO ALL THE STATE'S CITIZENS

✓ COMMERCIAL HARVESTERS – CLAM, CRAB TROTLINE AND OYSTER

- ✓ ACC ATTEMPTED TO DOCUMENT CLAM GROUNDS IN 2015; NOT COMPLETED
- ✓ TROTLINE 'LAYS' ARE TEMPORAL OR SEASONAL; CRABS EXIST IN NEARBY GEAR
- ✓ ONGOING DISCUSSION OF WHAT SHOULD CONSTITUTE PUBLIC RESOURCE WHEN ISSUING A LEASE

✓ RESOLUTION – ONGOING EDUCATION, DISCUSSION AND NEGOTIATION

CURRENT ISSUES – WATERFOWL BLIND SITES

✓ **HISTORIC BASIS FOR BOTH**

- ✓ PROPERTY OWNER WITH 1000' SHORELINE FIRST ALLOWANCE
- ✓ OTHERS CAN LICENSE SITES AFTERWARDS; STAKED SITES; FIXED BLINDS REQUIRE OTHER PERMITS FOR STRUCTURES IN TIDAL WATERS
- ✓ OCCUPIED BLIND SITES – MUST MAINTAIN 500 YD CLEARANCE
- ✓ NO CURRENT COORDINATION WITH LEASE APPLICATIONS
- ✓ SHOULD NOT BE A PROBLEM *IF PARTIES WILLING TO WORK TOGETHER*

✓ **HAVE BEEN USED TO MOVE A LEASE OR TRY TO PREVENT THEM FROM OPERATING PRODUCTIVELY**

- ✓ ACC HAS REQUESTED DNR SEEK SUMMARY FROM OFFICE OF THE ATTORNEY-GENERAL
- ✓ DESIRE TO ACCOMMODATE ALL PARTIES IF WILLING TO WORK TOGETHER

CHALLENGES TO LEASE PROGRAM

✓ **LEASES IN SANCTUARY ZONES IN MARYLAND OYSTER MANAGEMENT PLAN**

- ✓ DONE TO INCREASE OYSTER RESOURCE IN ZONES; RESTRICTIONS ON WHERE THEY CAN BE LOCATED AND LIMITED TO 10% OF AREA CURRENTLY
- ✓ 2018 BILL WOULD HAVE PLACED 1000' BUFFER FROM 'YATES BARS'

✓ **CURRENT DNR STUDY REGARDING LEASE CONFLICTS WITH OTHER USERS**

- ✓ ALREADY MODIFIED PUBLIC NOTIFICATION PROCESS FOR EARLIER NOTICE
- ✓ DEFINITION OF CLAM BOTTOM, TROTLINE 'LAYS'; PUBLIC OYSTER FISHERY
- ✓ ONGOING DISCUSSION OF WHAT SHOULD CONSTITUTE PUBLIC RESOURCE WHEN ISSUING A LEASE

✓ **REDEFINITION OF LEASABLE AREAS**

- ✓ CONTINUED CONFLICT FROM PUBLIC FISHERY TO LIMIT LEASES
- ✓ 2018 BILL WOULD HAVE MADE ALL GROUND WITH 1 OYSTER/SQ METER IN PSFA

REBUILDING OUR OYSTER RESOURCE & INDUSTRY

Why is oyster density important?

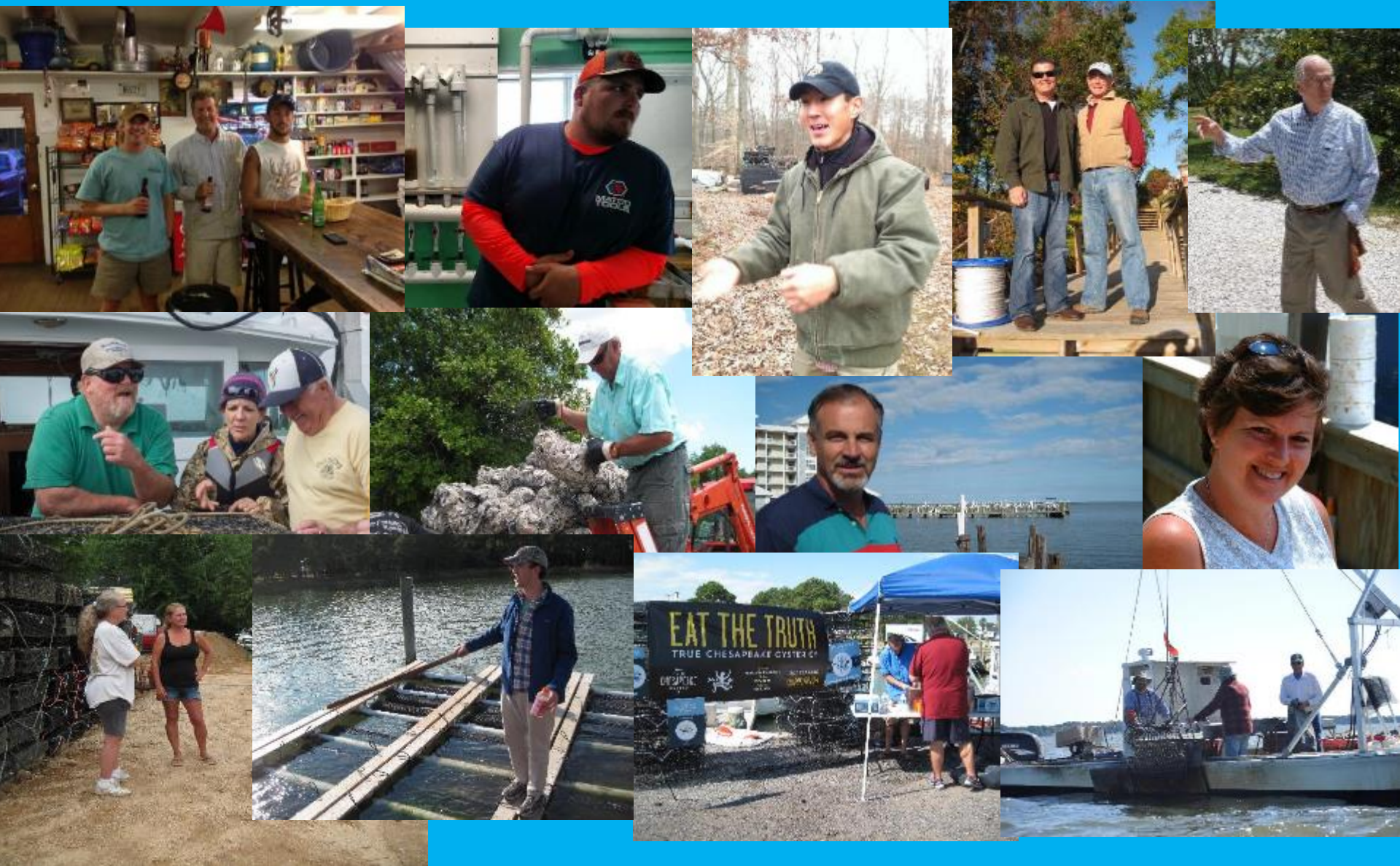
Reproductive Capacity

$$\% \text{ fertilization} = 0.49 * OD^{0.72*}$$

Oyster Density (/m ²)	% Fertilization efficiency
1	0.49
2	0.81
5	1.56
10	2.57
25	4.97
50	8.19
100	13.50
200	22.23
500	43.00
1000	70.83

*From Mann and Evans (1998) adaptation of Levitan (1991); **current MD mean oyster density (OD) is 1 oyster/m².**

THE RESULTS THAT COUNT ... OUR GROWERS



MANY DIFFERENT BACKGROUNDS AND EXPERIENCES



38° North, LLC

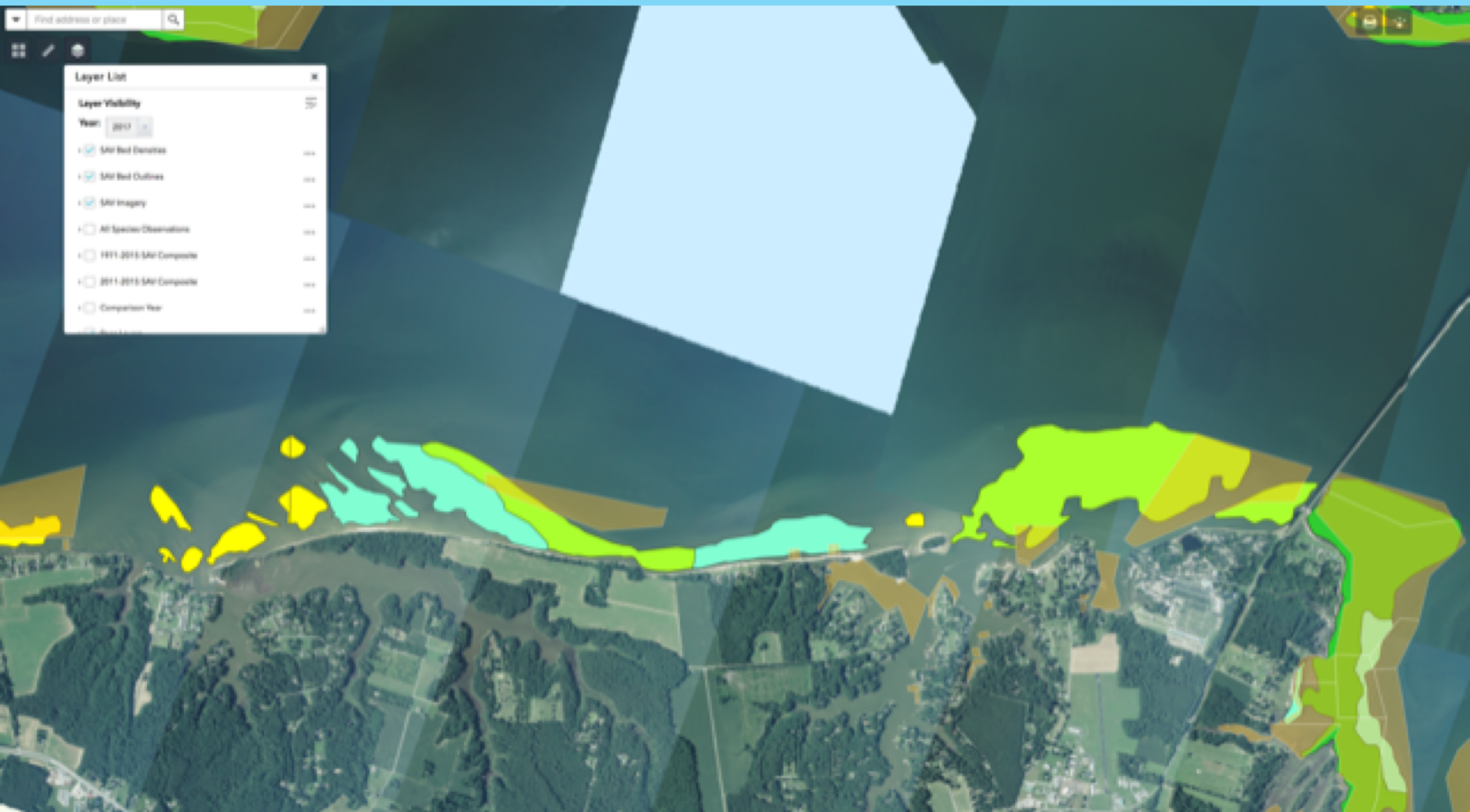
Seed production and growout using bottom cages and surface floats to produce high quality single oysters for raw bars



Dealing with These Issues as a Grower

Submerged Aquatic Vegetation







Aquaculture Siting Tool

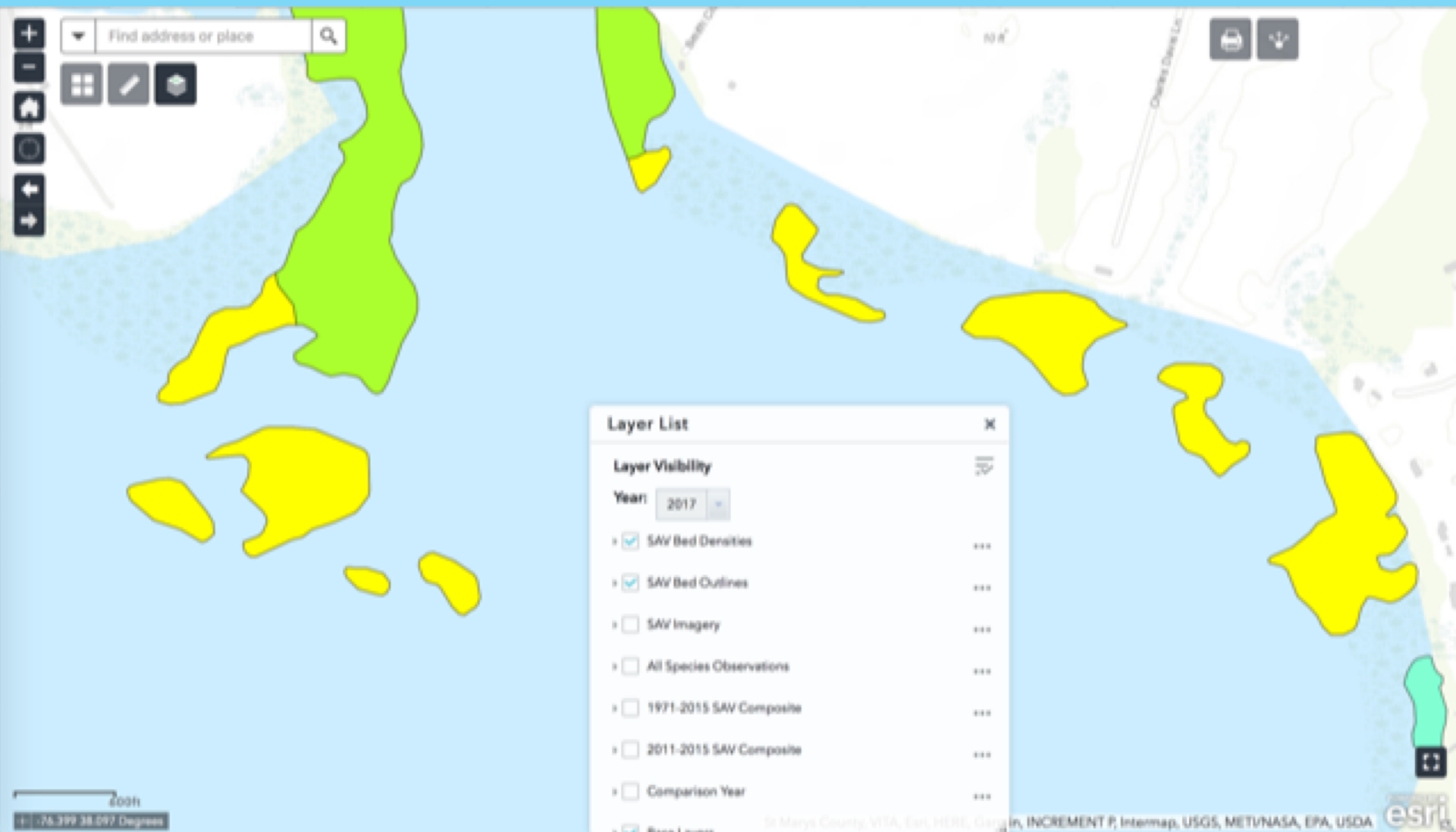


Q Find an address
Search by Lat/Long



Cursor Coordinates:
38° 6' 33.46" N, 76° 25' 4.08" W
DMS | UTM | Decimal Degrees







Duck Blinds

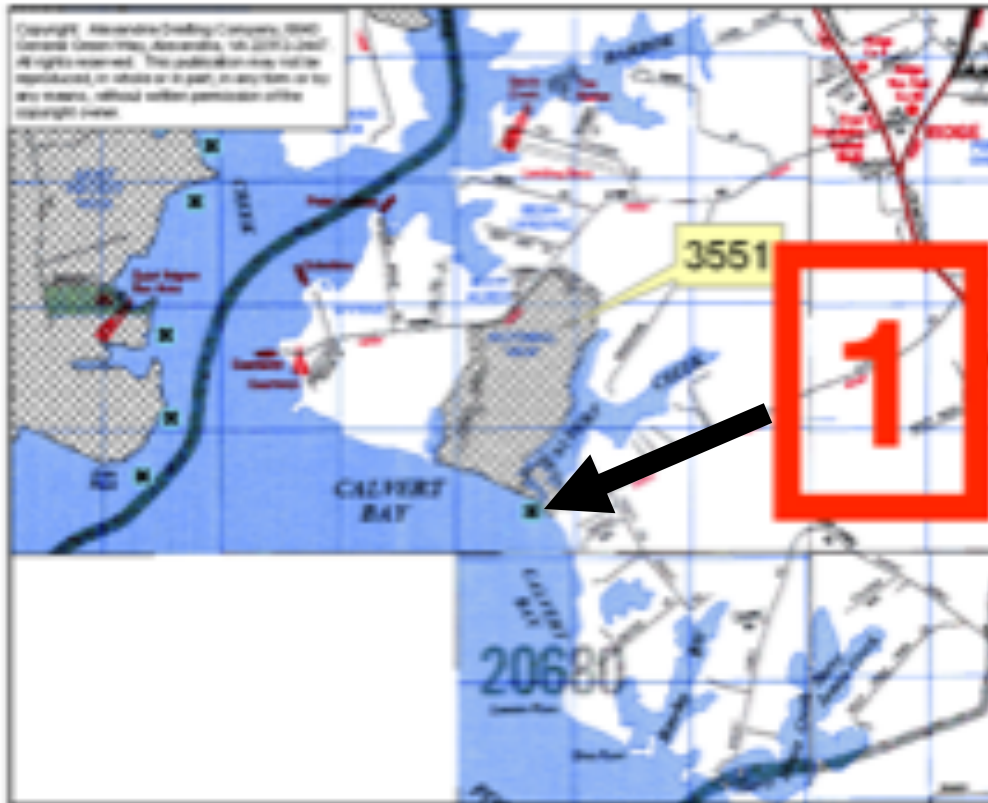
Offshore Blind and Shoreline License Map

Maryland Department of Natural Resources

Tawes State Office Building, E-1

580 Taylor Avenue

Annapolis, MD 21401



- Lease applied for in Calvert Bay
- Riparian property owner has a single waterfowl blind site licensed on his shoreline
- Protests lease application stating he does not want an aquaculture lease near his property
- Protest is denied

**DNR Oyster Lease
Application review 5/28/13**



- The lease in Calvert Bay is granted in 2016

2016 Leases in Calvert Bay

**2017 Duck Blind Permits
in Calvert Bay**

The map shows the coastline of Calvert Cliffs National Historical Monument. A red box labeled '6' is positioned in the upper right. Arrows point from this box to several circular markers along the shoreline, indicating permit locations. Other markers include a square with an 'x' and a circle with an 'r'.

Property owner immediately licenses SIX waterfowl blind sites at the edge of the newly issued lease

Land Owners

St. Mary's County Recently Proposed Ordinance

Proposed Ordinance:

Commercial dock use associated with on-and-off loading of seafood catch from new DNR-authorized shellfish aquaculture leases shall not be permitted in the CM zone for a period of eighteen (18) months from the effective date of this ordinance.

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Shellfish Aquaculture

THINK --

Economy

Employment

Environment

And remember ...

“AQUACULTURE IS AGRICULTURE”