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THE INSTITUTIONAL STRUCTURE OF
NEW YORK STATE'S CLAM INDUSTRY

by

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Historical Overview

One must go back to the colonial period to fully understand the present ownership pattern of underwater land and shellfish resources in New York State. Some owners of underwater lands trace their ownership rights to royal grants and patents from the King of England and from private land grants. The most well known is the colonial patent of Dongan dating back to 1686. There are patents dating even further back to 1666 such as the colonial patent of Nicholls. Other less known grants and patents include: the Smith Patent in Brookhaven and Islip towns; the Andros Patent, Oyster Bay, 1677; and the Fletcher Patent, Huntington, 1694.

The early colonists included the Dutch during the early 1600's. The first British community on Long Island settled on the south fork in the spring of 1640. The Treaty of Hartford, signed by the British and the Dutch in 1650, divided the land between the Hudson and Connecticut Rivers, including lands on Long Island. The ensuing years saw the British consolidate their hold on Long Island and its surrounding underwater lands.¹

King Charles II of England granted his brother, James Duke of York, all the land from the west bank of the Connecticut River to the east side

¹Ravenaugh, p. 12.

of the Delaware River in 1664. This resulted in all of Long Island coming under British control.¹

By this time a number of independent towns already existed in Eastern Long Island. The long lasting independence of these eastern towns still plays an important role in contemporary disputes over ownership and management of underwater shellfish lands on Long Island.

The early period of British rule saw controversies over underwater land ownership rights in several Long Island towns. Several towns--Brookhaven, Huntington, Southold, and Southampton--briefly associated themselves with Connecticut from 1662 until they shifted back to the Duke of York in 1664.

In 1666 Brookhaven applied for and received a patent from Governor Nicholls, giving it ownership of all land between Smithtown and Southold, from the Ocean to Long Island Sound. W. Keith Kavenagh, an historian at the State University of New York at Stony Brook comments on its importance.² "The Nicholl patents to Long Island towns became the first formal recognition of the legality of the proprietary rights and forms of local government of the patents under a European, that is to say English, sovereign."² Kavenagh then goes on to take note of its far-reaching impact that continues to influence recent court decisions regarding underwater lands.

One of the vital features of both the Duke's laws and the town patents appears to have been to remove the responsibility for the control of local affairs from the freeholders in general and concentrate it in the hands of a few of them as constables and overseers.³

The 17th Century charters and royal patents gave the responsibility to regulate underwater shellfish lands to local boards of trustees, more

¹Ibid., p. 13.

²Ibid., p. 22.

³Ibid.

commonly known as town trustees.

The Huntington Patent is representative of the 17th Century patents and grants.

Professor Kavenagh comments:

. . . far more important to those interested in the question of ownership of wetlands in these towns is the clause in each patent which created trustees to hold and manage all the unappropriated lands, 'to the use, benefit, and behoof profit, service, or advantage ,' of the freeholders of the town.¹

Kavenagh goes on to list the real property intended to be vested in the trustees. It is a long list so only those items that relate to shellfish resources are listed here: marshes, rivers, riverlets, waters, beaches, creeks, harbors, fishing, "and all franchises, profits, commodities, and hereditaments whatsoever to the said tract of land and premises belonging . . ."²

The town trustees were charged with administering these resources in the best interests of the town's residents.

These boards of trustees still regulate the shellfish resources within their town boundaries over 300 years after the original charters and patents were issued. Brookhaven, Easthampton, Huntington, and Southampton towns have boards of trustees to this day. To illustrate this, let's look at the cover of a pamphlet published by the town of Southampton. It's title page reads:

Rules . . . and Regulations
for the
Management and Products
of the Waters of
the Town of Southampton

As adopted by resolution on the 4th day of September, 1968, by the trustees of the freeholders and commonalty of the Town of Southampton, N.Y.³

¹Ibid., p. 49.

²Ibid., pp. 49-50.

³Rules and Regulations for the Management and Products of the Waters of the Town of Southampton.

The cover then lists the five town trustees for Southampton Town.

Today the concept still holds that local towns can regulate the harvest of their shellfish resources in conformity with the New York State Fish and Wildlife Law.

Current controversy centers around the struggle between those shellfishermen using manual harvesting methods on public underwater lands and companies using hydraulic dredges on leased underwater lands. This tug-of-war over public vs. leased shellfish beds has been going on for a long time and continues to erupt as the State of New York and local towns determine whether or not to lease bay bottom for mechanical harvesting.

Recently the private versus public harvesting controversy erupted when an individual applied for permits to lease state-owned underwater land for the harvesting of shellfish. The area to be considered for leasing was located in Long Island Sound near the Town of Huntington. The New York State Department of Environmental Conservation, charged with managing state-owned underwater lands, held a public hearing on the lease applications. Huntington Town baymen strongly objected to the proposed leases claiming that the areas in question were potential sites for manual harvesting of shellfish.

Historically two controversies have continued to the present time:

(1) Which governmental level (the State of New York or the local towns) own and control underwater shellfish lands? (2) How much underwater shellfish land will be open to the public (baymen using manual means of harvesting) and how much will be leased to firms and individuals for mechanical harvesting?

Each question has occupied the news headlines at different times in New York State. As mentioned previously, the current debate in the early

to mid 1970's relates to the second question regarding the allocation of underwater lands to public versus private harvesting.

Government Agencies Involved With
the Clam Industry

The basic legislation relating to the harvesting of clams is contained within the New York State Fish and Wildlife Law. Article 13, Marine and Coastal Resources, defines the marine and coastal district as follows,

The marine and coastal district shall include the waters of the Atlantic Ocean within three nautical miles from the coastline and all other tidal waters within the State, including the Hudson River up to the Tappan Zee Bridge.¹

Title 3, Marine Fisheries, covers regulations pertaining to: leasing of state-owned underwater lands for shellfish cultivation, sanitary surveys, diggers permits, shellfish growers permits, shippers permits, transplanting of shellfish, size limits, and prohibited acts relating to clams.

The following towns have rules and regulations pertaining to clam resources: Babylon, Brookhaven, Easthampton, Hempstead, Huntington, Islip, Oyster Bay, Shelter Island, Smithtown, Southampton, and Southold. The towns of North Hempstead and Riverhead do not have their own shellfish regulations. The clam resources within their town boundaries are regulated entirely according to State law.

Licensing Schemes--Commercial
and Recreational

The New York State Fish and Wildlife Law requires commercial clam diggers to purchase a shellfish diggers permit. Recreational clam diggers

¹New York State Fish and Wildlife Law, 1973-74 edition, p. 147.

are not required to obtain a State license. Most Long Island towns require licenses for commercial and recreational clam diggers. The following table lists the licenses required of both types of clam diggers.

Type of Harvesting Equipment

The State of New York prohibits dredges, scrapes, and mechanical dredges operated by motor-driven boats on public shellfish lands. This leaves tongs and clam rakes available to clam harvesters.

Some towns limit the taking of hard clams to implements such as

- (1) Tongs having teeth in the heads therefore spaced not less than one and one-eighth (1 1/8) inches apart measured in the clear, and having a distance between the heads of not less than one (1) inch measured in the clear at the intersection of the handles with the heads thereof: or
- (2) Rakes having teeth spaced not less than one and one-eighth (1 1/8) inches apart measured in the clear.

No wire, netting or other foreign matter shall be used between the teeth or bows of such tongs or rakes.¹

Soft-shelled clams also have gear limitations placed on their harvesting methods, "soft-shelled clams may be taken only by implements commonly known as shovels, forks and hoes except that churning shall be permitted on any bar or shoal that does not fall dry at ordinary low tide."²

Some gear regulations may differ slightly from town to town (Babylon has a 1 1/8" minimum space between rake teeth while Brookhaven requires a 1" minimum space). Yet town gear regulations are still very similar with only minor variations.

¹ Babylon Shellfish Code, Sec. 6-116, p. 308.

² Ibid., Sec. 6-117, p. 309.

Table 1. Shellfish Licenses

KEY: (C) = Commercial
 (NC) = Non-commercial
 (*) = No permit required for non-commercial clam digging

Governmental Unit	License Type	Definition	Fee
New York State	Shellfish digger (C)		7.50
	Shellfish Grower (bed permit)		3.25/a (\$5.00 min.)
	Marine Hatchery		100.00
Babylon	Commercial Shellfisherman (C)	½ bu. or more/day	75.00
	Non-commercial Shellfisherman (NC)	less than 1 bu./day	5.00
Brookhaven	Resident (*) (C)	½ bu. or more per day	25.00
Easthampton	Shellfish digger (C)		2.00
	(*)	less than ½ bu./day	
Islip	Commercial (C)	More than ½ bu./day	100.00 (\$25.00/ calendar quarter)
	Personal (NC)	½ bu. or less/day	5.00
	Shellfish buyer Employee of shellfish buyer		300.00 50.00
Hempstead	Commercial (C)	more than ½ bu.	10.00
	Non-commercial (NC)	½ bu. or less	1.00
Huntington	Commercial (C)	more than ½ bu.	15.00
	Personal (NC)	up to ½ bu.	1.00
	Shellfish shipper and processor		10.00
Oyster Bay	Commercial (C)	more than ½ bu.	50.00
	Personal (NC)	up to ½ bu.	3.00
Smithtown	Permit for taking up to 3 bu. of soft clams and 2 bu. of hard clams		1.00
Southampton	Commercial (C)		7.50
	(*) Temporary resident		5.00
Southold	Commercial (C)	more than 2 pecks (½ bu.)	5.00
	(*) Temporary resident	up to 2 pecks	5.00
	Resident		1.00
Shelter Island	Resident		1.00

Table 2. Minimum legal size limits for taking of clams (hard, soft, and surf) in New York State and town waters

N.Y.S.	Hard Clam (Venus Mercenaria)	Soft Clam (Mya Arenaria)	Surf Clam (Mactra Solicissima)
	1" in thickness	1½" in longest diameter	3" in longest diameter
Babylon	1	2	*
Brookhaven	1	2	*
Easthampton	1	2	*
Hempstead	1	1½	*
Huntington	1	2	*
Islip	1	*	*
North Hempstead (administered by N.Y.S. Shellfish Regulations)			
Oyster Bay	1	2	*
Riverhead (administered by N.Y.S. Shellfish Regulations)			
Shelter Island	1	2	*
Smithtown	1	2	*
Southampton	1	2	*
Southold	1	2	*

*Not mentioned in shellfish regulations.

Table 3. Closed seasons and times

Governmental Unit	Time Restrictions
New York State	Hard clams and soft-shell clams may not be harvested from sunset to sunrise. Surf clams can be harvested any time of day.
Babylon	Clams may not be harvested from sunset to sunrise. No commercial harvesting of clams on Sunday.
Brookhaven	No taking of clams from sunset to sunrise. No commercial taking of clams on Sunday.
Easthampton	Unlawful to harvest soft clams from June 1 to September 30. Unlawful to harvest clams from sunset to sunrise.
Hempstead	Unlawful to harvest clams from sunset to sunrise.
Huntington	Soft clams may not be taken from May 15 to September 15. Unlawful to take clams from sunset to sunrise.
Islip	No commercial harvesting of clams on Sunday. No taking of clams from sunset to sunrise.
Oyster Bay	Clams may not be taken from sunset to sunrise.
Shelter Island	Clams may not be taken from sunset to sunrise.
Smithtown	Soft clams may not be taken between June 15th and August 15th. Clams may not be taken on Sunday or from sunset to sunrise.
Southampton	Soft and hard clams may not be taken from sunset to sunrise.
Southold	None Listed.

Table 4. Maximum commercial catch per day

Governmental Unit		Clam		Surf
		Hard	Soft	
		----- (bushels) -----		
New York State		None	None	None
Babylon		None	8	None
Brookhaven		None	None	None
Easthampton		None	None	None
Hempstead		None	None	None
Huntington	Individually			
	1 person in boat	15	15	15
	2 or more people in boat	20	20	20
Islip		None	None	None
Oyster Bay		10	None	None
Shelter Island		5	5	None
Smithtown		2	3	None
Southampton		None	None	None
Southold		None	None	None

There are no gear restrictions on the harvesting of surf clams.

The previously mentioned gear restrictions do not apply to the harvesting of hard and soft shelled clams on leased or privately-owned underwater lands. The most common harvesting gear on these lands are hydraulic conveyor-belt dredges.

Public Health Regulations

Jay Ginter in his study of marine fisheries laws and management policy in New York State comments on the wide powers of the New York State Department of Environmental conservation:

Authority and responsibility of the Department to certify acceptable areas for taking shellfish and close areas for unsanitary reasons is provided for in Section 13-0307. The Department's authority extends to making rules and regulations governing literally every aspect of shellfishing, processing, and shipping so as to 'provide adequate sanitary control over all shellfish offered for sale and distribution in the State.'¹

The Department of Environmental Conservation is also the State agency responsible for carrying out the provisions of the National Shellfish Sanitation Program.

Law Enforcement

Shellfish regulations are enforced by conservation officers of the State Department of Environmental Conservation, the State Police, and to a more limited extent by Nassau and Suffolk County Marine Police officers and town bay constables.

¹Jay Ginter, Marine Fisheries Conservation in New York State: Policy and Practice of Marine Fisheries Management, Volume I, p. 25.

Bay Management Programs

Presently there are large variations in public aquacultural practices in New York State. The most common attempt to assure an adequate supply of clams is for a state or town agency to transplant spawner clams (usually hard clams) from a closed area to an open area with the goal of achieving a set of young clams in the open area for future harvests.

Clams are also transplanted from closed waters to open waters where they are allowed to depurate (cleanse themselves of impurities) before the area is open to public harvesting.

Some Long Island towns have invested large sums of money and staff time to study bay conditions and develop and implement comprehensive bay management programs. The Islip town Department of Environmental Control is charged with administering that town's Bay Management Program which involves shellfish biologists, natural resource technicians, and a shellfish commission consisting of commercial clam harvesters. It is still too early to evaluate the degree of success of Islip's Bay Management Program, especially in relationship to nearby towns that have not committed the relatively large financial and human resources to managing their town shellfish resources.

Producers Organizations

There are numerous organizations representing the commercial shellfishermen's interests. Baymen, who harvest clams on public lands, are organized along town lines including the following associations: Great South Bay Baymen's Association (covering Babylon, Islip, and Brookhaven towns), Southampton Baymen's Association, Easthampton Baymen's Association, Southold Baymen's Association, Huntington Baymen's Association, and Oyster Bay Baymen's

Association. There have been other baymen's associations, however, those listed were observed by the author to be functioning on-going associations.

Those harvesters either owning or leasing underwater shellfish lands are organized into the Long Island Shellfish Farmers Association.

The organization which represents the broadest range of New York's fishing industry is the Long Island Fishermen's Association. This group concentrates its work on the State level while still working on local concerns.

The baymen's associations are mainly concerned with town shellfish issues and usually rely on the Long Island Fishermen's Association to keep abreast of State shellfish regulation changes.

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