

**EXPAND CLAMMING ON NOBS (QA COUNTY)
TFAC Oct 2016**

- Clamming on a charted NOB (natural oyster bar) is illegal -

To expand clamming onto a charted NOB there are two options:

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| 1) Remove the NOB status from the area, so clamming is legal. | REGULATION change |
| 2) Retain the NOB status, but allow clamming in that section of the oyster bar, and only that section. | LAW change |

1) REMOVE THE NOB STATUS.....so clamming is legal

- NEED A DECLASSIFICATION PROCEDURE to remove the NOB status.
 - Will require conferring with the County Oyster Committee(s)
 - Will require conducting a survey to confirm the area is not an oyster bar.
- REGULATION CHANGE IS NEEDED to create a declassification procedure.
- 2 REGS (POSSIBLY 3) ARE NEEDED, could take about 2 years or more.

REG 1 – A process to declassify an NOB, or a portion of an NOB.

- The process would include conferring with the County Oyster Committees that are affected, conducting a survey to verify the area is no longer an oyster bar, announcing meetings, publishing the declassification action, and any other actions needed.

Caution - If the area is a PSFA and the survey shows it is no longer an oyster bar AND does not have clams, then a lease applicant can use that survey to apply for a lease and declassify the PSFA for leasing.

Caution - If there are clams there, and no oysters, the area still is not protected from leasing unless the definition and criteria for a PSFA is changed to include clams. A commercial density would be needed. This would be an additional third regulation.

REG 2 – Defining the NOBs

- The State's NOBs need to be legally defined in regulation so the declassification regulation can have meaning. The process of defining the NOBs in regulation involves publishing every corner coordinate and boundary line of every oyster bar. This process could take a couple of years.

REG 3 – Setting clam criteria for PSFAs

- If needed, this regulation will specify clam criteria for PSFA's and prevent leasing the proposed area *during* the declassification process assuming the clam criteria are met.

Will involve setting harvest rate criteria to describe what a commercial clam area is.

Footnote: There once was a clear process to declassify portions of NOB's if they were no longer oyster bars (~ 90+ day process) but it was removed from statute around 2010. This process would no longer work today as the law calls for changes with NOBs to be in regulation. The old process only involved charts.

2) RETAIN THE NOB STATUS.....but allow clamming only in a designated section

- NEED A LAW CHANGE

Will require conferring with the County Oyster Committee(s)

Will require conducting a survey to confirm the area is not an oyster bar, and that it has clams.

- CHANGE THE LAW THAT PROHIBITS CLAMMING IN NOB's to one that allows clamming in NOBs but only "in areas defined by DNR by regulation".

The bill will need a sponsor.

Caution - a bill may start one way, and end up quite differently.

A REG is needed to define the areas for clamming.

- CLAMMING WILL STILL BE ILLEGAL IN THE REST OF THE NOB.

- A LAW CHANGE (vs a declassification) can focus use of the area for clamming, not leasing.

A lease applicant can apply to have a PSFA declassified and apply for a lease if there are no oysters. Because the law will give the Department specific regulatory authority on this issue, there are a couple options to temporarily protect the area from leasing if there are clams but no oysters in the area:

Option 1. Set up clam criteria for PSFAs. If there are clams there at a specific commercial density (the exact density tbd), the area could be designated as not leasable through regulation. But a lease applicant can apply to have a PSFA declassified based on a survey at any time. So if the clams are not there the next year, the area can be leased.

Option 2. With the specific clam authority provided by the new legislation, the department could list the specific NOB area as open to clamming but off limits to leasing for a specified number of years (ie. 3 years). These areas would be incorporated into regulation, but not part of PSFAs. The expiration date on the lease prohibition may be difficult to keep track of overtime unless that date is also written into the regulation.
