

**U.S. Army Corps
of Engineer
Baltimore District**

Public Notice

In Reply to Application Number
CENAB-OP-RMS (Wisner, Eric /Aquaculture Lease #157)
2014-02263

PN 15-15

Comment Period: March 3, 2015 to April 3, 2015

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC ABOUT THE WORK DESCRIBED BELOW. AT THIS TIME, NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED.

The Baltimore District has received an application for Department of the Army Permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act as described below:

APPLICANT: Mr. Eric Wisner
26400 Nanticoke Road
Salisbury, Maryland 21801

LOCATION: The project is proposed in Ellis Bay, Wicomico County, Maryland.

DESCRIPTION OF WORK: To establish, operate, and maintain an aquaculture operation within a total of 57.7 acres by depositing oyster shell, with or without spat on shell a maximum of 4 inches, without predator controls (e.g. nets, etcetera), on the bottom substrate. The site is composed of a mixture of shell, sand, silt and mud substrate throughout the project area and would be used for purposes of culturing native Eastern Oyster (*Crassostrea virginica*) on the proposed site. The project site is also regulated by the Maryland Department of Natural Resources (MD DNR) and has been identified as submerged land lease application number 157.

The applicant has advised that the proposed project site would be subject to periodic harrowing, dragging and additional deposition of oyster shells, as needed, as described above, to maintain the site. Harvesting would be accomplished by dredging or other harvesting means as approved by the MD DNR. Staging and off-loading would be at the Nanticoke Harbor off Harbor Road in Nanticoke, Wicomico County, Maryland. The primary source for the oyster seed would be supplied by the University of Maryland Center for Environmental Science (UMCES) Horn Point Laboratory in Dorchester County, Maryland. The site would be marked by bamboo stakes at the corners with the name and lease number identified on an 8-inch by 12-inch board as required by MD DNR.

The project site is an approximate 57.7 acre area located a minimum of 1,511 feet channelward of the approximate mean high water (MHW) shoreline and a maximum of 3,758 feet channelward of the approximate MHW shoreline. Water depths within the project site varies from -4.8 feet to -7.3 feet at mean lower low water (MLLW), depending on the location within the project area, and the applicant's plans identify a minimum vertical clearance of -4.6 feet at MLLW above the finished grade/elevation of the

oyster shell after deposition. The coordinates for this lease in Wicomico County are as follows:

Corner	Latitude	Longitude
1	38° 14' 01.8" N	75° 52' 51.4" W
2	38° 14' 09.7" N	75° 52' 58.3" W
3	38° 14' 14.0" N	75° 53' 00.2" W
4	38° 14' 21.4" N	75° 52' 36.3" W
5	38° 14' 10.5" N	75° 52' 29.6" W
6	38° 14' 08.4" N	75° 52' 39.9" W

The purpose of the proposed project is to establish an area of suitable substrate for the commercial production of oyster shellfish to marketable size.

As part of the planning process for the proposed project, steps were taken to ensure avoidance and minimization of impacts to aquatic resources to the maximum extent practicable. This area was chosen to minimize potential impacts to submerged aquatic vegetation (SAV) and navigation. According to the Virginia Institute of Marine Science (VIMS) survey maps, there is no SAV mapped within the project footprint of the proposed aquaculture operation for years 2008 through 2012. No mitigation measures are proposed by the applicant.

All work will be completed in accordance with the enclosed plan(s). If you have any questions concerning this matter, please contact Mr. Eugene Morgenthaler of this office at 410-820-8629 or by email at eugene.j.morgenthaler@usace.army.mil

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH).

The project site lies in or adjacent to EFH as described under MSFCMA for Windowpane Flounder (*Scopthalmus aquosus*) () juvenile and adult; Bluefish (*Pomatomus saltatrix*) juvenile and adult; Summer Flounder (*Paralichthys dentatus*) larvae, juvenile, and adult; and for King Mackerel (*Scomberomorus cavalla*), Spanish Mackerel (*Scomberomorus maculatus*), Cobia (*Rachycentron canadum*) and Red Drum (*Sciaenops ocellatus*) egg, larvae, juvenile, and adult, (), (), all managed species under the MSFCMA.

The project has the potential to adversely affect EFH or the species of concern by the alteration of spawning, nursery, forage and/or shelter habitat as described under the MSFCMA for the species and life stages identified above. The habitat of the bottom substrate at the project site consists mostly sand, shell, silt and mud which does not support SAV. The Baltimore District has made a preliminary determination that site-specific impacts would not be substantial and an abbreviated consultation will be conducted with NMFS. No mitigative measures are recommended at this time to minimize

adverse effects on EFH. This preliminary determination may be modified if additional information indicates otherwise and could change the Corps' preliminary determination.

WATER QUALITY CERTIFICATION: The applicant is required to obtain a water quality certification in accordance with Section 401 of the Clean Water Act from the **Maryland Department of the Environment**. Any written comments concerning the work described above which relate to water quality certification must be received by the Wetlands and Waterways Program, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Boulevard, Suite 430, Baltimore, Maryland 21230-1708 within the comment period as specified above to receive consideration. The Section 401 certifying agency has a statutory limit of one year from the date of this public notice to make its decision.

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonable may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economic, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, and consideration of property ownership and in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above.

Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments provided will become part of the public record for this action. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Written comments concerning the work described above related to the factors listed above or other pertinent factors must be received by the District Engineer, U.S. Army Corps of Engineers, Baltimore District, P.O. Box 1715, Baltimore, Maryland, 21203 within the comment period specified above.

Where applicable, the applicant has certified in this application that the proposed activity complies with and will be conducted in a manner consistent with the approved Coastal Zone Management (CZM) Program. By this public notice, we are requesting the State concurrence or objection to the applicant's consistency statement. It should be noted that the CZM Program has a statutory limit of 6 months to make its consistency determination.

The applicant must obtain any State or local government permits which may be required.

A preliminary review of this application indicates that the proposed work may affect Federal listed threatened or endangered species or their critical habitat, pursuant to Section 7 of the Endangered Species Act, as amended. The project location and vicinity is not mapped as critical habitat for any known Federally-listed threatened or endangered species; however, the waterway is known to be utilized by transient individuals of the following species: Loggerhead sea turtles (*Caretta caretta*); Kemp's Ridley sea turtles (*Lepidochelys kempii*); Leatherback sea turtles (*Dermochelys coriacea*); Green sea turtles (*Chelonia mydas*); Shortnose sturgeon (*Acipenser brevirostrum*); and Atlantic sturgeon (*Acipenser oxyrinchus*). The Baltimore District will initiate informal consultation under Section 7(a)(2) of the ESA. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

Review of the latest published version of the National Register of Historic Places indicates that no registered properties listed as eligible for inclusion, therein, are located at the site of the proposed work. Currently unknown archeological, scientific, prehistoric, or historical data may be lost or destroyed by the work to be accomplished under the request permit.

The evaluation of the impact of the work described above on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act. Any person who has an interest which may be adversely affected by the issuance of this permit may request a public hearing. The District Engineer must receive the request, which must be in writing, US Army Corps of Engineers, Baltimore District, PO Box 1715, Baltimore, Maryland 21203-1715, within the comment period as specified as above to receive consideration. Also, it must clearly state forth the interest that may be adversely affected by this activity in the manner in which the interest may be adversely affected.

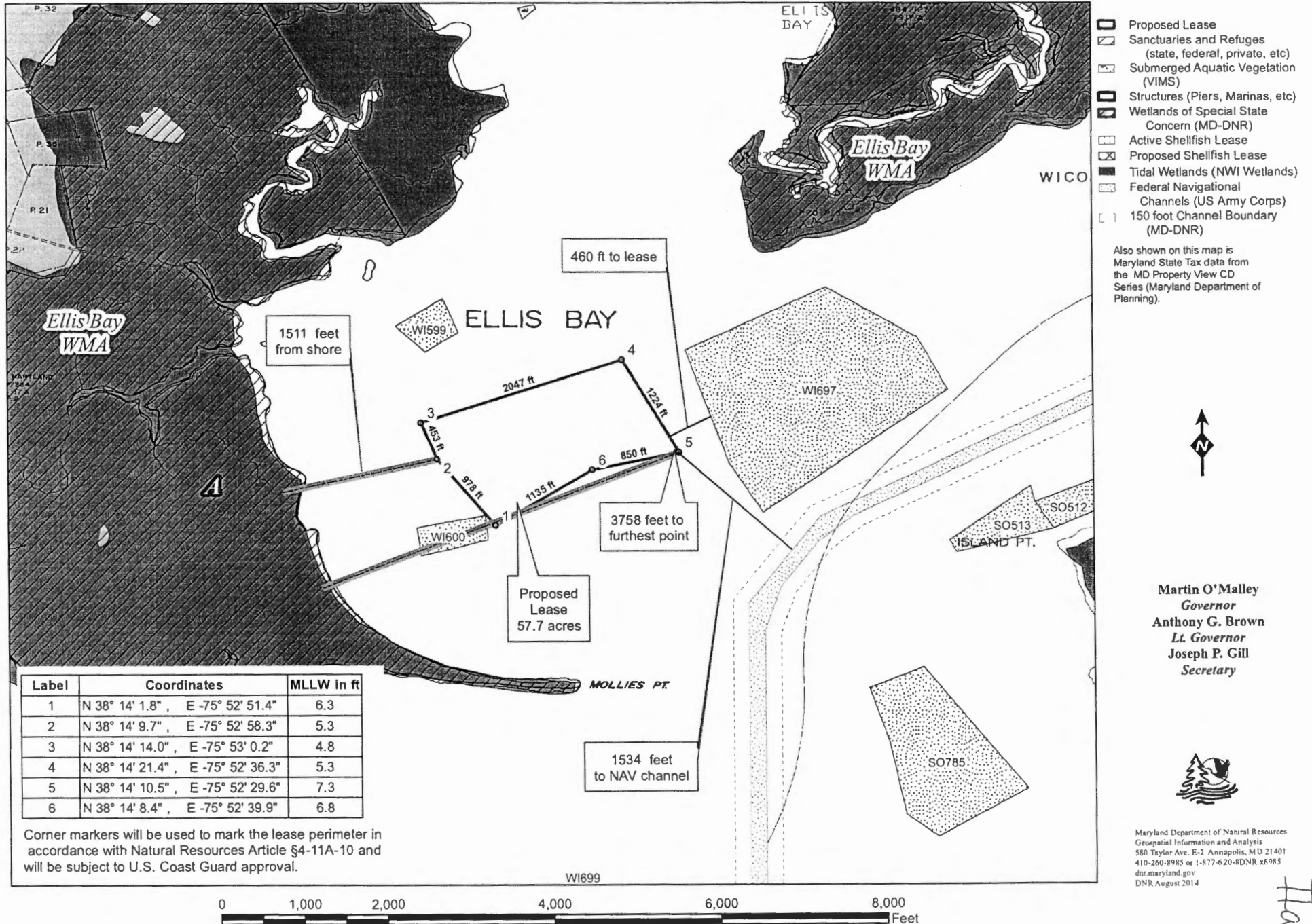
It is requested that you communicate this information concerning the proposed work to any persons known by you to be interested and not being known to this office, who did not receive a copy of this notice.

FOR THE DISTRICT ENGINEER:

KATHY B. ANDERSON
Chief, Maryland Section Southern

Proposed Shellfish Submerged Land Lease Overview Map

Eric Wisner #157 - Ellis Bay, Wicomico County, Maryland



Corner markers will be used to mark the lease perimeter in accordance with Natural Resources Article §4-11A-10 and will be subject to U.S. Coast Guard approval.

Also shown on this map is Maryland State Tax data from the MD Property View CD Series (Maryland Department of Planning).

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor
Joseph P. Gill
Secretary

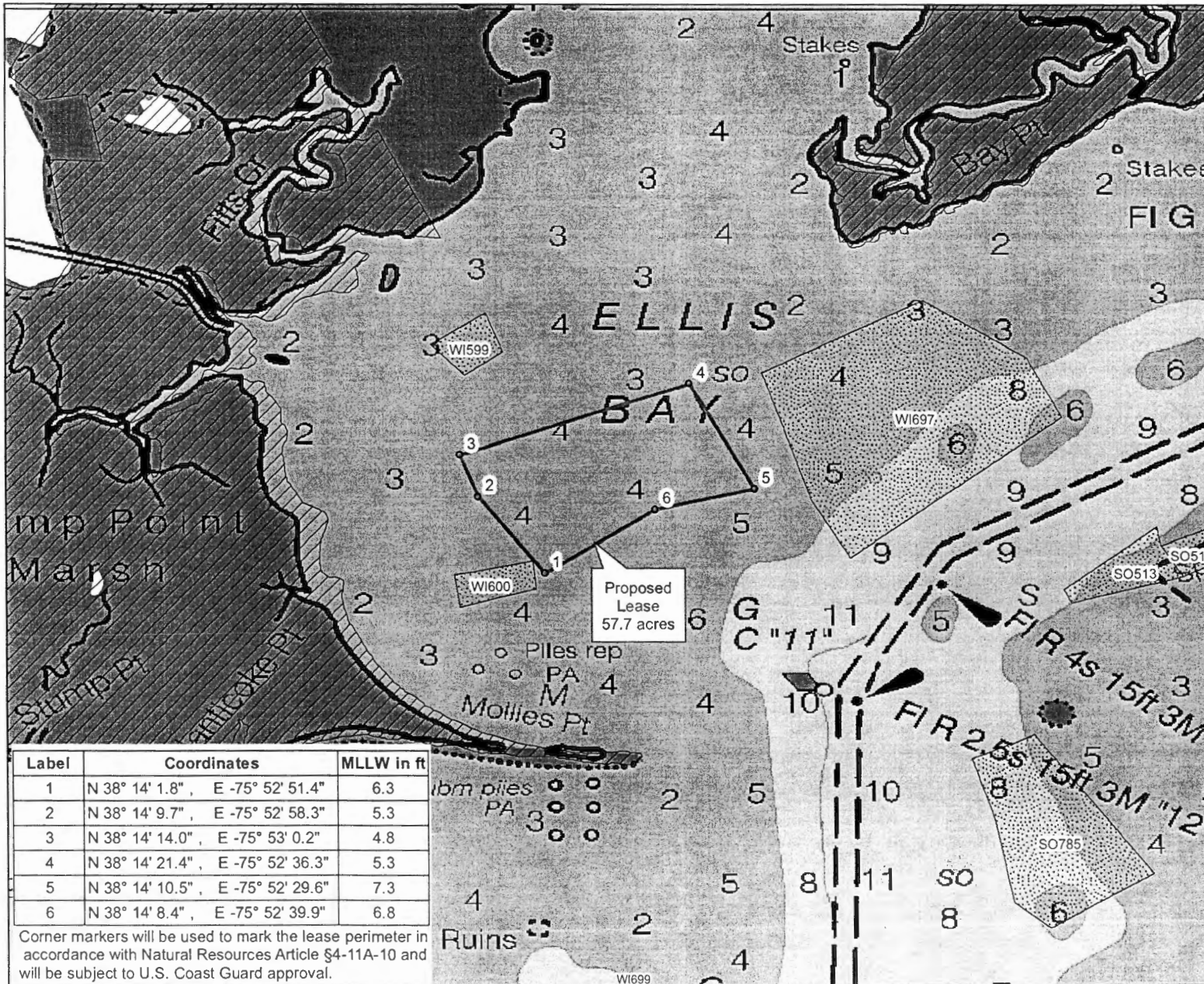


Maryland Department of Natural Resources
 Geospatial Information and Analysis
 580 Taylor Ave. E-2 Annapolis, MD 21401
 410-260-8985 or 1-877-620-8DNR x6985
 dnr.maryland.gov
 DNR August 2014

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Proposed Shellfish Submerged Land Lease NAV Chart Map

Eric Wisner #157 - Ellis Bay, Wicomico County, Maryland



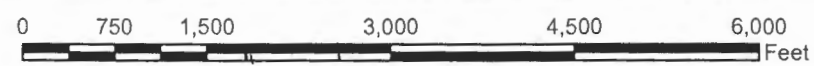
- Lease Area shown over NOAA Raster Navigational Charts.
- Proposed Lease
 - Sanctuaries and Refuges (state, federal, private, etc)
 - Submerged Aquatic Vegetation (VIMS)
 - Structures (Piers, Marinas, etc)
 - Wetlands of Special State Concern (MD-DNR)
 - Active Shellfish Lease
 - Proposed Shellfish Lease
 - Tidal Wetlands (NWI Wetlands)



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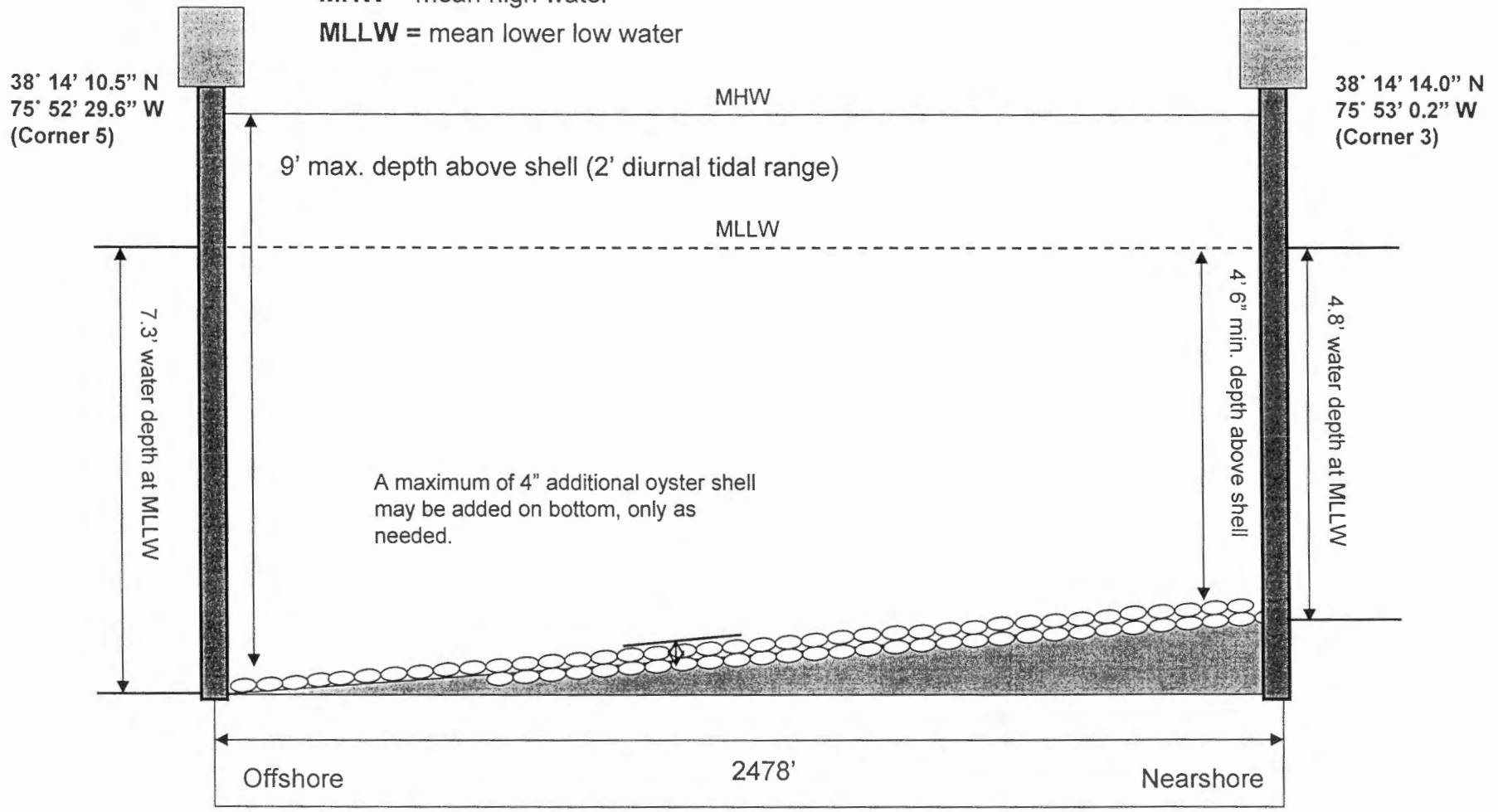
#157

Cross-Section Diagram for Proposed Submerged Land Lease #157

Name: Eric Wisner
 Town, State: Nanticoke, MD
 Waterbody: Ellis Bay
 Date: September 2014

 Bamboo stakes marked with name and lease # on 8"x12" board

MHW = mean high water
MLLW = mean lower low water



HC.