



## **COMMERCIAL SHELLFISH AQUACULTURE LEASE APPLICATION INSTRUCTIONS**

**The Department of Natural Resources (DNR) and the U.S. Army Corps of Engineers began jointly accepting applications for commercial shellfish aquaculture projects in the Chesapeake Bay, its tributaries and the Coastal Bays in October 2010. The joint application has been revised several times since 2010 in accordance with the passage of new State legislation and related regulations, as well as changes in the Corps' permitting process. The current version of the Joint Application for State Commercial Shellfish Aquaculture Lease and Corps of Engineers Federal Permit and application fee may be submitted to the Department of Natural Resources in person at the Tawes State office building (by appointment) or through USPS mail. All applications are date and time stamped and reviewed on a first come first served basis if complete. Older versions of the application are accepted for a grace period of 30 days once replaced by an updated version.**

### **General Information**

**Lease Term:** Commercial shellfish aquaculture leases in the Chesapeake Bay or Coastal Bays are granted for a term of twenty (20) years, renewable for one additional term and subject to annual usage requirements and rent obligations. After a 40-year leasehold, continuous use of the same ground requires reapplication by the leaseholder.

**Rent:** Annual rent for a submerged land lease is \$3.50 per acre. Annual rent for a water column lease is \$25.00 per acre. There is also a provision in State law for the Department to assess an Aquaculture Development Surcharge; however this is currently set to \$0.

**Laws and Regulations:** Please review all applicable statutes and regulations before submitting your application. The Code of Maryland Regulations (COMAR) is searchable online at the following website: <http://www.dsd.state.md.us/COMAR/ComarHome.html>. The majority of applicable regulations may be found in COMAR 08.02.23 and 08.02.04, as well as 10.15.07. Maryland statutes pertaining to shellfish (oysters and clams) are located in Natural Resources Articles §4-11 and §4-11A, with the latter containing aquaculture-specific provisions. Free public access to State law is available online at the following website: <http://www.lexisnexis.com/hotttopics/mdcode/> or through the "Statutes" tab on <http://mgaleg.maryland.gov>.

**U.S. Army Corps of Engineers Nationwide Permit #48:** The Baltimore District, U.S. Army Corps of Engineers (Corps) has reinstated the suspended 2012 Nationwide Permit #48 (NWP #48) with revised regional conditions for new and existing commercial shellfish aquaculture activities in Maryland tidal waters. NWP #48 replaced the expiring Regional General Permit-1 for commercial aquaculture activities. The reinstated NWP#48 is effective in Maryland waters as of August 16, 2016. Please visit the [Baltimore District Aquaculture Page](#) for more information about the changes to the Corps' permitting process under the NWP#48.

**Forms and Informational Documents:** Numerous aquaculture-related forms and additional informational documents are available at the DNR Aquaculture and Industry Enhancement Division website: <https://dnr.maryland.gov/fisheries/Pages/aquaculture/index.aspx>.

**Application Fee:** To be considered complete, each application (one per non-contiguous site) must be accompanied by a non-refundable state application fee of:

\$300.00 Submerged Land Lease

\$300.00 Water Column Lease

Please make checks payable to State of Maryland Department of Natural Resources. If you wish to apply for both a Submerged Land Lease and a Water Column Lease on the same site, you must submit a separate application and fee for each.

**Insurance:** Applicants should be aware that the Department requires water column lease holders to maintain at their expense, throughout the Term of the lease, insurance against loss or liability in connection with bodily injury, death, property damage or destruction, occurring within the leased area or arising out of the use of the lease by the leaseholder or its agents, employees, officers, and visitors.

The language pertaining to insurance contained in a standard lease agreement reads as follows:

“If this Lease includes the water column, Lessee shall maintain at its expense, throughout the Term, insurance against loss or liability in connection with bodily injury, death, property damage or destruction, occurring within the Area or arising out of the use thereof by Lessee or its agents, employees, officers, and visitors, under one or more policies of Commercial General Liability insurance having such limits as to each as are reasonably required by Lessor from time to time, but in any event of not less than a minimum coverage of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) annual aggregate, and shall contain broad form CGL Endorsement or its equivalent. Each such policy shall (a) name as insureds thereunder the State of Maryland and the Department of Natural Resources and Lessee, (b) by its terms be considered primary and non-contributory with respect to any other insurance (if any) carried by Lessor or its successors, (c) by its terms, provide Lessor with thirty (30) days prior written notice before cancellation, non-renewal, or material change to a policy, and (d) be issued by an insurer of recognized responsibility licensed to issue such policy in Maryland. Lessee shall obtain from its insurer and deliver to Lessor an endorsement to Lessee’s policy to evidence that Lessor is named as an additional insured and will be given thirty (30) days notice prior to cancellation, non-renewal, or material change to the policy.”

**Time to Issue:** The entire State issuance process takes a minimum of four months from the time the Department receives a complete application. Due to the volume of applications under review at this time, the actual time to lease issuance for a non-protested application can approach six to eight months. Issuance times may vary depending on the nature of the application and outcome of the public notice process. Please plan submission of your application materials accordingly.

### **What steps should I take prior to submitting an application?**

The Department recommends that applicants take the following steps prior to submitting an application to help facilitate a more streamlined review process.

1. Utilize the Division's Aquaculture Siting Tool, an online interactive mapping utility that can assist interested parties in identifying potential lease locations by minimizing known resource and other types of conflicts. While researching sites or just prior to submitting an application, one can generate printable maps, identify corner coordinates and calculate total area for a proposed lease using this tool. It is available on the Aquaculture and Industry Enhancement Division web page: <http://dnr.maryland.gov/fisheries/Pages/aquaculture/shellfish.aspx>.
2. Investigate one or more prospective lease locations by boat and record accurate corner coordinates in degrees, minutes, seconds (DMS) or degree decimal minutes (DDM) format using a GPS unit. **Because most GPS units are set by default to operate in DDM, you may need to change the default coordinate format on your unit to achieve the desired outcome.** Make a

note of the depths both at low and high tide, bottom type, boating traffic, adjacent residential use, and other ongoing recreational and commercial uses in and near the area to inform yourself about the site and its potential for commercial use. It is helpful to visit in varying seasons and weather conditions to understand the full range of conditions or competing uses a site may have.

3. Review the regional conditions for new and existing commercial shellfish aquaculture activities in Maryland tidal waters specified by the [United States Army Corps of Engineers' Nationwide Permit-48](#) to ensure that your proposed project will meet Federal permitting guidelines. The Nationwide Permit-48 replaced the expiring Regional General Permit-1 and became effective in Maryland waters as of Aug. 16, 2016 for commercial aquaculture activities.
4. If need be, contact the Division to discuss your proposed project. Staff will be able to help you determine if the proposed site meets statutory requirements but cannot recommend or choose a site for the applicant. If necessary, arrangements can be made to schedule an in-person meeting at the Tawes Building in Annapolis. Meetings are by appointment only.
5. Mark the center of your proposed area with a stake just prior to submitting the application.
6. Discuss your project with landowners adjacent to the proposed site and other potential user groups. All adjacent landowners as well as the county oyster committee will receive direct notice of the project via State and possibly Federal notification processes. The Department encourages applicants to proactively engage with "neighbors" on the land and water prior to a public notice being issued. This may help to alleviate concerns and foster a better understanding of the commercial shellfish aquaculture activities associated with the project. It may also uncover additional issues to consider, such as licensed shoreline or offshore blinds used for waterfowl hunting, local recreational boating activity or other commercial harvesting activities not readily visible during your on-site investigation.

### **What do I need to submit? – Application Checklist**

- \_\_\_\_\_ One signed copy of a fully completed Joint Application for State Commercial Shellfish Aquaculture Lease and Corps of Engineers Federal Permit
- \_\_\_\_\_ Non-refundable application fee (see fee schedule above)
- \_\_\_\_\_ Business information and all supporting documentation, if applicable (see p.1 sidebar of lease application)
- \_\_\_\_\_ Maps showing the proposed lease area, staging/equipment storage site, and offloading site (see pp. 3 and 5 of lease application)
- \_\_\_\_\_ Letter(s) of permission from riparian landowner(s) for proposed leases that are closer than 50' to shore at mean low water (see p. 3 sidebar of lease application)
- \_\_\_\_\_ For an application within any creek, cove, bay or inlet that is less than 300 feet wide at its mouth at mean low tide, a copy of the most recent legally recorded plat map showing surveyed boundaries of the adjacent property (see p. 3 of lease application)
- \_\_\_\_\_ Cross section diagram(s) showing actual depths at lease corners and shell or equipment maximum height. Please consider enclosing more than one cross-section diagram for especially large or oddly shaped leases (see p. 4 of lease application and attached sample diagrams)

\_\_\_\_\_ If water depths (bathymetry data) have been collected, submission of that information is encouraged, but not required unless specifically requested by the Department or USACE. Depths should be displayed relative to mean low water both within and around the proposed site.

\_\_\_\_\_ **Water column only** - Sketches/images with dimensions labeled of all in-water equipment to be used in conjunction with the water column lease, including corner or other types of gear markers (see pp. 7 and 10 of lease application).

\_\_\_\_\_ **Water column only** - Sample equipment layout. The location and spacing of each gear type should be shown, along with placement of any related anchor and/or tether lines and markers (see p. 10 of the lease application and sample layout that is included with these instructions)

\_\_\_\_\_ All applicant and co-applicant signatures for: Maryland's *Vibrio parahaemolyticus* Control Plan acknowledgement, Declaration of Intent to Actively Use and general Acknowledgements (see pp. 9, 11 and 12 of lease application).

### **What happens to my application once it is submitted?**

**State Review:** Upon receipt, the Department will evaluate your application for completeness.

**\*\*NOTE: Applications with incomplete or insufficiently detailed answers or that are missing required attachments or signatures will be deemed incomplete and returned, or the applicant will receive a notification letter or email requesting any missing information by a specified deadline. Incomplete applications are not considered "in review" and do not "hold" a proposed lease area. Applications are reviewed in the order that they are received AND complete.**

Once an application has been verified as complete, a legal and resource review of the proposed lease location will begin. A copy will also be forwarded to the U.S. Army Corps of Engineers for preliminary review. The Department will notify the primary applicant as soon as possible if the application requires any modifications as a result of conflicts identified during the State's review. Concurrent with the initial stages of internal review, the application will also be vetted by the Aquaculture Review Board (ARB), which meets monthly, to review and discuss new aquaculture projects. The ARB provides notification to each applicant upon conclusion of their review in the form of a mailed memo. This notification will include any noted concerns and/or recommendations for revisions identified by partner agencies.

It is reasonable to expect that proposed lease boundaries may shift slightly during the review process due to issues that come to the attention of the Department or another partner agency which must be addressed. It is even possible that an unforeseen conflict requires that a site be entirely re-located to move forward in the review process. These are considered involuntary changes and usually do not require re-application, though they may require updated application materials. **However, once an application is under review, any voluntary changes (requested by the applicant not in response to a review conflict or agency feedback) to the proposed lease area and/or gear type may be subject to complete re-application and submission of a new fee, at the discretion of the Department. The Department must also restart the review process if an area shifts substantially outside of the footprint of what was originally proposed, regardless of the reason.**

**Hydrographic Survey:** After the completion of the initial review phase, and when any and all ARB concerns have been addressed to the satisfaction of the partner agencies, the Department's Hydrographic Operations staff will conduct a hydrographic survey to determine the precise legal corner coordinates of the proposed lease area for mapping and advertisement. For this survey, the applicant must supply a

vessel and operator suitable for safe operation on the waters leading to and within the area of the proposed lease. The applicant is also required to supply suitable corner markers at that time.

**Federal Review:** Coordinates established during the hydrographic survey are used by the Department to create additional application materials, on your behalf, that are required by the U.S. Army Corps of Engineers and used to advertise the area to the public. The most recent version of your application (if revisions have occurred during the course of the review) and supplemental materials will be forwarded to the U.S. Army Corps of Engineers once DNR completes its review and survey. The Department can also provide a copy of the supplemental materials to an applicant provided to the Corps upon request.

**Advertisement:** As part of the public notification process, the Department will notify adjacent property owners with a map of the proposed lease location and a project description through U.S. Mail. The Department will also issue a public notice with this information through the Department's website and social media sites, a county newspaper, and to the Chair of the County Oyster Committee in the county of the proposed activity. State law requires advertising for 2 consecutive weeks followed by a 30-day public comment period. During this time the U.S. Army Corps of Engineers will conduct a separate but simultaneous review of the application materials according to the Nationwide Permit-48 permitting process. Applications may be subject to a Federal public notice at the discretion of the Corps. The applicant will be notified of any comments received by either agency and if a public information meeting or administrative hearing (petition to protest) has been requested.

**Federal Permitting:** **In addition to receiving a State lease, a new leaseholder must also be issued a permit authorization from the U.S. Army Corps of Engineers before conducting shellfish aquaculture activities on a lease.** The Baltimore District's goal is to come to a permit decision (or issuance) within 60 days of receipt of a federally-completed application for a qualifying project under a general or nationwide permit. The district is required to determine if an application under the nationwide permit is complete within 30 days from the date of receipt and must also notify the applicant of any mandatory missing information within this timeframe. The district's review and approval timeframes may be longer than 60 days when consultation with other agencies is required to comply with laws such as Section 7 of the Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act. The timeframe to make these determinations is 45 days. The district is working cooperatively with NOAA's National Marine Fisheries Services to ensure that ESA reviews do not unduly delay aquaculture permit decisions. The removal of limits on project acreage for aquaculture activities under Nationwide Permit 48 reduces the number of projects that have to go through an Individual Permit (IP) process.

If a lease area does not meet the requirements for review under the NWP-48 and an IP is instead required from the Corps, the Maryland Department of the Environment must also issue a State Water Quality Certification (WQC) and certification of concurrence with the Coastal Zone Management (CZM) Program Act. CZM concurrence insures the protection of waters of the State and is necessary for activities requiring a U.S. Army Corps of Engineers Section 404 permit. This certification will be incorporated into the Corps' IP authorization. There is no need for the applicant to file any paperwork directly to the Maryland Department of the Environment. If an IP is issued, a \$100 Corps permit fee will be applied. **Leaseholders are required to meet all special conditions specified in any Corps permit.**

**State Lease Issuance:** At the conclusion of the application process and once DNR receives confirmation that the Corps intends to permit the lease, the primary lessee will be sent a State "Shellfish Lease Agreement" to be signed by all leaseholders. Included with that mailing will be the information and forms necessary to obtain Shellfish Aquaculture Harvester Permit (SAHP) and Registration Cards (see below). The applicant is responsible for returning the signed lease agreement AND the completed,

signed SAHP Application and Harvester Verification Form to the Department. Once received back, the Department will execute and record the lease agreement. A copy of the fully executed lease agreement and a pro-rated invoice for the remaining calendar year's rent will be mailed to the primary lessee. The appropriate permits, registration cards and harvest reporting forms will be mailed once payment of the invoice is confirmed by the Department's Finance and Administrative Services.

### **What other permits might be necessary?**

All shellfish aquaculture leaseholders must possess a **Shellfish Aquaculture Harvester Permit (SAHP)** prior to engaging in aquaculture activities on their lease. Individuals other than the permit holder(s) may also be required to obtain a **Shellfish Aquaculture Harvester Registration Card (SAHRC)**. Please review Code of Maryland Regulations (COMAR) 08.02.23.04 to determine registration requirements. Leaseholders may specify the individuals for whom either a SAHP or SAHRC is requested on a SAHP Application returned with the signed lease agreement, or a subsequent SAHP Modification Form. All persons requesting a harvester card must also register with the Department for a **DNRid**, obtain a free **Aquaculture Declaration** through COMPASS, and sign a Harvester Verification and Signature Form acknowledging they have read and reviewed the Department's Harvest Education materials before receiving a card. Please note that obtaining an Aquaculture Declaration is only necessary once; however, reviewing the Harvest Education materials must be completed once every five years. For more information on obtaining an Aquaculture Declaration or DNRid please visit [http://dnr.maryland.gov/fisheries/Documents/COMPASS\\_Aquaculture\\_Declaration.pdf](http://dnr.maryland.gov/fisheries/Documents/COMPASS_Aquaculture_Declaration.pdf).

The primary lessee will receive cards for all qualifying Permittees and Registrants. Each card will bear the name, street address and authorized lease number for that Permittee or Registrant and must be kept on their person at all times when engaged in aquaculture activities on the leased area. SAHP Applications and Modification Form requests are processed on a two week printing cycle. Cards expire every year on December 31st and are renewed during the annual reporting and invoicing process.

Larvae, seed or shell imported across state lines to be placed in Maryland waters requires an approved **Shellfish Import Permit**. This permit application must be submitted to the Department 30 days prior to the anticipated shipment date to ensure enough processing time. The "Application to Import Shellfish From Out of State" is available at the Aquaculture Division web address given below or by request from the Department.

Land-based and in-water nursery (remote setting facilities, upwellers and downwellers) or hatchery operations meeting certain size and location criteria are permitted separately by the Department. Please complete a **Shellfish Nursery Permit** Application, available at the Aquaculture Division web address given below or by request from the Department.

### **Contact Information**

**For questions regarding DNR Commercial Shellfish Aquaculture Leases or related permits please contact the appropriate staff person listed on the DNR Aquaculture and Industry Enhancement Division website:** <http://dnr.maryland.gov/fisheries/Pages/aquaculture/staff-contact.aspx>

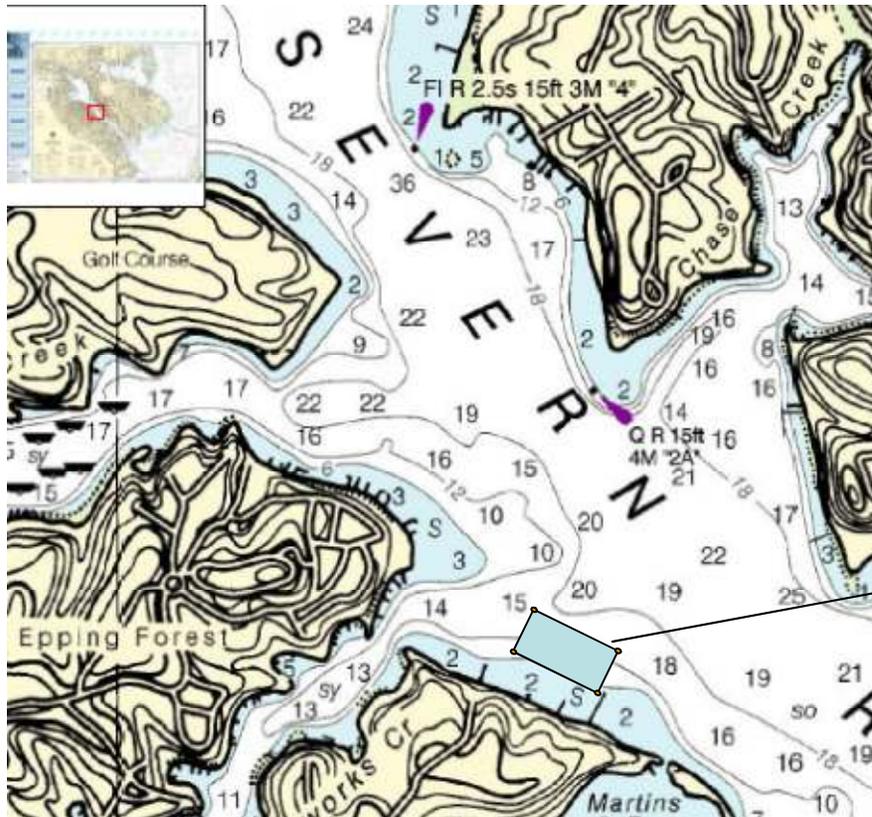
**For questions regarding the required U.S. Army Corps of Engineers permit process please contact:** Beth Bachur (410) 962-4336 or [Beth.Bachur@usace.army.mil](mailto:Beth.Bachur@usace.army.mil)  
**or visit:** <http://www.nab.usace.army.mil/Missions/Regulatory/Aquaculture/>

Revised 4-14-17

*Example of how to show the location of your proposed site using a map and aerial diagram:*

*\*Please include this info on all attachments submitted with your lease application*

Name/Business: John I. Doe  
 Town, State: Your Town, MD  
 Waterbody: Your River  
 Date: April 14, 2017



*\*Corner numbering should start at the SW most point and move in a clockwise direction. Number designation here should also be consistent with your cross-section diagram(s).*



 Marker buoy (8x12" with name and lease #)

# Cross-Section Example 1: Constant bottom depth

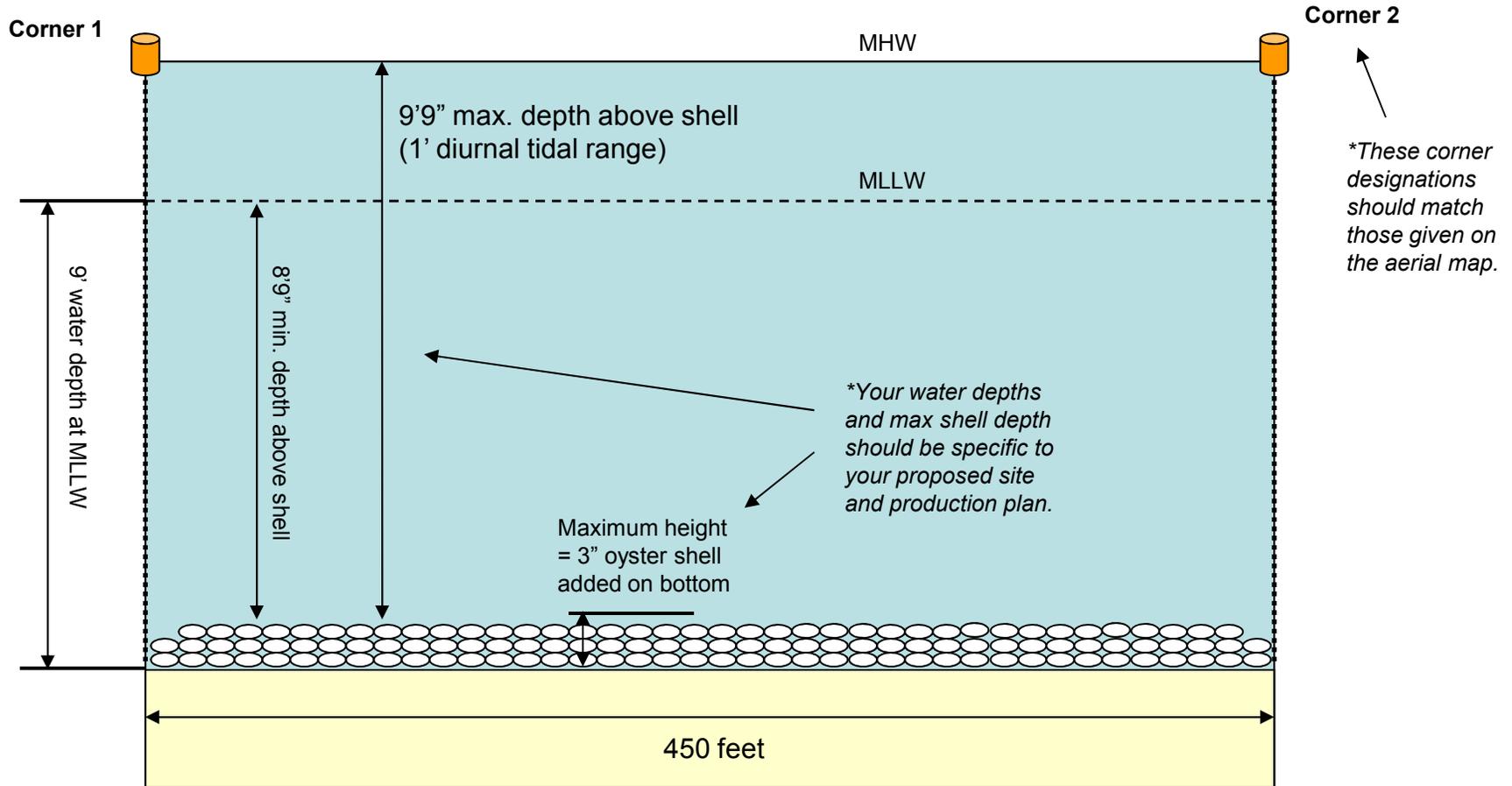
*\*Please include this info on all attachments submitted with your lease application*

Name/Business: John I. Doe  
 Town, State: Your Town, MD  
 Waterbody: Your River  
 Date: September 06, 2013

 Marker buoy (8x12" with name and lease #)

**MHW** = mean high water

**MLLW** = mean lower low water



# Cross-Section Example 2: Variable bottom depth

*\*Please include this info on all attachments submitted with your lease application*

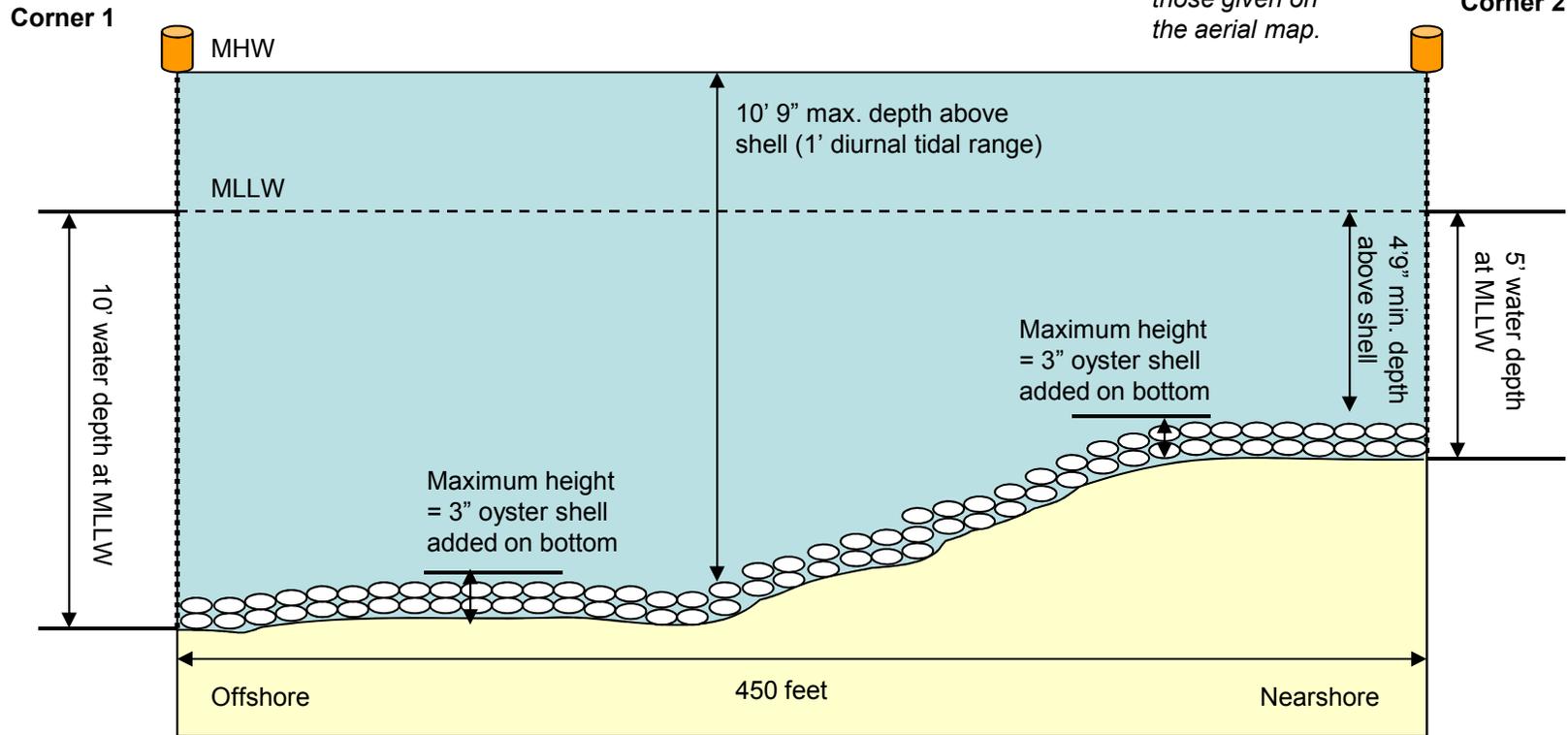
Name/Business: John I. Doe  
 Town, State: Your Town, MD  
 Waterbody: Your River  
 Date: April 14, 2017

 Marker buoy (8x12" with name and lease #)

**MHW** = mean high water

**MLLW** = mean lower low water

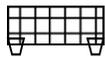
*\*These corner designations should match those given on the aerial map.*

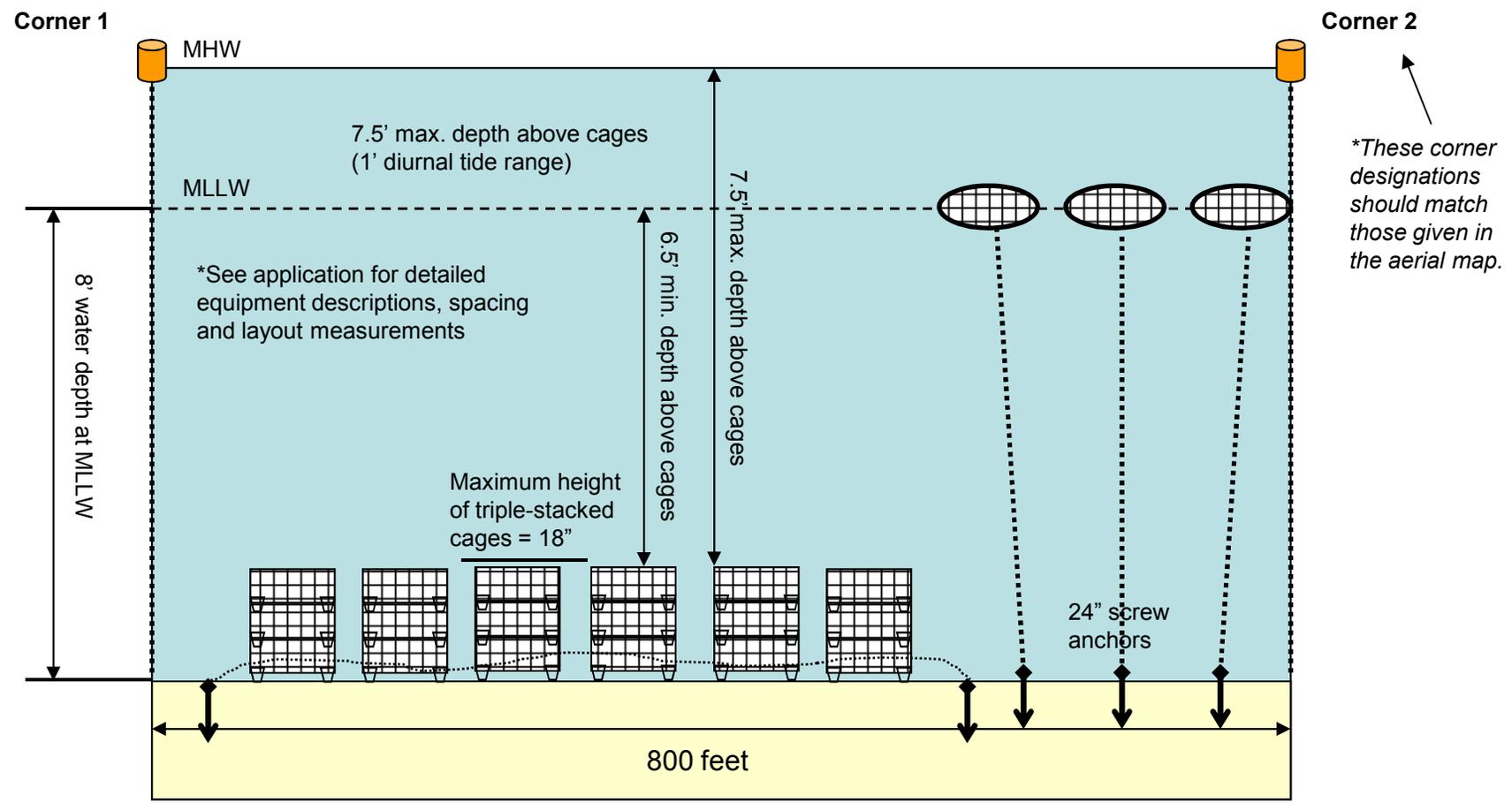


# Cross-Section Example 3: Constant bottom depth with cages or floats

*\*Please include this info on all attachments submitted with your lease application*

Name/Business: John I. Doe  
Town, State: Your Town, MD  
Waterbody: Your River  
Date: April 14, 2017

-  Marker buoy (8x12" with DNR contact info)
-  Float with max dimensions = 3' x 5' x 12"
- MHW** = mean high water
-  Cage with max dimensions = 3' x 3' x 6"
- MLLW** = mean lower low water



# Cross-Section Example 4: Variable bottom depth with cages and shell

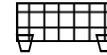
\*Please include  
this info on all  
attachments  
submitted with  
your lease  
application

Name/Business: John I. Doe  
Town, State: Your Town, MD  
Waterbody: Your River  
Date: April 14, 2017

 Marker buoy (8x12" with DNR contact info)

**MHW** = mean high water

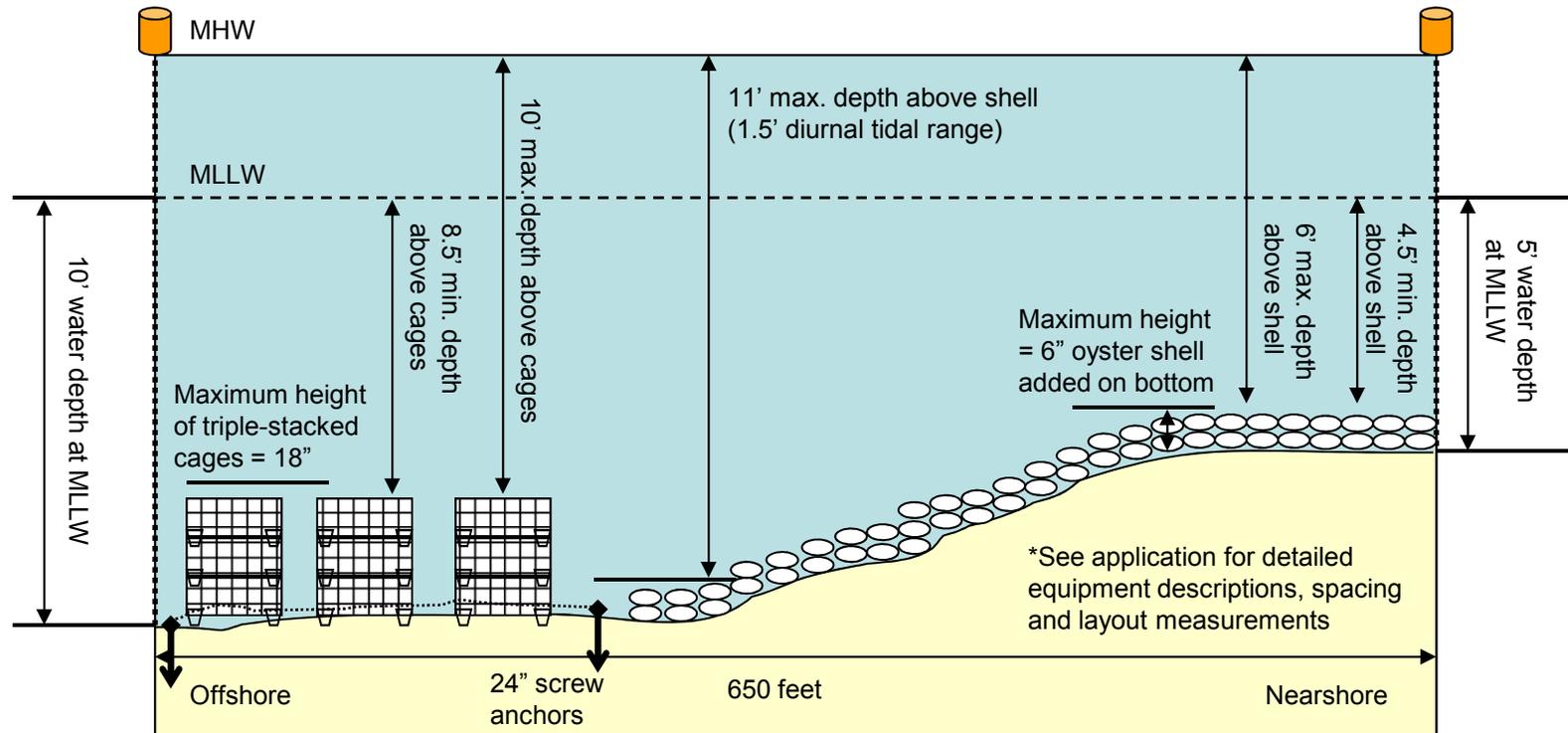
**MLLW** = mean lower low water



Cage with max dimensions = 3' x 3' x 6"

Corner 1

Corner 2



# Cross-Section Example 5: Variable bottom depth with hanging baskets

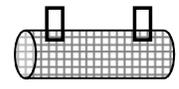
*\*Please include this info on all attachments submitted with your lease application*

Name/Business: John I. Doe  
Town, State: Your Town, MD  
Waterbody: Your River  
Date: April 14, 2017

● 9-12" white inflatable buoy (with applicant contact info and hazard symbol)

**MHW** = mean high water

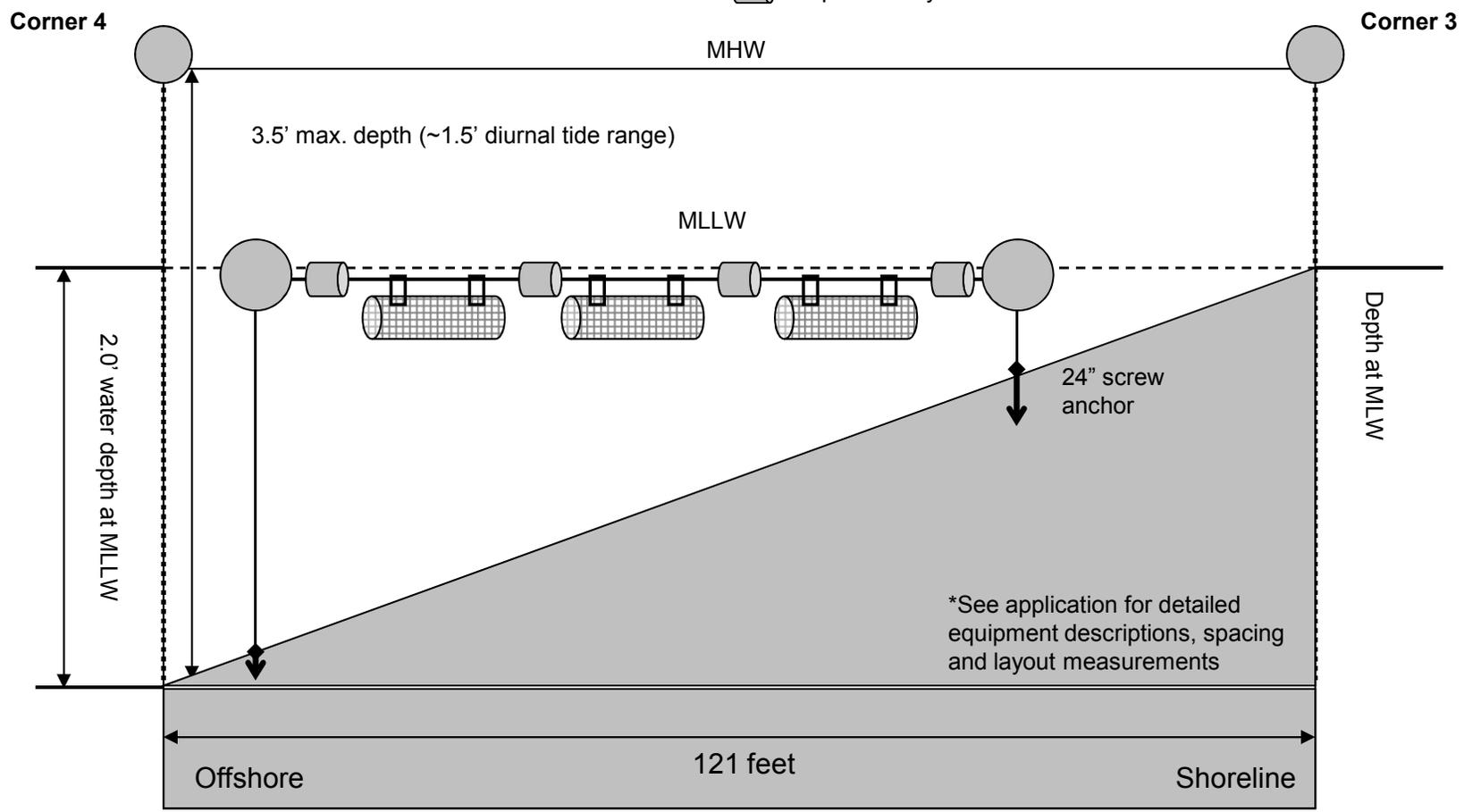
**MLLW** = mean lower low water



Hanging basket with max dimensions = 24" x 8" x 5"



Spacer buoy = 5" x 11"



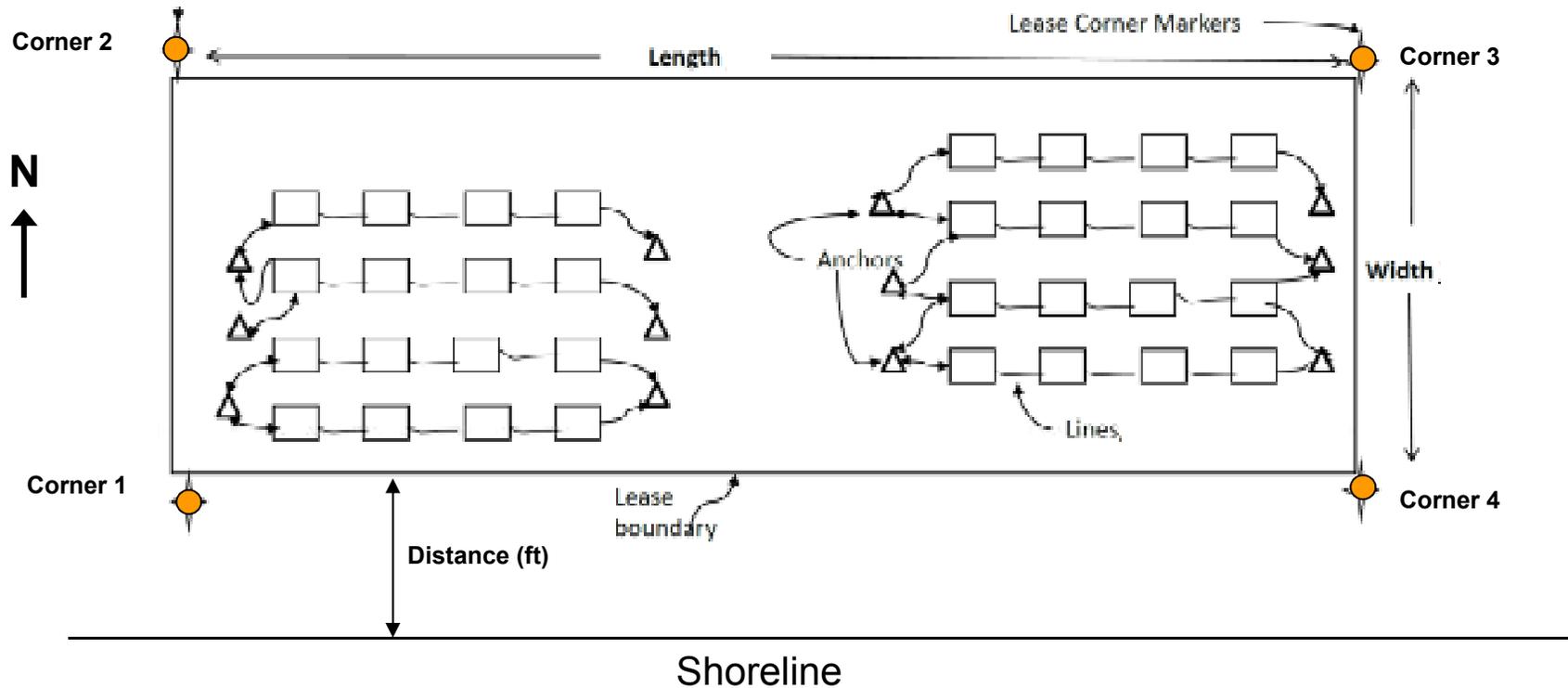
# Example of how to show the layout of equipment on your proposed water column lease:

*\*Please include this info on all attachments submitted with your lease application*

Name/Business: John I. Doe  
 Town, State: Your Town, MD  
 Waterbody: Your River  
 Date: April 14, 2017

□ Cage/float with max dimensions = 3' x 3' x 6"

🚫 Marker buoy (8x12" with name and lease #)



Spacing between individual cages/racks/floats: \_\_\_\_\_ feet  
 Spacing between arrays of cages/racks/floats: \_\_\_\_\_ feet  
 Maximum number of cages/racks/floats to be used: \_\_\_\_\_