

Town of Mattapoisett Rules and Regulations Governing Aquaculture

1. Prologue

The Town of Mattapoisett (“Town”) advocates the orderly development of aquaculture that is complementary to the existing commercial and recreational shellfishery, as well as the continued development of the waterfront management plan. In determining whether to grant a shellfish aquaculture license, the Town is obligated to protect and preserve the existing public fisheries and to minimize the impact on other uses of the marine environment. The size and scope of an aquaculture license shall co-exist with and not diminish the common property commercial and recreational shellfisheries or other existing water related activities.

2. Authority

- 2.1 The following Regulations concerning aquaculture licenses are adopted by the Town of Mattapoisett, pursuant to Massachusetts General Laws (MGL) Chapter 130, Section 57 – 68. Violation of any of the requirements in these Regulations subjects the holder of a license (“licensee”) to review and possible revocation of a license at the discretion of the Board of Selectmen.

- 2.2 Approval of a license shall be subject to all federal, state, and local laws and regulations, as in force and as amended from time to time. Compliance with such laws and regulations is required as a condition of a license. Failure to comply with applicable federal, state or local regulations shall be cause to revoke a license. The licensee is expected to be familiar with relevant laws and regulations.

- 2.3 The Board of Selectmen may declare a moratorium on the granting of licenses at any time when this action is deemed appropriate and in the best interests of the Town. Consideration of a moratorium shall be based upon but not limited to scientific data, environmental factors, diseases, overharvesting, environmental contamination, and impact on native stock and species.

- 2.4 The Board of Selectmen will consider applications for licenses on a first come first serve basis, within the limitations of acceptable land and water space. A list of applicants for licenses in order of date of application shall be kept on file in the Town Hall. The records shall be open for public inspection during regular Town Hall hours.
- 2.5 The Board of Selectmen may restrict the operation of any license to address unacceptable conditions or practices at the site, or amend other restrictions, as deemed necessary in the public interest. Further the Board of Selectmen reserves the right to amend these Regulations at any time.
- 2.6. Aquaculture licenses and operations granted pursuant to these Regulations shall be subject to any rules and regulations promulgated by the Division of Marine Fisheries (DMF), including those concerning the use and scope of predator controls in the intertidal zone, and licenses may be further conditioned by the DMF as they deem necessary and appropriate, including species to be propagated and the source and movement of seed shellfish.

3. Application Process

3.1 Application Submittal

- 3.1.1 Applicants desiring a license shall be required to complete and submit all information required by the Town, and shall be submitted under the pains and penalties of perjury. Any information on a license application that is determined to be untruthful before or after approval of any license application shall be grounds for denial and/or forfeiture of a license.
- 3.1.2 The applicant shall provide a plan of the project including all aspects of the management and operations of the project to the Board of Selectmen. The application shall include a map or plan of the proposed project locating the licensed area accurately, and describing the licensed area in metes and bounds. Applicant shall provide a list of all abutting waterfront property owners and associations, and any existing aquaculture license holders, within one thousand (1000) feet of any point along the perimeter of the requested licensed area. Additionally, the applicant should include a proposal of the benefits to the Town's waters and the overall shellfish population. Narrative shall include clearly stated public benefits as a result of the Aquaculture proposed.
- 3.1.3 The applicant shall also submit any other information as requested by the Board of Selectmen.

- 3.1.4 There shall be a non-refundable application fee of one hundred dollars (\$100.00) of which one dollar (\$1.00) is a recording fee, fifteen dollars (\$15.00) is for advertising in the local paper, and the remainder is for costs incurred in granting the application. The application fee must be submitted with the completed application form.
- 3.1.5 No application shall be deemed received until all the requirements for submittal of an application have been met. The Town assumes no responsibility or liability for incomplete or missing attachments. Any application that is incomplete for a period of 6 months shall be denied without prejudice.

3.2 Public Hearing and Notice

- 3.2.1 Following receipt of a completed application, the Town shall establish a public hearing date. No license shall be granted, transferred or renewed until after a public hearing, due notice of which has been posted in three (3) or more public places, and published in a local newspaper by the Town at least fourteen (14) days before the time fixed for the hearing, stating the name and residence of the applicant or transferee, as the case may be, the date of the filing of the application for a license, transfer or renewal, and the location, area, and description of the proposed or currently licensed area.
- 3.2.2 The Board of Selectmen shall notify the applicant at least twenty one (21) days prior to the public hearing of the time, date, and place of the hearing.
- 3.2.3 The applicant will be required to notify all abutting waterfront property owners and associations, and any existing aquaculture license holders within one thousand (1000) feet of any point along the perimeter of the requested licensed area, by certified mail return receipt requested. The notice to abutters, associations and licensees must be made at least fourteen (14) days prior to the public hearing date. The U.S. Postal Service Receipt for Certified Mail for each notice shall be submitted to the Board of Selectmen at or before the time of the hearing.
- 3.2.4 Upon receiving a completed application, the Board of Selectmen shall forward copies of the application to the Shellfish Warden, the Harbormaster and the Marine Advisory Board for comment. Written comment shall be returned to the Board of Selectmen within thirty (30) days of being received by the committee. In reviewing the application, the Board of Selectmen may consider, but is not bound by, submitted comments.

3.3 Approval Process

- 3.3.1 Upon reviewing the application, and following the public hearing, the Board of Selectmen may approve an application with or without conditions or deny an application. Applications shall be granted or denied in writing within sixty (60) days after receipt of the written application and subject to such terms, conditions and regulations as the Board of Selectmen deem proper.
- 3.3.2 In the event the Board of Selectmen approves the application, but prior to granting a license, the applicant shall request an inspection and certification of the licensed area by the Division of Marine Fisheries ("DMF") that the granting of a license and operation there under will cause no adverse harm on the shellfish or other natural resources of the Town. Failure of the DMF to so certify shall be deemed a denial of a license.
- 3.3.3 Upon certification by the DMF, the Board of Selectmen may grant a license, provided, however, that no license shall be granted for any areas then or within two years prior thereto, closed for municipal cultivation under provisions of M.G.L. Chapter 130, Section 54.
- 3.3.4 The granting of a license does not relieve the applicant from obtaining any other necessary licenses, approvals, and/or permits prior to conducting operations, including, but not limited to the U.S. Army Corps of Engineers, Massachusetts Department of Environmental Protection, or any division of the same, the Town's Conservation Commission, Board of Appeals or Planning Board, all as may be applicable.
- 3.3.5 The granting of a license may be conditional upon obtaining all licenses, approvals and/or permits. All licenses, approvals and/or permits required to use a license shall be appended to a license. A copy of all approved aquaculture licenses shall be kept on file in the Town Hall. The records shall be open for public inspection during regular Town Hall hours.
- 3.3.6 In reviewing an application for a new or amended license; or for license renewal or transfer, the Board of Selectmen shall determine whether the shellfish aquaculture plan proposed by the applicant meets all of the requirements of these Regulations and the waterfront management plan; and whether the plan proposed by the applicant is designed so as to cause no substantial adverse effect on the shellfish or other natural resources of Town; and will minimize impact on other uses of the marine environment. The Board of Selectmen reserves the right to approve or deny the issuance of an aquaculture license if deemed appropriate and in the best interests of the Town.
- 3.3.7 For any renewal without amendments, the licensee need not file a new application.

4. Licenses

4.1 Existing Licenses

- 4.1.1.1 Aquaculture licenses in existence before the date of issue of these Regulations remain subject to the requirements of the Division of Marine Fisheries 322 CMR and the provisions of MGL Chapter 130 as revised; as well as any prior requirements stipulated by the Town of Mattapoisett at the time the license was granted.
- 4.1.1.2 Aquaculture licenses in existence before the date of issue of these Regulations, and their subsequent renewals, shall be subject to the requirements stipulated in these Regulations, with the exception of sections 4.2, 5.3, 5.4.1, and 6.4.1.
- 4.1.1.3 Any proposed expansion of aquaculture license areas in existence before the date of issue of these Regulations shall be treated as a new license and shall be subject to all of these Regulations.
- 4.1.1.4 All license renewals subsequent to expansion shall be 'all inclusive' and shall be renewed together. Staggering of license periods for one expanded area will not be considered.

4.2 Eligibility

- 4.2.1 Licenses will be issued only to a bona fide domiciled resident of the Town of Mattapoisett, who has been domiciled within the town for at least 12 consecutive months prior to the date of application. Written proof that Mattapoisett is the domicile as well as the residence shall be required. Such written proof shall include address of residence and evidence of ownership or lease of said residence. Applicant shall also be required to provide evidence of voter registration, automobile registration, driver's license, location of income tax filings or other relevant proof that Mattapoisett has and will continue to be the principal home of the applicant. At such time as a licensee ceases to be a bona fide domiciled resident of the Town of Mattapoisett, the license shall be deemed to have been revoked.
 - 4.2.1. The applicant shall be 18 years of age or older.
 - 4.2.2. The applicant must be able to demonstrate documented evidence of education or experience in shellfish propagation and aquaculture that is acceptable to the Mattapoisett Board of Selectmen. This may be supported by a certificate of education from an accredited educational institution, or a

letter from a license holder describing the type of work performed and any other information which might be relevant.

4.2.3. The applicant shall have no prior shell fishing violations

4.2.4. The applicant must be a US Citizen.

4.3 Annual Fee

There shall be an annual fee of twenty-five (\$25.00) dollars per acre per year.

4.4 Duration and Renewal

4.4.1 Licenses granted by the Board of Selectmen are intended to be on a trial basis. To start, licenses may be granted for a 3 year period with a compulsory 2 year review by the Board of Selectmen. Licensees may request, only after the compulsory review, a renewal of the license for the third year. Renewal shall be subject to the approval of the Board of Selectmen.

4.4.2 The first license renewal shall be for a five (5) year period, subsequent renewals shall be no more than 10 years.

4.4.3 The Board of Selectmen shall review each license annually to ensure a reasonable amount of shellfish has been planted and produced on the licensed area during the preceding year. The Board of Selectmen shall have the right to waive the minimum production requirements in any year wherein there is evidence that the failure to meet the minimum standard is due to events beyond the control of the license holder.

4.4.4 Any license granted by the Board of Selectmen may, within two years before the expiration of its then current term, be renewed from the expiration of the original term for a further term, each term not to exceed 10 years.

4.4.5 The provisions applicable to the original license shall, so far as apt, apply to a renewal.

4.4.6 Renewals shall require public notice in accordance with the requirements of these regulations. For any renewal without amendments, the licensee need not file a new application.

4.5 Transfer of License

- 4.5.1 Licenses are granted to and for the exclusive use of a licensee. Subleasing or sale of the licensed area, a portion of the licensed area or of the license is prohibited.
- 4.5.2 Except as provided herein, licenses are renewable, heritable and transferable subject to the approval of the licensing authority and pursuant to MGL Chapter 130.
- 4.5.3 A licensee proposing to transfer his/her license shall first notify the licensing authority in writing that he/she no longer wished to operate a license and requests transfer of his/her licensed area to a designated recipient. Such recipient shall thereupon file an application with the Town. The application shall be treated, insofar as applicable, as a new application. This section shall be in accordance with sections 4.2.1-4.2.5 of this document.

4.6 Liability and Insurance requirements

- 4.6.1 Licensee is required to maintain business liability insurance and a performance bond sufficient to cover the costs of gear removal and site restoration. Said bond shall be a surety bond in the amount determined by the Board of Selectmen. In order to provide reasonable estimate for the value of the bond, (documented attempts to get)no less than three written quotations for the removal of the applicants proposed equipment in the event of default or required salvage post storm or event. All quotations shall be applied a safety/inflation factor (based on the average of the last 10 NE CPI) for the expected duration of the license period. Said insurance and bond shall be fully executed with an effective term identical to the period issued with that of the aquaculture license. Documented evidence of said insurance and bond shall be on file at the Mattapoisett Town hall and shall be a requirement for obtaining final approval by the Board of Selectmen.
- 4.6.2 Licensee is required to submit a list of all any persons, employees, or contracted persons authorized to work in the licensed area to the Board of Selectmen. Licensee is required to maintain workman's compensation insurance for all employees, or contracted persons that work in the licensed area. Licensees shall be held responsible for any and all actions taken by any persons, employees, or contracted persons working in the licensed area.
- 4.6.3 The licensee shall not hold the town liable for any damages or injury to the licensed area, or any injury on the licensed area.

4.7 Penalties/Revocation Policies

- 4.7.1 Failure of the licensee to comply with the provisions of any rule of regulation, term, condition, statute, or law, or lack of substantial use of the licensed area, may result in an order to revoke the license.
- 4.7.2 Revocation of any license pursuant to Section 4.7.1 shall be preceded by a public hearing held in accordance with the Open Meeting Law. The licensee shall be entitled to be present and have counsel and cross examine any witnesses and present witnesses on his or her behalf.
- 4.7.3 The penalty for violations of any of these Regulations shall be as follows. After a written warning, the licensee has fifteen (15) days to comply. After the fifteenth day, a fine not less than twenty five dollars (\$25.00) nor more than two hundred dollars (\$200.00) for each offense shall be issued. After thirty (30) days of non-compliance, the licensee shall have his/her license revoked. The Board of Selectmen shall have the right to waive fines or license revocation when there is evidence that the failure to comply within the required time is due to events beyond the control of the license holder.

5. Licensed Area

5.1 Applicable State Regulations

The location of the proposed licensed area must meet all requirements of the Division of Marine Fisheries 322 CMR, the provisions of MGL Chapter 130, in addition to any terms, conditions and/or restrictions set forth in these Regulations.

5.2 Town Review Requirements

- 5.2.1. All proposed license areas are subject to review by the Harbormaster, findings to be submitted to Marine Advisory Board.
- 5.2.2 All proposed license areas are subject to review by the Marine Advisory Board, the Marine Advisory Board shall make a recommendation to the Board of Selectmen regarding the suitability of the proposed licensed area.

5.3 Minimum depth

No part of a licensed area shall be allowed in less than six (6) feet of water at mean low tide, as depicted by the one (1) fathom line as indicated by the current NOAA survey soundings.

- 5.3.1 Applicants wishing to apply for a depth in waters less than six (6) feet shall be subject to the following conditions.
- 5.3.1.2 Applicant must prove that the species intended for propagation and cultivation require a depth of less than the six (6) feet otherwise noted above. If methodology for propagation and cultivation exists in depths of six (6) feet or great, the application shall not be considered.
- 5.3.1.3 Applicants seeking approval for a species that requires less than six (6) feet in depth will require 1) consideration and recommendation of the marine advisory board, 2) recommendation of the Harbormaster and 3) a unanimous vote of support by the Board of Selectman for final approval.

5.4 Total Size

- 5.4.1 A licensed area shall not be larger than 2 acres.
- 5.4.1.2 A license holder can apply for an extension to a licensed area or an additional licensed area after completing the 3rd year of operation with the original license. The license holder must have a proven record of properly managing the original licensed area, and following all of the town and state laws, along with a proven success record of planting, producing and marketing shellfish, before submitting an application to the town for an expansion to a licensed area, or an additional licensed area.

5.5 Use

Said licensee shall have the right to the exclusive use of the lands and waters for the purposes of growing shellfish thereon, and the licensee shall plainly mark for the boundaries of said area. The Selectmen or city council shall permit, as a condition of the license, such public uses of said waters and lands are as compatible with the aquaculture enterprise.

6. Operations

6.1 Time of use

In accordance with MGL Chapter 130 Section 68; no person shall dig, take or carry away shellfish or shells between one-half hour after sunset and one-half hour before sunrise, by any method whatever, from any waters, flats, or creeks licensed under these Regulations. A licensee or employee of a license violating this Paragraph may result in a forfeit of the license and all shellfish remaining on the licensed area.

6.2 Equipment Type

- 6.2.1 The type of equipment used in the licensed area (floating, submerged or bottom-mounted cages, bags, buoys, or stakes) may be restricted by the Board of Selectmen to limit the visual or navigational impact of the equipment in the licensed area.
- 6.2.2 Any changes to the type of equipment used in the licensed area shall be subject to the prior approval of the Board of Selectmen and require public notice and hearing in accordance with the requirements for an application of a new license.

6.3 Equipment Markings

- 6.3.1 All gear, tackle or other equipment must be indelibly marked with the license number conspicuously placed on each of piece of equipment.
- 6.3.2 All unusable gear shall be removed from a licensed area and either disposed of properly or moved to an appropriate site.
- 6.3.3 In accordance with M.G.L. Chapter 130, Section 32, if gear, tackle or other equipment leaves the licensed area for any reason and is deposited on the shore, beaches or flats, whether public or private, a licensee must recover the equipment within fifteen (15) days from the time of its deposit without any liability for trespass; provided, that a licensee in so doing does not commit any unreasonable or wanton injury to the property where the equipment is deposited. In the event a licensee does not recover the equipment within fifteen (15) days, the Town shall recover the equipment, at the expense of the licensee.
- 6.3.4 When a license is terminated for any reason, the prior licensee shall be required to remove all gear, tackle or other equipment from the licensed area within thirty (30) days of the license termination date. Any and all gear, tackle or other equipment not removed within thirty (30) days may be removed by the Town at the expense of the prior licensee.

6.4 Boundary Markings

- 6.4.1 All licensed area boundaries shall be marked at all corners and changes of direction by uniform yellow buoys, not less than 11.5 inches in shortest diameter, and bear the four-digit state propagation permit number issued to the licensee. Said numbers shall not be less than two inches in height. Where

a licensed area borders another licensed area, a buoy may bear the four-digit state propagation permit number of more than one licensee.

- 6.4.2 All said buoys shall be deployed at a minimum from April 1 until November 15, annually. If buoys are removed during the winter season, winter markers approved by the Harbormaster shall be used.
- 6.4.3 Any proposed alternative marking of a licensed area, must be submitted in writing to the Harbormaster and if in the discretion of the Harbormaster the changes are warranted, they shall be approved in writing.
- 6.4.4 The Harbormaster may direct licensees of licensed areas that border navigational channels or heavily navigated waters to use specified buoys to mark their licensed area boundaries for navigational purposes.
- 6.4.5 The licensee shall also contact the U.S. Coast Guard, First District, and Aids to Navigation Branch, to coordinate the proper buoy markings for the activity. The USCG may place additional marking requirements that exceed the minimum marking requirements indicated in this section.
- 6.4.6 Each licensee is responsible for maintaining the buoys marking their licensed area during the term of the license or of any renewal thereof. Failure to place or reasonably to maintain said buoys shall be sufficient cause for revocation of the license.
- 6.4.7 If there is any evidence that any licensee willfully extends, or causes to extend his licensed area boundaries, or allows the cultivation operation, propagation operation, or product and equipment to exist beyond the duly recorded boundaries of his licensed area, the Harbormaster may cause the licensed area to be re-surveyed, and any infraction of this regulation shall be deemed sufficient cause for revocation of the license.

6.5 Transplanting and Harvesting of Shellfish Product

- 6.5.1 No person shall plant, transplant, sell or have in their possession seed shellfish, without first obtaining a state seed permit or an aquaculture permit, or be listed on said seed permit.
- 6.5.2 No person shall transplant shellfish seed, seed stock, or stock from any public fisheries within the Town into a licensed area for purposes of stocking licensed aquaculture areas with such seed or stock.

- 6.5.3 All seed shellfish transferred to the licensed area shall be obtained from hatcheries certified by the DMF and as approved by the Board of Selectmen on the license.
- 6.5.4 Seed collected in any amount by any means from within the licensed area may however, be possessed or caused to be taken or possessed and exceed the amount permitted by the terms of their seed permit.
- 6.5.5 The licensee shall not remove or introduce any seed shellfish from or to any waterway other than from the licensed area.
- 6.5.6 No person shall transplant shellfish or shellfish seed to the licensed area until the Shellfish Constable has been notified. Notification shall be in writing at least seven (7) days prior to any transplanting, and shall be attached to documentation of the source and species of the shellfish and copies of permits.
- 6.5.7 In accordance with Massachusetts Dept. of Public Health Regulations:
- (a) Shellfish harvesters must be licensed by the Massachusetts DMF
 - (b) Shellfish transported by a harvester shall be adequately protected from temperature abuse and environmental contamination.
 - (c) Every container of shellfish must have a proper and completed harvester tag attached to it prior to landing.
 - (d) Proper harvest area designations must be used on harvester tags.
 - (e) A shellfish harvester may sell shellfish using a transaction card, only to a properly permitted Massachusetts wholesale dealer.
 - (f) A harvester shall retain a copy of each transaction slip for 90 days.
 - (g) Harvesters are exempt from federal seafood HACAPP regulations (21 CFR 123).

6.6 Storage, Culling and Packaging of Product

In accordance with Division of Marine Fisheries 322 CMR 15.08 (2) Disposal (a); it shall be unlawful to dispose of any gear or waste products on site or into coastal waters. All gear and waste products, including dead or dying culture animals, shall be disposed of in a landfill or other legal disposal site on land.

7. Monitoring

- 7.1 The Shellfish Constable and/or assistants shall have authority to inspect the licensed area at any time, and said inspection may include any and all containers on the site. In the event that the Shellfish Constable and/or assistants have reason to believe that inspection of the contents of any or all

containers on the site is in the best interest of the town, the Shellfish Constable and/or assistant shall contact the licensee by telephone or by leaving a notice at the address of the licensee indicated on the license, however, advising the licensee that the Town intends to inspect the contents of containers on the license and further inviting the licensee to be present at the time of said inspection. In the event that the Shellfish Constable and/or assistant do not receive a response from the licensee within 48 hours of notification by phone or by written notice, the inspection of containers may be conducted without the presence of the licensee.

- 7.2 The Town of Mattapoisett reserves the right at any time to obtain samples of any shellfish from a licensed area for the purpose of certified testing for disease and in order to assure that the activities being performed under the authority of this regulation are in accordance with the terms and conditions described herein.

8. Reporting

- 8.1 In accordance with MGL- Chapter 130 Section 65;

Every licensee or transferee of a license shall submit on oath on or before January thirty-first in the year following the period of operation, each year to the Board of Selectmen a report of the total number of each kind of shellfish planted, produced or marketed during the preceding year upon or from such licensed area, and an estimate of the total number of each kind of shellfish at the time of such report planted or growing thereon. The Board of Selectmen may specify a reasonable yearly market value to be produced by each shellfish license. Failure of the licensed shellfish project to meet such a value for any three consecutive years thereafter may result in a forfeit of the shellfish aquaculture license and licensed area.

- 8.2 In accordance with Division of Marine Fisheries 322 CMR 15.08 (4);

(a) All licensed aquaculture operations shall submit annually to the Division the following information before January 31 for the preceding calendar year:

- i. Production by weight, volume, or number;
- ii. Amount and sources of seed or juveniles purchased;
- iii. Source and disposition of brood stock;
- iv. Disease problems and unexplained mortality;
- v. Use and amount of chemicals, antibiotics or drugs.

- (b) It shall be unlawful for the holder of an aquaculture permit to falsify or fail to submit the required annual report.

- (c) All information submitted pursuant to this subsection shall be held in confidence, and may not be released except in summarized form, or in response to a valid court order.