

TOWN OF TISBURY



TISBURY AQUACULTURE LICENSE REGULATIONS

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By the authority vested in the Select Board of the Town of Tisbury by Chapter 130 of the Massachusetts General Laws (MGL) authorizing the Select Board to issue shellfish aquaculture licenses (herein referred to as the “license”) within the Town of Tisbury, the Select Board of said Town hereby make regulations as follows:

1. **Prologue:** The Town of Tisbury supports the development of well sited and managed aquaculture that is complementary to the Town's existing commercial and recreational shellfisheries and other marine user groups. In review of any license application the Town’s primary consideration is the protection and preservation of existing shellfisheries and minimizing impacts on the marine environment. Any license issued by the Town under the provisions of MGL c.130 and these regulations shall be designed and conditioned so as not to interfere with existing commercial and recreational fisheries and Town propagation efforts, and to allow all other compatible public uses of the licensed area.
1. **Eligibility:** The applicant shall hold or meet the requirements to hold a commercial shellfish license in Tisbury and be a United States citizen. The Aquaculture license shall be forfeited if the licensee ceases to meet these requirements. Applicants convicted of any violations of state or local shellfish regulations or laws in the three years preceding the date of their application shall submit a letter detailing the violation(s) and corrective actions taken.
3. **Moratorium:** The Select Board may enact a moratorium on the issuance of new licenses at any time when this action is deemed appropriate and in the best interests of the Town.
4. **Waitlist:** In the event a moratorium on the issuance of new licenses is enacted, a list of applicants for licenses shall be kept on file by the Town Administrator in the order of the date of receipt of a completed license application.
 - a. An up-to-date copy of the list shall be made available for review in the Town Hall.
 - b. It shall be the responsibility of the applicant to notify the Town Administrator’s office, in writing, between January 1 and February 15 of each year of their desire to remain on the list. The Town Administrator’s Office shall receive said notice in person or via certified mail by 4:00 PM on the deadline date (February 15) along with a non-refundable \$10.00 fee made payable to the Town of Tisbury.
5. **Application for Licenses:** An original and electronic copy of a fully completed Tisbury aquaculture license application form, and all supporting materials required in these regulations (herein referred to as the “application”), shall be submitted to the Town Administrator’s Office in-person or via certified mail.
 - a. The information provided in the application shall include details sufficient to show the intended project and project area (license site) to be licensed, and at a minimum include:

- i. A map of the proposed license site including the latitude and longitude of corner boundaries (including any secondary sites that may be used for upwellers or nursery grow out);
 - ii. The proposed species, amounts, and sizes of shellfish to be planted;
 - iii. The type, amount, and schematics of all proposed gear or structures to be deployed on the license site;
 - iv. A site plan showing how gear and structures shall be deployed on the license site;
 - v. Proposed access routes and landings to be utilized;
 - vi. Any other activities proposed by the applicant; and
 - vii. A description of measures the applicant has taken to avoid or minimize impacts to navigation, wild fisheries, marine resources, and other users.
- b. All applications for licenses shall be accompanied by a non-refundable application fee of one hundred dollars (\$100) made payable to the Town of Tisbury.

6. License Application Review Process:

- a. Review of Application for Completeness:

Within seven (7) days, the Town Administrator's Office shall provide a determination as to whether the application is complete or incomplete.

If a determination is made that the application is incomplete, the Applicant has forty-five (45) days to remedy any incomplete items. If the application remains incomplete, a final notice of said determination accompanied with the application fee shall be returned to the Applicant. The Applicant may reapply sixty-five (65) days after the final notice date of said determination.

- b. Review of Complete Application:

The Select Board shall forward electronically copies of the complete application to the Conservation Commission, Shellfish Constable, and Harbormaster and to the Advisory Committee to the Select Board natural resources and waterways. Written comments shall be returned to the Select Board within thirty (30) days.

In reviewing an application for new license or an amended license, the Select Board shall determine whether the shellfish Aquaculture plan proposed by the applicant meets all of the requirements of these regulations and the provisions of MGL c. 130, 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 the Town; whether the granting of the license will obstruct navigable waters; and whether the proposed plan is consistent with the purposes of these regulations to protect and preserve the existing fisheries and minimize impacts on other uses of the marine

environment. Upon reviewing the application and following the public hearing, the Select Board may grant the license, grant the license with conditions, or deny the license.

The licensee is required to obtain all other relevant licenses and begin working on the site within one year of being issued the license or the license will be considered forfeited.

c. Select Board Hearing and Public Notice:

Within sixty (60) days of receipt of a determination of completeness as outlined in Section 5 of these regulations, the Select Board shall hold a public hearing on the application for a license.

- i. The Select Board shall post a notice of the public hearing, consistent with the provisions of MGL c. 130, s. 60, in a local newspaper, the Town Hall, and at least two (2) other public places, a minimum of ten (10 days) prior to the hearing date. Copies of the application shall be made available for review at the Town Hall.
- ii. The Select Board shall notify the applicant a minimum of thirty (30) days before the hearing of the time, place, and date. The applicant shall be required to notify all abutters (as certified by the Board of Assessors) within three hundred (300) feet of any point along the perimeter of the requested license site by certified mail, return requested.
- iii. Abutters shall be notified a minimum of ten (10) days prior to the public hearing date. Certified mail receipts shall be kept on file with the original copy of the application. Failure to provide certified mail receipts shall be considered as a request for postponement by the applicant.
- iv. Upon review of the application and following a public hearing, the Select Board may grant the license, grant the license with conditions, or deny the license.
- v. Approval of a license by the Select Board is deemed “conditional,” subject to certification by the Division of Marine Fisheries of the license, and the licensee obtaining all other required local, state, and federal permits, licenses, and/or authorizations.
- vi. Licenses are issued under the provisions of MGL c. 130, and these regulations, and subject to all federal, state, and local laws, rules, and regulations as in force and amended from time to time. Failure of licensees to comply with any of the laws, rules, and regulations are subject to the enforcement procedures of these regulations, section 16.
- vii. The licensee is required to provide to the Town Administrator’s Office copies of all required local, state, and federal permits, licenses, and/or authorizations prior to beginning work on the site. Such permits, licenses, and/or authorizations shall be obtained within one year of the date of the issuance of the license or the license shall be considered forfeited. The date of issuance of the license shall be considered the date of certification of the license by the Division of Marine Fisheries.

- 7. Operations:** All shellfish and all other aquaculture related operations, air-drying, tagging, and culling shall be performed at each lease holders marked area, or on raft(s) or boat adjacent to the farm or other permitted locations. The only exception shall be during severe winter ice, storm or causing hazardous working conditions or livestock threatened, at which time the Select Board may authorize license holders to temporarily work within a designated area under strict timeframe at the discretion of the Shellfish Constable and Harbormaster.
- 8. Exclusivity of License:** Licenses are issued to and for the exclusive use of the licensee, who may contract with or employ others to work for the licensee. Sub-leasing is prohibited. Licenses are renewable and heritable, subject to the Select Board's approval.
- 9. Death of the Sole Licensee:** Any license issued under the provisions of MGL c. 130, s. 57 shall, upon the death of the sole licensee, continue in full force and effect, subject to the same terms, conditions and regulations imposed by the original license, for the balance of the unexpired term, or one year, whichever is longer. This is for the use and benefit of the immediate family of the deceased licensee. For purposes of this section the term immediate family shall mean spouse, son, daughter, mother, father, brother, and sister of said deceased licensee. This section shall apply only when the deceased is the only licensee named on the license at the time of the death of said licensee.
- 10. Annual license Fee:** There is an annual license fee of twenty-five dollars (\$25) per acre or part thereof. The license fee shall be paid to the Town at the time the license is issued and shall thereafter be due on or before December 31st of each year. If the fee is not paid within thirty (30) days the license shall be forfeited.
- 11. Annual Report:** Licensees shall file annual reports with the to Select Board and Shellfish Department on or before February 28 of each year, as per s. 65 of MGL c. 130 and shall produce documents showing the total number of each kind of shellfish planted, produced or marketed during the preceding year upon or from such licensed area, unexpected mortality and an estimate of the total number of each kind of shellfish planted or growing thereon at the time of such report.
- 12. Substantial Use Clause:** There shall be minimum levels of investment and production required to retain a license. These shall be: During the first and second year after the date of issuance of the license a total of one thousand dollars (\$1,000) per acre shall be spent on seed and/or gear. During the third year and thereafter there shall be a minimum production of fifteen hundred dollars (\$1,500) worth of product per year, per acre from the practice of aquaculture in the licensed area, which shall be demonstrated by the annual report. Failure of the licensee to meet such a value for any three consecutive years thereafter may result in a forfeiture of the shellfish aquaculture license and licensed area. If the licensee does not meet the reasonable production value, then upon written request to the Select Board said production value may be waived at the discretion of the Select Board, provided the licensee can demonstrate to the Select Board that the cause of the lower amount was the result of a natural disaster or other unforeseen personal misfortune.

- 13. License Terms:** New licenses shall be issued for a period not to exceed three (3) years, for a maximum total area not to exceed one (1) acre. The licensee may apply for license renewal at any time within two years prior to the expiration of the current term. The Select Board shall review the licensee's request for renewal within sixty (60) days after the receipt of a renewal application. A license may be renewed for up to five (5) years. No person shall hold more than two (2) licenses or be licensed for more than a total of two (2) acres. This acreage limitation does not apply to any license sites existing as of the date of adoption of these regulations or sites dedicated to a single upweller or other similar nursery device.
- 14. Site Markings:** The licensee is responsible for providing, installing, and maintaining four (4) hard plastic yellow buoys to clearly mark the area at the license site in accordance with MGL c.130, sect. 61. The license number shall be clearly marked two (2) inches in height on those buoys. All cages and gear shall also be marked with the license number. Failure to do so may result in revocation of the license. The license holder assumes all liability for all the gear and tackle used in connection with the lease site. All subtidal equipment must allow boaters to properly navigate the body of water. There shall be no overnight mooring for any motorized vessel of any kind in the licensed area.
- 15. Changes to Licenses:** A request to make changes or deviate from the proposed plans included in the initial license application shall be submitted to the Select Board and all other relevant federal, state, and local agencies prior to changes being made. Should the Select Board or the Division of Marine Fisheries determine proposed changes to the license are significant and outside of the scope of the initial license approval and certification, they may choose to treat the request as a new license application and require a public hearing.
- 16. Enforcement:** The Shellfish Department shall be responsible for enforcing all applicable regulations and periodically checking that all the gear is within the bounds of the licensed area and that the buoys are clearly marked. As required by the state or Shellfish Constable, aquaculture licensed lease holders shall provide samples or be subject to closure until further notice. A chain of custody, time, and temperature control report shall be submitted to the lessee from the Shellfish Constable.

Violations of these rules and regulations shall subject the licensee to review and revocation of license by the Select Board, following a public hearing. Any person having such Aquaculture license (and acceptance of said license shall constitute agreement) and who violates any laws of the Commonwealth, or any regulations made by the Tisbury Selectboard relating to shellfish propagation or Aquaculture in said Town shall be subject to the following penalties:

- a. A verbal warning will be issued to the License/Lease Holder, documented, and reported to the Town Administrator by Shellfish Department staff; the License/Lease Holder has two (2) weeks / fourteen (14) days to rectify the violation.
- b. If the situation is not rectified after the two weeks/fourteen (14) days, the Shellfish Department staff shall issue a final and written warning giving the License/Lease Holder two additional two (2) weeks / fourteen (14) days to rectify the violation.

- a. If the situation is still not rectified within the two (2) weeks / fourteen (14) days of the written warning, the License/ Lease Holder will appear before the Board of Selectmen for License/Lease review, revocation, or non-renewal.
- b. Three (3) or more written warnings within a twelve (12) month period will result in the License/Lease Holder appearing before the Board of Selectmen for License/ Lease review, revocation, or non-renewal.
- c. License/Lease disciplinary Revocation or Non-Renewal will include notification to the Massachusetts Division of Marine Fisheries and requires that the License/ Lease Holder remove all equipment from the lot and/or sale to the next License/ Lease Holder if they so agree, within sixty (60) days from the date of the License/lease revocation/non-renewal. This action supersedes the term of the lease; all other regulations apply.
- f. If the License/Lease Holder fails to clear the licensed site to the satisfaction of the Town Administrator, the License/Lease Holder is liable for, and the Town of Tisbury may recover the cost of clearing the lot including but not limited to: establishment of abandonment, legal fees, transport/haulage, disposal and staff time.

17. Transplanting of Wild Stock: No person shall transplant seed, seed stock, or stock from the public fisheries within the Town of Tisbury for purposes of stocking a licensed aquaculture site with such seed or seed stock.

18. Site Gear: All grow out equipment is permissible in accordance with state and federal law.

- a. Aquaculture working rafts are permitted within the leaseholders' grant site. All rafts, buoys, and grow out equipment must always remain within the bounds of the licensed area.
- b. Aquaculture Moorings: The Harbormaster, if requested by the applicant and authorized by the Select Board, shall issue moorings for the sole and exclusive use of aquaculture as required in the Army Corps of Engineers application process.
 - i. Aquaculture moorings shall be used for rafts, for the sole purpose of growing, upwelling, antifouling, culling, and/or sorting.
 - ii. Aquaculture moorings shall be exempt from annual mooring fees and be subject to all other mooring regulations as outlined in the Tisbury Waterways Regulations.

Approved by the Tisbury Select Board on October 1, 2019.

Revised by the Tisbury Select Board on February 7, 2024.

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