

## **Town of Tisbury Aquaculture license Regulations**

By the authority vested in the Selectmen of the Town of Tisbury by Chapter 130 of the Massachusetts General Laws (MGL) authorizing the Selectmen to issue shellfish aquaculture licenses (herein referred to as the “license”) within the Town of Tisbury, the Selectmen 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 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.
- 2. Eligibility:** Applicants applying for a license shall:
  - a. Meet the requirements to hold a Tisbury commercial shellfish permit as required in Section 2 (a-d) of the Town of Tisbury commercial shellfish permit regulations; and
  - b. Have held a Tisbury commercial shellfish permit for the three years preceding the date of application for a license; or
  - c. Provide a letter(s) of support detailing work performed and other relevant training or experience with shellfish aquaculture or propagation.

Applicants eligible based on past commercial shellfishing experience shall provide copies of their state landings reports for the preceding three years as part of their license application.

- 3. Moratorium:** The Board of Selectmen 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 kept 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 his/her desire to remain on the list.
  - 1. The Town Administrator's Office must receive said notice, on forms supplied by the Town Administrator's office, 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 five (5) hard copies 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 must 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 will 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 and minimize impacts to navigation, wild fisheries, marine resources, and other users.
- b. 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.
- c. In addition to the documentation required in Section 2(c) of these regulations, applicants that do not currently hold a Tisbury commercial shellfish permit shall provide the documentation required in Section 2 (c-d) of the Town of Tisbury commercial shellfish permit regulations.

- d. 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.
- e. Applications submitted without the information, documentation, and application fee required in these regulations, in section 5 (a-d), shall be considered incomplete and returned to the applicant and the application fee shall be deemed forfeited.

**6. License Application Review:** An application for a new license shall be reviewed to determine whether the application and proposed plan meets the requirements of these regulations and the provisions of other relevant local and state bylaws, regulations, and statutes.

- a. Considerations during the review of license applications include, but are not limited to:
  - i. If the proposed project is consistent with the intent of these regulations to protect and preserve the existing fisheries and minimize impacts on the marine environment and other public rights.
  - ii. If the application and proposed project is designed to cause no substantial adverse effect on the shellfish or natural resources of the Town;
  - iii. If the issuance of the license will obstruct navigable waters or other public uses of waterways.
- b. Review of Applications for Completeness: Upon receipt of an application for a license, the Town Administrator's Office shall distribute copies of the application to the Shellfish Constable, Harbormaster, Conservation Agent, and other relevant municipal boards, departments and/or officials as provided in section 6 (f) of these regulations, and request their review and a preliminary written determination to the Board of Selectmen as to the completeness of the application. This review and subsequent determinations are to ensure that the application contains sufficient information to demonstrate that the proposed project is designed to be consistent with the provisions of these regulations, and other relevant local and state laws and regulations, and if the project may require subsequent filings and review under other local or state bylaws, regulations, and/or statutes. This preliminary review provides the applicant the opportunity to make

amendments to the application prior to the formal public hearing and review by the Selectmen.

c. Shellfish Constable Review: The Tisbury Shellfish Constable shall review the application with respect to:

- i. Proof of the applicant's eligibility for a license as required in Section 2 (a-d) of these regulations and MGL Chapter 130;
- ii. If the application contains sufficient information to ensure consistency with these regulations and all other applicable local shellfish bylaws and regulations;
- iii. Potential impacts to existing commercial and recreational fisheries and Town propagation efforts, and if the applicant has demonstrated in the application sufficient measures to avoid and/or minimize those impacts by properly locating the site and other means;
- iv. If the project may require subsequent filings and review under other local or state bylaws, regulations, and/or statutes related to shellfishing and shellfish aquaculture under the Constable's authority.

d. Harbormaster Review: The Tisbury Harbormaster shall review the application with respect to:

- i. If the application contains sufficient information to ensure consistency with all applicable local waterways bylaws and regulations, and/or statutes;
- ii. Potential impacts to navigation and public uses of waterways, and if the applicant has demonstrated in the application sufficient measures to avoid and/or minimize those impacts by properly locating the site and other means; and,
- iii. If the project may require subsequent filings and review under other local or state bylaws, regulations, and/or statutes related to waterways and navigation under the authority of the Harbormaster.

e. Conservation Commission Agent Review: The Tisbury Conservation Agent shall review the application with respect to:

- i. If the application contains sufficient information to ensure consistency with local bylaws and regulations related to wetlands;

- ii. Potential impacts to wetlands resources, and if the applicant has demonstrated in the application sufficient measures to avoid and/or minimize those impacts by properly locating the site and other means; and,
  - iii. If the project may require subsequent filings and review under other local or state wetlands bylaws, regulations, and/or statutes under the authority of the Conservation Commission.
- f. Other Department Review as Required: The Town Administrator or Board of Selectmen may require preliminary review of license applications by other local boards, departments and/or officials, as they deem necessary. If such determination is made, the Town Administrator or Board of Selectmen shall specify in writing the terms of such review.
- g. Preliminary determinations made under the provisions of this section shall be submitted in writing to the Selectmen and applicant within thirty (30) days of the initial request for review by the Town Administrator's Office. Failure to submit a written determination within thirty (30) days shall be deemed as concurrence of the application's completeness.

**7. Selectmen Hearing and Public Notice:** Within sixty (60) days of receipt of a determination of completeness as outlined in Section 6 of these regulations, the Selectmen shall hold a public hearing on the application for a license.

- a. The Selectmen shall post a notice of the public hearing, consistent with the provisions of MGL Ch. 130, sec. 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 will be made available for review at the Town Hall.
- b. The Selectmen shall notify the applicant a minimum of thirty (30) days prior to the hearing of the time, place and date. The applicant will 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.
- c. Abutters must be notified a minimum of ten (10) days prior to the public hearing date. Certified mail receipts must be submitted to the Town Administrator's Office at least one calendar day prior to the hearing. Failure

to provide certified mail receipts shall be considered as a request for postponement by the applicant.

- d. Upon review of the application and following a public hearing, the Selectmen may grant the license, grant the license with conditions, or deny the license.
  - e. Approval of a license by the Selectmen 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.
  - f. Licenses issued under the provisions of MGL Chapter 130 and these regulations are 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 aforementioned laws, rules and regulations is deemed grounds for the revocation of the license.
  - g. 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 will 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.
- 8. Performance Bond:** The licensee shall post a five hundred dollar (\$500.00) bond to be used to recoup any costs incurred by the Town as a result of improper exercise of the license.
- 9. 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 Selectmen's approval.
- 10. Death of Licensee:** Any license issued under the provisions of MGL Ch. 130, Sec. 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.

**11. Annual license Fee:** There is an annual license fee of twenty-five dollars (\$25) per acre or part thereof. The license fee must be paid to the Town at the time the license is issued, and shall thereafter be due on or before December 31<sup>st</sup> of each year. If the fee is not paid within thirty (30) days the license shall be forfeited.

**12. Annual Report:** Licensees shall file annual reports with the Shellfish Department on or before February 28 of each year, as per section 65 of MGL Chapter 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.

**13. Substantial Use Clause:** There shall be minimum levels of investment and production required in order 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 on 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 Selectmen said production value may be waived at the discretion of the Selectmen, provided the licensee can demonstrate to the Selectmen that the cause of the lower amount was the result of a natural disaster or other unforeseen personal misfortune.

**14. 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 then current term. The Selectmen 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


- 15. Site Marking:** The licensee is responsible for providing, installing and maintaining four (4) hard plastic yellow buoys to clearly mark the corners of the license site. The license number must be clearly marked two (2) inches in height on those buoys. All cages and gear must also be marked with the license number. Failure to do so will result in revocation of the license. The license holder assumes all liability for all the gear and tackle used in connection with the license. All gear, except buoys, must be submerged so as not to interfere with boat passage. There will be no overnight mooring of any boats, barge or vessel of any kind in the licensed area.
- 16. Changes to licenses:** A request to make changes or deviate from the proposed plans included in the initial license application must be submitted to the Selectmen and all other relevant federal, state, and local agencies prior to changes being made. Should the Selectmen 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.
- 17. 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. The Shellfish Department also has the authority to obtain samples of any species held in the licensed area for the purpose of certified testing for disease.
- 18. 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.
- 19. Revocation:** Violations of these regulations will subject the licensee to review, and possible revocation of license, by the Board of Selectmen, following a public hearing. If the license is revoked, the licensee has thirty (30) days from said date to remove all gear and tackle from the waters and substrate. Any and all gear and tackle not removed within the thirty (30) day period may be removed by the Town at the expense of the licensee. The licensee shall post a



five hundred-dollar (\$500.00) bond to insure compliance with the above provisions.

Approved by the Tisbury Board of Selectmen on October 1, 2019.

  
Melinda F. Loberg,  
Chairman

  
James J. Rogers, Vice  
Chairman

  
Jeff Kristal, Clerk