



Town of Fairhaven
Rules and Regulations Governing
Aquaculture

1. Prologue

The Town of Fairhaven (“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 Fairhaven pursuant to Massachusetts General Laws (MGL) Chapter 130, Section 57-68. Violation of any of the requirements in these Regulations will subject 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 applicable 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, over-harvesting, environmental contamination, impact on native stock and species and negative impacts on the use of public waterways where grants are situated.

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 Selectmen's office 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 complete and submit all information and forms required by the Town, and applications 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 five hundred (500) feet of any point along the perimeter of the proposed licensed area. Additionally, the applicant should include a statement of the proposed benefits to the Town's waters and the overall shellfish population. The application shall include a narrative clearly stating the public benefits expected to result from the proposed project. The public will be notified of public and abutters will receive written notification of hearings to be held by the Fairhaven Marine Resources Committee and the Board of Selectmen concerning the application .
- 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, and the remainder is for costs incurred in reviewing the application. The application fee must be submitted with the completed

application. The application fee is subject to change at the direction of the Board of Selectmen.

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 to resubmittal.

3.1.6 For any renewal without amendments, the licensee need not file a new application.

3.2 Public Hearing and Notice

3.2.1 The Board of Selectmen shall notify the applicant at least (30) days prior to the public hearing of the time, date, and place of the hearing. Notice of the Public Hearing shall be posted in three (3) or more public places, and published by the applicant in a newspaper with local distribution at least fourteen (14) days prior to the date and time of the hearing. The notice of Public Hearing shall state the applicant's name and residence, date, time and place of Public Hearing, the filing date of the application, and the location, area and description of the territory subject to the application. All cost associated with publication are the responsibility of the applicant.

3.2.2 Upon receiving a completed application, the Board of Selectmen shall forward copies of the application to the Shellfish Warden, the Harbormaster and the Marine Resources Committee 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 the application with or without conditions, or may deny the 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 deems proper.
- 3.3.2 Upon approval of an application by the Board of Selectmenthe applicant shall request an inspection of the licensed area by the Division of Marine Fisheries (“DMF”) for its certification that the granting of a license and operation there under will cause no adverse harm to the shellfish or other natural resources of the Town. Failure of the DMF to so certify shall be deemed a denial of the requested license.
- 3.3.3 Upon certification by the DMF as set forth in Section 3.3.2, the Board of Selectmen may grant the requested license, subject to the provisions of M.G.L. Chapter 130, Section 54 authorizing the declaration of a close season for any or all kinds of shellfish for not more than three years in such waters, flats or creeks, not then the subject of a private grant, within the limits of the Town, as the Board of Selectmen deems proper and provided, further, that when any close season, declared as aforesaid, shall have ended, such flats, waters or creeks shall not within two years thereafter be licensed for the private cultivation of shellfish.
- 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, all as may be applicable.

- 3.3.5 The granting of a license may be conditioned upon the applicant obtaining, and maintaining in good standing, all applicable licenses, approvals and/or permits, which shall be appended to the aquaculture license. A copy all applicable licenses, approvals and/or permits shall be kept on file in the Selectmen's Office. The records shall be open for public inspection during regular Selectmen's office 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 interest of the Town.

4. Licenses

4.1 Existing Licenses

- 4.1.1.1 Aquaculture licenses in existence before the effective date 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 imposed by the Town of Fairhaven at the time the license was granted.

- 4.1.1.2 Aquaculture licenses in existence before the effective date of these Regulations, and their subsequent renewals, shall be subject to the provisions of these Regulations, with the exception of sections 4.2, 5.3, and 6.4.1.
- 4.1.1.3 Any proposed expansion of an aquaculture license, whether issued before or after the effective date of these Regulations, to cover additional areas shall be treated as a new license application and shall be subject to all of the provisions of these Regulations.
- 4.1.1.4 An aquaculture license which has been expanded pursuant to section 4.1.1.3 will be subject to renewal based upon the date of the original issuance of that license, without regard to the expansion of the area subject to that license.

4.2 Eligibility

- 4.2.1 The applicant must show proof of continuous residency in the Town of Fairhaven for one year prior to submission of the application. The licensee must continue to reside in the Town of Fairhaven for the term of the license.
- 4.2.2 The applicant shall be 18 years of age or older.
- 4.2.3 The applicant must be able to demonstrate documented evidence of education or experience in shellfish propagation and aquaculture that is acceptable to the Fairhaven 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.
- 4.2.4 The applicant shall have no prior shell fishing violations.
- 4.2.5 The applicant must be a U.S. Citizen.

4.3 Annual Fee

4.4 Duration and Renewal

- 4.4.1 Licenses granted by the Board of Selectmen are intended to be on a trial basis. The initial license will be for a two year period, extendable for a third year following a compulsory two year review by the Board of Selectmen. Licensees may request, only after the compulsory review, an extension of the license for the third year. Extension shall be subject to the approval of the Board of Selectmen.
- 4.4.2 The first license renewal shall be for a term of up to three (3) years. ., Subsequent renewals shall be for a term of up to ten (10) years.
- 4.4.3 The Board of Selectmen shall review each license at the end of its term to ensure a reasonable amount of shellfish has been planted and produced on the licensed area during the preceding year. The Board of Selectmen may waive the minimum production requirements in any year where 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 Following the first renewal, 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 then current 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. The licensee or those employed by the licensee's aquaculture business are the only parties allowed to harvest and tag shellfish from the permitted aquaculture area.

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 the license shall first notify the licensing authority in writing that the licensee no longer wishes to operate the license and requests transfer of the license to a designated recipient. The designated recipient shall thereupon file an application with the Town. The application shall be treated, insofar as applicable, as a new application. The designated recipient must be a qualified person pursuant to sections 4.2.1 through 4/2/4 of these Regulations.

4.6 Liability and Insurance Requirements

4.6.1 The licensee is required to maintain business liability insurance and a performance bond sufficient to cover the costs of gear removal and site restoration. The 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, the applicant must provide 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 other event. All quotations shall be applied a safety/inflation factor based on the average of the last 10 NE CPI² for the expected duration of the license period. The 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 the required insurance and bond shall be on file at the Fairhaven Town Hall and shall be a requirement for obtaining final approval by the Board of Selectmen. License renewal shall be granted only if annual catch (shellfish production) reports are submitted in a timely fashion along with bond and insurance information for each licensed year.

- 4.6.2 The licensee shall release and hold harmless and agree to indemnify the Town, its officers, agents and employees, from any injury to, or any claim made, by the licensee or by any other person for damages, of any sort whatsoever, whether considered direct, consequential or special, arising from or related to, the license, the licensed area, the licensee's equipment, the licensee's stock, any other property of the licensee, or the operations of the licensee.

4.7 Penalties/Revocation Policies

- 4.7.1 Subject to the provisions of section 4.7.3 below for violation of these Regulations, failure by a licensee to comply with the provisions of any other applicable 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. The licensee shall have five days following written notice to comply with the provisions of these Regulations. After five days, if the licensee is still not in compliance, a fine of not more than one hundred dollars (\$100.00) for each offense shall be issued. After thirty-five (35) days, if the licensee is still not in compliance, the licensee may be revoked pursuant to the provisions of sections 4.7.1 and 4.7.2 above. The Board of Selectmen may 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 licensee.

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 all requirements set forth in these Regulations.

5.2 Town Review Requirements

- 5.2.1 All proposed license areas are subject to review by the Harbormaster, who shall submit his findings to the Marine Resources Committee.
- 5.2.2 Based upon the findings of the Harbor Master, and such other information it shall choose to consider, the Marine Resources Committee shall make a recommendation to the Board of Selectmen regarding the suitability of the proposed licensed area.

5.3 Total Size

5.3.1 A licensed area shall be determined when the license is issued. Licensed areas shall not exceed two acres, unless subject to a license granted before the effective date of these Regulations.

5.3.2 A license holder may apply for an extension to a licensed area or an additional licensed area after completing the 3rd year of operation under the original license. The license holder must have a proven record of properly managing the original licensed area, compliance with all applicable town and state laws, and a record of successfully planting, producing and marketing shellfish, to qualify for an expansion to a licensed area, or an additional licensed area.

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 violation of this section may result in revocation of the license and seizure of all shellfish remaining on the licensed area.

6.2 Equipment Type

6.2.1 The Board of Selectmen may restrict the type of equipment (floating, submerged or bottom-mounted cages, bags, buoys, or stakes) used in the licensed area.

6.2.2 Any changes to the type of equipment used in the licensed area shall be subject to prior approval by the Board of Selectmen after public notice and hearing in accordance with the requirements for an application for a new license.

6.3 Equipment Markings

6.3.1 All unusable gear shall be removed from a licensed area and either disposed of properly or moved to an appropriate site.

6.3.2 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 -; provided, that a licensee in so doing shall not commit any unreasonable, unnecessary, 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 may recover the equipment, at the expense of the licensee.

6.3.3 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-five (35) days of the license termination date. Any and all gear, tackle or other equipment not removed within thirty-five (35) days may be removed by the Town at the expense of the prior licensee.

6.4 Transplanting and Harvesting of Shellfish Product

6.4.1 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.

6.4.2 No person shall transplant seed shellfish, 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.

6.4.3 All seed shellfish transferred to the licensed area shall be obtained from hatcheries certified by the DMF and approved by the Board of Selectmen on the license.

6.4.4 The licensee shall not remove or introduce any seed shellfish from or to any waterway other than from the licensed area.

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6.4.5 Licensees are subject to the provisions of regulations of the Department of Public Health C.533.000: FISH AND FISHERY PRODUCTS. A violation of the regulations of the Department of Public Health shall be considered a violation of the conditions of a license issued under these regulations.

7. Monitoring

7.1 The Shellfish Warden 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 Warden 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 Warden or assistant shall contact the licensee by telephone or by leaving a notice at the address of the licensee indicated on the license, advising the licensee that the Town intends to inspect the contents of containers on the licensed area and further inviting the licensee to be present at the time of the inspection. In the event that the Shellfish Warden or assistant does not receive a response from the licensee within 48 hours of notification by phone or written notice, the inspection of containers may be conducted without the presence of the licensee.

7.2 The Town 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 in the licensed area are in accordance with the requirements of these Regulations.

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 February 28 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 Licensees are subject to the provisions of the regulations of the Division of Marine Fisheries 322 CMR 15.08 (4). A violation of the regulations of the Division of Marine Fisheries shall be considered a violation of the conditions of a license issued under these regulations.