

# **Town of Plymouth**

## **Aquaculture Regulations**

### **1. PROLOGUE**

The Town of Plymouth (“Town”) advocates the orderly development of aquaculture that is complementary to the continuing development of the Town’s shellfishery as it pertains to shellfish aquaculture licenses. In determining whether to grant a license, the Town is obligated to protect and preserve the existing fisheries and to minimize the impact on other uses of the marine environment. The right of public navigation through a license shall not be infringed upon except in areas containing approved structures that are properly marked according to these regulations. The size and scope of a 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 AUTHORITY**

The following regulations concerning the licenses are adopted as part of the shellfish management plan of the Town of Plymouth, pursuant to Massachusetts General Law Chapter 130, Section 57, as amended. 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 (“licensing authority”)

#### **2.2 AUTHORIZED USES**

A license shall authorize the licensee at all times of the year, in upon, or from a specific portion of coastal waters of the Commonwealth, of tidal flats or land under coastal water to:

- plant or grow shellfish, bottom/off-bottom culture
- place shellfish in or under protective devices affixed to the tidal flats or under coastal waters, within boxes, pens, or nets
- harvest and take legal shellfish
- plant cultch for the purposes of catching shellfish seed
- grow shellfish by means of racks, rafts or floats

### **3. PRIVATE PROPERTY RIGHTS**

Licenses granted under these paragraphs do not convey property rights. Any use of a license for other than digging and taking shellfish upon privately owned property shall not proceed over the objections of the property owner. Pursuant to MGL Chapter 130 Section 57, a license does not impair the private rights of any person. A license does not authorize injury to private property or invasion of private rights. The granting of a license is not a determination of title or ownership of a licensed area. The licensee acknowledges, it is the responsibility of the licensee to obtain permission, if required, from the private property owner before exercising the rights conferred by a license other than for digging and taking of shellfish.

### **4. COMPLIANCE WITH FEDERAL, STATE AND LOCAL REQUIREMENTS**

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 regulation shall be cause to revoke a license. The licensee is expected to be familiar with relevant laws and regulations.

### **5. ELIGIBILITY**

#### **5.1 PROOF OF RESIDENCY**

Licenses shall be granted only to residents of the town who can prove to the satisfaction of the licensing authority that they are, indeed, a bona fide domiciled resident of the Town and have been domiciled within the Town for at least twelve (12) consecutive months prior to the date of application. All local tax obligations must be paid in full in order for an application to be considered. A licensed area shall be forfeited if the licensee ceases to be a bona fide domiciled resident of the Town. Waiver of the residency requirement for licenses on privately owned tidelands can be authorized by the licensing authority.

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### **6. MORATORIA**

The licensing authority 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. The licensing authority will consider applications for licenses on a first come first serve basis, within the limitations of acceptable land and water space. Further the licensing authority reserves the right to review the entire Aquaculture program and may amend these Regulations at any time.

### **7. APPLICATION PROCESS**

#### **7.1 FEES**

The following fees are associated with the Aquaculture license program:

- A seventy five dollar (\$75.00) non-refundable application fee at the time of submission.
- A fifty five dollar (\$55.00) advertising and legal notice fee for the public hearing shall be made payable to Gatehouse Media at the time of application submission.
- An annual permit fee of twenty five dollars (\$25.00) per acre will be payable at the time of the License approval and then before December 31st each calendar year.

#### **7.2 APPLICATION SUBMITTAL**

a) The completed application shall be submitted to the licensing authority in hand, or by United States Postal Service certified mail, return receipt requested.

b) The application shall be on forms provided by the Town, and shall include a map or plan of the proposed project sufficient to locate the licensed area accurately, and to describe the licensed area in metes and bounds. In addition, at the time of application submittal, the applicant must file with the licensing authority a shellfish development plan (on the form).

c) All documents in accordance with this paragraph submitted shall be submitted under the pains and penalties of perjury. The Town assumes no responsibility / liability for incomplete or missing attachments.

d) The applicant shall also submit any other information as requested by the licensing authority.

e) No application shall be deemed received until all the requirements for submittal of an application have been met.

#### **7.3 PUBLIC HEARING AND NOTICE**

a) 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 ten (10) 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.

b) The licensing authority shall notify the applicant at least fourteen (14) days prior to the public hearing of the time, date, and place of the hearing.

c) The applicant will be required to notify all abutters (as certified by the assessor's office) and licensees within seven hundred fifty (750) feet of any point along the perimeter of the requested licensed area by certified mail return receipt requested. The notice to abutters and licensees must be made at least 10 days prior to the public hearing date.

d) The U.S. Postal Service Receipt for Certified Mail for each notice shall be submitted to the licensing authority at or before the time of the hearing.

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### 7.4 LICENSE GRANTING

a) Upon receiving a completed application, the licensing authority shall forward copies of the application to the Shellfish Constable and Conservation Commission for comment. Written comment shall be returned to the licensing authority within thirty (30) days of being received by the Constable and the Commission. In reviewing the application, the licensing authority may consider, but is not bound by, submitted comments.

b) Upon reviewing the application, and following the public hearing, the licensing authority may grant a license with or without conditions or deny a license. Licenses shall be granted or denied in writing within sixty (60) days after receipt of the written application and shall be granted upon forms supplied by the licensing authority and upon such terms and conditions and subject to such terms, conditions and regulations as the licensing authority deem proper, but not so as to impair or to materially obstruct navigational waters, and a license shall describe by metes and bounds the waters, flats or creeks covered thereby.

c) In the event that the licensing authority shall fail to take vote on a license application within sixty (60) days after receipt of the application for a license, such failure shall be considered an approval of the application.

d) Licenses granted by the licensing authority are intended to be on a trial basis. To start, licenses may be granted for a three (3) year period with a compulsory two (2) year review by the licensing authority. Licensees may request, only after the compulsory review, a renewal of a license the third year. Renewal shall be subject to the approval of the licensing authority. The licensing authority and the Shellfish Constable shall review each license annually to ensure a minimum investment of at least one thousand five hundred dollars (\$1500.00) per acre for gear and seed stock for the licensed area. A licensee, whether an individual, corporation or LLC (including shareholders and members thereof), may not have interest in more than one (1) license. For the purposes of this paragraph, one (1) license shall be the maximum acreage (singly or aggregate) allowed

by law, that may be granted to an individual. Licenses not exceeding four (4) acres in size may be issued on publicly owned tidelands. The maximum license acreage on privately owned tidelands will be handled on a case by case basis at the discretion of the licensing authority.

e) In the event the licensing authority 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 thereunder 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.

f) Upon certification by the DMF, the licensing authority 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.

g) 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. Prior to operation, an accurate and to scale recorded plan defining the boundaries of a license, together with a full specific description of the licensed area shall be submitted. Upon completion of the plan, the applicant shall have the boundaries marked as prescribed by Paragraph 8.4.

h) 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.

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i) Licenses pursuant to this Paragraph shall be subject to any rules and regulations promulgated by the Department 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.

#### **7.5 CRITERIA FOR LICENSE GRANTING, RENEWAL AND TRANSFER**

In reviewing an application for a new or amended license; or for license renewal or transfer, the licensing authority shall determine whether the shellfish aquaculture plan proposed by the applicant meets all of the requirements of these Regulations and the provisions of MGL Chapter 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 Town; whether the granting of a license will not impair the private rights of any person and will not materially conflict with the purposes of these Regulations to protect and preserve the existing fisheries and minimize impact on other uses of the marine environment. Licenses are permissible beyond seven hundred fifty (750) feet from mean high water. This requirement is not applicable in areas that are separated from the shoreline or mean high water line by guzzles or channels containing water at mean low water as interpreted by the licensing authority. Applications cannot be approved if the area conflicts with existing laws or uses. For any renewal, the licensee need not file a new application.

## **8. TERMS OF THE LEASE**

### **8.1 EXCLUSIVE USE**

A licensee, or their legal representative, in accord with the terms set forth in these regulations shall have during the term of a license or renewal thereof the exclusive use of all waters, flats, or creeks

described in a license, and the exclusive right to take all shellfish therefrom during the time therein specified, subsequent to the granting of a license or the renewal thereof, as the case may be; provided that this paragraph shall not be construed to authorize any taking prohibited by law.

### **8.2 RIGHT TO TRANSFER AND SUBLEASE**

a) Licenses are granted to and for the exclusive use of a licensee. Subleasing of the licensed area or portion thereof is prohibited.

b) Except as provided herein licenses are renewable, heritable and transferable subject to the approval of the licensing authority and pursuant to MGL Chapter 130.

c) A license may be transferred to a person, corporation, or LLC in accordance with M.G.L. ch. 130 upon written request of the license holder to the licensing authority. Thereafter, a public hearing shall be held and, subject to the approval of the licensing authority, the license may be transferred. Any person, corporation or LLC to whom the license is being transferred shall be subject to the provisions of these regulations including, but not limited to, Regulation 5.1. The proposed transferee shall thereupon file an application under paragraph 7 of these Regulations. Thereafter, the license shall be treated, insofar as applicable, as a new application. In the event of a change of ownership of an LLC or corporation, such change will require a public hearing of the licensing authority. At the option of the Town, the applicant may be required to pay for the legal consulting fees incurred by the Town to review any applications or transfer requests. An existing leaseholder may transfer his/her leasehold interest to a corporation or LLC owned or controlled by that person if approved after a public hearing before the licensing authority.

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### 8.3 ASSIGNMENT OF LEASES

a) In the event a license becomes available as a result of being involuntarily revoked, abandoned, and is not otherwise transferred in accordance with section 8.2(c) above or privately owned tidelands, the next applicant on the waiting list will be given an opportunity by certified mail to accept this available lease area or another area that may be approved under the permitting process.

b) Names of applicants will be drawn from the waiting list in order, starting with number one and so on. These names will be of persons who have made application to the licensing authority and whose names were drawn from the lottery for placement.

c) Notice of the lottery to form the waiting list will be advertised for one week in a local paper. Two weeks after advertising, the licensing authority, at a regularly scheduled public meeting, will draw names of those applicants and post the waiting list in the order of drawing.

d) There will be ONLY one drawing to create the waiting list. After that, those persons wishing to be placed on the waiting list must submit a completed application with the licensing authority or their agent and be put last on the list in the order that the application was received.

e) The applicant shall respond in writing to the Administrator of the list within ten (10) business days after being contacted indicating if they accept or reject the offer. If a response is not received within ten (10) business days it will be considered a pass and the application will be removed from the waiting list.

f) Applicants must fulfill all requirements set forth in these Town of Plymouth Shellfish By-Laws, rules and regulations.

g) If, for some reason, the first on the list either fails or refuses to accept the available license, he will be removed from the list and the number two applicant will advance in position, and so on.

h) The licensing authority reserves the right to screen all applicants and deny them either a position of the waiting list or a license (lease).

i) The official list will be maintained and posted in the Harbormaster/ Shellfish Constable's office.

j) Applicants on the waiting list must renew their application annually in the month of January. Those not complying will be REMOVED from the list. A revised list shall be posted in the second week of February of each year.

k) No person on the waiting list may "pass down", transfer or otherwise assign his position on the list.

l) Applicants shall completely fill out and submit a waiting list application. All applications shall be complete, signed, dated and received by the Harbormaster's Office

m) The Town of Plymouth is not responsible for incomplete or lost applications.

n) All applications and attachments submitted to the Town shall become the property of the Town of Plymouth.

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### 8.4 MARKING OF BOUNDARIES

a) The licensee upon receiving his/her license shall cause the territory covered thereby to be plainly marked out by monuments, marks, or ranges and to mark the license boundaries (corners) with stakes. Each boundary stake is to be a plastic pole with a diameter no greater than 1.5 in. not higher than 18" above the surface of the licensed area with attached a painted yellow sign, measuring 8" x 10" with two inch block black lettering with the words PRIVATE LICENSE NO.\_\_\_\_". Signage shall be visible at mean low tide only. If rafts or any other floatation devices are allowed and used they will be marked with plastic poles with a sign attached having the same terminology as above. Reflector paint or tape shall be used in a manner as to be visible during hours of darkness. Any such boundary marker shall be subject to the inspection and approval by the Shellfish Constable.

b) The boundaries of all hard structures and or devices shall be plainly marked with (6") yellow sphere buoys every 25 feet to be attached and anchored with a 36 inch length of 1/8 inch tire cord from the top of any hard structure or device. Each boundary corner of the area of hard structures and or devices shall be marked with (2) two (6") yellow sphere buoys as mandated above. Each (6") yellow sphere buoy shall be plainly marked in (black) on (2) sides with the uniform state waterway marking system (symbol) for : **DANGER!** . The licensee is required to apply for a private aids to navigation permit through the United States Coast Guard to ensure the license site is properly marked and registered.

c) No structure or device (except marking buoys, and as otherwise noted in this Paragraph) shall protrude more than eighteen (18") inches above the substrate. Shellfish may be rafted only in those areas so specified in a license. Shellfish rafting in areas outside the limit of any raft area shall be prohibited.

### 8.5 MARKING AND REMOVAL OF EQUIPMENT

a) All gear, tackle or other equipment must be indelibly marked with the lease site number conspicuously placed on each of piece of equipment.

b) 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.

c) When a license is terminated for any reason, the 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 licensee.

d) Each license holder is required to have a bond for the duration of the license term plus six (6) months to cover the cost of gear removal and license site cleanup if abandoned by the license holder.

### 8.6 SET-BACKS AND BUFFER AREAS

No activity shall occur within a distance of twenty-five (25) feet from beds of eelgrass, widgeongrass, or saltmarsh, nor shall such vegetation be damaged or moved. In addition, a buffer area of seventy-five (75) feet shall be maintained between licensed areas.

*Buffer areas, open to anyone and everyone on an equal basis, shall be maintained for access and retrieval of product and equipment. The lessee shall have 15 days to retrieve product and equipment from day of giving Shellfish Constable written notice.*

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#### **8.7 MINIMUM PRODUCTIVITY, ANNUAL REPORT, AND REVIEW BY TOWN**

a) An annual review of each license will be conducted by the Shellfish Constable in order to determine substantial use of the lease during the previous year.

b) If by the end of the third year, a licensee cannot show substantial use of the licensed area during the preceding year, his/her license may be subject to forfeiture. In accordance with M.G.L. Chapter 130, Section 57, for the purpose of this Paragraph, substantial use shall be defined as an expenditure of \$1,500 per acre per year for gear and seed stock specifically for the grant. Such expense shall be exclusive of vehicle / vessel or other business development expenses not specifically related to propagation of aquaculture.

c) Failure of a licensee to achieve substantial use of the licensed area for three (3) consecutive years thereafter shall result in a forfeit of his/her license. If for any year, a licensee does not meet the substantial use value, then upon written request to the licensing authority the substantial use requirement may be waived at the discretion of the licensing authority for that particular year provided that a licensee can demonstrate to the satisfaction of the licensing authority that the cause of the lower amount produced is the direct result of a natural disaster or other unforeseen cause.

d) Licensees shall file an annual report with the licensing authority in accordance with the form provided by the licensing authority, submitted no later than December 31 of each year. A licensee shall also submit upon request of the licensing authority receipts, purchase and sale slips, etc., reasonably requested by the licensing authority in support of this paragraph.

#### **8.8 PROHIBITIONS**

a) No person shall dig, take or carry 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 as to which a license under these Regulations. A licensee or transferee of a license

violating this paragraph shall forfeit his/her license and all shellfish remaining on the licensed area.

b) All shellfish transferred to the licensed area shall be obtained from hatcheries or sources certified by the DMF and as approved by the Shellfish Constable. Annually, no later than the 1<sup>st</sup> of February, the licensee shall seek in writing, on forms provided by the town, authorization from the Shellfish Constable to obtain seed, seed stock, or stock for the ensuing year from the hatcheries and or sources selected by the licensee. The Shellfish Constable will approve or deny the authorization request in writing, in a timely manner.

c) No person shall transplant shellfish or shellfish seed to the licensed area until the Shellfish Constable has been notified. Notification shall be in writing **prior** to any transplanting, and shall be attached to documentation of the source and species of the shellfish and copies of permits.

#### **8.9 REVOCATION OF LICENSE**

a) Failure of the licensee to comply with the provisions of any rule of regulation, term, condition, statute, or law may result in an order to revoke the license.

b) Revocation of any license pursuant to Section 8.9(a) 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.

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**9. OTHER REQUIREMENTS**

**9.1 AUTHORITY TO INSPECT**

- a) The Shellfish Constable and/or deputies shall have the authority to inspect the licensed area at any time deemed necessary and the inspection may include any and all containers on the licensed area.
- b) The Town reserves the right to obtain samples of any species held in the licensed area for the purpose of certification and testing for disease, and in order to assure that the activities begin performed under the authority of this regulation are in accordance with the terms and conditions described herein.

**9.2 CHANGES TO THE LICENSE**

- a) Proposed changes to a license and all additions of material investments, which may include, but are not limited to, rafts, floats, racks, cages, trays, nets, etc., must be submitted in writing to the licensing authority.
- b) The licensing authority, in its discretion, will determine if the changes are significant, such that further review is warranted. If the changes are found to be significant, the licensing authority shall hold a public hearing to review the proposed changes, public notice of which shall be given as described in Paragraph 7.3 of these Regulations.
- c) For the purposes of this Paragraph, a significant change shall include, but not be limited to, any amendment of a license which may affect the navigable waters; which changes the form of aquaculture or the category of aquaculture performed by the licensee; and any changes which may impact the marine environment.
- d) Upon review of the proposed changes, the licensing authority may approve or deny the proposed changes.

**9.3 TOWN REQUIREMENTS AND RECORDS OF LICENSES GRANTED**

- a) The Town shall keep plans showing all licensed areas, and in a book devoted to that purpose only, a record of each license granted and transfers or renewals thereof, which shall include the name and residence of the licensee or transferee, the dates of granting the license, transfer, renewal, and expiration thereof, and a copy of the description of the licensed area.
- b) Each license, transfers, or renewals thereof, shall forthwith after the granting thereof be transmitted by the licensing authority to the Town Clerk, who shall enter the name in a book kept especially therefor in its office.
- c) The records shall be open for public inspection at all reasonable times.
- d) The licensing authority, at the expense of the Town, shall provide application forms for licenses including these Regulations and procedures, forms for transfer or renewal, and for annual reporting.

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### **9.4 LIABILITY OF THE TOWN**

a) The licensee shall not hold the Town liable for any damages or injury to the licensed area.

b) In addition the licensee shall not hold the Town liable for any damage or injury to the licensed area due to any dredging or improvements done in the best interests of the Town. If at any time it becomes necessary to dredge and/or otherwise accomplish maintenance dredging on or within the vicinity of the licensed area to improve or maintain channels for navigation, a licensee agrees not to obstruct the dredging plans and operations. A licensee will have ninety (90) days notice prior to commencement of any dredging operation. Before, during and after dredging operations are completed and if, in the opinion of a licensee, the Shellfish Constable and the state marine biologist, the bottom conditions are considered temporarily unsuitable for planting or maintaining shellfish, immediate and temporary permission for relocation of a licensee's stock shall be reviewed by the licensing authority. In the event that shellfish need to be relocated under these conditions, they shall be relocated at the expense of the licensee. All foregoing Regulations shall apply to any temporary placement of shellfish.

### **10. ENFORCEMENT AND PENALTIES**

a) The Shellfish Constable and Deputy Shellfish Constables have enforcement authority relating to Aquaculture in the Town of Plymouth

b) The penalty for violations of any of these Regulations shall be a fine not less than twenty five dollars (\$25.00) nor more than two hundred dollars (\$200.00) for each offense and the revocation of license or permit or both.

### **11. OTHER**

If any provision of these Regulations is declared invalid by any court or tribunal of competent jurisdiction, the remaining provisions of these Regulations shall not be affected.