

**Town of Duxbury**  
***Shellfish Aquaculture Grant Regulations***  
***“Grant Program”***

**1. PROLOGUE**

The Town of Duxbury (“Town”) advocates the orderly development of private aquaculture that is complementary to the continuing development of the Town's shellfishery. In support of this goal, the Town will issue Shellfish Aquacultural Grants (the “license” or “licenses”). Such licenses will be issued by the Town Board of Selectmen (the “licensing authority”). These Regulations govern licenses issued for the exclusive use of an area for aquaculture and do not govern permitting for general commercial or recreational shellfish harvesting.

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 area 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 common property commercial shellfisheries or other existing water-related activities.

**2. DEFINITIONS**

For the purposes of these Regulations, unless the context otherwise requires, the following words shall have the following meanings:

**Aquaculture** – the rearing of aquatic animals for food or the cultivation of aquatic plants for food.

**License Area** – the area shown on the licensee’s plan submitted with the application to the extent the area was approved by the Town for the license, including but not limited to the Exclusive Use Area, as defined in Section 17, below.

**Resident of the Town of Duxbury** – Any person who maintains a bona fide domicile in the Town of Duxbury for at least twelve (12) consecutive months prior to the date of any application made hereunder, as described further in Section 14, below.

**Shellfish** – includes clams, conchs, limpets, mussels, oysters, periwinkles, quahogs, razor clams, scallops, sea clams, sea quahogs, sea scallops and winkles, in accordance with M.G.L. c. 130, § 1.

**Shellfish Harvesting** – includes all the activities of the digging or taking of shellfish, sea worms, or eels up to and including the landing of same, pursuant to M.G.L. c. 130, §§ 52 and 100D.

### **3. AUTHORITY**

The following Regulations concerning shellfish aquaculture licenses are adopted as part of the Duxbury Aquaculture Management Plan of the Town of Duxbury dated January 12, 2009, pursuant to M.G.L. c. 130, §§ 52 and 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 licensing authority.

The licensing authority reserves the right to review or amend the Grant Program and to amend these Regulations at any time. Any such amendment(s) generally apply to all licenses unless stated otherwise in the amendment(s).

### **4. LICENSE APPLICATION PROCESS**

The licensing authority will consider applications for licenses on a first-come-first-served basis, within the limitations of available land and water space. Aquaculture space is a resource of limited availability and there is a need to protect aquaculture space through regulation. All applications for a license should be submitted, with the proper fees, to the Town Clerk for review by the licensing authority. For any renewal, the licensee need not file a full new application, but only an application for renewal.

- A.) Eligibility. All applicants for licenses under these Regulations must be at least eighteen (18) years of age and must be residents of the Town of Duxbury as described in Section 14, below. All local tax obligations must be paid in full in order for an application to be considered.
- B.) Fees are stated in Appendix A of these Regulations entitled, “Town of Duxbury Shellfish Aquaculture Grant Fee Information.”

### **5. APPLICATION SUBMITTAL**

The completed application shall be submitted to the Town Clerk by United States Postal Service certified mail, return receipt requested or by hand.

The application shall be on forms provided by the Town Clerk, and shall include a map or plan of the proposed area to be covered by the license. Such map or plan shall be sufficient for the licensing authority to locate that area accurately in person or on a map, and shall describe the proposed licensed area in metes and bounds, including the waters, flats, or creeks sought to be covered. In addition, the applicant must file a shellfish development plan (on the appropriate form) with the application describing the proposed use for the license. The applicant must demonstrate, on the application, that the applicant has the right to access and use the land that is the subject of the application. The application must include a specific analysis of land that will be subject to the license, the limits of that land (extreme low water line, mean low water line, etc.), and the rights to use that land are available to the licensee.

No license shall cover a land area greater than three (3) acres. All applications and attachments submitted to the Town shall become the property of the Town of Duxbury upon submission.

The Town Clerk shall review the application package for completeness and shall notify the applicant if any portion of the application is missing.

## **6. NOTICE OF PUBLIC HEARING**

Following receipt of a completed application, the licensing authority shall establish a public hearing date. No license shall be granted, transferred, amended, 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. Both posting and publication shall be done at least ten (10) days before the time fixed for the hearing, stating the name and residence of the applicant and, in the case of a transfer, the transferee, the date of the application, and the location, area, and description of the proposed or currently licensed area.

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.

The applicant will be required to provide notice of the hearing to all abutters to the license area (as certified by the assessor's office) and all other licensees within seven hundred (700') 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 ten (10) days prior to the public hearing date. 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.

## **7. PUBLIC HEARING AND REVIEW BY LICENSING AUTHORITY**

Upon receiving a completed application from the Town Clerk, the licensing authority shall forward copies of the application to the Shellfish Advisory Committee (the "Committee") and the Duxbury Bay Management Commission (the "Commission") for comment. The Commission and the Committee shall return written comment, if any, to the licensing authority within thirty (30) days. In reviewing the application, the licensing authority may consider, but is not bound by, comments submitted by the Committee or the Commission.

Licenses shall be granted, renewed, amended, transferred, or denied by the licensing authority in a written decision issued within sixty (60) days after receipt of the complete written application by the Town Clerk, unless an extension is granted by written agreement of the applicant. If the licensing authority fails to issue a written decision on a license application (including an application for renewal or transfer) within sixty (60) days after receipt of the completed application by the Town Clerk without a written extension from the applicant, the application will be deemed denied without prejudice to reapplication.

If, during the hearing, the licensing authority determines that it needs additional information in order to properly review the application, the licensing authority may request such additional information from the applicant, and may request that the applicant agree to extend the hearing time so that the additional information can be generated and considered. The applicant is not required to provide additional information or to agree to this request.

At the option of the licensing authority, the applicant may be required to pay for the legal and technical fees incurred by the licensing authority to review any applications, including for renewal, amendment, or transfer.

After review of the application and a public hearing regarding same, the licensing authority may grant, renew, amend, or transfer a license, with or without conditions, or the licensing authority may deny the application.

In reviewing an application for a new or amended license, or for license renewal or transfer, the licensing authority may grant the application only if the applicant demonstrates the following:

- A.) the shellfish aquaculture plan proposed by the applicant meets all of the requirements of these Regulations and the provisions of M.G.L. c. 130;
- B.) 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;
- C.) issuance of a license will not impair the private rights of any person; and
- D.) the issuance of a license 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 will only be issued for land more than seven hundred fifty feet (750') from the mean high water line. This requirement, however, 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. No license shall permit a licensee to impair or to materially obstruct navigational waters. The license, if issued, shall describe by metes and bounds the waters, flats, or creeks covered by the license.

All licensing decisions by the licensing authority are final.

## **8. LIMITED ENTRY FISHERY**

The licensing authority, at its discretion, may enact a Limited Entry Fishery. Upon such enactment, pending or new applications for aquaculture licenses shall be added to the Aquaculture Licensing Wait List (the "Wait List"). The licensing authority shall manage the Wait List chronologically which shall mean the order in which an application has been received with the date of the oldest application being first on the Wait List. If a license becomes available as a result of involuntarily revocation or relinquishment, the licensing authority shall notify persons on the Wait List, in chronological order, of the opportunity to apply for a new license.

Those persons wishing to be placed on the Wait List shall submit a completed application with the licensing authority or their agent and shall be placed on the Wait List in the order that an application is received. In order to remain in a given position on the Wait List, applicants shall renew their application annually in the month of January. It shall be the sole responsibility of the applicant to keep track of, and comply with, this annual requirement and the Town of Duxbury will not issue reminders of the annual deadline. Individuals who do not comply with this annual renewal requirement by January 31<sup>st</sup> will be removed from the Wait List. No Wait List applicant may transfer, bequeath, or otherwise assign their position on the wait list.

## **9. APPROVAL AND ISSUANCE OF THE LICENSE**

Licenses may be granted for up to a three (3) year period.

As described further in Section 23, below, an annual report must be filed by each licensee throughout the term of the license and an annual review of each license will be conducted by the Shellfish Constable throughout the term of the license. In addition, during the initial period of any license, each license will have: (1) a compulsory physical review of the licensed area by the Harbormaster or his staff after one year or just before the expiration of the first term of the license, whichever comes first, and (2) an annual review by the Committee to ensure that a reasonable amount of shellfish has been planted and produced in the licensed area during the preceding year. After satisfactory completion of both of these reviews, licensees may request a renewal of the license for an additional one to three years, and may request regular renewals thereafter. Renewal shall be subject to the approval of the licensing authority.

When the licensing authority has approved a new license or the renewal, amendment, or transfer of 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 applicant to obtain such a DMF certification within one year of approval of the license will cause the approval to be revoked. Although approval for a license may be given without such a certification, the license itself shall not be issued until such approval is received.

Within one year of approval of the license, the applicant must also complete the application review process as required by any applicable federal and state authorities, or the license approval will be revoked. Upon request, the licensing authority may extend the time period for this review. However, in no case shall a license be granted for any areas which are at the time of inspection, or which were within two years prior thereto, closed for municipal cultivation under provisions of M.G.L. c. 130, § 54.

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 such permits or licenses from the U.S. Army Corps of Engineers, Massachusetts Department of Environmental Protection, or any division of the same, or the Town's Conservation Commission, Board of Appeals, or Planning Board, all as may be applicable. Prior to operation, the applicant will be required to have the licensed area surveyed by a registered engineer or a registered surveyor. A recorded plan defining the boundaries of a license area, together with a full specific description of the licensed area shall be submitted to the Harbormaster before the issuance of the license. Upon completion of the plan, the applicant shall have the boundaries marked as prescribed by these Regulations.

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 and filed with the Town Clerk at the time of issuance of the license.

Licenses pursuant to this Paragraph shall be subject to any rules and regulations promulgated by the DMF, including those concerning the use and scope of predator controls in the intertidal zone. The licensing authority may condition the grant of a license on compliance with any conditions

that DMF deems necessary and appropriate for a given location or operation, including species to be propagated and the source and movement of seed shellfish.

#### **10. RIGHTS GRANTED UNDER A LICENSE**

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

- A.) Plant and grow shellfish, bottom/off-bottom culture;
- B.) Place shellfish in or under protective devices affixed directly to the tidal flats or land under coastal waters, within boxes, trays, pens, or nets, in compliance with these Regulations;
- C.) Harvest and take legal shellfish; and
- D.) Plant cultch for the purposes of catching shellfish seed; and grow shellfish by means of racks, rafts, or floats.

The licensing authority shall permit, as a condition of the license, such public uses of said waters as are compatible with aquacultural enterprise.

#### **11. DESIGNATED AQUACULTURE FLOAT AREA AND FEDERAL ANCHORAGE AQUACULTURE FLOAT MANAGEMENT PLAN**

Those granted a license under these Regulations may also apply for a designated aquaculture float, as set forth in M.G.L. c. 102 and pursuant to the following terms:

- A.) The Designated Aquaculture Float area shall not exceed 32 float moorings and shall be for aquaculture floats and related activity only;
- B.) Float Applicants shall provide proof of a valid aquaculture lease holder with the application;
- C.) Approved float applicants, for the Designated Aquaculture Float Area or the Federal Anchorage Aquaculture Float Area, must obtain an annual mooring permit (or renewal) for the float location; and
- D.) The Applicant shall abide by the Duxbury Rules and Regulations on Moorings, Permits and Waiting Lists.

Aquaculture Float applicants shall submit an aquaculture application first to the Harbormaster for approval and then to the Board of Selectmen for filing annually in the month of November, by a filing date set and publicized by the Board of Selectmen annually in October. As required by M.G.L. c. 130, §57, the applications shall describe the proposed activity and purpose of the floats, including the species of shellfish to be processed on the float and the float size and design.

After receipt of all applications, the Board of Selectmen shall hold a public hearing as required by M.G.L. c. 130, §§ 57 and 60 to issue individual licenses to the float applicants. Such float licenses shall include the name, address site numbers and coordinates for each individual float.

After the grant of float licenses by the Board of Selectmen, the Town shall post a public notice every November, as described in M.G.L. c. 130, §§57, 60, that includes (at least):

- 1.) The description of the area “Designated Aquaculture Float Area” with (corner coordinates);
- 2.) The float mooring location assignment and permit number; and

The complete list of applicant’s names, address and corresponding float mooring location assignments, corresponding permit numbers and coordinates.

All float licenses granted by the Board are issued with the following management conditions, plus any others deemed appropriate by the Board during the licensing process:

- 1.) The float may only be used for growing and sorting seed, processing and soaking product, and limited storage of aquaculture gear;
- 2.) Shellfish moved between the float and shore and vice/versa shall be tagged;
- 3.) No shell material or debris may be discarded over board at any time;
- 4.) Licensee shall not use the bottom or tidal flat for any purpose other than the mooring of authorized floats; and
- 5.) Licensee may only handle shellfish on the floats between the hours of ½ hour before sunrise and ½ hour after sunset.

After the grant of float licenses by the Board of Selectmen, it shall request the Massachusetts Division of Marine Fisheries (“DMF”) certification on the issuance of such a license, which may include a site survey, application and conditions review. DMF will send letters either approving or denying the issuance. DMF may also request additional information or conditions on the license.

## **12. PRIVATE PROPERTY RIGHTS**

Licenses granted under these Regulations do not convey property rights. Any entry on or over, or use of licenses upon privately owned property requires permission of the property owner. It shall be the licensee’s responsibility to obtain such permission. Pursuant to M.G.L. c. 130, § 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.

## **13. 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 regulations shall be cause to revoke a license. The licensee is expected to be familiar with applicable laws and regulations.

#### **14. RESIDENCY**

Licenses under the Grant Program shall be granted only to residents of the Town of Duxbury who can prove to the satisfaction of the licensing authority that they are bona fide domiciled residents of the Town and have been domiciled within the Town for at least twelve (12) consecutive months prior to the date of application. Written proof of residency is required. Such written proof may include address of residence, the time during which the applicant has resided at said address, and evidence of ownership or lease of said residence. Applicant may also be required to provide evidence of the location of automobile registration, address contained on the driver's license, and other relevant proof that Duxbury is the domicile of the applicant. A licensed area shall be forfeited if the licensee ceases to be a resident or otherwise ceases to comply with these Regulations. The licensing authority shall review the residency of each license holder whenever the license is presented for approval, review, or renewal.

#### **15. ISSUANCE OF LICENSES**

All new or renewed licenses approved by the Board of Selectmen shall be solely in the name of an individual, in accordance with Section 4A, and not in the name of a corporation or LLC, except a license in existence at the time of the adoption of these regulations held in the name of a corporation or LLC may be renewed or transferred to an individual of the corporation or LLC or a family member subject to the provisions of Section 4A .

If an existing licensee is a corporate entity, all owners of such entity shall submit proof to the satisfaction of the licensing authority that they are domiciled residents of the Town in the same manner as if the license holder were an individual, and the entity shall designate one individual authorized to engage in aquaculture under its license. Failure to demonstrate such proof of residency of any owner, principal, member, shareholder, or officer shall be cause for the forfeiture of said license. The Licensee shall notify the Town in writing addressed to the Town Clerk at least sixty (60) days prior to any change in the ownership or management of any non-individual license holder. Upon such notice, the Town Clerk shall notify the licensing authority, and the licensing authority shall review whether the license-holder continues to qualify for the license. No licensee may have an interest in more than one (1) license at any time.

#### **16. ENFORCEMENT**

The Shellfish Constable will administer and enforce these Regulations and all laws within his or her jurisdiction.

#### **17. EXTENT OF LICENSE RIGHTS**

A licensee, or his/her legal representative, in accordance with the terms set forth in these Regulations, shall have during the term of a license the exclusive use of the waters, flats, or creeks described in the license (“Exclusive Use Area”), and the exclusive right to take all shellfish therefrom during the time therein specified pursuant to M.G.L. c. 130, §§ 57 and 63; provided that this Paragraph shall not be construed to authorize any taking prohibited by law.

A licensee may also maintain a float, barge, or boat (hereinafter “float”) for processing purposes within the same growing area of the bay as is the licensee’s License Area. The location and size of such float shall be determined and authorized annually by the Harbormaster and shall be for the

exclusive use of the licensee conducting permitted tasks related to processing shellfish. When used, the float shall be considered to be part of the licensee's License Area and shall not be considered "off site."

Any license, amendment, transfer, or renewal granted under these Regulations is revocable as described herein and does not confer any property rights on the licensee.

**18. NO RIGHT TO SUBLEASE**

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

**19. RIGHT TO TRANSFER**

As provided herein licenses are renewable and transferable subject to the approval of the licensing authority and pursuant to M.G.L. c. 130.

**20. MARKING OF BOUNDARIES**

The licensee upon receiving his/her license shall cause the territory covered thereby to be plainly marked out by monuments, marks, or ranges and shall mark the license boundaries (corners) with stakes. Each boundary stake is to be a plastic pole with a diameter no greater than 1.5 inch, not higher than eighteen (18") inches above the surface of the licensed area with attached a painted yellow sign, measuring 8" x 10" with two (2") inch block black lettering and bearing 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 on the pole and signage 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. The requirements of this Paragraph shall not conflict with M.G.L. Chapter 130 or any requirements from the Army Corps of Engineers. If such conflict exists, the requirements of state or federal law will trump this Paragraph.

**21. MARKING AND REMOVAL OF EQUIPMENT**

Structures that are used by the licensee on any of the licensed territory shall be marked as follows: If any underwater hard structures or devices are used in the licensed territory, the boundaries of all such hard structures and/or devices shall be plainly marked with six (6") inches orange sphere buoys every twenty-five (25') feet to be attached and anchored with a thirty-six (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 two six (6") inch orange sphere buoys as mandated above. Each six (6") inch orange sphere buoy shall be plainly marked in white on two sides with the uniform state waterway marking system (symbol) for: DANGER!. All gear, tackle, or other equipment must be indelibly marked with the license number conspicuously placed on each of piece of equipment.

In accordance with M.G.L. v. 130, § 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, the licensee must recover the equipment within fifteen (15) days from the time of its deposit; provided,

that a licensee in so doing does not commit any unreasonable or wanton injury to the property where the equipment is deposited. If the licensee does not recover the equipment within fifteen (15) days, the Town shall recover the equipment, at the expense of the licensee.

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 and shall become the property of the Town if the licensee does not take possession of the equipment immediately after removal.

No structure or device (except marking buoys, and as otherwise noted in this section) shall protrude more than eighteen (18") inches above the substrate which, for the purposes of these Regulations, refers to the surface or material on or from which an aquaculture organism lives, grows, or obtains its nourishment. All structures shall be readily removable. 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.

## **22. SET-BACKS AND BUFFER AREAS**

No activity shall occur within a distance of twenty-five (25') feet from beds of eelgrass, widgeon grass, 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.

## **23. MINIMUM PRODUCTIVITY, ANNUAL REPORT, AND REVIEW BY TOWN**

An annual review of each license will be conducted by the Shellfish Constable in order to determine whether substantial use was made of the license during the previous year.

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 will be forfeited, unless the licensee can demonstrate to the licensing authority that the licensee has made diligent efforts during the license term and that some substantial progress is imminent. In accordance with M.G.L. c. 130, § 57, for the purpose of this Paragraph, substantial use shall be defined as an expenditure of \$1,500 per acre, or part thereof, 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.

Pursuant to M.G.L. c. 130, § 65, licensees shall file an annual report with the Shellfish Constable in accordance with the form provided by the licensing authority, submitted no later than December 31 of each year. The report shall document and describe the use and productivity of the licensed area during the previous year. A licensee shall also submit upon request of the licensing authority receipts, purchase and sale slips, and the like, reasonably requested by the licensing authority in support of this Paragraph. Each licensee shall also provide information sufficient to confirm that licensee continues to be a resident of Duxbury, domiciled in Duxbury, as part of each annual report.

## **24. PROHIBITIONS**

Pursuant to M.G.L. c. 130, § 68, 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 has been granted. A licensee violating this Paragraph shall forfeit his/her license and all shellfish remaining on the licensed area.

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

No licensee 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.

All shellfish harvesting shall be by hand without the assistance of power unless the use of mechanical power is approved by the Harbormaster on a case-by-case basis.

## **25. REVOCAION OF LICENSE**

Failure of the licensee to comply with the provisions of any applicable rule, regulation, bylaw, statute, or law may result in revocation of the license by the licensing authority.

Revocation of any license shall be preceded by a public hearing of the licensing authority. The licensee shall be entitled to be present and have counsel and cross examine any witnesses and present witnesses on his or her behalf.

## **26. AUTHORITY TO INSPECT**

Pursuant to Section 98 of Chapter 598 of the Acts of 1941, 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 structures or containers on the licensed area.

The Town may take samples of any species held in the licensed area for the purpose of determining their species, certifying their source, testing for disease, and in order to assure that the activities taking place are in conformity with the license and all requirements of law.

## **27. CHANGES TO THE LICENSE**

Proposed changes to the terms of 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 for review and approval by the licensing authority.

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 these Regulations.

For the purposes of this Subsection, 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; or which may impact the marine environment.

Upon review of the proposed changes, the licensing authority may approve or deny the proposed changes.

## **28. TOWN REQUIREMENTS AND RECORDS OF LICENSES GRANTED**

The licensing authority shall keep in its office 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 address 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.

Each license, transfer, or renewal 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.

The records shall be open for public inspection at all reasonable times.

## **29. LIABILITY OF THE TOWN**

The licensee shall not hold the town liable for any damages or injury to the licensed area, including damages or injury due to any dredging or improvements done by or on behalf of the Town. If at any time it becomes necessary to dredge and/or otherwise accomplish maintenance by dredging on or within the vicinity of the licensed area to improve or maintain channels for navigation, or for any other public purpose, 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. If shellfish need to be relocated under these conditions, they shall be relocated at the expense of the licensee.

## **30. 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.

Pursuant to M.G.L. c. 130, § 66, the penalty for destroying or interfering with the boundaries of a shellfish license or grant is a twenty dollar (\$20.00) fine.

Pursuant to M.G.L. c. 130, § 67, the penalty for taking shellfish from a licensee's shellfish grounds without permission or authority to do so is a twenty dollar (\$20.00) fine and/or one month imprisonment for the first offense, or a fifty dollar (\$50.00) fine and/or six month imprisonment for the second offense.

The penalty for any other violation 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/or the possible revocation of the license or both.

Adopted by the Town of Duxbury Shellfish Advisory Committee:

**January 11, 2017**

Adopted by the Town of Duxbury Board of Selectmen:

**February 15, 2017 with an effective date of March 1, 2017**

**Amendment to Paragraph No. 8 (changed to Limited Entry Fishery)**

**Adopted by the Town of Duxbury Selectboard:**

**April 8, 2024 with an effective date of April 9, 2024**

**Appendix A**  
**Town of Duxbury**  
**Shellfish Aquaculture Grant Fee Information**

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 by the Town in reviewing the license application. The application fee must be submitted with the completed application form, and is due regardless of whether the application is for a new license, a transfer, an amendment, or a renewal. In the case of a transfer, both the transferor and the transferee must approve of the transfer and such approval must be indicated on the application.

Once a license has been granted, an **ANNUAL ADMINISTRATIVE FEE** will be due in the amount of **twenty-five dollars (\$25.00) per acre, or part thereof**, covered by the license. If the fee is not paid within six (6) months of becoming due, the license shall be forfeited pursuant to M.G.L. c. 130, § 64.