

**Town of Eastham
Aquaculture License Regulations**

**TOWN OF EASTHAM
AQUACULTURE LICENSE REGULATIONS**

PREAMBLE

It is the intention and policy of the Town of Eastham to continue the long standing tradition of protection and enhancement of the shellfish resources of the town through the authority derived under MGL Chapter 130 given to the Board of Selectmen. Among the various methods utilized to this end, private aquaculture has been undertaken in the intertidal and subtidal zones since the early 1930's. It is recognized that the shell fishery is enjoyed by all citizens as part of the common wealth; however the specific cultivation of sites which are not productive by reason of nature is an objective which the town continues to support and encourage. The following regulations are an effort to facilitate such aquaculture projects while maintaining the protection of reasonable rights of the general public to enjoy the shell fishery. The granting of said licenses to pursue aquacultural activities is limited to the exclusive use of the land and waters above the lease site for purposes of growing shellfish; they are not to be construed as implying or conveying property ownership rights or the interference with private property rights in the adjacent upland areas.

I. GENERAL

1. The following regulations concerning private aquaculture licenses are adopted as part of the shellfish regulations of the Town pursuant to MGL Chapter 130 sections 52 and 57 as amended. Full compliance with all other state and local regulations is required as a condition to the aquaculture license.
2. Licenses issued under these sections do not convey any property rights. These licenses do not authorize injury to private property or invasion of private rights. It is the responsibility of the licensee to obtain permission of an upland property owner before exercising the rights conferred by these licenses to plant and harvesting shellfish. Additionally, the license holder is notified that the owners of the property described in the license may bring an action for trespass in court of competent jurisdiction. A licenses holder may not rely on this license as defense to an action in trespass.
3. Application for aquaculture license shall be made on such forms as may be provided by the Natural Resources Department for said purpose and shall include a management plan for the use of the area.

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4. Upon receipt of the application the Board of Selectmen shall give public notice and hold a public hearing concerning the granting of said license.
5. Following the close of the public hearing for such license, the Board shall approve or deny the license within 60 days of receipt of the application. For sites previously approved and certified by the Director of the Division of Marine Fisheries, the Board may directly issue the license. Sites not previously certified and approved will be reviewed by the Division and upon certification by the Director, the Board may issue the license.

II. LOCATION OF AQUACULTURE SITES

1. The town shall designate Aquaculture Development Areas in the intertidal area of Cape Cod Bay and Nauset Marsh for the purpose of facilitating the process of certification and approval. Said designation of ADA status will provide for determination of productivity or historical productivity, wetlands, Division of Waterways permits, and Corps of Engineers permits for the installation of devices for the cultivation of shellfish. Applicants for sites within an ADA will accept the terms and conditions for each site as determined by the permitting process and may commence aquaculture activity upon issuance of the license by the Board of Selectmen.
2. The Cape Cod Bay Aquaculture Development Area shall be defined as westerly from the area known as Boat Meadow Creek beginning at a point 100 feet north of the channel thence northerly to a point 100 feet south of the Bee's River channel, thence westerly to a point in the waters of Cape Cod Bay, thence southeasterly to the beginning point.
3. Said Aquaculture Development Area shall be separated from the *Spartina* sedge by a buffer of 50 feet to allow shellfishing by the general public.
4. Within the ADA described above, 20 sites of ½ acre area each shall be designated. Additionally, a ½ acre expansion site shall be designated adjacent to each initial site. Said areas and dimensions shall be subject to review by the Board of Selectmen.
5. Existing active aquaculture sites located in Nauset Marsh and Town Cove shall be continued subject to the provisions of these regulations.
6. Previously permitted sites in the Nauset Marsh shall be included in the Nauset Aquaculture Development Area designation subject to review and certification by all appropriate agencies.

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7. Additional sites for aquaculture licenses will be reviewed by the Board on an individual basis subject to the applicant's successfully obtaining all relevant permits.

III. ELIGIBILITY

1. No person shall hold an aquaculture license in the Town of Eastham without first obtaining a commercial Shellfish permit from the Town in compliance with the requirements for said permit. Said aquaculture license shall be deemed invalid and forfeited if the holder fails to maintain said commercial permit.
2. Only one aquaculture license shall be permitted to members of a single household domiciled together.
3. The minimum age for an Aquaculture license holder shall be 18 years upon the date of application, notwithstanding the issuance of commercial permit to persons less than 18 years of age.
4. Expansion of an aquaculture lease site may be awarded by the Board of Selectmen after the initial two year period of operation upon application by the lease holder and favorable review by the Natural Resources Department with respect to the progress accomplished on the site as described in the management plan, receipts for seed purchased, stock sold and overall utilization of the site.
5. The maximum acreage permitted to be held by one licensee shall be two (2) acres total within the town.
6. Aquaculture licenses are issued to an individual only and are for the exclusive use of the licensee. The holder of the license may employ others to perform certain necessary activities on the site. Subleasing or rental of the site is prohibited.
7. The Board may issue licenses for sites for educational or experimental purposes. Said licenses shall be issued to the institution or agency which is conducting the project rather than an individual.

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IV. OPERATION

1. All activities on an aquaculture lease site shall be in substantial compliance with the management plan filed by the applicant or as amended in consultation with the Natural Resources Department. Management plans shall be completed on forms provided by the Department of Natural Resources.
2. Annual reports of the activity and sale of shellfish from the site shall be filed on forms provided by the Department of Natural Resources on or before 31 December of each year.
3. Seed permits are required for the purchase or transport of seed shellfish stock for the lease site, and are obtained through the Division of Marine Fisheries.
4. Each site shall be marked in compliance with MGL Ch. 130 ch 57 with buoys or signs bearing the number of the lease site.
5. An area of five feet around the perimeter shall be remain uncultivated for the passage and movement of materials around the adjacent lease sites.
6. Structures placed upon an individual lease site may not extend more than 18 inches above the surrounding sediment. All structures placed on all sites shall be clearly marked with the name of the owner and the lease site number for identification in the event of removal by storm damage.
7. No wild seed may be transplanted onto a lease site by any means. However, recruitment of juvenile shellfish suspended in the overlying water column by means of cultch, nets or trays is permitted subject to the other provisions of these regulations.
8. Access to aquaculture sites shall be exclusively by vessel or on foot. No wheeled or track motorized vehicles are permitted on the beaches or intertidal areas of the Town.

V. TERMS OF LEASES

1. Initial lease agreements shall be for a period of two years for a maximum area of ½ acre. Following the first year and upon favorable evaluation by the Natural Resources Department, the license may be renewed for periods of ten years by the Board of Selectmen.

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2. Shellfish aquaculture licenses may not be transferred or sold in whole or in part to any party other than an immediate family member with the approval of the Board of Selectmen. Said licenses shall be subject to the same conditions and restrictions as provided for the initial licensee. In the event of the death of a license holder, the Selectmen may permit the transfer of said license to an immediate family member in accordance with the above conditions.
3. A licensee who elects to forfeit said license shall notify the Natural Resources Department of their intention in writing. The licensee may be authorized to obtain a seed sales permit from the Division of Marine Fisheries for the purpose of removing said seed stock from the licensed site.
4. An aquaculture license may be suspended or revoked by the Board of Selectmen for just cause after due notice and hearing by the Board. Failure to comply with applicable regulations and statutes, the management plan prepared for the site or any of the regulations pursuant to these sections may constitute just cause for suspension or revocation.
5. The annual fees for the aquaculture licenses shall be established by the Board of Selectmen, and shall be based on applicable sections of MGL Ch 130, and the individual acreage of a site.
6. Nothing in these regulations shall relieve the licensee from complying with all applicable bylaws, regulations and statutes either local state or federal. The Town shall not be held liable for damages to the lease site or cultivate shellfish as a result of management of the navigable waterways of the Town.
7. Any person receiving an Aquaculture Grant in the Town of Eastham shall be required to obtain, and pay for, a commercial shellfish license at the time said Aquaculture Grant is issued. Said license will be renewed annually when the grantholder submits his or her Annual Activity Report.