

Dartmouth Aquaculture Regulations

Section 1.0 Prologue

The Town of Dartmouth Select Board seeks the orderly development of aquaculture licenses ("licenses") within Town waters. Private aquaculture is a means to continue the long-standing tradition of protection and enhancement of the shellfish resources of the Town while reviving the commercial potential for local shellfish food sources in Dartmouth waters. Aquaculture as a private endeavor shall complement, and not impede or replace, historic harvest fisheries. The Select Board shall protect and preserve the existing and historic fisheries and minimize any impacts of aquaculture on other uses of the marine environment. Each license shall co-exist with, and not diminish the common commercial and recreational shellfisheries or other existing water-related activities. All licenses are subject to these Regulations. Any statutes or state regulations that are referenced herein shall be inclusive of any amendments or successor statutes or regulations to the same.

Section 2.0 Authority

All licenses are issued, and these Regulations are promulgated, by the Select Board under the authority specified in Massachusetts General Laws, Chapter 130, §§ 57 through 68. These Regulations supplement said statutes, and any state regulations that are promulgated pursuant to the same, which should be consulted in order to ensure a complete understanding of the procedures, requirements and limitations relating to local aquaculture licenses.

Section 3.0 Private Property Rights

Licenses issued under these Regulations do not convey any property rights. Licenses do not authorize trespass or injury to private property, nor invasion of any private rights. The issuance of a license for a particular licensed area is not a determination of title or ownership to the parcel(s) in which said area is located. It is the responsibility of the license holder to obtain permission of the owner(s) of said parcel(s) before exercising any privileges conferred by licenses to plant and harvest shellfish. Any use of a license upon privately owned property shall not proceed over the objections of the property owner(s) and a license holder may not rely upon an issued license as a defense to an action in trespass. By accepting a license for a particular licensed area, the license holder concurrently agrees to indemnify the Town and its boards, commissions, committees, officers, employees, officials, agents and attorney against any claims that are brought against them by the owner of the parcel(s) in which said area is located, including with respect to trespass, in response to any aquaculture activities that are conducted pursuant to said license.

Section 4.0 Moratorium on issuing new licenses

The Select Board may issue a moratorium on the issuance of new licenses at any time when that action is deemed appropriate and in the best interests of the Town's shellfishery.

Section 5.0 Standing to Apply - Residency

Licenses will be issued only to Town of Dartmouth residents who can prove to the satisfaction of the Select Board that they are a bona fide, domiciled resident of the Town of Dartmouth. Applicants must have been domiciled with the Town for at least 12 consecutive months prior to the date of their application, and must maintain this residency throughout

the term of the license. Failure to maintain residency shall result in the denial and/or revocation of a license. At least two forms of written proof of residency is required.

Acceptable forms of written proof include tax bills in the applicant's name, residential rent receipts, utility bills, driver's license, auto registration, etc. All applications and licenses are subject to the local tax obligation provisions of MGL Ch. 40 § 57, as previously adopted by the Town of Dartmouth, and Article 69 of the General By-Laws. License applicants must have attained the age of 18 years.

Section 6.0 Application for license; service; fees

Initial, transfer and renewal applications for licenses, on forms as provided by the Select Board, must be submitted under the pains and penalties of perjury. Any information on an initial, transfer or renewal application that is determined to be untruthful before or after approval of any application shall be sufficient grounds to deny or revoke the license. The non-refundable application fee is \$100 plus advertising costs, payable to the Town of Dartmouth, and due upon submittal of the license application. The application, application fee and advertising costs may be submitted to the Select Board by United States Postal Service certified mail, return receipt or in-hand delivery with dated proof of service received. Initial applications must provide all of the information as listed in 322 CMR 15.05(c)(1)-(5), as well as a site access plan and a shellfish management plan. Renewal and transfer applications need not provide this information.

Subsection 6.1 Incomplete Applications.

Any application that is submitted without all of the information and documentation that is required by these Regulations and any relevant statutory provisions shall be denied by the Select Board without prejudice and without a hearing, with no refund provided. Any such denial shall be in writing and delivered to the applicant in-hand or by US postal first class mail.

Subsection 6.2 Hearing; Notifications

Copies of the completed application shall be provided by applicant to be forwarded to the Town's Waterways Management Commission, Harbormaster, Shellfish Constable, Board of Health and Conservation Commission for review by each, and for written comment as desired by each. Said written comment(s) should be received by the Select Board no later than 30 days after the application is received by said reviewers. A public hearing shall be noticed and conducted in conformance with the provisions of M.G.L. Ch. 130, §§ 57 and 60; provided, that notice, as described in said § 60, additionally shall be published on the Town's website at least 10 days prior to the hearing; further provided, that said public hearing shall be scheduled for no later than 45 days from the date of submission of the application.

Subsection 6.3 Abutter Notification.

At least 10 calendar days prior to the established public hearing date, the Select Board shall notify the applicant of date, time and place of the hearing. No less than 7 calendar days prior to the scheduled public hearing, the applicant is required to notify all abutters (as certified by the Town Assessor) within 500 feet of the outside boundaries of the proposed licensed area, by United States Postal Service certified mail, return receipt, of the date, time and place of the public hearing and a summary of the proposed license application purpose

and location. Postal receipts of mail service, together with a copy of the notice mailed shall be presented to the Select Board no later than at the start of the scheduled public hearing

Section 7.0 Approval Process.

Following the required public hearing, the Select Board may deny or tentatively approve any proper application, and may condition said approval, in accordance with the provisions of M.G.L. c. 130, § 57. Any action or determination made by the Select Board shall be in writing and delivered to the applicant in-hand or by US postal first class mail.

Subsection 7.1 Division of Marine Fisheries Review/Certification

If an application is tentatively approved by the Select Board, no license will be issued until and unless the Director of the Division of Marine Fisheries has provided certification pursuant to M.G.L. Ch. 130, § 57.

Section 8.0 Area of License; Number of Licenses Allowed

The area of each license shall not exceed one-half acre (22,000 square feet) and shall be configured and confined to an area and in a manner that minimizes any adverse effects or harm to the residents, waterways, environment, flora and fauna of the Town. An applicant who does not currently possess a license may initially apply for not more than two (2) licenses. After three (3) years of continuous, licensed aquaculture operations within the Town a license holder may hold, whether through initial application approval, renewal or transfer, up to four (4) total licenses. After ten (10) years of continuous, licensed aquaculture operations within the Town, there is no limit on the number of licenses that a license holder may hold, whether through initial application approval, renewal or transfer. Licenses need not be for contiguous areas in order to be held by the same license holder. For the purposes of determining whether a license holder has reached these license quantity limits, both a group of individuals who are operating in concert, and immediate family members (as defined within M.G.L. Ch. 130 § 57) shall be considered a single license holder, regardless of in whose name any particular license is issued.

Section 9.0 License fee

Pursuant to M.G.L. c. 130, § 64, an annual license fee of \$25.00 per acre, or any portion thereof, or any other amount per acre that is specified by the State - whichever is higher - shall be paid by the license holder to the Town by December 31st of each year. Said fee shall be assessed separately for each license. In accordance with said statute, if this annual fee is not paid within six (6) months after it becomes due, the license shall be forfeited.

Section 10.0 Exclusivity of License; Sublease prohibited; Transfer

Licenses are issued for the exclusive use of the applicant, who may contract with or employ others to work on the licensed site. The License holder is required to submit a list of all persons, employees, or contracted persons authorized to work in the licensed area to the Select Board. The license holder shall not allow anyone to operate independently in the licensed area, whether or not for a fee. Licenses may be transferred subject to prior written Select Board approval pursuant to M.G.L. Ch. 130, § 58 and inherited by immediate family as specified and defined in M.G.L. Ch 130, § 57. The notice and hearing requirements for initial applications shall apply to transfer applications. If a transferee desires to change the

terms or conditions of the license, or the nature of scope of aquaculture operations pursuant thereto, then a new initial application must be submitted, with all of the accompanying statutory and regulatory requirements, including certification from the Director of Marine Fisheries. The sale or transfer of a license other than as provided in M.G.L. c. 130, § 58 shall render it null and void.

Section 11.0 License duration; Renewal

Licenses may be issued and renewed for periods of up to 5 years, to be determined in the discretion of the Select Board in each instance. In accordance with M.G.L. c. 130, § 58, renewal applications may not be submitted sooner than two (2) years prior to the expiration date of the license. The notice and hearing requirements for initial applications shall apply to renewal applications. If a license has been revoked, then a renewal application may not be submitted by the former license holder, and a new initial application for that license area may not be submitted by the former license holder until all markers, moorings, tackle, gear and other equipment has been removed from the same. If a license holder desires, upon or before renewal, to change the terms or conditions of the license, or the nature of scope of aquaculture operations pursuant thereto, then a new initial application must be submitted, with all of the accompanying statutory and regulatory requirements, including certification from the Director of Marine Fisheries

Section 12.0 Required Annual Report; Review

Failure to satisfy the reporting requirements of either M.G.L. Chapter 130, § 65 or 322 CMR 15.08(4), or the submission of false or inaccurate information in either or said reports, shall be sufficient grounds to revoke a license. The Select Board shall conduct an annual review of each license to ensure compliance with all applicable statutes and regulations, and the terms and conditions of the license, and to evaluate whether the license holder is making substantial use of the licensed area by attaining and maintaining reasonable productivity standards.

Section 13.0 Minimum Productivity

In accordance with M.G.L. Chapter 130, § 65, the minimum yearly market value to be produced by each licensed area shall be \$ 1,500.00 per acre (pro-rated for portions thereof).

Subsection 13.1 Failure to meet minimum productivity

In determining whether a license holder has failed to produce the minimum market value for a license area for any three consecutive years, the counting of said years shall not begin until the third year after the initial issuance of a license, but shall continue through the renewal of the license.

Subsection 13.2 Waiver of Minimum Productivity

In any year that a license holder fails to produce the minimum market value for a license area, such requirement may be waived for that particular year upon written request, at the sole discretion of the Select Board; provided that the license holder must demonstrate to the satisfaction of the Board that the production shortage is the direct result of a natural disaster or other unforeseen event that was outside of the control of the license holder; further

provided, that this waiver shall not cause the counting of consecutive failure years to reset, but rather shall solely cause the waived year to be skipped in this counting.

Section 14.0 Certified Seed/Brood Stock Only.

Seed Stock introduced into any license area must be from Division certified nurseries only and conform to 322 C.M.R. 15.07. License holders shall notify the Town Shellfish Constable at least seven days prior to planting or introducing any shellfish stock to the license area. The Shellfish Constable may remove or cause to be removed from the license area or waterway any shellfish for which the Town has been provided no bill of sale or other written proof of origin. The burden of proof that all shellfish comes from a certified hatchery or other allowable point of origin rest solely with the license holder.

Section 15.0 Health Standards.

The license holder shall adhere to all requirements of the MA Department of Public Health Fish and Fishery Products standards as codified in 105 CMR 533.

Section 16.0 Marking of Licensed Areas.

In accordance with M.G.L. c. 130, § 61, the license holder shall cause the approved license area to be plainly marked out by monuments, marks or ranges and by stakes or buoys as provided in the license. Boundary markers shall be no less than 11.5 inches in diameter, distinctly and legibly display in contrasting color figures at least two inches in height in a conspicuous place on each marker the words "AQUACULTURE AREA" "KEEP AWAY AT LEAST 50 FEET" and the state propagation number assigned to each license. In areas prone to ice conditions, winter stakes with similar markings may be substituted for boundary mark floats from November 15th to April 15th annually.

Subsection 16.1 PATON compliance.

It shall remain the sole responsibility of each license holder to properly register any and all grant markings as private aids to navigation (PATON) with the United States Coast Guard as required by 33 C.F.R. 66.

Subsection 16.2 Confirmation of marking compliance.

The Shellfish Constable may direct marker and buoy characteristics, placement, replacement or relocation at any time as needed in order to comply with the terms and conditions of the license.

Subsection 16.3 Keep away distance.

No person may anchor, moor or station a vessel or structure which is not involved in aquaculture operations within 50 feet of a license area or license area marker. A suitable buffer zone between license areas may be set by the Select Board as deemed appropriate.

Subsection 16.4 Responsibility for gear and tackle.

The license holder assumes all liability for all gear and tackle used on the licensed site. All mooring systems intended to secure aquaculture equipment, including any area and border markers, are subject to Dartmouth waterways and mooring regulations and fees and must be approved by the Harbormaster. If any aquaculture gear moves to any location off the

licensed site, it will be the responsibility of the license holder to remove it to the proper location within 30 days. Failure to correct misplaced gear within 30 days may cause removal by the Harbormaster, or at the Harbormaster's direction, at the sole expense of the license holder. Removal by employees of the Town shall be charged to the license holder at the actual cost per hour per Town employee plus expenses.

Subsection 16.5 Gear Removal upon termination.

Upon termination or discontinuance of an aquaculture license for any reason, all gear, tackle and equipment must be removed from the waters and substrate within 30 days.

Failure to remove all equipment may cause removal by the Shellfish Constable, or at the Shellfish Constable's direction, at the sole expense of the license holder. Removal by employees of the Town shall be charged to the license holder at the actual cost per hour per Town employee plus expenses.

Subsection 16.6 Harbormaster Directives.

All border and other licensed area markings and buoys, and any other equipment and anchors utilized at any time during aquaculture operations, are subject to the lawful directives of the Harbormaster pursuant to the independent statutory and state and local regulatory authority of that office, including, without limitation, with respect to ensuring navigational safety in all Town tidal waters.

Section 17.0 Liability, Insurance and bond.

Each license holder is required to maintain business liability insurance in the amount of not less than one hundred thousand dollars (\$100,000.00) combined single limit for any occurrence, and workers' compensation insurance as required by statute, and may also be required, as a condition of the license, to post a performance bond sufficient to cover the costs of gear removal and site restoration. Said bond shall be a surety bond in an amount determined solely by the Select Board on a case-by-case basis upon recommendation from the Shellfish Constable. Said insurance and bond shall be fully executed with an effective term co-extensive with that of the license. Documented evidence of said insurance and bond shall be on file with the Select Board and shall be a requirement for obtaining final approval of any license or renewal thereof. The performance bond is to ensure compliance with these regulations. Said bond shall be returned without interest accruing to the license holder upon satisfactory termination of operations and complete removal of all aquaculture equipment, or otherwise used for gear removal and site restoration.

Subsection 17.1 Respondeat Superior

License holders shall be held responsible for any and all actions taken by any persons, employees, or contracted persons working on their behalf in the licensed area.

Subsection 17.2 Hold Harmless.

By accepting a license for a particular licensed area, the license holder concurrently agrees to indemnify the Town and its boards, commissions, committees, officers, employees, officials, agents and attorneys against any claims that are brought against them as a result of any personal injury and/or property damage resulting from any aquaculture operations undertaken at the licensed site, whether or not said injury or damage occurs within the licensed area. The license holder shall not hold the Town of Dartmouth liable for any damage, injury or financial loss to the licensed aquaculture operations due to any dredging

or other public improvements that are undertaken in order to protect the public health and safety, and the environment of the Town, and to ensure that the waterways of the Town remain open and navigable.

Section 18.0 Operation Limitations

No aquaculture operations may be conducted between one-half hour after sunset and one-half hour before sunrise on the following day. No aquaculture operations may be conducted on any holiday upon which commercial shellfishing is prohibited within the Town of Dartmouth. Aquaculture operations must conform with the provisions of all state statutes and regulations.

Section 19.0 Equipment allowed.

The Select Board may condition a license by specifying the size and type of equipment which may be utilized for propagation in any license area.

Section 20.0 Inspection.

Anyone with the authority to enforce these Regulations may inspect the licensed area at any time, to include any and all equipment and containers on, or in transit to and from the site. In accepting a license, the license holder concurrently agrees to facilitate, and in no way hinder or obstruct, any and all such inspections. The license holder further allows the Town or State the right to obtain, at any time, samples of any species held in the licensed area for the purposes of certified testing for disease. Water samples may be collected at any time from within or around the licensed site for purposes of quality testing by the Division or any other local, state, or federal entity.

Section 21.0 Enforcement.

These Regulations shall be enforced by the Shellfish Constable and any other Town personnel that are specifically authorized by the Select Board or the Commonwealth to enforce any statutes or regulations relating to shellfish..

Subsection 21.1 Revocation.

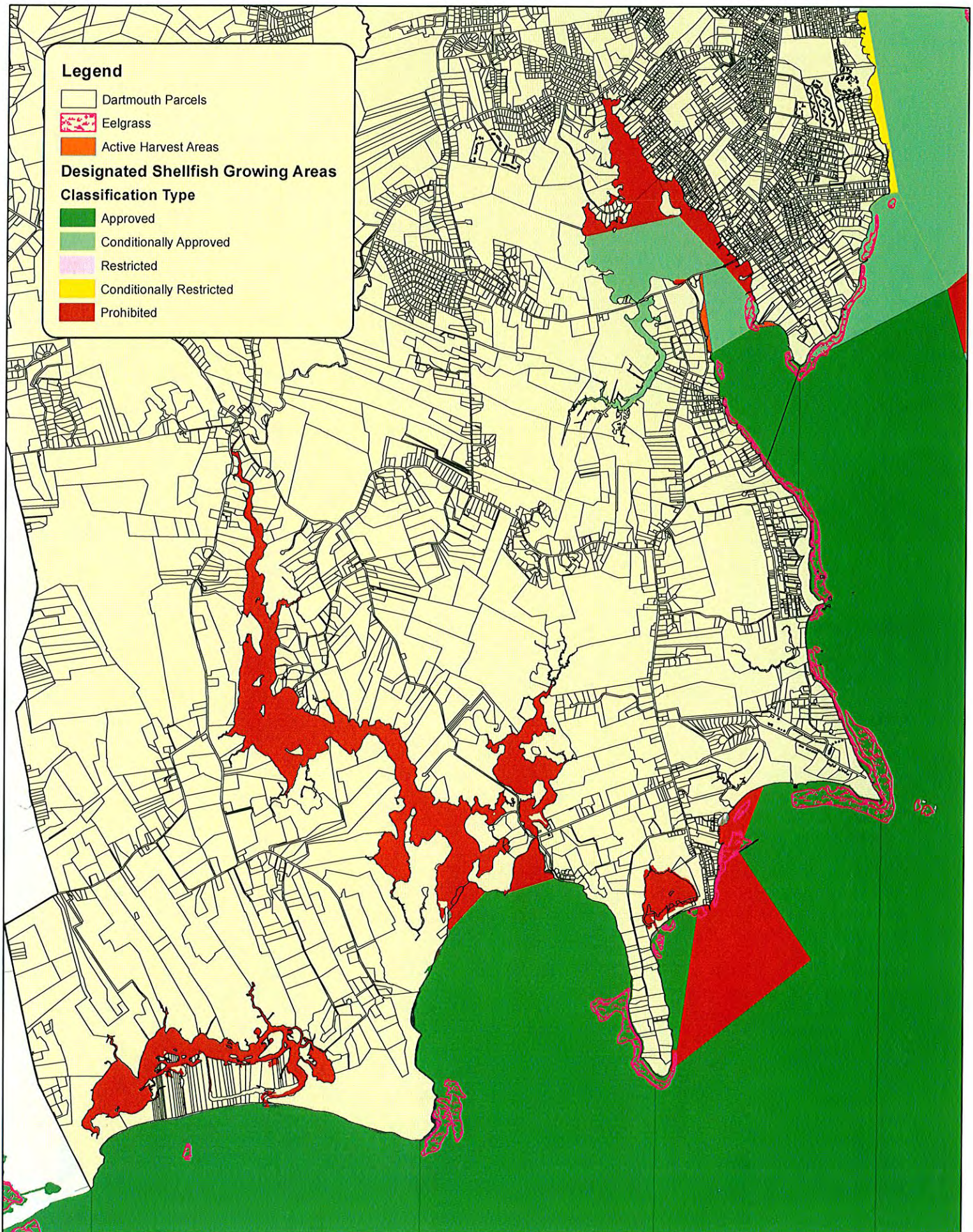
Prior to revoking a license pursuant to these Regulations and M.G.L. c. 130, § 57, the Select Board shall hold a hearing and shall provide the license holder with forty-eight (48) hours written notice of the same, including the allegations being made, by either hand delivery or certified mail, return receipt. Any such revocation shall be in writing and shall specify the violation(s) of the license holder and the facts supporting the same.

Section 22.0 Revision or Amendment of Regulations.

The Select Board reserves the right to revise or amend any and all of these regulations at any time. Changes to regulations shall apply immediately to existing and prospective licenses upon written notice to current and pending license holders.

Approved by the Select Board on _____.

**Town of Dartmouth Designated Shellfish Growing Areas,
Eelgrass Beds & Active Recreational/Commercial Harvest Areas**



Town of Dartmouth Aquaculture Grant Location Availability

