
TOWN OF ORLEANS
SHELLFISH GRANT REGULATIONS
As Amended February 16, 2022

A. STATUTORY COMPLIANCE REQUIRED.

All licensed grants in the Town of Orleans, and all activity thereon, shall comply with Massachusetts General Laws (MGL) Chapter 130, Sections 57-68A. In addition, grant holders shall obtain all other required permits before commencing any activities on the grant. Copies of all such permits shall be provided to the Shellfish Department.

B. COMMERCIAL PERMIT REQUIRED.

No person shall hold a license for a shellfish grant in the Town of Orleans without first obtaining a commercial shellfish permit from the Town of Orleans. Any grant area shall be forfeited if the holder ceases to be a commercial shellfish permit holder in the Town of Orleans. Grant areas shall be forfeited if the holder ceases to be a bona-fide domiciled resident of Orleans or Eastham.

Not more than one license for a shellfish grant shall be issued to members of the same household. For the purpose of this section members of the same household shall include members of one's immediate family as defined in Section D herein, domiciled at the same address. The one per household limitation imposed by this paragraph shall not apply to any grant in existence at the time of the original adoption of this regulation, September 7, 1994.

C. EXPERIENCE / EDUCATION REQUIRED.

The applicant is required to have a minimum of one year prior experience working in the aquaculture field or must complete the Cape Cod Cooperative Extension Shellfish Farming Course (or equivalent as approved by the Shellfish Constable) within 2 years of issuance.

D. EXCLUSIVE USE.

Grant areas are issued for the exclusive use of the grantee and it is the intent of these regulations to insure that the grant holder actively participates in the operation of said grant. However, the grant holder may employ others to perform certain necessary activities. Subleasing or rental of the grant area or portion thereof is prohibited.

E. REMOVAL OF SHELLFISH UPON DEATH OF LICENSEE.

Upon the death of any licensee, his immediate family shall have a period of three years, to provide for grow-out, or to remove adult and seed stock that has been planted by said licensee in the territory covered by his license. Prior to removing any seed however, the family must obtain the proper permit from the Division of Marine Fisheries. For the purposes of this section, immediate family shall mean the spouse, son, daughter, mother, father, brother and sister of said deceased licensee. The town may consider a transfer of said grant license under the terms delineated in paragraph T., below.

F. GRANT AREAS AND USE.

There shall be a maximum of 26 grants of up to 2 acres each in the Pleasant Bay estuary, pending availability of acreage. There shall be a maximum of 5 grants of up to two acres each in Cape Cod Bay, with said area limitations to be reviewed by the Board of Selectmen from time to time. In no case may any one grant

exceed two (2) acres in size. The future allocation of acreage for new shellfish grants in the Pleasant Bay estuary shall be consistent with the Resource Management Plan for the Pleasant Bay Area of Critical Environmental Concern (A.C.E.C.). No new grants shall be licensed in the waters of the Town of Orleans in the Nauset Estuary, or in other areas where the historic natural production of shellfish is evident.

Regardless of whether the specified total grant area limit has been reached, the Board of Selectmen may consider licensing grants for educational purposes and the purposes of collecting experimental data that would benefit all. In such cases, the Board of Selectmen may require that a project schedule and periodic reports be submitted to the Shellfish Department. There shall be no right to operate the grant area for any period after the conclusion of such educational project or experiment.

For the purpose of determining appropriate use of a shellfish grant by a license holder, the following standards shall apply:

- 1) Periodic inspections of a shellfish grant by the Shellfish Department shall be conducted annually.
- 2) The license holder shall be required to comply with at least one (1) of the following criteria annually:

Criteria #1. Shellfish Planting Density Requirement

- A. The density requirements contained herein shall be based on a three-year planting schedule:
- B. Quahogs must be planted at a minimum density of 35 per square foot over a minimum of 50 percent of the shellfish grant.
- C. Oysters must be planted at a minimum density of 10 per square foot over a minimum of 50 percent of the shellfish grant.
- D. Planting densities for other species not listed herein may be developed pending future amendments to MGL Chapter 130 pertaining to the recruitment of wild shellfish. Until such a time, the Shellfish Department shall conduct annual on-site inspections of the shellfish grant. If inappropriate use of a shellfish grant is evident, the Shellfish Constable or his deputies may request a hearing with the Board of Selectmen.

OR

Criteria #2. Annual Shellfish Purchase Requirement

- A. A minimum of \$2,500.00 per one-half acre must be expended annually on exclusively shellfish to be planted on a shellfish grant lease site.

3) Copies of all receipts for purchased seed shall be provided to the Shellfish Department within 48 hours of placement on the aquaculture site.

4) In the event that a license holder is unable to meet any of the above requirements, the license holder must provide sufficient evidence of hardship to the Shellfish Department and the Board of Selectmen in the form of a summary letter on or before December 31 of each year.

As grants in the Pleasant Bay estuary and Cape Cod Bay are relinquished to the town, they may be reassigned or reallocated pending a thorough site review by the Shellfish Department. Priority for the allocation of available acreage shall be given to existing grant-holders eligible for expansion or for the creation of protective buffer zones between grants. Otherwise, available acreage may be assigned to the first applicant from the waiting list.

For purposes of expansion only, the size and location of a grant area to be awarded shall be determined based on the following standards:

- 1) No application for expansion shall be considered until 75 percent of the current license area is planted with purchased shellfish.
- 2) Quahogs must be planted at a minimum density of 35 per square foot.
- 3) Oysters must be planted at a minimum density of 10 per square foot.
- 4) Planting densities or similar expansion criteria for other species not listed herein shall be considered at a future date as necessary.
- 5) The determination of the amount of expansion area shall be based on an assessment of the applicant's proposed planting schedule and consideration of the required planting densities.
- 6) In no case shall an expansion of greater than one-half acre per year be considered.

G. WAITING LIST OF APPLICANTS SHALL BE KEPT BY TOWN.

- (1) If the maximum number of grants in a given estuary are leased, the Shellfish Department shall maintain a waiting list of grant applicants in chronological order.
- (2) Placement on Waiting List and Fee
 - a. The applicant for a waiting list shall complete and submit a “*Aquaculture Grant Waiting List Application*” and provide the necessary fee to the Natural Resources Department. The fee shall be ten dollars (\$10) annually.
 - b. The applicant for a waiting list shall provide current and accurate contact information on their waiting list application. Failure to provide current and accurate contact information may result in removal from a mooring waiting list.
 - c. Upon receipt by the Shellfish Constable of a waiting list application, the Shellfish Constable shall enter the date of receipt on the application and add the name of the applicant to the chronological waiting list for the area requested.
 - d. All waiting lists shall be posted at the Natural Resources Department and online at the Town of Orleans website and shall be up-dated regularly.
- (3) Waiting List Renewal
 - a. The Shellfish Constable shall provide those individuals on the waiting lists with an annual “*Aquaculture Grant Waiting List Renewal*” form.
 - b. If the individual on a waiting list wishes to renew their place on the waiting list, they shall:
 1. Ensure that the information on the renewal form is accurate and sign the renewal form.
 2. Return the renewal form with the necessary payment to the Natural Resources Department between January 1 and March 31 inclusive.
- (4) Removal from a Waiting List
 - a. An individual on a waiting list who does not wish to renew their place on a waiting list should so indicate on the renewal form and return said form to the Natural Resources Department.
 - b. An individual on a waiting list must renew their place on the waiting list annually between January 1 and March 31 inclusive. Failure to renew during this period shall result in removal of the individual’s name from the waiting list.
- (5) Assignment of an Aquaculture Grant to an Individual from a Waiting List

When a grant becomes available, the Shellfish Constable may offer the grant site to the first individual on the waiting list. If the individual chooses not to accept the designated grant site, they will be removed from the list and the Shellfish Constable shall contact the next individual(s) on the waiting list.

H. APPLICANT TO PROVIDE DESCRIPTION.

The applicant for a licensed grant must provide a locus map and a sketch plan showing the Loran-C coordinates, Latitude and Longitude or a similar description of the location of the corners.

I. LICENSE PERIOD.

Grant licenses will be issued initially for a one (1) year period and for a maximum of one-half (1/2) acre. After one (1) year and an evaluation by the shellfish department, the grant may be expanded to a maximum of two (2) acres with a maximum ten (10) year term.

J. MANAGEMENT PLAN REQUIRED.

At the time of application, the applicant for a licensed shellfish grant must file a management/development plan with the Shellfish Department and Selectmen. Such plan will be evaluated by all reviewing parties in consideration of licensing said grant. Any subsequent changes must be submitted for review to the Shellfish Department prior to said change.

K. ANNUAL REPORTS.

Licensed grant holders shall file annual reports in accordance with MGL Chapter 130, Section 65 on or before December 31, each year. Copies of all receipts for shellfish seed purchased for said grant during that year shall be attached to this annual report.

L. SUSPENSION/REVOCATION.

Licensed grants may be suspended or revoked by the Board of Selectmen for violations of MGL Chapter 130, Sections 57-68A, the regulations of the Division of Marine Fisheries, the Orleans Shellfish Regulations, or otherwise for any just cause including failure by the grant holder to comply with conditions set forth by the Selectmen, the Shellfish Department and the grant holder's own management plan.

M. SHELLFISH SIZE REQUIREMENTS.

All shellfish removed from licensed grants shall meet town regulations regarding size and maturity except as provided for in paragraphs D and S of these regulations.

N. SEED PERMIT REQUIRED.

No person shall plant, place, or transplant seed shellfish in or on any water or flat within the Town of Orleans without first obtaining a state seed permit or aquaculture permit.

O. SEED RESTRICTION.

No person shall remove seed stock from the natural or wild fisheries within the Town of Orleans, for any purpose, including the purpose of stocking their licensed grant with such seed.

P. STRUCTURE HEIGHT.

No structure used for shellfish aquaculture (fixed to the bottom) within the boundaries of a grant shall be in any part more than eighteen (18) inches above the natural ground level.

Q. GRANT MARKING.

From April 1 to November 1, all shellfish grants shall be marked with twenty (20) inch or larger in circumference, yellow fluorescent balls at each corner, and said buoys shall be attached to their moorings only by metal chains, cables, or non-floating lines. These buoys shall bear the painted numbers of the licensed grant and said numbers shall not be less than two inches in height. Additionally, such other buoys as shall be required by the Harbormaster shall be placed as he shall direct.

Moorings for said buoys shall be of PVC pipe, metal staple, or similar design if approved by the Shellfish Constable, so as to reduce the potential for damage caused by dragging. The use of concrete blocks, bricks, mushroom anchors, or similar devices as moorings shall be prohibited unless authorized by the Shellfish Constable.

All aquaculture gear including but not limited to nets, bags, cages, racks and buoys shall be tagged by the licensee as follows: Town of Orleans Shellfish Grant (permit holders' last name) so that any loose gear may be returned. Said gear shall be retrieved by the grant holder within fourteen (14) days of verbal or written notification by the Natural Resources, Shellfish and Harbormaster Department.

Failure to comply with this regulation shall be cause for immediate forfeiture of said grant license in accordance with MGL Chapter 130, Section 61.

R. NIGHT RESTRICTIONS.

No grant holder shall dig, pile, take, harvest or carry away any shellfish or shells during the period between one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise by any method whatsoever.

In cases of impending natural emergency such as storm or ice, and with the permission of the shellfish constable or deputy, the grant holder may engage in the securing of threatened stock, the repair of propagation boxes, bottom pens, nets or other shellfishing equipment during the period from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise.

S. HARBOR IMPROVEMENTS LIABILITY.

No holder of any licensed grant shall hold liable the Town of Orleans or the Commonwealth of Massachusetts for any damage to any grant as the result of harbor improvements.

T. FORFEITURE OF GRANTS

A grant holder who decides to forfeit his/her grant license shall notify the Shellfish Department of that intention in writing, and specify the date on which the forfeiture shall become effective. The grant holder shall be allowed a reasonable period of time to allow for the grow-out of existing stock on the grant. After such notification the grant holder may be authorized by the Shellfish Constable to obtain a seed selling permit from the Division of Marine Fisheries to allow for the removal of adult and seed stock from the grant area until the date of forfeiture.

U. TRANSFER OF GRANTS

A grant license may not be transferred, in whole or in part, to any party other than an immediate family member of the current license holder (immediate family member being defined in paragraph D., above).

A license transferred under authority of this section shall continue in full force and effect and be subject to any conditions or restrictions applied at the time of issuance. Such transferred licenses may be renewable for such terms as allowed by paragraph H. above and all other requirements of these regulations pertaining to residency and licensing shall apply.

In the case of the death of the licensee, the town may elect to allow the transfer of said grant to an immediate family member or to a legal guardian. If such a transfer is made to an individual who is not the holder of a valid Orleans commercial shellfish permit and/or domiciled in the Town of Orleans or Eastham, the following conditions shall apply:

In the case of a transfer to an immediate family member who is not yet of lawful age to hold said permit or does not meet the residency requirements, he/she shall be allowed to operate the grant in partnership with a holder of a valid

permit until such time as he/she becomes eligible for the same. In the case of a transfer to a legal guardian, he/she shall be allowed to operate the grant in partnership with a holder of a valid commercial permit until such time as said minor is entitled to a permit.

In all cases, a person receiving the transferred grant who is of lawful age to obtain a commercial permit shall obtain said permit during the period between January 1 and April 30 immediately following the transfer. In the case of a minor, he/she shall obtain a commercial shellfish permit during the period between January 1 and March 31 immediately following the attainment of age fourteen (14).

V. ACREAGE ELIGIBILITY

No individual shall be entitled to any grant area that, when combined with grant acreage in Eastham, would bring his total acreage to greater than two acres.

W. COMMERCIAL PERMIT REQUIRED TO LAND SHELLFISH

All shellfish harvested from a shellfish grant shall be landed by the holder of a valid commercial shellfish permit and / or valid state employee transaction card associated with the grant.