

TOWN OF BARNSTABLE

NOTICE OF MEETINGS OF TOWN DEPARTMENT AND ALL TOWN BOARDS

As Required by Chapter 28 of the Acts of 2009, amending MGL Chapter 30A

SHELLFISH COMMITTEE :

DATE OF MEETING: Jun 15, 2016

TIME: 7:30pm - 9:30pm

PLACE: Senior Center 825 Falmouth Road, Hyannis

1. Approve minutes of the April 20, 2016 and the May 18, 2016, meetings.
2. Chairman's comments.
3. NR propagation report to include status of revolving account and amounts expended from the account to date.
4. Status of pending pier applications before the Conservation Commission.
5. Old Business

Discussion and possible vote on the issue of lack of reasonable notice regarding the Conservation Commission's Notices of Intent.

6. New Business

Discussion and vote on requested transfer of Aquaculture License # 13-01 from Nolan Ryan to Nathan Ryan; shellfish aquaculture site ng 018, 2 acres currently licensed to Nolan Ryan and issuance of a new license to Nathan Ryan for 5 years;

Discussion and vote on requested transfer of Aquaculture License # 95-08 from John V. Kelly to Robert Ashworth; shellfish aquaculture site ng 018, 0.32 acre currently licensed to John V. Kelly and issuance of a new license to Robert Ashworth for 5 years;

Discussion and vote on requested transfer of Aquaculture License # 99-01 from Robert Ashworth to Lynn Kraus; shellfish aquaculture site ng 005, 2 acres currently licensed to Robert Ashworth and issuance of a new license to Lynn Kraus for 5 years; and

Discussion and vote on renewal application of Nancy Ashworth for 2 acre site ng 022, License # 02-08, and issuance of a new license for a period of 10 years.

Discussion and possible vote of proposed Regulation changes to the Town of Barnstable Shellfishing, Eel, Herring and Aquaculture rules and regulations as proposed by the Natural Resources Program of the Marine Environmental Affairs Division and submitted for review to the Shellfish Committee all as follows:

1: Proposal: Section 407-47; Amend the regulation by adding the wording highlighted in **bold**.

§ 407-47. Proof of residency required.

Aquaculture grant licenses, hereinafter referred to as the “license” , will be issued to Town of Barnstable residents only who can prove to the satisfaction of the Licensing Authority that they are a bona fide, domiciled resident of the Town of Barnstable and have been domiciled within the Town for at least 12 consecutive months prior to the date of application. Two forms of written proof of residency is required; tax bills, rent receipts, utility bills, driver’s license, car registration, etc., may serve as proof. All local tax obligations must be paid in full in order for an application to be considered in accordance with MGL C. 40, § 57, which was adopted by Town Meeting 11/86. Any licensed area so licensed subsequent to the adoption of these rules and regulations shall be forfeited if the holder of the license, hereinafter referred to as the “licensee”, ceases to be a bona fide domiciled resident of the Town of Barnstable. **Annual documentation to verify the licensee is domiciled in the Town of Barnstable is required. This may be current real estate tax, mortgage or lease and copy of motor vehicle registration. (A driver’s license is not valid annual proof of domicile). The burden of proof is on the licensee and shall be included with the annual license fee, due by February 28 each year.**

Rationale

Annual proof of domicile is required for those in the commercial shellfishery. To keep better track of licensees, annual proof of domicile for grant holders should also be required.

2: Proposal: Section 407-50; Amend the regulation by adding the wording highlighted in **bold**.

§ 407-50. Filing and posting of applicants.

A list of applicants for licenses in order of date and application shall be kept on file by the Town Manager, and an up-to-date copy shall be permanently posted on an official bulletin board in the Town Hall. **It shall be the responsibility of the applicant to notify the Town Manager’s office, in writing, between January 1 and February 15 of each year of his/her desire to remain on the list. The Town Manager’s officer must receive said notice on forms supplied by the Town Manager’s office by 4:15PM on the deadline date (February 15) along with a \$10.00 fee.**

Rationale

Annual notice of desire to remain on the list along with a wait list fee will ensure the wait list stays current.

3: Proposal: Section 407-52; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

§ 407-52. Compliance with all laws required; approval of license.

Approval of any aquaculture license shall be subject to all federal, state and local laws, rules and regulations as in force and as amended from time to time. ~~and~~ The licensee shall comply with all such rules and regulations **pertaining to the operation of an aquaculture license in the state of Massachusetts**. Failure to comply with any of the aforementioned laws, rules and regulations shall be cause to revoke the license. The Town Manager's approval of a shellfish aquaculture license shall become effective upon the expiration of 30 days from the date the Town Council is notified, in writing, of said license approval unless the Town Council votes within said time to disapprove of said license.

Rationale

Federal, state and local laws are subject to change, and it needs to be clearly stated that licensees comply with any and all changes.

4: Proposal: Section 407-54; Amend the regulation by adding the wording highlighted in bold.

§ 407-54. Exclusivity of license; subleasing prohibited; transfer of license.

Licenses are issued to and for the exclusive use of the licensee who may contract with or employ others to work for the licensee. Subleasing of the licensed area or portion thereof is prohibited. Licenses are renewable, heritable and transferable subject to Town Manager written approval and pursuant to Massachusetts General Laws Chapter 130. **Licenses are transferable only after five years from the original license issuance date, subject to review by the Natural Resource Office for reporting requirements and production standards under §407-59 and §407-60 and subject to Town Manager's written approval and pursuant to Massachusetts General Laws Chapter 130.** A licensee proposing to transfer his or her license shall first notify the Town Manager in writing that he/she no longer wishes to operate the license and requests a transfer of his/her licensed area to a designated recipient. Such recipient shall thereupon file an application under §407-48. Thereafter, the application shall be treated, insofar as apt, as a new application.

Rationale

The five year waiting period for transfers encourages new licensees to make production standards and provides for the availability of a limited number of sites for persons on the waiting list..

5: Proposal: Section 407-56; Amend the regulation by deleting the crossed out wording.

§ 407-56. New license period; renewal.

A new license shall be issued for a period not to exceed five years, and for a total maximum area not to exceed two acres. ~~During the first year, at least 10% of the lease site must be used for the permitted aquaculture activity, during the second year 15% and during the third year 20% or the license will be forfeited.~~ The licensee may apply for renewal of the license at anytime within two years prior to the expiration date of the license. The Town Manager shall review the licensee's request for renewal within 60 days after receipt of the renewal request. Under the legal discretion of the Town Manager the license holder shall have the option of a renewal period up to 10 years.

Rationale

These production standards are unrealistic and are addressed in §407-59, Reasonable production value.

6: Proposal: Section 407-58; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

§ 407-58. License fee.

An annual license fee of ~~\$25~~ **\$200** per acre or any part thereof shall be paid to the Town by the licensee upon the issuance of the license and thereafter on or before December 31 of each year. If the fee is not paid within the 30 days after it becomes due, the license shall be forfeited.

Rationale

This cost increase is needed to meet the demands of growing aquaculture with appropriate staffing at Natural Resources.

7: Proposal: Section 407-59; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

§ 407-59. Reasonable production value.

An annual review of each license will be conducted by NR in order to determine reasonable production value. If, after the third year of a new license, any licensee cannot show that a reasonable amount of shellfish product has been produced on the license during the preceding year the license may be forfeited. For purposes stated herein reasonable amount of shellfish product shall mean not less than ~~\$2,000~~ **\$4,000** per acre per year based upon market value. Failure of the licensed shellfish product to meet such a value shall result in a forfeit of the shellfish aquaculture license and licensed area. If, for any year, the licensee does not meet the reasonable production value then upon written request to the Town Manager said reasonable production value may be waived at the discretion of the Town Manager for that particular year, provided that the licensee can demonstrate to the Town Manager that the cause of the lower amount produced is the direct result of a natural disaster or other unforeseen personal misfortune.

Rationale

\$4,000 per acre is a more accurate reflection of today's reasonable production value based on current inflation rates.

8: Proposal: Section 407-60; Amend the regulation by adding the wording highlighted in **bold**.

§ 407-60. Filing of annual reports.

Licensees shall file annual reports with NR in accordance with the form provided by NR on or before February 28 of each year and shall produce documents upon the request of NR showing purchase and sale slips stating the total amount of each kind of shellfish planted, produced or marketed during the preceding year (January 1 through December 31) upon or from the licensed area, and an estimate of the total number of each kind remaining. The report shall disclose all necessary information as required by these regulations and NR which establishes that the licensee reached the reasonable production value. **A new licensee is required to submit purchase and sale slips for source(s) of seed planted on his/her licensed site for the first three years of his/her original license.**

Rationale

Requiring new licensees to show documentation of seed planted on his/her licensed site for the first three years ensures new licensees are actively using their licensed area for aquaculture.

9: Proposal: Section 407-64; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

§ 407-64. Removal of gear upon termination of license.

When a license is discontinued or terminated for any reason, the license holder shall be required to remove all gear from the waters and substrate within 60 days of the license termination date. Any and all equipment not removed within 60 days ~~may~~ **shall be removed by a third party, contracted** by the Town, at the expense of the licensee.

Rationale

When a license is discontinued or terminated and the licensee abandons the site without removing gear, a third party would need to be hired to remove all remaining gear in order for the next licensee to take over the license.

7. Matters not reasonably anticipated by the Chair

The list of matters, are those reasonably anticipated by the president/chair, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the sub-committee may go into executive session.

PERSONS INTERESTED ARE ADVISED THAT IN THE EVENT THAT ANY MATTER TAKEN UP AT THE MEETING THAT REMAINS UNFINISHED AT THE CLOSE OF THE MEETING, IT MAY BE PUT OFF TO A CONTINUED SESSION OF THIS MEETING WITH PROPER POSTING.

For your information the section of the M.G.L. that pertains to postings of meetings is as follows: Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting.

Notice shall be printed in a legible, easily understandable format and shall contain: the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. Meetings of a local public body, notice shall be filed with the municipal clerk, and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.