

<p style="text-align: center;"><b>Town of Eastham Policy Guidelines</b> <b>Aquaculture License Regulations</b></p>
--

**1.0 AUTHORITY**

The Board of Selectmen, through the authority derived under MGL Chapter 130, intends to continue the long-standing policy and tradition of protection and enhancement of the shellfish resources of the town.

**2.0 PURPOSE**

**2.1** 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 Commonwealth; however, the specific cultivation of sites, which are not productive by reason of nature, is an objective that the town continues to support and encourage. The following Regulations are intended to facilitate such aquaculture projects while maintaining the protection of reasonable rights of the general public to enjoy the shell fishery. The granting of aquaculture licenses to pursue aquacultural activities is limited to the exclusive use of the land and the waters above the aquaculture 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.

**2.2** The term "Grant Site" refers to sites assigned by the Town for aquaculture use pursuant to these regulations. The term "Private Site" refers to sites used for aquaculture on privately owned tidelands. The term "aquaculture sites" refers to both Grant Sites and Private Sites.

**3.0 APPLICABILITY/ELIGABILITY**

**3.1** The minimum age for an aquaculture license holder shall be eighteen (18) years upon the date of application, notwithstanding the issuance of a Commercial Shellfish Permit to persons less than eighteen (18) years of age.

**3.2** Expansion of an aquaculture site may be permitted by the Board of Selectmen after the initial two-year period of operation and upon application by the licensee and favorable review by the Natural Resources Department with respect to the

progress accomplished on the Grant Site in compliance with the licensee's management plan.

- 3.3 The maximum size of a grant site permitted to be held by an individual or equally two persons shall be two acres. If more than one licensee is domiciled at a single household, the maximum acreage per domiciles is two acres.
- 3.4 Aquaculture licenses are issued to an individual or equally to two persons and are for the exclusive use of the licensee(s). The holder(s) of the licensee may employ others to perform certain necessary activities on the site. Subleasing or rental of the Grant Site is prohibited. Upon favorable review and favorable recommendation by the Shellfish Constable, qualified applicants for issuance of a second individual to an aquaculture site shall be reviewed and approved or denied by the Board of Selectmen on a case-by-case basis.
- 3.5 The Board of Selectmen may issue licenses for aquaculture sites for educational or experimental purposes. Said licenses shall be issued to the institution or agency that is conducting the project rather than an individual.

#### **4.0 GENERAL REGULATIONS**

- 4.1 These Regulations concerning 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.
- 4.2 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 written permission of an upland property owner before exercising the rights conferred by these licenses to plant and harvest shellfish. Applicants for an aquaculture license for use on a Private Site must document the consent of the owner of record of the Private Site.
- 4.3 Application for an 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 Grant Site pursuant to MGL Chapter 130, Section 57 and Section 59. All activities of an aquaculture Grant Site shall be in compliance with the licensee's management plan and application filed by the applicant or as amended in consultation with the Natural Resources Department. The application/management plan shall be submitted by the person requesting a Grant Site. (*Copy - Form A attached*). Any information that is found to be falsified may be cause for denial or forfeiture of a license.

- 4.4 Upon receipt of the application, the Board of Selectmen shall hold a duly advertised public hearing.
- 4.5 Within sixty (60) days of the close of the public hearing for such license, the Board shall approve or deny the license. All such approvals are further subject to approval by the Director of the Division of Marine Fisheries. For sites previously approved and certified by the Director 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.

## 5.0 LOCATION OF AQUACULTURE SITES

- 5.1 The town shall designate Aquaculture Development Areas (ADA) 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 an Aquaculture Development Area will provide for: surveying, Conservation Commission approval, determination of productivity from Division of Marine Fisheries, Division of Waterway permits, Indian Affairs review and Corps of Engineers permits for the installation of devices for the cultivation of shellfish. Applicants for sites within an Aquaculture Development Area 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.
- 5.2 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 (*Map #1 attached*). Cape Cod Bay is defined as Massachusetts Division of Marine Fisheries Growing Area CCB 9.
- 5.3 The Nauset Marsh/Town Cove Aquaculture Development Area is limited to sites identified and in existence as of January 1, 1997. Town Cove is defined as Massachusetts Division of Marine Fisheries Growing Area OC4, Nauset Marsh is Growing Area OC5 and Nauset Harbor is Growing Area OC2.
- 5.4 Within the Cape Cod Bay Aquaculture Development Area described above, Grant Sites of one-half (1/2) acre area each shall be designated. Additionally, a half (1/2) 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.
- 5.5 Existing active aquaculture sites located in Nauset Marsh and Town Cove shall be continued subject to the provision of these regulations. (*Map #2a; #2b; #2c*)

*attached*).

- 5.6 Previously permitted Grant Sites in the Nauset Marsh shall be included in the Nauset Aquaculture Development Area designation subject to review and certification by all appropriate agencies. (MAP - Include)
- 5.7 Additional sites for aquaculture licenses may be considered for licensing by the Board of Selectmen on an individual basis. In such cases, the applicant must obtain all relevant permits prior to the Board of Selectmen hearing to consider the matter.

## **6.0 OPERATION**

- 6.1 Annual Reports on forms provided by the Natural Resources Department must be submitted by the licensee to the Town every year before March 31<sup>st</sup> and must include the total number of each kind of shellfish planted, produced, or marketed during the preceding calendar year upon or from a licensed aquaculture area, and an estimate of the total number of each kind of shellfish at the time of such report planted or growing thereon (MGL Chapter 130 Section 65). Productivity receipts for gear or seed purchased may accompany such Annual Report submittal as applicable. (*Copy - Form B attached*).
- 6.2 Permits are required for the purchase or transport of seed shellfish stock to the site. Such permits may be obtained through the Massachusetts Division of Marine Fisheries.
- 6.3 Each aquaculture site shall be marked in compliance with MGL Ch. 130 Sec. 61. with yellow buoys bearing the number of the lease site in the color black. Said buoys shall be no less than 20" (twenty inches) in circumference.
- 6.4 All Grant Site cultivation shall be at least five feet (5') within the site boundary. This will facilitate the passage and movement of materials around adjacent Grant Sites.
- 6.5 No equipment or gear may rise more than eighteen inches (18") above the surrounding sediment. Equipment or gear made of flexible plastic or an equally flexible material may rise up to twenty four (24") inches around the surrounding sediment. Floating gear is permitted for use in Nauset Marsh/Town Cove.
- 6.6 No wild seed may be transplanted onto an aquaculture 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.

- 6.7** Access to aquaculture sites shall be by vessel, on foot, on ATV or by special permission of the Board of Selectmen. Use of an ATV must first be requested and approved through the Natural Resources Department. Other such permission may be requested annually, and if approved for designated vehicle type and limited time of applicability.
- 6.8** Dredging of aquaculture areas is prohibited.
- 6.9** The licensee shall submit seed purchase receipts from Massachusetts Division of Marine Fisheries approved sources, or pathology reporting if applicable, to the Natural Resources Department within 48 hours of placement on the aquaculture site.
- 6.10** Except for seed purchased from Division of Marine Fisheries approved hatcheries, all seed purchased, or intended to be purchased or placed onto the licensee's site, from other Designated Shellfish Growing Areas as defined by the Division of Marine Fisheries, shall be submitted to a qualified facility for pathology testing and shall be found by the pathology reporting to be acceptable for placement by the Division of Marine Fisheries, prior to such placement. Seed origin and documentation shall also be submitted to the Shellfish Constable for review prior to placement or planting.
- 6.11** In accordance with MGL Chapter 130, Section 68, operation is prohibited during the nighttime. Aquaculture operations shall be conducted between one half hour before sunrise to one half hour after sunset. In the event of impending natural emergencies due to storms, ice or other unforeseen limited circumstances, and only after first notifying and receiving approval of the Shellfish Constable, a licensee may engage in securing, placing or removing, stock and gear during this time period.
- 6.12** Aquaculture sites shall be maintained and cleaned of debris. This includes but is not limited to rebar, rebar staples, nets, racks, cages, bags, ropes, and buoys. All equipment or gear that is either damaged or can no longer be used as it was originally designed or intended to be used in the opinion of the Shellfish Constable, must be removed from the licensed area and disposed of properly. All gear shall be secured so that it can withstand strong weather elements. Rebar, rebar staples, nets, racks, cages, ropes, and buoys shall be immediately secured if they become loose. Nets and rebar shall be removed from the site after use. Shall a license be terminated for any reason it is the responsibility of the license holder to remove all equipment from the aquaculture site within 30 days, unless the subsequent licensee elects to purchase or otherwise utilize the existing gear.
- 6.13** All aquaculture gear including but not limited to bags, cages, racks and buoys shall be labeled by the licensee with the owner's and name town, or utilizing state

issued identification tags, so that any loose gear may be returned to the owner and shall be retrieved by the owner within fourteen (14) days of verbal or written notification by the Natural Resources Department.

- 6.14** Due to high demand for aquaculture Grant Sites, licenses may be revoked by the Board of Selectmen for lack of productive use pursuant to MGL Chapter 130 Section 57. There shall be minimum levels of investment and production required in order to retain a license. These shall be:
- a. During the first, second, and third year after the date of issuance of the license a minimum of \$1000 per acre shall be spent on seed and gear for the area and it shall be evident that this effort of improvement has taken place. Any licensed area that is less than one acre shall be prorated.
  - b. After the fourth year, adequacy of production shall be based on the annual report provided to the Natural Resources Department.
  - c. The Board of Selectmen will review hardship requests on a case-by-case basis.

**6.15** Licensees shall comply with all applicable vibrio regulations. (322 CMR)

## **7.0 TERMS OF LICENSES**

- 7.1** The license for a Grant Site shall be for a period of two (2) years for a maximum of one half (½) acre. Following the second year and upon favorable evaluation by the Natural Resources Department, the license will be recommended for renewal by the Board of Selectmen for a period of up to ten years and licensees of Grant Sites may elect to increase to two acres. Aquaculture licenses for Private Sites shall be for an initial term of 2 years, and shall be extended annually upon favorable evaluation by the Natural Resources Department.
- 7.2** Shellfish aquaculture licenses may not be transferred in whole or in part to any party other than an immediate family member without the approval of the Board of Selectmen, and in accordance with Section 8.0. No licenses may be sold. After a public hearing, the Board of Selectmen may approve the *transfer* of a license from one family member to another. Said licenses shall be subject to all conditions and restrictions contained herein. 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.

- 7.3** A licensee may elect to forfeit a license. He/she shall notify the Natural Resources Department of their intention in writing stating the reason and effective date. The licensee may obtain a seed sales permit from the Division of Marine Fisheries for the purpose of removing seed stock from the licensed site. If a licensee forfeits a license or has a license revoked for any reason, said licensee shall have sixty (60) days to remove all equipment from the site. If after sixty (60) days all equipment is not removed, the Town may remove it at the owner's expense.
- 7.4** An aquaculture license, in accordance with MGL Chapter 130 Section 57, may be suspended or revoked by the Board of Selectmen for just cause including, but not limited to, lack of substantial use of the licensed area, failure to comply with applicable regulations, statutes, procedures or directives of the town, or compliance with the approved management plan for the site.
- 7.5** The annual fees for the aquaculture licenses based in part on area under cultivation, shall be established by the Select Board, and shall be based on applicable sections of MGL Chapter 130.
- 7.6** 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 site or cultivated shellfish as a result of use or management of the navigable waterways of the Town.

## **8.0 ASSIGNMENT OF GRANTS**

- 8.1** As Grant Sites become available, they shall be assigned by the following process:
- a. Licenses for Grant Sites may be transferred in whole or part to an immediate family member after approval of the Board of Selectmen at a public hearing. For purposes of these regulations the term "immediate family" shall mean spouse, son, daughter, mother, father, brother, or sister.
  - b. Licenses for Grant Sites may be transferred by inheritance in whole or part to a relative after approval of the Board of Selectmen at a public hearing.
  - c. If the Grant Site is not transferred as specified in Section 8.1(a) or (b) an available Grant Site will be offered to the next individual on the waiting list. A person on the waiting list may elect to forego the offered site and maintain their status on the waiting list.

## **9.0 WAITING LIST PROCEDURES**

- 9.1** Individuals may apply to be on a waiting list for assignment to a vacant Grant Site, subject to the following requirements:
- a. New applicants must be a bona-fide resident of Eastham or Orleans, with their primary residence being in either town for no less than twelve consecutive months prior to the date of application.
- 9.2** New applicants must maintain residency requirements as outlined in Section 9.1 (a) and subsequent amendments, in order to remain on the waiting list.
- 9.3** In order to remain on the waiting list, individuals on the waiting list will be required to complete an annual renewal process and renewal fee, subject to a deadline as set by the Natural Resources Department for receipt of renewal forms.
- 9.4** Prior to the approval of a waiting list application, each applicant will be required to submit a one-time application fee and meet with Shellfish Constable to discuss aquaculture permitting requirements, logistics of operating a shellfish grant, access, and the applicant's aquaculture plan.
- 9.5** Persons on the waiting list maintained by the Natural Resources Department as of the effective date of this regulation shall comply with Section 9.3 to remain on the waiting list.
- 9.6** The Natural Resources Department shall manage the waiting list so that at least 50% of the Grant Licenses are assigned to Eastham residents, and if necessary to accomplish that goal, persons on the waiting list who are not Eastham residents shall be skipped over when assigning Grant Sites, but such persons may remain on the waiting list without otherwise losing their priority. The foregoing sentence does not preclude a person who was an Eastham Resident when a grant was assigned, from thereafter becoming an Orleans resident and retaining the Grant License, but in such case the person subsequently shall be treated as an Orleans resident when determining the 50% target.

## **10.0 ENFORCING OF REGULATIONS**

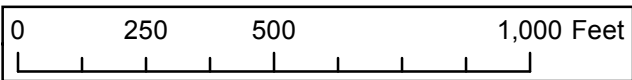
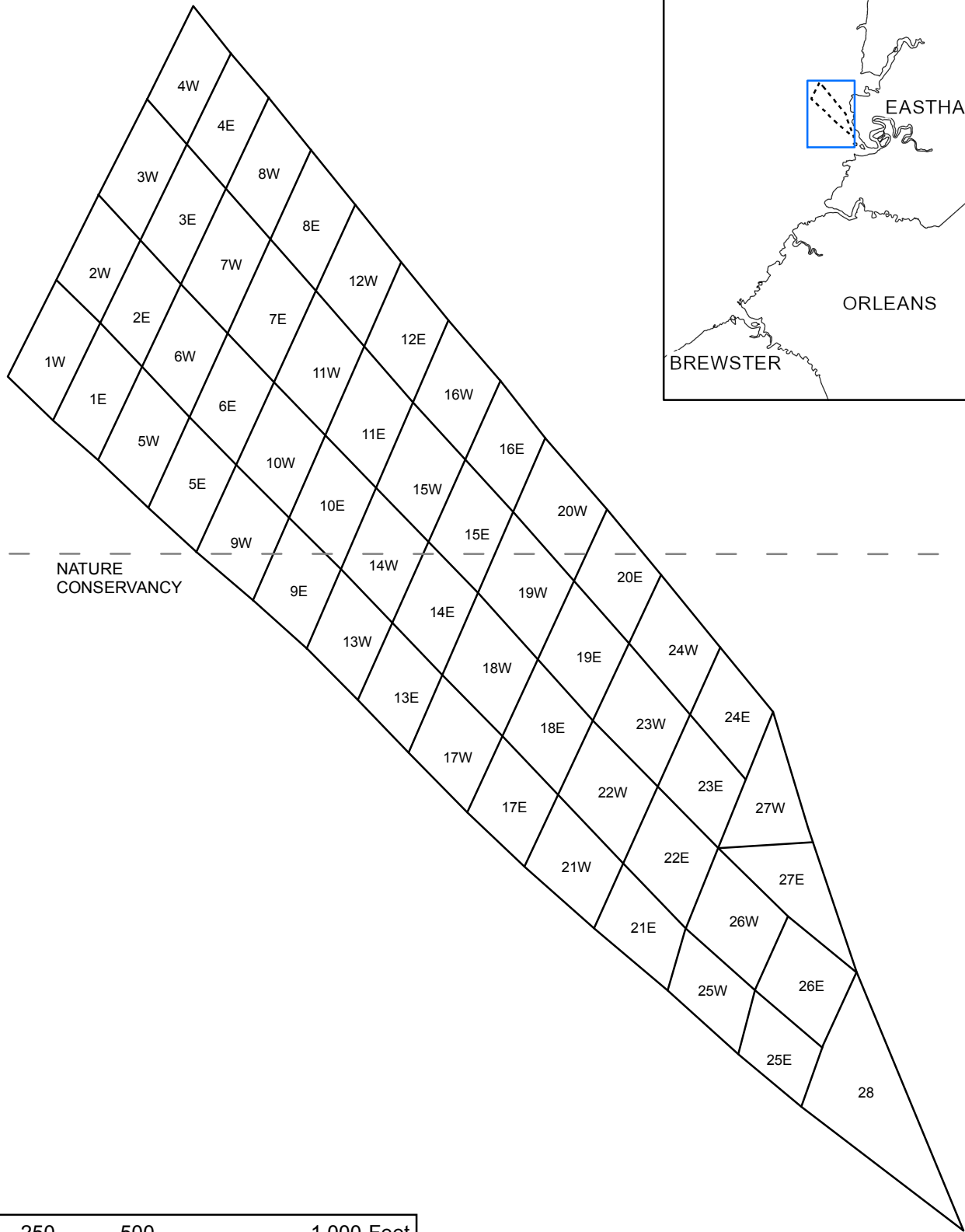
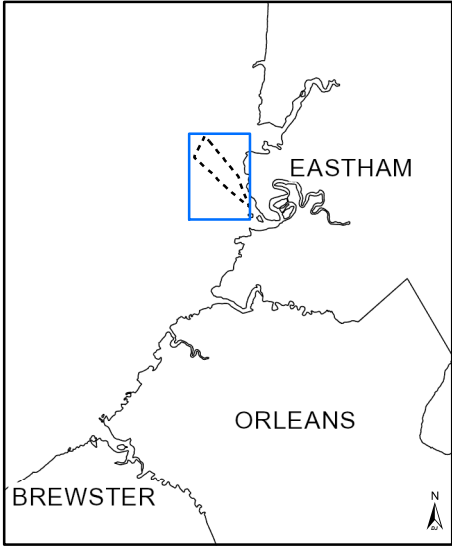
- 10.1** These regulations shall be enforced by the Shellfish Constable and his/her designees and non-compliance with the above regulations may be brought forth to the Board of Selectmen for their review and action(s) taken including but not

limited to revocation or forfeiture of aquaculture licenses and rights to the Grant Site. An aquaculture license, in accordance with MGL Chapter 130 Section 57, may be suspended or revoked by the Board of Selectmen for just cause including but not limited to lack of substantial use of the licensed area, failure to comply with applicable regulations, statutes, procedures, or directives of the town, or compliance with the approved management plan for the site.

*These regulations adopted by the Select Board at a public meeting held on: Monday, December 21, 2009; Revised: Monday, January 6, 2025.*

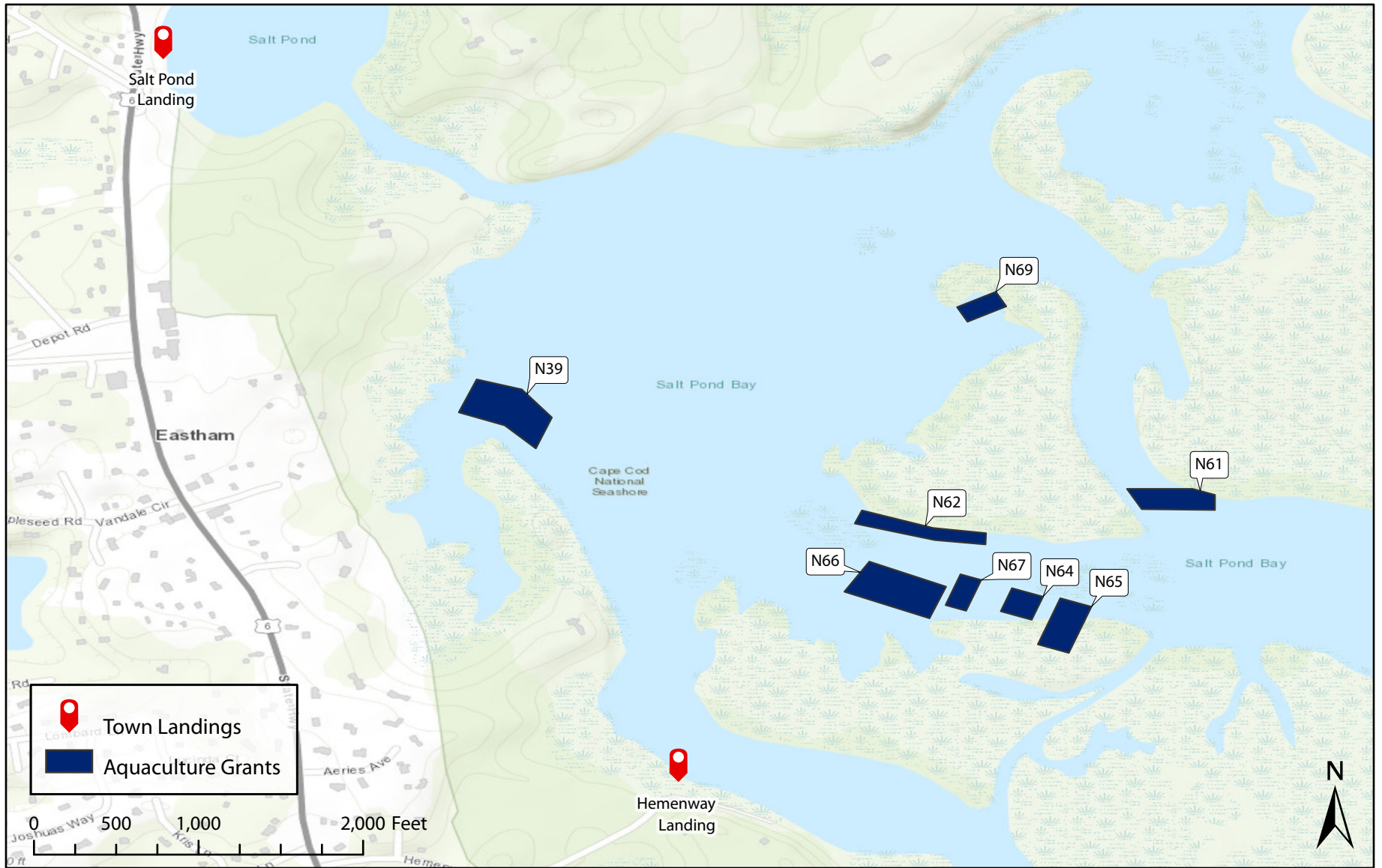


# Eastham Aquaculture MAP 1

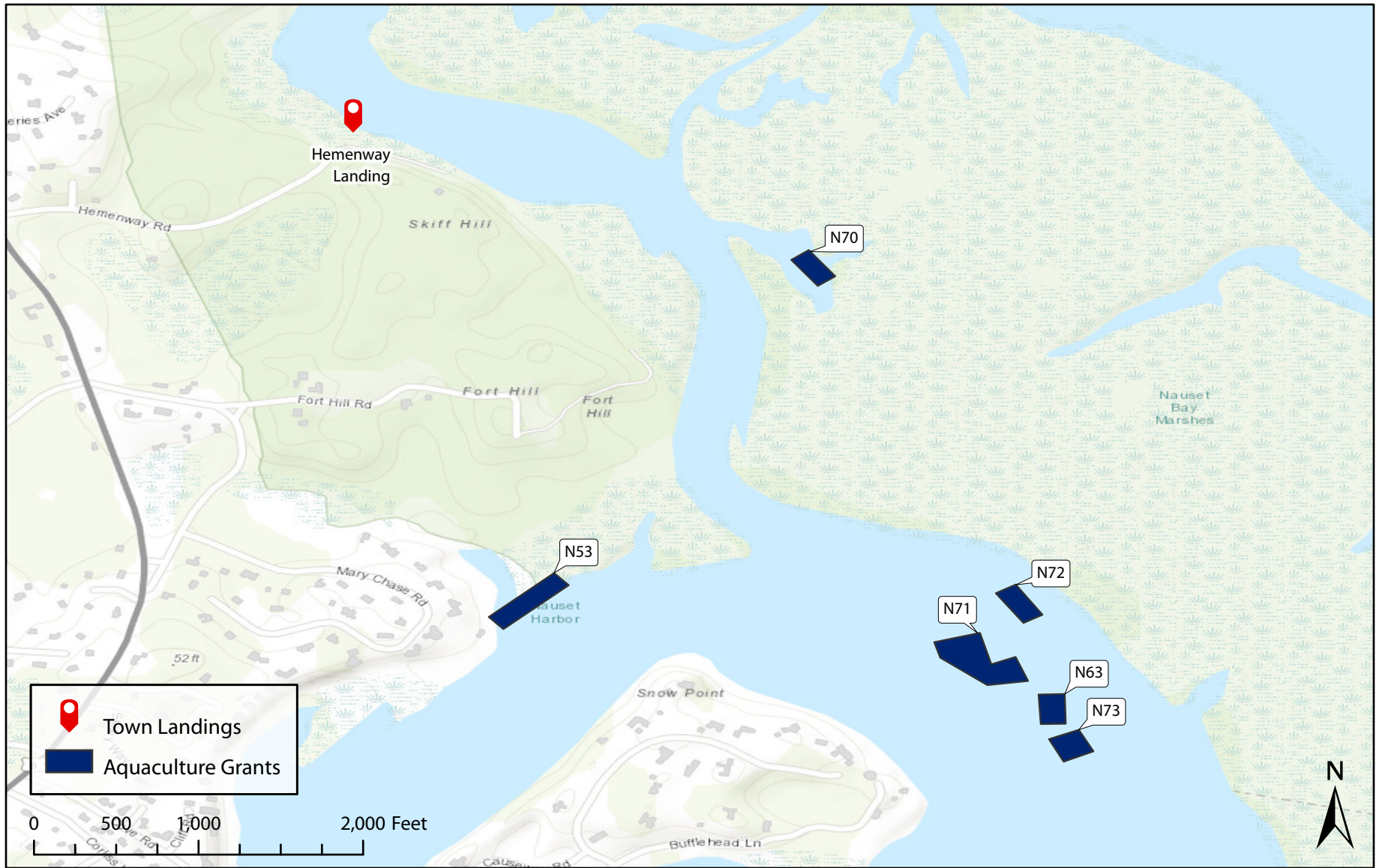


**\*This is a draft. Depictions of grant sizes may not be to scale.**

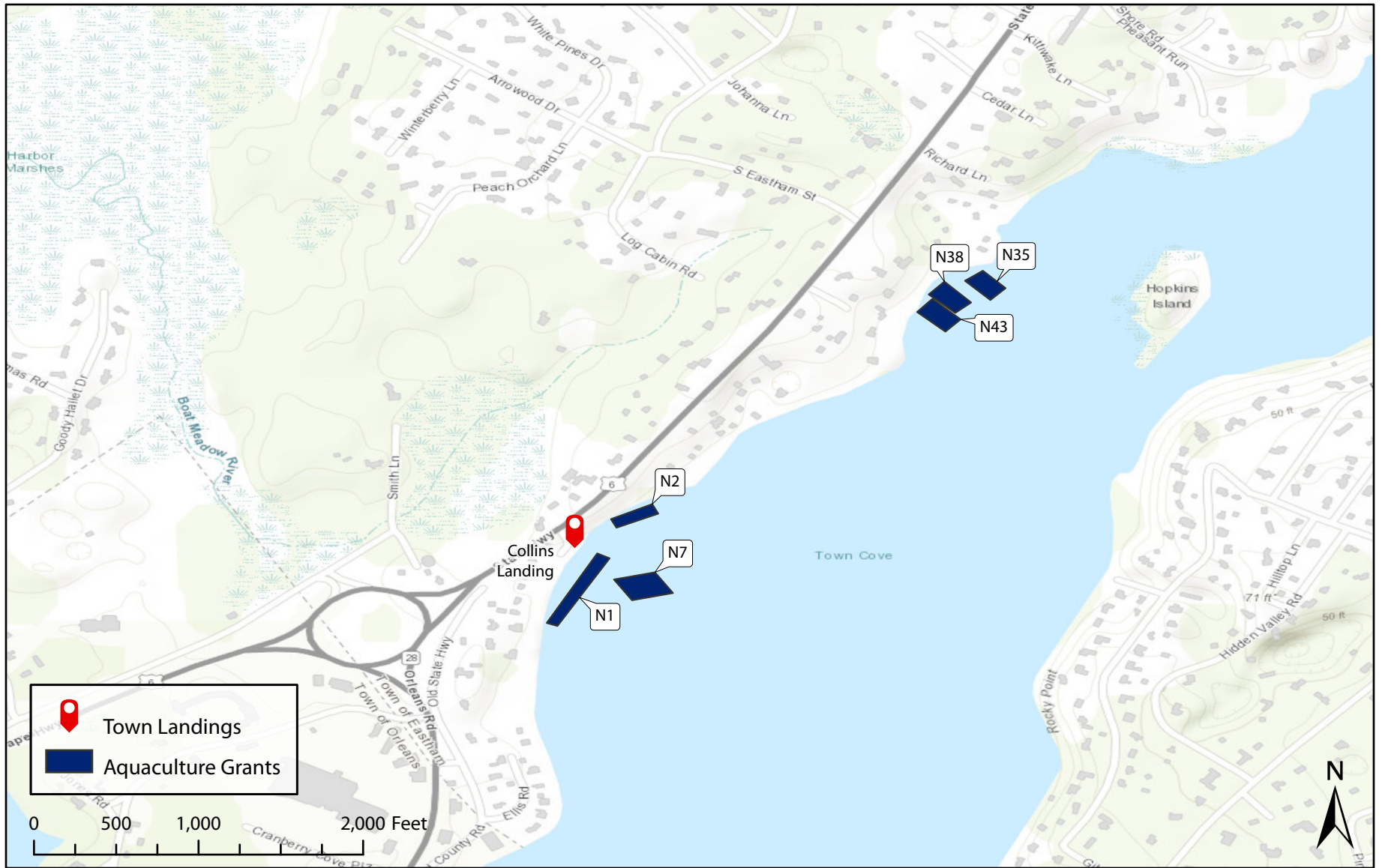




Eastham Aquaculture Map 2A



Eastham Aquaculture Map 2B



Eastham Aquaculture Map 2C



# TOWN OF EASTHAM FORM - A

## SHELLFISH AQUACULTURE MANAGEMENT PLAN APPLICATION

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

RESIDENTIAL ADDRESS: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_  
(IF DIFFERENT)

PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

AREA:  BOAT MEADOW  NAUSET MARSH  OTHER

SITE#

TYPES OF SHELLFISH YOU PLAN TO GROW:  QUAHOG  OYSTER  
 SEA CLAM  SOFTSHELL

### GROWOUT METHODS

(FOR EACH TYPE OF SHELLFISH RAISED, PLACE AN "X" ON THE LINE DESCRIBING METHODS USED)  
INCLUDE SPECIES AND DENSITIES

	QUAHOGS	OYSTERS	SOFTSHELL	SEA CLAM
CAGES				
FLOAT BAGS				
NETS ON BOTTOM				
RACKS				
NO PROTECTON				

ARE YOU FAMILIAR WITH BUSINESS MANAGEMENT PRACTICES AND MARKETING?  YES  NO  
IF YES, PLEASE EXPLAIN YOUR EXPERIENCE: \_\_\_\_\_

---

---

---

---

---

---

---





# TOWN OF EASTHAM FORM - A

## SHELLFISH AQUACULTURE MANAGEMENT PLAN APPLICATION

ARE YOU FAMILIAR WITH THE SITE AND GENERAL CONDITIONS?  YES  NO

PLEASE LIST SITE CONDITIONS (SUBTIDAL/INTERTIDAL, DEPTH OF WATER, SUBSTRATE ON BOTTOM):

\_\_\_\_\_

ARE YOU, OR HAVE YOU BEEN ENGAGED IN ANY ASPECT OF COMMERCIAL SHELLFISHING?  YES  NO

IF YES, PLEASE EXPLAIN: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

HOW MANY HOURS OF WORK PER WEEK DO YOU ANTICIPATE WILL BE REQUIRED AT THIS SITE? \_\_\_\_\_

PLEASE LIST ANY FACTORS WHICH YOU FEEL WILL BE HELPFUL IN MAKING THIS A SUCCESSFUL VENTURE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I CERTIFY THAT THE INFORMATION SUPPLIED ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT I AM THE SOLE APPLICANT FOR THIS GRANT APPLICATION. I UNDERSTAND THAT THIS CONSTITUTES AN APPLICATION FOR SHELLFISH AQUACULTURE LICENSE UNDER THE STATUTES OF THE COMMONWEALTH OF MASSACHUSETTS AND REGULATIONS OF THE TOWN OF EASTHAM AND ATTEMPT TO ACCOMPLISH THE GOALS TO THE BEST OF MY ABILITY.

\_\_\_\_\_

SIGNATURE

DATE

### FOR OFFICE USE ONLY

DATE RECEIVED \_\_\_\_\_

ISSUANCE DATE \_\_\_\_\_

DATE REVIEWED \_\_\_\_\_

EXPIRATION DATE \_\_\_\_\_

SITE NUMBER \_\_\_\_\_

LOCAL PERMIT# \_\_\_\_\_

STATE PERMIT# \_\_\_\_\_

SEED PERMIT# \_\_\_\_\_



# TOWN OF EASTHAM

## FORM - A

### SHELLFISH AQUACULTURE MANAGEMENT PLAN APPLICATION

**PLEASE ATTACH A NARRATIVE DESCRIBING THE FOLLOWING:**

**1. GEOPHYSICAL SITE CHARACTERISTICS:**

- INTERTIDAL/SUBTIDAL
- DEPTH @ MEAN HIGH WATER
- DEPTH @ MEAN LOW WATER
- HOW WILL THE SITE BE ACCESSED?
  - BY BOAT, ON FOOT, ETC.

**2. BENTHIC HABITAT CONDITIONS**

**3. PROPOSED SPECIES, QUANTITIES AND DENSITIES**

**4. PROPOSED PHYSICAL STRUCTURES/ GEAR SCHEMATICS**

**4a. HOW MANY:**

- CAGES
- RACKS
- FLOATS

**4b. HOW WILL STRUCTURES BE ANCHORED TO THE BOTTOM?**

**PLEASE ATTACH A SITE PLAN TO INCLUDE THE FOLLOWING:**

**1. LATITUDE AND LONGITUDE OF SITE CORNERS**

**2. MAP SHOWCASING THE LOCATION OF THE PROPOSED AQUACULTURE PROJECT**

**3. A DRAWING OR DIAGRAM WITH AN OVERHEAD VIEW AND SIDE VIEW OF:**

- GEAR SETUP
- SCHEMATICS ON THE SITE
- INCLUDE # OF CAGES, RACKS, BAGS, ETC.

— NOTE: ALL PLANS AND NARRATIVE SHOULD BE 8.5 X 11 IN SIZE —



# TOWN OF EASTHAM FORM - B

## ANNUAL AQUACULTURE LEASEHOLDER REPORT

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

RESIDENTIAL ADDRESS: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_  
(IF DIFFERENT)

HOME#: \_\_\_\_\_ CELL#: \_\_\_\_\_

EMAIL: \_\_\_\_\_

AREA:  BOAT MEADOW  NAUSET MARSH  OTHER \_\_\_\_\_

SITE#

### EXISTING CONDITIONS

TYPES OF SHELLFISH GROWN:  QUAHOG  OYSTER  SEA CLAM  SOFTSHELL

METHODS USED:  BAG & RACK  NETS  OTHER

### HATCHERY SEED PURCHASED

TYPE	QUANTITY	VENDOR	SIZE

WAS ANY SHELLFISH MARKETED? IF YES, COMPLETE BELOW:

TYPE	QUANTITY	UNITS: BUSHELS/PIECES	SIZE (NECK/ CHERRY, ETC.)

### ISSUES

PLEASE DESCRIBE IN GENERAL WHAT YOU DID ON THIS SITE: \_\_\_\_\_

WHAT LOGISTICAL PROBLEMS DID YOU ENCOUNTER? \_\_\_\_\_

WHAT IF ANY GROWING PROBLEMS? (BIOFOULING, PREDATION, GROWTH RATES, ETC.) \_\_\_\_\_

### LOOKING AHEAD

WHAT DO YOU ANTICIPATE DOING WITH THIS SITE NEXT YEAR? \_\_\_\_\_

WILL YOU BE INCREASING SEED PURCHASES?  YES  NO

TRYING DIFFERENT METHODS?  YES  NO (IF YES, DESCRIBE): \_\_\_\_\_

COLLABORATING WITH NEIGHBORING GROWERS?  YES  NO

ANY OTHER THOUGHTS? \_\_\_\_\_