

From: [Gregg J. Corbo](#)
To: [Nancy Civetta](#)
Cc: [Richard Waldo](#); [Carolyn M. Murray](#)
Subject: RE: Questions about subdividing shellfish grants
Date: Wednesday, November 9, 2022 2:51:39 PM

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Hi Nancy.

I am writing to follow-up on our telephone call and further explain my answers to your original questions.

As to the two grants that have been returned to the Town and are subject to the lottery, it is my opinion that these grants can be carved up by the Selectboard and offered to the public subject to the terms and conditions on all other grants as described in the regulations. In other words, they are just like any other grant, only smaller. If, however, the Board wishes to make these new grants subject to special conditions, I recommend that those conditions be spelled out in the regulations.

As to grants that are currently held by private parties, there is nothing in the regulations or General Laws that addresses the issue of subdivision. Although an argument can be made that subdivision can be allowed by a transfer of a portion of a grant, there are many variable situations that may arise as a result of an ad hoc subdivision process. Therefore, if the Board is willing to entertain requests to subdivide existing grants, I recommend that it establish a process by regulation.

Please feel free to contact me if you have any further questions in this regard.

-Gregg

Gregg J. Corbo, Esq.

KP | LAW

101 Arch Street, 12th Floor

Boston, MA 02110

O: (617) 654-1764

F: (617) 654 1735

gcorbo@k-plaw.com

www.k-plaw.com

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From: Gregg J. Corbo
Sent: Wednesday, November 9, 2022 9:37 AM
To: Nancy.Civetta@wellfleet-ma.gov

Cc: Richard Waldo <Richard.Waldo@wellfleet-ma.gov>; Carolyn M. Murray <CMurray@k-plaw.com>

Subject: RE: Questions about subdividing shellfish grants

Hi Nancy. I am available to discuss later today. In the meantime, my answers to your questions are below.

QUESTIONS

The Shellfish Department is coming to Town Counsel to request guidance on what will need to happen if the Selectboard would like to accommodate subdividing grants.

Would a precedent be set if the Town allowed the two grants up for a lottery to be subdivided so that anyone in Town with a grant could request a subdivision?

In my opinion, subdividing the two grants held by the Town would not establish precedent for grants held by private parties. Generally speaking, similarly situated parties are entitled to equal treatment under the law unless there is a rational basis for treating them differently. In my opinion, the Town and private parties holding grants are not similarly situated for purposes of this analysis.

The Selectboard has the authority to determine what areas will be licensed, if any, and to establish the boundaries for those areas. In my opinion, once a grant is returned to the Town for any reason, the Selectboard has the authority to re-examine the licensed area and determine whether it should be changed (as long as the new boundary does not encroach upon another existing license), whether it should be reissued as is, or even whether it should be kept vacant. In contrast, private parties only have rights that are given to them by the Selectboard. In this regard, they enter into a contract with the Town to have control over a certain defined area for a certain period of time. In other words, the Town as licensor has control over the property, whereas the licensees only has the rights given to them by the Town. In my opinion, this distinction between the Town as the licensor and the private parties as licensees presents a rational basis for treating them differently and for allowing the Selectboard to subdivide grants and not allowing private parties to do so.

Could a grant holder who has a lease with the Town legally request to subdivide a grant? What if the lease were on private (and not Town) property? Since the lease is with the Town, then the Town would have to agree to a subdivision, correct? We were thinking it might be like subletting a rental property, which is a no no. I am also attaching a sample lease for you to review.

In my opinion, a private party may request that their grant be subdivided, subject to the approval of the Selectboard. Subdivision is not addressed in the regulations. The Selectboard, however, has the authority to establish the boundaries of grant areas and to agree to amend grants issued to private parties. In my opinion, this grant of authority includes the authority to subdivide an existing grant; provided that all grant holders agree to the subdivision and the subdivision is approved by the Selectboard. If a subdivision is allowed, the new grants will be subject to all provisions in the regulations, and if those grants are on private property, they would be subject to any rules or regulations of the property owner.

What if one grant holder wanted to subdivide because s/he wasn't getting along with another grant holder? Would both grant holders have to agree to the subdivision?

Yes. Because the grant is a contract between the Town and the private grant holders, all parties would have to agree to the subdivision.

Since their intention with creating more grants from these two grants up for lottery is to provide for new entrants to the aquaculture industry, is there a way for them to implement certain lease restrictions in order to guarantee that in perpetuity. One idea that is being discussed is that only one name would be able to be on a subdivided grant, instead of the four currently in our regulations, so that basically no transfers could happen and that subdivided grant would always come back to the Town for a lottery to ensure that it is always going to be available for new entrants. Could this be provided for if the Selectboard crafted a new regulation to accommodate subdivisions?

In my opinion, the Selectboard can establish criteria and limitations for subdivisions, but I recommend that these be written into the regulations.

Gregg J. Corbo, Esq.

KP | LAW

101 Arch Street, 12th Floor

Boston, MA 02110

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F: (617) 654 1735

gcorbo@k-plaw.com

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From: Gregg J. Corbo

Sent: Monday, November 7, 2022 1:52 PM

To: Nancy.Civetta@wellfleet-ma.gov

Cc: Richard Waldo <Richard.Waldo@wellfleet-ma.gov>; Carolyn M. Murray <CMurray@k-plaw.com>

Subject: FW: Questions about subdividing shellfish grants

Hi Nancy. I can look into this for you. Can we schedule time for Wednesday? I am free most of the day. Thanks.

Gregg J. Corbo, Esq.

KP | LAW

101 Arch Street, 12th Floor

Boston, MA 02110

O: (617) 654-1764

F: (617) 654 1735

gcorbo@k-plaw.com

www.k-plaw.com

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From: Nancy Civetta <Nancy.Civetta@wellfleet-ma.gov>

Sent: Monday, November 7, 2022 11:07 AM

To: Carolyn M. Murray <CMurray@k-plaw.com>

Cc: Richard Waldo <Richard.Waldo@wellfleet-ma.gov>

Subject: Questions about subdividing shellfish grants

Dear Carolyn,

I have not heard back yet to whom I should be sending this inquiry and time is of the essence as the Shellfish Advisory Board meeting is next Monday evening (11/14 at 6 p.m.).

The Selectboard directed me to first check in with the Mass. Division of Marine Fisheries (MADMF) and then with Town Counsel about the possibility of subdividing shellfish grants. We currently have no regulations that provide for this. Grants are approved by the Selectboard with a set of corner boundary coordinates and assigned a unique identifying number. When new people want to get added to a grant, we have this regulation:

7.9. Rights of Use and Transfer

Licensees shall have the exclusive use of the area described in their license for the purpose of aquaculture, for the duration of their terms. No other individual may use the license without the express permission of the licensee(s). (See Section 4.9 Poaching, Section 4.10 Disturbance of Grant by Other Than the Licensee and MGL Chapter 130; [Section 57](#), [Section 63](#) and [Section 67.](#))

Licensees may transfer the rights or responsibilities assigned to their license to any other individuals, companies or corporations by vote of the Selectboard, and with the express permission of all other individuals who hold license for the same area. (See MGL Chapter 130; [Section 58](#) and Section 7.8.3 Limit on Individuals Licensed to Use a Grant.)

In a personal communication on the phone with Chrissy Petitpas, the aquaculture specialist at MADMF, she told me that it is up to the individual municipalities if they wish to create regulations regarding subdividing grants. They said the Town can set new conditions for leases, can choose not to renew leases for any reason, and can revise existing conditions in leases as long as it is not in conflict with preceding conditions or current regulations (see a copy of our most recent 6.28.2022 regulations attached). She said what the state cares about is that if a Town decides to subdivide a grant site that they be informed of the new coordinates and that each site gets a unique identifier (e.g. 652A and 652B instead of 652). She said the conditions on the leases will need to be updated to include the new coordinates and identifiers, as well, and include any new conditions that the Town wishes to add due to the subdivision.

The Chair of the Selectboard has also requested that the Shellfish Advisory Board look into subdividing two grants that have come back to the Town and will be coming up for a lottery. He would like to see if we could make 2-3 grants out of each three-acre parcel. I am worried about setting a precedent where if we do it for these new grants, grant holders would be able to petition the Selectboard to subdivide their grants. We currently have 155 grants, so the specter of increasing that is a bit daunting given the Shellfish Department's resources. However, at any rate, we don't have any regulations to this regard in our current regulations, except that the section below includes the word in its heading. I believe that the below section title refers to subtidal areas of the town, such as Mayo Beach, Indian Neck, etc. that have already been subdivided into aquaculture grants. That is how I interpret it.

7.1. Issuance of Shellfish Aquaculture Licenses (Grants) for Areas Surveyed and Subdivided by the Town.

Once areas are identified by the Shellfish Constable as potentially suitable for the location of shellfish aquaculture, and the areas are under the control of the Town, the Selectboard may exercise their discretion as the licensing authority for the issuance of license/s for shellfish aquaculture (grants) in compliance with [MGL Chapter 130](#). The Selectboard shall post notice of the availability and location of such acreage, as well as any applicable conditions and/or limitations upon such acreage, on the Shellfish Department's notice board, at Town Hall and on the [Town Website](#).

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I am available to discuss this to go over in more detail what I have outlined here. My cell is 617-901-7193.

Thank you for your help – or please put me in touch with whom I should be working with on this.

Sincerely,
Nancy

Nancy Civetta
Shellfish Constable
Town of Wellfleet
C: 617-901-7193
O: 508-349-0325
E: nancy.civetta@wellfleet-ma.gov
300 Main St.
Wellfleet, MA 02667
Check for news and updates on [Facebook](#).