



Wellfleet Shellfish Department



300 Main Street, Wellfleet, Massachusetts 02667

INTRODUCTION TO DAVID PAINE AND KRISTI JOHNS' OPERATIONS ON GRANT # 851, 863, AND 861-B, 2.5 TOTAL ACRES, FIELD POINT

- Over the past five years, the Shellfish Department has observed no use of any kind of license sites #851 and 863, which are contiguous and one acre each, by the grant holders David Paine and Kristi Johns.
- In the past two years, we have seen Johns picking a few times on the wild oyster bar, likely started by bottom crop they had years ago, on license site #861-B, which is a half acre in a separate location close to the other two grants.
- As required by our regulations, there must be production and market sales equal to or exceeding \$1,000 an acre. These three license sites total 2.5 acres and therefore, should demonstrate \$2,500 a year in sales.

HISTORICAL OVERVIEW OF GRANT # 851, 863, AND 861-B

- License 851 granted on Jan. 29, 1986, to Steven Paine.
- License 851 granted on Apr. 28, 1996, to Steven Paine and David Paine.
- License 851 transferred on Dec. 17, 2013, to David Paine and Kristi Johns.
- License 851 renewed on Apr. 28, 2016, for ten years to David Paine and Kristi Johns.
- License 863 granted on May 5, 1986, to David Paine.
- License 863 granted on Apr. 25, 1996, to David Paine and Steven Paine.
- License 863 transferred on Dec. 17, 2013, to David Paine and Kristi Johns.
- License 863 renewed on Apr. 28, 2016, for ten years to David Paine and Kristi Johns.
- License 861-B granted on Dec. 6, 1993, to Steven Paine.
- License 861-B transferred on Apr. 2, 1996, to Steven Paine and David Paine.
- License 861-B transferred on Dec. 17, 2013, to David Paine and Kristi Johns.
- License 861-B renewed on Apr. 28, 2016, for ten years to David Paine and Kristi Johns.
- David Paine's propagation and state commercial permits were revoked in 2016 by the Massachusetts Division of Marine Fisheries.
- Kristi Johns had a propagation permit in 2020, 2021 and 2022.
- According to annual grant reports submitted to the Town for 2017 through 2019, there were no sales from this grant despite the presence of bottom crop.
- Shellfish Constable Civetta met with Paine and Johns on Jan. 3, 2018, and we filled out a grant inspection form for 2017 together. We discussed the fact that there was no activity on the grants, and they that they would be "reapplying for permits" and "Kristi was planning to work the bottom crop" of oysters.
- Civetta did a grant inspection on Oct. 19, 2019, with Kristi Johns present. The notes say that "Next year, [they] will begin selling to meet productivity requirements."
- On Aug. 16, 2019, MA DMF confirmed there were no sales to date.

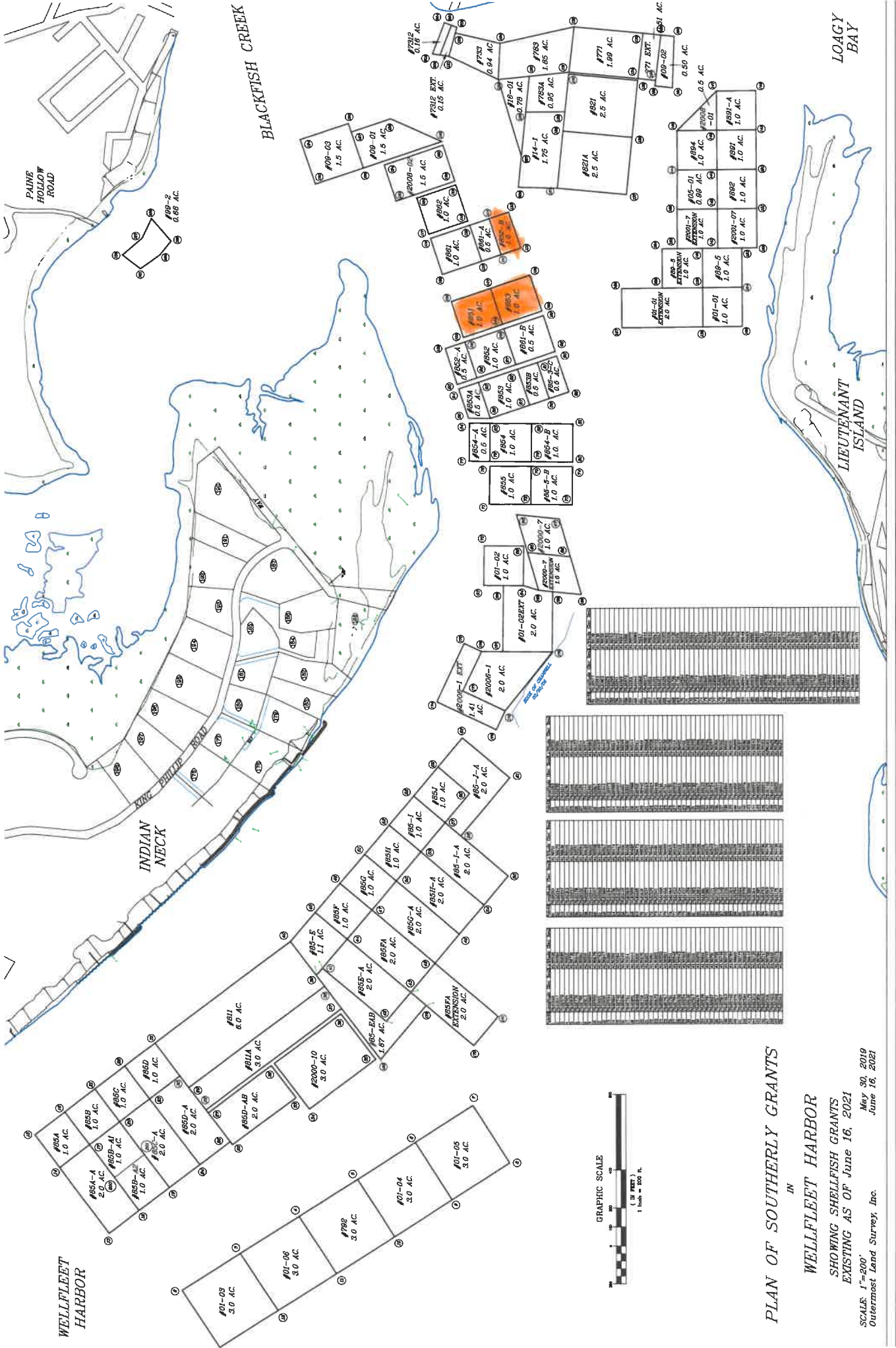
wellfleet-ma.gov/shellfish-department

Phone (508) 349-0325



Fax (508) 349-0305

- On Feb. 2, 2020, David Paine and Kristi Johns were issued a written warning for a violation of Shellfishing Policy and Regulations 7.19.5 Overwintering of Equipment by having gear on the grant past Jan. 15, 2020 and failing to submit an overwintering contract.
- According to the 2020 annual grant report, 700 oysters were removed from the grant; 500 of which were sold to the Town as part of its COVID-19 Oyster Buyback program.
- Civetta did a grant inspection with Johns on September 29, 2020. The only notes are that the large bottom crop of wild oysters is still there, and there is a buried rack needing removal.
- No 2021 Town annual grant report was received for this grant. There was no aquaculture activity of any kind on any of the grants in 2021. The wild oyster bar remains.
- On the State annual grant report, Johns reported no seed purchases and no shellfish sales.
- On Jan. 28, 2022, Constable Civetta spoke with Johns on the phone to explain enforcement actions that Shellfish Department was undertaking regarding minimum productivity requirements.
- On Feb. 4, 2022, David Paine and Kristi Johns received notification via email that this grant was under review for minimum productivity requirements. In that email, Constable Civetta requested Paine and Johns petition MA DMF for a record of their sales over the last seven years.
- On Feb. 9, 2022, Kristi Johns signed for a certified letter stating their grant was under review for minimum productivity requirements and requesting her and David Paine petition MA DMF for a record of their sales over the last seven years. The certified mail packet included the documents needed to request sales history through the MA DMF.
- On Mar. 25, 2022, a follow-up email was sent with an attachment of the certified letter, dated Mar. 18, 2022, sent to Kristi Johns stating that their grants failed to meet minimum productivity requirements along with instructions on how to request a public hearing.
- On Mar. 29, 2022, Kristi Johns signed for the certified letter dated Mar. 18, 2022, stating that Constable Civetta did not receive any additional information from the MA DMF demonstrating minimum productivity met on this grant and that this grant failed to meet the minimum productivity requirements. The letter contained instructions on how to request a public hearing.
- On Apr. 5, 2022, David Paine and Kristi Johns requested a public hearing.
- David Paine and Kristi Johns have not yet paid grant fees for 2022. The total due is \$150.



PLAN OF SOUTHERLY GRANTS
 IN
 WELFLEET HARBOR
 SHOWING SHELLFISH GRANTS
 EXISTING AS OF June 16, 2021
 SCALE: 1"=200'
 Outermost Land Survey, Inc. May 30, 2019
 June 16, 2021

requested 4/5/2022

Wellfleet Harbormaster Department Wellfleet Shellfish Department



300 Main Street, Wellfleet, Massachusetts 02667

David Paine and Kristi Johns
POB 263
South Wellfleet, MA 02667

March 18, 2022

Dear David and Kristi:

The Shellfish Department has been discussing minimum productivity for your grant #s 851, 863 and 861-B with you since 2018. I spoke with Kristi on the phone on January 28, 2022, and explained the enforcement actions the Shellfish Department was undertaking to this regard and that you would be receiving an email and certified mail with what you needed to do to demonstrate that you have made minimum productivity on these grants. Given that these grants total 2.5 acres, you need to sell \$2,500 worth of product annually.

To date, we have not received anything from you with your state SAFIS landings.


Therefore, I am notifying you of failing to meet minimum productivity, which would mean forfeiting your grants. You have the right to appeal this to the Selectboard within two weeks from this notification. If you do not file an appeal within that time frame, your license for grant #s 851, 863 and 861-B will be forfeited automatically. Here are the Town of Wellfleet's Shellfishing Policy and Regulations to this regard:

7.13.3. Notification of Failure to Meet Minimal Requirements

Subsequent to the filing of the annual report, the Constable will notify any license holder who, in the opinion of the Constable, has failed to meet the minimum requirements. The license holder has the right to appeal to the Selectboard within two weeks after notification. If no appeal is filed on a timely basis, the license will be forfeited.

Don't hesitate to call me for further details. Should you want to appeal my determination to the Selectboard, that is your right.

Sincerely,


Nancy Civetta
Shellfish Constable
Town of Wellfleet

wellfleet-ma.gov/shellfish-department

Phone (508) 349-0325



Fax (508) 349-0305



Wellfleet Shellfish Department



300 Main Street, Wellfleet, Massachusetts 02667

February 4, 2022

Dear *David + Kristy*

As we discussed on the phone, the Shellfish Department has been monitoring your grant for minimum productivity, and we would like to request some additional information from you as we evaluate your grant's production. Here are the regulations:

7.12.1. Minimum Levels of Investment and Production

There shall be minimum levels of investment and production required in order to retain an area 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. During the fourth year and every year thereafter there shall be a minimum production of an average of \$1000 worth of product per year per acre, or prorated for a portion thereof, from the practice of aquaculture on the licensed area. This shall be demonstrated by the annual grant report, and, if so requested by the Shellfish Constable, copies of transaction receipts or other acceptable documentation.

In an effort to more fully understand the history of shellfish sales on your farm, the Shellfish Department will be creating a historical review of minimum productivity met on your grant over the last seven years. We chose this time period to take into consideration that the past two years (2020 and 2021) have been affected by market uncertainties during the pandemic caused by COVID-19.

To do this, the Shellfish Department will be cross-referencing your grant reports and our grant inspections paperwork with Mass. Division of Marine Fisheries sales data. We have worked with MADMF, which provided the forms included here to guide you in how to request your data. **When you request your data, please request it from 1/1/2015 to 12-31-2021. You will need to provide your sales information back to the Shellfish Department by February 28, 2022.** MADMF has assured us that they can meet this turn-around time, but please act immediately. If you decide not to query the MADMF, the Shellfish Department will use your grant reports and our grant inspections to make its determination.

Ultimately, the Selectboard is the regulatory authority that decides whether or not a grant must be forfeited. If the Shellfish Department concludes that your grant is not meeting minimum productivity, you will have an opportunity to appeal this determination to the Selectboard and request a public hearing to explain your circumstances.

Sincerely,

Nancy Civetta
Nancy Civetta
Shellfish Constable

PS. You will need to do this for all the rest of your grants

wellfleet-ma.gov/shellfish-department

Phone (508) 349-0325

Fax (508) 349-0305

Nancy Civetta

From: Nancy Civetta
Sent: Monday, February 7, 2022 1:34 PM
To: Kristi Johns (kljgreen74@hotmail.com)
Subject: Minimum productivity request for information
Attachments: David Paine-Kristi Johns.pdf; DMFWellfleetTemplate2022minprod-WSD.docx; How to request your catch reports from DMF.pdf

Dear David and Kristi,

As discussed, the attached was sent by certified mail to you last week. If you decide to do this via USPS mail, the entire request must be notarized, which can be done with Rebekah Eldridge, Executive Assistant to the Town Administrator, in Town Hall. Please call her at 508-349-0300, ext. 1100 to set up an appointment.

Don't hesitate to contact me with any questions or for assistance.

Thank you for your understanding,
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](#).

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DAVID PAINE & KRISTI JOHNS
POB 263
SOUTH WELFLEET, MA
02663



9590 9402 6450 0346 4718 00

2. Article Number (Transfer from carrier label)

7020 1290 0000 3238 6685

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Kristi Johns*

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

2-9-20

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Mail Restricted Delivery (X)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

PS Form 3800, April 2015 PSN 7530-02-000-9047

South Wellfleet, MA 02663

02/05/2022

7020 1290 0000 3238 6685

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

South Wellfleet, MA 02663

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$0.00
- Return Receipt (electronic) \$0.00
- Certified Mail Restricted Delivery \$0.00
- Adult Signature Required \$0.00
- Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total Postage and Fees \$7.38

Sent To: David Paine & Kristi Johns
Street and Apt. No. or PO Box No. PO Box 263
City, State, ZIP+4® South Wellfleet MA 02663

Postmark Here: MAR 22 2022

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David Paine & Kristi Johns
Po Box 263
South Wellfleet 02663

9590 9402 6450 0346 4728 45

7020 1290 0000 3238 1383

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Kristi Johns*

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Mail Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

Rebekah Eldridge

From: Nancy Civetta
Sent: Friday, March 25, 2022 5:35 PM
To: Kristi Johns (kljgreen74@hotmail.com)
Cc: Rebekah Eldridge
Subject: Notice of potential forfeiture of grant #s 851, 863 and 861-B for not making minimum productivity
Attachments: dpainekjohnsletter 3-21-22.pdf

Dear David and Kristi,

Attached is the correspondence that has been sent to you from the Town of Wellfleet Shellfish Department regarding noncompliance on grant #s 851, 863 and 861-B with the Town's minimum productivity regulations:

7.12.2. Failure to Meet Production Levels

Failure of the licensee/s to meet the specified production level for any three (3) consecutive years may result in the forfeit of the aquaculture license and licensed area, as stated in [MGL Chapter 130: Section 65](#).

A certified letter was sent to you on March 21, 2022, with a notice of your failure to meet minimal requirements per our regulations section 7.13.3.

7.13.3. Notification of Failure to Meet Minimal Requirements

Subsequent to the filing of the annual report, the Constable will notify any license holder who, in the opinion of the Constable, has failed to meet the minimum requirements. **The license holder has the right to appeal to the Selectboard within two weeks after notification. If no appeal is filed on a timely basis, the license will be forfeited.**

If you would like a public hearing with the Selectboard to explain why you have not met minimum productivity please contact Rebekah Eldridge and request one WITHIN TWO WEEKS of receiving your certified mail. If you do not, you will automatically forfeit your grant. You can certainly request a public hearing at any time before receiving your certified mail, as well.

You can reach Rebekah as follows:

- 1) Go to her office in Town Hall. It is on the second floor, second door on the left. She is there 9 a.m to 3:30 p.m. Monday through Friday.
- 2) Call her at 508-349-0300 ext. 1100. Leave a message if she doesn't pick up.
- 3) Hit reply all to this email and request it as she is copied here. Or email her directly at rebekah.eldridge@wellfleet-ma.gov.
- 4) Put a certified letter with return receipt requested in the mail to her attention to Town of Wellfleet, 300 Main St. Wellfleet, MA 02667.

If you have any questions, please call me at 617-901-7193.

Thank you,
Nancy

Nancy Civetta
Shellfish Constable
Town of Wellfleet
C: 617-901-7193
O: 508-349-0325
E: nancy.civetta@wellfleet-ma.gov