

Shellfish Committee Minutes of the Meeting

DATE: May 21, 2014
TIME: 7:30 P.M. to 9:30 P.M.
LOCATION: MEAD Building

Shellfish Committee Members present: Stuart Rapp, Albert Surprenant, Les Hemmila, Richard Haskell, Andre Sampou, Kevin Flaherty, Robert Lancaster

General Public present: Richard Kraus, Lynn Kraus, Christopher Freeman, Lenny Clark

Town Council Liaison: Phil Wallace

Town Staff present: Doug Kalweit, Tom Marcotti

Chairman's Report:

Stuart Rapp chaired the May 21, 2014 meeting of the Shellfish Committee.

Stuart Rapp took a roll call of members present at the meeting.

Stuart Rapp read a notice at the beginning of the meeting:

NOTICE OF RECORDING

"Please note that tonight's meeting is recorded and broadcast on Channel 18 and, in accordance with MGL Chapter 30A, s. 20, I must inquire whether anyone is taping this meeting and to please make their presence known."

The Shellfish Committee unanimously approved a motion and adopted the minutes of the April 16, 2014 meeting of the Shellfish Committee.

Natural Resources Report

Tom Marcotti informed the committee of the following shellfishing area openings, closings and events:

- **Effective Saturday, May 24, 2014 The West Bay Recreational Shellfishing Area as defined is open to the recreational harvest of all shellfish and seaworms.**

The **West Bay Recreational Shellfishing Area** is defined as the waters, flats and shoreline within an area beginning from the West Bay Landing at Bridge Street to the Wianno Yacht Club pier to the "NR / No Shellfishing" sign/buoys located offshore. DMF/SC 22.11

- **Lewis Bay Shellfishing Closures:**

2.8 **Harbor Bluff, Lewis Bay:** The waters and flats and all tributaries thereto in Lewis Bay northwest of a line drawn from the southern end of Harbor Bluff in the Town of Barnstable to the end of Glenwood Street in the Town of Yarmouth and southerly of a line drawn from the end of Channel Point Road Way in the Town of Barnstable to the end of Columbus Avenue in the Town of Yarmouth. (DMF/SC:28.2; classified as conditionally approved; **status: Closed to shellfishing June 1 through October 31, all dates inclusive. The area shall not automatically reopen to shellfishing on November 1 and will remain closed until examined and shellfishing is allowed by DMF.**)

2.9 **Lewis Bay:** The waters and flats of that portion of Lewis Bay in the Town of Barnstable, west of a line drawn from the Town Way at Harbor Bluff in a southwest direction to the Hyannis Yacht Club Pier and east of a line drawn from the end of the stone jetty at Snow's Creek to the "No Shellfishing" sign on the opposite shore. (DMF/SC:28.8; classified as conditionally approved; **status: Closed to shellfishing June 1 through October 31, all dates inclusive. The area shall not automatically reopen to shellfishing on November 1 and will remain closed until examined and shellfishing is allowed by DMF.**)

• **Clamming Class for Kids**

12th annual Fun-Filled Clamming Classes for Kids

**Barnstable's Natural Resources Program will offer three
FREE shellfishing classes for young people:
SATURDAY JUNE 14th @ 7:00AM at Bridge St. Landing, Osterville
SUNDAY JUNE 15th @ 7:30AM at Bridge St. Landing, Osterville
WEDNESDAY JUNE 18TH @ 10:00AM at Bridge St. Landing, Osterville**

- « Natural Resources staff and town shellfish volunteers will be available to assist any young digger who wants the help.
- « Be prepared to get wet! The shellfish live in wet sand that gets covered by saltwater when the tide is high. Waders, hip boots or knee boots would be helpful. Protective gloves are necessary.
- « Shellfish may be taken by hand or rake. Small (garden) hand rakes and trowels will be allowed for the young diggers.
- « Attendees will receive a free "Clammer Kid" badge and an activity booklet.
- « Shellfish that are legally harvested may be taken home.
- « Certificates of Completion for this Clamming Class for Kids will be handed out as you leave with your catch.
- « SHELLFISH REGULATIONS APPLY AS ALWAYS!

The comfort and safety of participating youngsters is
the responsibility of the accompanying adult guardian.

For more information, call Natural Resources during office hours
Monday - Friday from 8:30am to 4:15pm at 508-790-6272 or
direct your questions via email to amy.croteau@town.barnstable.ma.us

Doug Kalweit informed the Shellfish Committee that the following number of recreational shellfishing licenses have been sold by the Town as of May` 21st, 2014:

Residential Recreational Licenses:	1,320 (43 more than last year at this time.)
Non-Residential Recreational Licenses	151 (62 more than last year at this time.)
Seasonal Recreational License	1

Doug Kalweit informed the committee of the status of the Shellfish Propagation Revolving Fund (FY-14) as of 05/21/14:

Expenditures:	\$72,500
Balance:	\$182,292.36

Doug Kalweit informed the Shellfish Committee of the hiring of Mr.Charles Johnson, as a seasonal Natural Resources Enforcement Agent working 40 hours per week. Mr. Johnson will focus on the enforcement of shellfish and shellfish aquaculture regulations.

Doug Kalweit informed the committee that Josh Ostrom is no longer holds a commercial shellfishing permit and that Donald Souza has acquired a new commercial shellfishing permit through the lottery.

Doug Kalweit informed the committee about his proposal to install a remote video camera at the Scudder Lane Landing as a tool for surveillance purposes.



Tom Marcotti informed the committee that he will present an update (at the June 2014 meeting of the Shellfish Committee) of shellfish / habitat surveys of the Shellfish Committee's proposed area of expansion for shellfish aquaculture sites in Barnstable Harbor.

Natural Resources staff, the general public and the Shellfish Committee discussed various shellfish propagation projects, shellfish regulations as well as shellfish disease and public health issues.

Piers, Dredging and Shellfish Habitat Issues:

The Shellfish Committee reviewed the following coastal development project proposal and discussed various pertinent shellfish resource and habitat issues:

Applicant: William & Pamela Randon

Project

Location: 117 Eel River Road, Osterville, MA 02655, Map 116 / Parcel 097

Proposed

Project: To construct and maintain a boardwalk, pier, ramp and float.

Applicant's

Agent: John C. O'Dea, P.E.
Sullivan Engineering Inc.
P.O. Box 659 / 7 Parker Road
Osterville, MA 02655
phone: 508-428-3344

Public Hearing: Date: May 27, 2014
Time: 6:30 P.M.
Place: Barnstable Town Hall,
367 Main Street, Hyannis MA
Town Council Hearing Room, 2nd floor

The Shellfish Committee approved a motion (six (6) members voted yes and one (1) member voted no) to send a letter to the Conservation Commission opposing the proposed pier application of William and Pamela Randon based on the quality of the shellfish habitat.

Old Business

Les Hemmila informed the Shellfish Committee that the Aquaculture Sub-Committee did not hold a recent meeting as everyone was very busy.

Other Business

Doug Kalweit introduced proposed amendments to the Town eel regulations 407- 5 (11), 407- 6 (G), 407 – 39 (A);(C) as consolidated by Amy Croteau (included below). The Town eel regulations would be in compliance with recently changed State eel statutes. After review, the Shellfish Committee approved a motion to recommend that the Town adopt the proposed amendments to the eel regulations.

DATE: April 17, 2014

SUBJECT: 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.

BACKGROUND: The Town of Barnstable maintains a comprehensive compilation of rules and regulations for the management of town shellfish, eel and herring natural resources as well as town shellfish aquaculture licenses. An annual review of these regulations is conducted by staff to ensure that the regulations meet the current needs of the community. Changes in the regulations are recommended by staff to the Town Manager. The Shellfish Committee is invited to discuss the proposed changes and also to provide recommendation to staff and the Town Manager.

The Town Manager holds a public hearing on any proposed revision to the regulations and the public is invited to comment on the proposed changes. The Town Manager's approval of shellfish, eel, herring and aquaculture regulations shall become effective upon the expiration of thirty (30) days from the date the Town Council is notified, in writing, of said regulation approval unless the Town Council votes within said time to disapprove of the said regulation(s).

SHELLFISH COMMITTEE REVIEW: To be added to the agenda for the May 2014 meeting

PUBLIC HEARING: TBD

ANALYSIS: The following list represents the proposed changes and the rationale therefore. The regulations have been reformatted to include the proposed changes. The entire regulation is outlined and insertions, deletions and/or changes are highlighted in **bold** for ease of identification, where applicable.

1: Proposal: Section 407-5:A; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in bold.

§ 407-5. Harvest Limits.

A. With the exception of scallops, the total amount of shellfish taken on a recreational permit in any one week shall not exceed one bushel. The recreational weekly limit for the following species of shellfish, worms and eels, in season, shall be:

- (1) Soft shell clams: one level peck, as defined.
- (2) Quahogs: one level peck, as defined.
- (3) Blue Mussels: one (1) level bushel, as defined, in Barnstable Harbor and Northside waters. One (1) peck, as defined, in all southside areas of the Town.
- (4) Bay scallops: one level bushel. (See also scallop regulations.)
- (5) Sea scallops: one level bushel.
- (6) Sea clams: one level bushel.
- (7) Oysters: limits will be posted annually.
- (8) Razor clams: one level peck, as defined.
- (9) Jackknife clams: one level peck, as defined.
- (10) Sea worms: not more than 100.
- (11) Eels: ~~50~~. **25 per day**

Rationale

Massachusetts Division of Marine Fisheries dictates a recreational daily eel harvest of 25 eels. Towns are given local authority to be more restrictive than DMF regulations but not given the local authority to be more lenient.

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

§ 407-6. Minimum size limits.

Shellfish shall be culled and all seed returned to the waters and flats immediately. Persons shall not take or have in their possession (in basket, bucket, bag or other container):

- A. Soft shell clams less than two inches in longest diameter to the amount of more than 5% of any batch.
- B. Quahogs less than one inch shell thickness (hinge width) to the amount of more than 5% of any batch.
- C. Bay scallops without a well-defined raised annual growth ring to the amount of more than 5% of the total catch remaining. (See scallop regulations.)
- D. Sea scallops less than 3 ½ inches in diameter from the hinge to the outer edge to the amount of more than 10% of the entire lot. This tolerance of 10% shall be determined by the numerical count taken at random of not less than one peck nor more than four pecks of the entire lot.
- E. Sea clams less than five inches in longest diameter to the amount of more than 5% of any batch.
- F. Oysters less than three inches in longest diameter to the amount of more than 5% of any batch.
- G. Eels or elvers less than ~~six~~ **nine** inches in total length.

Massachusetts Division of Marine Fisheries dictates a recreational eel size minimum of nine inches. Towns are given local authority to be more restrictive than DMF regulations but not given the local authority to be more lenient.

3: Proposal: Section 407-39:A; Amend the regulation by deleting the crossed out wording, adding the wording highlighted in bold and adding the necessary wording.

§ 407-39. Commercial elver and eel fishing.

- A. Minimum size limit. It is unlawful for a person to take or possess elvers or eels of a size less than ~~six~~ **nine** inches in total length.
- B. Permit. No person shall take or attempt to take eels for the purpose of sale or any commercial purpose unless he or she is the holder of a Town of Barnstable commercial permit endorsed for eels.
- C. Harvest method. No person shall take or attempt to take eels, *Anquilla rostrates*, by any contrivance other than by pots, spears or angling. **The use of eel pots with a wire mesh size smaller than ½ inch by ½ inch is prohibited. The use of fyke nets is prohibited between September 1 and December 31**
- D. Buoys. All buoys will be painted the Town eel fishery color, bright green, the Town eel permit number shall be displayed on all buoys. A colored stripe may be added for identification.
- E. Pots. Pots shall not be set in navigable marked channels. No person shall fish in excess of 100 pots.
- F. Freshwater eeling. Commercial eeling in freshwater is allowed by special state permit. A valid Massachusetts fishing license is also required.

Rationale

Massachusetts Division of Marine Fisheries dictates a recreational eel size minimum of nine inches. Massachusetts Division of Marine Fisheries dictates new commercial eel harvest restrictions. Towns are given local authority to be more restrictive than DMF regulations but not given the local authority to be more lenient.

New Business

Doug Kalweit informed the Shellfish Committee of the Town Manager's forfeiture of Richard Kraus' shellfish aquaculture license (10-05) for a site (ng023; 2 acres) located in Barnstable Harbor for non-compliance with Town of Barnstable shellfish aquaculture regulations 407-58 and 407-60 based on Doug's recommendation. Doug Kalweit and Town Councilor Shellfish Committee Liaison Phillip Wallace informed the committee that the Town Manager was requesting the committee to review the issue (see included documents below) and reply with recommendations. Richard and Lynn Kraus were present at the meeting to explain to the committee why they did not comply with the regulations, the status of their shellfish aquaculture operations, and to ask the Shellfish Committee and the Town Manager to let him keep his license. The committee reviewed and discussed the issue and made a motion to recommend to the Town Manager that Richard Kraus' shellfish aquaculture license be reinstated. Three (3) members voted yes and four (4) members abstained.

Thomas K. Lynch, Town Manager
 Town of Barnstable
 367 Main St.
 Hyannis, Massachusetts 02601

April 19, 2014

Dear Manager Lynch,

I am writing to ask you to reconsider your April 10, 2014 letter to myself revoking my shellfish lease in Barnstable Harbor. I would have responded earlier but was away last week. When my wife received your letter last Tuesday I asked her to bring in my catch report along with a fifty-dollar check (both enclosed) to Natural Resources but they refused to accept them. I ask you to reconsider for the following reasons.

During December 2012 I suffered a perforated stomach ulcer that nearly killed me. I subsequently suffered an infection in my abdomen and was hospitalized for nearly a month. I was laid up for more than four months from this illness.

During November 2013 I underwent major surgery to repair a very serious hernia caused by the previous operation and infection allowing my abdominal muscles to completely separate. This second surgery also resulted in an antibiotic resistant infection. This second surgery really knocked me down and I am just now beginning to recover. I am 67 years old and have a left leg amputation (1982) and don't recover as fast as I used to and I fell behind on my personal affairs.

I am an owner and president/operator of Aquacultural Research Corporation (ARC) in Dennis. I have been with ARC since the early 1970's. We started shellfish aquaculture in the United States. ARC provides all the seed shellfish for Town propagation programs on Cape Cod. We have provided the Town of Barnstable with quality seed shellfish for the past 20 years. All the oysters and clams for Barnstable's recreational shellfisheries originate at ARC. We have nearly a million dollars worth of shellfish on the lease in Barnstable Harbor. Losing this lease and shellfish would cause the demise of ARC, the oldest and one of the largest shellfish hatcheries in the United States. We employ 18 full-

time employees and provide seed to approximately 150 shellfish growers on Cape Cod in addition to all the towns.

During 2013 the State of Massachusetts legislature changed the report date for shellfish leases from December 31 to February 28. With a one-month grace period I was two weeks late with my payment and catch report.

I sincerely apologize for the lateness of my payment and report. I can only hope you will take the above into consideration.

Sincerely,



Richard A. Kraus
55 Packet Landing Rd.
West Barnstable, MA 02668
508-737-4173



The Town of Barnstable Office of Town Manager

367 Main Street, Hyannis, MA 02601
Office: 508.862.4610
Fax: 508.790.6226
www.town.barnstable.ma.us
Citizens' Resource Line: 508.862.4925



Thomas K. Lynch, Town Manager
tom.lynch@town.barnstable.ma.us

Mark S. Ellis, Assistant Town Manager
mark.ellis@town.barnstable.ma.us

April 10, 2014

Mr. Richard Kraus
DBA: Aquacultural Research Corp.
55 Packet Landing Road
West Barnstable, MA 02568

Mr. Kraus,

The Town of Barnstable requires an annual fee for shellfish aquaculture license acreage. The current annual fee is \$25.00 per acre due by December 31 of each year (refer to M.G.L., Chapter 130; Section 64 and Town of Barnstable Shellfish Aquaculture Regulation §407-58). Our records show that the Town did not receive a 2013 annual fee payment for two (2) acres licensed to you in Barnstable Harbor (site: NC023, license #10-05). Furthermore, the Town of Barnstable requires an annual report for each license (refer to M.G. L., Chapter 130; Section 65 and Town of Barnstable Shellfish Aquaculture Regulation §407-60). Our records show that the Town did not receive a 2013 report.

Upon such findings your shellfish aquaculture license #10-05 is hereby forfeited. Under Town of Barnstable shellfish aquaculture regulation § 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 be removed by the Town at the expense of the licensee.

Sincerely,

Thomas K. Lynch
Town Manager,
Town of Barnstable