

Town of Barnstable
Marine and Environmental Affairs Department
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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 and Environmental Affairs Division after consultation with 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: vote on 08/09/2023 §407-15, §407-36 unanimous vote, 7 in attendance, 7 voted in favor, vote on 1/10/2024 for §407-12, §407-50, §407-60 unanimous vote 8 in attendance, 8 voted in favor, §407-54, §407-57, §407-59 8 in attendance, 4 votes in favor, 3 votes not in favor, 1 abstention

PUBLIC HEARING: Tuesday April 23, 2024 11:30AM, Selectmen's Conference Room, 2nd floor Town Hall, 367 Main St, Hyannis, MA 02601

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 changes are highlighted in **bold** for ease of identification.

1: Proposal: Section 407-12; Amend the existing regulation by removing the ~~crossed out~~ wording **highlighted in bold** and adding the wording **highlighted in bold**.

§407-12. Classes of permits and permit conditions.

A. Town of Barnstable commercial shellfishing permits are granted under the authority of the Town Manager for the taking of shellfish for sale or other consideration, issued to persons, ~~other than aliens~~, having attained their 16th birthday and who are domiciled in the Town of Barnstable. When the holder of a Town of Barnstable commercial shellfish permit is no longer domiciled in the Town of Barnstable, said Town of Barnstable commercial shellfish permit shall be void.

(1) Limitation of available licenses. Commercial shellfishing licenses shall be issued each year only to commercial shellfish license holders of the preceding year, who apply for license renewal. Commercial shellfish license renewals must be applied for between January 1 and January 31.

(2) Commercial Shellfishing License Procedure:

(a) New commercial shellfishing permits may be issued at the rate of one new permit for every non-renewed permit, or permit that is void as a result of other causes (i.e., forfeiture, death, etc.).

(b) If a commercial permit becomes void as a result of death, the permit may be inherited by one individual next of kin. Within 30 days of the death of the commercial permit holder the individual next of kin must: notify the Town of the death of the commercial permit holder, complete a Town of Barnstable commercial shellfish **permit** application, prove to the satisfaction of the Licensing Authority that they are a bona fide, principally domiciled resident in the Town of Barnstable and have been principally domiciled within the Town for at least 12 consecutive months prior to the date of application for inheritance, pay the appropriate fee in full for the commercial permit as determined in §407-12(2)(d)(1) and procure a Commonwealth of Massachusetts commercial shellfishing permit. Failure to meet these requirements within the thirty days will result in the permit being offered to the lottery under §407-12(2)(d).

(c) To become eligible for a new commercial permit you must apply, pursuant to these regulations, within January 1st and January 31st and pay the non-refundable \$5 application fee.

Upon the hand delivery of a completed legitimate application, and payment of the fee, the applicant's name will be entered into a lottery. On February 1st, the applicant names will be drawn by lottery to determine the sequential chronological order that applicant acquire a permit. On February 1st, the Natural Resources Office shall post on the bulletin board outside its building, on Phinney's Lane, a chronological list of applicants as determined by lottery eligible for a commercial permit as determined by vacancy.

(d) If an existing commercial permit becomes void and is not subject to inheritance, during the calendar year (January 1 through December 31) for which the permit was issued, the next eligible applicant as determined by the lottery will be notified, by mail, of the availability of a permit. The applicant shall have ten (10) business days from the date of notification to pay the balance of the permit fee or the permit will be offered to the next eligible applicant as determined by the lottery. The applicant will be notified by Natural Resources when the new permit is available to be picked up. New permits shall be issued for a given commercial shellfishing permit year (April 1 through March 31). The applicant list shall be dissolved each year as of December 31st.

Note: If any dates stated in Regulation §407-12A fall on a Saturday, Sunday or Holiday recognized by the Town of Barnstable, the next Marine Environmental Affairs Department business day shall apply.

B. Commonwealth of Massachusetts commercial shellfishing permit. This permit is required by Massachusetts General Law to dig or take shellfish within the Commonwealth of Massachusetts for commercial purposes and required prior to issuance of the Town of Barnstable commercial shellfish permit.

C. Apprentice commercial shellfishing permit. The Town Manager or Shellfish Constable may issue an apprentice commercial shellfishing permit to a resident child who is sponsored by a Town of Barnstable commercial shellfishing permit holder **or Town of Barnstable commercial shellfish permit holders**. Said child must be under the age of **16 18. and said apprentice commercial shellfishing permit shall expire on the child's 18th birthday**. The apprentice shall assist only the sponsor(s), and only in the harvest of the sponsor's catch limit(s). The apprentice shall not harvest shellfish without the accompaniment of ~~the a~~ a sponsor. **Upon completion and documentation to the satisfaction of the Shellfish Constable of 400 hours of having worked under the tutelage of the sponsor(s) and documentation of successful completion of a Coast Guard boaters safety course, Upon the expiration of the apprentice commercial shellfishing permit** the **apprentice commercial shellfishing permit holder of said permit** may apply for a Town of Barnstable commercial shellfishing permit pursuant to these rules and regulations **only if the child had held the apprentice commercial shellfishing permit for two years prior to their 16th 18th birthday, can demonstrate having worked in the shellfish industry for at least 400 hours, and has successfully completed a Coast Guard boaters safety course**. The allowances to an apprentice permitted under this regulation are distinct and separate from the stipulations that apply to new applicants under Subsection A(2) above. **After five years of holding a Town of Barnstable commercial shellfish permit as a result of having completed the apprenticeship, the commercial permit shall be added to the closed commercial fishery and subject to Subsection A(2) above.**

D. Permit conditions.

(1) Commercial shellfishing permit fees:

- (a) Master: \$550.
- (b) Age 65 or older, Master **Senior**: \$350.

(2) Commercial shellfishing permits expire on March 31 each year.

(3) Unlawful harvest without a commercial shellfishing permit. No person shall take or attempt to take shellfish for sale or other commercial purpose, unless said person is the holder of a valid Town of Barnstable commercial shellfish permit. It shall be prima facie evidence that persons shellfishing on a Town of Barnstable commercial shellfish permit are utilizing said permit for commercial purposes and are subject to all regulations governing such use. This shall not apply to **aquaculture** license holders while on their licensed site.

(4) Assisting in commercial harvest prohibited. A person shall not assist in the commercial harvest or culling of shellfish unless said person holds a Town of Barnstable commercial shellfish permit, unless otherwise stated.

Rationale: addresses removal of a non-politically correct outdated terminology, changes conditions of apprentice commercial shellfishing program to make it more inclusive of younger people, giving more time to complete apprenticeship and the ability to go through the commercial permitting process once the apprenticeship is complete, rather than having to wait until their 18th birthday.

2: Proposal: Section 407-15; Amend the existing regulation by removing the **crossed out**-wording **highlighted in bold** and adding the **wording highlighted in bold**.

§407-15. Shellfishery conservation and management.

A. Temperature restrictions. Dry digging for soft shell clams and quahogs is prohibited when the air temperature is 28F or below. However, the commercial harvest of mussels, the subtidal harvest of quahogs and the use of the hydraulic method or a hand plunger to subtidally harvest soft shell clams, jackknife clams (~~*Tagelus plebeius*~~ *Ensis leei*) and common razor clams (~~*Ensis directus*~~ *Tagelus plebeius*) on the Southside will be allowed.

B. Backfilling of dig holes. All dig sites shall be backfilled when dry digging **all** shellfish.

C. Mainland thatch conservation. The digging of shellfish in the thatch (grass) on the mainland shore is prohibited. Dig sites in the thatch on flats and islands shall be repaired.

D. Shucking restriction. All shellfish harvested shall be brought ashore in the shell.

E. Transport of seed restriction. No person shall transport or move seed clams, quahogs, or scallops, except that a five percent (by count) of seed shall be allowed as a margin of error.

F. Area closures. No person shall take or attempt to take shellfish from a closed area with the exception of scallops. Shellfishing for any purpose is prohibited in these areas (See also Shellfish Area Status 2). Areas may be posted from time to time by Natural Resources or the Board of Health due to high concentrations of seed, point source pollution or health hazard, propagation projects or other purpose. The taking of shellfish from these areas is prohibited. Also, the taking of shellfish from any shellfish culturing gear or tampering with said gear deployed by public and/or private entities on approved designated areas is prohibited. Said approved designated areas shall be considered closed areas.

G. Inspections. All shellfish and sea worms harvested in the Town of Barnstable are subject to inspection. Failure to display shellfish upon demand of enforcement personnel shall be a violation.

H. Destruction of shellfish or shellfish habitat. The willful destruction of shellfish and/or shellfish habitat is prohibited. **and shall be punishable by a fine not to exceed \$1,000 per incident, and \$1,000 per day for any such destruction which continues over more than a twenty-four hour period of time.**

Rationale- Proposed change reflects moving fines into §1-5 rather than in §407. Proposed change also reflects change in scientific name of jackknife razor clam.

3: Proposal: Section 407-36; Amend the existing regulation by removing the ~~crossed out~~-wording **highlighted in bold** and adding the wording **highlighted in bold**.

§407-36. Commercial jackknife clam and common razor clam shellfishing.

A. Commercial jackknife clam (**Tagelus plebeius Ensis leei**) and common razor clam (**Ensis directus-Tagelus plebeius**) harvest limit. The total commercially harvested daily limit of either species shall not exceed four level totes, as defined, whether harvested in the Northside or Southside areas open for commercial harvest.

B. Southside harvest restrictions>

(1) Harvest area restriction in the intertidal zone. The commercial harvest of jackknife clams and common razor clams by dry digging on the Southside of the Town of Barnstable is prohibited. The commercial harvest of jackknife clams and common razor clams from the intertidal area, that area between mean low-water line and the mean high-water line, or any flat or beach which is exposed at low tide, is strictly prohibited, unless otherwise stated.

(2) Harvest method. Jackknife clams and common razor clams may be commercially harvested on the Southside by hydraulic method or hand plunger. No other devices or materials shall be used, unless approved by the Natural Resources Office. All hydraulic method and hand plunger rules and regulations as defined for the commercial harvest of soft shell clams pertain to the commercial harvest of jackknife clams and common razor clams. (Refer to commercial soft shell clam shellfishing rules and regulations).

(3) Harvest days/hours. Refer to commercial soft shell clam shellfishing rules and regulations.

C. Northside harvest restrictions.

(1) Harvest days. The commercial harvest of jackknife clams and common razor clams shall be allowed Monday through Saturday.

(2) Harvest area restriction. The commercial harvest of jackknife clams and common razor clams shall be prohibited in the Scudder Lane Recreational Shellfishing Area, Huckins Island, all tidal flats associated with the island and areas closed for management and/or pollution closures. The commercial harvest of jackknife clams and common razor clams in the area stated above shall be effective Tuesday January 1, 2019 through December 31, 2019. Beginning January 1, 2020 the opening and closing of the above mentioned area shall be governed by Section 188-4(A)2 of the Town of Barnstable Code.

(3) The commercial harvest of jackknife clams and common razor clams shall be allowed west of a line extending from Calves Pasture Point, excluding Huckins Island and all tidal flats associated with the island, commercial harvest is prohibited on this island. Harvest method: Razor clams may be taken with a standard clam hoe (rake) in areas designated by the Town Manager. No shovels, forks or other devices shall be used, unless approved by the Natural Resources Office.

(4) All helpers actively helping a commercially licensed shellfisherman, harvesting razor clams, shall be required to hold a valid Mass. commercial shellfish and sea worms permit. However, no such permit is required to operate the boat. All helpers must present their valid Mass. commercial shellfish and sea worms permit, in person, to the Natural Resources Office prior to initially helping a commercially licensed shellfisherman.

Rationale- Proposed change reflects change in scientific name of jackknife razor clam.

4: Proposal: Section 407-50; Amend the existing regulation by removing the **crossed out**-wording and adding the wording **highlighted in bold**.

§407-50. Filing and posting of applicants.

A list of applicants for the licenses that have been reverted to or created by the Town in order of date and application shall be kept on file by the Marine Environmental Affairs **Division Department** Office, ~~the Town Manager and an up-to-date copy shall be permanently posted on an official bulletin board in the Town Hall~~. Those applying to be added to the list at the Marine Environmental Affairs **Division Department** Office shall pay a non-refundable \$5.00 fee. It shall be the responsibility of the applicant to notify the Marine Environmental Affairs **Division Department** Office, in writing, between January 1 and February 15 of each year of his/her desire to remain on the list. The Marine Environmental Affairs **Division Department** Office must receive said notice on forms supplied by the Marine Environmental Affairs ~~Division Department~~ Office by 4:15PM on the deadline date (February 15) along with a \$5.00 fee.

Rationale: addresses the shift of the list to an online database used by Marine Environmental Affairs and also addresses the change from the Marine Environmental Affairs Division becoming a Department in recent years.

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

§407-54. Exclusivity of license; subleasing prohibited; transfer of license; **untimely death of licensee**.

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. If however, the licensee is under any pending investigations for violations the license may not be transferred. **In the event of the untimely death of a licensee, the license shall continue in full force and effect, subject to the same terms, conditions and regulations imposed by the original license, for a term not to exceed five years. This is for the use and benefit of the immediate family of the deceased licensee or a person designated in a will by the deceased licensee. Such recipient shall thereupon file an application under §407-48. Thereafter, the application shall be treated as a new application with the exception that the license may be transferred sooner than five years after issuance of the new license at the discretion of the inheritor. For purposes of this section, the term immediate family shall mean spouse, son, daughter, mother, father, brother or sister of the deceased licensee.**

Rationale: addresses the conditions of heritability in relation to the untimely death of a licensee. More properly aligns with state statute MGL Ch. 130 Section 57 pertaining to aquaculture license operations following the death of a licensee.

6: Proposal: Section 407-57; Amend the existing regulation by removing the ~~crossed out~~-wording **highlighted in bold** and adding the wording **highlighted in bold**.

§407-57. Acreage limitation.

The maximum total acreage licensed to any new licensee shall not exceed four acres. A new licensee may apply for additional acreage, if applicable, only after the expiration of the original five year license. The maximum total acreage licensed to any **existing** licensee shall not exceed ~~two~~ **four** acres on the Northside and ~~two~~ **four** acres on the Southside within the Town of Barnstable inner bays. **If an individual licensee requests that a business name be added to the aquaculture license along with the name and Barnstable domicile of the licensee, the business name may not be present on individual aquaculture licenses in excess of 8 acres on the Northside and 8 acres on the Southside within the Town of Barnstable inner bays. This** These acreage limitations ~~does do~~ not apply to any existing so-called grant (now referred to as a "licensee") which is in excess of four acres and will not prevent the grant holder (now referred to as the "licensee") from future renewals **or transfers**, provided that said licensee abides by all other applicable regulations set forth herewith. **All previously permitted Northside and Southside inner bay licensed sites will remain as such and cannot be combined into larger permitted sites under one license.**

Rationale: addresses the want for additional acreage for consolidation of existing aquaculture businesses operating on more than two acres while balancing the want of other stakeholders interested in getting into aquaculture when possible for it to actually be possible (the waitlists). This modest increase is a balance of stakeholders, the broader community and MEA

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

§407-59. Reasonable **Production-Value Shellfish Investment Standards**.

An annual review of **each aquaculture** licenses will be conducted by Natural Resources in order to determine reasonable ~~production-value-shellfish investment standards~~. If, after the third year of a new license, any licensee cannot show that a reasonable amount of shellfish ~~product~~ has been **planted and/or** produced on the licensed ~~site~~ during the preceding year the license may be forfeited. For purposes stated herein reasonable amount of shellfish **planted and/or produced product** shall mean **income from sales of** not less than \$4,000 per acre per year based upon market value. This amount is subject to change with inflation rates. Failure of the ~~licensed-shellfish-project licensee~~ to meet such ~~a-value a shellfish investment standard~~ 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 shellfish investment standard~~ then upon written request to the Town Manager **or Shellfish Constable** said reasonable production value may be waived at the discretion of the Town Manager **or Shellfish Constable** 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 effect of a natural disaster or other unforeseen personal misfortune.

Rationale: addresses the current use of licensed sites across Town more accurately in that not all sites have market bound product on them but have seed planted, which still carries value. This regulation has not accurately reflected aquaculture operations across sites in Town for years. This will make annual reporting more accurate.

8: Proposal: Section 407-60; Amend the existing regulation by removing the ~~crossed out~~-wording **highlighted in bold** and adding the wording **highlighted in bold**.

§407-60. Filing of annual reports; **requirements for new licensees.**

Licensees shall file annual reports with Natural Resources in accordance with ~~the a~~ form provided by Natural Resources on or before February 28 of each year and shall produce documents upon the request of Natural Resources 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 Natural Resources which establishes that the licensee reached the reasonable production value. A new licensee is required to submit purchase and sale slips for the source(s) of seed planted on his/her licensed site and/or gear purchase for his/her licensed site for the first three years of his/her original license. **In addition, new licensees are required to provide documentation that the new licensee has taken the Cape Cod Cooperative Extension's Shellfish Farming Course (or equivalent as approved by the Shellfish Constable) within the first two years of holding the original license.**

Rationale: addresses concerns of novice aquaculturists being issued licensed sites potentially without any background in aquaculture while balancing the ability of any person domiciled in the Town of Barnstable being eligible to apply for the aquaculture waitlists.