The Town of Barnstable

Office of Town Manager

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Mark S. Ells, Town Manager

Amendments to the Town of Barnstable Shellfish, Eel, Herring and Aquaculture Rules and Regulations

These regulations are made by the Town Manager of the Town of Barnstable, under the authority of General Laws, Chapter 130, and the Charter of the Town of Barnstable. These regulations shall supersede any former shellfish regulations and shall continue in force until rescinded or replaced by the Town Manager, or until the authority to make and enforce shellfish regulations has been repealed.

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

1: Section 407-14

§ 407-14. General commercial shellfishing.

A. Harvest hours. No person shall take or attempt to take shellfish or seaworms during the nighttime hours, between sunset and ½ hour before sunrise, except as otherwise noted utilizing the hydraulic method (see hydraulic method restrictions).

B. Tagging shellfish and display of permit.

(1)The regulations for tagging shellfish set forth in 322 CMR 16.03 are hereby incorporated and made a part hereof.

(2) All shellfish, commercial permits and licenses shall be displayed upon demand of a Shellfish Constable, Deputy Shellfish Constable or Town of Barnstable police officer.

2: Section 407-17

§ 407-17. Southside Harvest Restrictions.

A. Harvest restrictions in the intertidal zones. The commercial harvest of soft shell clams by dry digging on the Southside of the Town of Barnstable is prohibited. The commercial harvest of soft shell clams from the intertidal area, that area between mean low-water line and the mean high-water line, or any flat or beach area which is exposed at low tide, is strictly prohibited, unless otherwise stated.

B. Harvest days/hours. The commercial harvest of soft shell clams on the Southside of the Town of Barnstable shall be allowed Monday through Saturday, November 1 through May 31; and Monday through Friday June 1 through October 31. The harvest of shellfish by the hydraulic method is prohibited from ½ hour before sunset until 7:30 the following morning.

C. Hydraulic method or hand plunger shall be used for the commercial subtidal harvest of soft shell clams, jackknife clams and common razor clams only on the Southside of Town. The harvest of other species of shellfish using the hydraulic method is prohibited.

(1) Tide/depth restriction. The harvest of subtidal soft shell clams by either method is prohibited from two hours after low tide to two hours prior to the next low tide, based on Boston Tide Calendar issued by Natural Resources. The harvest of subtidal soft shell clams is prohibited in less than two-foot depth of water, unless otherwise stated.

(2) Harvest of subtidal soft shell clams, Shoestring Bay, Popponesset Bay and the Marstons Mills River (subject to State closures). Subject to current hydraulic/plunging regulations, except that the harvest of subtidal soft shell clams is prohibited in less than one-foot depth of water and is prohibited on any flat or beach area which is exposed at low tide or posted by Natural Resources. The harvest by either method is prohibited from two hours after low tide to two hours prior to the next low tide, based on the Boston Tide Calendar issued by Natural Resources.

(3) Hydraulic method helper. Commercial permit holders utilizing the hydraulic method to harvest subtidal soft shell clams shall be allowed one helper. Said helper shall at all times be in the immediate company of and under the direct supervision of the hydraulic permit holder while harvesting shellfish. The helper shall be required to a Commonwealth of Massachusetts commercial shellfish and seaworms permit. All helpers must present their valid Mass. commercial shellfish and seaworms permit, in person, to the Natural Resources office prior to initially helping a commercially licensed shellfisherman.

(4) Gear restriction (Southside). Pumps shall not exceed eight horsepower and shall be equipped with proper muffler and exhaust system. Pumps shall be mounted low in the boat to limit noise.

3: Section 407-20.

§ 407-20. Other applicable regulations.

All commercial shellfishing permit conditions, general commercial shellfishing rules and regulations and shellfishery conservation and management regulations apply. In addition, the following conditions, rules and regulations apply:

A. Definitions of quahogs.

(1) Littleneck: greater than or equal to one-inch hinge width; less than 2½ inches in longest diameter.

(2) Cherrystone: greater than or equal to 2 ½ inches; less than three inches in longest diameter.

(3) Chowder: greater than or equal to three inches in longest diameter.

B. Minimum size limit. 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) quahogs less than once inch shell thickness (hinge width) to the amount of more than 5% of any batch.

C. Gear restrictions. Quahogs may be commercially harvested by hand, rakes, tongs, dipnet and bullrake. No other device may be used, unless approved by Natural Resources.

D. All helpers actively assisting a commercially licensed shellfisherman harvesting quahogs, shall be required to hold a valid Massachusetts commercial shellfish and seaworms permit. Said helper shall be allowed to cull and sort the quahog catch and return seed to the water. Said helper shall not be allowed to harvest quahogs. All helpers must present their valid Mass. commercialshellfish and seaworms permit, in person, to the Natural Resources office prior to initially assisting a commercially licensed shellfisherman.

4: Section 407-36(C)2.

(2) Harvest area restriction. The commercial harvest of jackknife clams and common razor clams shall be allowed in Barnstable Harbor West of Beach Point, Sandy Neck excluding the Scudder Lance Recreational Shellfishing Area 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 Tuesday December 31, 2019.

5: Section 407-47

§ 407-47. Proof of residency required.

Aquaculture grant licenses, herein referred to as the “license”, will be issued to Town of Barnstable residents only who can prove to the satisfaction of the Licensing Authority that they are a bona fide, principally domiciled resident of the Town of Barnstable and have been principally domiciled within the Town for at least 12 consecutive months prior to the date of application. Two forms of written proof of residency is required; tax bills paid by the applicant, rent receipts with accompanying lease agreement, utility bills paid by the applicant, driver’s license, car registration issued to the applicant, etc., may serve as proof. All local tax obligations must be paid in full in order for an application to be considered in accordance with MGL C. 40, §57, which was adopted by Town Meeting 11/86. Any licensed area so licensed subsequent to the adoption of these rules and regulations shall be forfeited if the holder of the license, herein referred to as the “licensee”, ceases to be a bona fide, principally domiciled resident in the Town of Barnstable. Annual documentation to verify the licensee is principally domiciled in the Town of Barnstable is required. This may be a current real estate tax bill, mortgage statement or residential lease and copy of motor vehicle registration (a driver’s license is not valid proof of domicile). The burden of proof is on the licensee and shall be included with the annual license fee, due by December 31 each year.

6: Section 407-50

§ 407-50. Filing and posting of applicants.

A list of applicants for 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 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 Office shall pay a non-refundable $5.00 fee. It shall be the responsibility of the applicant to notify the Marine Environmental Affairs Division 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 Office must receive said notice on forms supplied by the Marine Environmental Affairs Division office by 4:15PM on the deadline date (February 15) along with a $5.00 fee.

7: Section 407-54

§ 407-54. Exclusivity of license; subleasing prohibited; transfer of license.

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 or violations the license may not be transferred.

8: Section 407-63

§ 407-63. Responsibility for gear and tackle.

The license holder assumes all liability for all gear and tackle used on the licensed site. If any such gear and tackle is moved to a location off the licensed site, it shall be the responsibility of the licensee to remove said gear. If within 21 days after notification to the licensee by NR that the licensee has not complied with this requirement, the Town may cause such gear and tackle to be removed at the expense of the licensee. Every licensee shall permanently mark or tag, in a conspicuous place, any and all gear and tackle used on the licensed site including without limitation trays, bags, racks, lines and pipes with the six digit state propagation permit number issued to the licensee. Netting shall be marked or tagged in a conspicuous place, per every 200 square feet. Said regulation is subject to fine schedule for non-compliance. The shellfish constable shall have the authority to temporarily waive these regulations if the presence of ice, sever weather or other condition hampers the ability of the licensee to immediately comply with these regulations.

9: Section 407-65

§ 407-65. Harbor improvements; migration of navigational channels.

No licensee shall hold the Town of Barnstable or the Commonwealth of Massachusetts liable for any damage to a licensed site as a result of harbor improvements. Any grant bounded by a navigational channel, as defined by the Harbormaster, that has migrated by natural or man-made causes into or through a permitted shellfish grant and has eroded a portion of the permitted land within the grant to a navigational depth of at least three feet at mean low water, said channel shall become the natural boundary of the grant and supersede any previous agreed boundaries of the grant. The grant holder shall sacrifice any and all rights of his/her grant within this defined navigational channel. Should sediment migrate and settle within Aquaculture Zone 1 in Barnstable Harbor, due in whole or in part to natural conditions, leaving an area along the channel with less than three feet of water at mean low tide and adjacent to a licensed site less than 2 acres in size, a licensee may apply in writing to re-define the boundaries of the license along the channel through the Natural Resources Office. Final determination of whether or not a re-definition of boundaries is warranted will be decided by the Town Manager though a Town Manager public hearing.

Adopted: _____

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Mark S. Ells, Town Manager
Town of Barnstable