



Town of Barnstable
Community Services Department
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TO: Mark S. Eills, Town Manager
FROM: Amy A. Croteau, Shellfish Constable, Natural Resources
THROUGH: Daniel J. Horn, Marine & Environmental Affairs Division
DATE: December 1, 2017
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: September 2017 agenda items

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

CC: Andy Clyburn, Assistant Town Manager
Lynne M. Poyant, Community Services Manager

1: Proposal: Section 407-36(C)2; Amend the existing regulation by adding the wording highlighted in bold and italicized. This proposed regulation would be in effect until January 1, 2019. After that date the existing regulation will be reinstated.

***(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 Lane 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 Monday January 1, 2018 through Monday December 31, 2018.***

Rationale:

At the September 6th 2017 staff meeting of the Natural Resources Office, staff discussed the proposal of extending the opening a designated portion of the "Recreational Shellfishing Area" in the mid-section of Barnstable Harbor to the commercial harvest of razor clams only.

Natural Resources recommends keeping open the said area for an additional year based upon visual surveys conducted in the areas that have been harvested over the past year as well as management criteria seeking to utilize the standing population for commercial purposes.

Natural Resources supports the advantageous, efficient, bountiful and economically fortuitous commercial harvest of the standing razor clam set within a designated portion of the Barnstable Harbor Recreational Shellfishing Area as proposed in the amendments to Town of Barnstable shellfish regulations 407-36C(2).

2: Proposal: Section 407-17; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

§ 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 on Monday through Saturday, November 1 through May 31; and Monday through Friday, June 1 through October 31. The harvest of shellfish by 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 utilizing 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 and Popponessett bays (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 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 hold a Commonwealth of Massachusetts commercial shellfish **and seaworms** permit. All helpers must present their valid Mass. **bed certificate 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.

Rationale:

A Massachusetts bed certificate no longer exists in Division of Marine Fisheries language as a commercial permit. It is called a Massachusetts commercial shellfish and seaworms permit. Town regulations should refer to the permit as DMF refers to the permit

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

§ 407-31. Licensing of helpers.

All helpers actively helping **a** commercially licensed shellfishermen, harvesting scallops, shall be required to hold a valid Mass. ~~bed certificate commercial shellfish and seaworms permit~~. However, no such permit is required to operate the boat. All helpers must present their valid Mass. ~~bed certificate commercial shellfish and seaworms permit~~, in person, to the Natural Resources Office prior to initially helping a commercially licensed shellfisherman.

Rationale:

A Massachusetts bed certificate no longer exists in Division of Marine Fisheries language as a commercial permit. It is called a Massachusetts commercial shellfish and seaworms permit. Town regulations should refer to the permit as DMF refers to the permit. One grammatical error correction, removal of "a" when referring to commercial shellfishermen.

4: Proposal: Section 407-36; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

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

- A. Commercial jackknife clam (*Tagelus plebius*) and common razor clam (*Ensis directus*) harvest limit. The total commercially harvested daily limit of either species shall not exceed four level tote baskets, 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 area 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.
- A. 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 allowed east of a line extending north from Barnstable Yacht Club Pier, to a post and sign at Green Point, Sandy Neck, and West of Beach Point, Sandy Neck.

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

(3) The commercial harvest of jackknife clams and common razor clams shall be allowed west of a line extending North from Calves Pasture Point, to the Eastern bank of Wells Creek, excluding Huckins Island and all tidal flats associated with said island, commercial harvest is prohibited on these islands. 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 or materials shall be used, unless approved by the Natural Resources Office.

(4) The commercial harvest of jackknife clams and common razor clams shall be allowed on the eastern half of Great Thatch Island, Barnstable Harbor, as posted, subject to the above listed restrictions.

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

Rationale:

A Massachusetts bed certificate no longer exists in Division of Marine Fisheries language as a commercial permit. It is called a Massachusetts commercial shellfish and seaworms permit. Town regulations should refer to the permit as DMF refers to the permit.

5: Proposal: Section 407-54; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

§ 407-37. Commercial mussel shellfishing.

- A. Harvest days. The commercial harvest of mussels shall be allowed on Monday through Saturday.
- B. Commercial mussel harvest limit. The total daily limit of mussels, commercial harvest, shall not exceed 50 **bags tote baskets**.
- C. Harvest limit per boat. There shall not be more than two harvest limits per boat for commercial permit holders.
- D. Gear restrictions and harvest method. Stone fork or dredge, not to exceed 32 inches in width. All persons harvesting mussels are responsible for the cleanliness of the landing areas.
- E. All helpers actively helping **a** commercially licensed shellfishermen, harvesting mussels, shall be required to hold a valid Mass. **bed-certificate commercial shellfish and seaworms permit**. However, no such permit is required to operate the boat. All helpers must present their valid Mass. **bed-certificate commercial shellfish and seaworms permit**, in person, to the Natural Resources Office prior to initially helping a commercially licensed shellfisherman.

Rationale:

A Massachusetts bed certificate no longer exists in Division of Marine Fisheries language as a commercial permit. It is called a Massachusetts commercial shellfish and seaworms permit. Town regulations should refer to the permit as DMF refers to the permit. Additionally, there is no definition of "bag" in terms of commercial harvest limit in Town of Barnstable shellfish regulations so it should read "tote baskets". One grammatical error correction, removal of "a" when referring to commercial shellfishermen.

6: Proposal: Section 407-63; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

§ 407-64. Responsibility for gear and tackle.

The license holder assumes all liability for all gear and tackle used on the license. If any such gear is moved to a location off the license, 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 to be removed at the expense of the licensee. Every licensee shall permanently mark or tag, in a conspicuous place, each shellfish container, used on the license site, with the **four 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, severe weather or other condition hamper the ability of the licensee to immediately comply with these regulations.

Rationale:

Division of Marine Fisheries now issues a 6 digit propagation permit number, not four. Town ordinances should reflect current DMF regulation.