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Town of Barnstable
Community Services Department
Marine and Environmental Affairs Division



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DRAFT

DATE: August 25, 2016

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: Voted on and approved at August shellfish committee meeting

PUBLIC HEARING: October 20, 2016 9:00AM, 367 Main St, Town Hall Hearing Room, 2nd Floor, 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 insertions, deletions and/or changes are highlighted in **bold** for ease of identification, where applicable.

1: Proposal: Section 407-47; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

§ 407-13. Commercial shellfishing permit application procedure.

A. Each applicant for a Town of Barnstable commercial shellfish permit shall fill out and submit an application form, provided by Natural Resources and an application fee of \$5; said fee is not refundable but will be applied to the permit fee when said permit is picked up. Attached to the application shall be copy of:

- (1) Commonwealth of Massachusetts commercial shellfish permit, valid for the year being applied for.
- (2) Documentation to verify the applicant is domiciled in the Town of Barnstable. This may be current real estate tax **bill**, mortgage **statement** or **residential** lease and copy of motor vehicle registration. (A driver's license is not proof of domicile.) The burden of proof is on the applicant.
- (3) Validated catch report stub from the year previous to the year being applied for.
- (4) Note: Chapter 121, Article I, of the Code of the Town of Barnstable provides that any license or permit may be denied or revoked for nonpayment of taxes, fees, assessments, betterments or other municipal charges.

B. Application window. Each applicant for a Town of Barnstable commercial permit must apply for said permit between January 1 and January 31 annually. Applications will not be accepted after January 31. After paying the initial application fee of \$5 for the commercial permit, the applicant must pick up and pay in full for said permit within 90 days after closing of the application window.

C. Address change. Should any commercial permit holder's address change during the commercial permit year, they must contact Natural Resources in writing with said address change.

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 and Environmental Affairs Division business day shall apply.

Rationale

The Shellfish Committee wanted the same clarity of paperwork needed to prove domicile as was approved by the committee for aquaculture lease holders, §407-47.

2: Proposal: Section 407-47; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

§ 407-47. Proof of residency required.

Aquaculture grant licenses, hereinafter 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, domiciled resident of the Town of Barnstable and have been 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, rent receipts, utility bills, driver’s license, car registration, 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, hereinafter referred to as the “licensee”, ceases to be a bona fide domiciled resident of the Town of Barnstable. **Annual documentation to verify the licensee is domiciled in the Town of Barnstable is required. This may be current a real estate tax bill, mortgage statement or residential lease and copy of motor vehicle registration. (A driver’s license is not valid annual 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.**

Rationale

Annual proof of domicile is required for those in the commercial shellfishery. To keep better track of licensees, annual proof of domicile for licensees should also be required.

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

§ 407-50. Filing and posting of applicants.

A list of applicants for licenses **that have been reverted to the Town** in order of date and application shall be kept on file by the Town Manager, and an up-to-date copy shall be permanently posted on an official bulletin board in the Town Hall. **It shall be the responsibility of the applicant to notify the Town Manager’s office, in writing, between January 1 and February 15 of each year of his/her desire to remain on the list. The Town Manager’s officer must receive said notice on forms supplied by the Town Manager’s office by 4:15PM on the deadline date (February 15) along with a \$15.00 fee.**

Rationale

Annual notice of desire to remain on the list along with a wait list fee will ensure the wait list stays current. It should be noted that this wait list only addresses grants that have been turned back to the town, and does not include transfers. Domicile will be required within 407-47 if someone on the wait list is offered a grant.

4: Proposal: Section 407-52; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

§ 407-52. Compliance with all laws required; approval of license.

Approval of any aquaculture license shall be subject to all federal, state and local laws, rules and regulations as in force and as amended from time to time. ~~and~~ The licensee shall comply with all such rules and regulations **pertaining to the operation of an aquaculture license in the Commonwealth of Massachusetts**. Failure to comply with any of the aforementioned laws, rules and regulations shall be cause to revoke the license. The Town Manager's approval of a shellfish aquaculture license shall become effective upon the expiration of 30 days from the date the Town Council is notified, in writing, of said license approval unless the Town Council votes within said time to disapprove of said license.

Rationale

Federal, state and local laws are subject to change, and it needs to be clearly stated that licensees comply with any and all changes.

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

§ 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.

Rationale

The five year waiting period for transfers encourages new licensees to make production standards and provides for the availability of a limited number of sites for persons on the waiting list..

6: Proposal: Section 407-56; Amend the regulation by deleting the crossed out wording.

§ 407-56. New license period; renewal.

A new license shall be issued for a period not to exceed five years, and for a total maximum area not to exceed two acres. ~~During the first year, at least 10% of the lease site must be used for the permitted aquaculture activity, during the second year 15% and during the third year 20% or the license will be forfeited.~~ The licensee may apply for renewal of the license at anytime within two years prior to the expiration date of the license. The Town Manager shall review the licensee's request for renewal within 60 days after receipt of the renewal request. Under the legal discretion of the Town Manager the license holder shall have the option of a renewal period up to 10 years.

Rationale

These production standards are unrealistic and are addressed in §407-59, Reasonable production value.

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

§ 407-59. Reasonable production value.

An annual review of each license will be conducted by NR in order to determine reasonable production value. If, after the third year of a new license, any licensee cannot show that a reasonable amount of shellfish product has been produced on the license during the preceding year the license may be forfeited. For purposes stated herein reasonable amount of shellfish product shall mean not less than ~~\$2,000~~ **\$4,000** per acre per year based upon market value. **This amount is subject to change with inflation rates.** Failure of the licensed shellfish product to meet such a value 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 then upon written request to the Town Manager said reasonable production value may be waived at the discretion of the Town Manager 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 result of a natural disaster or other unforeseen personal misfortune.

Rationale

\$4,000 per acre is a more accurate reflection of today's reasonable production value based on current inflation rates. It is necessary to mention that this production value is likely to change over time.

8: Proposal: Section 407-60; Amend the regulation by adding the wording highlighted in **bold**.

§ 407-60. Filing of annual reports.

Licensees shall file annual reports with NR in accordance with the form provided by NR on or before February 28 of each year and shall produce documents upon the request of NR 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 NR which establishes that the licensee reached the reasonable production value. **A new licensee is required to submit purchase and sale slips for source(s) of seed planted on his/her license site and/or gear purchased for his/her licensed site for the first three years of his/her original license.**

Rationale

Requiring new licensees to show documentation of seed planted on his/her licensed site and/or gear purchased for the first three years ensures new licensees are actively using their licensed area for aquaculture.

9: Proposal: Section 407-64; Amend the regulation by adding the wording highlighted in **bold**.

§ 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 a third party, contracted** by the Town, at the expense of the licensee.

Rationale

When a license is discontinued or terminated and the licensee abandons the site without removing gear, a third party may need to be hired to remove all remaining gear in order for the next licensee to take over the license.