

## **Chapter 407 SHELLFISH**

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[HISTORY: Adopted by the Town Manager of the Town of Barnstable 4-6-1995; revised 11-21-1996, 1-8-1998, 2-18-1999, 12-5-2000, 1-31-2003, January 2004. Sub-sequent amendments noted where applicable.]

## **GENERAL REFERENCES**

**Noncriminal disposition — See Ch. 1, Art. I.**

### **ARTICLE I**

#### **General Provisions**

##### **§ 407-1. Adoption of regulations; posting of changes.**

A. 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 These regulations shall supersede any former shellfish regulations and shall continue in force until rescinded or replaced by the Town Manager, or until the authority to make and enforce shellfish regulations has been repealed.

B. These regulations are subject to change from time to time and said changes will be posted at the Town Clerk's Office bulletin board, the Natural Resources Office (1189 Phinney's Lane, Centerville, MA), and Natural Resources bulletin boards located at Town landings commonly used for shellfishing.

##### **§ 407-2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**APPRENTICE COMMERCIAL SHELLFISHING PERMIT** — Granted under the authority of the Town Manager or Shellfish Constable to a resident child under the age of 16 for the purpose of assisting a sponsor Town of Barnstable commercial shellfish permit holder.

**BATCH** — All shellfish in each separate container.

**BUSHEL** — Except as otherwise noted, the quantity contained in a tote basket measuring 2,746 cubic inches in volume. Shellfish shall be level with the top of said tote basket.

**CALENDAR WEEK** — Seven full days beginning on any Sunday and ending on the following Saturday.

**COMMERCIAL FISHERMAN** — Any person who sells or offers for sale, shellfish, sea worms or eels, for cash or other consideration.

**COMMERCIAL SHELLFISH PERMIT, TOWN OF BARNSTABLE** — Granted under the authority of the Town Manager, for the taking of shellfish for sale or other consideration.

**COMMONWEALTH OF MASSACHUSETTS COMMERCIAL SHELLFISHING PERMIT A** permit issued by the Division of Marine Fisheries and defined in General Laws, Chapter 130, § 80.

**CONCH** — Those species of whelk known as *Busycon carica* (knobbed whelk) and *Busycoty-pus canaliculatus* (channeled whelk).

**CULL** — To sort and measure shellfish; separate seed from adult stock and replant seed.

**DOMICILE** — That place where (a person) has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning (Black's Law Dictionary, revised 4th ed.).

**FAMILY** — All those persons of the immediate family (husband, wife and any unmarried children and grandchildren under the age of 18) domiciled and living under the same roof.

**HARVEST** — To catch, dig, take or attempt to catch, dig or take any fish, shellfish or bait.

**HINGE WIDTH** — The distance between the convex apex of the right shell and the convex apex of the left shell.

HYDRAULIC METHOD — The taking or attempt to take shellfish by means of water pressure pumped through a single pipe (wand), manifold or other device approved by Natural Resources, said pressure being supplied by a mechanical pump. The hydraulic method includes the raking or collection of shellfish dislodged from the bottom via said water pressure.

LAND or LANDING — To transfer the catch of fish or shellfish from any vessel to any other vessel or from the waters, flats or any vessel onto any land, pier, wharf, dock or other artificial structure.

MANAGER — The Town Manager of the Town of Barnstable.

MASTER PERMIT — A permit allowing the commercial harvest of scallops, clams, mussels and eels.

PECK — The word “peck” whenever used herein shall mean the quantity contained in a standard metal wire peck basket, level with the top of said peck basket. Said quantity shall not exceed 10 quarts (672 cubic inches) dry measure. The said peck basket shall be the only authorized container allowed to recreationally harvest and contain shellfish.

RECREATIONAL PERMIT — A permit granted under the authority of the Town Manager for the taking of shellfish for noncommercial domestic use only.

RESIDENT — Resident real estate taxpayers, year-round tenants, non-seasonal tenants (six months or more of the calendar year) of residential dwellings located within the Town of Barnstable.

PROOF OF RESIDENCY — Current real estate tax bill, non-seasonal lease or, valid Massachusetts operator’s license, or any other ID issued by the Massachusetts Registry of Motor Vehicles, in combination with Massachusetts motor vehicle registration, both listing a residential dwelling within the Town of Barnstable. The address of a post office box is not acceptable as proof of residency.

SEED CLAM — Soft shell clams measuring less than two inches in the longest diameter.

SEED OYSTER — Oyster measuring less than three inches in the longest diameter.

SEED BAY SCALLOP — Bay scallops which do not have a well-defined raised annual growth line on the shell.

SEED QUAHOG — Quahog measuring less than one inch shell thickness (hinge width).

SHELLFISH — Includes, but not limited to, clams, quahogs, mussels, oysters, scallops, razor clams or razor fish, sea clams, sea scallops, sea quahogs, conchs and whelks.

TOTE BASKET — The quantity contained in a tote basket measuring 2,746 cubic inches in volume. Shellfish shall be level with top of said tote basket.

## ARTICLE II

### **Recreational Shellfishery**

#### **§ 407-3. Classes of recreational shellfishing permits, licensing requirements and conditions.**

A. Resident recreational permits: Those who pay real estate taxes or are residents, as defined, of the Town of Barnstable are entitled to a Town of Barnstable recreational shellfishing permit. This permit also allows the taking of sea worms, herring and eels for noncommercial purposes. Fee: \$40.

(1) Family recreational permit: issued on the basis of one per resident family, as defined.

(2) Individual recreational permit: issued to unmarried resident individuals over the age of 18.

B. Nonresident recreational permit: issued to an individual; regardless of residency. The same conditions as resident recreational permits apply, with the exception of Town of Barnstable residency. Fee: \$140.

C. Senior recreational permit: issued to an individual who has attained the age of 65 and is a legal resident of, or pays real estate taxes to, the Town of Barnstable; one permit per family. Fee: \$30.

D. Seasonal recreational permit: issued to an individual, regardless of residency. The permit shall be effective from June 1 through August 31 for the year it was issued. The same conditions as resident recreational permits apply. Fee: \$70. The permit may be upgraded to a non-resident recreational permit, for the year it was issued, for an additional \$70.

E. Permit conditions.

(1) Permit expiration date: Recreational permits expire on March 1, each year, except as otherwise noted.

(2) Unlawful harvest without a recreational permit: No person shall take or attempt to take shellfish or sea worms within the Town of Barnstable, unless he or she is in possession of a valid Town of Barnstable shellfish permit.

(3) Prohibition of sale of shellfish: No person shall sell or offer for sale, for money or other consideration, any shellfish, sea worms, herring or eels, taken under a recreational permit.

(4) Transfer of permit: The Town of Barnstable shellfish permit is not transferable without the written permission of the Town Manager or Shellfish Constable. An illegally transferred permit shall be considered invalid.

(5) Child under 12: No person (child) under the age of 12 years shall be allowed to use the recreational permit unless accompanied by an adult with a valid shellfish permit.

(6) Guests of a recreational permit holder: A recreational permit holder may take guests to dig with them as long as only one weekly limit is taken. One limit per permit is allowed. The permit holder must be present and is responsible for any violations against the shellfish rules and regulations by the guest(s).

(7) The Town of Barnstable shellfish permit shall be visibly displayed on the person while shellfishing and transporting ashore.

(8) Landing restriction: All shellfish harvested under a recreational permit shall be landed in the Town of Barnstable.

**§ 407-4. Harvest time restrictions.**

A. Harvest days. Shellfish taken under a recreational permit may be harvested on Sunday, Wednesday and Saturday and on Commonwealth of Massachusetts recognized holidays as adopted by the Town of Barnstable only, except as otherwise stated. The shellfishing calendar week consists of seven full days beginning on any Sunday and ending on the following Saturday.

B. Other harvest day restrictions.

(1) Blue mussels may be harvested daily in Barnstable Harbor.

(2) Sea clams may be harvested daily in the area east of a line extending from Salten Point to the Eastern Bank of Great Thatch Island, Barnstable Harbor.

(3) Sea worms may be taken daily.

(4) Scallops. (See scallop regulations.)

(5) Oysters. Season dates will be posted annually. The harvest of oysters shall be closed (prohibited) effective April 1 annually.

C. Harvest hours. No person shall take or attempt to take shellfish or sea worms during the nighttime hours, between sunset and 1/2 hour before sunrise.

**§ 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: 25 per day.

B. Authorized Recreational Shellfish Container: All shellfish harvested under a recreational shellfishing permit shall be harvested and contained in a standard ten (10) quart metal wire peck basket as defined. No other containers are allowed.

**§ 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 1/2 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 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 nine inches in total length.

#### **§ 407-7. Gear restrictions and regulations.**

A. Clams and razor clams may be taken with a standard clam hoe (rake) or hand plunger 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.

B. Quahogs and oysters may be taken by hand, rakes, tongs, dipnet and bull rake. No other device may be used, unless approved by Natural Resources.

C. Eels and elvers may be taken by pots, spears or angling. A recreational shellfish permit must be in possession; the limit for recreational permit holders is 10 pots; all pots and buoys are to be marked with the permit holder's name, and buoys must be painted bright green. A permit is not required to take eels for recreational use by spears or angling.

D. Skin or scuba diving. All persons skin or scuba diving for shellfish shall display the diver-down flag and, upon request, produce a Town of Barnstable shellfish permit.

#### **§ 407-8. Shellfishery conservation and management.**

A. Temperature restriction. Dry digging for soft shell clams and quahogs is prohibited when the air temperature is 28o °F. or below.

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. Wet storage prohibition. The wet storage of shellfish in the Town of Barnstable waters is prohibited.

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

G. 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 closed 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.

H. 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.

I. 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.

**§ 407-9. Recreational scallop regulations.**

A. Closed season. The harvest of scallops shall be closed (prohibited) effective April 1 annually, MGL C. 130, § 71. Open season will be posted annually.

B. Recreational harvest limit. One bushel per week may be harvested daily.

C. Minimum size limit. Only scallops with a well-defined raised annual growth ring may be taken; all other scallops will be considered seed scallops and must be returned to the water immediately. However, it shall not be unlawful to have in possession seed scallops unavoidably left in the catch after it has been culled, to the amount of not more than 5% of the total catch remaining.

D. Gear restriction. Scallops may be taken by hand, rake, dipnet and dragging in all areas that are not closed to dragging. In such areas closed to dragging, they may be taken by hand, dipnet, rakes and diving. No other devices may be used.

E. Dredge size restriction. No drags, dredges shall exceed 32 inches in width.

F. Dredging area restrictions.

(1) No dragging shall be permitted North of a line marked by buoys, running from the way to water at the end of Estey Avenue, to the southerly end of East jetty, and in the above area, only one bushel per permit holder may be taken per calendar week. No boats permitted in this area.

(2) No dragging shall be allowed between Calves Pasture Point and the Barnstable Yacht Club pier.

G. Sale restriction. No scallops taken on a recreational permit shall be sold or offered for sale.

H. Storm policy. In the event of a storm depositing scallops on the beach, where there is no chance of said scallops being returned to the waters by tidal actions, scallops may be harvested by Town of Barnstable residents and all Town of Barnstable shellfish permit holders. Residents must provide proof of residency. Ten-bushel per day limit. Note: The harvest of any shellfish is prohibited during the nighttime hours, sunset to 1/2 hour before sunrise.

**§ 407-10. Herring and alewife rules and regulations.**

A. It shall be unlawful for any person to harvest, possess or sell river herring in the Town of Barnstable or in the waters under the jurisdiction of the Commonwealth of Massachusetts.

B. Conservation. Throwing objects into the water and/or malicious destruction of the herring and alewives is prohibited.

C. Unauthorized alteration of herring runs. No person shall tamper with, adjust or destroy any structure provided for the passage of herring and alewives unless authorized by the Supervisor of Natural Resources.

## **§ 407-11. Regulations pertaining to other species.**

For recreational rules and regulations pertaining to other species including conch, whelk, ocean quahog, sea scallop, lobster, crabs and sea urchins, refer to Massachusetts General Laws Chapter 130 and Code of Massachusetts Regulations 322.

### ARTICLE III

#### **Commercial Shellfishing**

## **§ 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) New Commercial Shellfishing License Procedure:

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

(b) 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 applicants 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.

(c) If an existing commercial permit becomes void, 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) 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 new permit shall be available within ten (10) days, thereafter, 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 and Environmental Affairs Division 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. Said child must be under the age of 16, and said apprentice commercial shellfishing permit shall expire on the child's 16th birthday. The apprentice shall assist only the sponsor, and only in the harvest of the sponsor's catch limit. The apprentice shall not harvest shellfish without the accompaniment of the sponsor.

Upon the expiration of the apprentice commercial shellfishing permit the 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 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.

D. Permit conditions.

(1) Commercial shellfishing permit fees:

- (a) Master: \$550.
- (b) Age 65 or older, master: \$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 grant holders while on their licensed grant.

(4) Catch report. A catch report for the calendar year shall be submitted to Natural Resources, on forms provided, no later than January 15 annually. Failure to submit a catch report will result in a fine of no more than \$500 as per the determination of Natural Resources, and may result in a suspension of the Town of Barnstable commercial shellfish permit for one year, commencing the next commercial permit year (April 1 to March 31).

(5) 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.

**§ 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 a 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, mortgage or 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.

**§ 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 1/2 hour before sunrise, except as otherwise noted utilizing the hydraulic method (see hydraulic method restrictions).

B. Tagging shellfish and display of shellfish permit.

(1) All shellfish harvested under a commercial shellfish permit shall be placed in a suitable container during transport. The container shall bear a label or tag legibly marked with:

- (a) Date of harvest.
- (b) Place of harvest.
- (c) Digger's state permit number.
- (d) Name and address of digger.

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

C. Possession of shellfish. No person shall possess shellfish in excess of daily commercial limit in or on the waters of the Town of Barnstable, or while landing their catch.

D. Landing of shellfish. After the completion of harvest, all shellfish harvested in the Town of Barnstable under a commercial permit shall be landed at a Town landing. The word "landed" as used herein shall mean the location where shellfish are removed from the shoreline to any point of land above the mean high-water line. This regulation shall not apply when ice conditions prevent the use of a boat.

E. Shall not take family limit in addition. A commercial shellfish permit holder shall not take in any one day shellfish in excess of the commercial quantity allowed by statute or regulation, regardless of the fact that he or a member of his family may hold a family shellfish permit.

F. Wet storage. The wet storage of shellfish in Town of Barnstable waters is prohibited, except with the written permission of Natural Resources.

G. Skin or scuba diving. All persons skin or scuba diving for the commercial harvest of shellfish shall display the diver-down flag and, upon request, produce a Town of Barnstable commercial shellfish permit.

H. Northside commercial shellfishing area restriction. The commercial harvest of shellfish shall be allowed east of a line extending north from the Barnstable Yacht Club pier, to a post and sign at Green Point, Sandy Neck, and West of Beach Point, Sandy Neck, except as otherwise noted or amended.

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

**§ 407-15. Shellfishery conservation and management.**

A. Temperature restrictions. Dry digging for soft shell clams and quahogs is prohibited when the air temperature is 28o°F. 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*) and common razor clams (*Ensis directus*) 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). Areas may be posted closed 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 purposes. 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.

ARTICLE IV

**Commercial Soft Shell Clam Shellfishing**

**§ 407-16. Other applicable regulations; minimum size limit; harvest limit.**

- A. 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.
- 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) soft shell clams less than two inches in longest diameter to the amount of more than 5% of any batch.
- C. Commercial soft shell clam harvest limit. The total daily limit of soft shell clams, commercial harvest, shall not exceed three level tote baskets, as defined, whether harvested in the North-side or Southside areas, open for commercial harvest.

**§ 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 the hydraulic method is prohibited from 1/2 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 Popponeset 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 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 hold a Commonwealth of Massachusetts commercial shellfish permit. All helpers must present their valid Mass. bed certificate, 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.

#### **§ 407-18. Northside harvest restrictions.**

A. Harvest days. The commercial harvest of soft shell clams on the Northside of the Town of Barnstable shall be allowed Monday through Friday. However, commercial harvest is prohibited on Wednesdays, May 1 through October 15, annually.

B. Harvest method. Shellfish to be taken by hand rake only. The intertidal harvest of soft shell clams is permitted in those areas open to commercial harvest in Barnstable Harbor. The possession of plunging or hydraulic pumping equipment while harvesting shellfish in Barnstable Harbor is prohibited without the written permission of the Shellfish Constable.

#### **§ 407-19. Northside commercial harvest area restrictions.**

A. Barnstable Harbor. The Commercial harvest of shellfish shall be allowed east of a line extending north from the Barnstable Yacht Club pier, to a post and sign on Green Point, Sandy Neck, and west of Beach Point, Sandy Neck.

B. The commercial harvest of soft shell clams shall be allowed west of a line extending from Calves Pasture Point to the eastern bank of Wells Creek, including the westernmost portion of "Little Huckins Island" and all tidal flats associated with said island, west of the "Closed to Commercial Shellfishing" signposts as posted by the Natural Resources Office. Commercial harvest is prohibited on "Huckins Island" and all tidal flats associated with said island.

C. Great Thatch Island, Barnstable Harbor: eastern half of island, as posted; subject to the above-listed restrictions.

## ARTICLE V

### **Commercial Quahog Shellfishing**

#### **§ 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 2 1/2 inches in longest diameter.

(2) Cherrystone: greater than or equal to 2 1/2 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 one 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.

#### **§ 407-21. Southside commercial quahog harvest restrictions.**

A. Harvest days. The commercial harvest of quahogs on the Southside of the Town of Barnstable shall be allowed on Monday through Saturday. Harvest by commercial permit on Sunday is prohibited.

B. Commercial quahog harvest limit. The total daily limit of littleneck, cherrystone or mixed (littleneck/cherrystone) shall not exceed three level tote baskets, as defined. The total daily limit of all quahogs (i.e., littlenecks, cherrystones and chowders) shall not exceed five level tote baskets in any combination. Chowder quahogs shall be culled and bagged separately from littlenecks and cherrystones prior to landing, if the total catch exceeds three tote baskets.

#### **§ 407-22. Northside commercial quahog harvest restrictions.**

A. Harvest days. The commercial harvest of quahogs on the Northside shall be allowed on Monday through Friday. However, commercial harvest is prohibited on Wednesdays, May 1 through October 15 annually.

B. Commercial quahog harvest limit. The total daily limit of commercially harvested quahogs shall not exceed two level tote baskets, as defined.

C. Commercial quahog harvest area restriction. The commercial harvest of quahogs shall be allowed east of a line extending north from the Barnstable Yacht Club pier, to a post and sign at Green Point, Sandy Neck, and West of Beach Point, Sandy Neck.

## ARTICLE VI

### **Commercial Scallop Shellfishing**

#### **§ 407-23. 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.

**§ 407-24. Harvest days.**

Scallops may be commercially harvested daily, Monday through Saturday.

**§ 407-25. Closed season.**

The harvest of scallops shall be closed (prohibited effective April 1 annually, MGL C. 130, § 71. Open season will be posted annually.

**§ 407-26. Harvest limit.**

Harvest limits will be posted annually.

**§ 407-27. Minimum size limit.**

Only scallops with a well-defined raised annual growth ring may be taken; all other scallops will be considered seed scallops and must be returned to the water immediately. However, it shall not be unlawful to have in possession seed scallops unavoidably left in the catch after it has been culled, to the amount of not more than 5% of the total catch remaining.

**§ 407-28. Gear restriction.**

Scallops may be taken by hand, rake, dipnet and dragging in all areas that are not closed to dragging. In such areas closed to dragging, they may be taken by hand, dipnet, rakes and diving. No other devices may be used.

**§ 407-29. Dredge size restriction.**

No drags or dredges shall exceed 32 inches in width.

**§ 407-30. Dredging area restrictions.**

No dragging shall be permitted North of a line marked by buoys, running from the way to water at the end of Estey Avenue, to the southerly end of East jetty. No boats permitted in this area.

**§ 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. However, no such permit is required to operate the boat. All helpers must present their valid Mass. Bed certificate, in person, to the Natural Resources Office prior to initially helping a commercially licensed shellfisherman.

**§ 407-32. Harvest limit per boat.**

There shall be not more than two harvest limits allowed per boat for commercial permit holders.

**§ 407-33. Sale and transfer restrictions.**

It shall be unlawful for the holder of any type permit to sell or offer for sale, or transfer their catch, unless landed ashore.

**§ 407-34. Storm policy.**

In the event of a storm depositing scallops on the beach, where there is no chance of said scallops being returned to the waters by tidal actions, scallops may be harvested by Town of Barnstable residents and all Town of Barnstable shellfish permit holders. Residents must provide proof of residency. Ten-bushel per day limit. Note: The harvest of any shellfish is prohibited during the nighttime hours, sunset to 1/2 hour before sunrise.

ARTICLE VII

**Commercial Shellfishing and Fishing Regulations for Other Species**

**§ 407-35. Applicability of other regulations.**

All commercial shellfishing permit conditions, general commercial shellfishing rules and regulations and shellfishery conservation and management regulations apply for each species. In addition the following conditions, rules and regulations apply for the individual species as listed.

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

A. Commercial jackknife clam (*Tagelus plebeius*) 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.

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 allowed east of a line extending north from the Barnstable Yacht Club pier, to a post and sign at Green Point, Sandy Neck, and West of Beach Point, Sandy Neck.

(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. However, no such permit is required to operate the boat. All helpers must present their valid Mass. bed certificate, in person, to the Natural Resources Office prior to initially helping a commercially licensed shellfisherman.

**§ 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.

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. However, no such permit is required to operate the boat. All helpers must present their valid Mass. Bed certificate, in person, to the Natural Resources Office prior to initially helping a commercially licensed shellfisherman.

**§ 407-38. Commercial oyster shellfishing.**

The commercial harvest of oysters is prohibited in the Town of Barnstable, except for licensed grant holders on their grants.

**§ 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 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 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.

**§ 407-40. Other species.**

For commercial rules and regulations pertaining to other species including conch, whelk, surf clam, ocean quahog, sea scallop, lobster, crabs and sea urchins refer to Massachusetts General Laws Chapter 130 and Code of Massachusetts Regulations 322.

ARTICLE VIII

**§ 407-44. Town of Barnstable Closures:**

A. Northside:

(1) **Scudder Lane Recreational Shellfishing Area, Barnstable Harbor:** The waters, foreshores and tidal flats of the Scudder Lane Recreational Shellfishing Area are closed to the harvest or attempted harvest of shellfish and seaworms from the Beach House west of the Scudder Lane landing, to the Barnstable Yacht Club pier, and extending to the Huckins Island tidal flat. Opening dates for Scudder Lane Recreational Shellfishing Area will be posted annually. Effective April 1 annually, the Scudder Lane Recreational Shellfishing Area is closed to the taking of shellfish and seaworms for any purpose (DMF/CCB:31.20).

## § 407-45. Areas Closed to Commercial Shellfishing:

### A. Northside:

- (1) **Scudder Lane Recreational Shellfishing Area** as defined above.
- (2) **Barnstable Harbor:** except as otherwise noted.

### B. Southside:

(1) **Cordwood Landing Recreational Shellfishing Area:** The waters, flats and shoreline within an area beginning from the "No Shellfishing" sign/post located on the shore at 671 Old Post Road thence northeasterly to the "No Shellfishing" sign/post located on the shore at 721 Old Post Road to the "No Shellfishing" sign buoys located offshore (DMF/SC21.21).

(2) **Popponeset Bay Seasonal Commercial Hydraulic Method / Hand Plunger Restriction:** Effective annually the commercial harvest of soft shell clams and razor clams assisted by the hydraulic method or hand plunger method is prohibited in all the waters, shores, flats and tributaries of Popponeset Bay and Shoestring Bay in the Town of Barnstable. This regulation shall be in effect annually from May 1st through October 31st, all dates inclusive.

(3) **The West Bay Recreational Shellfishing Area:** 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/SC22.11).

**Note:** For current information on the above listed areas, phone Natural Resources at 790-6272 or the Massachusetts Division of Marine Fisheries.

Periodically updated shellfish area maps and shellfish area openings and closures are available online at: <http://town.barnstable.ma.us/>

"Shellfish maps displayed on this web site are to illustrate written geographical definitions of shellfish areas, as defined by the Massachusetts Division of Marine Fisheries and the Town of Barnstable Natural Resources Office. In the field, signposts, buoys and landmarks are used to assist in the demarcation of written geographical definitions of shellfish areas. Check with the Natural Resources Office to verify shellfish area locations. The harvest of shellfish is prohibited in those areas posted by the Natural Resources Office, regardless of the fact that weather or man may from time to time remove signage. If an area has been posted and signage is missing, notify the Natural Resources Office."

## ARTICLE IX

### **Aquaculture License Regulations**

#### **§ 407-46. Findings.**

The Town of Barnstable advocates the orderly development of aquaculture that is complementary to the continuing development of the Town's shellfishery as it pertains to aquaculture licenses. In consideration of any aquaculture license the Town is obligated to protect and preserve the existing fisheries and to minimize the impact on other uses of the marine environment. The right of public navigation through a license shall not be infringed upon except in areas containing approved structures that are properly marked according to these regulations. The size and scope of the license shall co-exist with and not diminish the common property commercial and recreational shellfisheries or other existing water-related activities.

#### **§ 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.

**§ 407-48. Application for and issuance of license; hearing; fee.**

Applicants, other than renewal applications, desiring a license shall be required to complete and submit all information required on the Town's approved application form and shall be submitted under the pains and penalties of perjury. Any information on a license application that is determined to be untruthful before or after approval of any license application shall be grounds for denial and/or forfeiture of a license. The nonrefundable application fee is \$125 payable to the Town of Barnstable upon submittal of a license application to the Town Manager. Following the receipt of a completed license application, the Town Manager shall establish a public hearing date. At least 15 days prior to the established hearing date, the Town Manager shall notify the applicant of the time, date, and place of the hearing. The applicant is required to notify all abutters (as certified by the Town Assessor) within 300 feet of the outside boundaries of the proposed licensed area of the date, time and place of the public hearing. The notification by the applicant to the abutters must be made at least 10 days prior to the hearing date by certified mail return receipt requested, which receipts must be submitted to the Town Manager at the time of the public hearing. In addition the Town Manager shall post the hearing notice in the Town Hall at least 15 days prior to the hearing and cause the hearing notice to be published in the local newspaper at least seven days prior to the hearing.

**§ 407-49. Moratorium on issuances of new licenses.**

The Town Manager may issue a moratorium on the issuance of new licenses at any time when this action is deemed appropriate and in the best interests of the Town's shellfisheries.

**§ 407-50. Filing and posting of list of applicants.**

A list of applicants for licenses in order of date of 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.

**§ 407-51. Submission of application for review by other agencies.**

Upon receipt of a completed application the Town Manager shall deliver, within seven days, a copy of the completed application to Natural Resources, the Harbormaster, the Waterways Committee, the Recreation Department, the Conservation Commission, the Town Attorney, the Shellfish Committee, the precinct Councilor, civic association, and the village library for their review and written comments. Said written comments are to be received by the Town Manager no later than 30 days after the applications are received by the reviewing departments and committees.

**§ 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. 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.

**§ 407-53. Preapplication meeting with GIS staff.**

Prior to submittal of application, the licensee shall meet with the GIS staff of the Town of Barnstable to locate the proposed licensed area boundaries by latitude and longitude on the Town GIS system and obtain a map delineating proposed licensed area for submittal with the application. The licensee shall place approved boundary markers at all changes of angles of the licensed area in compliance with these regulations.

**§ 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. 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.

**§ 407-55. Changes to original plans.**

All proposed changes to the original working plans as described in the original application, and all additions of material investments, which may include, but are not limited to, rafts, floats, racks, cages, trays, nets, etc., must be submitted in writing to Natural Resources and if in the discretion of Natural Resources the changes are such that further review is warranted then the NR may recommend to the Town Manager that further review of the proposed change take place and the Town Manager upon review of the proposed change may approve or deny said proposed change.

**§ 407-56. New license period; renewal.**

A new license shall be issued for a period not to exceed five years, and for a maximum total 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 lease site will be forfeited. The licensee may apply for the 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.

**§ 407-57. Acreage limitation.**

The maximum total acreage licensed to any licensee shall not exceed two acres on the Northside and two acres on the Southside within the Town of Barnstable inner bays. This acreage limitation does not apply to any existing so-called grant (now referred to as a "license") which is in excess of four acres and will not prevent the grant holder (now referred to as the "licensee") from future renewals, provided that said licensee abides by all other applicable regulations set forth herewith.

**§ 407-58. License fee.**

An annual license fee of \$25 per acre or any part thereof shall be paid to the Town by the licensee upon the issuance of the license and thereafter on or before December 31 of each year. If the fee is not paid within 30 days after it becomes due, the license shall be forfeited.

**§ 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 per acre per year based upon market value. Failure of the licensed shellfish project 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.

**§ 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.

**§ 407-61. Transplanting seed stock from public fisheries prohibited.**

No person shall transplant seed, seed stock or stock from the public fisheries within the Town, for purposes of stocking licensed aquaculture land with such seed or stock. Said regulation is subject to fine schedule for non-compliance.

**§ 407-62. Marking boundaries of licensed areas.**

Shellfish aquaculture sites bordering the channel within the 98 acre aquaculture area in Barnstable Harbor shall be marked with red buoys bordering the northside of the channel and green buoys bordering the southside of the channel where individual site boundary changes of angles border the channel. Said red and green buoys shall not be less than 11.5 inches in diameter.

Shellfish aquaculture sites on the periphery of the 98 acre aquaculture area in Barnstable harbor, shall use yellow buoys not less than 15.5 inches in shortest diameter, to mark only the most external changes of angles on said sites. The buoys shall bear the state propagation permit number and the words "Aquaculture Area". Said numbers and letters shall not be less than two inches in height.

All other licensed area boundaries shall be marked at all corners and changes of angles by uniform yellow buoys, not less than 11.5 inches in shortest diameter, and bear the state propagation permit number issued to the licensee. Said numbers shall not be less than two inches in height. Where a licensed area borders another licensed area, a buoy may bear the state propagation permit number of more than one licensee. All said buoys shall be deployed from April 1 until November 15, annually.

Any proposed alternative marking of a licensed area, must be submitted in writing to Natural Resources and if in the discretion of Natural Resources the changes are warranted, they may be approved in writing. The Harbormaster may direct licensees of licensed areas that border navigational channels to use specified buoys to mark their licensed area boundaries for navigational purposes.

Each licensee is responsible for maintaining the buoys marking their licensed area. Failure to place or reasonably to maintain said buoys shall be sufficient cause for revocation of the license. 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 hampers the ability of the licensee to immediately comply with these regulations.

**§ 407-63. 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 licensed site, with the four 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 hampers the ability of the licensee to immediately comply with these regulations.

**§ 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.

**§ 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 license 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.

**§ 407-66. Inspection of containers; samples for disease testing.**

The Shellfish Constable and/or assistants shall have authority to inspect the licensed area at any time, and said inspection may include any and all containers on the site. In the event that the Shellfish Constable and/or assistants have reason to believe that inspection of the contents of any or all containers on the site is in the best interest of the town, the Shellfish Constable and/or assistant shall contact the licensee by telephone or by leaving a notice at the address of the licensee indicated on the license, however, advising the licensee that the Town intends to inspect the contents of containers on the license and further inviting the licensee to be present at the time of said inspection. In the event that the Shellfish Constable and/or assistant does not receive a response from the licensee within 48 hours of notification by phone or by written notice, the inspection of containers may be conducted without the presence of the licensee. The Town of Barnstable reserves the right at any time to obtain samples of any shellfish from a licensed area for the purpose of certified testing for disease.

**§ 407-66a. Taking without consent from a licensed site.**

Whoever takes or attempts to take shellfish of any description upon any shellfish grounds or beds covered by a license granted by the Town of Barnstable or State of Massachusetts, or in any way disturbs the growth of shellfish thereon, or whoever discharges any substance which may directly or indirectly injure the shellfish upon any such grounds or beds, without the consent of the licensee or transferee shall be subject to fine schedule for said violation.

**§ 407-67. License review and/or revocation.**

Violation of these rules and regulations subjects the licensee to review and possible revocation of the license at the discretion of the Barnstable Town Manager.

**§ 407-68. Severability.**

If any provision of these rules and regulations is declared invalid by any court or tribunal of competent jurisdiction, the remaining provisions of these rules and regulations shall not be affected thereby.

ARTICLE X

**Enforcement and Penalties**

**§ 407-69. Enforcing persons.**

The foregoing regulations shall be enforced by the Shellfish Constables, Deputy Shellfish Constables, Natural Resources Officers, Sandy Neck Rangers and any Police Officer of the Town of Barnstable, hereinafter called "enforcing persons."

**§ 407-70. Violations and penalties.**

Enforcing persons may in their discretion, initiate criminal proceedings for any violation thereof. Alternatively, enforcing persons may utilize the method of noncriminal disposition established by Article I of Chapter 1 of the Code of the Town of Barnstable. The fine for violation of regulations not specifically listed under said Article I shall be \$50.

**§ 407-71. Revocation or suspension of Town permit.**

The Town of Barnstable shellfish permit, recreational or commercial, may be revoked or suspended by the Town Manager for any violation of the Town shellfish regulations. A hearing with the Town Manager will be afforded on revocations.

**§ 407-72. Missing signs.**

The harvest of shellfish is prohibited in those areas posted by natural resources, regardless of the fact that weather or man may from time to time remove signage. If an area has been posted and signage is missing, notify natural resources.

**Shellfish Area Status**

**DEFINITIONS**

**Approved Area:** The classification of a State shellfish growing area which has been approved by the State shellfish control authority (DMF) for growing or harvesting shellfish for direct marketing. The classification of an approved area is determined through a sanitary survey conducted by the State shellfish control authority. An approved shellfish growing area may be temporarily made a closed area when a public health emergency resulting from, for instance, a hurricane or flooding, is declared.

**Closed Area:** A growing area where the harvesting of shellfish is temporarily or permanently not permitted. A closed area status is or may be placed on any of the five classified area designations: Approved, Conditionally Approved, Restricted, Conditionally Restricted, or Prohibited.

**Conditionally Approved Area:** The classification of a State shellfish growing area determined by the State shellfish control authority (DMF) to meet approved area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally approved shellfish growing area is closed when the area does not meet the approved growing area criteria and is temporarily closed by the shellfish control authority.

**Conditionally Restricted Area:** The classification of a State shellfish growing area determined by the State shellfish control authority to meet restricted area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally restricted shellfish growing area is closed when the area does not meet the restricted growing area criteria and is temporarily closed by the shellfish control authority.

**Prohibited Area:** A prohibited area is a growing area where there is no current sanitary survey or where the sanitary survey or other monitoring program data indicate that fecal material, pathogenic microorganisms, poisonous or deleterious substances, marine toxins, or radionuclides may reach this area in excessive concentrations. The taking of shellfish for any human food purposes from such areas is prohibited.

**Restricted Area:** State waters that have been classified by the State shellfish control agency as an area from which shellfish may be harvested only if permitted and subjected to a suitable and effective cleansing process.

**1 Areas subject to a Commonwealth of Massachusetts water quality closure:****Northside**

1.1	Maraspin Creek, Barnstable Harbor (DMF/CCB:32.0)	25
1.2	Upper Scorton Creek (west) (DMF/CCB:34.2)	25

**Southside**

1.3	Hyannis Inner Harbor (DMF/SC:28.1)	25
1.4	Snow's Creek, Lewis Bay (DMF/SC:28.9)	25
1.5	Squaw Island / Hall's Creek (DMF/SC:26.0)	25
1.6	Ocean Street and Hawes Ave., Hyannis Harbor (DMF/SC:27.1)	25
1.7	East Bay and Lower Centerville River (DMF/SC:24.0)	25
1.8	Upper Centerville River (DMF/SC:24.2)	25
1.9	Bumps River (DMF/SC:25.0)	25
1.10	Scudder's Bay (DMF/SC:25.1)	25
1.11	Shoestring Bay (DMF/SC:20.3)	26
1.12	Warren's Cove (DMF/SC:23.3)	26

**2 Areas subject to seasonal water quality closure by the Commonwealth of Massachusetts:****Northside**

2.1	Barnstable Harbor, North (DMF/CCB:31.1)	26
2.2	Barnstable Harbor (DMF/CCB:31.2)	26
2.3	Barnstable Marshes (DMF/CCB:33.0)	26
2.4	Upper Scorton Creek (DMF/CCB:34.1)	26
2.5	Mill Creek, Hallet's Pond, Short Wharf Creek (DMF/CCB:29.0)	26

**Southside**

2.6	North Bay (DMF/SC:23.2)	27
2.7	Marstons Mills River (DMF/SC:23.1)	27
2.8	Prince Cove (DMF/SC:23.1)	27
2.9	Harbor Bluff, Lewis Bay (DMF/SC:28.2S)	27
2.10	Lewis Bay (DMF/SC:28.8)	27
2.11	Pirate's Cove, Seapuit River (DMF/SC:21.2)	27
2.12	Shoestring Bay (DMF/SC:20.3)	27

**1 The following areas are under or subject to a Commonwealth of Massachusetts water quality closure:**

**Northside:**

**1.1 Maraspin Creek, Barnstable Harbor:** The waters and flats and all tributaries thereto of Barnstable Inner Harbor (A.K.A. Maraspin Creek) in the Town of Barnstable, southerly of a line drawn from Salten Point to Blish Point (DMF/CCB:32.0; **classified as prohibited**).

**1.2 Upper Scorton Creek (West):** the waters, flats and all tributaries of Scorton Creek in the Town of Barnstable, west of a line drawn southerly from the “NO SHELLFISHING” sign posted at the entrance to Great Island Creek to the “NO SHELLFISHING” sign posted at the entrance sign of the unnamed creek on the opposite shore (DMF/CCB:34.2; **classified as prohibited**).

**Southside:**

**1.3 Hyannis Inner Harbor:** the waters and flats and all tributaries of Hyannis Inner Harbor in the Towns of Barnstable and Yarmouth, northerly of a line drawn from the end of Channel Point Road Way in the Town of Barnstable to Columbus Avenue in the Town of Yarmouth (DMF/SC:28.1; **classified as prohibited**).

**1.4 Snow's Creek, Lewis Bay:** The waters and flats west 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:28.9; **classified as prohibited**).

**1.5 Squaw Island / Hall's Creek:** The waters and flats and all tributaries thereto of Squaw Island in the Town of Barnstable, east of a line drawn across the common mouth of Green Dunes Creek and Halls Creek (DMF/SC:26.0; **classified as prohibited**).

**1.6 Ocean Street and Hawes Avenue, Hyannis Harbor:** The waters, flats and all tributaries thereto of that portion of Hyannis Harbor within a fifty (50) yard diameter of the “No Shellfishing” sign located at the jetty nearest to the intersection of Ocean Street and Hawes Avenue (DMF/SC:27.1; **classified as prohibited**).

**1.7 East Bay and Lower Centerville River:** The waters, flats and all tributaries of East Bay and Centerville River, southwesterly of a line drawn northerly from the end of Long Beach Road to the “No Shellfishing” sign on the opposite shore and northerly of a line drawn across the mouth of East Bay and south of the South Main Street Bridge (DMF/SC:24.0; **classified as restricted**).

**1.8 Upper Centerville River:** The waters, flats and all tributaries of the Centerville River north-east of a line drawn northerly from the end of Long Beach Road to the “No Shellfishing” sign on the opposite shore. (DMF/SC:24.2; **classified as prohibited**).

**1.9 Bumps River:** The waters, flats and all tributaries of the Bumps River, southerly of a line drawn easterly from the bottom of the Town way to water off of Starboard Lane to the “No Shell-fishing” sign on the opposite shore and north of the South Main Street Bridge (DMF/SC:25.0; **classified as restricted**).

**1.10 Scudder's Bay:** The waters, flats and all tributaries of Scudder's Bay, northerly of a line drawn easterly from the bottom of the Town way to water off of Starboard Lane to the “No Shell-fishing” sign on the opposite shore (DMF/SC:25.1; **classified as prohibited**).

1.11 **Shoestring Bay:** all waters, flats and tributaries north of line extending easterly from Mitchell Pier to the "NO SHELLFISHING" sign on the Barnstable shore (DMF/SC:20.3; **classified as prohibited**).

1.12 **Warrens Cove:** The waters, flats and all tributaries of Warrens Cove, easterly of a line drawn northerly from the two "No Shellfishing" signs located at the mouth of Warrens Cove (DMF/SC:23.3; **classified as prohibited**).

**2 The following areas are subject to seasonal water quality closure by the Commonwealth of Massachusetts:**

**Northside:**

2.1 **Barnstable Harbor, North:** The waters and flats and all tributaries thereto of that portion of Barnstable Harbor in the Town of Barnstable north of a line drawn easterly from the "NO SHELLFISHING" sign on the west shore at the mouth of Wells Creek to the "NO SHELLFISHING" sign on Little Thatch Island to the "NO SHELLFISHING" sign on the south end of Town Island to the "NO SHELLFISHING" sign on Mussel Point to the "NO SHELLFISHING" sign at the Lighthouse (DMF/CCB:31.1; classified as conditionally approved; **status: Closed to shellfishing September 15 through December 14, all dates inclusive. The area shall not automatically reopen to shellfishing on December 15 and will remain closed until examined and shellfishing is allowed by DMF.**).

2.2 **Barnstable Harbor:** The waters, flats and all tributaries of that portion of Barnstable Harbor in the Town of Barnstable south of a line drawn easterly from Blish Point to the Aids to Navigation can buoy #13 to the "NO SHELLFISHING" sign on the shore at the end of Indian Trail (DMF/CCB:31.2; classified as conditionally approved; **status: Closed to shellfishing September 15 through December 14, all dates inclusive. The area shall not automatically reopen to shell-fishing on December 15 and will remain closed until examined and shellfishing is allowed by DMF.**).

2.3 **Barnstable Marshes:** The waters and flats thereto of Barnstable Marshes in the Town of Barnstable southwest of a line drawn northwest from Calves Pasture Point to the southeast tip of Sand Island and southwest of a line drawn northwest from the northwest tip of Sand Island to the west tip of Slough Point (DMF/CCB:33.0; classified as conditionally approved; **status: Closed to shellfishing September 15 through December 14, all dates inclusive. The area shall not automatically reopen to shellfishing on December 15 and will remain closed until examined and shellfishing is allowed by DMF.**).

2.4 **Upper Scorton Creek:** The waters, flats and all tributaries of Scorton Creek in the Town of Barnstable, west of a line drawn between the two NO SHELLFISHING signs posted on the north and south banks of Scorton Creek immediately east of Wicks Island and east of a line drawn southerly from the NO SHELLFISHING sign posted at the entrance to Great Island Creek to the NO SHELLFISHING sign posted at the entrance sign of the unnamed creek on the opposite shore (DMF/CCB:34.1; classified as conditionally approved; **status: Closed to shellfishing September 15 through December 14, all dates inclusive. The area shall not automatically reopen to shellfishing on December 15 and will remain closed until examined and shell-fishing is allowed by DMF.**).

2.5 **Mill Creek, Hallet's Pond, Short Wharf Creek:** The waters, flats and all tributaries of Mill Creek, Hallet's Pond and Short Wharf Creek in the Towns of Barnstable and Yarmouth, south of a line drawn across the mouth of Mill Creek and west of a line drawn across the mouth of Short Wharf Creek (DMF/CCB:29.0; classified as conditionally approved; **status: Closed to shell-fishing May 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.**

**Southside:**

2.6 **North Bay:** The waters, flats and all tributaries of that portion of North Bay, northeasterly of a line drawn from Point Isabella to the north tip of Grand Island; north of the Bridge Street Bridge and south of a line drawn across the mouth of the Marstons Mills River (DMF/SC:23.2; classified as conditionally approved; **status: Closed to shellfishing May 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.**).

2.7 **Marstons Mills River:** The waters and flats and all tributaries thereto of Marstons Mills River in the Town of Barnstable, south of a line drawn across the mouth of Prince Cove, north of a line drawn across the mouth of the river and westerly of a line drawn northerly from the two “No Shellfishing” signs located at the mouth of Warren’s Cove. (DMF/SC:23.1; classified as conditionally approved; **status: Closed to shellfishing May 1 through February 15, all dates inclusive. The area shall not automatically reopen to shellfishing on February 15 and will remain closed until examined and shellfishing is allowed by DMF.**).

2.8 **Prince Cove:** The waters and flats and all tributaries thereto of Prince Cove in the Town of Barnstable, north of a line drawn across the mouth of Prince Cove (DMF/SC:23.1; classified as conditionally approved; **status: Closed to shellfishing May 1 through February 15, all dates inclusive. The area shall not automatically reopen to shellfishing on February 15 and will remain closed until examined and shellfishing is allowed by DMF.**).

2.9 **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.**).

2.10 **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.**)

2.11 **Pirate’s Cove, Seapuit River:** The waters and flats and all tributaries thereto of that portion of Seapuit River and Pirates Cove in the Town of Barnstable, west of a line north from the “NO SHELLFISHING” sign at the westerly end of Dead Neck to the “NO SHELLFISHING” sign on Grand Island and east of a line drawn northeasterly from the northeast tip of Sampson’s Island to the “NO SHELLFISHING” sign on the southwest end of Grand Island (DMF/SC:21.2; classified as conditionally approved; **status: Closed to shellfishing May 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.**).

2.12 **Shoestring Bay:** The waters, flats and all tributaries of Shoestring Bay in the Towns of Mashpee and Barnstable, easterly of a line drawn south from the southernmost point of Mashpee Neck to Punkhorn Point; northerly of a line drawn from Punkhorn Point to Ryefield Point and southerly of a line drawn from Simons Narrows Road in the Town of Mashpee to the “Public Way to Water” in the Town of Barnstable. (DMF/SC:20.3; classified as conditionally approved; **status: Closed to shellfishing April 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.**