

Shellfish Committee Minutes of the Meeting

DATE: October 15, 2014
TIME: 7:30 P.M. to 9:30 P.M.
LOCATION: MEAD Building

Shellfish Committee Members present: Stuart Rapp, Gerard Ganey, Les Hemmila, Kevin Flaherty, Linda Romano, Robert Lancaster, Richard Haskell, Andre Sampou

General Public present: Christopher Wood, Ann Canady, Jared Hemmila, Wayne Hayes, Matt Bunnell, Scott Mullin, Arlene Wilson, Chris Freeman, Lenny Clark, Mark Begley, Tamar Haspel, Dave Ryan

Town Council Liaison: Phil Wallace

Town Staff present: Doug Kalweit, Tom Marcotti, Elizabeth Lewis, Nicolette Mariano

Chairman's Report: 1- 3

Stuart Rapp chaired the October 15th, 2014 meeting of the Shellfish Committee.

Stuart Rapp took a roll call of members present at the meeting.

Stuart Rapp read a notice at the beginning of the meeting:

NOTICE OF RECORDING

"Please note that tonight's meeting is recorded and broadcast on Channel 18 and, in accordance with MGL Chapter 30A, s. 20, I must inquire whether anyone is taping this meeting and to please make their presence known."

The Shellfish Committee voted not to approve the September 17th minutes of the Shellfish Committee based on discrepancies regarding the determination of public comment included or not included in the written minutes. The Shellfish Committee discussed the protocol for the written minutes of the meeting of the Shellfish Committee in regards to public comment. Stuart Rapp suggested getting the opinion of the Town Council on how to include public comment in the written minutes of the meeting.

Stuart Rapp announced a public notice from the Massachusetts Department of Environmental Protection (DEP) and referenced the following:

Public notice is hereby given of the Draft General License by which eligible non-commercial projects can self-certify small-scale docks, piers and similar structures accessory to a residential use in and over flowed tidelands, great ponds, and navigable rivers and streams of the Commonwealth. All eligible projects are determined to be water-dependent. MassDEP is authorized to create this general license, and its self-certification process, pursuant to MGL Chapter 91, Section 18C and the waterways regulations at 310 CMR 9.29.

The Department will consider all comments from the public hearings and written comments received by October 27, 2014. Failure of any aggrieved person or group of ten citizens or more to submit written comments to the Waterways Regulation Program by the Public Comment Deadline will result in the waiver of any right to an adjudicatory hearing in accordance with 310 CMR 9.13(4)(c).

Stuart informed the committee that he and Arlene Wilson attended the DEP hearing on these matters, that was held at Barnstable Town Hall. Stuart and Arlene informed the committee of some details of the DEP proposals.

The Shellfish Committee Nomination Committee (Robert Lancaster and Gerard Ganey) nominated Stuart Rapp as chairman and Richard Haskell as vice-chairman. The Shellfish Committee unanimously passed a motion to nominate Stuart Rapp as chairman and Richard Haskell as vice-chairman.

Elizabeth Lewis informed the Shellfish Committee of the following upcoming shellfishery management notices:

Shellfish Management November, 2014

Shellfish Closures and Openings: November, 2014

- **Shellfishing Area Status**

The shellfish areas listed below are scheduled to reopen on November 1st pending approval by the Massachusetts Division of Marine Fisheries:

2.5 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.**).

North Bay:

The **Bay Street Relay Area (DMF/SC23.20)** is defined as: the waters, flats and tributaries of that portion of North Bay from the Town landing at Bay Street to the sign at the tip of the salt marsh at 237 Seapuit Road and extending to the offshore sign/buoys.

Effective until January 5th 2015, commercial shellfishing is prohibited within the Bay Street Relay Area.

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/SC20.3; 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.**

- **Scudder Lane Recreational Shellfishing Area Opening**

Effective Saturday, **November 1st, 2014**, the Scudder Lane Recreational Shellfishing Area in Barnstable Harbor is open for the **recreational** harvest of shellfish, except for a portion(s) of the area defined and marked by yellow buoys, which will remain closed for shellfish propagation project protection and/or scientific research project protection. (For more details see related notices of shellfish management closure for said projects.).

Effective Wednesday, **April 1, 2015**, the Scudder Lane Recreational Shellfishing Area in Barnstable Harbor is closed to the harvest of all shellfish unless closed sooner for management or public health purposes.

The Scudder Lane Recreational Shellfishing Area extends from the sign post near the beach house west of the Scudder Lane Landing to the Barnstable Yacht Club pier, and extends to the Huckins Island tidal flat.

Closed portions of the Scudder Lane Recreational Shellfishing Area for shellfish project protection:

Those portions of the Scudder Lane Recreational Shellfishing Area within an area(s) defined by yellow buoys are indefinitely closed to the harvest of all shellfish.

Natural Resources has deployed predator exclusion netting to protect quahog seed planted in the area, Please do not disturb the project netting or quahogs. Yellow buoys mark the boundaries of the project sites.

Please do not jeopardize the project by tampering with the deployed gear and equipment. Abiding by these conditions will insure the integrity of the project equipment and the safety of the public. It is the hope of all those involved in this project that any inconvenience to anyone's use of the public lands and resources in the harbor is compensated by the successful enhancement of the natural resources of the harbor for the benefit of all. Thank you for your cooperation. For more information please contact the Natural Resources Office.

- **Oysters**

Effective Saturday, **November 1st, 2014**, Town of Barnstable waters currently open to the harvest of soft shell clams and quahogs are open for the **recreational** harvest of oysters.

Effective Wednesday, **April 1st, 2015**, the harvest of oysters is prohibited throughout the Town of Barnstable unless closed sooner for management or public health purposes.

LEGAL SIZE OYSTER: Minimum legal harvest size is three (3) inches longest length.

RECREATIONAL HARVEST LIMIT: Not more than 1/2 peck (5 quarts dry measure) per calendar week.

SHELLFISH MANAGEMENT: The Natural Resources Office reserves the right to prohibit the harvest of shellfish at any time in any area of the Town for management purposes.

- **Scallop Season**

Effective **Saturday, November 1st, 2014** scallops may be harvested **recreationally and commercially** subject to existing scallop regulations. Harvest by commercial permit on Sunday is prohibited.

LEGAL SIZE SCALLOP: CMR 322 6.11

Prohibition on harvest and possession of seed scallops.

No person shall land or possess scallops without a well-defined growth line and that growth line shall measure at least 10 millimeters from the hinge of the shell.

Exception. Bay Scallops that have a well-defined raised annual growth line located less than 10 millimeters (mm) from the hinge of the shell, shall be lawful to harvest and possess if the shell height is at least 63.5 millimeters or 2.5 inches.

<u>RECREATIONAL HARVEST LIMIT:</u>	One (1) level tote basket, as defined, per week, may be harvested daily.
<u>COMMERCIAL HARVEST LIMIT:</u>	Not more than four (4) level tote baskets, as defined, per day.
<u>CLOSED SEASON:</u>	April 1 to opening date in October or November as regulated by the Town.

- **Contaminated Oyster and Quahog Relay Area Openings:**

The area listed below is scheduled to reopen on November 1st, 2014 pending approval by the Massachusetts Division of Marine Fisheries, subject to state and local rules and regulations.

North Bay:

North Bay Relay Area (DMF/SC23.22) The North Bay Relay Area is defined as: the waters, flats and shoreline of that portion of North Bay from the pier at 79 Sand Point Road to the pier at 86 Sand Point Road extending to the navigational channel at the northern entrance to Cotuit Bay and to the offshore sign/buoys in North Bay.

- **West Bay Recreational Shellfishing Area Closure:**

**TOWN OF BARNSTABLE SHELLFISH MANAGEMENT CLOSURE
UNDER THE AUTHORITY OF BARNSTABLE SHELLFISH REGULATION 407-8G and 407-15F**

**CLOSED PORTION OF WEST BAY
FOR QUAHOG SEED PROTECTION:**

Effective **Saturday, November 1st, 2014** The West Bay Recreational Shellfishing Area as defined is closed to the harvest of all shellfish and seaworms.

West Bay:

The **West Bay Recreational Shellfishing Area (DMF/SC 22.11)** is defined as 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.

Elizabeth Lewis informed the Shellfish Committee of the progress of Natural Resources shellfish propagation projects.

Tom Marcotti noted the valuable assistance of seasonal assistants Nicolette Mariano and Conor McMorow as well as members of Americorps Cape Cod and the Barnstable Association for Recreational Shellfishing for shellfish propagation projects.

Tom Marcotti informed the Shellfish committee of a public hearing for some proposed amendments to the herring, eel and shellfish aquaculture regulations as included below:

NOTICE OF PUBLIC HEARING

Town Manager, Thomas K. Lynch will hold a public hearing on proposed changes to Amendments to the Town of Barnstable Shellfish, Eel, Herring and Aquaculture Rules and Regulations.

Said public hearing will be held on Thursday, November 6, 2014 at 9:00 A.M. in the Selectmen's Conference Room, Town Hall, 2nd Floor, 367 Main Street, Hyannis, MA. Full text of the proposed changes is available for review during regular business hours in the Office of the Town Manager, 367 Main Street, Hyannis, MA.

Any interested party is invited to comment and attend this hearing.

Legal Ad
Barnstable Patriot 10/17/14

Thomas K. Lynch
Town Manager

TO: Thomas K. Lynch, Town Manager
FROM: Douglas M. Kalweit, Supervisor, Natural Resources Office
THROUGH: Daniel J. Horn, Director, Marine and Environmental Affairs Division
DATE: October 6, 2014

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 after consultation with the Shellfish Committee.

BACKGROUND: The Town of Barnstable maintains a comprehensive compilation of rules and regulations for the management of town shellfish, eel and herring natural resources as well as town shellfish aquaculture licenses. An annual review of these regulations is conducted by staff to ensure that the regulations meet the current needs of the community. Changes in the regulations are recommended by staff to the Town Manager. The Shellfish Committee is invited to discuss the proposed changes and also to provide recommendation to staff and the Town Manager. The Town Manager holds a public hearing on any proposed revision to the regulations and the public is invited to comment on the proposed changes. The Town Manager's approval of shellfish, eel, herring and aquaculture regulations shall become effective upon the expiration of thirty (30) days from the date the Town Council is notified, in writing, of said regulation approval unless the Town Council votes within said time to disapprove of the said regulation(s).

SHELLFISH COMMITTEE REVIEW: Natural Resources is proposing amendments to eel / elver regulations 407-5A, 407-6:G and 407-39:A and presented the proposals to the Shellfish Committee at their May 21, 2014 meeting for review and discussion. The Shellfish Committee passed a motion at their May 21, 2014 meeting recommending that the proposed amendments to 407-5A, 407-6G and 407-39 be adopted by the Town.

Natural Resources is proposing amendments to herring and alewife rules and regulations 407-10 and presented the proposals to the Shellfish Committee at their September 17th 2014 meeting for review and discussion. The Shellfish Committee passed a motion at their September 17th, 2014 meeting recommending that the proposed amendments to 407-10 be adopted by the Town.

Natural Resources is proposing an amendment to Town of Barnstable Aquaculture License Regulation (Article IX) 407-60. The Aquaculture Sub-Committee compiled the proposed amendment to the Aquaculture License Regulation 407-60 and submitted it to the Shellfish Committee for discussion and review at the Shellfish Committee's August 20th, 2014 meeting. The Shellfish Committee passed a motion at their August 20th, 2014 meeting recommending that the proposed amendment to 407-60 be adopted by the Town.

PUBLIC HEARING: To be determined

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 407-5:A; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in bold.

§ 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: ~~50~~. **25 per day**

Rationale:

Massachusetts Division of Marine Fisheries dictates a recreational daily eel harvest of 25 eels. Towns are given local authority to be more restrictive than DMF regulations but not given the local authority to be more lenient.

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

§ 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 ½ 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 the 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 ~~six~~ **nine** inches in total length.

Rationale:

Massachusetts Division of Marine Fisheries dictates a recreational eel size minimum of nine inches. Towns are given local authority to be more restrictive than DMF regulations but not given the local authority to be more lenient.

3: Proposal: Section 407-39:A; Amend the regulation by deleting the crossed out wording, adding the wording highlighted in bold and adding the necessary wording.

§ 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 ~~six~~ **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 size 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.

Rationale:

Massachusetts Division of Marine Fisheries dictates a recreational eel size minimum of nine inches. Massachusetts Division of Marine Fisheries dictates new commercial eel harvest restrictions. Towns are given local authority to be more restrictive than DMF regulations but not given the local authority to be more lenient.

4: Proposal: Section 407-10; Delete the crossed out wording and regulations and adding the wording highlighted in bold

§ 407-10. Herring and alewife rules and regulations. **(NOTE: 407-10:K)**

- ~~A. Resident and real estate taxpayer requirement. Residents and real estate taxpayers of the Town of Barnstable are required to have a Town of Barnstable Herring Permit, or Resident shellfish permit, to take Herring or Alewives. The fee for said herring permit shall be \$5.00. A Senior Citizen Permit shall be \$3.00. Said permit holders are entitled to one pail containing not more than 15 herring or alewives per calendar week, per household.~~
- ~~B. Nonresident requirement. Residents of the Commonwealth of Massachusetts are required to have a Town of Barnstable herring permit or nonresident shellfish permit, to take herring or alewives. The fee for said herring permit shall be \$25. Said permit holders are entitled to one pail containing no more than 15 herring or alewives per calendar week, per household.~~
- ~~C. Unlawful Harvest. No person shall take or attempt to take herring or alewives from the Town of Barnstable waters unless said person is a Town of Barnstable resident or real estate taxpayer, or holds a Town of Barnstable herring permit or shellfish permit.~~
- ~~D. Harvest Days. Herring and/or alewives may be taken on Mondays, Wednesdays, Fridays and Saturdays. Hours: 6 A.M. to 7 P.M. ONLY.~~
- ~~E. Harvest Method. Herring and alewives shall be taken by dipnet or by hand only.~~
- ~~F. Harvest Containers. All herring and alewives taken from the water shall be placed in a suitable box, pail or basket and removed from the area. Paper and cardboard containers are not considered suitable.~~
- G. B. Conservation. Throwing objects into the water and/or malicious destruction of the herring and alewives is prohibited.**
- ~~H. 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.~~
- ~~I. Designated harvest areas. Herring and alewives shall be taken from designated areas only. Herring and alewives shall not be disturbed outside of designated harvest areas.~~
- ~~J. Restricted areas. The Town of Barnstable anadromous fishways, the embankments of said fishways and the area within 100 feet of said embankments shall be considered restricted areas. All persons, with the exception of property owners or legal occupants of the property, are prohibited from entering these restricted areas. The taking of anadromous fish is prohibited within these areas.~~
- K. A. It shall be unlawful for any person to harvest, possess or sell river herring in the Town of Barnstable or in waters under the jurisdiction of the Commonwealth of Massachusetts.**
- (1) Exceptions. The Director of the Massachusetts Division of Marine Fisheries may**

~~authorize the harvest and possession of river herring from a particular spawning run for personal use based on documentation that the spawning run from which herring are harvested is not depleted.~~

~~(2) Tolerance for bait fisheries. No person shall possess any batch of fish where more than 5% of the total is comprised of river herring species by count.~~

~~(3) Expiration. These measures shall expire on January 1, 2015.~~

Rationale:

After expiration of the most recent three year river herring fishery moratorium on January 1, 2015, towns will only be able to re-open herring runs to recreational and/or commercial harvest if sustainable fishery management plans are created and approved by both Massachusetts Division of Marine Fisheries and the Atlantic States Marine Fisheries Commission. Town regulations need to be changed in order to reflect these conditions.

5: Proposal: Section 407-60; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in bold.

§ 407-60. Filing of annual reports.

Licenses shall file annual reports with NR in accordance with the form provided by NR on or before ~~December 31~~ **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.

Rationale:

The Town reporting date of February 28 will coincide with the recently adopted state statute M.G.L. Chapter 130 Section 65 revision that became effective January 7th 2014.

Piers, Dredging and Shellfish Habitat Issues: 5

The Shellfish Committee reviewed the following coastal development project proposals and discussed various pertinent shellfish resource and habitat issues:

Applicant: Daniel A. & Wendy J. Kraft

Project

Location: 98 Tracey Road, Cotuit, MA 02635, Map 4 / Parcel 005

Proposed

Project: Relocate and extend existing pier, ramp and float to avoid entrance to adjacent salt pond.

Applicant's

Agent: A.M. Wilson Associates, Inc.
20 Rascally Rabbit Road, Unit 3
Marstons Mills, MA 02648

Public Hearing: Date: October 28, 2014
Time: after 6:30 P.M.
Place: Barnstable Town Hall,
367 Main Street, Hyannis MA
Town Council Hearing Room, 2nd floor

Arlene Wilson presented various aspects of the proposal to the Shellfish Committee. The Shellfish Committee unanimously approved a motion that Stuart Rapp send a letter to the Conservation Commission stating that the Shellfish Committee has no objection to the proposed pier project, subject to the installation of access stairs in the vicinity of the mean low water line and no motorized vessels allowed.

Applicant: Arthur S. & Patricia J. McCarthy

Project

Proposed

Project: Construct and maintain boardwalk, pier, ramp and float.

Public Hearing: Date: October 28, 2014

Time: after 6:30 P.M.

Place: Barnstable Town Hall,

367 Main Street, Hyannis MA

Town Council Hearing Room, 2nd floor

Old Business

A) Les Hemilla informed the Shellfish Committee that the Aquaculture Sub-Committee reviewed Stuart Rapp's request that the Sub-Committee review the state and local transfer regulation for shellfish aquaculture sites and provide clarity, input and recommendations to the Shellfish Committee. Les informed the Shellfish Committee that the Aquaculture Sub-Committee recommended no changes to the current local regulation (407 – 54) and the state statutes (M.G.L. Ch 130 sec. 57, 58) regarding the renewability, heritability and transferability of shellfish aquaculture sites.

B) The Shellfish Committee reviewed the committee's Barnstable Harbor shellfish aquaculture site expansion area proposal. Les Hemilla recommended that people (i.e. individuals on the waiting list) who want shellfish aquaculture sites in the harbor advocate for the proposed sites. The Shellfish Committee, Town Councilors and the general public discussed various aspects of the proposal including the impact to the public, the use of public access areas, environmental and navigational issues as well as the construct of the waiting list. The Shellfish Committee approved a motion to submit the committee's shellfish aquaculture site proposal to the Town Council for review (7 yes, 1 no).

Scott Mullin submitted the following letter to the committee regarding the Shellfish Committee's shellfish aquaculture site expansion area proposal:

Les,

I have spent some time thinking about the proposed expansion of the Aquaculture lease sites in Barnstable harbor and have some thoughts. I wonder if you could please pass along my comments to the appropriate committees and persons about the proposed expansion in the area of the mouth of Scorton Creek in Barnstable Harbor.

My family and I have farmed in the harbor for almost 20 years now and I realize there are many people who would also like to establish a shellfish farm as well, I truly believe the proposed area for expansion is not an appropriate location for several reasons. First, the land proposed for the new sites has taken a number of sets of wild soft shell clams over the years and, specifically, in the past 3 years yielded a commercial harvest of these animals. I believe this would violate the statutes set preventing the establishment of a lease site where wild species are pre-existing. Second, having farmed for the past 19 years less than a 100 yards from the proposed sites I have witnessed, perhaps more than anyone in the harbor, these flats and their natural sand migration and shifting substrats. The proposed acreage is in a tidal salt marsh creek and not on a traditional sand bar. These proposed sites would constantly be "on the move" meaning that the sediments shift greatly from year to year and would not allow the new farmers to adequately plan/plant/maintain/harvest crops with the same consistency seen on the existing farms because of these changing substrats. In addition, there is a small (un-navigable at 1/2 tide and below) creek that shifts on its own accord as well. This creek would severely hamper any skilled existing farmer, let alone every new shellfish aquaculturist, in their ability to access their site because they all abut this creek. I believe the proposed locations are not a wise selection for new aquaculture ventures for these reasons alone.

Public access is a difficult subject to delve into anywhere, but in our harbor it is particularly difficult. With only the Scudder Lane ramp or the State Boat Ramp - because the Town Ramp is not really viable with no parking - as the access points you would be placing a huge burden on the village of Barnstable and it's boaters, never mind the existing farmers. Since the Scudder Lane Mooring field is closed and there are few spots in front of the mouth of Barnstable Harbor the new farmers would have to trailer their boats. The thought of 14 new farmers and their associated foot print on Scudder Lane during the recreational oyster harvest or the State Boat Ramp during Striper season is daunting. I envision attempting to park at Scudder Lane, where my boats are moored and the beach parking and lot (which is inadequate for the people already working on the flats) are full. I will have to go to my boat and have my wife attempt to park my truck at the State Boat Ramp and drive into the harbor to pick her up and vice versa at the end of the day.

I understand that there is a desire and a willingness for more cultured shellfish in the world and our town/harbor is no different. The sites as pointed out to me in the area of the mouth of Scorton Creek are not a wise choice as pointed out above. I look forward to attending a future meeting to hear about other locations that could be considered for further expansion.

Regards, Scott Mullin

C) Over the last several months the Aquaculture Sub-Committee has formulated proposed amendments to the Town of Barnstable Shellfish Aquaculture Regulations and submitted them to the Shellfish Committee for review and consideration.

At the January 2014 meeting of the Shellfish Committee discussed and reviewed the Aquaculture Sub-Committee's proposed amendments to Aquaculture License Regulations (Article IX), revised them, and unanimously passed a motion that approved all the revised proposed amendments as noted by Stuart Rapp. Kevin Flaherty recused himself from the vote. Stuart Rapp noted the Shellfish Committee's revisions of the Aquaculture Sub-Committee's proposed amendments to Aquaculture License Regulations (407-47, 407-50, 407-56, 407-57, 407-59)

At the August 2014 meeting of the Shellfish Committee the committee discussed and reviewed the Aquaculture Sub-Committee's proposed amendments to Aquaculture License Regulations (Article IX), revised them, and unanimously passed individual motions for three more proposed amendments (407-60, 407-63, 407-64).

The Shellfish Committee, Natural Resources and the general public further reviewed and discussed the Shellfish Committee's proposed amendments to the Aquaculture License Regulations as revised by the Natural Resources Office and included below.

Proposed amendments to Aquaculture License Regulations (ARTICLE IX) approved by the Shellfish Committee at its January 15, 2014 meeting and August 20th, 2014 meeting with revisions from the Natural Resources Office.

ANALYSIS: The Natural Resources Office staff met weekly from August into October 2014 and reviewed the Shellfish Committee's proposed amendments to the Town of Barnstable Aquaculture License Regulations (Article IX). The following list represents the existing regulation, the Shellfish Committee's proposed amendments and the rationale therefore. The Shellfish Committee's entire proposed amendment is outlined with insertions, deletions and/or changes as revised by the Natural Resources Office. Natural Resources Office deletions are highlighted with ~~strikethroughs~~ and insertions are highlighted in **bold** for ease of identification.

EXISTING REGULATION:

§ 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.

SHELLFISH COMMITTEE'S PROPOSED AMENDMENT (approved January 15th, 2014): Aquaculture grant licenses, hereinafter referred to as the "license," will be issued to a Town of Barnstable individual or corporation, as long as the individual or the president of a corporation is a majority shareholder and he/she 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 (4/6/1995) shall be forfeited if the holder of the license¹¹, hereinafter referred to as the "licensee," ceases to be a bona fide domiciled resident of the Town of Barnstable.

Shellfish Committee's Rationale: *The option for corporate ownership by new or existing aquaculture companies in the Town of Barnstable is a recommended business practice.*

Note: Natural Resources is currently consulting with the Town's legal department regarding the Shellfish Committee's proposed amendment to § 407-47.

EXISTING REGULATION:

§ 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.

SHELLFISH COMMITTEE'S PROPOSED AMENDMENT (approved January 15th, 2014) AS REVISED BY THE NATURAL RESOURCES OFFICE:

A waiting 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 of said list shall be permanently posted on an official bulletin board in the Town Hall. The waiting list shall be renewable at the beginning of each calendar year. 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 waiting list. The Town Managers office must receive said notice on forms ~~approved by the Natural Resource Department~~ **supplied by the Town Manager's Office** by 4:15 PM on the deadline date (February, 15) along with a \$10.00 fee. In order to be on the list and to stay on the list you must be domiciled in the Town of Barnstable.

Shellfish Committee's Rationale:

The existing waiting list is stagnant and outdated. This change is consistent with mooring waiting list policies.

Natural Resources Revision Rationale:

The waiting list is administered by the Town Manager's Office.

EXISTING REGULATION:

§ 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.

SHELLFISH COMMITTEE'S PROPOSED AMENDMENT (approved by the Shellfish Committee January 15th, 2014) AS REVISED BY THE NATURAL RESOURCES OFFICE:

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 and inheritable. Licenses are transferable only after ~~three~~ **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 the 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 to request 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 as a new application. ~~If, however, the license is under the scrutiny of the Natural Resources Office for production as well as any other potential regulatory violations then the license may not be transferred.~~

Shellfish Committee's Rationale:

To encourage new licensees to meet production standards.

Natural Resources Revision Rationale:

The five year waiting period for transfers provides for the availability of a limited number of sites for persons on the waiting list.

EXISTING REGULATION:

§ 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.

SHELLFISH COMMITTEE'S PROPOSED AMENDMENT (approved by the Shellfish Committee January 15th, 2014) AS REVISED BY THE NATURAL RESOURCES OFFICE:

A new license shall be issued for a period not to exceed five years, and for a maximum total area not to exceed two (2) acres. The licensee may apply for the renewal of the license 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. Subject to the discretion of the Town Manager the license holder shall have the option of a renewal period of up to 10 years.

Shellfish Committee's Rationale:

This rule change removes production standards from §407-56 and addresses them in §407-59. Removal of acreage limitation reflects the fact that the majority of individuals and companies actively, successfully working in the aquaculture industry work on or manage more than 2 acres and this issue is addressed in §407-57.

Natural Resources Revision Rationale:

Two (2) acre parcels address the fair distribution of a limited number of existing sites to persons on the waiting list.

EXISTING REGULATION:

§ 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.

SHELLFISH COMMITTEE'S PROPOSED AMENDMENT (approved by the Shellfish Committee January 15th, 2014) AS REVISED BY THE NATURAL RESOURCES OFFICE:

The maximum total acreage licensed to any licensee shall not exceed ~~ten (10)~~ two (2) acres on the Northside and two (2) 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 ~~ten (10)~~ four (4) 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.

Shellfish Committee's Rationale:

Increase of the acreage limitation reflects the reality that the majority of individuals and companies actively, successfully working in the aquaculture industry work on or manage more than 2 acres.

Natural Resources Revision Rationale:

Two (2) acre parcels address the fair distribution of a limited number of existing sites to persons on the waiting list.

EXISTING REGULATION:

§ 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.

SHELLFISH COMMITTEE’S PROPOSED AMENDMENT (approved by the Shellfish Committee January 15th, 2014) AS REVISED BY THE NATURAL RESOURCES OFFICE:

An annual review of each license will be conducted by the Natural Resources Office 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 shall be subject to forfeiture. For purposes stated herein reasonable amount of shellfish product shall mean not less than \$10,000 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. ~~All new inexperienced applicants may only seek and possibly receive licensed sites of no more than two (2) acres on the north side of the Town and no more than two (2) acres on the south side of the Town. After the passage of five (5) years and the licensee has worked the licensee’s site to the satisfaction of the Natural Resources Office then that licensee shall be considered experienced and thereafter may be eligible to seek and possibly receive licensed sites which are greater than two (2) acres subject to these Regulations. Any new applicant who can prove to the satisfaction of the Natural Resources Office that he/she has worked in the aquaculture industry for more than two (2) years and the Natural Resources Office determines that based upon that experience the applicant understands the best practices to be used on the licensed site then that person shall be deemed to be experienced.~~

Shellfish Committee’s Rationale:

\$10,000 per acre production requires minimal investment and effort and reflects the reality. Concerns about inexperienced applicants not using best practices which can lead to devastating results all of which effect in entire embayment.

Natural Resources Revision Rationale:

Two (2) acre parcels address the fair distribution of a limited number of existing sites to persons on the waiting list. Production requirements are addressed in 407-59 and 407-60.

EXISTING REGULATION

§ 407-60. Filing of annual reports.

Licensees shall file annual reports with NR in accordance with the form provided by NR on or before December 31 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.

SHELLFISH COMMITTEE'S PROPOSED AMENDMENT (approved by the Shellfish Committee August 20th, 2014) AS REVISED BY THE NATURAL RESOURCES OFFICE:

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 licensed site for the first three years of his/her original license.**

Shellfish Committee's Rationale:

To conform with Massachusetts General Laws Chapter 30 Section 65.

Natural Resources Revision Rationale:

The reporting date of February 28th coincides with MGL Chapter 130 Section 65. Production requirements are also addressed in conjunction with 407-59.

EXISTING REGULATION

§ 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. All floating gear and cages and netting greater than 200 square feet shall bear the license number of the license. 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.

SHELLFISH COMMITTEE'S PROPOSED AMENDMENT (approved by the Shellfish Committee August 20th, 2014) AS REVISED BY THE NATURAL RESOURCES OFFICE:

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. All floating gear and cages and netting greater than 200 square feet shall bear the license number of the license. 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. No structure or device used in the production of shellfish shall protrude more than 24" above the substrate between April 15 and November 15.

Shellfish Committee's Rationale:

Following the former Army Corps Aquaculture Guidelines with minor changes in height.

Natural Resources Revision Rationale:

Natural Resources has no revisions.

EXISTING REGULATION**§ 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.

SHELLFISH COMMITTEE'S PROPOSED AMENDMENT (approved by the Shellfish Committee August 20th, 2014) AS REVISED BY THE NATURAL RESOURCES OFFICE:

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 and shellstock to be removed in 6 months from the license termination date. Any and all equipment not removed within 60 days and shellstock not removed in 6 months shall be removed by the Town at the expense of the licensee.

Shellfish Committee's Rationale:

The Shellfish Committee endorsed the Aquaculture Sub-Committees proposal.

Natural Resources Revision Rationale:

Natural Resources has no revisions.

Dave Ryan submitted the following letter to the committee regarding the review of the Shellfish Committee's proposals:



12 Enterprise Road • Hyannis, MA 02601
508-737-9258 • Fax 508-771-3383 • Email: capeoyster@verizon.net

15 October 2015

Stuart Rapp, Chairman
Shellfish Committee
321 Phinneys Lane
Centerville MA 02632

Dear Chairman Rapp,

In the event I am not present at tonight's meeting due to another commitment, please add these comments to the minutes related to any discussion on the DNR recommendations of changes to shellfish aquaculture rules.

As you know, over the past year, at the request of the Shellfish Committee, a subcommittee was formed and met to review current aquaculture rules and regulations. Meetings were held publicly, with proper notice. DNR staff were present and participated in discussion at all meetings. Possible changes to current regulations were voted on, and presented numerous times to the shellfish committee, where input was solicited, and changes and improvements to the proposed changes were made. This was a careful and thorough process that included DNR staff.

Changes to the aquaculture regulations focused on making improvements in accountability to growers, more accuracy in reporting, and a reduction in duplicitous paperwork that leads to inaccurate reporting and less accountability. Rule changes also encourage more rigorous production standards that better reflect production

levels and effort. Rule changes acknowledge the fact the majority of aquaculture efforts in our town is by small family businesses where 1 person manages more than one 2 acre site. The fact remains that in order to work in this business fulltime more than 2 acres is needed. The cost of doing business is so high in today's economy that a certain volume must be attained to be viable. 16

I learned just a few days ago that DNR staff have arbitrarily gutted some of the most important aspects of these rule changes. They have done this in a vacuum, with no public input. The changes they have made reflect their social view, and have no technical, biological, or practical purpose. Apparently, according to the social view of a couple of young DNR staff, a small business like ours, providing eight good paying year round jobs with health care and benefits, a supporting million dollar infrastructure including locally purchased trucks, boats, and gear, plus a year round processing and shipping facility, is a negative.

The aquaculture industry in town has grown significantly over the past 20 years. It provides 20-30 very good year round jobs. But it is still a very small but important green industry. Oyster production is the single biggest contributor to nitrogen removal and water quality improvements in the 3 Bay system. Nitrogen removal by aquaculture produced oysters is science based and quantifiable. Again, these rule changes proposed by the Shellfish Committee and subcommittee are focused on accuracy in reporting, greater accountability, and more professional approach. DNR staff recommendations are contrary to this and completely against having viable shellfish aquaculture efforts here in Barnstable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Ryan".

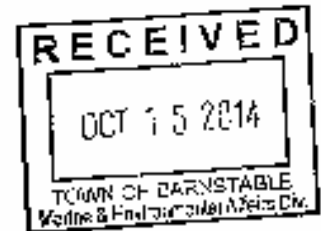
David Ryan, Cape Cod Oyster Co.



12 Enterprise Road • Hyannis, MA 02601
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15 October 2015

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321 Phinneys Lane
Centerville MA 02632



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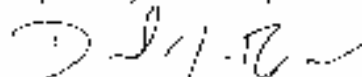
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David Ryan, Cape Cod Oyster Co.