

Town of Barnstable
Shellfish Committee
1189 Phinneys Lane, Centerville Ma. 02632
www.town.barnstable.ma.us



Office: 508-790-6273
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Committee Minutes of the Meeting

DATE: September 9, 2020

TIME: 6:30 P.M. to 7:23 P.M.

**This meeting was held via ZOOM
Physically closed to the public to avoid group congregation.**

Shellfish Committee Members present: Stuart Rapp, Jacob Angelo, Paul Caruso, Patricia Farinha, Tyler Hagenstein, Robert Lancaster, Al Surprenant, and Bill Shumway

Shellfish Committee Members absent: none

General Public present: Tom Ryshavy, Allyson Schmidt, Mike Bridges

Town Council Liaison present: Kristine Clark

Town Staff present: Derek Lawson, MEA Director, Amy Croteau, Natural Resource Officer/Shellfish Constable and Terri McDonald, Clerk of the Board

Stuart Rapp chaired the September 9, 2020 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."

1. Meeting Minutes:

Meeting Minutes from July 8, 2020 and August 12, 2020 tabled to next meeting on October 14, 2020

2. Chairman's Comments: None

3. Natural Resources Report:

Amy Croteau reported:

The following upcoming shellfish openings:

Saturday, October 3, 2020 Recreation Scallop Season

Monday, October 5, 2020 Commercial Scallop Season

Sunday, November 1, 2020 Bay Street Recreational Area is open for recreational Shellfishing and Closed to Commercial Shellfishing.

Wednesday, November 4, 2020 Oyster Season

September 15th–December 15th closure is in Barnstable Harbor Marshes, Annual Closing by DMF for water quality reasons. Opening is dependent on water quality testing.

Barnstable Clean Water Coalition: Dissolved Oxygen Sensors have been placed in Barnstable Waterways in September - please do not remove part of a study for the next six weeks.

Comments from Committee: No markings on it. Might want to mark the buoys to identify them so people know what they are.

Scudders NOI Pre-Construction Meeting:

Photos were taken September 2 and 9, 2020 by Natural Resources. Conservation is allowing the removal of vegetation on the bank before license is issued. Project ends October 31, 2020. Once issued, the License will be posted on Town's Conservation and Natural Resources' website. Two signs were removed and shell container was removed, sand will be put down and vegetation removal and will be replaced. Natural Resources will try to document with photos every day. Ramp is to be maintained in working condition for entirety of project. Contractor assured no additional damage to the ramp would occur.

Kris Clark attended site meeting as well. Requesting that signage be posted for public knowledge of the project and information be posted on Town website in advance of licenses issued. Amy will check back in with Darcy.

Climate Resiliency Fund procured by MSOA has given us Rainfall gauges. Real time rainfall gauges reporting live at Sandy Neck. Prince Cove Marina is a hub connectivity issue but gauge is working and accessible. Hopefully by next meeting will have an update. Will not be accessible to public but information is sharable.

County Dredge at Deadneck pipes will be laid outside Seapuit River and Bay for now and will have info when it is moved and informed of location. This is the final phase of the project.

Paul Caruso stated that the light at end of Prince Cove Ramp has been replaced.

4. New Business:

Hoping to take vote today on proposed shellfish regulations. After Committee votes there is a two week public notice period and then 30 day Town Manager vetting period followed by a 30 day Town Council vetting period.

- A. Proposed Shellfish Regulation Changes 2020-2021
 - §407-2 Definitions
 - §407-3 Classes of recreational shellfishing permit, licensing requirements and conditions
 - §407-5 Harvest limits
 - §407-9 Recreational scallop regulations
 - §407-12 Classes of permits and permit conditions
 - §407-18 Northside harvest restrictions
 - §407-38 Commercial oyster shellfishing
 - §407-47 Proof of residency required
 - §407-65 Harbor improvements; migration of navigational channels

Changes were discussed. Most of these changes (attached) are mostly language revisions and changed to coincide with Massachusetts State Regulations. There will likely be more changes next year.

The Shellfish Committee unanimously approved a motion made by Robert Lancaster and seconded by Paul Caruso to make the changes to the Shellfish Regulations as presented.

5. Status of pending NOI pier applications before the Conservation Commission:

- A. Applicant: Carlton C. & Christina A. Sands
 Project Location: 4 & 0 Bay Shore Road, Hyannis, MA
 Representative: Nathan D. Jones, Coastal Engineering Co., Inc.
 Proposed Project: The proposed project is to provide shorefront protection to the subject property and upland dwelling to include, stabilizing the existing shoreline with the construction of a rock revetment. The applicant is proposing to tie into the abutting revetment so the shoreline will have one continuous protection method. Other improvements include tree removal and plantings of native trees, shrubs and grasses. This is a continuance hearing.
 Conservation Hearing Date: 09/01/2020 6:30PM James H Crocker, Jr. Hearing Room via Zoom

- B. Applicant: Andree C. Phillips, Trustee of Andree C. Phillips Revocable Trust & Connor J. Haugh, Trustee of Connor J. Haugh Revocable Trust
 Project Location: 12 Bay Shore Road, Hyannis, MA.
 Representative: Charles Rowland, Sullivan Engineering & Consulting, Inc.
 Proposed Project: To repair and rebuild the existing stone revetment.
 Conservation Hearing Date: 09/01/2020 6:30PM James H Crocker, Jr. Hearing Room via Zoom

Both are these proposals are for revetment they were reviewed in month's meeting with Nate Jones. There were additional coastal bank questions. Most of the marsh has been recessed due to sand shifting. Order of Conditions will be forthcoming and will be shared when issued. No vote needed.

6. Old Business: None.

7. Matters not reasonably anticipated by the Chair:

Patricia Farinah brought up the discussion on the loss of propagation quahogs. Amy Croteau stated that it is an ongoing investigation.

Videos will be presented on Centerville River after the relay by Jake Angelo and Natural Resources at the next meeting of October, 14, 2020.

Jake Angelo made comments on how changes are happening to the local embayments and people may not be aware as to why. He would like to present a monthly update on this issue.

The Shellfish Committee unanimously voted to approve a Motion made by Patricia Farinha and seconded by Paul Caruso to adjourn.

Respectfully submitted: Terri McDonald – Clerk of the Board



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Animal Control 508-790-6274
Harbormaster 508-790-6273
Marinas 508-790-6273
Moorings 508-790-6273

Natural Resources 508-790-6272
Sandy Neck 508-790-6272
Sandy Neck Gatehouse 508-362-8300

TO: Mark S. Ells, Town Manager

FROM: Amy A. Croteau, Shellfish Constable, Natural Resources

THROUGH: Nina Z. Coleman, Marine Environmental Affairs Division

DATE:

SUBJECT: Changes to the Town of Barnstable Shellfishing, Eel, Herring and Aquaculture rules and regulations as proposed by the Natural Resources Program of the Marine and Environmental Affairs Division after consultation with the Shellfish Committee.

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

SHELLFISH COMMITTEE REVIEW: September 09, 2020 Zoom meeting

PUBLIC HEARING: TBD

ANALYSIS:

The following list represents the proposed changes and the rationale therefore. The regulations have been reformatted to include the proposed changes. The entire regulation is outlined and changes are highlighted in **bold** for ease of identification.

1: Proposal: Section 407-2; Amend the existing regulation by removing the ~~crossed-out~~ wording **highlighted in bold** and adding the wording **highlighted in bold** .

§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 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 *Busycotypus 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, spouse or partner**, 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 pack 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 **unless another container is authorized by the Shellfish Constable or Deputy Shellfish Constable.**

RECREATIONAL PERMIT- A permit granted under the authority of the Town Manager for the taking of shellfish for non-commercial 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 **the** top of said tote basket.

Changes to the definitions section reflect updated wording to accommodate the “modern family” as well as addresses some grammatical errors. As other small containers are allowed for use in the recreational fishery at Officer discretion, removing the wording stating the only authorized container is a peck basket makes sense.

2: Proposal: Section 407-3; Amend the existing regulation by removing the ~~crossed-out~~ wording **highlighted in bold** and adding the wording **highlighted in bold**

§407-3. Classes of recreational shellfishing permit, 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 shellfish permit. This permit also allows for 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 residents 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, **as defined**. ~~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, **with the exception of Town of Barnstable residency**. ~~Fee: \$70.~~ The permit may be upgraded to a non-resident recreational permit, for the year it was issued, for an additional ~~fee \$70.~~

E. Veteran recreational permit: issued to a resident of the Commonwealth of Massachusetts who is a veteran, as defined by MGL Chapter 4, Section 7, cl. 43rd as amended by the Acts of 2005, Chapter 130. The same conditions as resident recreational permits apply, with the exception of Town of Barnstable residency.

F. 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~~ to the Shellfish Constable and any Deputy Shellfish Constable upon request.
- (8) Landing restriction: All shellfish harvested under a recreational shellfish permit shall be landed in the Town of Barnstable.

Rationale

In 2018 the Brave Act, S. 2632, An Act Relative to Veterans Benefits, Rights, Appreciation, Validation and Enforcement was passed in MA. Section 29 of this Act states "Section 52 of chapter 130 of the General Laws, as so appearing, is hereby amended by inserting after the word "therefor", in line 61, the following words:- ; provided, however, that such city or town shall not charge a veteran a fee greater than the fee charged to a resident of such city or town." This change in regulation makes adoption of this within our Shellfish permit requirements straightforward, transparent and consistent with recent transition to online permitting. Other changes are to provide consistency in the language of classes of permits. Changes to permit conditions reflect aboriginal rights and patrons not always having printed permits on their person as a result of transitioning to online permitting. Fees are listed in ??????????

3: Proposal: Section 407-5; Amend the existing regulation by removing the ~~crossed-out~~ wording **highlighted in bold** and adding the wording **highlighted in bold**

§407-5. Harvest limits.

A. With the exception of a 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, 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, **as defined**. (See also scallop regulations.)
- (5) Sea scallops: one level bushel, **as defined**.
- (6) Sea clams: one level bushel, **as defined**.
- (7) Oysters: limits 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 **unless approved by the Shellfish Constable or a Deputy Shellfish Constable**.

Rationale

Changes maintain consistency in wording with other limits and additionally allow for officer discretion when recreational shellfishers arrive without a standard peck basket.

4: Proposal: Section 407-9; Amend the existing regulation by removing the ~~crossed out~~ wording **highlighted in bold** and adding the wording **highlighted in bold**

§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 **with one exception provided in 322 CMR 6.11. This exception states bay scallops that have a well-defined raised annual growth line located less than ten 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. 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 ½ hour before sunrise.

Rationale

Adding the language for the 322 CMR 6.11 exception as it pertains to bay scallops brings our regulations into compliance with state regulations.

5: Proposal: Section 407-12; Amend the existing regulation by removing the ~~crossed out~~ wording and adding the wording **highlighted in bold**

§ 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 nonrenewed 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, between January 1 and January 31 and pay the nonrefundable application fee of \$5. 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 1, the applicant names will be drawn by lottery to determine the sequential chronological order that applicants acquire a permit. On February 1, 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 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 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 31.

(3) Note: If any dates stated in § 407-12A fall on a Saturday, Sunday or holiday recognized by the Town of Barnstable the next Marine and Environmental Affairs ~~Division~~ **Department** 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-license** holders while on their licensed **grant site**.

(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.

Rationale

Division of Marine Fisheries legal staff has determined using the word "grant" implies ownership of the licensed site, which is not correct. Referring to leased public lands as licensed aquaculture sites and/or licenses is the preferred wording.

6: Proposal: Section 407-18; Amend the existing regulation by adding the wording **highlighted in bold**

§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. **Beginning January 1, 2021 the opening and closing of the commercial harvest of soft shell clams on the Northside of the Town of Barnstable on Wednesdays, May 1 through October 15, shall be governed by Section 188-4(A)2 of the Town of Barnstable Code.**

Rationale

During 2019 and 2020, the soft shell clam sets in Barnstable Harbor proved bountiful and sustainable enough to allow 8 additional Wednesdays of commercial harvest via Town Manager Emergency Order. This proposed regulation change would make it easier for commercial soft shell clamming to be allowed on Wednesdays May 1 through October 15 through Town Manager Order. Additionally, transitioning to Town Manager Order rather than Emergency Order would allow the opening to be for a longer period of time than 60 days.

7: Proposal: Section 407-38; Amend the existing regulation by removing the ~~crossed out~~-wording **highlighted in bold** and adding the wording **highlighted in bold**

§407-38. Commercial oyster shellfishing.

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

Rationale

Division of Marine Fisheries legal staff has determined using the word "grant" implies ownership of the licensed site, which is not correct. Referring to leased public lands as licensed aquaculture sites and/or licenses is the preferred wording.

8: Proposal: Section 407-47; Amend the existing regulation by removing the ~~crossed out~~-wording **highlighted in bold**.

§407-47. Proof of residency required.

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

Rationale

Division of Marine Fisheries legal staff has determined using the word "grant" implies ownership of the licensed site, which is not correct. Referring to leased public lands as licensed aquaculture sites and/or licenses is the preferred wording.

9: Proposal: Section 407-65; Amend the existing regulation by removing the ~~crossed out~~-wording **highlighted in bold** and adding the wording **highlighted in bold**.

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

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

Rationale

Division of Marine Fisheries legal staff has determined using the word "grant" implies ownership of the licensed site, which is not correct. Referring to leased public lands as licensed aquaculture sites and/or licenses is the preferred wording.

