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**TO:** Mark S. Ells, Town Manager

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

**THROUGH:** Nina Z. Coleman, Marine Environmental Affairs Division

**DATE:** TBD

**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 19, 2018 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: Section 407-14; Amend the regulation by deleting the crossed out wording and adding the wording highlighted in **bold**.

**§ 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 ½ hour before sunrise, except as otherwise noted utilizing the hydraulic method (see hydraulic method restrictions).

B. Tagging shellfish and display of 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:~~ **All shellfish must be tagged in accordance with 322 Code of Massachusetts Regulation “CMR” 16.03**

~~(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, **Deputy Shellfish Constable** or Town of Barnstable police officer.

*Rationale*

*Christopher Freeman had requested that the Town requirements for tagging of shellfish be aligned with Massachusetts regulations, natural resources does not object to this request.*

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

**§ 407-17. Southside harvest restrictions.**

A. Harvest restrictions in the intertidal zones. The commercial harvest of soft shell clams by dry digging on the Southside of the Town of Barnstable is prohibited. The commercial harvest of soft shell clams from the intertidal area, that area between mean low-water line and the mean high-water line, or any flat or beach area which is exposed at low tide, is strictly prohibited, unless otherwise stated.

B. Harvest days/hours. The commercial harvest of soft shell clams on the Southside of the Town of Barnstable shall be allowed on Monday through Saturday, November 1 through May 31; and Monday through Friday, June 1 through October 31. The harvest of shellfish by the hydraulic method is prohibited from ½ hour before sunset until 7:30 the following morning.

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

(1) Tide/depth restriction. The harvest of subtidal soft shell clams by either method is prohibited from two hours after low tide to two hours prior to the next low tide, based on Boston Tide Calendar issued by Natural Resources. The harvest of subtidal soft shell clams is prohibited in less than two-foot depth of water, unless otherwise stated.

(2) Harvest of subtidal soft shell clams, Shoestring Bay **and**, Popponesset Bay **and the Marstons Mills River** (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 and seaworms permit. All helpers must present their valid Mass. Commercial shellfish and seaworms permit, in person, to the Natural Resources Office prior to initially helping a commercially licensed shellfisherman.

(4) Gear restriction (Southside). Pumps shall not exceed eight horsepower and shall be equipped with proper muffler and exhaust system. Pumps shall be mounted in the boat to limit noise.

#### *Rationale*

*Initially requested by commercial shellfisherman John Nawoichik, this area is reportedly underutilized by the recreational shellfishery during the 2.5 months of the year it is in open status. Allowing the commercial harvest in up to 1 foot of water instead of the usual two feet of water will make compliance during extreme winter tides easier to accomplish. This will also allow harvest of currently under-harvested animals. Natural Resources does not object to this request.*

3: Proposal: Section 407-20; Amend the regulation by adding the wording highlighted in **bold**.

**§ 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 ½ inches in longest diameter.
  - (2) Cherrystone: greater than or equal to 2 ½ 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 once 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.
- D. All helpers actively assisting a commercially licensed shellfisherman harvesting quahogs, shall be required to hold a valid Massachusetts commercial shellfish and seaworms permit. Said helper shall be allowed to cull and sort the quahog catch. Said helper shall also be allowed to return seed to the water. Said helper shall not be allowed to harvest quahogs. All helpers must present their valid Mass. commercial shellfish and seaworms permit, in person, to the Natural Resources office prior to initially assisting a commercially licensed shellfisherman.**

*Rationale*

*This regulation change was initially suggested by commercial shellfisherman Jacob Angelo. As commercial shellfishers are allowed helpers for harvest of other species, Natural Resources is in favor of this request but does not believe the helper should be allowed to physically harvest the quahogs. Commercially harvested quahogs should only be harvested by a licensed Town of Barnstable commercial shellfisherman or shellfisherwoman. For this reason, helpers will only be allowed to cull the catch, sort the catch and return seed to the water.*

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

***(2) Harvest Area restriction. The commercial harvest of jackknife clams and common razor clams shall be allowed in Barnstable Harbor West of Beach Point, Sandy Neck excluding the Scudder Lane Recreational Shellfishing Area and areas closed for management and/or pollution closures. The commercial harvest of jackknife clams and common razor clams in the area stated above shall be effective Tuesday January 1, 2019 through Tuesday December 31, 2019.***

#### *Rationale*

*At the August 22<sup>nd</sup> 2018 staff meeting of the Natural Resources Office, staff discussed the proposal of extending the opening a designated portion of the “Recreational Shellfishing Area” in the mid-section of Barnstable Harbor to the commercial harvest of razor clams only.*

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

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

**5:** Section 407-47; Amend the regulation by adding the 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, **physically** domiciled resident of the Town of Barnstable and have been **a physically** 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 **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, **physically** domiciled resident in the Town of Barnstable. Annual documentation to verify the licensee is **physically** 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*

*Definition of "domicile" is unclear and open to varying interpretations. Natural Resources seeks to better define within 407-47 to avoid confusion and close any loopholes.*

**6: Proposal:** Section 407-50; Amend the regulation by adding the wording highlighted in **bold** and removing the wording that has been crossed out.

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

A list of applicants for licenses **that have been reverted to or created by the Town** in order of date and application shall be kept on file by the **Marine Environmental Affairs Division Office**, ~~the Town Manager~~, and an up-to-date copy shall be permanently posted on an official bulletin board in the Town Hall. **Those applying to be added to the list at the Marine Environmental Affairs Division Office shall pay a non-refundable \$5.00 fee. It shall be the responsibility of the applicant to notify the Marine Environmental Affairs Division Office, in writing, between January 1 and February 15 of each year of his/her desire to remain on the list. The Marine Environmental Affairs Division Office must receive said notice on forms supplied by the Marine Environmental Affairs Division office by 4:15PM on the deadline date (February 15) along with a \$5.00 fee.**

*Rationale*

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

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

**§ 407-54. Exclusivity of license; subleasing prohibited; transfer of license.**

Licenses are issued to and for the exclusive use of the licensee who may contract with or employ others to work for the licensee. Subleasing of the licensed area or portion thereof is prohibited. Licenses are renewable, heritable and transferable subject to Town Manager written approval and pursuant to Massachusetts General Laws Chapter 130. Licenses are transferable only after five years from the original license issuance date, subject to review by the Natural Resource Office for reporting requirements and production standards under §407-59 and §407-60 and subject to Town Manager's written approval and pursuant to Massachusetts General Laws Chapter 130. A licensee proposing to transfer his or her license shall first notify the Town Manager in writing that he/she no longer wishes to operate the license and requests a transfer of his/her licensed area to a designated recipient. Such recipient shall thereupon file an application under §407-48. Thereafter, the application shall be treated, insofar as apt, as a new application. **If, however, the license is under the scrutiny of the Natural Resources Office for production as well as any other regulatory violations, then the license may not be transferred.**

*Rationale*

*Natural Resources believes that no grant under scrutiny for production standards or any other regulatory violation should be eligible for transfer.*

**8:** Section 407-63; Amend the regulation by adding the wording highlighted in **bold.**

**§ 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 license site~~ **any and all containers and materials used on the licensed site. This includes but is not limited to trays, bags, racks, lines, pipes, etc.,** with the six digit state propagation permit number issued to the licensee. Netting shall be marked or tagged in a conspicuous place, per every 200 square feet. Said regulation is subject to fine schedule for non-compliance. The shellfish constable shall have the authority to temporarily waive these regulations if the presence of ice, sever weather or other condition hampers the ability of the licensee to immediately comply with these regulations.

*Rationale*

*Natural Resources believes that licensees should be responsible for any and all gear deployed within their licensed sites and should be held accountable when their gear goes missing. This increase in amount of gear to be tagged and marked ensures the responsibility falls on the licensee and allows for traceability of rogue gear.*

**9:** Section 407-65; Amend the regulation by adding the wording highlighted in **bold.**

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

No license 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. **Should sediment migrate and settle within Aquaculture Zone 1 in Barnstable Harbor; leaving an area along the channel with less than three feet of water at mean low tide and adjacent to a licensed grant 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 though a Town Manager public hearing.**

## *Rationale*

*Due to sand accretion along channel bordering grants, a number of licensees have gear that is not within the confines of their licensed leased sites. Some of these areas being utilized are important parts of the licensee's vibrio compliance plans, Natural Resources is seeking to have compliance with Town regulations requiring grant gear to be located within the licensed areas and is willing to allow small changes to existing boundary lines within the defined areas if there is good reason as presented by the licensee.*

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