



Town of Barnstable
Marine and Environmental Affairs Department
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TO: Mark S. Eells, Town Manager

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

THROUGH: Nina Z. Coleman, Marine Environmental Affairs Division

DATE: 08/13/2021

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: August 11, 2021 (5 members present, voted unanimously in favor of all regulation changes)

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 407-12; Amend the existing regulation by removing the **~~crossed out~~**-wording **highlighted in bold** 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 Shellfish License Procedure:

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

(b) If a commercial permit becomes void as a result of death, the permit may be inherited by one individual next of kin. Within thirty days of the death of the commercial permit holder the individual next of kin must: notify the Town of the death of the commercial permit holder, complete a Town of Barnstable commercial shellfish permit application, 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 within the Town for at least 12 consecutive months prior to the date of application for inheritance, pay the appropriate fee in full for the commercial permit as determined in §407-12(2)D(1) and procure a Commonwealth of Massachusetts commercial shellfishing permit. Failure to meet these requirements within the thirty days will result in the permit being offered to the lottery under §407-12(2)(d).

(b)(c) To become eligible for a new commercial permit you must apply, pursuant to these regulations, within January 1st and January 31st and pay the non-refundable \$5 application fee.

Upon the hand delivery of a completed legitimate application, and payment of the fee, the applicant's name will be entered into a lottery. On February 1st, the applicant names will be drawn by lottery to determine the sequential chronological order that applicants acquire a permit. On February 1st, the Natural Resources Office shall post on the bulletin board outside its building, on Phinney's Lane, a chronological list of applicants as determined by lottery eligible for a commercial permit as determined by vacancy.

(e)(d) If an existing commercial permit becomes void **and is not subject to inheritance**, during the calendar year (January 1 through December 31) for which the permit was issued, the next eligible applicant as determined by the lottery, will be notified, by mail, of the availability of a permit. The applicant shall have ten (10) days from the date of notification to pay the balance of the permit fee or the permit will be issued to the next eligible applicant as determined by the lottery. **The new permit shall be available within ten (10) days to be picked up.** The applicant will be notified by Natural Resources when the new permit is available to be picked up. New permit shall be issued for a given commercial shellfishing year (April 1 through March 31). The applicant list shall be dissolved each year as of December 31st.

Note: If any dates stated in Regulation 407-12A fall on a Saturday, Sunday or Holiday recognized by the Town of Barnstable, the next Marine and Environmental Affairs 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 the 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 license holders while on their licensed sites.

~~(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).~~

(54) 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- Proposed changes within this regulation address heritability of commercial licenses, making a commercial permit heritable by next of kin upon the death of a current licensed commercial harvester. Wording for this change was borrowed from existing aquaculture regulation 407-47. The other proposed change addresses the redundancy of filing an annual commercial harvest report when commercial harvesters are already required to file their catches with SAFIS (Standard Atlantic Fisheries Information System).

2: Proposal: Section 407-13; Amend the existing regulation by removing the **crossed out**-wording **highlighted in bold** and adding the wording **highlighted in bold**

§407-13. Commercial shellfishing permit application procedure.

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

(1) Commonwealth of Massachusetts commercial shellfish permit, valid for the year being applied for.

(2) Documentation to verify the applicant is domiciled in the Town of Barnstable. This may be current real estate tax bill, mortgage statement or residential lease and copy of motor vehicle registration. (A driver's license is not proof of domicile.) The burden of proof is on the applicant.

~~(3) Validated catch report stub from the year previous to the year being applied for.~~

~~(-4-3)~~ Note: Chapter 121, Article I, of the Code of the Town of Barnstable provides that any license or permit may be denied or revoked for nonpayment of taxes, fees, assessments, betterments or other municipal charges.

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

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

Note: If any dates stated in Regulation 407-12A fall on a Saturday, Sunday or Holiday recognized by the Town of Barnstable, the next Marine Environmental Affairs **Division Department** business day shall apply.

Rationale- Proposed change addresses the redundancy of filing an annual commercial harvest report when commercial harvesters are already required to file their catches with SAFIS (Standard Atlantic Fisheries Information System).

3: Proposal: Section 407-27; Amend the regulation by adding the wording highlighted in **bold**.

§407-27. Minimum size limit.

Only scallops with a well-defined raised annual growth ring may be taken; all other scallops will be considered seed scallops and must be returned to the water immediately **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 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.** 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.

Rationale- Proposed change brings Town regulations into compliance with state regulations pertaining to scallop catches.

4: Proposal: Section 407-32; Amend the existing regulation by removing the ~~crossed out~~ wording **highlighted in bold** and adding the wording **highlighted in bold**

§407-32. Harvest limit per boat.
There shall not be more than ~~two~~ **five** harvest limits allowed per boat for commercial permit holders.

Rationale- Proposed change addresses the regulation being made to change the behavior of a few bad apples when there were well over 200 commercial harvesters in the fishery. The current limited entry fishery is much smaller and more manageable. This also allows harvesters to carpool and boat-pool addressing current gas price rises and limited access/parking at most landings.

5: Proposal: Section 407-45; Amend the existing regulation by removing the ~~crossed out~~ wording **highlighted in bold** and adding the wording **highlighted in bold**.

§407-45. Areas closed to commercial fishing.

A. Northside:

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

B. Southside:

- (1) The Handy Point Quahog Propagation Area is defined as the waters and intertidal flat within an area marked by yellow "NR" marker buoys and/or signposts as deployed near Handy Point in Cotuit Bay

~~(2) Popponesset Bay Seasonal Commercial Hydraulic Method / Hand~~

~~Plunger Restriction: Effective annually the commercial harvest of soft shell~~

~~clams and razor clams assisted by the hydraulic method or hand plunger~~

~~method is prohibited in all the waters, shores, flats and tributaries~~

~~of Popponesset Bay and Shoestring Bay in the Town of Barnstable.~~

~~This regulation shall be in effect annually from May 1st through October 31st~~

~~all dates inclusive.~~

- ~~(3)~~ **(2)** The West Bay Recreational Shellfishing Area: The waters, flats and shoreline within an area beginning from the West Bay Landing at Bridge St to the Wianno Yacht Club Pier to the "NR/No Shellfishing" sign buoys locate offshore (DMF/SC22.11)

Rationale- Proposed change addresses a restriction put in place for a much larger commercial fishery that was at the time in competition for shared resources with the recreational fishery. This is no longer the case and so the change is amenable.

6: Proposal: Section 407-71; Amend the existing regulation by adding the wording **highlighted in bold**

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

The Town of Barnstable shellfishing permit, recreational or commercial, may be revoked or suspended by the Town Manager for any violation of the Town shellfish regulations. A hearing with the Town Manager will be afforded on revocations. **Recreational shellfish permits may also be suspended by the Director of Natural Resources at the request of the Shellfish Constable or a Natural Resource Officer for non-compliance with shellfish regulations. Any person who is issued a suspension will be provided the opportunity for a hearing with the Director of the Marine and Environmental Affairs Department. Any person desiring such a hearing must submit a written request for said hearing postmarked within five business days of the effective date of suspension. An appeal of the Director of the Marine Environmental Affairs Department's decision may be filed with the Office of the Town Manager within five days of issuance of said decision.**

Rationale- Proposed change makes it easier for Natural Resources to address frequent recreational violators using a suspension plan similar to that laid out in Sandy Neck regulations. For those larger, more serious violations §407-71 using Town Manager authority for revocation or suspension of recreational license would be utilized.