

Town of Wellfleet  
Shellfishing Policy and Regulations  
Last Amended 10/28/2008

Section 1.

- 1.1. Purpose: The Purpose of this policy statement and regulations is to assure the continuance of a healthy shellfishing industry in the Town of Wellfleet. The objective is to foster, protect and preserve the Town of Wellfleet's highly important shellfish resources and habitats, to maintain and improve conditions permitting sustainable productive shellfishing and aquaculture, for all persons legally engaged therein, and to provide appropriate protection for the reasonable and legitimate interests of all others affected by shellfishing activity in the waters of the Town of Wellfleet and the activities hereinafter provided.
- 1.2. This policy statement by the Wellfleet Board of Selectmen sets forth in part the process by which the Town of Wellfleet intends to achieve the objective.
- 1.3. These regulations are adopted by the Wellfleet Board of Selectmen, pursuant to MGL Chapter 130, Sections 52 and 57. They supplement and are consistent with State Regulations (MGL Chapter 130), which all persons must observe.
- 1.4. These regulations will be enforced by the Wellfleet Shellfish Constable, Deputy Shellfish Constable, The Wellfleet Police Department or any duly authorized agent of the Board of Selectmen of the Town of Wellfleet. Failure to adhere to these regulations can result in fine, suspension or loss of permit, or suspension or loss of license or all three.
- 1.5. The Shellfish Policy and Regulations may be amended by the Wellfleet Board of Selectmen after a duly constituted public hearing.

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Section 2.

- 2.1. Definitions - The following terms used in the following Policy and Regulations shall have the following meanings:

**Aquaculture Permit** - A certificate issued by the Division of Marine Fisheries permitting the certificate holder to sell seed shellfish.

**Basket Rake** - A hand-held implement used for the harvesting of shellfish, which is similar to but longer than a standard clam hoe and which has a basket and no more than twenty (20) teeth, and is no wider than 12 inches at its widest part, does not have a T handle, and is only to be used on foot.

**Bull Rake** - A T-handled hand-held and hauled implement used for the harvesting of shellfish. It shall be 12 inches or wider and have a fixed basket and teeth. It is only to be used out of a boat or on foot.

**Bushel** - U.S. Dry measure; 2150.42 cubic inches, or 32 quarts.

**Captain** - The master or individual in charge of a vessel

**Channel** - The area marked by U.S. Coast Guard navigation buoys indicating a navigable channel

**Clam Rake** - A hand tool, of eight (8) tines or less, used to manually bring clams to the surface of the substrate

**Commercial Harvest** - The taking and selling of shellfish for sale, trade, or other consideration

**Diving** - The use of SCUBA, surface supplied air, or snorkel

**Domiciled Resident** - A declared resident of the Town of Wellfleet. Written proof that Wellfleet is the domicile as well as the residence of the applicant shall be required. Such written proof may include address of residence, the time during which the applicant has resided at said address, and evidence of ownership or lease of said residence. Applicant may also be required to provide evidence of voter registration, automobile registration, driver's license, location of income tax filings and other relevant proof that Wellfleet has been and will continue to be the home of the applicant.

**Handpicking** - The transfer of shellfish to a container from the substrate by hand or with a hand-held tool of eight (8) tines or less

**Harvesting Area** - An area approved for the taking of shellfish

**Handpicker** - An individual who practices handpicking

**Intertidal** - of the land or area between the mean high and the mean low watermarks

**(To) Land** – To bring harvested shellfish to the Town Pier and to tie up before proceeding elsewhere. (amended 5/23/06)

**License** - A certificate issued by the Division of Marine Fisheries or the Town of Wellfleet granting to the licensee the rights to plant, grow and take shellfish within a specified area.

**License Holder** - A person, or persons, (corporation engaged in research ref. 5.1.8) holding a license issued by the Board of Selectmen of the Town of Wellfleet under the provisions of MGL Chapter 130.

**Licensee** - see License Holder (supra)

**Mussel** - A marine mollusk of the species *Mytilus edulis*

**Oyster** - A marine mollusk of the species *Crassostrea virginica*

**Permit** - A certificate issued by the Board of Selectmen of the Town of Wellfleet or their designee permitting a person to harvest shellfish and sea worms within the Town of Wellfleet.

**Petite Oysters** – Oysters whose length is between 2.5 and 3 inches. (amended 10/28/08)

**Planted Areas** - Areas in which the Shellfish Department has planted shellfish for purposes of propagation.

**Poaching** – The taking or removal of shellfish from any unauthorized area without the prior express authorization of the license holder or Shellfish Constable. Section 8.1.11 must also be observed.

**Quahog** - A marine mollusk of the species *Mercenaria mercenaria*, commonly called the hard-shelled clam.

**Quart** - U.S. Dry Measure; 67.201 cubic inches.

**Raking** - Gathering oysters and/or other materials into a pile, and then transferring this accumulation to a container, vehicle or vessel.

**Scallop** - A marine mollusk of the species *Aequipecten irradians*, commonly called Cape scallop or bay scallop.

**Scratch** - To harvest clams with the aid of a clam rake.

**Seed Permit** - A certificate issued by the Division of Marine Fisheries to license holders permitting the license holder to relay seed shellfish from one area to another.

**Soft-shell Clam (Steamer)** - A soft-shell clam of species *Mya arenaria*.

**Shellfish** - Clams, conches, mussels, oysters, periwinkles, quahogs, razor clams or razor fish, scallops, sea clams, sea quahogs, sea scallops and winkles.

**Sub-tidal** - The body of water or area below that of mean low water.

**Surf Clam (Sea Clam)** - a clam of species *Spisula solidissima*.

**Temporary Regulations** - Regulations promulgated from time to time to meet the changing status of the various areas within the waters of the Town of Wellfleet

**Tidal Lands** - Lands between the lines of the mean high and mean low tides.

**Tongs** – A hand-held and hauled implement used for the harvesting of shellfish. They have a scissor mechanism to close two baskets upon themselves.

**Waters** - Coastal waters, tidal flats, tidal creeks, and all salt or fresh waters within the boundaries of the Town of Wellfleet.

**Week** - The calendar week commencing at 00:01 A.M. Sunday and ending at 12:00 Midnight Saturday.

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## Section 3.

### 3.1. Policy - General; Non-Commercial Permits

- 3.1.1.1. Annual non-commercial resident and/or taxpayer permits valid 1 January to 31 December may be issued to any resident and/or taxpayer twelve (12) years of age or older of the Town of Wellfleet (including proven owners and year-round renters of trailers permanently situated in the Town of Wellfleet).

3.1.2. Non-commercial Permit fee schedule (amended 05/27/08)

Resident or Taxpayer	\$50.00
Resident or Taxpayer over 65 years old	10.00
Non-resident or Non-taxpayer	200.00
Eel Permit	3.00
Seasonal Non-commercial Permits (June 1 – Sept. 30)	
Resident or Taxpayer	30.00
Non-resident or Non-taxpayer	75.00
Replacement Fee	10.00

3.1.3. A special fee in an amount determined by the Board of Selectmen of the Town of Wellfleet that may be charged to a permit holder to allow the taking of shellfish from a planted area of re-laid shellfish.

3.1.4. The Board of Selectmen of the Town of Wellfleet may restrict the taking of shellfish by commercial or non-commercial permit holders in any area and in such manner as they deem expedient.

Section 4. Policy - Commercial Permits

4.1.1. A commercial permit may be issued to any person fourteen (14) years of age or older, who has been a bona fide domiciled resident (See Sec. 2 Definitions) of the Town of Wellfleet for the immediate past six (6) months or more. Residents aged fourteen (14) through sixteen (16) may be issued junior commercial permits. Any commercial permit will be revoked if the holder ceases to be a bona fide domiciled resident of the Town of Wellfleet. Commercial permits will not be issued to unnaturalized foreign-born persons who have not resided in Barnstable County at least five (5) years prior to making application.

4.1.2. Commercial Permit fee schedule (amended 05/27/08)

Resident (see 4.1.1)	\$300.00
Resident (see 4.1.1) over 65 years old	50.00
Junior Resident (see 4.1.1) Commercial	100.00
Eel Permit	3.00
Replacement Fee	10.00

4.1.3. Annual commercial permits valid from 1 January to 31 December will be issued from January 1st to April 30th of the permit year subject to a thirty (30) day review of the application. Permits will only be issued after the applicant has shown proof of valid State Commercial Permit with Shellfish endorsement and a valid Shellfish Transaction Card. Only in the year in which a person reaches fourteen (14) years of age may that person apply for a junior commercial permit at any time after the occurrence of that person's birthday. (amended 05/27/08)

4.1.4. The Board of Selectmen may at its discretion grant permits after April 30th if the applicant demonstrates:

- a) that unusual circumstances existed which would reasonably excuse a failure to file an

application prior to May 1<sup>st</sup>, and

- b) that a manifest injustice and substantial hardship would be caused by the refusal of a permit, and
- c) that the granting of the late permit would not affect the opportunity of the timely applicants to harvest a reasonable quantity of shellfish.

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## Section 5. Policy - Licensed Areas

- 5.1.1. The Board of Selectmen may license specific areas of the waters of the Town of Wellfleet to individuals for the purpose of granting exclusive rights to plant, grow and take shellfish from that area, said license to be subject to the provisions of MGL Chapter 130 and any terms, conditions and/or restrictions set forth in these regulations and town bylaws or regulations and any specific conditions or restrictions set forth in the license. This license does not grant any property rights. Any use of this license for other than digging and taking of shellfish upon privately owned property may not proceed over the objection of the property owner. Pursuant to Massachusetts General Laws Chapter 130, Section 57, the licensee does not impair the private rights of any person. This license does not authorize any injury to private property or invasion of private rights. The issuance of this license is not a determination of title or ownership. The licensee acknowledges, it is the responsibility of the licensee to obtain permission, if required, from the private property owner before exercising the rights conferred by this license other than for the digging and taking of shellfish. The license holder is on notice that the owners of the property described in the license may bring an action for trespass in a court of competent jurisdiction. A license holder may not rely on this license as a defense to an action in trespass.
- 5.1.2. The Board of Selectmen will accept and process applications for area licenses in accordance with MGL Chapter 130, Section 57, and the application procedure of the Town of Wellfleet, not in conflict with MGL Chapter 130, Section 57.
- 5.1.3. The Board of Selectmen may at a duly advertised public hearing declare a moratorium on license approvals at any time this action is deemed appropriate and in the best interests of the town.
- 5.1.4. Licenses issued will be issued only to bona fide domiciled residents (see Sec.2) of the Town of Wellfleet, 18 years of age or older, who have the knowledge and experience to fulfill the responsibilities specified in the license. At such time as a licensee ceases to be a bona fide resident of the Town of Wellfleet, that individual shall be removed from the license. The status of all other licensees will not change. If that licensee is the sole licensee then the license shall be deemed to have been revoked.
1. The applicant's name does not appear on any other area license
  2. The applicant must have held and used a Wellfleet commercial shellfishing permit during two (2) of the last three (3) years OR the applicant must be able to demonstrate some experience in shellfish propagation and aquaculture since 1986. This may be supported by a letter from a license holder describing the type of work performed and any other information which might be relevant.
- 5.1.5. The initial term for a new license shall be two (2) years. Provided appropriate effort has been demonstrated, the first renewal of a license may be for five (5) years, unless the licensee agrees to a

shorter term. Subsequent renewals may be for ten (10) years unless the licensee agrees to a shorter term. Renewals may be requested and acted upon only during the twenty-four (24) months immediately prior to the expiration date of the current license. The renewal period shall begin on the expiration date of the existing license.

- 5.1.6. Licenses issued under MGL Chapter 130, Section 57 by the Board of Selectmen of the Town of Wellfleet may be issued to up to four (4) individuals, 18 years of age or older, meeting the requirements set forth in 5.1.1 and 5.1.5. The Selectmen will not recognize more than four (4) individuals as licensees on any one license.
- 5.1.7. No license or licenses will be for more than seven (7) acres in total. Each person named on a license as a licensee shall be charged with the total acreage covered by that license. No license holder shall hold license for more than seven (7) acres in total. Individuals holding more than seven (7) acres prior to the adoption of this policy will not be required to accept a license for a lesser acreage, but will not be eligible for a license for any additional acreage.
  - 5.1.7.1. Any licenses issued prior to the effective date of these regulations that are not in compliance with the terms set forth in Section 5.1.7, will remain valid, and will be allowed to continue in force according to the existing terms and conditions of said license.
- 5.1.8. The Selectmen may issue a license to an individual or an institution (including a corporation) which proposes to conduct aquacultural research and development projects if the Selectmen feel that it is appropriate, in the best interests of the town or beneficial to the aquaculture industry. The following terms and conditions will apply:
  - 5.1.8.1. The initial term of a research and/or development license shall not exceed two (2) years. The license may then be renewed for a period of up to eight (8) years, for a total maximum of ten (10) years.
  - 5.1.8.2. The applicants shall provide a plan of the project including all aspects of the management and operations of the project to the Board of Selectmen, the Shellfish Constable and the Division of Marine Fisheries.
  - 5.1.8.3. All data and subsequent results and analyses of the project shall be made available to the Board of Selectmen, the Shellfish Constable, and the Division of Marine Fisheries at predetermined times to be established in the license.
  - 5.1.8.4. Licenses issued under this section shall not be transferable to any other individual or group.
  - 5.1.8.5. Products resulting from the exercise of this license, in excess of those required for the aquacultural research and development specified in 5.1.8 shall be turned over to the Town of Wellfleet annually, for appropriate use by the Shellfish Department.
- 5.1.9. Shellfish licenses may be suspended or revoked during their term by the Board of Selectmen only for violation of relevant Massachusetts General Laws, the Wellfleet Shellfish Regulations or the terms and conditions set forth in the license.
- 5.1.10. The Town of Wellfleet will not be held liable for any damage to a licensed area, or gear, or stock thereon, by reason of any dredging or other harbor improvements undertaken by the Town of

Wellfleet.

- 5.1.11. The Board of Selectmen of the Town of Wellfleet will license areas of publicly owned intertidal land in such a manner as will allow as many licensed areas as are economically practical for any such parcel of intertidal land approved for licensing.
- 5.1.12. Any license issued under the provisions of MGL Chapter 130, Section 57 shall, upon the death of the sole licensee, continue in full force and effect, subject to the same terms, conditions and regulations imposed by the original license, for the balance of the unexpired term as long as it does not exceed three years. This is for the use and benefit of the immediate family of the deceased licensee. For purposes of this section the term immediate family shall mean spouse, son, daughter, mother, father, brother and sister of said deceased licensee. This section shall apply only when the deceased is the only licensee named on the license at the time of the death of said licensee.
- 5.1.13. There shall be minimum levels of investment and production required in order to retain an area license. These shall be:
  - 5.1.13.1. During the first and second year after the date of issuance of the license a total of \$1000 per acre shall be spent on seed as well as gear for the area, and it shall be evident on the area that this effort of improvement has taken place.
  - 5.1.13.2. During the third year and thereafter there shall be a minimum production of \$500 worth of product per year from the practice of aquaculture on the licensed area, which shall be demonstrated by the annual grant report.
  - 5.1.13.3. The Constable shall have the right to waive the minimum production requirements wherein there is evidence that the failure to meet the minimum standard is due to events beyond the control of the license holder.
  - 5.1.13.4. In the event of an extension being granted to a presently licensed area, the same level of effort per acre as required above for new licensed areas shall apply to the newly licensed area.
- 5.1.14. The Shellfish Department shall make no less than one visit per year to each licensed area in the company of the license holder.
  - 5.1.14.1. Subsequent to the filing of the annual grant report, the Constable will notify any license holder who, in the opinion of the Constable, has failed to meet the minimum production requirement. The license holder has the right to appeal to the Board of Selectmen within two weeks after notification. If no appeal is filed on a timely basis, the license will be deemed forfeit.
- 5.1.15. No acreage other than that located within the confines of Wellfleet harbor, shall be counted in determining the numbers of bushels of seed which a license holder will be permitted to take.

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## Section 6. Policy Regarding Issuance of Shellfish Grants for Areas Subdivided by the Town

- 6.1. It shall be the policy of the Board of Selectmen when exercising their discretion as the licensing authority for the issuance of shellfish grant license (s) pursuant to the applicable provisions of MGL

Chapter 130, that when areas are identified by the Shellfish Constable as potentially suitable for the location of shellfish grant(s), which areas are under the control of the Town, the Board of Selectmen shall post notice of the availability of such grants to eligible individuals (refer to Section 5 for conditions), as well as any conditions and/or limitations upon such grants. Such notice will be posted in accordance with Section 7.

6.2. Policy for Previously established Grants that Become Available

In the event that a grant previously certified by the DMF becomes available, its status shall be posted by the Shellfish Constable (as described in Section 7 in these Regulations) for a period of 30 calendar days. If more than one qualified person (see Section 5) applies to hold the license, a lottery shall be held within 14 days by the Board of Selectmen to impartially determine who shall be granted the right to use it for aquaculture. ( amended 5/23/06)

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Section 7. Policy – Posting

- 7.1.1. Copies of these Shellfish Policies and Regulations and of any supplements thereto and of any Temporary Regulations, which the Board of Selectmen of the Town of Wellfleet may from time to time publish will be posted in the office of the Selectmen of the Town of Wellfleet, the office of the Town Clerk of the Town of Wellfleet, the office of the Harbormaster of the Town of Wellfleet, the Shellfish Department notice board, and the Wellfleet and South Wellfleet Post Offices as specified in MGL Chapter 130, Section 52.

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## SHELLFISH REGULATIONS OF THE TOWN OF WELLFLEET

Section 8. General and Non-Commercial Regulations

**All fines specified in these regulations shall be enforced as per Section 14. 2nd and 3rd violation fines are for repeated occurrences within two (2) years of the original violation.**

- 8.1.1. All persons twelve (12) years old or older engaged in taking, removing, or having in possession eels, soft-shelled clams, quahogs, surf clams, sea clams, razor clams, oysters, mussels, scallops or sea worms taken from the waters of the Town of Wellfleet shall have an appropriate license or permit obtained and used only in accordance with the terms, conditions and restrictions herein set forth.
- 8.1.2. All persons taking or carrying away or having in their possession shellfish of any kind, in a boat, container or vehicle shall exhibit all such shellfish for inspection on demand by the Shellfish Constables, Police Officer or duly authorized agent of the Board of Selectmen of the Town of Wellfleet.
- 8.1.3. Individuals engaged in shellfishing, eeling or gathering sea worms must have a Town of Wellfleet license or permit prominently displayed and show the same on demand to the Shellfish Constable, Deputy Shellfish Constable, Police Officer or other duly authorized agent of the Board of Selectmen of the Town of Wellfleet.
- 8.1.4. No person who does not hold a state seed permit or an aquaculture permit shall take or have in his or her possession seed shellfish, defined as; quahogs less than one (1) inch thick across the hinge; soft-shell clams less than two (2) inches in length; oysters less than three (3) inches in length; or bay scallops without a well defined raised annual growth line. A violation of this regulation shall

exist if the take contains more than 5% seed shellfish per batch (see sec. 11.1.3).

- 8.1.5. A grant license holder may harvest and sell petite oysters (between 2.5 and 3 inches in length) only if:
  - a) they do not have a Town of Wellfleet commercial shellfish permit;
  - b) they have documented proof of purchase of seed;
  - c) they have the required amendment to their propagation permit, granted by the State, allowing them to sell petite oysters to a previously designated dealer, approved by the State;
  - d) they, or their employees (as defined in 11.1.2 and 11.1.3) or their families do not store any oysters harvested from the wild on their licensed area(s);
  - e) they are limited to selling petite oysters for a term of not less than a year, beginning with the routine issuance of an annual propagation permit from the State;
  - f) they forfeit any claim to a hardship waiver under Section 4.1.4 of the Town of Wellfleet Shellfishing Policy and Regulations. (amended 10/28/08)
- 8.1.6. The taking of any shellfish from the waters of the Town of Wellfleet by any method other than those commonly known as handpicking, the long rake, the bull rake, scratcher, tongs, clam hoe, digging, dragging or dredging (see 9.1.4), will be prohibited.
- 8.1.7. Handpicking or scratching is the only permitted method of harvesting shellfish, north of a line extending from the seaward end of the Indian Neck Breakwater (Loran Coordinates) to the large rock called Old Saw (a.k.a. Egg Island Rock)(Loran Coordinates) thence in the same direction to Great Island at Mean High Water (Loran Coordinated) except when allowed otherwise in the Wellfleet Temporary Shellfish Regulations. A license holder is permitted to use any approved method of shellfish harvesting within his or her licensed area.
- 8.1.8. The taking or possession of shellfish in excess of the legal limits established for a non-commercial license is prohibited.
- 8.1.9. The total amount of shellfish, comprising oysters, quahogs, soft-shell clams or razor clams, taken in one (1) week shall not exceed ten (10) quarts, and the total amount of mussels taken in one (1) week shall not exceed ten (10) quarts, or the total amount of scallops taken in one (1) week shall not exceed one (1) bushel, or the total amount of surf (sea) clams taken in any one (1) week shall not exceed one (1) bushel. The total number of sea worms taken in one (1) day shall not exceed twenty-four (24).
- 8.1.10. No person shall come ashore with shellfish and return to the waters of the Town of Wellfleet on the same day for the purpose of taking additional shellfish in excess of the daily permit limit.
- 8.1.11. No shellfish shall be brought ashore except in their shells.
- 8.1.12. No person shall pick, dig, pile, take or carry away any shellfish from the waters of the Town of Wellfleet, by any method whatsoever, between one half (1/2) hour before sunrise and one half (1/2) hour after sunset. (MGL Ch 130, Sec. 68)
- 8.1.13. No shellfish of any size shall be taken out of the Town of Wellfleet for the purpose of transplanting or to be placed in any waters outside the limits of the Town of Wellfleet without the proper permits.

- 8.1.14. No seed shellfish taken from waters of the Town of Wellfleet shall be shucked, sold, traded or disposed of for any consideration, except as specified on a seed permit issued by the Division of Marine Fisheries. (see sec. 11.1.3)
- 8.1.15. Except in licensed areas no shellfishing shall be carried on when the temperature is below 28 Fahrenheit, (- 2 degrees Celsius), as determined by the Shellfish Constable.
- 8.1.16. Scallop season shall open October 1st and shall close April 1st the following year, except when otherwise regulated.
- 8.1.17. No person holding a non-commercial permit shall pick, dig, take or carry away shellfish, eels or sea worms for the purpose of sale, trade or other consideration.
- 8.1.18. No oysters other than seed oysters taken under a valid permit from the waters of the Town of Wellfleet shall be planted or transplanted into the waters of the Town of Wellfleet, without the proper permits, certificates of origin, and inspection by the proper authorities.
- 8.1.19. Any unauthorized person who disturbs, poaches, steals, picks or takes any shellfish in any amount whatsoever from a licensed area legally marked in accordance with Section 10.1.8 of these Regulations and MGL Chapter 130, Section 67, shall be subject to criminal penalties and potential civil penalties and restoration of taken property as well as these specific penalties.
- 8.1.20. Horseshoe crabs shall not be intentionally killed while practicing predator control.
- 8.1.21. No person shall maintain a predator control method that will intentionally threaten any endangered species.

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## Section 9. Commercial Shellfish Regulations

- 9.1.1. No vessel shall operate a drag or dredge north of a properly marked line extending from the seaward end of the Indian Neck Breakwater (Loran Coordinates) to the large rock called Old Saw (a.k.a. Egg Island Rock) thence in the same direction to Great Island at Mean High Waters. No vessel shall operate a drag or dredge East of a line extending from the candy pole on Field Point to the boat house on Lieutenant Island, or within one hundred (100) feet of a properly marked licensed area (see sec. 10.1.9), with the exception that a license holder may drag over his own grant. (amended 08/24/04)
- 9.1.2. No vessel which operates a drag or dredge shall have more than one drag or dredge in a position ready to use at any time.
- 9.1.2.1. No drag or dredge with or without teeth having a width greater than fifty (50) inches shall be used in Wellfleet Harbor. Any drag or dredge used for the purpose of taking oysters, shall have exposed teeth at least one and one half (1 ½) inches in length as measured from the bottom of the bar, and separated by no more than four (4) inches along the entire exposed portion of the bar which must be in contact with the bottom.
- 9.1.3. No vessel shall land more than twenty per cent (20%) of the permitted daily catch of any species of shellfish, so-called by-catch, other than such species which the gear used is designed to harvest.

- 9.1.4. Hydraulic harvesting of quahogs from vessels by means of a drag provided with a blade no longer than eighteen (18) inches and with hoses of a diameter no greater than four (4) inches for the ejection through nozzles of water under pressure is permitted in the sub-tidal area south of a line extending from the seaward end of the Indian Neck Breakwater to the large rock called Old Saw (a.k.a. Egg Island Rock) thence in the same direction to Great Island at Mean High Water (Loran Coordinates) to the Eastham/Wellfleet town line, but not within one hundred (100) feet of the buoyed channel nor of a buoyed licensed area, but only in such areas and during such periods as may be specified by Temporary Regulations issued by the Board of Selectmen of the Town of Wellfleet.
- 9.1.5. No holder of a commercial permit shall take shellfish from an area reserved for the holders of non-commercial permits.
- 9.1.6. No person engaged in commercial shellfishing or aquaculture shall operate on any tidal beach or flat or other land below the mean-high water line a motorized vehicle at a speed in excess of fifteen (15) miles per hour or a motorized vehicle which is dual wheeled or which has a Gross Vehicle Weight (GVW) greater than nine thousand two hundred pounds (9200 lbs).
- 9.1.7. Persons engaged in commercial shellfishing or aquaculture operating motorized vehicles on any tidal beach or flat or other land below the mean-high water line shall drive only on the foreshore of the tidal area below the high tide line but above the tidal flat, closely rounding every groin or other obstruction extending below the high water line, to a point opposite a licensed area, and thence to the licensed area. The traffic not directed to a licensed area shall be confined to the area below the high tide line above the tidal flat, closely rounding any groin or other obstruction extending below the high water line. Parking is permitted on the licensed area or in the access route to a licensed or legal harvesting area as described above.
- 9.1.8. Any vessel in the waters of the Town of Wellfleet used for commercial shellfishing employing (over the side) a drag, dredge or other gear designed for the taking of shellfish must be registered and documented in the Town of Wellfleet. The Captain of said vessel found in violation of this regulation shall be fined for each violation.
- 9.1.9. The owner of a vessel engaged in commercial shellfishing in the waters of the Town of Wellfleet involving the use of a drag, dredge or other mobile gear shall hold a valid Town of Wellfleet Commercial Shellfish Permit.
- 9.1.10. Any commercial permit holder who prepares shellfish of any kind for sale, trade or other consideration must legibly mark or tag all containers of shellfish with the name and number of the commercial permit or the name and number of the licensed area licensee at the time of the transaction.
- 9.1.11. Persons under fourteen (14) are permitted to pick, dig, or take shellfish in a commercial area while under the supervision of a parent or guardian holding a commercial permit. No shellfish may be taken in excess of the daily limit of the permit held by the parent or guardian.
- 9.1.12. All draggers engaged in shellfishing must land all catch at the Town Pier before proceeding to any licensed area unless previously inspected by the Shellfish Department. All cages of the catch to be held in wet storage must be properly tagged so as to facilitate such inspections. ( amended 05/23/06)

## 9.2. Bay Scallops

- 9.2.1. No person shall land scallops taken under a commercial permit from the waters of the Town of Wellfleet anywhere but at the Town Pier or Town Marina.
- 9.2.2. No vessel shall take more than ten (10) bushels (tied) of scallops, including shells. No more than twenty (20) bushels (tied), shells included, shall be taken by any vessel having two (2) or more permit holders on board, in one (1) day. The Captain of said vessel shall be fined for each violation.
- 9.3. Mussels
- 9.3.1. There is no limit to the taking of mussels per commercial permit per day.
- 9.4. Oysters
- 9.4.1. No more than five (5) bushels of oysters including shells, per commercial permit holder shall be taken by a vessel in any one (1) given day. No more than ten (10) bushels including shells, shall be taken by any vessel having two (2) or more commercial permits aboard in any one (1) day. The Captain of said vessel shall be fined for each violation.
- 9.4.2. No commercial permit holder shall take more than five (5) bushels of oysters, including shells, per day.
- 9.5. Quahogs
- 9.5.1. No more than fifteen (15) bushels of quahogs including shells, shall be taken by a vessel having one (1) commercial permit aboard, in one (1) day. Captain of said vessel shall be fined for each violation.
- 9.5.2. No more than twenty-five (25) bushels including shells, shall be taken in one (1) day by a vessel having two (2) commercial permits aboard. The Captain of said vessel shall be fined for each violation.
- 9.5.3. No commercial permit holder shall take by raking more than five (5) bushels of quahogs, including shells, in any one (1) day.
- 9.6. Razor Clams
- 9.6.1. No commercial permit holder shall take more than two (2) bushels of razor clams in any one day.
- 9.7. Sea Worms
- 9.7.1. No commercial permit holder shall take more than forty-eight (48) sea worms in any one (1) day.
- 9.8. Soft-shell Clams
- 9.8.1. No commercial permit holder shall take more than three (3) bushels of soft-shell clams in any one (1) day.
- 9.9. No commercial shellfish permit holder shall take shellfish in excess of the daily limit from

designated geographical area of Wellfleet Harbor, said designations to be found in Section V of the Temporary Shellfish Regulations.

9.10. All shellfish harvested in Wellfleet shall be landed in Wellfleet.

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## Section 10. Licensed Areas Regulations

- 10.1.1. The annual fee for a shellfish area license shall be \$25.00 per acre or portion thereof, as provided in MGL Chapter 130, Section 64.
- 10.1.2. Licensees shall file annual reports under oath on their activities in accordance with MGL Chapter 130, Section 65 on or before the 31st of December each year. This report must include any changes or deviations from the original plan filed with the original application or any subsequent application.
- 10.1.3. Any licensee who submits a false licensed area report in violation of MGL Chapter 130, Section 65 shall be penalized by the revocation of his or her license.
- 10.1.4. Licensees may not transfer any rights or responsibilities assigned to their license to any individual(s), except with the express consent of the Board of Selectmen of the Town of Wellfleet. Licensees shall be held responsible for any and all actions taken by any persons, employees, or contracted persons working in the licensed area. (see MGL Ch. 130, Sec. 63)
- 10.1.5. No person shall plant, transplant, sell or have in their possession seed shellfish, without first obtaining a state seed permit or an aquaculture permit, or be listed on said seed permit. Seed collected in any amount by any means from a licensed area may however, be possessed or caused to be taken or possessed exceed the amount permitted by the terms of their seed permit. Nor may any license holder in any one calendar year take or cause to be taken more than twenty-five (25) bushels of seed per acre of licensed area or fraction thereof pro rated at that rate.
- 10.1.6. No raking of seed shall be permitted except in areas specifically designated for raking by the Shellfish Constable.
- 10.1.7. No person shall harvest shellfish seed by dragging, except by the licensee within the boundaries of a licensed area.
- 10.1.8. Every licensee shall mark the corners of the area licensed under their license with buoys marked with the license number. From April 1st to November 1st, the corners shall be marked with fluorescent yellow balls, at least twenty (20) inches in circumference. Buoys shall be attached to their anchor by cables, chains or non-floating lines. Numbers shall be marked on said buoys, and shall be at least two (2) inches high and shall be black in color. Temporary buoys shall be required November 1<sup>st</sup> through April 1<sup>st</sup>. (Each day of noncompliance (seven) 7 days after a written warning by the Shellfish Constable shall constitute a separate violation.)
- 10.1.9. No licensee shall place equipment or gear within the boundaries of the licensed area that rises more than eighteen (18) inches above the grade. Spat collection devices (such as Chinese hats) are to be excluded. (Each day of noncompliance seven (7) days after a written warning by the Shellfish Constable shall constitute a separate violation.)

- 10.1.10. Every licensee shall clearly and permanently mark any and all trays, boxes, holding cars and all other aquacultural gear with the license number of the license area in a manner that is clearly visible. All gear on a licensed area must be securely fastened to the bottom or removed. All unusable gear shall be removed from a licensed area and either disposed of properly or moved to an appropriate site, not located within a protected resource area. Loose nets, twisted and damaged racks, loose envelopes and grow out bags are all included. For on-site winter storage, racks must be sunk or pumped into the bottom before the site becomes inaccessible due to ice; all other gear including floats, barges and moorings must be removed or relocated to an appropriate site, not located within a protected resource area. The fines for these violations are as follows. After a written warning, the licensee has 7 days to comply. After the seventh day, a fifty dollar ticket shall be issued for each day of non-compliance. After 30 days of non-compliance, the licensee shall have his/her license revoked. The Shellfish Constable shall have the authority to temporarily waive these regulations if the presence of ice hampers the ability of the licensee to immediately comply with these regulations. (amended 02/26/08)
- 10.1.11. There shall be a twenty-five (25) foot wide, or one half the distance to the adjacent licensed area if less than fifty (50) feet, buffer zone contiguous with the perimeter of any licensed area, except where two (2) licensed areas abut. It is the responsibility of the license holder to keep this road clear of any equipment or gear owned by the licensee.
- 10.1.12. No license holder shall dig, pile, take, harvest or carry away any shellfish or shell during the period from one half (1/2) hour after sunset to one half (1/2) before sunrise by any method whatsoever. In the event of impending natural emergencies due to storms, ice or the like, and only after notifying the Shellfish Constable, a licensee may engage in securing stock and gear during this time period. Licensees must notify the Shellfish Constable in advance of their intention to empty seed trays and plant out seed at such times when the extreme tides needed to conduct such activities occur during this time period.
- 10.1.13. Hydraulic harvesting gear may be utilized within the boundaries of a licensed area. However, the Shellfish Constable shall have fourteen (14) days to seek a hearing before the Board of Selectmen of the Town of Wellfleet. The Board of Selectmen of the Town of Wellfleet shall determine whether the stop order shall be made permanent. (Each day of noncompliance after a written warning by the Shellfish Constable shall constitute a separate violation.)
- 10.1.14. Any duly licensed shellfish grant holder that willfully extends, or causes to extend his grant boundaries, or allows the cultivation operation, propagation operation or product and equipment to exist beyond the duly recorded boundaries of his licensed area, the Shellfish Constable may cause the licensed area to be re-surveyed by a registered Civil Engineer, and upon discovery of the aforementioned infraction of this regulation, shall immediately forfeit said grant license. (amended 5/17/99)

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## Section 11. Seed Picking

- 11.1.1. When authorized licensed seed pickers are working in an area which is also open to the taking of adult shellfish, seed oysters are to be placed in separate containers.
- 11.1.2. All persons employed by a seed permit holder to assist in picking seed, shall be accompanied by a seed permit holder, and shall hold a Wellfleet Commercial Shellfish Permit.

- 11.1.3. Seed oyster permit holders shall register the names, addresses and commercial permit numbers of all persons employed to pick seed oysters with the Wellfleet Shellfish Department, at least seventy-two (72 hours) prior to any such person being allowed to pick seed oysters. (Form available at the office of the Shellfish Constable)
- 11.1.4. All seed oysters picked by and/or for any seed permit holder shall be transported to the proper shellfish licensed area ONLY by the vehicle or vessel listed on the state seed permit.
- 11.1.5. Seed permit holders shall keep a written log of all seed taken. This log shall include the names of all persons involved in the taking of seed oysters on any specific date as well as the amount of seed taken, and the area whence the seed was taken. This log must be produced upon demand by the Shellfish Constable, any Police Officer, or any person duly authorized by the Selectmen of the Town of Wellfleet.
- 11.1.6. Handpicking (see Section 2 Definitions) is the ONLY permitted method of taking seed oysters, except that raking (see Section 2 Definitions) may be permitted in areas specified by the Shellfish Constable. Should there be any question as to whether the harvesting method proposed falls into the category of handpicking or raking this question should be addressed to the Shellfish Constable BEFORE such method is employed.
- 11.1.7. Cultch material shall not be dumped at the designated area unless such dumping is authorized by the Shellfish Constable.

(Notice: The Board of Selectmen has, in spirit, voted to support a "seed-picking" fee to replace the present method of requiring seed picking to replace cultch. This will have to go through Town Meeting and the state legislature for approval, in which case the fee will be retroactive. If it fails, seed pickers will still be required to replace their cultch.)

\*\*\* Refer to Temporary Shellfish Regulations Section IV for additional regulations.

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## Section 12. Eeling

- 12.1.1. No person shall take, remove, catch or have in his or her possession eels from the waters of the Town of Wellfleet without having first obtained an eeling permit from the Board of Selectmen of the Town of Wellfleet. This permit shall be plainly marked with the height, color of eyes and hair of the permittee and with any other identification deemed expedient by the Board of Selectmen of the Town of Wellfleet.
- 12.1.2. No eels shall be taken within the Town of Wellfleet by the use of a fyke, unless a special permit for the use thereof is obtained.
- 12.1.3. On the demand of the Shellfish Constables, Police Department or other duly authorized agent of the Board of Wellfleet, every permittee shall display in full view his entire catch of eels for examination.
- 12.1.4. Permits issued for the catching or taking of eels from the waters of the Town of Wellfleet shall be issued to Town of Wellfleet commercial permit holders for the taking of an unlimited number of eels in any one (1) day, and to Town of Wellfleet non-commercial permit holders for the taking of not more than twenty (20) pounds of eels in any one (1) day. (See 3.1.2 and 4.1.2)

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## Section 13. Shellfishing by Diving

- 13.1.1. A commercial permit holder may harvest shellfish by diving from April 1st to October 1st, south of a properly marked line extending from the seaward end of the Indian Neck Breakwater to the large rock called Old Saw (a.k.a. Egg Island Rock) thence in the same direction to Great Island at Mean High Water to the Eastham/Wellfleet town line. Shellfish harvesting by diving is prohibited north of said line at any time of the year, except as may be from time to time permitted by the Temporary Regulations.
- 13.1.2. No person may dive within one hundred (100) feet of any properly marked licensed shellfish area (see 10.1.8), except for license holders diving on their own licensed areas.
- 13.1.3. Divers with commercial permits are subject to the same daily permit limits as handpickers with commercial permits. Divers with non-commercial permits are subject to the same daily permit limits as handpickers with non-commercial permits.
- 13.1.4. All divers shall display a "diver down" flag when in the water, and must stay within one hundred (100) feet of said flag.
- 13.1.5. No commercial permit holder shall harvest shellfish by diving by any method from within the buoyed channel.
- 13.1.6. All divers shall land shellfish taken from the waters north of a line extending from the seaward end of the Indian Neck Breakwater to the large rock called Old Saw (a.k.a Egg Island Rock) thence in the same direction to Great Island at mean high water only at the Town Pier.

**Note to divers:** Divers should always check Temporary Regulations for areas which may be open to shellfishing by diving.

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## Section 14. Enforcement

- 14.1.1. The Board of Selectmen of the Town of Wellfleet or the Director of the Division of Marine Fisheries may revoke an area license in accordance with the provisions set forth in MGL Chapter 130, Sections 57 and 65.
- 14.1.2. The Town of Wellfleet Shellfish Constable, Assistant Shellfish Constable, Police Department, (including Special Officers), and any other official whom the Selectmen of the Town of Wellfleet may from time to time designate shall have the authority to enforce all sections and subsections and provision of the Town of Wellfleet Shellfish Regulations, which enforcement shall include without limitation the non-criminal disposition procedure provided in MGL Chapter 40, Section 21D.
- 14.1.3. The penalties for violation of any of these regulations shall be:
  - 14.1.3.1. A fine of \$50 for the first offense, a fine of \$150 for the second offense, and a fine of \$300 for the third offense.
  - 14.1.3.2. Additionally, holders of Wellfleet shellfish permits shall have their permit

suspended for a period of not less than three days nor more than fourteen days for the first offense, suspended for not less than fourteen days nor more than sixty days for the second offense, and suspended not less than sixty days for the third offense. In any instance where the permit was due to expire during the proposed suspension period, the suspension may be invoked during the next calendar year. Additionally, the beginning date of the suspension shall be determined by the Board of Selectmen. Furthermore, the Board of Selectmen reserves the right to revoke any such permit for particularly egregious violations and/or a pattern of abuse of these regulations. In the event that a permit is revoked, that individual may not harvest shellfish in the town of Wellfleet or be aboard any vessel which is actively engaged in shellfishing until their permit is restored, with licensed areas being the only exception. (amended 03/27/07) A public hearing will be held within 30 days to allow a permit holder to appeal the revocation or suspension of said permit. (amended 05/23/06)

14.1.3.2.1 The enforcing officer may offer the offender of any of these regulations the opportunity to immediately accept the suspension of his/her permit for the minimum specified time to begin the following calendar day. In this case, the offender must surrender his/her permit and agree in writing to the suspension. Acceptance or rejection of this offer will in no way affect the disposition of the fine.

14.1.3.3 Lastly, the enforcing officer may, at his/her discretion, seize and dispose of any unlawful catch as per Massachusetts General Laws, Chapter 130, Section 12.

14.1.4. All sections of Chapter 130 of the Massachusetts General Laws, which apply to shellfish, shall be enforced.

14.1.5. All regulations and specifications made prior to the date of acceptance of these regulations are hereby revoked.

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

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## **IMPORTANT**

The use of vehicles to access publicly or privately owned licensed areas shall be in accordance with the applicable sections of the Town of Wellfleet Shellfish Policies and Regulations, the Bylaws of the Town of Wellfleet, and conditions which may be imposed by the Conservation Commission.