

DRAFT DOCUMENT
Town of Nantucket
Shellfishing Policy and Regulations
Last Amended (5/01/14)
Under Authority of Massachusetts General Law, Chapter 130
Under Authority of Chapter 122 of the Code of the Town of Nantucket

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Section 1 – Shellfishing Policy for the Town of Nantucket/Purpose of Regulations

The purpose of these regulations is to preserve, protect and restore Nantucket’s shellfisheries, underwater and intertidal habitats within the Town of Nantucket’s jurisdiction. These regulations supplement and are consistent with the requirements of the Commonwealth of Massachusetts including Massachusetts General Law Chapter 130, Code of Massachusetts Regulations 322, the Code of the Town of Nantucket Chapter 122, the Town of Nantucket Shellfish Management Plan, the Nantucket and Madaket Harbors Action Plan, and the current Best Management Practices for the Shellfish Culture Industry in Southeastern Massachusetts, developed by Southeastern Massachusetts Aquaculture Center (SEMAC).

To implement this policy, the Board of Selectmen or their designee may restrict the taking of shellfish by commercial or noncommercial permit holders in any area or in any manner for the purpose of managing the fishery or habitats.

The waters of the Town of Nantucket that are used for commercial shellfishing and shellfish aquaculture are a unique resource, therefore the granting of commercial shellfishing permits and licenses for aquaculture are restricted to declared domiciled residents of Nantucket (See Section 4.1).

Section 2 – General Regulations (Applying to Recreational, Commercial and Aquaculture Licenses)

2.1 – License or Permit Required

All persons taking shellfish for recreational or commercial purposes shall be required to have a shellfish permit as issued by the Town of Nantucket.

2.1a – Display of license

All persons taking shellfish for recreational or commercial purposes shall be required to clearly display a shellfish permit/pin as issued by the Town of Nantucket.

2.2 – Areas where Recreational and Commercial Shellfishing May Occur

Any area within the Town of Nantucket’s waters; unless posted as closed by the Commonwealth of Massachusetts or Town of Nantucket.

2.3 – Daily Limit

No permit holder shall take shellfish or other marine organisms in excess of the daily limit.
(See individual species per permit type)

2.4 – Landing Shellfish

No shellfish shall be brought ashore except in their shells.

2.5 – Daily Time Limit

Permit holders shall be able to take shellfish from the waters of the Town by allowed methods from one half hour before sunrise to one half hour before sunset unless otherwise specified in these regulations.

2.6 – Closures and Red Flag

Closures of the shellfishery shall apply to both recreational and commercial fisheries and shall be noted by red flags as posted by the Shellfish Warden. The Red Flag will be raised at the Town Pier (located at 34 Washington St.) and Jackson’s Landing in Madaket. Other closure events for water quality or habitat preservation shall be posted by the Shellfish Warden at the specific site of the closure. All closures will be posted at the Town Pier, Natural Resources Office, and on the

Natural Resources Department webpage. Closures may be related (but not limited) to temperature or shellfish strandings.

2.7 – Temperature Restrictions

No shellfishing shall be carried on when the air temperature is below 28 degrees Fahrenheit (2 degrees Celsius), as determined by the Shellfish Warden, areas licensed for aquaculture are exempt from this regulation. A red flag will be raised at the Town Pier (located at 34 Washington St.) and Jackson's Landing in Madaket. Vessels are required to return to shore and land shellfish if the temperature dips below 28°F.

2.8 – Bay Scallop Strandings

No taking of bay scallops, either recreational or commercial shall be carried on during a red flag stranding event as determined by the Shellfish Constable.

2.9 – Poaching

Any unauthorized person who poaches or otherwise disturbs any shellfish in any amount or in any location shall be subject to criminal penalties and potential civil penalties
(See MGL Chapter 130; and Section 11. 6 Revocation of Shellfishing Permits.)

2.10 – Disturbance of licensed or closed areas

No person other than the license holder or their designee shall inspect, disturb or handle any shellfish or gear within the marked leased or closed area.

2.11 – Inspection on demand

All persons harvesting, carrying away, or otherwise having in their possession shellfish or marine organisms of any kind, in a boat, container, shanty, or vehicle shall exhibit all such shellfish for inspection by the Shellfish Wardens, Police Officers or any other duly authorized agents.

2.12 – Possession of Seed

An individual or entity must file a state scientific permit, state propagation permit, or aquaculture license with the Natural Resources Department if planning on possessing seed shellfish for any reason. A violation of this regulation shall exist if the total catch contains more than 5% seed shellfish.

2.13 – Methods of taking

The taking of any shellfish from the waters of the Town of Nantucket shall be limited to hands, dipnets, rakes and tongs, unless otherwise noted within these regulations.

2.14 – SCUBA diving and snorkeling

All persons taking shellfish using SCUBA or snorkeling shall be required to display a dive flag for each individual in the water. Flag must be within 100 feet of diver. Recreational divers and snorkelers must have a pin on their person.

2.15 – Transplanting

2.15a – Transplanting Shellfish Outside of Nantucket Waters

No shellfish of any size shall be taken out of the Town for the purpose of transplanting or to be placed in any waters outside the limits of the Town without proper permits.

2.15b- Shipping of Live Shellfish for Broodstock/Propagation Purposes

No live shellfish of any size shall be shipped outside of Nantucket for broodstock or propagation purposes until a pathology certificate is provided and permission is granted from the Board of Selectmen or its designee.

2.15c – Transplanting Shellfish into Nantucket Waters

No shellfish shall be planted or transplanted into the waters of the Town of Nantucket, without the proper permits, certificates of origin, and approval by the proper authorities.

2.15d – Harvesting Seed from the Wild Not Allowed

The taking of seed is prohibited without the proper permits and approval by the proper authorities.

2.16 By-Catch

No by-catch of any species in excess of 5% of the licensed targeted shellfishery shall be allowed for commercial purposes. Any by-catch that is less than 5% of the total catch must be in season

according to the Division of Marine Fisheries and the Town of Nantucket. If allowable by-catch is to be sold commercially, you must have a commercial license for that species.

2.17 Catch Reports Provided to the Town

2.17a-Commercial Catch Reports: Holders of Commercial Shellfish Permits shall submit a monthly catch report to the Shellfish Warden, on forms provided. It shall be the responsibility of the permit holder to insure that he/she submits the required Catch Report no later than the fifteenth(15) day of the month following the month for which such report is being made:(i.e. December 15,January 15, February 15, March 15, and April 15).Failure to submit a catch report shall be a violation of the Town of Nantucket.

2.17b-Recreational Catch Reports: All recreational shellfish permit holders shall file an annual catch report with the Town, stating the amount, species, and place of shellfish harvested, for the twelve months ending on the preceding March 31. A new permit may not be issued until the catch report has been completed by the permit holder.

Section 3– Recreational (Non-commercial) Shellfishing

3.1 – Permits

The recreational harvest of shellfish requires all individuals age 14 or older to obtain a recreational shellfish permit through the Town of Nantucket. All children participating in shellfish harvesting under the age of 14 must be accompanied by a valid permit holder. Shellfish taken by a child under the age of 14 are included in the catch limit of the permit holder.

3.1a- Town of Nantucket Recreational Shellfish Licenses are not transferrable or subject to refunds

3.1b – Annual Permits (April 1 – March 30)

Resident	\$25.00 (\$35.00)
Resident over 60	Free (Lifetime permit)
Non-Resident (all ages)	\$100.00 (\$125.00)
Non-Resident (all ages) - weekly	\$50.00
Replacement fee	\$5.00

*All fees are to be set by the Board of Selectmen

**Residency requirements apply for residency fees (See Section 4.1.a)

3.2 – Cannot harvest for commerce

No person holding a recreational permit shall harvest shellfish, eels or sea worms for the purpose of sale, trade or other consideration.

3.3 – Harvest criteria by species

Measurement requirements

3.3 – Recreational Harvest criteria by species

Species	Season	Days	Limit	Size and Special Considerations
Bay scallops	Open October 1 – March 31	Wed. – Sun.	1 bushel per week	Must possess a well defined growth ring. Exception: Bay scallops that have a well-defined raised annual growth line located less than 10mm from the hinge of the shell, shall be lawful to harvest and possess if the shell height is at least 63.5mm or 2.5"
Quahogs	Year round	Daily	1 – 10 quart bucket/day; no more than 1 bushel/week	1" thick at hinge
Soft-shell Clams	Closed June 15 th - Sept. 15	Sunday Only	1 – 10 quart bucket	2" in length Note: undersized clams must be replanted neck upright covered with a layer of sand.
Razor Clam	Closed June 15 th - Sept. 15	Sunday Only	1 – 10 quart bucket	2" in length Note: undersized clams must be replanted neck upright covered with a layer of sand.
Blue Mussel	Year round	Daily	1 bushel/week	2" in length Note: can be taken by one standard bay scallop dredge outside of Eelgrass areas.
Oysters	Year round	Daily	0.5 bushel/week	3" in length
Conch	Closed Dec.16- April 14	Daily	1 bushel/week	2.75" in width
Blue Crab	Closed January 1- April 30	Daily	25 crabs/day	5" from spine to spine Note: Hand or dip net only – State permit required for other methods of taking
Horseshoe crabs				Prohibited
Green Crab				In order to harvest green crabs you must obtain a Letter of Authorization (LOA) from DMF
Eels	Year round	24 hours/day	50/day	6" minimum Note: can be taken by gigging or by dip net 1.5" mesh netting or bigger; Requires state recreational saltwater fishing license
Other shellfish (limpets, periwinkles, blood arks, sea clams, sea quahogs, sea scallops, winkles)				May be taken in accordance to the laws of Massachusetts-see state regulations

Section 4-Commercial Shellfishing

4.1 Eligibility for All Commercial Shellfishing Permits

4.1.a: Must meet residency requirements: A declared resident of the Town of Nantucket: Written proof that Nantucket is the domicile as well as the legal residence of the applicant shall be required to the satisfaction of the Board of Selectmen or their designee. Proof of legal residence may include voter registration, automobile registration, driver's license, income tax filings, census data, or verification information as deemed necessary by the issuing agency. To qualify as a resident under these regulations an individual must have maintained that residence for one full year. Any commercial permit will be revoked if the holder ceases to meet the residency requirement for the Town of Nantucket.

4.1.b: Applicant must be 14 years of age or older.

4.1.c: Minors under fourteen (14) without a permit: Person under fourteen (14) are permitted to harvest shellfish in a commercial area while under the supervision of a parent or a 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.

4.1.d: Permits will only be issued after the applicant has shown proof of having a valid State Commercial Permit with a shellfish endorsement and a valid Shellfish Transaction Card from the DMF **(CMR 322 7.01 (2) g,i,k)**

4.1. e.: Unnaturalized Foreign Born Persons: Commercial permits will not be issued to those who have resided on Nantucket for at least five (5) years prior to making an application **(MGL Chapter 130; Section 55)**.

4.2: Harvest must be tagged: Each day at the time of harvest, any commercial permit holder who has shellfish of any kind for sale, trade or other consideration, must legibly mark all containers of shellfish using legal tags. **(MGL Chapter 130; Section 81/83)**.

4.3 Commercial Species Shellfish Permits (other than Bay Scallops): Commercial Permits for Quahogs, Blue Mussels, and Conchs/Whelk shall be filed with the Town of Nantucket or its designee on an annual basis and shall be valid for one (1) year from date of approval.

4.4 Commercial Permit Required for Dragging/Dredging: The owner or operator of a vessel engaged in commercial shellfishing in the waters of the Town of Nantucket involving the use of a drag, dredge, or other mobile gear, shall hold a valid Town of Nantucket Commercial Shellfishing Permit.

BAY SCALLOP REGULATIONS (Commercial)

4.5 Commercial Bay Scallop Permit Requirements

4.5.a: Commercial Bay Scallop Applications and Commercial Scallop Apprentice Applications must be filed and paid in full with the Nantucket Police Department prior to 5:00 pm on March

31st for the commercial season beginning the following November 1st and lasting through March 31st of any given year.

4.5. b: Late Applicants: Applications for Commercial Scalping or Commercial Scallop Apprentices filed after 5:00 pm on March 31st will not be valid for scalloping until December 1st or as of the 30th day after the date submitted, whichever is later. No waivers will be granted.

4.5. c: Commercial Bay Scallop Permits shall be issued for a period of one year from April 1.

4.6 Apprentice Commercial Bay Scallop Permit Requirements

4.6.a: Must meet residency requirements.

4.6.b: All applicants for a commercial scallop permit that do not have a history of being issued such a permit from the Town of Nantucket will be issued an "apprentice permit." Apprentices are required to scallop with a valid commercial scallop permit holder that agrees to participate in the apprentice program for forty (40) active fishing days. Apprentices and their mentors must attend a pre-season workshop with the Department of Natural Resources. After providing proof of apprenticeship completion to the Department of Natural Resources and the Harbor and Shellfish Advisory Board, the apprentice will be issued a valid commercial scallop permit. For all other purposes, the holder of an apprentice permit will be considered a fully permitted commercial scallop fisherman during the term of the apprenticeship and thereby bound by all applicable laws and regulations.

4.7 No Transfer or Refunds for Town of Nantucket Commercial Shellfish Permits: No transfers or refunds of Town of Nantucket commercial shellfish permits will be granted.

4.8 Commercial Bay Scallop Season and Days: The Board of Selectmen shall allow the taking of bay scallops for commercial purposes from November 1-March 31 on Monday-Friday only, with the exception of Christmas Day. When Christmas falls between Monday-Friday of any given year, scalloping shall be allowed the following Saturday. Any alteration to these dates shall be done in accordance to **Ch.122, Section 122-9, Code of the Town of Nantucket**. The Board of Selectmen may grant permission for the collection of scallop seed outside the commercial season for the purpose of moving seed.

4.9 Commercial Bay Scallop Daily Start Time and Landing Hours: Dredges may be deployed between the hours of 6:30 am and 4:30 pm. All commercial bay scallop boats must be at off-loading points by 4:30 pm.

4.10 Returning to Shore to Pick Up Cullers: A license holder may return to shore to pick up a culler but no more than 2.5 bushels of bay scallops may be on board when the culler boards the vessel.

4.11 Returning to Shore for Other Reasons With the Intention of Resuming Scalping on the same Day: License holder must notify the shellfish warden if he/she plans to resume so that the boat may be checked upon arrival.

4. 13 Transferring of Scallops: No transferring of catch from one boat to another.

4.14 Commercial Bay Scallop Limits: The Board of selectmen shall allow the taking of 5 level bushels (shells included) in “town approved boxes” per commercial bay scallop permit. Each boat may have a maximum of 10 level bushels harvested with two (2) valid commercial bay scallop permit holders on board.

4.15 Bay Scallop Size Harvest Criteria: (322 CMR.6.11): No person shall land or possess bay scallops without a well defined growth line and that growth line shall measure at least 10 millimeters from the hinge of the shell. *Exception: Bay Scallops that have an annual growth line located less than 10 millimeters (mm) from the hinge of the shell, shall be lawful to harvest if the shell height is at least 63.5 millimeters (mm) or 2.5 inches.*

4.16 Use of Dredges for Commercial Bay Scallops: Dredges may not be used before 6:30 am or after 4:30pm on any given scalloping day. The weight of any given dredge is restricted to 35 pounds (lbs). The use of two or more dredges connected by an iron bar or any similar device is prohibited. No dredge or dredges greater than twenty-eight inches (28”) will be permitted. Power-hoisting of dredges is permitted provided no dredge is more than 28” wide, seven (7) rings deep, and the net on the dredge is not over eighteen (18) mesh long.

4.17 Landing Location of Bay Scallops: All bay scallops harvested in Nantucket waters shall be landed in Nantucket and catch shall remain in boxes.

Quahog Regulations (Commercial)

4.18 Commercial Quahog Harvesting Days/Hours: Quahogs may be harvested daily from ½ hour before sunrise to ½ hour before sunset.

4.19 Commercial Quahog Limit: No more than twenty (20) bushels including shells in town approved boxes shall be taken per permit per day. If there are two (2) commercial permits on board, then 40 bushels may be harvested.

4.20 Quahog Size Harvest Criteria: No person shall take or have in his possession quahogs less than one inch (1”) thick at the hinge.

4.21 Commercial Harvest Methods: Hand collecting and rakes shall be allowed provided the teeth spacing on rakes is a minimum of one inch (1”) and basket openings are a minimum of 15/16” inches across. All other methods of harvesting quahogs, including dredging, must be pre-approved in writing by the Town of Nantucket or its designee.

Blue Mussel Regulations (Commercial)

4.22 Commercial Blue Mussel Harvesting Days/Hours: Blue Mussels may be harvested daily from ½ hour before sunrise to 1/2hour before sunset.

4.23 Commercial Blue Mussel Limit: No more than ten (10) bushels including shells in town approved boxes shall be taken per permit per day. If there are two (2) commercial permits on board, then 20 bushels may be harvested.

4.24 Blue Mussel Size Harvest Criteria: No person shall take or have in his possession blue mussels less than two inches (2”) in length.

4.25 Commercial Harvest Methods: Hand collecting, rakes, tongs. All other methods of harvesting blue mussels, including dredging, must be pre-approved in writing by the Town of Nantucket or its designee.

Conch/ Whelks (Commercial)

4.26 Commercial Conch/Whelk Harvesting Season/Days/Hours: Conchs/Whelks may be harvested from April 15-December 15, daily from ½ hour before sunrise to 1/2hour before sunset.

4.27 Commercial Conch/Whelk Limit: 200 Tagged Pots

4.28 Conch/Whelk Size Harvest Criteria: Currently 2 ¾" at the greatest width to be raised 1/8 " per year to the optimal size of 3 ½". (First increase to be implemented by the DMF for the 2014 season).

4.29 Commercial Conch/Whelk Harvest Methods: Hand collecting, rakes, and tongs. Pots are limited to state permit holders.

4.30 Town Permit Required for Commercial Conch/Whelk Harvest in Town Waters: A town permit is required to commercially conch within Nantucket and Madaket Harbors. The boundary line for Nantucket Harbor will be from the end of the east jetty to the end of the west jetty. The boundary line for Madaket Harbor is from eel point to Ester's Island. (See map for details section 10).

4.31 Prohibition of Harvest: Commercial harvest of whelks/conch prohibited every other year. A schedule of closures will be approved by the Town of Nantucket or its designee.

4.32 Maximum Allowable Pots in Nantucket and Madaket Harbors: The maximum allowable pots in Nantucket and Madaket Harbor combined will not exceed 90 pots. Tags will be issued in equal number amongst permit holders and are transferrable.

Other Shellfish Species (Commercial)

4.33 Other shellfish or crab species shall not be taken for commercial purposes from the waters of the Town of Nantucket without the express written permission of the Natural Resources Department, Harbor Shellfish Advisory Board, and the Board of Selectmen.

4.34 Town of Nantucket Commercial Permit Fees

Bay Scallop	\$250.00
Quahog	\$150.00
Blue Mussel	\$150.00
Conch/Whelk *	\$150.00

*Closed for new entries

4.35 Commercial Seasons, Days, Limits and Size Restrictions

Species	Season	Daily Harvest Limit	Days/Hours	Size Restrictions
Bay Scallops	November 1-March 31	5 level bushels per permit (2 permits max per boat)	Monday –Friday 6:30am-4:30pm	Must possess a well defined growth ring. Exception: Bay scallops that have a well-defined raised annual growth line located less than 10mm from the hinge of the shell, shall be lawful to harvest and possess if the shell height is at least 63.5mm or 2.5"
Quahogs	Year Round	20 bushels per permit (2 permits max per boat)	½ hr before sunrise-1/2 hour before sunset	Must be one inch (1") thick at hinge
Blue Mussels	Year Round	10 level bushels	½ hr before sunrise-1/2 hour before sunset	Must be two inches (2") in length
Conchs/Whelks	April 15-December 15	No Limit (200 pots)	½ hr before sunrise-1/2 hour before sunset	Must be 2.75"

Section 5 : Aquaculture

5.1 Issuance of Shellfish Aquaculture Licenses (Grants) for Areas Surveyed and Subdivided by the Town. Once areas are identified by the Natural Resources Department as potentially suitable for the location of shellfish aquaculture, and the areas are under the control of the Town, the Board of Selectmen may exercise their discretion as the licensing authority for the issuance of license/s for shellfish aquaculture (grants) in compliance with [MGL Chapter 130](#).

5.2 Previously Established Grants that Become Available

In the event that a licensed aquaculture area previously certified by the DMF becomes available, it will be considered on whether it should continue for the purpose of aquaculture, and if so, offered first to the Town of Nantucket for propagation use, and if not needed, the next in line on the waiting list of qualified approved applicants shall notified by the Natural Resources Department. The Board of Selectmen shall hold a public hearing determine who shall be granted the right to use such available acreage for aquaculture.

5.3 Annual License Fee and Due Date

The annual fee for an aquaculture license to be paid to the Town by each licensee shall be no less than \$25.00 per acre (or portion thereof) per licensee, as required by [MGL Chapter 130; Section 64](#). The fee shall be due no later than March 31 of any given year.

5.4 Location of Areas Licensed for Aquaculture (Grants)

Grants are located in the following areas:

Area 1: Head of Harbor (60 acres)

Area 2: Coskata Pond (10 acres)

Area 3: Pocomo Meadows (6 acres)

Area 4: Coskata entrance (12 acres)

Area 5: Polpis Harbor (12 acres)

*Approval of the proposed licensed areas shall be determined by the Natural Resources Department, Harbor and Shellfish Advisory Board, and ultimately the Board of Selectmen with appropriate regard for reasonable navigational and recreational/commercial interest in the areas concerned.

5.5 Conditions for Use of Area Licensed for Aquaculture

The Board of Selectmen may license specific areas beneath the waters of the Town to individuals for the purpose of granting exclusive rights to plant, grow and harvest shellfish from that area. Said license is subject to the provisions of **MGL Chapter 130**, those set forth in current regulations of the Division of Marine Fisheries, these regulations or other town bylaws, as well as any specific conditions or restrictions set forth in the license by the Board of Selectmen.

5.6 Process for Approval of Aquaculture Licenses

The Board of Selectmen or its designee will accept and process applications for area licenses in accordance with **MGL Chapter 130; Section 57**, and the application procedure of the Town, specifically the Natural Resources Department.

5.7 Moratorium on Aquaculture Licenses

The Board of Selectmen may at a duly advertised public hearing declare a moratorium (a time-specific closure) on license approvals at any time this action is deemed appropriate and in the best interests of the fishery and the environment.

5.8 Issuance of Licenses for Aquaculture

Domiciled Residents: Licenses issued will be issued only to domiciled residents (See Sec.1 Definitions) of the Town, 18 years of age or older, who have the knowledge and experience to fulfill the responsibilities specified in the license, provided that the applicant has held and used a Nantucket commercial shellfishing permit during two (2) of the last three (3) years OR the applicant can demonstrate some experience in shellfish propagation and aquaculture. 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.

*At such time as a licensee ceases to be a domiciled resident of the Town that individual shall be removed from the license and the waiting list.

5.9 Renewal of Aquaculture Licenses

The initial term for a new license shall be two (2) years. Provided appropriate effort has been demonstrated, as required, the first renewal of a license may be for up to 10 years, unless the licensee agrees to a shorter term. Renewals may be requested and acted upon only during the (6) months immediately prior to the expiration date of the current license. The renewal period shall begin on the expiration date of the existing license.

5.10 Working of Grants by Non-Licensees

All individuals authorized by a licensed grant holder to work the grant in the absence of a licensed grant holder must be registered with the Shellfish Department. Licensees are responsible for the actions of all such employees or otherwise affiliated persons while they are working on the grant designated by their registration.

5.11 Limit on Size of Grant

No licensee shall hold a license for, or have use of, more than (1-4)acres (depending on availability) in during lease years 1-3 and upon good standing and demonstrated need for expansion may apply for(1-6) more acres but not to exceed 10 acres total per lease. Special consideration may be given by the Board of Selectmen or its designee for earlier expansions if environmental conditions prohibit or alter production plans as originally proposed.

*Each person named on a license as a licensee shall be charged with the total acreage covered by that license.

5.12 Rights of Use and Transfer

Licensees shall have the exclusive use of the area described in their license for the purpose of aquaculture, for the duration of their terms. No other individual may use the license without the express permission of the licensee(s).

Licensees may transfer the rights or responsibilities assigned to their license to any other individuals, companies or corporations by vote of the Board of Selectmen. [\(See MGL Chapter 130; Section 58\)](#)

5.13 Inheritance of Rights to Use an Aquaculture License

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 or one year, whichever is longer. 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.

5.14 Liability of the Town

The Town 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.

5.15 Evidence of Productivity: Shall be defined as listed below in “Minimum Levels of Production”.

5.16 Minimum Levels Production

There shall be minimum level of shellfish production required in order to retain an aquaculture license. This shall be: a minimum inventory maintained of 10,000 shellfish per acre. These standards are subject for review by the BOS or its designee and may be amended.

5.17 Failure to Meet Production Levels

Failure of the licensee/s to meet the specified production level for any three (3) consecutive years may result in the forfeit of the aquaculture license and licensed area, as stated in [MGL Chapter 130; Section 65](#).

5.18 Waiver of Production Requirements

The Natural Resources Department shall have the right to waive the minimum production requirement when there is evidence that the failure to meet the minimum standard is due to events beyond the control of the license holder.

5.19 Extension of or Addition to Licensed Area (Grant): Investment and Production

In the event of an extension being granted to a presently licensed area, the same level of effort per acre for the newly licensed, area is required as described above in Sections

5.20 Annual Reports

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. The report must include any changes or deviation from the original plan filed with the original application or any subsequent application

5.21 Penalization for False Report

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.

5.22 Notification of Failure to Meet Minimal Requirements

Subsequent to the filing of the annual report, the Natural Resource Department will notify any license holder who, in the opinion of the town, has failed to meet the minimum requirements. 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 forfeited.

5.23 Annual Inspection of Each Grant

The Natural Resources Department shall make no less than one visit per year to the site of each licensed area in the company of the license holder.

5.24 Required State Seed Permit

No person shall harvest, plant, transplant, transport, sell or otherwise have in their possession seed shellfish, without first obtaining a state seed permit from the Massachusetts DMF, as required by [MGL Chapter 130, Section 80 and CMR 322, Section 15.04\(b\) 1](#)

5.25 No Lethal Predator Control Measures

It shall be unlawful to use lethal means to control or exclude predators or other organisms from any area used for aquaculture. Non-lethal enclosures, including, but not limited to, nets, fences, bubble curtains and noise may be used, if approved for a specific site and purpose. Invertebrate predators, pests and fouling organisms may be removed manually from an aquaculture site and disposed of in a lawful manner ([CMR 322, Section 13.7.2](#)).

5.26 No Killing of Horseshoe Crabs On Grant

Horseshoe crabs shall not be intentionally killed while practicing predator control.

5.27 No Harm to Endangered Species

No person shall maintain a predator control method that will intentionally threaten any endangered species.

5.28 Removal of Bay Scallop Seed From Licensed Area

In the event that a significant amount of bay scallop seed sets within the boundaries of a licensed aquaculture lease, every effort shall be made to remove and relocate the seed by the licensee and the Department of Natural Resources.

5.29 Grants Shall Be Marked

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. Winter sticks shall be required from November 1 through April 1.

5.30 Marking of Gear

Every licensee shall clearly and permanently mark any and all trays, boxes, holding cars and all other aquaculture gear with the license number of the license area in a manner that is clearly visible.

5.31 Gear Must be Secured

All gear on licensed areas must be securely fastened to the bottom or removed. All unusable gear, including loose nets, twisted and damaged racks, loose envelopes, grow out bags and fastening devices must be removed from a licensed area and either disposed of properly.

5.32 Exception for Ice in Harbor

The Shellfish Constable shall have the authority to temporarily waive these regulations if the presence of ice hampers the ability of a licensee to immediately comply with these regulations.

5.33 Fines for Gear Violations

After receiving 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 noncompliance. After 30 days of non-compliance, the licensee shall have his or her license revoked.

5.34 Hydraulic Harvesting of Shellfish from Grant Areas

The use of hydraulic harvesting gear for the purpose of harvesting shellfish from within the boundaries of a licensed area is permitted under the following conditions and with the following restrictions:

- a) Devices used shall be for the hosed ejection of water under pressure into a shellfish bed;
- b) Pressure pumps shall not exceed five (5) horsepower as rated by the manufacturer;
- c) Noise control devices (i.e. mufflers) shall be in place and in good repair at all times;
- d) Not more than one device may be used on any grant at any time
- e) Hours of operation shall be between 7:00 a.m. and ½ hour before sunset;
- f) The Natural Resources Department shall have the authority to direct an individual involved in the use

of such equipment to cease and desist if they feel that there is a problem that necessitates such action. Any individual so ordered shall have the right to appeal the decision to the Board of Selectmen, at their first scheduled meeting after the service of such order.

5.35 Extension of Acreage Without Permission

No aquaculture license holder may willfully extend or cause to extend his or her grant boundaries, or allow cultivation, operation, propagation or products and equipment to exist beyond the duly recorded boundaries of his or her licensed area. The Natural Resources Department may cause a licensed area to be re-surveyed by a registered civil engineer, in the event that the assigned boundaries of an aquaculture license are called into question. If a violation of this section is then established, the aquaculture license of the individual guilty of the infraction shall then be revoked.

5.36 Disturbance of Grant by Other Than the Licensee and (MGL Chapter 130; Section 57, Section 63 and Section 67)

5.37 Abandonment or Default of Aquaculture Lease: Leaseholder is required to remove all personal property from the licensed area at his/her cost. If gear is not completely removed, the Town of Nantucket may remove the gear at the expense of the leaseholder.

5.38 Adherence to All State Vibrio Protocols

All licensed aquaculture growers must adhere to all state policies regarding vibriosis and the harvest of shellfish

Section 6. Scientific Research

6.1 Research and Propagation Projects/Plans involving Town Waters (Non-Commercial)

The applicants shall provide a plan of the project including all aspects of their backgrounds, intended management and operations of the project to the Natural Resources Department, Shellfish Harbor Advisory Board, and if appropriate, the Board of Selectmen 3 months prior to the start of the project.

6.2 Research License

Researchers are required to obtain the necessary permits and approvals required for scientific collection or shellfish propagation from the Town of Nantucket and the Division of Marine Fisheries.

6.3 Dissemination of Data and Results

All data and subsequent results and analyses of the project shall be made available to the Natural Resources Department, Shellfish Harbor Advisory Board, and the Board of Selectmen and the Division of Marine Fisheries at predetermined times to be established in the plan of project.

6.4 Excess Research Product Returns to Town (Non-Commercial)

Shellfish products resulting from the exercise of these approvals and permits, in excess of those required for the aquaculture research and development shall be turned over to the Town of Nantucket annually, for appropriate use by the Natural Resources Department.

Section 7 – Enforcement

7.1-Enforcement Personnel: In compliance with Chapter 122 § 122-16 of the Code of the Town of Nantucket the Shellfish Warden as designated by the Board of Selectmen is the primary enforcement personnel. The Board of Selectmen shall assign any other personnel or deputies as they see fit for shellfish enforcement.

7.2-Penalties: Recreational and Commercial Violations and the associated penalties are listed in the tables below. Any penalty may be appealed to the Board of Selectmen within 30 days of the issuance.

7.3-Penalty Fees: Penalties must be paid in full with a receipt provided to the Natural Resources Department.

7.4-Disposition of Unlawful Catch: All confiscated catch will be documented and photographed before putting unlawful shellfish back into the water by the Shellfish Warden ([MGL Ch.130; Section 12](#))

7.5-Suspension: Suspension applies to open fishing days only

7.6 Recreational Violations

Violation	1 st Offense	2 nd Offense	3 rd Offense	Final Offense
No Town License on Record	\$125* loss of catch and cessation of shellfishing for the day	\$250 and loss of catch and cessation of shellfishing for the day	\$500 and loss of catch and cessation of shellfishing for the day	\$1000 and loss of catch and cessation of shellfishing for the day
Refusal of Inspection	\$250	\$500	\$1000	\$1000 and loss of license
Over Limit for the day/week	\$125* (loss of catch)	\$250 (loss of catch)	\$500 (loss of catch)	\$1000 (loss of catch)
Shellfishing in Closed Areas	\$125*	\$250	\$500	\$1000
Taking of Undersized Shellfish	\$125* (loss of catch)	\$250 (loss of catch)	\$500 (loss of catch)	\$1000 (loss of catch)
Taking Shellfish on Closed Days/Hours	\$125* (loss of catch)	\$250 (loss of catch)	\$500 (loss of catch)	\$1000 (loss of catch)
Taking Shellfish Out of Season	\$125* (loss of catch)	\$250 (loss of catch)	\$500 (loss of catch)	\$1000 (loss of catch)
Taking of Shellfish Using Unapproved Methods	\$125* (loss of catch)	\$250 (loss of catch)	\$500 (loss of catch)	\$1000 (loss of catch)
No Pin Displayed	\$25* loss of catch and cessation of shellfishing for the day	\$50 loss of catch and cessation of shellfishing for the day	\$75 loss of catch and cessation of shellfishing for the day	\$100 loss of catch and cessation of shellfishing for the day
No Dive Flag Displayed	\$25*(cessation of shellfishing for the day)	\$50(cessation of shellfishing for the day)	\$75(cessation of shellfishing for the day)	\$100(cessation of shellfishing for the day)

Shipping Live Shellfish Off-Island without permission for purposes other than consumption (i.e. Broodstock or Propagation)	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits
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*A verbal warning may be given for the first offense at the discretion of the Shellfish Warden

7.7 Commercial Violations

Violation	1 st Offense	2 nd Offense	3 rd Offense	4 th Offense
Refusal of Inspection	10 Days off and confiscate catch	30 days off and confiscate catch	60 days off and confiscate catch	1 year off and confiscate catch
Seed >5% and undersized shellfish	1 Day off and confiscate catch *1 st Offense in subsequent years=5 days off	10 days off and confiscate catch	30 days off and confiscate catch	1 year off and confiscate catch, re-apprentice, and cant purchase license until suspension is up
Red Flag Fishing	1 Day off and confiscate catch	10 days off and confiscate catch	30 days off and confiscate catch	1 year off and confiscate catch, re-apprentice, and cant purchase license until suspension is up
Taking of Shellfish Using Unapproved Methods	1 Day off and confiscate catch	10 days off and confiscate catch	30 days off and confiscate catch	1 year off and confiscate catch
Fishing on a Suspended License	10 days off and confiscate catch	30 days off and confiscate catch	60 days off and confiscate catch	1 year off and confiscate catch
Shellfishing in Closed Areas	1 Day off and confiscate catch	10 days off and confiscate catch	30 days off and confiscate catch	1 year off and confiscate catch
Taking Shellfish on Closed Days/Hours	1 Day off and confiscate catch	10 days off and confiscate catch	30 days off and confiscate catch	1 year off and confiscate catch
Poaching (From Aquaculture Lease)	subject to criminal penalties and	subject to criminal penalties and	subject to criminal penalties and	subject to criminal penalties and
Lack of Proper	confiscate	confiscate	confiscate catch	confiscate catch/

Permits	catch and \$50 fine	catch and \$150 fine	and \$300 fine/and 10 days off	Lose active permit for 30 days/ \$1000 fine
Greater than 5% By-Catch	confiscate and \$50 fine	confiscate and \$150 fine	confiscate and \$300 fine/and 10 days off	confiscate catch/ Lose active permit for 30 days/ \$1000 fine
Taking Shellfish Out of Season	confiscate By-Catch and \$50 fine	confiscate and \$150 fine	confiscate and \$300 fine/and 10 days off	confiscate catch/ Lose active permit for 30 days/ \$1000 fine
No Permit for saleable by-catch	confiscate By-Catch and \$50 fine	confiscate By-Catch and \$150 fine	confiscate By-Catch and \$300 fine/and 10 days off	confiscate catch/ Lose active permit for 30 days/ \$1000 fine
Over Daily Bushel Limit (Extra box or Partial box)	confiscate catch and \$50 fine	confiscate catch and \$150 fine	confiscate catch and \$300 fine	confiscate catch/ Lose active permit for 30 days/ \$1000 fine
Tags on Boxes	confiscate By-catch and \$50 fine	confiscate and \$150 fine	confiscate and \$300 fine/and 10 days off	confiscate catch/ Lose active permit for 30 days/ \$1000 fine
Shipping Live Shellfish Off-Island for purposes other than consumption (i.e. Broodstock or Propagation)	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits	\$25,000 And not eligible for future town shellfish permits
Fish Early/Late	1 day off*	5 days off	10 days off	30 days off
Failure to Submit Monthly Catch Report	1 day off*	5 days off	10 days off	30 days off
Dredges in excess of 35 lbs.	\$50 fine*	\$150 fine	\$300 fine	\$500
Exceeding bushel limit when picking up a culler	\$50 fine*	\$150 fine	\$300 fine	\$500
Mounding	confiscation of extras and \$50.00 fine*	confiscation of extras and	confiscation of extras and 1 day off	confiscation of extras and 5 days off

		\$100.00 fine		
Broken/ Altered Bushel Boxes	\$50.00 fine*	\$100.00 fine	1 day off	5 days off
No Dive Flag Displayed	\$50.00 fine*	\$100.00	1 day off	5 days off

*A verbal warning may be given for the first offense at the discretion of the Shellfish warden

Section 8 – Definitions

Unless otherwise identified, all cited Sections refer to sections of the Town of Nantucket Shellfishing Policy and Regulations. The terms listed in this Section, when used in the Town’s Shellfishing Policy and Regulations, shall have the meanings that follow:

Annual Aquaculture Report: A required yearly report form detailing aquaculture production and gear summary for aquaculture licenses to submit annually.

Apprentice – applicant for a commercial shellfishing permit that has never been issued a permit from the Town of Nantucket in previous years. (specific requirements as defined in Section 4.6)

Aquaculture -The farming of aquatic marine organism including, but not limited to fish, mollusks, crustaceans, echinoderms and plants. Farming implies some sort of intervention in the rearing process to enhance production including, but not limited to controlled propagation, feeding and protection from predators.

Aquaculture License/Permit - An authorization, granted by a vote of the Board of Selectmen, to utilize a specific tract of land under coastal waters (1) to plant and grow shellfish in bottom or off bottom culture; (2) to place shellfish in or under protective devices affixed directly to the tidal flats or land under Nantucket’s coastal waters, such as boxes, pens, trays, bags or nets; (3) to harvest and take legal shellfish; (4) to plant cultch for the purpose of catching shellfish seed; and (5) to grow shellfish by means of racks, rafts or floats (MGL Chapter 130, Sections 57 - 68).

Aquaculture Licensed Area (Grant) - a designated bottom area, certified by The Department of Marine Fisheries (DMF) and licensed by a vote of the Board of Selectmen, on which the licensee may plant, grow and harvest shellfish (MGL Chapter 130; Sections 57 & 68).

Aquaculture Permit - (See Permit)

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

Bay Scallop - A marine mollusk of the species *Argopecten irradians*

Blue Crab - a species of crustacean known as *Callinectes sapidus*

Board of Selectmen -The Nantucket Board of Selectmen (BOS); Nantucket's elected executive Board, designated by the State (MGL Chapter 30) as the regulatory Board that has jurisdiction over shellfishing in the Town.

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.

Bushel/ Town Approved Box- U.S. dry measure; 2150.42 cubic inches, or 32 quarts (see picture in Appendix A).

By-Catch -The incidental capture of non-target species.

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

Closures - any area or time period as designated by the Division of Marine Fisheries, Board of Selectmen or their designee prohibiting the taking of shellfish.

CMR -Code of Massachusetts Regulations.

Commercial Harvest –The harvest of shellfish for sale, trade, or other consideration.

Conch/ Whelk - any species known as *Busycon carica* (knobbed whelk) and *Busycotypus canaliculatus* (channeled whelk)

Constable (Warden) -The municipal employee, appointed by the Board of Selectmen, who is in charge of administering the management of the fishery

(To) Cull -to remove dead, dying, undersized or otherwise unsuitable organisms (also, the organism which is removed).

(To) Dig and Take -(archaic); **See (To) Harvest**

Dipnet-A hand held net

(To) Dive -The use of SCUBA, surface supplied air, or snorkel to harvest shellfish.

DMF - Division of Marine Fisheries.

Drag / Dredge - A heavy metal frame with an attached bag, which is towed or dragged 7 along the seafloor to catch bottom dwelling shellfish. Some have metal teeth along the base of the frame that act like a rake.

Elgrass – small genus of widely distributed seagrass.

Eels – an elongated fish Anguilliformes.

Fyke - A long bag-shaped fishing net held open by hoops that act as a cul-de-sac funnel.

Glass Eel/Elver -Eel in its transparent, post-larval stage.

Grant - See Aquaculture License/Licensed Area

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

(To) Harvest -To gather shellfish or other marine organisms in a container of any sort after sorting and separating them from what has initially been taken from the habitat.

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

Handpicker - An individual who practices handpicking.

Intertidal-The land or area between the mean high and the mean low watermarks.

(To) Land -To bring harvested shellfish by vessel to the Town Pier and to tie up before proceeding elsewhere; to bring harvested shellfish ashore above the mean high water line.

License Holder - A person or persons, or a firm or corporation holding a license issued by the Board of Selectmen under the provisions of MGL Chapter 130.8

Licensee - See License Holder

MGL –Massachusetts General Law.

Mean High Water (MHW) / Tide -The average elevation of all high waters recorded for a particular point or station over a considerable period of time, as determined by the National Geodetic Survey, National Ocean Service or National Oceanic and Atmospheric Administration; the average water level that demarcates the transition from exposed land to submerged land at the point of high tide.

Mean Low Water (MLW) / Tide -The average height of the low waters recorded for a particular point or station over a considerable period of time, as determined by the National Geodetic Survey, National Ocean Service or National Oceanic and Atmospheric Administration; the average water level that demarcates the transition from exposed land to submerged land at the point of low tide.

Mounding – term used to describe the act of piling scallops in an approved bushel box so that the scallops exceed the legal level limit of the box.

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

Nub Scallop – A fall spawned scallop defined by the growth ring being less than 10mm from the hinge.

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

Permit - A certificate granting permission to engage in specific activities issued by the appropriate authority.

State Aquaculture Permit - "seed" or propagation permit as defined in MGL, Chapter 130; Sections 80 and 69 and CMR 322, Section 15.04 (b)(1): Authorizes the possession and growing of seed shellfish from an approved source. May be endorsed for the use of upwellers or similar nursery systems to enlarge hatchery seed for planting, but not for resale. May be endorsed for the sale of regulated species below the minimum size established by regulation if an operational plan to control sale, shipment, tagging and record keeping is approved by the Director.

Shellfish Transaction Card - (CMR 322, Section 7.01 (2)(k)), issued by DMF: Authorizes only the named individual holding a commercial fishermen permit endorsed for shellfish and seaworms to sell shellfish and seaworms, and shall be used in conjunction with either a Massachusetts driver's license or a Registry of Motor Vehicles identification card.

State Commercial Permit (Commercial Fishing Permit / Shellfish Permit), issued by DMF: Allows an individual to take, land and sell (to a licensed dealer) shellfish and seaworms. A shellfish ID card, from the Division, and town permit are also required.

Petite Oysters – Aquaculturally reared oysters, whose height (from hinge to shell margin) is between 2.5 and 3 inches.

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

Poaching – The harvesting of shellfish, illegally, from any area.

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

Quart- 67.201 cubic inches (U.S. Dry Measure).

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

Razor clam – a marine mollusk of the species *Ensis directus*

Red Flag - Closures of both recreational and commercial shellfisheries and shall be noted by red flags as posted by the Shellfish Constable.

Resident - A declared resident of the Town of Nantucket: Written proof that Nantucket is the

domicile as well as the legal residence of the applicant shall be required to the satisfaction of the Board of Selectmen or their designee. Proof of legal residence may include voter registration, automobile registration, driver's license, income tax filings, census data, or verification information as deemed necessary by the issuing agency. To qualify as a resident under these regulations an individual must have maintained that residence for one full year.

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

Seed - Quahogs, less than (1) one inch wide, across both valves at the hinge, soft-shell clams less than (2) two inches in length (the largest measurement, 90 degrees from the hinge to outer margin of the shell); oysters, with the exception of petites, less than (3) three inches in height (from hinge to outer margins of the shell), and scallops without a defined annual growth ring.

Softshell Clam (Steamer) - A softshell clam of species *Mya arenaria*.

Shellfish - Softshell clams, whelks, mussels, oysters, snails, quahogs, razor clams (razor fish), bay scallops, sea scallops, sea clams, and blood arks.

Spat - An oyster or similar bivalve mollusk in the larval stage, especially when it has settled on and attached itself to a surface on which it can then proceed to grow.

Strandings – When shellfish are beached or at risk in shallow waters due to wind driven storm events

Subtidal-The body of water or area below that of mean low water for spring tides; habitats rarely, if ever, completely uncovered by low tides.

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

(To) Take -To harvest.

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

Town -The Town of Nantucket.

Transaction Card - See Permits; Shellfish Transaction Card.11

(To) Transplant -The moving of shellfish from one area to another.

Warden - See Constable

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

Weights (for dredges): Window weights used to make the dredge heavier

Section 9-Pictures of Town Approved Shellfishing Containers

Approved recreational containers with legal limits:

Metal Bushel Basket



Level Metal Bushel Basket With Float



Level Metal Bushel Basket With Float



Level Orange Bushel Basket With Float



Appropriate Level For Orange Bushel Basket



Town of Nantucket "Level" Bushel Box (Appropriate Condition)



Section 10 - Areas Requiring Town License For Commercial Shellfishing



