

Hydraulic Dredging and Mobile Gear Prohibition

Hydraulic dredging and other mobile fishing gear have been shown to impact the following interests of the Wetlands

Protection Act:

Protection of Wildlife Habitat

Protection of Marine Fisheries

Protection of Land Containing Shellfish

Storm Damage Prevention

Finfish and Shellfish are a valuable renewable resource. The maintenance of the productive Aquatic habitats and shellfish beds not only assures the continuance of the species themselves, but also plays a direct role in supporting fish stocks by providing a major food source. The young shellfish in the planktonic larval stage that are produced in large quantities during spring and summer are an important source of food for the young stages of marine fishes and many crustaceans. When a resource area is found to be significant to the protection of land containing shellfish under 310 CMR 10.34(3), and is also significant to marine fisheries, the following factors are critical to the protection of those interests:

- (a) shellfish,
- (b) water quality,
- (c) water circulation, and
- (d) the natural relief, evaluation or distribution of sediment grain size of such land.

Under 310 CMR 10.25, the jurisdiction of the Conservation Commission extends into the Nearshore Areas of Land under the Ocean, extending seaward to a point where the land is at a depth of 40 feet below the level of the ocean at mean low water in Cape Cod Bay, and to a depth of 80 feet below mean low water in all other areas.

Under 310 CMR 34(4), "any [activity on] land containing shellfish shall not adversely affect such land or marine fisheries by a change in the productivity of such land caused by:

- (a) alterations of water circulation,
- (b) alterations in relief elevation,

- (c) the compacting of sediment by vehicular traffic,
- (d) alterations in the distribution of sediment grain size,
- (e) alterations in natural drainage from adjacent land, or changes in water quality, including, but not limited to, other than natural fluctuations in the level of salinity, dissolved oxygen, nutrients, temperature or turbidity, or the addition of pollutants.

Hydraulic Dredging is an activity which adversely affects land containing shellfish in the following manner:

(a) The turbulence generated by hydraulic dredging or other mobile fishing gear that disturbs the bottom significantly increases turbidity levels. High turbidity levels attenuate light, which is necessary for photosynthetic process responsible for the primary productivity and oxygen regeneration of the water.

(b) The suspended sediments settle on shellfish beds, smothering existing shellfish and altering the quality of the benthic environment essential for spat (mollusk larvae) settlement.

(c) Resuspension of bottom sediments causes redistribution of sediments, alteration in sediment grain size distribution and causes changes in bottom topography relief, elevation and grade, including the creation of depressions in the bottom. Settlement of sediments into depressions can create deep pockets of highly fluid like sediment which may not be able to physically support shellfish or which can become anoxic and therefore not support shellfish.

(d) Disturbance of sediments during the period of shellfish larval settlement hinders or prevents the effective settlement of shellfish larvae.

Hydraulic dredging and other mobile gear has also been shown to adversely impact the interest of storm damage prevention, by uprooting vegetation and undermining the stability of land under the ocean. The underwater "terrace" contours of the trenches created by hydraulic dredging contributes to erosion of the adjacent beach, coastal dunes and banks during storm events.

8.1 No hydraulic dredging or use of mobile gear shall occur within the waters under the jurisdiction of the Nantucket Conservation Commission without a proper filing before the Conservation Commission.

8.2 Taking of shellfish or finfish by mechanical means including but not limited to trawls, drags, rakes and hydraulic gear with the assistance of machinery is prohibited within the jurisdictional waters of the Town of Nantucket. This does not include the use of manual rakes or other hand operated devices for the collection of shellfish or baitfish with or without the use of scuba gear.

PROVINCETOWN CONSERVATION COMMISSION

LOCAL REGULATIONS

[1] Definitions

Vegetated Wetlands – Any area of at least 300 square feet where surface or groundwater, or ice, at or near the surface of the ground support a plant community dominated (at least 50 per cent) by wetland species or have created hydric soils.

Unvegetated Wetlands – Coastal areas, such as flats and unvegetated intertidal areas; coastal and freshwater beaches, dunes, and banks; and land subject to flooding. Also, inland areas subject to flooding which do not support wetland vegetation or contain hydric soils, but which store at least 1/8 acre feet of water to an average depth of six inches at least once a year, or the statistical equivalent, and land areas two feet or less vertically above the high water mark of any lake or pond defined by Chapter 12 of the General By-Laws of Provincetown; regulations promulgated by the Provincetown Conservation Commission or 310 CMR. Does not include swimming pools, artificially lined ponds or pools, wastewater lagoons, or stormwater runoff basins, the construction of which may be regulated but do not themselves constitute regulated areas.

Bog – A freshwater wetland characterized by peat accumulation usually dominated by moss. Receives only direct precipitation; characterized by acid water, low alkalinity, and low nutrients.

Marsh – A freshwater or coastal wetland permanently or periodically inundated characterized by nutrient-rich water.

Swamp – A freshwater wetland characterized by forest, shrub, or reed cover (called a fen). Mostly refers to a forested wetland in North America. Swamps are dependent on nutrient-rich ground water derived from mineral soils.

Wet Meadow - An open prairie, grassland or savannah with waterlogged soils but without standing water for most of the year.

Flats – The intertidal shore along the coast. Flats may be rocky, muddy, or sandy. They are inundated daily by the tides but the resource area extends inland to the highest spring tide water mark. A portion of the resource area flats may overlap with coastal beach or other related resource areas.

River – Any natural flowing body of water that empties to any ocean, lake, pond, or other river and which flows throughout the year.

Stream – A body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into, or out of a resource area as defined by Chapter 12 of the Provincetown General By-Laws, regulations promulgated by the Provincetown Conservation Commission or any Area Subject to

Protection under 310 CMR. A stream is generally smaller than a river and may flow intermittently or throughout the year.

Reservoir – A man-made lake created when a dam is built on a river.

Lake – Any open body of fresh water with a surface area of ten acres or more, and shall include great ponds.

Ponds – Any open body of fresh water which exists throughout the year except in times of severe drought.

Estuaries – Any embayment or partially enclosed coastal body of water where the tide meets the current of any stream or river. Also, any are where fresh water and salt water mix and tidal effects are evident.

Agriculture – Any work with produces food or other products for commerce or subsistence. This term shall include aquaculture.

Protection of Land Containing Shellfish – means protection of the capacity of an Area Subject to Protection Under M.G.L. c. 131, Section 40:

- (a) to prevent or reduce contamination or damage to shellfish; and
- (b) to serve as their habitat and nutrient source.

Land Containing Shellfish – means land under the ocean, tidal flats, rocky intertidal shores, salt marshes and land under salt ponds when any such land contains shellfish.

Shellfish; mean the following species – Bay scallop (*Argopecten irradians*); Blue mussel (*Mytilus edulis*); Ocean quahog (*Arctica islandica*); Oyster (*Crassostera virginica*); Quahog (*Mercenaria magellanicus*); Soft shell clam (*Mya arenaria*).

Shellfish Constable – means the official in a city or town, whether designated a constable, warden, natural resources officer, or by some other name, in charge of enforcing the laws regulating the harvest of shellfish.

Land Under the Ocean – means land extending from the mean low water line seaward to the boundary of the municipality's jurisdiction and includes land under estuaries.

Nearshore Areas – as defined in 310 CMR 10.25

Bank - "Bank" shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

Vernal Pool - "Vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. Vernal pools shall include those mapped and certified by the Massachusetts Natural Heritage and Endangered Species Program as well as those areas identified in the field as eligible for certification by a professional wetland biologist or other expert.

Rare Species - "Rare species" shall include, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

Person - "Person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

Alter - "Alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting protected and jurisdictional resource areas;

1. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind.
2. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
3. Drainage or other disturbance of water levels or water table. Dumping, discharging, or filling with any material which may degrade water quality.
4. Placing of fill, or removal of material, which would alter elevation.
5. Driving of piles, erection, or repair of buildings, or structures of any kind.
6. Placing of obstructions or objects in water.
7. Destruction of plant life including cutting of trees.
8. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters.

9. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater.
10. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas.
11. Use of fertilizers, pesticides, herbicides and fungicides.

Isolated Vegetated Wetland - Isolated vegetated wetland is any area with surface or ground water or ice at or near the surface of the ground and greater than 500 square ft. which supports a plant community (cover) comprised of 50% or greater of wetland species, or which in the judgment of the Commission, supports a significant community of wetland vegetation.

Passive Recreation - Passive recreation refers to non-consumptive, non-motorized uses such as wildlife observation, walking, biking, canoeing and fishing as well as trail-based hiking, mountain biking, horseback riding, picnicking. The goal of providing passive recreational uses is to promote the least impact on the wetland ecosystem. Passive recreation generally encompasses the less intensive range of outdoor activities compatible with preserving natural resource functions such as wildlife habitat and floodplain protection. Passive recreation is that which emphasizes the open-space aspect of a park and which involves a low level of development, including picnic areas and trails.

Article 1 - Beach Access/Parking: Harbor Beaches

Anyone wishing to drive on or park on any Provincetown Harbor beach must obtain from the Provincetown Conservation Commission either a Beach Access permit sticker or a Beach Access form.

The driver and/or registered owner of a motor vehicle in operation and/or parked upon the beaches, flats or any "Resource Area" found to be doing so without a permit, sticker or form by the Conservation Commission Enforcement Officers, the Shellfish Constable or the Provincetown Police shall be fined \$100.00 for the first violation, \$200.00 for the second violation, \$300.00 for the third violation, etc.

The Conservation Commission has the authority to issue this Regulation for State owned and "private" beaches because it is the enforcing authority for the State Wetlands Protection Act (MGL #131, sec. 40) as well as the Provincetown Wetlands By-Law.

The reason for this Regulation is the driving of vehicles on the beach alters a state or town defined resource area.

1.1 Procedure: Anyone wishing to obtain a Beach Access sticker or form shall apply to the Department of Community Development in Town Hall. A simple, one-page

form is completed with the boat license number, lobstering number, aquaculture license number, etc.

Access Stickers: The Shellfish Committee will supply the Department of Community Development with lists of all lobstermen, small boat fishermen, aquaculture works and frequent recreational boat users known to them. Upon payment of a fee as set by the fee schedule in Appendix A, the applicant will be issued a sticker that is good for one year.

Access Forms: Upon approval and payment of a fee as set by the fee schedule in Appendix A, the applicant will be given a copy of the application form to be posted inside the vehicle windshield.

Appeals: Applicants denied an access sticker or short-term application form may apply to the Commission to be put on the agenda for the next Public Meeting of the Conservation Commission. The final decision will be made by the Conservation Commission and the Chair of the Shellfish Committee.

^[2]**Article 2. 100 Foot Buffer**

Pursuant to the regulation of activity under Chapter 12 of the Town of Provincetown By-laws in the 100 ft. buffer zone of resource areas given in *310 CMF (l)(a)* and given in Chapter 12 Section 2 the following performance standard shall be satisfied.

Within the 100 foot buffer zone of resource areas an undisturbed buffer zone 50 ft. in width shall be provided between wetland resource areas and the limit of site disturbance. Proposed structures within the 100 foot buffer zone shall not be located closer than 80 ft. from the resource area, so that attendant construction, landscaping and maintenance activities may ensue without buffer zone insult.

This regulation shall not be construed to preclude access paths, vista pruning or construction of water dependent structures within the buffer zone, any of which may be permitted at the Commission's discretion.

These regulations notwithstanding, the Conservation Commission will consider any and all proposals for activity within the buffer zone on a site specific basis, disposing of each according to its merit and the degree to which wetland interests have been protected and preserved at the locus.

Article 3. Administrative Review

To better serve the public's interests under Chapter 12 of the Provincetown General By-Law, the Conservation Commission or its agent shall accept and review applications for an Administrative Review. A nonrefundable Administrative Review fee shall be collected at the time of submittal. (See fee schedule in Appendix A)

3.1 Such Review shall constitute an administrative opinion as to whether or not a project proponent needs to submit a filing to the Conservation Commission. An opinion will be provided in writing within 2 weeks and shall serve as evidence of the proponent's due diligence to comply with Chapter 12 of the Provincetown General By-law. The Commissioners shall be copied on all Administrative Reviews.

3.2 Any person who disagrees with the opinion provided may file a Request for Determination of Applicability as a means to appeal the decision.

3.3 The Administrative Review may be appealed due to lack of action after two weeks by filing a Request for Determination of Applicability.

3.4 The project proponent shall understand that any work beyond the scope of the Administrative Review shall be subject to enforcement action.

3.5 The opinion provided under the Administrative Review shall be considered accurate for one year unless relevant changes are made to the Provincetown General By-Law or to the regulations promulgated thereunder. The Administrative Review process is not meant to provide relief from new regulations unless work under the Review has begun prior to the effective date of any changes.

3.6 Minimum submissions shall include the property address, map and parcel, full scope of work and a G.I.S. sketch plan.

Article 4. Vista Pruning Regulations

Pursuant to Chapter 12 of the Provincetown General By-law, the Provincetown Conservation Commission promulgates the following vista pruning regulations:

4.1 Vista pruning applies to work within the 100' buffer zone to a resource area. Vista pruning requires an Order of Conditions or a Determination of Applicability, which conveys approval by the Conservation Commission.

4.2 No work is allowed in a resource area, except as specifically permitted by the Commission in Land Subject to Coastal Storm Flowage, Land Subject to Flooding, and Coastal Banks.

4.3 Prior to a required site visit by the Conservation Agent, live trees and dead trees for which removal is requested should be flagged with tape. Vista corridors within which limbing will occur should be delineated.

4.4 Removal of trees is by flush cutting, not digging. If at all possible, cut trees or limbs should remain in the buffer zone to provide habitat value. Transport of the cut wood or brush to outside of the buffer zone shall be by hand, not with the use of heavy equipment.

4.5 In regards to live trees and dead trees:

- a) Removal is generally not allowed. Exceptions would be with express approval from the Commission or Agent and generally due to hazards to buildings.
- b) Limbing of dead wood on a live tree is permitted.
- c) Limbing of lower branches is limited to no more than 20% on an individual tree.
- d) Limbing is not permitted between January 15 and September 30 to protect tree viability and nesting habitat.
- e) Topping is not permitted without express approval.

4.6 In regards to shrubs and brush:

- a) No cutting or thinning allowed except of dead material.

4.7 In regards to ground cover:

- a) No disturbance is permitted.

4.8 In regards to greenbriar and other climbing vines:

- a) Removal, by hand-pulling or clipping around base of tree, is permitted.

4.9 The extent of pruning allowed is at the discretion of the Agent. Work requested beyond that approved by the Agent may require additional filings.

4.10 Vista pruning beyond that permitted by the Commission or the agent may be subject to enforcement actions.

Article 5. Wetlands Protection Violations.

Pursuant to Chapter 12 of the Provincetown General By-Law, violations shall be as follows:

The Commission shall have authority to enforce Chapter 12 of the Provincetown Bylaws (Wetlands Protection Bylaw), its regulations, and permits issued thereunder by violation notices, enforcement orders, under the Town's non-criminal disposition section of its general bylaws, pursuant to G.L. c. 40, §21D, and civil and criminal court actions. Any Police Officer, Conservation Agent, Harbormaster, or Shellfish Constable shall have authority to enforce these regulations. Any person who violates provisions of the wetlands bylaw and its regulations may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Any person, who violates any provision of the wetland bylaw, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of \$300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of

the wetlands bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

5.1 Violations shall be categorized as follows:

- a) **Type 1:** any unauthorized removing, filling, dredging, building upon, degrading, or discharging into, or otherwise altering of any of the following resource areas: any freshwater or coastal wetlands; vegetated and unvegetated wetlands; marshes; flats; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; lands subject to tidal action, coastal storm flowage, or flooding;
- b) **Type 2:** any unauthorized removing, filling, dredging, building upon, degrading, or discharging into, or otherwise altering within 100 feet of any of the following resource areas: any freshwater or coastal wetlands; vegetated and unvegetated wetlands; marshes; flats; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; lands subject to tidal action, coastal storm flowage, or flooding;
- c) **Type 3:** failure to comply with an enforcement order issued by the Provincetown Conservation Commission or its agents.
- d) **Type 4:** any unauthorized activity beyond the scope of an Order of Conditions, Determination of Applicability or Certificate of Compliance issued by the Conservation Commission. Any unauthorized activity beyond the scope of an Administrative Review issued by an agent of the Conservation Commission. Making any false, inaccurate or misleading statements in any filing. Failure to comply with any certification on project plans. Leaving in place unauthorized fill or otherwise failing to restore illegally altered land to its original condition.

5.2 Penalties for violations shall be as follows:

Violation Fine

- a) Type 1 \$300
- b) Type 2 \$300
- c) Type 3 \$300
- d) Type 4 \$300

Article 6. Conservation Land Use

Under the terms of the Conservation Commission Act, Conservation land is received and held "in the name of the city or town." The Conservation Commission has a clear authority under the Conservation Act to adopt rules and regulations for the use of its

land. The Town of Provincetown Conservation Commission's goal in management of its property is to protect the values of the land. The values are related to the protection or preservation of biological and ecological diversity, water supply and water quality, aesthetics and recreation, community character and others the Commission deems important. These values are related to public health and safety and environmental protection. The Commission is charged with balancing these values with public use and accessibility. In doing so, the Commission shall encourage passive recreation on its lands.

6.1 All people are welcome to enjoy themselves without charge in conservation lands from ½ hour before sunrise to ½ hour after sunset.

6.2 No person shall litter or engage in illegal dumping. This shall mean the leaving of any foreign materials on conservation land. This includes, but it not limited to, pet waste, food waste and cigarettes.

6.3 No cars, trucks or other powered vehicles or tools except for municipal vehicles are allowed except on designated roads.

6.4 The use of firearms is prohibited, except on the Clapp's Pond Property when use in accordance with any other applicable laws.

6.5 No trapping, hunting or collecting of flora and fauna is allowed on Conservation lands. Hunting is not prohibited on the Clapp's Pond Property when in accordance with any other applicable laws.

6.6 For public safety reasons, unpermitted fires are not allowed. For public health, safety and environmental reasons camping is not permitted on the lands.

6.7 Consumption of alcoholic beverages is not permitted on Conservation property.

6.8 No person shall cut, break, remove, deface, defile, or ill-use any structure, fence, sign, or have possession of any part there of. No trees, bushes, plants, or flowers shall be defaced or cut, nor shall trails be cut or marked, nor dams built, nor any structure such as a lean-to, bridge, tower, handrail or barrier be constructed without authorization of the Conservation Commission. No person shall conduct ground (i.e. soil) disturbing activities.

6.9 No person shall engage in business, sell, expose for sale or give away any goods, wares or circulars without permission from the Conservation Commission.

6.10 Pursuant to Town of Provincetown By-laws Chapter 2 -3, and MGL Chapter 40, § 21D, regarding the establishment of a noncriminal disposition process, the Commission does hereby promulgate the following regulation and penalty schedule for its land management rules and regulations for properties which the Commission both controls and directly manages:

Violation	Fine
a) Littering	\$300
b) Illicit dumping	\$300
c) Unauthorized vehicle use (cars, trucks, ATV's, powered vehicles or tools, motorcycles/dirt bikes, etc.)	
First	\$100
Second	\$200
Third or more	\$300
d) Cutting or removal of vegetation, soil, stone	\$200
e) Consumption of alcoholic beverages	\$100
f) Camping	\$200
g) Defacing or destruction of any structure, sign or gate	\$200
h) Hunting or use of firearms	\$300

6.11 The Conservation Commission, its agents and any Town Police Officer or Natural Resources Officer shall have the authority to issue citations assessing monetary fines, depending on the extent and severity of the violation.

6.12 Failure to pay a fine assessed under this regulation within 21 days may result in criminal prosecution.

^[3]**Article 7. Beach Cleaning**

The public's need for a sanitary beach must be balanced with the Commission's goal of maintaining that same beach as a functioning unit of a healthy ecosystem. Overzealous beach cleaning, mechanical or otherwise, can affect vegetation and the revegetation process, thereby contributing to beach erosion. It may also impact the wrack line, which is an important feeding habitat for many marine organisms, thereby interrupting nutrient cycles. Beach cleaning operations may also eliminate directly or indirectly beach nesting birds, such as Piping Plovers (*Charadrius melodus*) and Least Terns (*Sterna antillarum*). The removal of driftwood, seaweed, and debris in general may eliminate the sources of shelter and feeding for these bird species and many others. For these reasons, and pursuant to Chapter 12 of the Provincetown General Bylaw, the Provincetown Conservation Commission promulgates the following beach regulations:

7.1 No cleaning, raking, or otherwise altering of coastal beaches shall be conducted without a valid Order of Conditions specifically permitting, and detailing the methods of, the beach alterations.

7.2 Beach cleaning shall not be permitted unless the applicant demonstrates a clear showing that it is for the benefit of the health and safety of the general public.

7.3 All feasible efforts shall be made to preserve the natural organic components of the beach.

7.4 Cleaning or raking of a beach shall be accomplished without removal or destruction of vegetation or the impairment of the growth of such vegetation.

7.5 Cleaning or raking of a beach, with out a permit, is prohibited in the drift line zone, which lies between the mean high tide and the spring high tide line. Drift line zones collect material during high spring tides and/or storms. They may contain large quantities of marine algae, eelgrass, and marsh detritus all of which contribute to wildlife habitat. Moreover, bacteria and fungi quickly break down this organic matter, releasing nutrients into the sand and eventually back to the sea.

7.6 These regulations shall not be construed to preclude hand removal of unnatural debris or recreational and minimally invasive “beachcombing” or reasonable traditional uses, any of which may be allowed without permitting at the Commission’s discretion. The Commission strongly encourages the hand removal of unnatural debris.

7.7 These regulations notwithstanding, the Conservation Commission will consider any and all proposals for activity on a site specific basis, disposing of each according to its merit and the degree to which wetland interests have been protected and preserved at the locus.

^[4]Article 8. Hydraulic Dredging Prohibition

Hydraulic dredging has been shown to impact the following interests of the Wetlands Protection Act:

- Protection of Wildlife Habitat (in this case Eelgrass (*Zostera marina*))
- Protection of Marine Fisheries (particularly juvenile Cod and other species)
- Protection of Land Containing Shellfish
- Storm Damage Prevention

Shellfish are a valuable renewable resource. The maintenance of the productive shellfish beds not only assures the continuance of the shellfish themselves, but also plays a direct role in supporting fish stocks by providing a major food source. The young shellfish in the planktonic larval stage that are produced in large quantities during spring and summer are an important source of food for the young stages of marine fishes and many crustaceans. When a resource area is found to be significant to the protection of land containing shellfish under 310 CMR 10.34(3), and is also significant to marine fisheries, the following factors are critical to the protection of those interests:

- (a) shellfish,
- (b) water quality,
- (c) water circulation, and
- (d) the natural relief, evaluation or distribution of sediment grain size of such land.

Under 310 CMR 10.25, the jurisdiction of the Conservation Commission extends into the Nearshore Areas of Land under the Ocean, extending seaward to a point where the

land is at a depth of 40 feet below the level of the ocean at mean low water in Cape Cod Bay, and to a depth of 80 feet below mean low water in all other areas.

Under 310 CMR 34(4), “any [activity on] land containing shellfish shall not adversely affect such land or marine fisheries by a change in the productivity of such land caused by:

- (a) alterations of water circulation,
- (b) alterations in relief elevation,
- (c) the compacting of sediment by vehicular traffic,
- (d) alterations in the distribution of sediment grain size,
- (e) alterations in natural drainage from adjacent land, or changes in water quality, including, but not limited to, other than natural fluctuations in the level of salinity, dissolved oxygen, nutrients, temperature or turbidity, or the addition of pollutants.

Hydraulic Dredging is an activity which adversely affects land containing shellfish in the following manner:

- (a) The turbulence generated by hydraulic dredging significantly increases turbidity levels. High turbidity levels attenuate light, which is necessary for photosynthetic process responsible for the primary productivity and oxygen regeneration of the water.
- (b) The suspended sediments settle on shellfish beds, smothering existing shellfish and altering the quality of the benthic environment essential for spat (mollusk larvae) settlement.
- (c) Resuspension of bottom sediments causes redistribution of sediments, alteration in sediment grain size distribution and causes changes in bottom topography relief, elevation and grade, including the creation of depressions in the bottom. Settlement of sediments into depressions can create deep pockets of highly fluid like sediment which may not be able to physically support shellfish or which can become anoxic and therefore not support shellfish.
- (d) Disturbance of sediments during the period of shellfish larval settlement hinders or prevents the effective settlement of shellfish larvae.

Hydraulic dredging has also been shown to adversely impact the interest of storm damage prevention, by uprooting vegetation and undermining the stability of land under the ocean. The underwater “terrace” contours of the trenches created by hydraulic dredging contributes to erosion of the adjacent beach, coastal dunes and banks during storm events.

8.1 No hydraulic dredging shall occur within the waters under the jurisdiction of the Provincetown Conservation Commission without a proper filing before the Conservation Commission.

8.2 Taking of shellfish or finfish by mechanical means including but not limited to trawls, drags, rakes and hydraulic gear with the assistance of machinery is prohibited within Provincetown Harbor. This does not include the use of manual rakes or other

hand operated devices for the collection of shellfish or baitfish with or without the use of scuba gear.

^[5] Article 9 - Hiring Outside Consultants

As provided by GL Ch. 44 § 53G, the Provincetown Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (GL Ch. 131 § 40), the *Town of Provincetown non-zoning Wetlands Bylaw (Provincetown General Bylaws Chapter 12)*, Conservation Commission Act (GL Ch. 40 § 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time. The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information or technical assistance acquirable only through outside consultants would be necessary for the making of an objective decision. Upon such finding, the Conservation Commission shall request the applicant to provide a statement regarding the total project cost. Such statement may be used by the Commission to determine the amount of consulting fees to be deposited by the Applicant, per the schedule of fees included within the Town's Wetland Protection By-law.

Funds received by the Conservation Commission pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in GL Ch. 44 §53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant. Accrued interest may also be spent for this purpose. At the completion of the Commission's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made to the applicant or the applicant's successor in interest. For the purposes of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Commission with documentation establishing such succession interest.

Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydro geologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and/or its Administrator or Agent. Consultants include, but are not limited to, engineers, planners, wetland scientists, surveyors, attorneys or other professionals with experience in the matters that are the subject of the Commission's proceedings. All requests for meetings, site visits, reports, and questions of the consultant shall be routed through the

Conservation Commission, Administrator or Agent unless the Commission authorizes the Consultant to work directly with the applicant to resolve project-related issues. The Commission shall provide a copy of all consultant reports to the applicant in a timely manner.

The Conservation Commission shall request a written estimate from a qualified consultant(s) of its choosing as to the cost of providing the request services. The Conservation Commission shall then give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.

The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. In no event shall the total consultant fee be greater than the maximum allowed under the Provincetown Wetlands Bylaw. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal), and the Commission shall state such in a letter to the applicant. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. Repeated failures to pay deposit funds for consultant fees shall be grounds for dismissal of the applicant's application, petition and/or notice of intent.

The applicant may appeal the selection of the outside consultant to the Board of Selectmen, who may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Board of Selectmen and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date of the Commission's notice of selection of the proposed consultant. The required time limits for action upon the application shall be extended by the duration of the administrative appeal. In the event that the Board of Selectmen makes no decision within one month following the filing of the appeal, the selection made by the Commission shall stand.

Notice of Intent requires 7 business day advance notice. Request for Determination requires 5 business day advance notice.

Abutters' lists shall be obtained from the Town Assessors Office. Written notice shall be given at the expense of the applicant in a newspaper of general circulation in the municipality according to Provincetown Wetland By-law Chapter 12-5-2.

^[1] Adopted June 6, 2006; Amended September 8, 2009.

^[2] Amended September 8, 2009.

^[3] Adopted October 17, 2006, Amended September 8, 2009.

^[4] Adopted October 30, 2007

^[5] Adopted July 22, 2004

^[6] Created September 6, 2005; Amended January 22, 2008.