



Town of Barnstable
Marine and Environmental Affairs Department
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Derek Lawson, Director
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SHELLFISH COMMITTEE
MINUTES OF THE MEETING
DATE: August 11, 2021
TIME: 6:33 P.M. to 7:15 P.M.

This meeting was held via ZOOM

Shellfish Committee Members present: Stuart Rapp, Robert Lancaster, Patricia Farinha, Tyler Hagenstein, Jake Angelo

Shellfish Committee Members absent: Al Surprenant, Paul Caruso

General Public present: Ryan Aittaniemi, Jill Anne Nawoichik, Dave Aittaniemi, Doug Crook

Town Council Liaison present: Kristine Clark

Town Staff present: Amy Croteau, Senior Natural Resource Officer/Shellfish Constable

Stuart Rapp called the meeting to order, as August 11, 2021 meeting of the Shellfish Committee. Stuart Rapp read a notice at the beginning of the meeting:

NOTICE OF RECORDING "Please note that tonight's meeting is recorded and broadcast on Channel 18 and, in accordance with MGL Chapter 30A, s. 20, I must inquire whether anyone is taping this meeting and to please make their presence known."

TOPICS FOR DISCUSSION

- 1. Approve Meeting Minutes:** July 14, 2021 Meeting Minutes. This item was tabled until next meeting.
- 2. Chairman's Comments:** None.
- 3. Natural Resources Report/Correspondence:**
 - A. September 15, 2021 Shellfish Area Closures**

Barnstable Harbor Marshes close on September 15th. This is an annual closing by Division of Marine Fisheries (DMF) due to water quality from the migratory birds. The area will reopen on December 16, 2021 pending water quality testing by DMF.

B. Public Meeting Announcement- Capital Improvement Plan (CIP) for Scudder’s Lane lot and boat ramp

Officer Croteau turned this item over to Councilor Clark. Councilor Clark stated that there is a design meeting to be held on Wednesday, August 25, 2021 at 1:00pm that is open to the public to discuss ideas for design. Many Commercial Fishermen have had concerns with the ramp construction performed at Prince Cove in the Mills and Bay Street, Osterville.

PUBLIC MEETING NOTICE

The public is invited to a meeting regarding the Scudder's Lane Boat Ramp Design and Construction on **Wednesday, August 25, 2021 at 1:00PM at Barnstable Town Hall, 367 Main Street, James H. Crocker, Jr. Hearing Room, 2nd floor**. This project was approved in the FY 2022 Capital Budget and Improvement Plan with the design and permitting costs to be spent in Fiscal Year 2022 (page 88 of the Plan). In advance of the new design, we invite public input to ensure that the new design serves the users of this public way effectively.

PROJECT: MEA-22	DEPARTMENT PRIORITY: 4 of 11	2021-104
Project Working Title: Scudder’s Lane Boat Ramp Design & Construction		
Project Location: 210 Scudder’s Lane, Barnstable		
Project Description: Remove existing asphalt boat ramp and replace with concrete ramp, add additional storm water structures in the parking area		
Project Justification: The boat ramp is very old and the asphalt is collapsing creating both a safety hazard and restriction on use for the recreational and commercial (shellfish) needs of access to the water.		
Impact of Denial/Postponement: Denial of moving forward with this project will result in the need for costly temporary repairs, and as the ramp deteriorates further, could result in closure of the ramp thus restricting access to important commercial shell fishing operations and recreational boating.		
		

If you have questions, please contact Town Councilors Gordon Starr: starrbarnstable@gmail.com or Kristine Clark: precinct11clark@gmail.com

4. New Business:

A. Discussion of proposed regulation changes, possible vote.

After much discussion and explanation the Shellfish voted on the following Regulation Changes that have been vetted through the Legal Department.

The Shellfish Committee unanimously voted by roll call to approve a motion made by Jacob Angelo and seconded by Patricia Farinha to approve following changes to the Commercial Shellfish Regulation **§407-12. Classes of permits and permit conditions** as written.

§407-12. Classes of permits and permit conditions.

A. Town of Barnstable commercial shellfishing permits are granted under the authority of the Town Manager for the taking of shellfish for sale or other consideration, issued to persons, other than aliens, having attained their 16th birthday and who are domiciled in the Town of Barnstable. When the holder of a Town of Barnstable commercial shellfish permit is no longer domiciled in the Town of Barnstable, said Town of Barnstable commercial shellfish permit shall be void.

(1) Limitation of available licenses. Commercial shellfishing licenses shall be issued each year only to commercial shellfish license holders of the preceding year, who apply for license renewal. Commercial shellfish license renewals must be applied for between January 1 and January 31.

(2) **New** Commercial Shellfish License Procedure:

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

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

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

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

~~(c)~~**(d)** If an existing commercial permit becomes void **and is not subject to inheritance**, during the calendar year (January 1 through December 31) for which the permit was issued, the next eligible applicant as determined by the lottery, will be notified, by mail, of the availability of a permit. The applicant shall have ten (10) days from the date of notification to pay the balance of the permit fee or the permit will be issued to the next eligible applicant as determined by the lottery. **The new permit shall be available within ten (10) days to be**

picked up. The applicant will be notified by Natural Resources when the new permit is available to be picked up. New permit shall be issued for a given commercial shellfishing year (April 1 through March 31). The applicant list shall be dissolved each year as of December 31st.

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

B. Commonwealth of Massachusetts commercial shellfishing permit. This permit is required by Massachusetts General Law to dig or take shellfish within the Commonwealth of Massachusetts for commercial purposes and required prior to the issuance of the Town of Barnstable commercial shellfish permit.

C. Apprentice commercial shellfishing permit. The Town Manager or Shellfish Constable may issue an apprentice commercial shellfishing permit to a resident child who is sponsored by a Town of Barnstable commercial shellfishing permit holder. Said child must be under the age of 16, and said apprentice commercial shellfishing permit shall expire on the child's 16th birthday. The apprentice shall assist only the sponsor, and only in the harvest of the sponsor's catch limit. The apprentice shall not harvest shellfish without the accompaniment of the sponsor. Upon the expiration of the apprentice commercial shellfishing permit the holder of said permit may apply for a Town of Barnstable commercial shellfishing permit pursuant to these rules and regulations only if the child had held the apprentice commercial shellfishing permit for two years prior to their 16th birthday, can demonstrate having worked in the shellfish industry for at least 400 hours, and has successfully completed a Coast Guard boaters safety course. The allowances to an apprentice permitted under this regulation are distinct and separate from the stipulations that apply to new applicants under Subsection A(2) above.

D. Permit conditions.

(1) Commercial shellfishing permit fees:

- (a) Master: \$550.
- (b) Age 65 or older, master \$350.

(2) Commercial shellfishing permits expire on March 31 each year.

(3) Unlawful harvest without a commercial shellfishing permit. No person shall take or attempt to take shellfish for sale or other commercial purpose, unless said person is the holder of a valid Town of Barnstable commercial shellfish permit. It shall be prima facie evidence that persons shellfishing on a Town of Barnstable commercial shellfish permit are utilizing said permit for commercial purposes, and are subject to all regulations governing licensed sites.

~~(4) Catch report. A catch report for the calendar year shall be submitted to Natural Resources, on forms provided, no later than January 15 annually. Failure to submit a catch report will result in a fine of no more than \$500 as per the determination of Natural Resources, and may result in a suspension of the Town of Barnstable commercial shellfish permit for one year, commencing the next commercial permit year (April 1 to March 31).~~

~~(5) Assisting in commercial harvest prohibited. A person shall not assist in the commercial harvest or culling of shellfish unless said person holds a Town of Barnstable commercial shellfish per~~

The Shellfish Committee unanimously voted by roll call to approve a motion made by Patricia Farinha and seconded by Tyler Hagenstein to recommend approval of the following changes to the Commercial Shellfish Regulation §407-13. **Commercial Shellfishing permit application procedure** as written.

§407-13. Commercial Shellfishing permit application procedure.

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

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

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

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

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

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

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

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

The Shellfish Committee unanimously voted by roll call to approve a motion made by Robert Lancaster and seconded by Patricia Farinha to approve following changes to the Commercial Shellfish Regulation §407-27. **Minimum size limit** as written.

§407-27. Minimum size limit.

Only scallops with a well-defined raised annual growth ring may be taken; all other scallops will be considered seed scallops and must be returned to the water immediately with one exception provided in 322 CMR 6.11. This exception states bay scallops that have a well-defined raised annual growth line located less than 10 millimeters (mm) from the hinge of the shell, shall be lawful to harvest and possess if the shell height is at least 63.5 millimeters or 2.5 inches. However, it shall not be unlawful to have in possession seed scallops unavoidably left in the catch after it has been culled, to the amount of not more than 5% of the total catch remaining.

The Shellfish Committee unanimously voted by roll call to approve a motion made by Jacob Angelo and seconded by Tyler Hagenstein to recommend approval following changes to the Commercial Shellfish Regulation §407-32 Harvest limit per boat and §407-45 Areas closed to commercial fishing as written.

§407-32. Harvest limit per boat.

There shall not be more than ~~two~~ **five** harvest limits allowed per boat for commercial permit holders.

§407-45. Areas closed to commercial fishing.

A. Northside:

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

B. Southside:

- (1) The Handy Point Quahog Propagation Area is defined as the waters and intertidal flat within an area marked by yellow “NR” marker buoys and/or signposts as deployed near Handy Point in Cotuit Bay
- ~~(2) Popponesset Bay Seasonal Commercial Hydraulic Method / Hand Plunger Restriction: Effective annually the commercial harvest of soft shell clams and razor clams assisted by the hydraulic method or hand plunger method is prohibited in all the waters, shores, flats and tributaries of Popponesset Bay and Shoestring Bay in the Town of Barnstable. This regulation shall be in effect annually from May 1st through October 31st all dates inclusive.~~
- ~~(3)~~ (2) The West Bay Recreational Shellfishing Area: The waters, flats and shoreline within an area beginning from the West Bay Landing at Bridge St to the Wianno Yacht Club Pier to the “NR/No Shellfishing” sign buoys locate offshore (DMF/SC22.11)

The Shellfish Committee unanimously voted by roll call to approve a motion made by Patricia Farinha and seconded by Jacob Angelo to recommend approval of the following changes to the Commercial Shellfish Regulation §407-71. Revocation or suspension of Town permit as written.

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

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

B. Upcoming (and Old) Renewal & Transfer Hearings: None

C. Upcoming (and old) Proposed Coastal Projects:

1. Applicant: AAR Legacy, LLC
Project Location: 671 Old Post Rd, Cotuit, MA 02635
Representative: John O’Dea, Sullivan Engineering & Consulting, Inc.
Proposed Project: Proposed shoreline improvements to include replacement of existing failing timber bulkhead with stone revetment, and replacement of beach house, deck and stairs.
Conservation Hearing Date: 08/10/2021 4:30PM via Zoom
*Continued Until 09/14/2021

There are a number of concerns with this Notice of Intent (NOI). The initial filing of the NOI stated that all work to be accessed by land. The latest plans have demolished the whole house and now rebuilding with many more changes including replacing the existing wood bulkhead with a new revetment. A request was made to access through Cordwood Landing. This is a very popular landing used by the public to access the water as well as to shellfish.

Shellfish Survey was completed by Elizabeth Lewis, Town of Barnstable Shellfish Biologist, a large area of softshell clams was documented. Historically this has been a great habitat for shellfish. Comments were made that when the Scudder Lane project was approved, there was and request not to use the beach, this was not effective.

Robert Lancaster state that the Shellfish Survey was very well written. The Shellfish Committee discussed this project at great lengths and were very opposed to the project as presented. No vote was taken.

2. Applicant: Gordon D. & Lorri S. Owades, Trs.
Project Location: 167 Cedar Tree Neck Rd, Marstons Mills, MA 02648
Representative: Charles Rowland, Sullivan Engineering & Consulting, Inc.
Proposed Project: To remove the existing float and construct a new float and ramp along the outside of existing pier ell.
Conservation Hearing Date: 08/17/2021 6:30PM via Zoom
3. Applicant: Evangelos G. Geraniotis, Trs.
Project Location: 199 Cedar Tree Neck Rd, Marstons Mills, MA 02648
Representative: Charles Rowland, Sullivan Engineering & Consulting, Inc.
Proposed Project: To remove the existing float and construct a new ramp and float on the existing pier.
Conservation Hearing Date: 08/17/2021 6:30PM via Zoom

Both of these projects were discussed as one project. This area is compromised habitat, however many of these vessels sit dry most of the time, this compromised the habitat further.

No vote taken.

4. Applicant: Stephen P. Ahern, Trustee; Alta Vista 2020 Realty Trust
Project Location: 421 Main St, Osterville, MA 02655
Representative: Matthew Costa, Cape & Islands Engineering, Inc.
Proposed Project: Proposed replacement of existing float with new 8' W X 25' L float and proposed land management to eradicate common reed (phragmites) within an area of 10,700+/- square feet.
Conservation Hearing Date: Continued to 09/14/2021 6:30PM via Zoom

No vote taken. Will be on next Agenda for the September meeting.

6. **Old Business:** None

7. **Matters not reasonably anticipated by the Chair:**

Councilor Clark commented on the Conflict of Interest Certifications, all Town Committee Members must undergo course and obtain a Certificate and submit to Cynthia Lovell to keep on file. This is a State requirement which needs to be renewed every two years. Councilor Clark will email out the document to all the Shellfish Committee Members with the link.

The Shellfish Committee unanimously voted by roll call to approve a Motion made by Robert Lancaster and seconded by Tyler Hagenstein to adjourn.

Respectfully submitted: Terri McDonald – Clerk of the Board