

## ARTICLE XLIV

### **SHELLFISH AND SCALLOP RULES AND REGULATIONS** **(Not a By-Law – For Informational Purposes Only)**

#### **4401. SEVERABILITY CLAUSE**

If any section, provision, rule or regulation is deemed unlawful or unconstitutional then the remaining sections or portions thereof, provisions, rules and regulations shall remain in effect.

#### **4402. GENERAL PROVISIONS**

**4402.1 Definitions** - (Rules of Construction) In these rules and regulations, unless the context otherwise requires, the following words shall have the following meanings and the following rules of construction shall apply:

**Board** - The Board of Selectmen of the Town of Westport.

**Boat** - Watercraft of every description used or capable of being used as a means of transportation on water.

**Bushel** - A quantity of four (4) pecks equivalent to thirty-two (32) quarts of wet measure or a volume of 2,150.42 cubic inches.

**Calendar Week** - Any period of seven (7) full days beginning on any Sunday at dawn.

**Clam** - A marine mollusk of the species Mya arenaria commonly called the soft-shelled clam or steamer.

**Closed Area** - A closed season for any or all kinds of shellfish or scallops in such waters, flats, and/or creeks deemed necessary or expedient by the Shellfish Constable subject to approval of the Board to plant, grow and protect shellfish or scallops.

**Closed Season** - The time during which shellfish and/or scallops can not be lawfully harvested.

**Commercial Fishermen Permits** (Shellfish or Specially Endorsed) – The permit issued by the Massachusetts Division of Marine Fisheries expressly for the purpose of harvesting shellfish and scallops to offer said for sale.

**Family** - Shall mean and include a husband, wife and dependent(s) providing the husband, wife and dependent(s) are domiciled and living under the same roof and the dependent(s) has not yet reached the age of twenty-one (21).

**Head of Family** - Person whom assumes responsibility for the family and is so recognized by the Board.

**Hinge Width** - The distance between the convex apex of the right shell and the convex apex of the left shell.

**License** - The license issued under the authority of the Board expressly for the purpose of harvesting commercial quantities of shellfish or scallops.

**Licensee** - Any person to whom a license has been issued.

**Non-resident** - Any person who neither resides in, nor owns real estate in the Town of Westport but is an inhabitant of the Commonwealth of Massachusetts.

**Oyster** - A marine mollusk of the species Crassostrea virginica commonly known as the American oyster.

**Peck** - A quantity of eight (8) quarts of wet measure or a volume of 537 cubic inches.

**Permit** - The permit issued under the authority of the Board expressly for the purpose of harvesting recreational quantities of shellfish or scallops for domestic use only.

**Permittee** - Any person to whom a permit has been issued and any family member listed on that permit.

**Quahog** - A marine mollusk of the species Mercenaria commonly known as the hard-shelled clam, little neck, and cherrystone.

**Resident** - Any person who actually and physically resides in, or owns real estate having an assessed valuation of three thousand (\$3,000.00) dollars or more in the Town of Westport.

**Ropeck Orange Basket** – The official Town measuring basket for shellfishing, when leveled at the top.

**Scallop** - A marine mollusk of the species Argopectin irradians commonly known as the cape cod scallop or bay scallop.

The verb **To Scallop** in all of its moods and tenses; to take or attempt to take or harvest scallops by any method or means whether or not such method or means results in their capture.

**Sea Clam** - A marine mollusk of the species Spisula solidissima commonly known as the surf clam.

**Seed Clam** - A soft-shelled clam of a size less than two (2) inches in the longest length.

**Seed Oyster** - An American oyster of a size less than three (3) inches in the longest length.

**Seed Quahog** - A hard shelled clam of a size less than one (1) inch shell thickness or hinge width.

**Seed Scallop** - A cape or bay scallop without a well defined raised annulus or growth ring.

**Seed Sea Clam** - A surf-clam of a size less than four (4) inches in the longest length.

**Shellfish** - Shall mean and include soft-shelled clams, eels, marine worms, mussels, oysters, quahogs, razor clams, and sea clams.

The verb **To Shellfish** in all of its moods and tenses; to take or attempt to take or harvest shellfish by any method or means, whether or not such method or means results in their capture. (hand, handrake, bull rake, tong, fork, plunger, dredge or dive)

**Special License** - The license issued under the authority of the Board to persons not yet attaining the age of sixteen (16), expressly for the purpose of harvesting commercial quantities of shellfish.

**Town** - The Town of Westport.

**Waters** - All waters of the Town within the rise and fall of the tide and the three (3) mile limit of marine jurisdiction as far as the same are applicable to the shellfish and scallop resources of the Town.

**4402.2** A person who counsels, aids or assists in a violation of any of these provisions, rules and regulations so adopted by the Board or shares in any of the proceeds of said violation by receiving or processing shellfish and scallops shall be deemed to have incurred the penalties imposed thereby upon the person of such violation.

**4402.3** When deemed necessary or expedient, the harvest of shellfish and scallops, as authorized by the Board, shall be referenced as to the harvesting by lawful means and in a lawful manner. Any reference to the harvesting, or having in possession, of any shellfish and scallops shall include the harvesting, or having in possession, of any part or portion thereof.

**4403. CLASSES OF LICENSES, PERMITS, AND FEES**

Dredging Licenses – **Taken over by the State**

Fourteen-Day Citizen's Family Shellfish Permits - **\$100.00**  
Non-Resident Family Scallop Permit - **\$250.00**  
Non-Resident Family Shellfish Permits - **\$200.00**  
Resident Family Scallop Permits - **\$50.00**  
Resident Family Shellfish Permits - **\$35.00**  
Senior Citizen Resident Scallop Permit - **\$10.00**  
Senior Citizen Resident Shellfish Permits - **\$10.00**  
Scallop Fishermen's License - **\$300.00**  
Shellfish Fishermen's License - **\$200.00**  
Special Shellfish Fisherman's License - **\$60.00**  
Duplicate - **\$10.00**

**4404.**

**REQUIREMENTS TO OBTAIN LICENSES AND PERMITS**

For all classes of licenses and permits it shall be the burden of the applicant to the satisfaction of the issuing authority, the Board or their agent, to prove place of residence or real estate ownership. For all classes of permits, it shall also be the burden of the applicant, to the satisfaction of the issuing authority, the Board or their agent, to prove family membership for each individual to be listed on the permit. Instruments of such proof may consist of a current real estate tax receipt, inclusion in the roles of a current assessor's list, inclusion in the roles of a current census list, children's enrollment in a school system, a valid drivers license, a valid automobile registration, current rent receipts and/or current utility bill receipts showing address and is domiciled in the Town of Westport, and/or any other instrument deemed expedient or necessary by the issuing authority.

**4401.1      Dredging License**

Shall be issued to any applicant who is a resident of the Town. Said license may also be issued in the name of a boat provided the boat is owned and operated by a resident of the Town.

**4404.2      Fourteen Day Citizen's Family Shellfish Permits**

Shall be issued to any non-alien citizen of the United States, who being head of family and neither a resident nor non-resident, is temporarily housed and vacationing in the Town. Applicants shall bear the burden of proof of temporary housing by means of any one, or combination, of the instruments listed in Section 4404.

**4404.3      Non-Resident Family Permit (Shellfish and Scallop)**

Shall be issued to any non-resident who is head of family. The head of family shall provide the names of the family members entitled to use said permit.

**4404.4      Resident Family Permit (Shellfish and Scallop)**

Shall be issued to any resident who is head of family. The head of family shall provide the names of all family members entitled to use said permit.

**4404.5 Fisherman's License (Shellfish and Scallop)**

Shall be issued to any resident who has in their possession a valid Commercial Fisherman Permit or who submits positive evidence that a Commercial Fishermen Permit has been applied for.

**4404.6 Senior Citizen's License (Shellfish and Scallop)**

Shall be issued to any resident of the Town who has attained the age of sixty-five (65) at the time he or she purchases the permit.

**4404.7 Special Shellfish Fisherman's License**

Shall be issued to any resident who has not yet attained the age of sixteen (16), when said resident files in the office of the Town Clerk a written statement of the parent, parents or legal guardian granting permission for the applicant to receive said license. Applicants must possess a valid Commercial Fisherman permit or submit positive evidence that a Commercial Fisherman Permit has been applied for.

**4404.8 Duplicate**

Shall be issued for any class of license or permit as a replacement for loss or by mistake or accidentally destroyed. Duplicate shall also be issued to amend any class of permit when the family status or eligibility of a permittee to use a permit changes.

**4405. GENERAL CONSIDERATION FOR ALL CLASSES OF LICENSE AND PERMITS**

**4405.1** License and permits shall be issued subject to any changes in these provisions, rules, and regulations and any amendments thereto that the Board may deem necessary and expedient and so adopted under the provisions of Massachusetts General Law, Chapter 130, Section 52.

**4405.2** Any licensee or permittee who violates any of these provisions, rules, and regulations may have their license or permit suspended or revoked and canceled by the Board by written notice to person to whom the license or permit was issued. A copy of such notice shall be filed in the office of the Board and shall be prima facie evidence that such notice has been given.

**4405.3** Licenses and permits are not transferable and no person shall amend, alter or in any way modify the information contained on a license or permit.

- 4405.4** No licensee shall be issued nor entitled to use a similar class of permit and no permittee shall be issued nor entitled to use a similar class of license.
- 4405.5** The age, height, weight, color of eyes and hair and any other identifying features deemed necessary by the Board shall be plainly marked on each license or permit for each licensee and permittee.
- 4405.6** No person shall shellfish or scallop without a valid license or permit.
- 4405.7** Every person shall have their license or permit in possession while shellfishing or scalloping and while transporting shellfish and scallops from their beds to shore and shall on demand forthwith display the same along with a valid driver's license or other positive identification and catch to any Westport Selectman, Police Officer, Reserve Police Officer, Shellfish Constable or any Shellfish Deputy Warden and such other officials as the Board may from time to time designate as enforcing persons.
- 4405.8** Shellfish and scallops shall be brought ashore whole and in shell.
- 4405.9** Shellfishing and scalloping shall only be between sunrise and sunset, excluding eeling, which shall have no closed season.
- 4405.10** Unless the scallop closed season is modified under the provisions of the Massachusetts General Law, Chapter 130, Section 73 by the Board, no person shall scallop between April first (1st) and the following September thirtieth (30th) inclusive.
- 4405.11** No person shall shellfish or scallop in a closed area so plainly marked.
- 4405.12** While shellfishing or scalloping, shellfish and scallops shall be **IMMEDIATELY** culled and all seed returned to the waters and flats and no person shall move or transport seed of any kind without first obtaining written permission from the Director of the Massachusetts Division of Marine Fisheries and the Westport Shellfish Constable.
- 4405.13** No person shall take or have in their possession seed clams, seed oysters, seed quahogs, or seed sea-clams except that a five (5%) per cent by count of seed shall be allowed.
- 4405.14** Clams shall only be taken by a clam fork, clam rake, clam hoe, plunger, or hand; no other device or method shall be used.
- 4405.15** Mussels shall only be taken by hand, hand rake, bull rake, or tongs. No other device or method shall be used except during the scallop season when the use of a scallop drag or dredge, so-called, shall be allowed.

- 4405.16** Oysters shall only be taken by hand, hand rake, bull rake, or tongs. No other device or method shall be used. Oyster Relay Areas shall only be harvested by hand rake or tongs. No other device or method shall be used and oysters will be culled immediately over relay bed.
- 4405.17** Quahogs shall only be taken by hand, hand rake, bull rake, or tongs; no other device or method shall be used except that a dredge may be used outside the waters of the Westport River estuary beginning from a line drawn from Westport light atop the Nubble to the western most tip of Horseneck or Cherry and Webb Point-approximately 331 true.
- 4405.18** No person shall engage in the removal of mussels or scallops while using a drag or dredge, so-called, of more than thirty-six (36) inches in overall width.
- 4405.19** The maximum quantity of scallops to be taken by any one boat on any one day shall be limited to that allowed two (2) licenses or two (permits) or one (1) license and one (1) permit.
- 4405.20** Scallops shall only be taken by hand, hand rake, bull rake, tongs, dig net, or dredge; no other device or method shall be allowed.
- 4405.21** Within the waters so-defined under Article XLIV, Section 4405.7 and all other waters seaward to the twelve (12) foot mean low water contour, sea clams shall only be taken by hand, hand rake, bull rake, tongs, or dip net; no other device or method shall be used.
- 4405.22** Whoever catches or takes from the waters any starfish or drills and winkles and their egg cases, or cockles shall deposit the same at some place at least five (5) feet above the high watermark.
- 4405.23** No person shall shellfish or scallop within one hundred (100) feet of any municipal aquacultural enterprise or in any other way disturb the growth of shellfish or scallops contained in or on the racks, rafts, trays, or floats of a municipal aquacultural enterprise so plainly marked. No person shall take or directly or indirectly injure the shellfish or scallops contained in or on aquacultural devices so mentioned. No person shall injure, deface, destroy, remove, or trespass upon any municipal aquacultural device or any mark or bound used to define the extent of the municipal aquacultural enterprise, or tie or fasten any vessel thereto, or injure, deface, destroy, remove, or trespass upon any materials used as part of or in conjunction with any municipal aquacultural and propagative enterprise so plainly marked.
- 4405.24** The destruction of shellfish beds, scallop beds, and marshlands while shellfishing or scalloping is strictly prohibited.

**4406.**

**FAMILY PERMITS**

- 4406.1** The names of family members qualifying to use a family permit shall have their names plainly marked on the permit.
- 4406.2** Family permits are only valid for those persons listed on the permit.
- 4406.3** No more than one (1) permit of any one class shall be issued to a family.
- 4406.4** Senior Citizen Resident Permit is valid only for the senior citizen to whom the permit is issued and their spouse who shall have his or her name listed on the permit.
- 4406.5** No more than one class of Senior Citizen Resident Permit shall be issued to any one senior citizen including spouse.
- 4406.6** Non-Resident Family Shellfish Permits, Resident Family Shellfish Permits, and Senior Citizen Resident Shellfish Permits are valid for any one year during the period between January first (1st) and December thirty-first (31st) inclusive of that year.
- 4406.7** Non-Resident Family Scallop Permits, Resident Family Scallop Permits, and Senior Citizens Scallop Permits are valid only during the period of October first (1st) of any one year to the succeeding March thirty-first (31st) inclusive unless the scallop closed season is modified by the Board as provided under the Chapter 130, Section 73 of the Massachusetts General Laws.
- 4406.8** Fourteen Day Citizen's Family Shellfish Permits are valid only during the period from the date of issuance hence for fourteen (14) days inclusive.
- 4406.9** Not more than one-half ( $\frac{1}{2}$ ) bushel of clams including shells (to be taken in one day) per week on any one (1) permit.
- 4406.10** Family Permit weekly mussel limit to be unlimited.
- 4406.11** Not more than one (1) bushel of oysters including shells shall be taken during any one (1) calendar week on any one (1) permit.
- 4406.12** Not more than one (1) peck of quahogs including shells shall be taken during any one (1) day on any one (1) permit and not more than one-half ( $\frac{1}{2}$ ) bushel of quahogs including shells shall be taken during any one (1) calendar week on any one (1) permit.
- 4406.13** Not more than one and one half ( $1\frac{1}{2}$ ) bushels of scallops including shells shall be taken during any one (1) calendar week on any one (1) permit.
- 4406.14** Not more than one (1) bushel of sea-clams including shells shall be taken during any one (1) day on any one (1) permit and not more than two (2) bushels of sea-clams including shells shall be taken during any one (1) calendar week on any one (1) permit.

**4406.15** No permittee will sell or offer for sale, for money or other considerations, any shellfish and scallops.

**4407.** **COMMERCIAL FISHERMAN'S LICENSE**

**4407.1** Fisherman's and Special Fisherman's Licenses are valid only for the one (1) person to whom the license is issued.

**4407.2** Fisherman's and Special Fisherman's Shellfish Licenses are valid for any one (1) year during the period between January first (1st) and December thirty-first (31st) inclusive of that year.

**4407.3** Scallop Fisherman's Licenses are only valid during the period of October first (1st) of any one year to the succeeding March thirty-first (31st) inclusive unless the scallop closed season is modified by the Board as provided under Chapter 130, of the Massachusetts General Laws.

**4407.4** No more than one (1) class of license shall be issued to any one (1) resident.

**4407.5** Special Fisherman's Shellfish Licenses are not valid during school hours.

**4407.6** Dredging Licenses are valid for any one (1) year during the period January first (1st) and December thirty-first (31st) inclusive of that year.

**4407.7** No shellfish and scallops shall be removed from the shores of any area of the Town by any licensee unless the container thereof has been tagged and labeled with said tag or label to bear thereon the quantity of shellfish or scallops contained therein, the size or sizes of shellfish contained therein, the area (BB1--Area outside the mouth of river; BB2--Richmond Pond; BB3--West Branch; BB4--East Branch) within the Commonwealth of Massachusetts from which the shellfish or scallops were taken, the number of the Commercial Fisherman Permit (State License) under which the shellfish or scallops were taken, the date the shellfish or scallops were taken and the name of the licensee.

**4407.8** Not more than one (1) bushel of clams including shells shall be taken during any one (1) day on any one (1) license.

**4407.9** Fisherman's and Special Fisherman's License daily mussel limit shall be unlimited.

**4407.10** Not more than five (5) bushels of oysters including shells shall be taken during any one (1) day on any one (1) Shellfish Fisherman's License.

**4407.11** Not more than two and one-half (2½) bushels of oysters including shells shall be taken during any one (1) day on any one (1) Special Fisherman's Shellfish License.

- 4407.12** Not more than four (4) bushels of quahogs including shells shall be taken during any one (1) day on any one (1) Shellfish Fisherman's License.
- 4407.13** Not more than one and one half (1½) bushels of quahogs including shells shall be taken during any one (1) day on any (1) Special Shellfish Fisherman's License.
- 4407.14** Not more than seven (7) bushels of scallops, including shells shall be taken during any one (1) day on any one (1) Scallop Fisherman's License.
- 4407.15** Not more than three hundred and fifty (350) bushels of quahogs including shells shall be taken during any one (1) calendar week on any one (1) Dredging License.
- 4407.16** Not more than one hundred (100) bushels of surf clams, including shells, shall be taken during any one (1) day and including every day of the week between sun up and sunset, outside twelve (12) feet of water at low tide from November 1<sup>st</sup> to April 30<sup>th</sup> and twenty (20) feet of water at low tide from May 1<sup>st</sup> to October 30<sup>th</sup> and outside of Town waters two hundred (200) bushels are allowed per day. (State Reg. 6.08)
- 4407.17** Not more than ten (10) bushels of surf clams in any one (1) day on any one Shellfish Fisherman's License.

**4408.**

**DIVING REGULATIONS FOR HARVESTING OF SHELLFISH**

- 4408.1** A flag should be displayed for each diver in the water. Non-compliance will be a \$100 fine.
- 4408.2** Skin diving with mask and snorkel, and scuba diving with air tanks, may be used to take shellfish in specific areas when prescribed by the Selectmen. In no case will scuba diving for shellfish be allowed in depths of less than seven (7) feet. Any commercial shellfisherman harvesting by scuba diving shall display permit numbers on the flag with Massachusetts permit numbers not less than three (3) inches in height no less than ½ inch in thickness or width of line. Both skin and scuba divers shall display a dive flag that they shall carry with them attached by a line to a basket or weight. Divers must stay within a ten (10) foot radius of their flag while shellfishing. Non-compliance with any part of this regulation shall be a fine of not less than one hundred (\$100) dollars for the first offense, two hundred (\$200) dollars for the second offense and three hundred (\$300) dollars for the third offense.
- 4408.3** No scuba or skin diving for shellfish is allowed within fifty (50) feet of a marked channel. Non-compliance with this regulation shall be one hundred (\$100) dollars for the first offense, two hundred (\$200) dollars for the second offense and three hundred (\$300) dollars for the third offense.

**4408.4** There will be no harvesting of shellfish by any means within any properly marked grant sites, except those with special permission or grant owner or Shellfish Constable. Fine assessed to violators shall be one hundred (\$100) dollars.

**4408.5** When scuba or skin diving for shellfish, the diver will cull his or her catch immediately as it is being caught and release under size shellfish at that site. Non-compliance with this regulation is a one hundred (\$100) dollar fine currently in the Shellfish Regulation booklet.

**4409. ENFORCEMENT**

**4409.1 Penalties**

The foregoing provisions, rules, and regulations shall be enforced by any Westport Selectman, Police Officer, Reserve Police Officer, Shellfish Constable, or any Shellfish Deputy Warden and any other official the Board may designate as enforcing persons. Enforcing persons may in their discretion initiate criminal proceedings for any and all violations of these provisions, rules, and regulations in which case the penalties shall be as provided in Massachusetts General Law, Chapter 130. Alternatively, or in addition to initiating criminal proceedings, enforcing persons may refer violations of these provisions, rules, and regulations to the Board. The Board shall notify the concerned licensee or permittee as to the time and place of the hearing at which the Board may, at their pleasure, suspend or revoke and cancel licenses and permits according to the following policy:

**4409.2 First Offense**

Suspension of license or permit for thirty (30) days, in which case the licensee or permittee shall not apply for any license or permit for thirty (30) days.

**4409.3 Second Offense**

Suspension of license or permit for sixty (60) days, in which case the licensee or permittee shall not apply for any license or permit for sixty (60) days.

**4409.4 Third Offense**

Suspension of permit for one (1) year, in which case the licensee or permittee shall not apply for any license or permit for one (1) year.

**4409.5 Fourth Offense**

In the event a fourth offense is incurred or a licensee or permittee otherwise shows total disregard for these provisions, rules, and

regulations, the Board may revoke and cancel the license or the permit for a period of time as so determined by the Board not to exceed five (5) years, in which case the licensee or permittee shall not apply for any license or permit for a period of time so determined by the Board not to exceed five (5) years.

**4409.6** No fee received for a license or permit, which has been suspended or revoked and canceled shall be refunded.

**4410. NON-CRIMINAL DISPOSITION**

Town By-Law affords enforcing persons a third option of enforcing these rules and regulations, non-criminal disposition. If the method of non-criminal disposition is used by an enforcing person, the specific penalties for a violation of these rules and regulations shall be:

**4410.1 Violation And Penalties:**

Section 4405., Paragraphs 4405.7, 4405.12, 4405.19, 4405.22 - **\$15.00**

Section 4407., Paragraph 4407.7 - **\$15.00**

Section 4405., Paragraphs 4405.14, 4405.15, 4405.16, 4405.18, 4405.20 - **\$25.00**

Section 4405., Paragraphs 4405.6, 4405.8 - **\$50.00**

Section 4406., Paragraphs 4406.9, 4406.11, 4406.12, 4406.13, 4406.14 - **\$50.00**

Section 4407., Paragraphs 4407.8, 4407.10, 4407.11, 4407.12, 4407.13, 4407.14, 4407.15 - **\$50.00**

Section 4405., Paragraphs 4405.13, 4405.24 - **\$100.00**

Section 4405., Paragraphs 4405.9, 4405.10, 4405.11, 4405.17, 4405.21, 4405.23 - **\$200.00**

Section 4406., Paragraph 4406.15 - **\$200.00**

Section 4405., Paragraph 4405.6 - **\$100.00**