

Town of Eastham

Shellfish Regulations and Fees and Catch Limits

(Index for Shellfish Regulations and Fees and Catch Limits (Appendix A) begin on Page 13)

1.0 Authority

The Board of Selectmen, through the authority derived from Massachusetts General Laws Chapter 130 and the Eastham Town Code of Conduct, Chapter 127. Hereby adopts a set of guidelines for Eastham's Shellfish Regulations, Fees and Catch Limits.

2.0 Purpose

The purpose of these regulations is to protect, enhance and assure the continuance of a healthy shellfishing industry in the Town of Eastham. Shellfish resources and habitats play a vital role in the Town's natural resources and these regulations will help maintain and improve a sustainable shellfish population.

3.0 Definitions

In these regulations, unless the context otherwise requires, the following word shall have the following meanings:

“Batch” -- all shellfish in each separate container.

“Bushel” -- a standard measure of volume equaling one (1) level wire basket whose interior volume measures two thousand one hundred fifty (2,150) cubic inches.

“Clam” -- a marine mollusk of the species *Mya arenaria* commonly called the soft-shell clam.

“Container” -- any bag, box, basket, cage, or other receptacle containing shellfish.

“Commercial Permit” -- is a license issued whereby holder thereof may sell the shellfish taken under such permits.

“Recreational permit” -- a recreational license issued which permits a husband, wife, and dependent(s), who are domiciled and living under the same roof to harvest shellfish.

“Mussel” -- a marine mollusk of the species *Mytilus edulis*, commonly known as the blue mussel.

“Oyster” -- a marine mollusk of the species *Crassostrea virginica*, commonly known as the American oyster.

“Possession” – in the immediate control of a person e.g. in a boat, car, bag, etc. belonging to an individual.

“Quahog” – a marine mollusk of the species *Mercenaria mercenaria*, commonly called the hard-shell clam.

“Scallop” – a marine mollusk of the species *Aequipecten irradians*, commonly known as the bay scallop.

“Seed Clam” – Soft shell clams measuring less than two inches in the longest diameter.

“Seed Oyster” – Oyster measuring less than three inches in the longest diameter.

“Seed Bay Scallop” – Bay scallop which does not have a well-defined raised annual growth ring on the shell.

“Seed Quahog” – Quahog measuring less than one inch shell thickness (hinge width)

“Shellfish” -- clams, conchs, moon snails, mussels, oysters, quahogs, razor clam or razor fish, scallops, sea worms, whelk and winkles.

“Take” – any method of harvest of the related species from its habitat.

“Ten quart bucket” – a standard measure of volume equaling one (1) level wire basket whose interior volume is six hundred seventy two (672) cubic inches.

“Week” – seven (7) consecutive days beginning on Sunday at 12:01 am and ending on Saturday at 11:59 pm.

4.0 Permits, fees, and permit restrictions

4.1 Types of permits:

Shellfish permits shall be of three (3) types: **commercial permits (class five)**, whereby the holders thereof may sell the shellfish taken under such permits; **recreational permits (class one, two, four & six)**, whereby the holders thereof may **not** sell shellfish taken under such permits; and **apprentice permits**, as described in section 4.8.

4.2 Possession and carrying of permit:

All persons are prohibited from taking eels (except by hook and line), sea worms or shellfish from the coastal waters of the Town without a shellfish permit. Shellfish permits shall be carried while shellfishing.

- 4.3 **Transferability of permit:**
Shellfish permits are not transferable.
- 4.4 **Display of permit upon demand:**
All persons taking, carrying away, or having in their possession shellfish of any kind in any boat, vehicle, or container shall exhibit, on demand of the Shellfish Constable and his/her designees, Cape Cod National Seashore Park Rangers, Environmental Police Officers and any Police Officer of the Town of Eastham their permit to take such shellfish. Whoever violates any provision of this subsection may have their permit to shellfish in the Town of Eastham suspended for a period of no less than seven (7) days, subject to the provision of section 7.3.
- 4.5 **Commercial permit eligibility:**
No person shall be eligible to apply for a *commercial* shellfish permit unless he or she has been domiciled in the Town of Eastham or Orleans for six (6) months preceding the date of application. Commercial permits shall be forfeited immediately to the Natural Resources Department if the holder fails to continue his/her domicile within either municipality.
- 4.6 **Shellfishing rights of residents of Eastham & Orleans:**
Domiciled persons of Eastham shall enjoy the same right to the shellfisheries of Orleans as they enjoyed from the incorporation of the Town, after first obtaining a permit from the Town of Orleans. Domiciled persons of Orleans shall enjoy the same right to the shellfisheries of Eastham as they enjoyed from the incorporation of the Town, after first obtaining a permit from the Town of Eastham.
- 4.7 **Commercial permit and apprentice permit issuance:**
Applications for *commercial* permits and *apprentice* permits shall be submitted to the Natural Resources Department between **January 1** and **April 30** annually. Applications are subject to thirty-day (30) review period. Said permit shall be valid until 11:59 p.m. April 30 of the following year and shall be valid only for the person for whom it was issued. A Commercial permit is valid only in the waters, flats, and tidal creeks of Eastham.
- 4.8 **Free apprentice permits:**
Persons who have not yet achieved fourteen (14) years of age on the date of application, who are domiciled, subject to the provision of section 4.5 may be issued a free *apprentice* permit. Said permit will allow the person to assist a duly licensed Commercial harvester in the taking of shellfish provided that the limit for the harvest shall not exceed that of one (1) permit holder. Said *apprentice* permit holders who achieves the age of 14 years during the period between May 1st and December 31st of the same year may then be issued a Commercial permit at the cost of a *commercial* permit for the remainder of the calendar year subject to full digging privileges and harvest limits, subject to the provision of section 4.7.

- 4.9 **Dual permit prohibition:**
No person holding a *commercial permit* shall hold at the same time a *recreational permit* for the taking of shellfish.
- 4.10 **Commercial permit required for dredging:**
Each person actively engaged in the dredging of shellfish in Cape Cod Bay in Eastham shall hold a *commercial permit* issued by the Town of Eastham. For the purposes of this regulation, “actively engaged” shall be defined as handling, harvesting shellfish or operating harvesting gear.
- 4.11 **Planting or transplanting without a permit:**
No person shall plant, place or transplant shellfish in or onto the waters or shellfish areas within the Town of Eastham without first obtaining a permit from the Eastham Board of Selectmen upon recommendation of the Shellfish Constable.
- 4.12 **Recreational permit issuance:**
- 4.12(a) **All fees for recreational permits shall be set by the Board of Selectmen annually. SEE APPENDIX A**
- 4.12(b) A **class one** recreational permit may be issued to domiciled persons of the Town of Eastham or Orleans and for persons not domiciled but owning real estate within the Town of Eastham.
- 4.12(c) A **class two** (senior) recreational permit may be issued to an individual domiciled in the Town of Eastham or Orleans sixty-five (65) years of age or over.
- 4.12(e) A **class four** recreational permit may be issued for persons not owning real estate in the Town of Eastham or Orleans nor renting lodging in the Town of Eastham.
- 4.12(f) A **class six** recreational permit may be issued for any persons, *which will be valid for a period of seven consecutive days.*
- 4.12(g) **Recreational permits will be issued after June 1st of every year and shall be valid until May 31st of the following year, unless sooner suspended or revoked or otherwise designated.**
- 4.12(h) **Only ONE(1) recreational permit may be issued per household.**

5.0 General regulations

**All catch limits shall be set by the Board of Selectmen annually.
SEE APPENDIX A**

5.1 **Enforceability:**

The Shellfish Constable and his/her designees shall be empowered to enforce all applicable sections of Chapter 130 of the Massachusetts General Laws and 322 CMR of the Massachusetts Division of Marine Fisheries pertaining to shellfish in the Town of Eastham.

5.2 **Display of shellfish upon demand:**

All persons taking, carrying away, or having in their possession shellfish of any kind in boat, vehicle, or container shall exhibit, on demand of the Shellfish Constable and his/her designees, Cape Cod National Seashore Park Rangers, Environmental Police Officers and any Police Officer of the Town of Eastham, all shellfish in their possession for inspection. Whoever violates any provision of this sub-section, in addition to any penalties specified in M.G.L. Chapter 130, may have their permit to shellfish in the Town of Eastham suspended for a period of no less than seven (7) days subject to the provisions of section 7.3 herein. Whoever throws or dumps overboard or into the water shellfish contained within a pail, bag, barrel or other receptacle, after having been requested or signaled by the Shellfish Constable or his/her designees to stand by for inspection shall be deemed to have violated this sub-section.

5.3 **Seizure of shellfish:**

All shellfish taken, held, possessed or dealt with contrary to any section or sub-section of these regulations made under authority thereof may in addition to any or all of the penalties contained therein, be seized, photographed, destroyed or returned to the waters of the Commonwealth by the Shellfish Constable or his/her designees.

5.4 **Closed areas:**

The Selectmen may restrict the use of areas for the taking of all shellfish as they deem expedient, either absolutely or generally or for some particular use, or for the taking of certain kinds of shellfish only and allowing other kinds to be taken from such restricted areas, and such restrictions shall have the same force and effect as any rule or regulation made herein. No shellfish shall be taken from any area waters of the Town of Eastham unless such areas have been declared open for taking of shellfish by the Board of Selectmen. Shellfish areas that have been classified as “Prohibited”, “Restricted”, or “Conditionally Restricted” by the Massachusetts Division of Marine Fisheries or the Massachusetts Department of Public Health shall also be considered closed for the taking of all shellfish by the Eastham Board of Selectmen. All private shellfish grant sites shall be closed for harvesting of shellfish by anyone other than the lessee or their agents.

- 5.5 **Restricted areas:**
The area of Salt Pond, Salt Pond River and an area of 1,000 feet to the Southerly side of Hemenway Landing shall be restricted to recreational limits regardless of the type of permit held.
- 5.6 **Restricted methods:**
The taking of clams, quahogs, razor clams or mussels from the waters and flats of the Town of Eastham by any other method than what is commonly known as the “long rake”, “scratcher”, “tong”, “pitchfork”, “plunger”, “clam hoe”, or “salting (for razor clams only)” is prohibited unless the taker has a permit issued by Board of Selectmen upon recommendation of the Shellfish Constable. No shovel, spade, trowel or other edged tool may be used in the harvesting of shellfish.
- 5.7 **Possession of seed shellfish:**
No person shall take or have in their possession seed mussel or clams less than two (2) inches in longest diameter, or seed oyster less than three (3) inches in longest diameter, or seed quahog less than one (1) inch in thickness, or whelk less than two and three-quarters ($2\frac{3}{4}$) inches shell width, or seed scallop as defined in section 6.3(e), exceeding five percent (5%) by number of any batch.
- 5.7(a) Only someone who is a licensed aquaculturalist in the Town of Eastham and carries a valid seed permit issued from the Massachusetts division of Marine Fisheries may have seed in their possession as defined in Sub-section 5.7.**
- 5.8 **Shellfishing during the nighttime:**
No person shall dig, take, power dredge or carry away any shellfish or shells between the hours of one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise by any method whatsoever, from any water, flat or creek of the Town of Eastham.
- 5.9 **Temperature restrictions:**
No person shall harvest any shellfish, with the exception of mussels and eels when the air temperature is below twenty-eight (28) degrees Fahrenheit.
- 5.10 **Disposition of starfish, moonsnail, or crabs above high water mark:**
Whoever catches or takes from, the waters of the Town any starfish, moonsnail, or crab, shall deposit the same some place above high water mark or at some suitable place designated by the Shellfish Constable.
- 5.11 **Clam holes shall be filled:**
All holes dug while harvesting shellfish shall be refilled and all seed shall be replanted immediately.

5.12 **Digging in sedge grass:**

There shall be no digging in the sedge grass (*spartina*).

5.13 **Power dredging:**

Power dredging shall be restricted to the waters of Cape Cod Bay and to the taking of bay scallops in other town waters. With the exception of quahogs, mussels and bay scallops, no shellfish shall be taken from the waters of the Town of Eastham by the use of power dredge, drag or any other means thereto unless a permit has been issued by the Board of Selectmen upon the recommendation of the Shellfish Constable. A fee may be set and charged by the Board of Selectmen for said permit. The presence of a dredge overboard at anytime shall be considered evidence of intent to take shellfish.

5.14 **Landing of shellfish:**

All shellfish commercially harvested in the Town of Eastham shall be landed at the following locations unless the Shellfish Constable is notified of an alternate location at least twenty-four (24) hours prior to landing: Cove Road Landing, Goose Hummock Landing, Asa's Landing, Snow Shore Landing, Priscilla Landing, Mill Pond Landing, Tonset Road Landing, Collins' Landing, Hemenway Landing, or Salt Pond Landing in the Nauset estuary; Rock Harbor in Cape Cod Bay.

6.0 Specific regulations

6.1 **Mussels; culling, dredging, restricted areas.**

6.1(a) All mussels shall be culled and all mussels less than two (2) inches in longest diameter shall be returned to the water in the area from which they were taken.

6.1(b) Mussels may be harvested from the waters of Nauset Marsh and Town Cove by power dredging from October 1st to March 31st if a permit has been issued by the Board of Selectmen upon the recommendation of the Shellfish Constable. A fee may be set and charged by the Board of Selectmen for said permit.

6.2 **Eels; methods, registration, obstruction or interference**

All catch limits for the taking of eels shall be set by the Board of Selectmen annually. SEE APPENDIX A

6.2(a) Eels may be taken only by pot, trap, hook and line, or spear. No other methods shall be employed except if a permit has been issued by the Board of Selectmen upon the recommendation of the Shellfish Constable. A fee may be set and charged by the Board of Selectmen for said permit.

- 6.2(b) Any person who sets five (5) or more pots or traps must hold a valid Eastham commercial shellfish permit. All pots or traps for eels shall be registered annually with the Eastham Natural Resources Department. The name of the permit holder shall be plainly marked on all pots, traps, cans, and buoys. Buoys shall be painted with a color scheme approved by the Natural Resources Officer for identification.
- 6.2(c) No freshwater lakes, rivers, ponds, creeks, bogs or any saltwater estuary may be obstructed in any way so as to interfere with the habits and migration of eels.

6.3 Scallops; seasons, hours, tote requirements, landings, possession of seed, etc.

All the catch limits for the harvest of scallops shall be set by the Board of Selectmen annually. SEE APPENDIX A

- 6.3(a) The following seasonal restrictions shall apply to the harvest of scallops by any commercial or recreational permit holder:
 - 6.3(a)i. The waters and flats of Cape Cod Bay in the Town of Eastham shall be open for the taking of scallops annually from in October 1st through March 31st of the following year. The taking of scallops is prohibited in Cape Cod Bay between April 1st and September 30th, inclusive.
 - 6.3(a)ii. The waters and flats of the Nauset estuary shall be open for the taking of scallops annually from the third Sunday in October through March 31st of the following year. The taking of scallops is prohibited in the Nauset estuary between April 1st and the third Saturday in October, inclusive.
- 6.3(b) Hours for scalloping shall be from one-half (1/2) hour before sunrise to 4:00 PM, seven (7) days per week.
- 6.3(c) All scallops taken by Commercial permit must be landed in plastic totes measuring eighteen (18) inches long by twelve (12) inches wide by ten and five-tenths (10.5) inches deep, inside measurements, and containing two thousand two hundred sixty-eight (2,268) cubic inches.
- 6.3(d) All scallops taken from the waters of Cape Cod Bay shall be landed at Rock Harbor except by written permission in advance from the Shellfish Constable. Scallops taken from Nauset Marsh and Town Cove shall be landed at Collins' Landing, Hemenway Landing, Salt Pond Landing, Cove

Road Landing, Goose Hummock Landing, Asa's Landing, Snow Shore Landing, Priscilla Landing, Mill Pond Landing and Tonset Road Landing.

- 6.3(e) All scallops taken from the Town of Eastham waters shall be scallops with a well-defined, raised annual growth ring. Any scallop that does not meet the aforementioned requirements in the opinion of the Shellfish Constable shall be deemed a seed scallop and shall be returned to the water immediately.
- 6.3(f) All scallops shall be taken to shore in the shell.
- 6.3(g) The presence of a scallops dredge overboard at any time shall be considered evidence of intent to take scallops.
- 6.3(h) Scallop dredge frames used in Nauset Marsh and Town Cove shall not measure more than thirty-six (36) inches in width and shall be of light construction type. The maximum width of drag in Cape Cod Bay shall be five (5) feet.
- 6.3(i) No scallops may be taken by scuba, snorkel, or by any other means of diving in those areas which are open to dragging in Nauset Marsh and Town Cove.
- 6.3(j) Any boat used for commercial scalloping in the Town of Eastham shall make only one (1) trip per day.
- 6.3(k) No shellfish permit holder (*commercial or recreational*) shall land scallops and return to the waters for the purpose of additional scalloping without written permission from the Shellfish Constable.

7.0 Violations and penalties.

Pursuant to Massachusetts General Laws: Chapter 40 – (Powers and Duties of Cities and Towns), Section 21D – (Non-criminal disposition of ordinance, by-law, rule or regulation violations) the following regulations do apply:

7.1 Violations and penalties

Any person who violates any provision of these rules, regulations or law shall be punishable by a fine of two hundred dollars (\$200) for each offense, except where a violation takes place in an area further restricted by statute, where the penalty shall be set by that statute. Each day's continued violation shall constitute a separate offense.

7.2 **Enforcing persons**

The foregoing regulations shall be enforced by, the Shellfish Constable and his/her designees, Cape Cod National Seashore Park Rangers, Environment Police Officers and any Police Officer of the Town of Eastham.

7.3 **Suspension of commercial and recreational permits:**

The Board of Selectmen may suspend or revoke, for cause, any commercial or recreational permit granted by them for such times, as they shall deem proper. Notice, in writing, shall be given to the permit holder of said suspension. Any person whose permit has been suspended shall return to the same office of the Town Clerk of the town which issued the permit, where the permit shall remain until the period for which it was suspended has expired.

This policy (Shellfish Regulations and Appendix A – Fees and Catch Limits) adopted at a public hearing on _____.

TOWN OF EASTHAM

Fees and Catch Limits

APPENDIX A

1.0 The following catch limits shall apply to holders of *commercial permits*:

- 1.1 No person having a valid commercial permit from Eastham or Orleans may take daily from the Nauset estuary or Cape Cod Bay in excess the following: four (4) bushels quahogs (*Mercenaria mercenaria*) with not more than two (2) bushels necks and/or cherry-stone, ten (10) bushels of mussels. (Limits for mussels and soft-shell clams will be periodically reviewed and set by the selectmen.)

The total limit for commercial power dredging of quahogs (*Mercenaria mercenaria*) in Cape Cod Bay shall not exceed thirty-five (35) bushels per trip per boat per day and must be landed at Rock Harbor except by written permission from the Shellfish Constable or his/her designees.

Such limits shall be subject to resource assessments. No such permit holder shall have in their possession while in, or on, or adjacent to the waters or flats of the town or at any landing within the town, shellfish in excess of the limits specified in this paragraph.

1.2 The following catch limits shall apply to the harvest of scallops:

1.2 (a) The daily limit for commercial permit holders in Cape Cod Bay shall be ten (10) level totes per day per permit holder, and there shall be a maximum of two (2) permit holders allowed per boat. If two (2) limits are to be harvested, both commercial permit holders must be actively engaged in the harvesting. For the purposes of this regulation, “actively engaged” shall be defined as handling or harvesting scallops or operating harvesting gear.

1.2 (b) The daily limit for commercial permit holders in Nauset estuary shall be five (5) level totes per day per permit holder and there shall be a maximum of two (2) permit holders allowed per boat. If two (2) limits are to be harvested, both commercial permit holders must be actively engaged in the harvesting. For the purposes of this regulation, “actively engaged” shall be defined as handling or harvesting scallops or operating harvesting gear.

2.0 The following catch limits shall apply to holders of *recreational permits*:

2.1 The taking of quahogs, clams, mussels and oysters by *recreational permit* holders shall not exceed one (1) ten-quart pail-full per week, except for eels by spear, and sea worms which shall not exceed thirty-six (36) per week.

2.2 The following catch limits shall apply to the harvest of scallops:

2.2(a) In addition to other shellfish harvested a *recreational permit* holders shall be allowed one (1) bushel of scallops per week.

3.0 The following are the current fees and classes of permits:

Permit	Permit Class	Fee Amount
Recreational	Class 1 – Taxpayer	Twenty-Five Dollars (\$25)
Recreational	Class 2 – Senior Taxpayer (ages 65 & up)	Twelve Dollars (\$12)
Recreational	Class 4 – Non-resident	Seventy-Five Dollars (\$75)
Commercial	Class 5 – Commercial	Two Hundred Dollars (\$200)
	Class 5 – Senior Commercial (ages 70 & up)	Ten Dollars (\$10)
Recreational	Class 6 – Seven (7) Day	Twenty Dollars (\$20)

4.0 The duration of *recreational permits* are from June 1st to May 31st of the following calendar year, except for a *seven day recreation permit* in which the duration is seven days and expires on the day written on the permit. Commercial permits are valid until 11:59 p.m. April 30th of the following year.

5.0 Fees and Catch Limits can be reviewed and set annually by the Board of Selectmen.

This policy (Shellfish Regulations and Appendix A – Fees and Catch Limits) adopted at a public hearing on _____.

INDEX

**Shellfish Regulations
and Fees and Catch Limits (Appendix A)**

1.0 Authority 1

2.0 Purpose.....1

3.0 Definitions.....1-2

4.0 Permits, fees, and permit restrictions 2-4

4.1 Types of permits

4.2 Possession and carrying of permit

4.3 Transferability of permit

4.4 Display of permit upon demand

4.5 Commercial permit eligibility

4.6 Shellfish rights of the residents of Eastham & Orleans

4.7 Commercial permit and apprentice permit issuance

4.8 Free apprentice permits

4.9 Dual permit prohibition

4.10 Commercial permit required for dredging

4.11 Planting or transplanting without a permit

4.12 Recreational permit issuance

5.0 General regulations 5-7

5.1 Enforceability

5.2 Display of shellfish upon demand

5.3 Seizure of shellfish

5.4 Closed areas

5.5 Restricted areas

5.6 Restricted methods

5.7 Possession of seed shellfish

5.7 (a) Persons that can possess seed

5.8 Shellfishing during the nighttime

5.9 Temperature restrictions

5.10 Disposition of starfish, moon snail, or crabs above high water mark

5.11 Clam holes shall be filled

5.12 Digging in sedge grass

5.13 Power dredging

5.14 Landing of shellfish

6.0 Specific regulations7-9

- 6.1 Mussels
 - 6.1(a) Culling of mussels
 - 6.1(b) Dragging for mussels

- 6.2 Eels
 - 6.2(a) Methods of harvest
 - 6.2(b) Registration of eel pots
 - 6.2(c) Obstruction of or interference with migration of eels

- 6.3 Scallops
 - 6.3(a) Harvest seasons
 - 6.3(a)i Cape Cod Bay
 - 6.3(a)ii Nauset estuary
 - 6.3(b) Hours for scalloping
 - 6.3(c) Landing of scallops in totes
 - 6.3(d) Landing of scallops, locations
 - 6.3(e) Seed scallop described
 - 6.3(f) Landing of scallop in the shell
 - 6.3(g) Evidence of intent to scallop
 - 6.3(h) Scallop dredge frame measurements
 - 6.3(i) Diving for scallops
 - 6.3(j) One (1) trip / boat / day
 - 6.3(k) Returning to waters prohibited

7.0 Enforcement and penalties.....9-10

- 7.1 Violations and penalties
- 7.2 Enforcing persons
- 7.3 Suspension of commercial and recreational permits

APPENDIX A – Fees and Catch Limits.....11-12

- 1.0 Commercial Permits
- 2.0 Recreational Permits
- 3.0 Current Fees and Classes of Permits
- 4.0 Duration of Permits (Recreational and Commercial)
- 5.0 Fees and Catch Limits – Set by Board of Selectmen Annually