



## TOWN OF AQUINNAH

### REGULATIONS AS TO THE TAKING OF SHELLFISH

By authority vested in the Selectmen of the Town of Aquinnah by Chapter 130 Section 52 of the General Laws, and by vote of the Town authorizing the Selectmen to control, regulate or prohibit the taking of eels, oysters, clams, quahogs, and scallops within the Town of Aquinnah, the Selectmen of said town hereby adopt the following regulations effective May 1, 1992 and amended September 20, 2011.

1.0 GENERAL REGULATIONS - All licensees must comply with these regulations and Massachusetts General Laws, Chapter 130.

1.1 An Aquinnah Shellfish License is required to take any and all types of shellfish from the waters of Aquinnah. Exempt from family/individual licensing by the Town is any person who is a member of the Wampanoag Tribe of Aquinnah, provided that while engaged in shell fishing, he/she is in possession of their tribal identification card. The exemption is not valid for any type of commercial shell fishing.

1.2 Shellfish licenses shall be valid from April 1 through March 31 or any part thereof.

1.3 Shellfish licenses are not transferable.

1.4 No person shall dig, pile, take, or carry away shellfish by any method whatever from any waters, flats, or creeks between the time limits of one half hour after sunset and one half hour before sunrise.

1.5 Any person engaged or having engaged in shell fishing must immediately stop for and display all shellfish in their possession when directed to do so by the Shellfish Constable, Deputy Shellfish Constable or Police Officer.

1.6 Shellfish shall be taken from Menemsha and Squibnocket Ponds only by methods commonly using a "bull rake", "digger", "tongs" or "clam hoe". Except for the taking of scallops, any use of mechanical power is prohibited unless an exception is recommended by the Shellfish Committee and approved by the Board of Selectmen.

1.7 No one shall possess soft clams less than two inches in length, oysters less than three inches in length and quahogs less than an inch in thickness.

No one shall possess any seed shellfish unless they are an individual or group who hold a special permit from the State of Massachusetts to move seed under the supervision of the Shellfish Constable.

1.8 No starfish, green crabs, whelks, moon snails or codium shall be returned to the water but placed upon the shore substantially above the water line at high tide.

1.9 All license holders must accompany their catch to shore. No license holder may come to shore with shellfish and then return to the water for the purpose of adding to their catch without the permission of the Constable or one of his deputies.

1.10 All license fees are non-refundable.

2.0 FAMILY SHELLFISH LICENSES - shall be valid for a family comprised of no more than licensee, spouse and children under eighteen (18) years of age and two guests.

A) A RESIDENT FAMILY SHELLFISH LICENSE shall be issued to an owner of real estate in the Town of Aquinnah assessed for taxation at not less than ten thousand (\$10,000.00) dollars, or a dwelling house or to any permanent resident of the Town of Aquinnah with at least six months residency. Burden of proof of residency shall be on the applicant. The fee for a resident family shellfish license shall be thirty (\$30.00) dollars. The fee shall be waived for any resident senior citizen who has attained a minimum of seventy (70) years of age.

B) A NON-RESIDENT FAMILY SHELLFISH LICENSE shall be issued to any person. The fee for a non-resident family shellfish license shall be fifty (\$50.00) dollars. The fee for any non-resident senior citizen who has attained a minimum of seventy (70) years of age shall be twenty five (\$25.00) dollars. There shall be no fees waived.

C) ONE (1) WEEK NON-RESIDENT FAMILY SHELLFISH LICENSE shall be issued to any person, from May 1 through September 30. Each license shall be valid for a maximum of seven (7) days and no one (1) week non-resident shellfish license shall be valid after September 30. The issuance of the license allows the licensee to take up to one weekly limit of shellfish. The fee shall be twenty five (\$25.00) dollars. There shall be no fee waived.

2.1 Family and Non-Resident Licenses allow the taking of any kind of shellfish except scallops and oysters from the waters of Aquinnah.

2.2 Family and Non-Resident Licenses allow for the taking of no more than ½ a heaping bushel each of quahogs, clams or sea clams per week; the total catch not to exceed one (1) bushel per week.

2.3 A bushel container must be a plastic “legal limit” bushel box. No other container used to hold a bushel of shellfish shall be allowed. These containers must be in good shape and not be cracked, spread, stretched or any method used to increase their capacity. No artificial means shall be used to hold shellfish on the baskets or boxes.

2.4 The licensee must have their valid shellfish license on their person while shellfishing, and must present said license to the Shellfish Constable, Deputy Shellfish Constable or Police when directed to do so. The Town’s Acting Authority may also require a photo identification to be presented.

## ENFORCEMENT AND PENALTIES

3.0 The Selectmen may suspend any license for such period of time as they deem proper if a determination is made at a notified selectmen’s meeting that an infraction/violation of the above stated shellfish regulations has occurred. The selectmen may also impose a fine of not less than \$10.00 nor more than \$50.00 for each proven violation. The Selectmen must notify permit or license holders of such suspension or fine in writing. Anyone whose permit or license has been suspended shall surrender the same to the Shellfish Constable.

3.1 Any person who takes shellfish from the waters of Aquinnah without an Aquinnah shellfish license, or Wampanoag identification card, or any person who does so after his/her license has been revoked, or suspended and before it is reinstated, shall be punished by a fine of not less than fifty (\$50.00) dollars nor more than one thousand (\$1,000.00) dollars or by

imprisonment for not more than three months, or both, as is provided in Massachusetts General Laws Chapter 130, Section 2 as amended.

3.2 The penalty for a violation of the above stated rules and regulations, or elsewhere in these regulations, shall be:

- First offense, suspension of the shellfish license for five (5) fishing days and/or not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars.
- Second offense, suspension of the shellfish license for fifteen (15) days and/or a fine of not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars.
- Third offense, revocation of shellfish license for one calendar year.

4.0 COMMERCIAL SHELLFISH LICENSES - shall be issued to any permanent resident of Aquinnah 14 years of age or older. No commercial shellfish license may be granted to any person who has not resided in town for at least six (6) months preceding his/her application for a license. For a Bay Scallop license the residency requirement is 1 year. The burden of proof shall be on the applicant. The applicant shall have 12 consecutive months of three forms of proof. Some examples of proof of residency are: rent receipts and/or rent canceled checks, tax bill receipts, utility bills, census list representation, and/or any other proof deemed acceptable by the Shellfish Committee. The applicant shall also possess a valid Massachusetts Commercial Shellfish License. The fee for commercial shellfish licenses shall be:

- 1) Quahog/Soft shell-Sixty (\$60.00) dollars.
- 2) Bay Scallop-Two hundred (\$200.00) dollars.
- 3) Oyster-Seventy five (\$75.00) dollars.

4.1 The applicant shall complete a License Eligibility Application long form and submit it to the Shellfish Committee for its review together with any additional information or documentation requested by the Committee to demonstrate eligibility. The applicant shall have the burden of demonstrating eligibility to the satisfaction of the Committee. Upon receipt of a recommended application, the Board of Selectmen shall within seven (7) business days reach a decision with respect to the issuance of the license. Eligibility shall not exclude those applicants who are serving in the armed forces or who are pursuing degrees at institutions of higher learning.

4.2 The Board of Selectmen reserves the right to delay payment of the commercial scallop license fee if the resident declares in the application financial hardship. Payment will be due Friday at 4pm of the 1<sup>st</sup> week of scalloping.

4.3 License holders who are attending island schools may not fish during the hours that school is in session.

4.4 The Town of Aquinnah sets the following maximums for the daily catch by commercial license holders:

#### QUAHOGS

4.4.1 The daily limit for commercial licenses shall be eight (8) struck bushels, of which no more than two (2) bushels may be Little Necks. It is unlawful to take any quahog that does not measure one (1) inch in thickness (hinge height). A gauge must be carried while quahoging. The hours for commercial quahoging shall be from 7:00 a.m. - 4:00 p.m. from November 1st to March 31st, and from 7:00 a.m. to 5:00 p.m. from April 1st to October 31st, Monday

through Friday.

## SOFT SHELLED CLAMS

4.4.2 The commercial limit shall be no more than two (2) bushel per day, Monday through Friday.

The minimum legal size shall be two (2) inches at the longest shell measurement. A two (2) inch ring must be carried while clamming. Commercial clamming shall be limited to the same hours as commercial quahogging. Jetting of clams is prohibited.

## SCALLOPS

4.4.3 Per Shellfish Committee recommendation and Selectmen approval, the commercial limit shall be reviewed and established annually.

The hours for taking scallops by commercial fishermen shall be between 7:00 a.m. and 4:00 p.m. except Saturday and Sunday when the ponds are closed to all commercial shellfishing (see exception in section 3.4.4). All commercial shellfishermen must check in with the Shellfish Constable no later than 4:10 p.m.

4.4.4 By 10:00 am on any given weekday, if a majority of fisherman present determine that weather conditions are too dangerous to fish, or the air temperature has not reached a minimum of thirty (30) degrees Fahrenheit, there shall be no dragging for scallops that calendar day. A red flag raised by the Shellfish Constable shall indicate the stoppage of commercial shell fishing. If one or more days, Monday through Friday, fails to reach a minimum air temperature of thirty (30) degrees Fahrenheit by 10 a.m. then a commercial licensee may fish a commercial limit on Saturday of the same calendar week, provided that the air temperature of thirty (30) degrees Fahrenheit is reached by 10 a.m. that Saturday. There shall be no make-up day for any other method of catching scallops.

Scallop season opening/closing dates and limits, within the limits of Massachusetts General Law, Chapter 130, will be recommended by the Shellfish Committee and are contingent upon the approval of the Board of Selectmen.

4.4.5 a) No person shall take scallops other than adult scallops or offer for sale or have in his possession such scallops, unless licensed by the Massachusetts Division of Marine Fisheries to do so. Adult scallops shall be scallops with a well defined, raised annual growth line (annulus) at least ten (10) millimeters from the hinge of the shell and any scallop without such line shall be deemed a seed scallop.

b) Exception. Bay Scallops that have a well-defined raised growth line located less than ten (10) millimeters from the hinge of the shell, shall be lawful to harvest and possess if the shell height is at least two and a half (2 ½) inches.

c) The daily limit for the taking of scallops within the waters of Aquinnah shall be set by the Aquinnah Selectmen prior to opening the season annually or at any time during the season the Aquinnah Selectmen may vote to change the daily limit.

4.4.6 Commercial Boat Regulations.

a) No boats used for the taking of scallops shall exceed twenty-five (25) feet in length at the water line.

b) A current Massachusetts Boat Registration is required.

c) The use of more than six (6) drags is prohibited.

d) The use of a drag exceeding thirty-six (36) inches in width is prohibited.

e) The use of lead rollers or lead weights on the drags is prohibited.

- f) The use of teeth on a drag is prohibited.
- g) Loose scallops in boats are prohibited and shall be confiscated by the Shellfish Constable or Deputy Shellfish Constable.
- h) At the completion of a tow, the contents of the retrieved drag will be culled after being placed on the culling board to provide for minimal damage to the seed.

4.4.7 Dragging shall be prohibited from the following areas:

- a) The area which the Shellfish Constable designates as the seed area.
- b) The Shellfish Constable may designate an area each scallop season for dip netting only and dragging will be prohibited. The area will be marked by buoys set out by the Shellfish Department personnel. (??)

4.4.8 Scallops that are washed ashore by storm conditions, within the boundaries of the Town of Aquinnah, shall be harvested by holder of a valid Aquinnah shellfish licensee only. No limit shall apply under these conditions at the discretion of the Shellfish Constable or Deputy Shellfish Constable on duty.

4.4.9 There shall be only Aquinnah commercial shellfish licenses on a boat during commercial harvest except for the following conditions. Any person holding a residential family permit may be allowed to get his/her limit, for only one calendar day of that week, aboard a boat fishing commercially if the Shellfish Constable or Deputy Shellfish Constable is notified prior to fishing.

4.4.10 There shall be no scuba diving for scallops in Menemsha Pond.

4.4.11 Scallop licensees are entitled to the following maximum quantities of shellfish:

A. FAMILY: One (1) struck bushel per week;

B. COMMERCIAL: Up to Eight (8) struck level; The amount to be determined annually by the Shellfish Committee and Board of Selectmen;

C. NON – RESIDENT: One (1) struck bushel per week.

4.4.12 A holder of a family license who desires a commercial license, and is eligible, may pay for the commercial permit by surrendering the family permit and paying the difference in cost to the town.

4.4.13 No one shall remove any scallops on Thanksgiving Day and the following Friday, Christmas and New Year's Day

#### OYSTER

4.4.12 Oyster season opening/closing dates and limits, within the limits of Massachusetts General Law, Chapter 130, will be recommended by the Shellfish Committee and are contingent upon the approval of the Board of Selectmen. The minimum size for oysters shall be three (3) inches longest shell measurement.

4.4.13 The maximum limit for recreational harvest shall be not more than one half (1/2) bushel per calendar week per shellfish license. The Shellfish Constable may close any area for the reason of protecting seed.

#### MUSSELS

4.4.14 The commercial limit shall be no more than ten (10) bushel per day, Monday through Friday. The hours for commercial musseling shall be from 7:00 a.m. - 4:00 p.m. year round.

#### COMMERCIAL LICENSE PENALTIES

5.0 Any person having such commercial license (and acceptance of said license shall constitute agreement) for the taking of shellfish and who violates any laws of the Commonwealth or any regulations made by the Aquinnah Selectmen relating to shellfish or shell fishing in Aquinnah shall be subject to the following penalties:

1. First offense - Violators of these regulations shall be fined one hundred dollars (\$100.00) and shall forfeit that day's catch;

2. Second offense – Violators of these regulations must appear before the Board of Selectmen. Said Board at a fair and open hearing may, upon recommendation of the Shellfish Constable or Deputy Shellfish Constable and at the Board's sole discretion, suspend such license for a period of one week (five fishable days) and shall forfeit that day's catch;

3. Third offense – Violators of these regulations must appear before the Board of Selectmen. Said Board at a fair and open hearing may, upon recommendation of the Shellfish Constable or Deputy Shellfish Constable and depending on the severity of the offense suspend such license for a period from one fishable month to one fishable year at the Board's sole discretion and shall forfeit that day's catch.

If a license suspension carries beyond the close of the season of the species being harvested, the balance of the suspension remaining shall be carried over to that species next season.

If there are no subsequent offenses during a three (3) year period starting with the date of the last offense, the individual will be considered to have a clean slate.