

DARTMOUTH MASSACHUSETTS



Office of the Select Board  
*Stanley M. Mickelson-Chair*  
*Frank S. Gracie III-Vice-Chair*  
*Kelli A. Martin-Taglianetti*  
*Shawn D. McDonald*  
*John Haran*



400 Slocum Road  
Dartmouth, MA 02747-0985  
Telephone: (508) 910-1813  
Fax: (508) 910-1839  
[www.town.dartmouth.ma.us](http://www.town.dartmouth.ma.us)  
**David G. Cressman**  
Town Administrator  
Email: [cressmandg@town.dartmouth.ma.us](mailto:cressmandg@town.dartmouth.ma.us)

**SHELLFISH REGULATIONS**  
November 7, 2016

Please be advised that the new Shellfish Regulations will be in effect as of **December 1, 2016.**

## DARTMOUTH SHELLFISH REGULATIONS

These Shellfish Regulations are promulgated by the Dartmouth Select Board in accordance with its authority pursuant to Massachusetts General Laws, Chapter 130, Section 52. These Shellfish Regulations supersede and replace any prior enacted regulations relating to the taking of shellfish, eels and sea worms within the coastal waters of the Town of Dartmouth, which prior regulations are hereby repealed.

### Article 1.0. Definitions

For the purposes of these Shellfish Regulations, the following terms shall have the following meanings. Any terms that have not been defined specifically herein shall have their normal English meanings, unless the context indicates otherwise.

*Bushel*: A quantity of shellfish filling a volume of 2,150.4 cubic inches or 8 dry U.S. gallons.

*Clam*: A marine mollusk of the species *Mya arenaria*, or any other soft-shelled clam or steamer.

*Calendar week*: Any period of seven (7) full days beginning on Sunday at dawn.

*Commercial license*: Any shellfishing authorization that is listed in Section 2.4, and that authorizes the taking of shellfish, eels and/or sea worms for commercial purposes.

*Coastal waters*: Any waters that are subject to tidal flow or lie within three (3) nautical miles of the mean high tide line.

*Division*: The Massachusetts Division of Marine Fisheries, or any successor subdivision of the Commonwealth of Massachusetts that is responsible for the management of marine resources.

*Dry-digging*: Raking, digging, clawing or otherwise excavating into or below the surface of sand, rock, mud or other top level natural material at any point shoreward of the tide line that is then-existing at the time of such activity.

*Eel*: A catadromous marine animal of the species *Anguilla rostrata*, and commonly known as the American Eel.

*Enforcing agent*: The Shellfish Constable and any Deputy Shellfish Constables, the Harbormaster and any Assistant Harbormasters, any police officers of the Town, and any other individual so designated by the Select Board from time to time.

*To harvest/harvesting/harvested*: Removing any shellfish, eels or sea worms from their natural environment.

*Hinge width*: The distance between the convex apex of one side of the shell and the convex apex of the other side of the shell (i.e. shell thickness).

*Household member:* A person's spouse, anyone claimed by said person as a dependent for taxes purposes, and anyone listed on said person's submitted annual Town census form; provided, that any such spouse, dependent or listed individual must be living in the same residence as said person.

*Hydraulic harvesting:* Any method of harvesting shellfish that includes the use of water pressure (whether dispensed from a pipe, wand, manifold or other device) in order to disturb the ocean floor or tidal flats, or otherwise dislodge shellfish from their natural resting places.

*Immature eel:* An eel with a length of less than nine (9) inches.

*To land/landing/landed:* Bringing any harvested shellfish, harvested eels or harvested sea worms above the mean high tide line.

*Mussels:* A marine mollusk of the species *Mytilus edulis*, commonly known as the blue mussel.

*Non-resident:* An individual who: 1) is domiciled within any municipality within the Commonwealth of Massachusetts, as demonstrated by either: a) the most recently submitted annual local census form for the asserted municipality of residence; or b) current registration as a voter within said municipality; or 2) owns real estate within said municipality with an assessed value of at least \$10,000.00, as demonstrated by the most recent assessor's records for that municipality.

*Oyster:* A marine mollusk of the species *Crassorea virginica*, and commonly known as the American Oyster.

*Peck:* One quarter (1/4) of a bushel.

*Quahog:* A marine mollusk of the species *Venus mercenaria*, commonly called the hard-shelled clam and categorized as a littleneck or cherrystone.

*Recreational permit:* Any shellfishing authorization that is listed in Section 2.3, and that authorizes the taking of shellfish, eels and/or sea worms for personal use and personal consumption only.

*Resident:* An individual who: 1) is domiciled within the Town, as demonstrated by either: a) the most recently submitted annual Town census form for the asserted residential address; or b) current registration as a voter within the Town; or 2) owns real estate within the Town with an assessed value of at least \$10,000.00, as demonstrated by the most recent assessor's records for the Town.

*Scallop:* A marine mollusk of the species *Aequipecten irradians*, and commonly known as the cape or bay scallop.

*Seed clam:* A clam of a size less than two (2) inches in the longest diameter.

*Seed oyster:* An oyster of a size less than three (3) inches in the longest diameter.

*Seed quahog: A Quahog:* a quahog with a hinge width of less than one (1) inch.

*Seed scallop:* A scallop that lacks a well-defined raised annual growth ring.

*Seed shellfish:* Seed clams, seed oysters, see quahogs and seed scallops.

*Shellfish:* Clams, mussels, oysters, quahogs and scallops.

*Shellfishing authorization:* A recreational permit or commercial license that is issued by the Select Board's Office for the taking of shellfish, eels and/or sea worms within the coastal waters of the Town.

*To take/taking/taken:* Harvesting and thereafter landing shellfish, eels or sea worms.

*Town:* The Town of Dartmouth, Massachusetts.

## **Article 2.0. Shellfishing Authorizations**

### **Section 2.1 – Applicability and Scope of Shellfishing Authorizations**

- (a) No shellfish, eels or sea worms may be taken from within the coastal waters of the Town except in accordance with a valid, unexpired shellfishing authorization
- (b) The various types of recreational permits authorize the taking of shellfish, eels and/or sea worms for personal use and consumption only. No shellfish, eels or sea worms that are taken pursuant to a recreational permit shall be sold, traded or otherwise used for commercial purposes, whether in a raw or cooked form.
- (c) Any shellfishing authorization that is issued in the month of December is valid from January 1<sup>st</sup> through December 31<sup>st</sup> of the following calendar year. Any shellfishing authorization that is issued at any other time is valid for the remainder of the calendar year in which it is issued.
- (d) Upon the recommendation of the Shellfish Constable, and taking into consideration environmental and ecological factors, potential contamination and toxicity, and current and projected shellfish populations, among other factors, the Select Board may determine from time to time to set limits on the total number of any given type of recreational permit or commercial license that may be issued in a calendar year. Regardless of when any such determination is made, it shall not go into effect until the following December 1<sup>st</sup>, and notice of which shall be made available in the Select Board's Office and the Harbormaster's Office.

### **Section 2.2 – Limitations on the Issuance of Any Shellfishing Authorization**

- (a) Any individual who seeks a shellfishing authorization shall submit the appropriate application to the Select Board's Office. All applications, the form of which shall be determined by the Select Board from time to time, shall be available at the Select Board's Office and the Harbormaster's Office.

(b) No shellfishing authorization may be issued unless the appropriate application fee has been paid by the applicant. Application fees for each type of shellfishing authorization shall be set annually by the Select Board and posted at the Select Board's Office and the Harbormaster's Office; provided, that such fees shall not be prorated depending upon when in the calendar year the application is submitted; further provided, that no application fee shall be required in order to receive a Senior Resident Shellfish Permit.

(c) No shellfishing authorization may be issued to an applicant unless, at the time of submission of the application, said applicant either displays in his possession a standard metal shellfish gauge or purchases one from the Select Board's Office.

(d) No shellfishing authorization may be issued to an applicant who has failed to pay any non-criminal fine that has been levied against him, whether related to these Shellfish Regulations or otherwise, unless an appeal of said fine is pending.

(e) No shellfishing authorization may be issued to an applicant who, on the date of the submission of the application, has not yet filed any relevant catch report that is due on or prior to that date, as provided in Article 5.0; nor may a shellfishing authorization be issued to an applicant who is a household member of anyone who, on the date of the submission of the application, has not yet filed any relevant catch report that is due on or prior to that date, as provided in said Article.

(f) No shellfishing authorization may be issued to an applicant who, within three (3) years of the date of the submission of the application, has had a recreational permit revoked by the Select Board pursuant to Subsection 6.4(a); nor may any shellfishing authorization be issued to an applicant who, within five (5) years of the date of submission of the application, has had a commercial license so revoked.

(g) No shellfishing authorization may be issued to an applicant within one (1) year of the Select Board's revocation of another individual's recreational permit, where said applicant's actions contributed to said revocation; nor may any shellfishing authorization be issued to an applicant within three (3) years of the Select Board's revocation of another individual's commercial license, where said applicant's actions contributed to said revocation.

(h) No shellfishing authorization may be issued to an applicant within five (5) years of the second day within a calendar year on which said applicant has harvested or landed shellfish, eels or sea worms without a shellfishing authorization.

(i) No individual may hold simultaneously both a recreational permit and a commercial license for the taking of the same type of species; provided, that nothing shall preclude a recreational permit or commercial license from being voluntarily surrendered in order to obtain a different shellfishing authorization; further provided, that no refund shall be provided in exchange for any such surrender, and no fee shall be waived for any new shellfishing authorization that is issued as part of said surrender.

(j) No shellfishing authorization may be issued to any corporation, trustee or other legal entity, but rather only to individuals in their own capacities.

### **Section 2.3 – Types of Recreational Permits**

The following residential permits are issued for the taking of shellfish, eels and sea worms for personal use and personal consumption:

- (a) Residential Shellfish Permit – issued to any applicant who demonstrates compliance with the defined requirements of “resident” and is at least sixteen (16) years of age, which permit allows the recreational taking of clams, quahogs, oysters, mussels, eels and sea worms by said applicant and any household member of said applicant.
- (b) Senior Residential Shellfish Permit – issued to any applicant who demonstrates compliance with the defined requirements of “resident” and is at least sixty-five (65) years of age, which permit allows the recreational taking of clams, quahogs, oysters, mussels, eels and sea worms by said applicant and any household member of said applicant who has not yet reached the age of sixteen (16) years; provided, that nothing shall preclude a resident of at least sixty-five (65) years of age from obtaining a Residential Shellfish Permit instead of a Senior Residential Shellfish Permit.
- (c) Residential Scallop Permit – issued to any applicant who demonstrates compliance with the defined requirements of “resident” and is at least sixteen (16) years of age, which permit allows the recreational taking of scallops by said applicant only.
- (d) Non-residential Shellfish Permit – issued to any applicant who demonstrates compliance with the defined requirements of “non-resident” and is at least sixteen (16) years of age, which permit allows the recreational taking of clams, quahogs, oysters, mussels, eels and sea worms by said applicant only.

### **Section 2.4 – Types of Commercial Licenses**

The following commercial licenses are issued for the taking of shellfish, eels and sea worms for sale, trade or other commercial use:

- (a) Residential Shellfish License – issued to any applicant who demonstrates compliance with the defined requirements of “resident”, is at least eighteen (18) years of age, and demonstrates possession of a valid, unexpired commercial Shellfish Transaction Card that has been issued by the Division pursuant to 322 CMR 7.01(2)(k), which license allows the commercial taking of clams, quahogs, oysters and mussels by said applicant only.
- (b) Residential Eel and Sea Worm License - issued to any applicant who demonstrates compliance with the defined requirements of “resident”, is at least eighteen (18) years of age, and demonstrates possession of a valid, unexpired commercial Shellfish Transaction Card that has been issued by the Division pursuant to 322 CMR 7.01(2)(k), which license allows the commercial taking of eels and sea worms by said applicant only.

## **Article 3.0 – Legal Scope of Shellfish Authorizations**

### **Section 3.1 – Subject to Other Applicable Law**

(a) Whenever there is a conflict between the provisions of these Shellfish Regulations and the provisions of any state or federal law, including, without limitation, Massachusetts General Laws, Chapter 130, Sections 52 through 56, and 322 CMR 1.00 et seq., the more restrictive provisions shall govern.

(b) Nothing in these Shellfish Regulations shall be interpreted or construed to govern, authorize or prohibit the transport or sale of shellfish, eels or sea worms that have been lawfully landed pursuant to, and in accordance with, a valid commercial license.

(c) The issuance of a recreational permit or commercial license does not grant, and shall not be construed as granting, any right or permission to trespass upon any private property.

### **Section 3.2 – Limits on Continued Validity**

(a) Shellfish authorizations may not be sold, transferred, conveyed or assigned, and any attempt to do so shall render any such shellfish authorization null and void.

(b) If the holder of any shellfishing authorization, other than a Non-residential Shellfish Permit, ceases to be a resident for whatever reason, then said shellfishing authorization shall be rendered null and void.

## **Article 4.0 – Limitations on Use of Shellfishing Authorizations**

No one shall take shellfish, eels or sea worms pursuant to a shellfishing authorization except in accordance with the following limitations:

### **Section 4.1 – Time and Date Restrictions**

(a) No taking of shellfish, eels or sea worms shall occur on any official holiday of the Commonwealth of Massachusetts, being any day that is listed in Massachusetts General Laws, Chapter 4, Section 7, Clause 18.

(b) No taking of scallops shall occur on Mondays or Tuesdays, or between April 1<sup>st</sup> and September 30<sup>th</sup>;

(c) No taking of quahogs shall occur on Sundays, Mondays or Tuesdays.

(d) No taking of oysters shall occur on Sundays, Mondays or Tuesdays, or between April 1<sup>st</sup> and October 31<sup>st</sup>.

(e) Taking of clams may occur only on Tuesdays and Saturdays.

(f) Harvesting of shellfish, eels and sea worms may occur only between thirty (30) minutes after sunrise and thirty (30) minutes before sunset.

(g) Landing of shellfish, eels and sea worms must occur by sunset of the same day on which they are harvested.

### **Section 4.2 – Catch Limits**

(a) Catch limits for all non-scallop Recreational Permits (i.e. Residential Shellfish Permits, Senior Residential Shellfish Permits and Non-residential Shellfish Permits) are:

1. one (1) peck of clams per calendar week;
2. two (2) pecks of oysters per calendar week;
3. two (2) pecks of quahogs per calendar week;
4. twenty-five (25) eels per day; and
5. one hundred (100) sea worms per day.

(b) The catch limit for the recreational Residential Scallop Permits is one (1) bushel per calendar week.

(c) Catch limits for the commercial Residential Shellfish Licenses are:

1. one (1) peck of clams per calendar week;
2. one (1) bushel of oysters per calendar week;
3. three (3) bushels of quahogs per day; provided, that no more than twelve (12) bushels shall be taken in total per calendar week.

(d) Catch limits for the commercial Residential Eel and Sea Worm Licenses are:

1. twenty-five (25) eels per day; and
2. one hundred (100) sea worms per day.

(e) With respect to any daily or weekly catch limit for quahogs, no more than half of that catch limit may be satisfied by taking quahogs of between one (1) inch and two and a half (2.5) inches (i.e. "little necks").

(f) In calculating all shellfish catch limit volumes, shellfish must remain in their shells.

(g) In calculating when any given catch limit is reached for Residential Shellfish Permits, Senior Residential Shellfish Permits and Residential Scallop Permits, the catch volumes of the permit holder and all authorized household members shall be combined.

(h) Pecks shall be measured utilizing a standard peck wire basket. Bushels shall be measured utilizing a bushel polyethylene tote basket with internal measurements as follows: nineteen and three quarters (19  $\frac{3}{4}$ ) inches in diameter at the top, by fourteen and one quarter (14  $\frac{1}{4}$ ) inches in height, by thirteen and one quarter (13  $\frac{1}{4}$ ) inches in diameter at the bottom.

(i) Peck containers and bushel containers may be filled only such that the shellfish are level with the top of the container, and any mounding of shellfish above this line shall be considered excess catch in violation of the relevant catch limit. Any partially filled peck or bushel container that is landed shall be considered full for the purpose of calculating catch limits.

(j) Different species of shellfish may not be combined in the same peck or bushel container.



### **Section 4.3 – Seed Shellfish and Immature Eels**

- (a) Seed shellfish and immature eels shall not be taken.
- (b) Any seed shellfish or immature eels that are harvested shall be returned, in a manner that ensures their continued survival, immediately to the water or tidal flats from which they were harvested.
- (c) Seed shellfish and immature eels shall not be damaged or destroyed, or left exposed or dumped in a manner such that they become damaged or destroyed.

### **Section 4.4 – Household Members**

- (a) Prior to allowing a household member to act under the authority of a recreational permit, the holder of said recreational permit must provide, as part of the permit application, the Select Board's Office with the name of this individual, along with sufficient evidence, as determined by said Office, that said individual satisfies the definition of "household member".
- (b) No authorized household member shall take any shellfish, eels or sea worms except in the presence, and under the supervision, of the relevant recreational permit holder.
- (c) Each recreational permit holder shall be responsible for all activities of any household member who is purporting to act under the authority of said recreational permit.
- (d) Any household member who is purporting to act under the authority of any recreational permit shall be verbally identified upon the request of an enforcing agent.

### **Section 4.5 – Harvest Areas**

- (a) The open and closed status of the various harvest areas for any given species of shellfish, and for commercial licenses, are determined from time to time by the Select Board upon the recommendation of the Shellfish Constable, taking into consideration environmental and ecological factors, potential contamination and toxicity, and current and projected shellfish populations, among other factors.
- (b) The open and closed status of harvest areas shall be designated on maps that are available at the Select Board's Office and the Harbormaster's Office. There are no on-site signs or posted notices showing such designations.
- (c) Every individual purporting to take shellfish pursuant to a shellfish authorization is responsible for knowing and understanding the open or closed status of every harvest area.

### **Section 4.6 – Harvesting Methods for Recreational Permits**

- (a) Shellfish, eels and sea worms may be harvested pursuant to any recreational permit only as follows:
  1. Clams may be harvested by hand, clam fork, clam rake, clam hoe or hand-plunger.
  2. Mussels, oysters and quahogs may be harvested by hand or hand rake.

3. Scallops may be harvested by hand, hand rake, dip-net or a towed dredge or drag of not more than thirty-six (36) inches in overall width; provided, that no such dredge or drag may be toothed; further provided, that not more than two holders of Residential Scallop Permits may engage in the taking of scallops from the same vessel or watercraft during the same water outing.

4. Eels and sea worms may be harvested by hand, hand spear, clam rake, dip-net or angling.

(b) No other method of recreational permit harvesting is allowed, including, without limitation, hydraulic harvesting, the use of shovels, spades, pitchforks, bull rakes or tongs and the use of SCUBA gear or other underwater breathing equipment.

(c) All hand rakes, whether or not they include a basket, shall be at least eight inches in width, shall have at least three prongs of at least six inches each, and shall be at least thirty-six inches in length.

#### **Section 4.7 – Harvesting Methods for Commercial Licenses**

(a) Shellfish, eels and sea worms may be harvested pursuant to a commercial license only as follows:

1. Clams may be harvested by hand, clam fork, clam rake, clam hoe or hand-plunger; provided, that dry-digging is prohibited.
2. Mussels, oysters and quahogs may be harvested by hand, hand rake, bull rake or tongs; provided, that dry-digging is prohibited.
3. Sea worms may be harvested by hand, clam rake or dip-net.
4. Eels may be harvested by hand, hand spear, angling or eel pot (as described in Subsection 4.7(b))

(b) The use of eel pots is subject to the following limitations:

1. Each eel pot must be connected to its own Styrofoam buoy, which buoy must be of a contrasting, visible color, must be at least twelve (12) inches in diameter, and must have engraved or legibly written upon it above the water line the Residential Eel and Sea worm License number.
2. No eel pot may be set within any navigable channel or fairway.
3. No eel pot may be set within any mooring area (as designated by the Harbormaster), or within one hundred (100) feet of any such mooring area, between April 1<sup>st</sup> and December 1<sup>st</sup>.
4. No eel pot may be set within fifty (50) feet of any aquaculture area (as designated by the Select Board under the Dartmouth Aquaculture Regulations).

5. No line that is made from polypropylene or other non-sinking material may be used with any eel pot.

6. No more than ten (10) eel pots may be set at any given time pursuant to a Residential Eel and Sea worm License.

(c) No other method of commercial license harvesting is allowed, including, without limitation, hydraulic harvesting, the use of shovels, spades and pitchforks, and the use of SCUBA gear or other underwater breathing equipment.

(d) All hand rakes, whether or not they include a basket, shall be at least eight inches in width, shall have at least three prongs of at least six inches each, and shall be at least thirty-six inches in length.

#### **Section 4.8 – Other Harvesting Limitations For All Shellfishing Authorizations**

(a) Dry-digging is prohibited whenever the air temperature is at or below thirty-two (32) degrees Fahrenheit (zero degrees Celsius), exclusive of wind chill.

(b) Oysters and quahogs may be harvested in the intertidal region (above the mean low tide line) only when and where there is a least six (6) inches of tidal water depth.

(c) Each hole, depression and divot that is made during the course of harvesting must be filled in and smoothed flat prior to creating a new hole, depression or divot for harvesting, and no such hole, depression or divot shall be left at the conclusion of harvesting.

(d) Any starfish, oyster drills, moon snails or green crabs that are caught as part of the harvesting of any shellfish, eels or sea worms shall not be deposited within the coastal waters of the Town, but rather must be removed at least five (5) feet above the mean high tide line.

#### **Section 4.9 – Limitations on Landing of Shellfish, Eels and Sea worms**

(a) Any shellfish, eels and sea worms that are harvested within the coastal waters of the Town also must be landed in the Town, unless advanced permission for a different landing location is granted by the Shellfish Constable.

(b) All shellfish, eels and sea worms that are harvested must remain whole, within the shell and uncooked until after they have been landed.

(c) No shellfish, eels or sea worms that are harvested shall be eaten or sold prior to being landed.

(d) No shellfish, eels or sea worms that are harvested shall be damaged or destroyed, or left exposed or dumped in a manner such that they become damaged or destroyed, prior to being landed; nor shall the shells or other pieces of any shellfish, eels or sea worms, or any cooked portions of the same, be discarded, dumped or disposed of prior to landing; provided, that when shellfish, eels and sea worms are harvested in excess of their respective catch limits, it shall be permissible to return them, in a manner that ensures their continued survival, immediately to the water or tidal flats from which they were harvested.

(e) No shellfish, eels or sea worms that are harvested shall be relocated or transplanted to another location within the coastal waters of the Town or another municipality.

### **Article 5.0 – Annual Catch Reports**

#### **Section 5.1 – Submission of Report**

Every holder of a recreational permit or a commercial license must submit to both the Select Board's Office and the Shellfish Constable, by January 15<sup>th</sup>, an annual catch report for each such permit or license so held, detailing the types and quantities of shellfish, eels and sea worms that were landed, and the dates on which those types and quantities were landed, in the previous calendar year.

#### **Section 5.2 – Use of State Report**

For commercial license holders, the annual catch report may be a copy of any such report that is required by the Division, provided that the information in said report matches what is required by Section 5.1.

### **Article 6.0 – Inspection and Enforcement Authority**

#### **Section 6.1 – Inspections**

(a) The holder of any shellfishing authorization(s) must display the same of his person at all times while taking shellfish, eels or sea worms within the coastal waters of the Town, and must provide the same for inspection upon request by any enforcing agent.

(b) Any individual who is taking shellfish, eels or sea worms within the coastal waters of the Town, or who has taken shellfish, eels or sea worms from those coastal waters, must allow any enforcing agent to inspect any personal property that reasonably could contain said shellfish, eels or sea worms, except to the extent that any such inspection is otherwise precluded by law.

#### **Section 6.2 – Boating Restrictions**

(a) If any individual has had a recreational permit revoked by the Select Board pursuant to Subsection 6.4(a), then for a period of three (3) years from said revocation, said individual shall not be allowed on any vessel or watercraft from which anyone is taking shellfish, eels or sea worms within the coastal waters of the Town; further, if any individual has had a commercial license so revoked, then for a period of five (5) years from said revocation, said individual shall not be allowed on any such vessel or watercraft.

(b) If any individual has acted in a manner that has contributed to the revocation of another person's recreational permit by the Select Board pursuant to Subsection 6.4(a), then for a period of one (1) from said revocation, said individual shall not be allowed on any vessel or watercraft from which anyone is taking shellfish, eels or sea worms within the coastal waters of the Town; further, if any individual so contributes to the revocation of another person's commercial license,

then for a period of three (3) years from said revocation, said individual shall not be allowed on any such vessel or watercraft.

(c) If any individual has had a shellfishing authorization suspended by the Select Board pursuant to Subsection 6.4(a), then for the length of that suspension, said individual shall not be allowed on any vessel or watercraft from which anyone is taking shellfish, eels or sea worms within the coastal waters of the Town.

### **Section 6.3 – Enforcement**

(a) The enforcement of these Shellfish Regulations shall be by any enforcing agent.

(b) Any person who fails to comply with the provisions of these Shellfish Regulations may be fined through the non-criminal method of disposition as provided by Massachusetts General Laws, Chapter 40, Section 21D; provided, that this enforcement method is subject to the adoption of a general by-law to that effect by the Dartmouth Town Meeting; further provided, that separate fines may be levied against both the holder of a Residential Shellfish Permit or Senior Residential Shellfish Permit, and any household member of said holder that is purporting to act under any such Permit, for any violation of these Shellfish Regulations by said household member; further provided, that any given action or inaction may constitute multiple distinct violations of these Shellfish Regulations, each of which may result in a separate fine.

(c) In addition to the issuance of any non-criminal fine, any enforcing agent shall seize and dispose of any shellfish, eels or sea worms that are taken in violation of these Shellfish Regulations.

(d) The enforcing agent may refer any violation of these Shellfish Regulations to the Select Board for a hearing pursuant to Subsection 6.4(a); provided, that said enforcing agent immediately shall refer to the Select Board for a hearing any instance in which, in a single day, an individual harvested shellfish, eels and/or sea worms in violation of these Shellfish Regulation, where the total market value of said shellfish, eels and/or sea worms is at least one thousand dollars (\$1000); further provided, that said enforcing agent immediately shall refer to the Select Board for a hearing any indication that an individual has provided false identification or information in obtaining a shellfishing authorization.

### **Section 6.4 – Suspension and Revocation**

(a) The Select Board may, in its discretion, suspend or revoke a shellfishing authorization for violations of these Shellfish Regulations, but only after the referral of the matter by an enforcing agent pursuant to Subsection 6.3(d), and only after a public hearing for which the holder of the shellfishing authorization shall be given at least fourteen (14) days written notice.

(b) If the holder of any current shellfishing authorizations fails to file, pursuant to Section 5.1, a timely annual catch report for any expired shellfishing authorization from the prior calendar year, or is a household member of anyone who fails to timely file any such annual catch report, then all of said holder's current shellfishing authorizations shall be suspended automatically without a hearing, and there shall be no appeal to the Select Board of this suspension; provided, that any

such suspension shall be without prejudice, such that the subsequent filing of said catch report shall result in the automatic reinstatement of any shellfishing authorizations that have been so suspended; further provided, that in the event that any such annual catch report is filed, but is deficient, it shall be treated only as a violation of these Shellfish Regulations that is subject to Subsections 6.3(b), 6.3(d) and 6.4(a).

#### **Section 6.5 – Enforcement Presumptions**

(a) For enforcement purposes, there shall be a rebuttable presumption that anyone who is onboard any vessel or watercraft from which the taking of shellfish, eels or sea worms is occurring is participating in that activity.

(b) For enforcement purposes, there shall be a rebuttable presumption that any shellfish, eels and sea worms that are possessed within the coastal waters of the Town, or within five hundred (500) feet of the mean high tide line of the Town, were harvested within those coastal waters.

#### **Section 6.6 – Judicial Enforcement**

The Select Board may seek the enforcement of these Shellfish Regulations through the issuance of injunctive, declaratory or other equitable relief by the Superior Court.

#### **Section 6.7 – Appeal of Application Denial**

Any individual who is denied a shellfishing authorization may appeal this determination to the Select Board for a public hearing, for which hearing the aggrieved applicant shall be given at least twenty-one (21) days written notice.

### **Article 7.0 – Interpretation**

#### **Section 7.1 – Severability**

The provisions of these Shellfish Regulations are severable. If any court of competent jurisdiction determines that any provision is in violation of the laws, constitutions or regulations of the Commonwealth of Massachusetts or the United States of America, the remaining provisions shall not be affected thereby and shall continue in full force and effect.

#### **Section 7.2 – Effective Date**

These Shellfish Regulations shall be effective as of December 1, 2016.