

SECTION I. GENERAL PROVISIONS

ARTICLE 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:

"Adult" Any person who has reached the age of eighteen (18) years.

"Blue Crab" A marine crustacean with the scientific name *Callinectes Sapidus*. Sometimes referred to as "Blue Shell Crab".

"Board" The Board of Selectmen of the Town of Swansea

"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 Warden subject to approval of the Board to plant, grow and protect shellfish.

"Closed Season" The time during which shellfish can not be lawfully harvested.

"Commercial Fisherman Permit" (Shellfish or Specially Endorsed). The permit issued by the Massachusetts Division of Marine Fisheries expressly for the purpose of harvesting shellfish 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" Shall be that adult person who assumes responsibility for the family.

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

"Junior Commercial License" The license issued under the authority of the Board to residents not yet attaining the age of eighteen (18), expressly for the purpose of harvesting commercial quantities of shellfish.

"License" The license issued under the authority of the Board expressly for the purpose of harvesting commercial quantities of shellfish.

"Licensee" Any person to whom a license has been issued.

"Non-Resident" Any person who neither resides in the Town of Swansea but who is an inhabitant of the Commonwealth of Massachusetts or Rhode Island.

"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.

"Periwinkle" A marine gastropod mollusk of the species *Littorina Saxatilis*. It is a species of small sea snail in the family Littorinidae, the winkles or periwinkle.

"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 mercenaria* commonly known as the hard-shelled clam, little neck, count neck, cherrystone or bull.

"Quahog Classifications/Measurements" The classifications and measurements are as follows: "Little Necks" shall consist of a subset of both "Top Neck" and "Count Neck" and shall have a minimum hinge Width (as defined herein) of one inch (1"). A "Count Neck" shall be classified as having an overall length of up to two inches (2"). A "Top Neck" shall measure between two and three and three quarter inches (2"-2 3/4") in overall length. "Cherrystones" shall measure between two and three quarter inches to three and one quarter inches (2 1/4"-3 1/4") in overall length. "Bulls/Chowders" Shall have an overall length of three and one quarter inches (3 1/4") and up. The term "Overall Length" shall be determined to be the

greatest measurement between opposite ends of the shell.

"Resident" Any person who actually and physically resides in and demonstrates a domiciliary position within the Town of Swansea, i.e. Primary residence.

"Scallop" A marine mollusk of the species *Argopectin irradians* commonly known as the Cape Cod scallop or Bay scallop.

"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-shell 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 annulus or growth ring.

"Seed Sea Clam" A surfclam of a size less than five (5) inches in the longest length.

"Shellfish" Shall mean, and include, soft-shelled clams, mussels, oysters, quahogs, razor clams, periwinkles, sea clams and scallops.

(The phrase) "to shellfish" shall mean 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.

"Sunrise & Sunset" shall be defined as that being printed in the daily newspaper and/or its respective website. (As officially amended by The Board and ratified on 04/06/2010)

"Town" The Town of Swansea.

SECTION: II

ARTICLE 1. CLASSES OF LICENSES, PERMITS AND FEES

- A. Resident Family/Non-Resident Taxpayer Shellfish Permit.....\$ 50.00
- B. Fourteen Day Non Resident Family Shellfish Permit\$ 50.00

- C. Senior Citizen Resident Shellfish Permit \$ 10.00
- D. Shellfish Fisherman's License \$ 600.00
- E. Junior Shellfish Fisherman's License\$ 50.00
- F. Non-Resident Shellfish Permit.....\$ 150.00
- G. Duplicate License.....\$ 5.00

ARTICLE 2. 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 . 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 driver's license, a valid automobile registration, current rent receipts and/or current utility bill receipts showing address and/or any other instrument deemed expedient or necessary by the issuing authority.

ARTICLE 3. DESCRIPTIONS OF PERMITS AND LICENSES

Fourteen Day Citizen's Family Shellfish Permit. 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 the first paragraph under Article No. 2.

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

Recreational/Resident-Taxpayer Family Permit. Shall be issued to any resident who is head of the family. The head of family shall provide the names of all family members entitled to use said permit. "Temporary Physically Incapable Persons" as referred below shall be considered a subset of this classification. "Taxpayer" shall be any non-resident who pays more than \$500 per annum in taxes to the town of Swansea.

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

Senior Citizen Permit. Shall be issued to any resident of the Town who has attained the age of sixty-five at the time he or she purchases the permit. There shall be only one (1) senior citizen permit per household and shall be shared

between spouses/domestic partners. (As officially amended by The Board and ratified on 04/06/10.)

Junior/Special Shellfish Fisherman's License. Shall be issued to any resident who has not yet attained the age of eighteen (18) 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.

Temporary Physically Incapable Persons Recreational permit holders who are, by a Medical Doctors opinion determined to be incapable of harvesting shellfish, may designate another person to harvest their shellfish. All rules and regulations regarding Recreational permit holders shall apply.

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

SECTION III

ARTICLE 1. SPECIFIC RULES AND REGULATIONS

- A. Any licensee or permittee who violates any of these provisions, rules and regulations, may have their license or permit suspended or revoked and cancelled by the Board by written notice to person to whom the license or permit was issued. A copy of such notice shall be filed with the Board or in the Office of the Town Clerk and shall be prima facie evidence that such notice has been given.
- B. 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.
- C. 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.
- D. The age, height, weight, color 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.
- E. No person shall shellfish without a valid license or permit.

- F. Every person shall have their license or permit in possession while shell fishing 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 Swansea Selectman, Shellfish Warden, Police Officer, Reserve Police Officer, or any Deputy Shellfish Warden and such other officials as the Board may, from time to time, designate as enforcing persons.
- G. All shellfish shall be brought ashore whole and in shell.
- H. Shell fishing shall **ONLY BE PERMITTED** during the time period between one-half (1/2) hour before sunrise and one-half (1/2) hour after sunset, as defined herein; "Section I General Provision" Exception: After a rain closure, on the first day of being reopened, the harvesting of shell fish shall not proceed until 8:00 A.M. Furthermore, there shall be flagpoles placed at the ends of Susan Drive and Randall Shea Road and the Swansea Boat Ramp. A **GREEN FLAG** shall indicate that the beds are open and a **RED FLAG** shall indicate that they are closed. (As officially amended by The Board and ratified on 04/06/10)
- I. No person shall shellfish in a closed area.
- J. While shell fishing, all shellfish 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 Swansea Shellfish Warden.
- K. No person shall take, or have in their possession, seed clams, seed oysters, seed quahogs, seed scallops or seed sea clams except that a five (5) percent by count of seed shall be allowed. The intent is to provide an acceptable percentage of "missed" seed shellfish through normal harvesting. Recreational permit holders shall be required to have on their person a standard Massachusetts shellfish sizing ring (1" minimum hinge width for Quahogs and 2" minimum length for Softshell/Steamer Clams.) Furthermore, all Recreational permit holders shall be required to utilize a standard "1 Peck" Wire basket while harvesting Softshell/Steamer Clams and shall utilize the same or a 1/2 bushel wire basket while harvesting quahogs. (As officially amended by The Board and ratified on 04/06/10)
- L. Clams shall only be taken by a clam fork, clam rake or by hand. No shovel, plunger or other device or method shall be used.

- M. Mussels shall only be taken by hand, hand rake, bull rake or tongs. No other device or method shall be used.
- N. 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. (If applicable.)
- O. Quahogs shall only be taken by hand, hand rake, bull rake or tongs. No other device or method shall be used.
- P. Periwinkles shall only be taken by hand or hand rake.
- Q. There shall be no dredging of any kind regarding the harvesting of any shellfish referred to in this document without the permission of the Dept. of Marine Fisheries and the Shellfish Warden. *No mechanical devices of any kind shall be used in the direct harvesting of shellfish.

(*Mechanical assistance will be allowed in the aid of removing of a bull rake, if needed, after a particular dig is complete.)
- R. No person shall shellfish or scallop within one hundred (100) feet of any municipal aqua cultural 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 aqua-cultural enterprise so plainly marked. No person shall take, or directly or indirectly injure, the shellfish or scallops contained in, or on, aqua cultural devices so mentioned. No person shall injure, deface, destroy, remove or trespass upon any municipal aqua cultural device or any mark or bound used to define the extent of the municipal aqua cultural 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 aqua cultural or propagative enterprise so plainly marked.
- S. The destruction of shellfish beds and scallop beds and marshland, while shell fishing or scalloping is strictly prohibited.
- T. The use of scuba gear or any other breathing apparatus while diving is not allowed and the use of compressed air or other mechanical devices in the harvesting of any shellfish, except as stated in Section III, Article I, Paragraph S, is strictly prohibited.
- U. Anyone harvesting Softshell/Steamer clams shall fill in all holes to the

best of their ability before leaving the area. (As officially amended by The Board and ratified on 04/06/10)

- V. No person shall come ashore with shellfish and thereafter (later) on the same day return to the waters of the town for the purpose of harvesting additional shellfish. The Board hereby authorized the enforcing authorities' discretion in the enforcement of this provision. (As officially amended by The Board and ratified on 04/06/10)

ARTICLE 2. RULES & REGULATIONS: Recreational Permits

- A. The names of family members qualifying to use a family permit shall have their names plainly marked on the permit.
- B. Family permits are only valid for those persons listed on the permit.
- C. No more than one (1) permit/license of any one class shall be issued to a family.
- D. Senior Citizen Resident Permit is valid only for the senior citizen to whom the permit is issued and spouse who shall have their name listed on the permit.
- E. No more than one class of Senior Citizen Resident Permit shall be issued to any one senior citizen, including spouse.
- F. Non-Resident Family Shellfish Permits, Resident Family Shellfish Permits and Senior Citizen Resident Shellfish Permits are valid for any one year during the shell fishing season as established by the Board.
- G. 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 Chapter one hundred and thirty (130), section seventy three (73) of the Massachusetts General Laws.
- H. Fourteen Day Citizen's Family Shellfish Permits are valid only during the period from the date of issuance hence for fourteen (14) days inclusive.
- I. Not more than one (1) peck of clams including shells shall be taken during any one (1) calendar day on any one (1) permit and no more

than one (1) peck in any calendar week. (As officially amended by the Board and ratified on 04/06/10)

- J. Family Permit for mussels shall be one (1) bushel per day and one (1) bushel per week.
- K. Not more than one-half ½ bushel of oysters including shells shall be taken during any one calendar day and no more than one (1) bushel per calendar week on any one (1) permit.
- L. Not more than 1/2 bushel of quahogs including shells shall be taken in any (1) one calendar day and not more than 1/2 bushel of quahogs shall be taken in any (1) calendar week. Furthermore, not more than (10) ten quarts of the (16 quart) 1/2 bushel limit shall consist of "Count Neck" or "Top Neck", with the balance of the limit consisting of "Cherrystones" or "Bulls", as defined herein. (As officially amended by The Board and ratified on 04/06/10)
- M. Not more than one and one-half (1 1/2) bushels of scallops including shells shall be taken during any one (1) calendar week on any one (1) permit.
- N. 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.
- O. No permittee will sell, or offer for sale, for money or other considerations, any shellfish and scallops.
- P. The harvesting of periwinkles shall be unlimited unless otherwise restricted by Massachusetts State Law.
- Q. The harvesting of male blue or blue shell crabs shall be unlimited unless otherwise restricted by Massachusetts State Law. A minimum spine to spine width shall be 4 1/8"
- R. Any Harvesting of Quahogs from a boat on a recreational permit shall be done in 4 feet of water or greater. (As officially amended by The Board and ratified on 04/06/10.)

ARTICLE 3. RULES AND REGULATIONS: Commercial Fisherman's Licenses

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

- B. Fisherman's and Special Fisherman's Shellfish License are valid for any one (1) year during the shellfish season as established by the Board.
- C. Scallop Fisherman's Licenses are only valid during the period of October first (1st) of any one year to December first (1st), inclusive, unless the scallop closed season is modified by the Board as provided under Chapter one hundred and thirty (130) of Massachusetts General Laws.
- D. No more than one (1) class of license shall be issued to any one (1) resident.
- E. Special/Junior Fisherman's Shellfish Licenses are not valid during school hours.
- F. No Shellfish 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 and the size or sizes of shellfish contained therein.
- G. Not more than one (1) peck of clams including shells shall be taken during any one (1) calendar day or one (1) peck per calendar week on any one (1) license. (As officially amended by The Board and ratified on 04/06/10)
- H. Fisherman's and Special Fisherman's Shellfish License daily mussel limit shall be five (5) bushels.
- I. Not more than two (2) bushels of oysters including shells shall be taken during any one (1) day on any one (1) Shellfish Fisherman's License. Season closed May - August.
- J. Not more than one (1) bushel of oysters including shells shall be taken during one (1) day on any one (1) Junior Fisherman's Shellfish License.
- K. Not more than three (3) bushels of quahogs (including shells) shall consist of little necks, top necks, count necks or cherrystones in any one day on any one (1) Commercial Shell fisherman's license. Not with standing these amounts, an additional five (5) bushels of quahogs (including shells) will be allowed to be harvested, provided they consist of strictly bulls/chowders.
- L. Not more than two (2) bushels of quahogs (including shells) shall consist of little necks, top necks, count necks or cherrystones in any one

day on any one (1) Junior Commercial Shell Fisherman's license. Not with standing these amounts, an additional three (3) bushels of quahogs (including shells) will be allowed to be harvested, provided they consist of strictly bulls/howders.

- M. 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.
- N. The commercial harvesting of Quahogs shall not take place in waters less than four (4) feet in depth at any point established at mean low tide. This shall be strictly enforced. The reasoning is to preserve the recreational portion of the shellfish beds. The board shall reserve the right to limit or restrict shell fishing in areas which they determine to be recreational swimming areas.
- O. All commercial catches shall be submitted via a daily call to the Shellfish Warden. In addition to this, it shall be required that the Shellfish Warden shall be supplied with a monthly catch report outlining all shellfish that was harvested. This shall be submitted in writing to the Shellfish Warden by 5:00 P.M. on the last day of the month. (As officially amended by The Board and ratified on 04/06/10.)

Knowledge of, and adherence to these rules and regulations, are the sole responsibility of the license/permit holder.

SECTION IV ENFORCEMENT

ARTICLE 1. Penalties

The foregoing provisions, rules and regulations shall be enforced by any Swansea Selectman, Police Officer, Reserve Police Officer, Shellfish Warden, 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 one hundred and thirty (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 a hearing at which the Board may, at their pleasure, suspend or revoke and cancel

licenses and permits according to the following policy:

- A. 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. The fine for a Residential permit holder shall be \$50.00 and the fine for a Commercial license holder shall be \$100.00
- B. 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. The fine for a Residential Permit holder shall be \$100.00 and the fine for a Commercial license holder shall be \$500.00
- C. Third Offense - In the event a third offense is incurred or a licensee or permittee otherwise shows total disregard for these provisions, rules or regulations, the board shall revoke and cancel the license or 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.
- D. Any person who is found to be in the act of harvesting shellfish without having first Procured a valid license or permit shall be penalized in accordance with Section IV, Article 1, Paragraphs "A", "B" and "C" plus the cost of the applicable License or Permit.

No fee received for a license or permit which has been suspended or revoked and cancelled shall be refunded.

These rules and regulations are made by the Board of Selectmen of the Town of Swansea under the authority of Massachusetts General Law, Chapter 130, These rules and regulations shall supersede any former shellfish rules and regulations. Regarding dispute or conflict between this set or any prior set of rules and regulations, this document shall be in force and be deemed Controlling.

The Board shall reserve the right to rule on anything that is not specifically covered in these Rules and Regulations.

Observance of these rules and regulations is paramount in the preservation of shell fishing in our town for years to come. Should any citizen observe any violation of these rules, they are encouraged to contact the enforcing authorities. (MSV - 4/5/2009. Final Rev. 5/19/09.)

These rules and regulations to take effect on May 19, 2009.

APPROVED: PER ORDER OF THE SWANSEA BOARD OF SELECTMEN.

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.