Town of Wellfleet
Shellfishing Policy and Regulations
Last Amended 04/09/13, 06/04/13, 7/16/13, and 01/28/14, 06/10/14, 8/05/14, 09/16/14, 03/24/15, 05/12/15, 08/11/15, 09/08/15
All References to Massachusetts General Law (MGL) and the Code of Massachusetts Regulations (CMR) are valid as of 2014

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Section 1. Definitions

Unless otherwise identified, all cited Sections refer to sections of the Town of Wellfleet Shellfishing Policy and Regulations. The terms listed in this Section, when used in the Town's ***Shellfishing Policy and Regulations****, shall have the meanings that follow:*

Annual Report - A report that must be submitted to the Town every year before February 28th which includes the total number of each kind of shellfish planted, produced or marketed during the preceding year upon or from a licensed aquaculture area, and an estimate of the total number of each kind of shellfish at the time of such report, planted or growing thereon (MGL Chapter 130; Section 65).

Aquaculture - The farming of aquatic marine organism including, but not limited to fish, mollusks, crustaceans, echinoderms and plants. Farming implies some sort of intervention in the rearing process to enhance production including, but not limited to controlled propagation, feeding and protection from predators.

Aquaculture License - An authorization, granted by a vote of the Board of Selectmen, to utilize a specific tract of land, under coastal waters (1) to plant and grow shellfish using in-bottom or off- bottom culture; (2) to place shellfish in or under protective devices affixed directly to the tidal flats or land under Wellfleet's coastal waters, such as boxes, pens, trays, bags or nets; (3) to harvest and take legal shellfish; (4) to plant cultch for the purpose of catching shellfish seed; and (5) to grow shellfish by means of racks, rafts or floats (MGL Chapter 130; Section 57).

Aquaculture Licensed Area (Grant) - See **Licensed Area**.

Aquaculture Permit (See **Permit)**

Basket Rake - A hand-held implement used for the harvesting of shellfish, which is similar to but longer than a standard clam hoe, which has a basket and no more than twenty (20) teeth, is no wider than 12 inches at its widest part, does not have a T handle, and is only to be used on foot.

Blood Ark Clam and Ponderous Ark Clam - Bivalves of the species *Anadara* ovalis and *Noetia* ponderosa are some of the few marine mollusks having red blood, due to the presence of hemoglobin. Their shells grow to a length of approximately two or three inches and are fairly thick and sturdy. Each of the two valves has approximately 35 radiating ribs. The complete bivalve, when viewed from the end, is heart-shaped.

Board of Selectmen - The Wellfleet Board of Selectmen (BOS); Wellfleet's elected executive Board, designated by the State (MGL Chapter 30) as the regulatory Board that has jurisdiction over shellfishing in the Town.

Bull Rake - A T-handled hand-held and hauled implement used for the harvesting of shellfish. It shall be 12 inches or wider and have a fixed basket and teeth.

Bushel - U.S. dry measure; 2150.42 cubic inches, or 32 quarts.

By-Catch - The incidental capture of non-target species.

Captain - The master or individual in charge of a vessel.

Channel- The area marked by U.S. Coast Guard navigation buoys indicating a navigable way of passage.

Chinese Hats - Cones or disks of plastic, usually in stacks, coated with mortar with high lime content, used to collect oyster spat.

Clam Rake - A hand tool of typically eight (8) tines or less, used to manually bring clams to the surface of the substrate.

CMR - Code of Massachusetts Regulations.

Commercial Harvest – The harvest of shellfish for sale, trade, or other consideration.

Constable (Warden) - The municipal employee, appointed by the Board of Selectmen, who is in charge of administering the management of the fishery; the head of the Shellfish Department of the Town.

(To) Cull - to remove dead, dying, undersized or otherwise unsuitable organisms (also, the organism which is removed).

(To) Dig and Take - (archaic**);** See **(To) Harvest**

(To) Dive - The use of SCUBA, surface supplied air, or snorkel to harvest shellfish.

DMF - Division of Marine Fisheries.

Documented Vessels - Commercial or recreational vessels registered through the federal system which have a certificate of documentation, recognized both nationally and internationally, as well as an Official Number permanently affixed to the hull.

Domiciled Resident - See **Resident**

Drag / Dredge - A heavy metal frame with an attached bag, which is towed or dragged along the seafloor to catch bottom dwelling shellfish. Some have metal teeth along the base of the frame that act like a rake.

Extension - An extension of a licensed area abutting a pre-existing area licensed by the same individual.

Fyke - A long bag-shaped fishing net held open by hoops that act as a cul-de-sac funnel.

Gems (Vongeles - Quahogs between 7/8 and 1 inch wide (thickness of the hard clam across both valves at the hinge).

Glass Eel - Eel in its transparent, post-larval stage.

Grant - See **Aquaculture License/Licensed Area**

(To) Handpick - The transfer of shellfish to a container from the substrate by hand or with a hand-held tool of eight (8) tines or less.

(To) Harvest - To gather shellfish or other marine organisms in a container of any sort after sorting and separating them from what has initially been taken from the habitat.

Harvesting Area - An area approved for the taking of shellfish.

Handpicker - An individual who practices handpicking.

Intertidal - The land or area between the mean high and the mean low watermarks.

Jerk Rake - modified bull rake employing a harness.

(To) Land - To bring harvested shellfish by vessel to the Town Pier and to tie up before proceeding elsewhere; to bring harvested shellfish ashore above the mean high water line.

License - An authorization, granted by a vote of the Board of Selectmen, to utilize a specific tract of land under coastal waters (1) to plant and grow shellfish in bottom or off bottom culture; (2) to place shellfish in or under protective devices affixed directly to the tidal flats or land under Wellfleet's coastal waters, such as boxes, pens, trays, bags or nets; (3) to harvest and take legal shellfish; (4) to plant cultch for the purpose of catching shellfish seed; and (5) to grow shellfish by means of racks, rafts or floats (MGL Chapter 130, Sections 57 - 68).

Licensed Area (Grant) - a designated bottom area, certified by The Department of Marine Fisheries (DMF) and licensed by a vote of the Board of Selectmen, on which the licensee may plant, grow and harvest shellfish (MGL Chapter 130; Sections 57 & 68).

License Holder - A person or persons, or a firm or corporation holding a license issued by the Board of Selectmen under the provisions ofMGL Chapter 130.

Licensee - See **License Holder**

Long Raking - method of harvesting shellfish using a long handled bull or basket rake from a boat.

MGL - Massachusetts **G**eneral **L**aw.

Mean High Water (MHW) / Tide - The average elevation of all high waters recorded for a particular point or station over a considerable period of time, as determined by the National Geodetic Survey, National Ocean Service or National Oceanic and Atmospheric Administration; the average water level that demarcates the transition from exposed land to submerged land at the point of high tide.

Mean Low Water (MLW) / Tide - The average height of the low waters recorded for a particular point or station over a considerable period of time, as determined by the National Geodetic Survey, National Ocean Service or National Oceanic and Atmospheric Administration; the average water level that demarcates the transition from exposed land to submerged land at the point of low tide.

Mussel - A marine mollusk of the species *Mytilus edulis.*

Oyster - A marine mollusk of the species *Crassostrea virginica.*

Permit - A certificate granting permission to engage in specific activities issued by the appropriate authority.

~ Aquaculture / Seed Permit, issued by DMF

State Aquaculture Permit: "seed" or propagation permit as defined in MGL, Chapter 130; Sections 80 and 69andCMR 322, Section 15.04 (b)(1):

Authorizes the possession and growing of seed shellfish from an approved source. May be endorsed for the use of upwellers or similar nursery systems to enlarge hatchery seed for planting, but not for resale. May be endorsed for the sale of regulated species below the minimum size established by regulation if an operational plan to control sale, shipment, tagging and record keeping is approved by the Director.

~Commercial Shellfishing Permit (Section 6.1), issued by BOS.

~ Eeling Permit (Section 10), issued by BOS.

~ Noncommercial, Non-resident, Non-taxpayer Shellfishing Permit (Section 5.2), issued by BOS.

~ Noncommercial Resident or Taxpayer Shellfishing Permit (Section 5.2), issued by BOS.

~ Propagation Permit (Aquaculture Management - Marine Fisheries propagation permit) (Section 7.15.2), issued by DMF.

~ Shellfish and Seaworm Permit (CMR 322, Section 7.01 (2) (g), issued by DMF:

Authorizes only the named individual to harvest, possess and land shellfish and seaworms for commercial purposes, and may be endorsed for the shucking of bay scallops.

~ Shellfish Transaction Card (CMR 322, Section 7.01 (2) (k)) , issued by DMF:

Authorizes only the named individual holding a commercial fishermen permit endorsed for shellfish and seaworms to sell shellfish and seaworms, and shall be used in conjunction with either a Massachusetts driver's license or a Registry of Motor Vehicles identification card.

~ State Commercial Permit(Commercial Fishing Permit / Shellfish Permit), issued by DMF:

Allows an individual to take, land and sell (to a licensed dealer) shellfish and seaworms. A shellfish ID card, from the Division, and town permit are also required.

Petite Oysters – Aquaculturally reared oysters, whose height (from hinge to shell margin) is between 2.5 and 3 inches.

Planted Areas - Areas in which the Shellfish Department has planted shellfish for purposes of propagation or transplanting.

Poaching – The harvesting of shellfish, illegally, from any area.

Quahog - A marine mollusk of the species *Mercenaria mercenaria*, commonly called the hardshelled clam.

Quart - 67.201 cubic inches (U.S. Dry Measure).

Raking - Gathering oysters and/or other materials using a rake and then transferring this accumulation to a container, vehicle or vessel.

(To) Relay - See **Transplant**

Registered Vessels - Motorized vessels of any size, including those that don't primarily depend on mechanical propulsion, registered with the Massachusetts Office of Environmental Law Enforcement at the Registry and Titling Bureau.

Resident - A declared resident of the Town of Wellfleet. Written proof that Wellfleet is the domicile as well as the legal residence of the applicant shall be required to the satisfaction of the Shellfish Constable and Board of Selectmen. Proof of legal residence may include voter registration, automobile registration, driver's license, income tax filings, census data, or passport.

Scallop - A marine mollusk of the species *Aequipecten irradians*, commonly called Cape scallop or bay scallop.

(To) Scratch - To harvest clams with the aid of a clam rake.

Seed - Quahogs, with the exception of gems, less than (1) one inch wide, across both valves at the hinge, soft-shell clams less than (2) two inches in length (the largest measurement, 90 degrees from the hinge to outer margin of the shell); oysters, with the exception of petites, less than (3) three inches in height (from hinge to outer margins of the shell), and scallops without a defined annual growth ring.

Seed Permit - See **Permit.**

Shellfish Constable - See **Constable**

Softshell Clam (Steamer) - A softshell clam of species *Mya arenaria*.

Shellfish - Softshell clams, whelks, mussels, oysters, snails, quahogs, razor clams (razor fish), bay scallops, sea scallops, sea clams, and blood arks.

Spat - An oyster or similar bivalve mollusk in the larval stage, especially when it has settled on and attached itself to a surface on which it can then proceed to grow.

Subtidal - The body of water or area below that of mean low water for spring tides; habitats rarely, if ever, completely uncovered by low tides.

Surf Clam (Sea Clam) - A clam of species *Spisula solidissima*.

(To) Take - To harvest.

Taxpayer – An individual or corporation who owns land in Wellfleet for which they are taxed by the Town.

Tongs - A hand-held and hauled implement used for the harvesting of oysters. They have a scissor mechanism to close two baskets upon themselves.

Town - The town of Wellfleet.

Transaction Card - See **Permits**; Shellfish Transaction Card.

(To) Transfer - To grant the right to use a previously established, licensed area, as allowed by MGL Chapter 130: Sections 57 and58, and approved by a vote of the Board of Selectmen.

Transferee - Individual or entity to whom the right to use a previously established, licensed area for aquaculture has been granted by a vote of the Board of Selectmen.

(To) Transplant - The moving of shellfish from one area to another.

Warden - See **Constable**

Waters - Coastal waters, tidal flats, tidal creeks, and all salt or fresh waters within the boundaries of the Town of Wellfleet.

Week - The calendar week commencing at 00:01 A.M. Sunday and ending at 12:00 Midnight Saturday.

Wet Storage - The temporary placement of legally harvested shellfish from an area open to shellfishing onto an area licensed for aquaculture, for the purpose of maintaining their health in an optimal environment or for the purpose of allowing them to purge themselves of sand and other inedible matter, before transporting them to market.

Section 2. Shellfishing Policy for the Town of Wellfleet

Purpose of Regulations

The purpose of these regulations is to foster, protect and preserve Wellfleet's shellfish resources and habitats, to maintain and improve conditions permitting sustainable, productive shellfishing and aquaculture, to ensure equitable use of the resource for all persons legally engaged in these activities, and to provide appropriate protection for the reasonable and legitimate interests of all others affected by shellfishing. To that end, these regulations supplement and are consistent with the requirements of the State of Massachusetts including Massachusetts General Law Chapter 130, Code of Massachusetts Regulations 322, and the current Best Management Practices for the Shellfish Culture Industry in Southeastern Massachusetts, developed by SEMAC (Southeastern Massachusetts Aquaculture Center).

To implement this policy, the Board of Selectmen may restrict the taking of shellfish by commercial or noncommercial permit holders in any area or in any manner for the purpose of managing the fishery.

The Board of Selectmen will license areas of intertidal land in such a manner as will allow as many licensed areas as are economically and environmentally practical for any such parcel of intertidal land approved for licensing.
Because much of the area that is used for shellfishing and shellfish aquaculture is a precious natural resource that is owned by the Town, the granting of commercial permits and licenses for aquaculture is restricted to domiciled residents of Wellfleet.

Section 3. Informing the Public of Information and Meetings Concerning the Fishery

3.1. Posting of Shellfishing Policy and Regulations
Current copies of this Shellfishing Policy and these Regulations, and any amendments thereto, will be available in the Selectmen's office, the office of the Town Clerk, the Shellfish Department office, and the Wellfleet

Public Library. They shall be also posted at the Wellfleet and South Wellfleet Post Offices (MGL Chapter 130; Section 52), as well as on the official website of the Town.

3.2. Posting of Hearings about Aquaculture Licenses, Held by the Board of Selectmen
As required byMGL Chapter 130; Section 60, all hearings held by the Board of Selectmen for the granting, transferring or renewal of aquaculture licenses must be posted in three public places, and advertised in a local newspaper at least ten (10) days before that hearing is to take place, as well as the Town's web site as soon as the date of the hearing has been determined by the Board. The posting must provide the name of the applicant(s), their residence, and the date of the filing of the application, and the specific location and description of the acreage to be licensed.

3.3. Open Meeting Law
Compliance with MGL Chapter 30A; Sections 18-25 (Effective July 1, 2010)
(the Open Meeting Law) and 940 CMR 29.00 is required for all municipal meetings, above and beyond the requirements of Sections 3.1 and 3.2.

Section 4. General Regulations (Applying to the Noncommercial and Commercial Shellfisheries As Well As Shellfish Aquaculture)

4.1. Areas Where Commercial and Noncommercial Shellfishing May Take Place
(See also Appendixes and Section 8.1 Areas Closed to Dragging and Dredging)

Commercial-only area: north of a line from the seaward end of the breakwater to the easternmost tip of Great Island (with the exception of Chipman's Cove) marked by a red and white striped pole. This area is subject to seasonal restrictions.

Noncommercial-only area: (Area 2, in CCB 11; see Section 4.2) off Indian Neck, south from the Breakwater to the second groin. This area is subject to seasonal restrictions (see Section 5.1).

Commercial and Noncommercial area: includes all the rest of the harbor except buoyed grants. This area is subject to seasonal restrictions

4.2. Area and Boundary Locations (See Appendix A and C for Area Maps and Appendix B for Specific GPS Locations)

4.2.1. Areas

Area 1: All marine waters and intertidal areas north of the No-drag Line, excluding Chipman's Cove.

Area 2: (Within CCB 11.) All marine waters and intertidal areas landward of the area enclosed by the #14 navigational beacon at the seaward end of Indian Neck breakwater to a point near the #12 channel marker and thence inshore to the end of the first groin south of the Burton Baker Landing.

Area 3: All marine waters and intertidal areas in the waters of the Town, excluding Areas 1 and 2.

4.2.2. Boundaries

Blackfish Creek: (Within CCB 14.) All marine waters and intertidal areas enclosed east of a boundary from the parking lot at Fox Island, marked with a striped pole, to the western edge of the house at the northwestern tip of Lieutenant's Island, and north of the Lieutenant's Island Bridge.

Chipman's Cove (within CCB 13): All marine waters and intertidal areas enclosed south of a boundary from the southeastern tip of Shirttail Point to a point on the shore on the other side of the channel,

marked with a striped pole, and east of a boundary from the southwestern tip of the L Pier to a point on the tip of Indian Neck, marked with a striped pole.

Duck Creek (within CCB 13): All marine waters and intertidal areas enclosed north of a boundary from the southeastern tip of Shirttail Point to a point on the shore on the other side of the channel, marked with a striped pole, east of Commercial Street, and south of Uncle Tim's Bridge.

East Side (within CCB 11): From the breakwater at Indian Neck to the Eastham Town Line.

Eastham / Wellfleet Town Line: (Southernmost boundary of CCB 11.) For the purposes of shellfishing, the boundary runs down the middle of Hatches Creek, and westerly from the official boundary marker in Hatches Creek to the Eastham/Wellfleet boundary marker on Billingsgate Island and thence in the same direction to State waters.

Egg Island/Egg Island Channel (within CCB11): Channel and tidal flats south of Power's Landing and Keller's Corner, and north of the block grants.

Herring River (within CCB 12): All marine waters and intertidal areas enclosed west of a boundary from the main flagpole at the Chequessett Neck Club to a point on the tip of Great Island, marked with a striped (candy cane) pole, and south of a boundary determined by the Massachusetts Division of Marine Fisheries, marked with poles on either side of the river.

Inside L Pier (within CCB 13): All marine waters and intertidal area enclosed by the L Pier, and west of a boundary from the southeastern tip of the L Pier to the eastern high point of the Town Boat Ramp.
Main Harbor (within CCB 11): All marine waters and intertidal areas within Wellfleet Harbor, excluding Blackfish Creek, Chipman's Cove, Duck Creek, Herring River, Mayo Beach and South Lieutenant's Island.

Mayo Beach (within CCB 11): All marine waters and intertidal areas enclosed east of a boundary from the main flagpole at the Chequessett Neck Yacht Club to a point on the tip of Great Island, marked with a striped pole, north of the No Drag Line, and west of a boundary from the southwestern tip of the L Pier to a point on the tip of Indian Neck, marked with a striped pole.

South Lieutenant's Island (CCB 10): All marine waters and intertidal areas enclosed east of a boundary from the osprey nest pole on the southern end of Lieutenant's Island to the Eastham/Wellfleet marker in Hatche's Creek, and south of the Lieutenant's Island Bridge.

Wellfleet Harbor (CCB 10, 11, 12, 13, and 14): All marine waters and intertidal areas enclosed north of the Eastham/Wellfleet Town Line, and east of a boundary from the Eastham / Wellfleet boundary on Billingsgate Island to the southern tip of Jeremy Point.

West Side (within CCB 11): The portion of the west side of Wellfleet Harbor immediately southeast of the no quahog dredge line (see below), offshore from the area commonly known as Middle Meadow.

No-drag Line:
1: Line extending from the navigational beacon (#14) at the seaward end of Indian Neck breakwater to a point on the tip of Great Island, marked with a striped (candy cane) pole.

2: Line extending from the striped pole on Field Point to the boathouse on Lieutenant Island.

No-quahog-dredge Line: Line extending from a point in Middle Meadow marked with a striped pole, towards the US Geodetic and Coast Survey marker at the landward end of the third groin west of Mayo Beach, ending where this line meets the No-drag Line (near the rocks known as Old Saw).

4.3. Landing of Shellfish

4.3.1. Landing of Shellfish: All shellfish harvested in Wellfleet shall be landed in Wellfleet.

4.3.2 Transfer of Oysters to Wholesale Dealers Trucks During Vibrio Control Season: During the time that the Vibrio Control Season is in effect for that season, the Wellfleet Marina parking lot at 255 Commercial Street shall be used as the only location for commercial fishermen to transfer oysters harvested from any approved site in Wellfleet to a wholesale dealer's vehicle so that unannounced inspections may be conducted by the Town's Shellfish Department or State Shellfish Authorities.

The following conditions must be met:

1) Each wholesale dealer's vehicle shall have a valid permit issued by the DMF;

2) Each transfer of oysters shall be conducted in accordance with:

a) The DMF's Vibrio Control Plan and Regulations in effect for that season;

b) The National Shellfish Sanitation Program's Guide for the Control of Molluscan Shellfish in effect for that season; and

c) The Department of Public Health's Regulation for Fish and Fishery Products in effect for that season.

This regulation has been approved as a variance to 105 CMR 533.000 (I) (3) (f) (2) by the Director of the MDPH/BEH Food Protection Program and shall expire after a period of three (3) years. It shall be in effect during the range of dates identified in the DMF's Vibrio Control Plan and Regulations for the years 2015, 2016, and 2017. At any time during this three-year period this variance may be revoked, modified, or suspended by the Department of Public Health if the conditions that are referenced above are not met. In accordance with 105 CMR 533.030(C), a copy of this variance will be available to the public.

Documents referenced in Section 2 a) are available on the Food Protection Program website during each Vibrio Control Season. (Go to www.mass.gov/dph/fpp)

4.4. Daily Limit

No permit holder shall take shellfish or other marine organisms in excess of the daily limit. Noncommercial limits (Section 5.3.2); commercial limits (Section 6.3).

4.5. No Same Day Landings in Excess of Daily Limit

No person shall come ashore with shellfish and return to the waters of the Town on the same day for the purpose of taking additional shellfish in excess of the daily permit limit.

4.6. Landing Shellfish Before Shucking

No shellfish shall be brought ashore except in their shells with the exception of sea scallops.

4.7. Daily Time Limits

No person shall harvest, pick, dig, pile, take or carry away any shellfish from the waters of the Town, by any method between one half (1/2) hour after sunset and one half (1/2) hour before sunrise. (MGL Chapter 130; Section 68)

4.8. No Shellfishing Below 28 Degrees Fahrenheit

Except in areas licensed for aquaculture, no shellfishing shall be carried on when the air temperature is below 28 degrees Fahrenheit (2 degrees Celsius), as determined by the Shellfish Constable and as indicated by a buoy displayed on the flagpole next to the Shellfish Office, on the Shellfish Department answering machine and on the Town website.

4.9. Poaching

Any unauthorized person who poaches or otherwise disturbs any shellfish in any amount or in any location shall be subject to criminal penalties and potential civil penalties (See MGL Chapter 130; and Section 11. 6 Revocation of Shellfishing Permits.)

4.10. Disturbance of Grant by Other Than Licensee
No one may in any way disturb the growth or arrangement of shellfish on a licensed area, or work a dredge, or use any other implements to harvest shellfish, or discharge any substance which may directly injure the shellfish upon a licensed area, or willfully damage, remove or tie up to any of a grant's designating boundary markers, without the express consent of the licensee. No one, while upon or sailing over any such licensed acreage may have overboard any implement for the taking of shellfish, under any pretense or purpose whatever, without the expressed consent of the licensee. (See MGL Chapter 130; Section 66 andSection 67)

4.11. License and/or Permit Required
All persons fourteen (14) years old or older engaged in taking, removing, or having in possession eels, sea worms or shellfish, including soft-shelled clams, quahogs, surf clams, sea clams, razor clams, oysters, mussels, and scallops, taken from the waters of the Town shall have an appropriate license or permit obtained and used only in accordance with all terms, conditions and restrictions.

4.12. Inspection on Demand
All persons harvesting, carrying away or otherwise having in their possession shellfish or marine organisms of any kind, in a boat, container or vehicle shall exhibit all such shellfish for inspection on demand by the Shellfish Officers, Police Officers or any other duly authorized agents.

4.13. Display of Permit/License
Individuals engaged in shellfishing, eeling or gathering sea worms must have a Town license or permit prominently displayed and show the same on demand to Shellfish Officers, Police Officers or other duly authorized agents.

4.14. Possession of Seed Restricted
No person who does not hold a state propagation permit or an aquaculture license shall have in his or her possession seed shellfish, defined as; quahogs less than one (1) inch wide (thickness of both valves across the hinge); soft-shell clams less than two (2) inches in length; oysters less than three (3) inches in height (except for aquaculture license holders under certain conditions as specified in Section 7.16 (Petite Oysters and Gems) or bay scallops without a well defined raised annual growth line. A violation of this regulation shall exist if the take contains more than 5% seed shellfish per batch (see Section 7.15 Shellfish Seed).

4.15. Methods of Harvest
The taking of any shellfish from the waters of the Town of Wellfleet by any method other than those commonly known as handpicking, long raking, bull raking, jerk raking, basket raking, scratching, tonging, digging, dragging or dredging (See Section 8: Commercial Shellfishing: Dragging and Dredging) will be prohibited.
A license holder is permitted to use any approved method of shellfish harvesting within his or her licensed area.

4.16. Detrimental Practices of Harvesting by Hand Prohibited
It is prohibited to harvest any species of shellfish in a manner that inhibits the growth or survival of any other species of shellfish.

4.17. Handpicking or Scratching-only Areas
Handpicking, scratching or basket raking are the only permitted methods of harvesting shellfish, north of a line extending from the seaward end of the Indian Neck Breakwater to the large rock called Old Saw, thence in the same direction to Great Island at Mean High Water except when otherwise allowed by the Board of Selectmen. A license holder is permitted to use any approved method of shellfish harvesting within his or her licensed area. (See Appendixes for area maps and GPS coordinates.)

4.18. Transplanting
4.18.1. Transplanting Shellfish Outside of Wellfleet Waters

No shellfish of any size shall be taken out of the Town for the purpose of transplanting or to be placed in any waters outside the limits of the Town without the proper permits.

4. 18.2. Transplanting Shellfish Into Wellfleet Waters
No shellfish shall be planted or transplanted into the waters of the Town, without the proper permits, certificates of origin, and approval by the proper authorities.

4.18.3. Harvesting Seed from the Wild Not Generally Allowed
The handpicking of oyster seed from the public resource is prohibited with the following exception: from time to time, under special conditions identified by the Shellfish Constable, recommended by the Shellfish Advisory Board and approved by a vote of the Board of Selectmen, oyster seed may be taken for the purpose of transplantation.

4.19. Areas Restricted to Use by Permit Class
No holder of a commercial permit shall take shellfish from an area reserved for the holders of noncommercial permits and vice-versa.

4.20. Annual Opening and Closing of Scallop Season
Scallop season shall open October 1st and shall close April 1st the following year, except when otherwise regulated.

4.21. Motorized Vehicles on Beaches
Only commercial permit holders or aquaculture licensees may use motorized vehicles on beaches or intertidal areas. (See Section 6.5 Use of Motorized Vehicles for Shellfishing.)

Section 5. Noncommercial Shellfishing

5.1. Seasonal Restrictions: Open and Closed Areas
The opening and closing of noncommercial shellfishing areas, as well as catch limits, may be subject to change by vote of the Board of Selectmen. (See Section 5.3.2 Noncommercial Catch Limits) Notification of such changes will be available on the Shellfish Department section of the Town web site and on the Shellfish Department answering machine.

Chipman's Cove: closes for the taking of all shellfish on April 30 and reopens on the last Sunday in October, unless otherwise regulated.

Area 2 (Indian Neck): open for the harvesting of shellfish, with the following limits and on the following days, unless otherwise regulated:

- June 1 through September 30; will be open Sundays and Wednesdays, annually.
- October 1 through May 31; will be open seven (7) days a week, annually.

Area 3 (The rest of the Harbor with the exception of commercial-only areas): Open for the harvesting of shellfish on the following days, unless otherwise regulated:

- June 1-September 30; will be closed to all noncommercial shellfishing, annually.
- October 1-May 31; will be open seven (7) days a week, annually. (See Section 4.1.)

5.2. Permits

5.2.1. Eligibility for Noncommercial Permits
Annual and seasonal noncommercial permits may be issued to anyone, twelve (12) years of age or older.

5.2.2. Noncommercial Permit Fee Schedule (amended 05/27/08)

Annual Permits (Jan.1-Dec. 31)	
Resident or Taxpayer	$50.00
Resident or Taxpayer over 65 years old	10.00
Nonresident or Nontaxpayer	200.00
Eel Permit	3.00
Seasonal Noncommercial Permits (June 1 – Sept. 30)	
Resident or Taxpayer	30.00
Non-resident or Non-taxpayer	75.00
Replacement Fee (for all categories)	10.00

5.3. Noncommercial Shellfishing Regulations

5.3.1 Required Icing and Shading of Harvest in Warmer Weather
During the *Vibrio* control period, as determined annually by the DMF (see 322 CMR 16.00 Shellfish Harvest and Handling) due to concerns about the presence of *Vibrio parahaemolyticus,* oysters taken by noncommercial permit holders shall be put in a container and surrounded by ice made from potable water within two (2) hours of the time when the first oyster (harvested on a given day) is taken from the water **or,** in the case of intertidal harvest, the time of first exposure to the air by tide.
All oysters taken from the water shall be protected from direct exposure to sunlight during harvest and subsequent transport from the harvest area to any destination, at all times.
With the first offense of this section, the harvester will lose his or her catch. With any subsequent offense, the harvester shall lose his or her catch and noncommercial permit for one year.

5.3.2 Cannot Harvest for Commerce
No person holding a noncommercial permit shall harvest shellfish, eels or sea worms for the purpose of sale, trade or other consideration.

5.3.3Noncommercial Catch Limits
The total amount of shellfish, comprising oysters, quahogs, soft-shell clams or razor clams, blood ark clam or ponderous ark clam taken in one (1) week shall not exceed ten (10) quarts, and the total amount of mussels taken in one (1) week shall not exceed ten (10) quarts, or the total amount of scallops taken in one (1) week shall not exceed one (1) bushel, or the total amount of surf (sea) clams taken in any one (1) week shall not exceed one (1) bushel. The total number of sea worms taken in one (1) day shall not exceed twenty-four (24). There is a 20 lb. limit on the amount of eels that can be taken in one day.

Section 6. Commercial Shellfishing

6.1. Commercial Permits

6.1.1. Eligibility For Commercial Permits
A commercial permit may be issued to any person fourteen (14) years of age or older, who is a domiciled resident of Wellfleet. Individuals aged fourteen (14) through sixteen (16) may be issued junior commercial permits. Only in the calendar year in which a person reaches fourteen (14) years of age may that person apply for a junior commercial permit at any time after the occurrence of that person's birthday. Residents over 65 may be issued senior permits. Any commercial permit will be revoked if the holder ceases to be a domiciled resident of Wellfleet.

Commercial permits will not be issued to unnaturalized foreign born persons who have not resided in Barnstable County at least five (5) years prior to making application (MGL Chapter 130; Section 55).

6.1.2. Commercial Permit Requirements
Annual commercial permits will be issued from December 1 through January 31st of the permit year, subject to a thirty (30) day review of the application by the Shellfish Constable. Annual commercial permits are valid from Jan. 1 through Dec. 31. Permits will only be issued after the applicant has shown proof of having a valid State commercial permit with a shellfish endorsement and a valid shellfish transaction card from the DMF. CMR 322 7.01 (2) g, i, k

6.1.3. Commercial Permit Fee Schedule (amended 05/27/08)

Resident	$300.00
Senior Resident (65 years or older)	50.00
Junior Resident (14-16 years old)	100.00
Eel Permit	3.00
Replacement Fee (for all categories)	10.00

6.1.4. Hardship Exemption
The Board of Selectmen may at its discretion grant permits after January 31st if the applicant demonstrates **all three** of the following conditions:

• that unusual circumstances existed which would reasonably excuse a failure to file an application prior to February 1st, and

• that a substantial hardship would be caused by the refusal of a permit, and

• that the granting of the late permit would not affect the opportunity of applicants, who have applied in a timely manner, to harvest a reasonable quantity of shellfish?

6. 2. Commercial Shellfish Regulations

6.2.1 Required Icing and Shading of Product
Annually, during the period of time that the DMF's *Vibrio* control plan is in effect, harvesters must comply with the State's regulations. (See 322 CMR 16.00 Shellfish Harvest and Handling.) With the first offense of this section, the harvester will lose his or her product. With any subsequent offense, the harvester shall lose his or her product and license and/or permit for one year.

6.2.2. Harvest Must Be Tagged
At the time of harvest, any commercial permit holder who has shellfish of any kind for sale, trade or other consideration, must legibly mark all containers of shellfish using legal tags.

6.2.3. Minors Under Fourteen (14) Without Permit
Persons under fourteen (14) are permitted to harvest shellfish in a commercial area while under the supervision of a parent or guardian holding a commercial permit. No shellfish may be taken in excess of the daily limit of the permit held by the parent or guardian.

6.2.4. Commercial Catch Limits

6.2.4.1. Bay Scallops

No vessel shall take more than ten (10) bushels (tied) of scallops, including shells. No more than twenty (20) bushels (tied), shells included, shall be taken by any vessel having two (2) or more permit holders on board, in one (1) day. The captain of said vessel shall be cited for each violation.

6.2.4.2. Mussels
There is no limit to the taking of mussels per commercial permit per day.

6.2.4.3. Oysters
a. Hand Picking: no commercial permit holder shall take more than five (5) bushels of oysters, including shells, per day.

b. Dragging / Dredging: No more than five (5) bushels of oysters including shells, per commercial permit holder shall be taken by a vessel in any one (1) given day. No more than ten (10) bushels including shells shall be taken by any vessel having two (2) or more commercial permits aboard in any one (1) day. The captain of said vessel shall be cited for each violation.

6.2.4.4. Quahogs
a. Hand Picking: No commercial permit holder shall take by raking more than five (5) bushels of quahogs, including shells, in any one (1) day.

b. Dragging / Dredging: No more than fifteen (15) bushels of quahogs including shells, shall be taken by a vessel having one (1) commercial permit aboard, in one (1) day. Captain of said vessel shall be cited for each violation. No more than twenty-five (25) bushels including shells shall be taken in one (1) day by a vessel having two (2) commercial permits aboard. The captain of said vessel shall be cited for each violation.

6.2.4.5. Razor Clams
No commercial permit holder shall take more than two (2) bushels of razor clams in any one day.

6.2.4.6. Sea Worms
No commercial permit holder shall take more than forty-eight (48) sea worms in any one (1) day.

6.2.4.7. Soft-shell Clams
No commercial permit holder shall take more than three (3) bushels of soft-shell clams in any one (1) day.

6.2.4.8 Blood Ark Clam or Ponderous Ark Clams
a. Hand picking: No commercial permit holder shall take more than 10 (ten) bushels of ark clams, including shells, in any one day.

b. Dragging/Dredging: No more than ten (10) bushels, including shells, shall be taken by a vessel having one (1) commercial permit holder, in one (1) day. No more than twenty (20) bushels, including shells, shall be taken in one (1) day by a vessel having two (2) commercial permit holders aboard, in one (1) day. The captain of said vessel shall be cited for each violation.

6.3. Daily Area Catch Limits - 1 bushel = 32 quarts

Area	Oysters	Quahogs	Soft-shell clams	Blood Ark/ Ponderous Ark Clams
Herring River	1 bushel	1 bushel	1 bushel	10 bushels
Mayo Beach	1 bushel	2 bushels	3 bushels	10 bushels
Duck Creek	1 bushel	1 bushel	1 bushel	10 bushels

Blackfish Creek	I bushel	2 bushels	3 bushels	10 bushels
Main Harbor	5 bushels	5 bushels	3 bushels	10 bushels
Chipman's Cove	1 bushel	1 bushel	1 bushel	10 bushels
South Lt. Island	1 bushel	1 bushel	3 bushels	10 bushels

6.4. Seasonal and Other Restrictions: Open and Closed Areas
The opening and closing of these areas, as well as catch limits, may be subject to change by vote of the Board of Selectmen. Notification of such changes will be available on the Shellfish Department section of the Town web site and on the Shellfish Department answering machine.
Dragging or diving within 25 feet of all areas licensed for shellfish aquaculture is prohibited. (See Section 8.9 No Dragging/Dredging Near Licensed Areas)

6.4.1. Chipman's Cove:
a. Harvest dates: Chipman's Cove will close for the taking of all shellfish on April 30 and will reopen on the last Sunday in October of the current year, unless otherwise regulated.

b. Landing Sites - All shellfish are to be landed at the end of Old Pier Road, at the Marina boat ramp or piers, or from a point on the road along the southern perimeter of the Cove nearest the harvesting site, unless permitted otherwise by the Shellfish Constable.

c. Harvesting Restrictions-All shellfish are to be removed from the area at the time of harvest. No shellfish are to be left on the flats and removed at a later time of day, by any means or methods. Diving for shellfish is prohibited.

d. Spat collection area-An area of Chipman's Cove for placement of oyster spat collection by shellfish grant license holders, approximately 300' by 300' marked by yellow buoys, will be so designated from June 1 through October 31 of current year, unless otherwise regulated.

6.4.2. Duck Creek:
a. Harvest dates - Duck Creek will open for the taking of all shellfish on December 1 and will close on April 30, pending State approval, unless otherwise regulated.

b. The taking of shellfish from the bulkheads, pilings and adjacent flats in the area of the "L" pier, behind the fuel dock and inshore of the finger piers near the boat ramp shall be PROHIBITED until further notice.

6.4.3. Herring River
Herring River will be open to shellfishing on a conditional basis as directed by the DMF. The dates of opening and closure will be approved by a vote of the Board of Selectmen
The area is open to the taking of shellfish by Wellfleet Commercial permit holders only. Scuba diving for shellfish is prohibited.

6.4.4. West Side:
The West Side of Wellfleet is open to the taking of shellfish by any means EXCEPT by use of a quahog dredge.

6.4.5. Egg Island:
a. The north side of Egg Island from the flag pole at Chequessett Country Club

easterly to the Town Pier is open year round for the taking of quahogs and oysters.

b. Diving from a boat is permitted with the usual restrictions and conditions. The use of scratcher and basket rakes and clam hoes will be allowed; no other methods of harvest are permitted. (See also Section 9 **Commercial Shellfishing: Diving for Shellfish**)

6.4.6. Blackfish Creek:
Blackfish Creek will be open year round for the taking of quahogs, soft-shelled clams and oysters.

6.4.7 South Lieutenant Island
South Lieutenant Island will be closed for the taking of shellfish from June 1st through September 30th.

6.5. Use of Motorized Vehicles for Shellfishing

6.5.1. Motorized Vehicles on Beaches
Only commercial permit holders or aquaculture licensees may use motorized vehicles on beaches or in intertidal areas. (See Town of Wellfleet General Bylaws under ARTICLE VII GENERAL - Section 24. Beach Vehicular Traffic By-Law.)

6.5.2. Terms and Conditions for Use of Motorized Vehicles
All use of vehicles to access areas licensed for aquaculture or other areas open to commercial permit holders, shall also be in accordance with the applicable general bylaws of the Town, and conditions, which may be imposed by the Conservation Commission.

6.5.3. Speed Limit on Beaches and Intertidal Areas
No person engaged in commercial shellfishing or aquaculture shall operate a motorized vehicle at a speed in excess of fifteen (15) miles per hour or a motorized vehicle which is dual wheeled or which has a gross vehicle weight (GVW) greater the nine thousand two hundred pounds (9200 lbs) on any tidal beach or flat or other land below the mean-high water line.

6.5.4. Allowed Line of Access for Vehicles
Persons engaged in commercial shellfishing or aquaculture operating motorized vehicles on any tidal beach or flat or other land below the mean-high water line shall drive only on the foreshore of the tidal area below the high tide line but above the tidal flat, closely rounding every groin or other obstruction extending below the high water line, to a point opposite a licensed area, and thence to the licensed area. The traffic not directed to a licensed area shall be confined to the area below the high tide line above the tidal flat, closely rounding any groin or other obstruction extending below the high water line. Parking is permitted on the licensed area or in the access route to a licensed or legal harvesting area as described above.

6.6 Transfer of Oysters to Wholesale Dealer's Trucks During Vibrio Control Season

See Section 4.3.2.

Section 7. Shellfish Aquaculture

7.1. Issuance of Shellfish Aquaculture Licenses (Grants) for Areas Surveyed and Subdivided by the Town.
Once areas are identified by the Shellfish Constable as potentially suitable for the location of shellfish aquaculture, and the areas are under the control of the Town, the Board of Selectmen may exercise their discretion as the licensing authority for the issuance of license/s for shellfish aquaculture (grants) in compliance withMGL Chapter 130. The Board of Selectmen shall post notice of the availability and location of such acreage, as well as any applicable conditions and/or limitations upon such acreage, on the Shellfish Department's notice board, at Town Hall and on the Town Website.

7.2. Previously Established Grants that Become Available
In the event that a licensed aquaculture area previously certified by the DMF becomes available, its status shall be

posted by the Shellfish Constable (see Section 3; Informing the Public of Meetings Concerning the Fishery) for a period of 30 calendar days. If more than one qualified person (as described in Section 1 under **Domiciled Resident**, and Section 7.8.1 Domiciled Residents) whose name does not appear on another license applies to hold the license, the Board of Selectmen shall hold a public lottery within 14 days to impartially determine who shall be granted the right to use such available acreage for aquaculture.

7.3. Annual License Fee
The annual fee for an aquaculture license to be paid to the Town by each licensee shall be $25.00 per acre (or portion thereof) per licensee, as required byMGL Chapter 130; Section 64.

7.4. Location of Areas Licensed for Aquaculture (Grants)
Grants may be located in the following areas:

Area 1: On tidal flats off Mayo Beach and Chequessett Neck from the eastern boundary of the Town property at Powers Landing to the Town Pier and at least three hundred (300) feet northward of a line from the seaward end of the Breakwater to the easternmost tip of Great Island, except in the area above mean low water on Egg Island.

Area 2: On tidal lands lying north and easterly of the Breakwater and of the northerly tip of Indian Neck.

Area 3: On tidal lands off Indian Neck from Omaha Road south to the eastern tip of Field Point.

Area 4: On tidal lands off the westerly side of Old Wharf Point and at the entrance to Loagy Bay.

Approval of the proposed licensed area shall be determined by the Board of Selectmen with appropriate regard for reasonable navigational and recreational interest in the areas concerned.

7.5. Conditions for Use of Area Licensed for Aquaculture
The Board of Selectmen may license specific areas beneath the waters of the Town to individuals for the purpose of granting exclusive rights to plant, grow and harvest shellfish from that area. Said license is subject to the provisions ofMGL Chapter 130, those set forth in current regulations of the Division of Marine Fisheries, these regulations or other town bylaws, as well as any specific conditions or restrictions set forth in the license by the Board of Selectmen.

This license does not grant any property rights. Any use of this license for other than the planting, growing, and harvest of shellfish upon privately owned property may not proceed over the objection of the property owner. This license does not authorize any damage to private property or other violation of private rights. The issuance of this license is not a determination of title or ownership. The licensee acknowledges that it is the responsibility of the licensee to obtain permission if requested in writing, from the property owner, before exercising the rights conferred by the license other than for the planting, growing and harvest of shellfish on that property. However, the license holder is on notice that the owners of the property described in the license may nevertheless bring an action for trespass in a court of competent jurisdiction. A license holder may not rely on this license as a defense to an action in trespass. (MGL Chapter 130;Section 57.)

7.5.1 Access to Areas Licensed for Aquaculture is Required
There will be permitted and designated access to all licensed acreage. The method or methods of access shall be precisely specified in the text of the aquaculture license (lease) granted by the Board of Selectmen.

7.5.1.1. Vehicle Access to Grants
Vehicle access will only be allowed when:
a. Town roads and Town landings are used;

b. The owners of private roads to be used have no objection;
c. The specific route of entry from the roadway onto the beach and flats is approved and conditioned by the Conservation Commission.

7.5.1.2 Non-vehicular Access to Grants

Access by foot and/or boat shall be designated in the aquaculture lease, in all cases in which vehicle access is not possible or permitted.

7.6. Process for Approval of Aquaculture Licenses

The Board of Selectmen will accept and process applications for area licenses in accordance withMGL Chapter 130; Section 57, and the application procedure of the Town.

7.7. Moratorium on Aquaculture Licenses

The Board of Selectmen may at a duly advertised public hearing declare a moratorium (a time-specific closure) on license approvals at any time this action is deemed appropriate and in the best interests of the fishery and the environment.

7.8. Issuance of Licenses for Aquaculture

7.8.1. Domiciled Residents: Licenses issued will be issued only to domiciled residents (See Sec.1 Definitions) of the Town, 18 years of age or older, who have the knowledge and experience to fulfill the responsibilities specified in the license, provided that the applicant has held and used a Wellfleet commercial shellfishing permit during two (2) of the last three (3) years OR the applicant can demonstrate some experience in shellfish propagation and aquaculture. This may be supported by a letter from a license holder describing the type of work performed and any other information which might be relevant.

At such time as a licensee ceases to be a domiciled resident of the Town that individual shall be removed from the license. The status of all other licensees will not change. If that licensee is the sole licensee then the license shall be revoked.

7.8.2. Renewal of Aquaculture Licenses

The initial term for a new license shall be two (2) years. Provided appropriate effort has been demonstrated, as required in Section 7.12, the first renewal of a license may be for five (5) years, unless the licensee agrees to a shorter term. Subsequent renewals may be for ten (10) years, unless the licensee agrees to a shorter term. Renewals may be requested and acted upon only during the twenty four (24) months immediately prior to the expiration date of the current license. The renewal period shall begin on the expiration date of the existing license.

7.8.3. Limit on Individuals Licensed to Use a Grant

Licenses issued under MGL Chapter 130; Section 57 by the Board of Selectmen of the Town of Wellfleet may be issued to up to four (4) individuals, 18 years of age or older, meeting the requirements set forth Section 7. The Selectmen will not recognize more than four (4) individuals as licensees on any one license. Each individual who is licensed to use an area for aquaculture must acknowledge and approve the addition of any person who subsequently applies to be included on that license.

7.8.4. Working of Grants by Non-Licensees

All individuals authorized by a licensed grant holder to work the grant in the absence of a licensed grant holder must be registered with the Shellfish Department. Licensees are responsible for the actions of all such employees or otherwise affiliated persons while they are working on the grant designated by their registration. When more than one licensee has been granted a license for the same acreage, each licensee is responsible only for the actions of the employees or otherwise affiliated persons who are under their separate management.

7.8.5. Limit on Size of Grant

No licensee shall hold a license for, or have use of, more than seven (7) acres in total. Each person named on a license as a licensee shall be charged with the total acreage covered by that license. (See Section 7.3 Annual License Fee.) Individuals holding more than seven (7) acres prior to the adoption of the establishment of this limit will not be required to accept a license for a lesser acreage, but will not be eligible for a license for any additional acreage.

7.8.6. Grants Established Before August 1, 1993
Any license/s issued prior to August 1, 1993, the date on which the Board of Selectmen established the maximum size of seven (7) acres for an aquaculture holding, will remain valid, and will be allowed to continue according to the existing terms and conditions of said license.

7.8.7. Aquaculture Research and Development Projects

7.8.7. 1. License for Aquaculture Research and Development
The Selectmen may issue a license to an individual or an institution (including a corporation) which proposes to conduct aquaculture research and development projects if environmentally appropriate, in the best interests of the town, and beneficial to the aquaculture industry.

7.8.7.2. Initial Term of License
The initial term of a research and/or development license shall not exceed two (2) years. The license may then be renewed for a period of up to eight (8) years, for a total maximum of ten (10) years.

7.8.7.3. Plan of Project
The applicants shall provide a plan of the project including all aspects of the management and operations of the project to the Board of Selectmen, the Shellfish Constable and the Division of Marine Fisheries.

7.8.7.4. Dissemination of Data and Results
All data and subsequent results and analyses of the project shall be made available to the Board of Selectmen, the Shellfish Constable, and the Division of Marine Fisheries at predetermined times to be established in the license.

7.8.7.5. Excess Product Returns to Town
Products resulting from the exercise of this license, in excess of those required for the aquaculture research and development specified in Section

7.8.7.6 License for Aquaculture Research and Development shall be turned over to the Town of Wellfleet annually, for appropriate use by the Shellfish Department.

7.9. Rights of Use and Transfer

Licensees shall have the exclusive use of the area described in their license for the purpose of aquaculture, for the duration of their terms. No other individual may use the license without the express permission of the licensee(s). (See Section 4.9 Poaching, Section 4.10 Disturbance of Grant by Other Than the Licensee and MGL Chapter 130;Section 57, Section 63 and Section 67.)

Licensees may transfer the rights or responsibilities assigned to their license to any other individuals, companies or corporations by vote of the Board of Selectmen, and with the express permission of all other individuals who hold license for the same area. (See MGL Chapter 130; Section 58 and Section 7.8.3 Limit on Individuals Licensed to Use a Grant.)

7.10. Inheritance of Rights to Use an Aquaculture License

Any license issued under the provisions of MGL Chapter 130, Section 57 shall, upon the death of the sole licensee, continue in full force and effect, subject to the same terms, conditions and regulations imposed by the original license, for the balance of the unexpired term or one year, whichever is longer. This is for the use and benefit of the immediate family of the deceased licensee. For purposes of this section the term immediate family shall mean spouse, son, daughter, mother, father, brother and sister of said deceased licensee.

7.11. Liability of the Town

The Town will not be held liable for any damage to a licensed area, or gear, or stock thereon, by reason of any dredging or other harbor improvements undertaken by the Town.

7.12. Evidence of Productivity: Use It or Lose It

7. 12.1. Minimum Levels of Investment and Production

There shall be minimum levels of investment and production required in order to retain an area license. These shall be:

a. During the first, second, and third year after the date of issuance of the license a minimum of $1000 per acre shall be spent on seed and gear for the area and it shall be evident that this effort of improvement has taken place. Any licensed area that is less than one acre shall be prorated.

b. During the fourth year and every year thereafter there shall be a minimum production of an average of $1000 worth of product per year per acre, or prorated for a portion thereof, from the practice of aquaculture on the licensed area. This shall be demonstrated by the annual grant report, and, if so requested by the Shellfish Constable, copies of transaction receipts or other acceptable documentation. (See MGL Chapter 130, Section 64 Annual fees for license.)

7.12.2. Failure to Meet Production Levels

Failure of the licensee/s to meet the specified production level for any three (3) consecutive years may result in the forfeit of the aquaculture license and licensed area, as stated in MGL Chapter 130; Section 65.

7.12.3. Waiver of Production Requirements

The Constable shall have the right to waive the minimum production requirements when there is evidence that the failure to meet the minimum standard is due to events beyond the control of the license holder.

7.12.4. Extension of Licensed Area (Grant): Investment and Production

In the event of an extension being granted to a presently licensed area, the same level of effort per acre for the newly licensed, abutting section is required as described above in Sections 7.12.1 Minimum Levels of Investment and Production and 7.12.2 Failure to Meet Production Levels.

7.13. Annual Report

7.13.1. Due Date

Licensees shall file annual reports under oath, on their activities in accordance with MGL Chapter 130; Section 65 on or before February 28th of the following year. The report must include any changes or deviation from the original plan filed with the original application or any subsequent application.

7.13.2. Penalization for False Report

Any licensee who submits a false licensed area report in violation of MGL Chapter 130; Section 65 shall be penalized by the revocation of his or her license.

7.13.3. Notification of Failure to Meet Minimal Requirements
Subsequent to the filing of the annual report, the Constable will notify any license holder who, in the opinion of the Constable, has failed to meet the minimum requirements. The license holder has the right to appeal to the Board of Selectmen within two weeks after notification. If no appeal is filed on a timely basis, the license will be forfeited.

7.14. Annual Inspection of Each Grant
The Shellfish Department shall make no less than one visit per year to the site of each licensed area in the company of the license holder.

7.15 Shellfish Seed

7.15.1. Required State Seed Permit
No person shall harvest, plant, transplant, transport, sell or otherwise have in their possession seed shellfish, without first obtaining a state seed permit from the Massachusetts DMF, as required by MGL Chapter 130, Section 80 and CMR 322, Section 15.04(b) 1

7.15.2. Special Circumstances for Taking of Seed
From time to time, with the approval of the DMF and the Board of Selectmen, the Shellfish Department may open up an area for the taking of oyster seed only by aquaculture licensees who hold a seed permit.

7.15.3. Use of Spat Collecting Devices
The use of spat collecting devices such as Chinese hats to catch oyster larvae in areas not licensed for aquaculture, may only be done by commercial permit holders who also hold a seed permit (Section 1, **Definitions).** This may only take place during the spawning season, as determined by the DMF. This is usually from June 15th to September 15th.
During this period, catching oyster larva with such devices is legally considered to be fishing, not farming and the devices are classified as fishing equipment, not growing devices.
From time to time, upon receiving a recommendation from the Constable, the Board of Selectmen may vote to limit the areas in which such fishing is allowed or the numbers of Chinese hats or such other devices that may be set out by individuals in these same areas.

7.15.4. Catch Limit for Seed Specified on Permit
No license holder in any one calendar year may take, or cause to be taken, more than twenty-five (25) bushels of seed oysters per acre of licensed area or fraction thereof, pro rated at that rate.

7.15.4. No Seed Harvested by Dragging
No person shall harvest shellfish seed by dragging, except by the licensee within the boundaries of his or her licensed area.

7.16. Petite Oysters and Gems
An aquaculture license holder may harvest and sell petite oysters (between 2.5 and 3 inches in height) and/or gems (quahogs between ¾ and 1 inch in width) if:
a. they do not have a Town of Wellfleet commercial shellfish permit;
b. they have documented proof of purchase of seed
c. they have the required amendment to their propagation permit, granted by the State, allowing them to sell petite oysters and/or gems to a previously designated dealer, approved by the State;
d. they, or their employees, or otherwise affiliated persons (as defined in Section 7.8.4) Employees of Licensees or their families do not store any oysters or quahogs, harvested from the wild on their licensed area(s);
e. they are limited to selling petite oysters and/or gems for a term of not less than a year, beginning with the routine issuance of an annual propagation permit from the State;
f. they forfeit any claim to a hardship waiver under Section 6.1.4 Hardship Exemption of the Town of Wellfleet Shellfishing Policy and Regulations.

7.16.1 Transfer of Oysters to Wholesale Dealers Trucks During Vibrio Control Season: See Section 4.3.2

7.17. Predator Control

7.17.1. No Lethal Predator Control Measures

Unless specifically authorized by the Director, in consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service, it shall be unlawful to use lethal means to control or exclude predators or other organisms from any area used for aquaculture. Non-lethal enclosures, including, but not limited to, nets, fences, bubble curtains and noise may be used, if approved for a specific site and purpose. Invertebrate predators, pests and fouling organisms may be removed manually from an aquaculture site and disposed of in a lawful manner (CMR 322, Section 13.7.2).

7.17.2. No Taking of Horseshoe Crabs or Whelks/Conks Without Permit.

Being in possession of horseshoe crabs and whelks (conchs) for any reason requires a State permit. In this regulation, whelk/conch refers to either knobbed whelk (Busycon carica) or channeled (smooth) whelk (Busycotypus canaliculatus). (See CMR 322 6. 34: Horseshoe Crab Management and 322 CMR Section 6.21: Minimum Size for Conch.) As stated in 7.17.1, neither species shall be intentionally killed while practicing predator control.

7.17.3. No Harm to Endangered Species

No person shall maintain a predator control method that will intentionally threaten any endangered species.

7.18. Aquaculture Gear and Equipment

7.18.1. Grants Shall Be Marked

Every licensee shall mark the corners of the area licensed under their license with buoys marked with the license number. From April 1st to November 1st, the corners shall be marked with fluorescent yellow balls, at least twenty (20) inches in circumference. Buoys shall be attached to their anchor by cables, chains or non-floating lines. Numbers shall be marked on said buoys, and shall be at least two (2) inches high and shall be black in color. Temporary buoys shall be required from November 1 through April 1.

7.18.2. Height and Arrangement of Equipment

With the exception of spat collection devices there shall be no equipment or gear made of metal that rises more than eighteen (18") inches above the grade, and equipment or gear made of plastic (or another equally flexible material) higher than twenty-four (24”) inches above the grade, within the boundaries of a licensed area.

7.18.3. Marking of Gear

Every licensee shall clearly and permanently mark any and all trays, boxes, holding cars and all other aquaculture gear with the license number of the license area in a manner that is clearly visible.

7.18.4. Gear Must be Secured

All **equipment** or gear on a licensed area must be securely fastened to the bottom **at ground level** or removed **by January 15 or before ice prevents removal, whichever comes first**. All **equipment** or gear **which is no longer used as it was originally designed or intended to be used** must be removed from a licensed area and either disposed of properly or moved to an appropriate site not located within a protected resource area. **This includes** loose nets, twisted and damaged racks, loose envelopes, grow-out bags and fastening devises.

7.18.5. Exception for Ice in Harbor

The Shellfish Constable shall have the authority to temporarily waive these regulations if the presence of ice hampers the ability of a licensee to immediately comply with these regulations.

7.18.6. Fines for Gear Violations.

After receiving a written warning, the licensee has 7 days to comply. After the seventh day, a fifty dollar ticket shall be issued for each day of noncompliance. After 30 days of non-compliance, the licensee shall have his or her license revoked.

7.19. Buffer Zones
There shall be a buffer zone contiguous with the perimeter of any licensed area that is either twenty-five (25) feet wide, or one half the distance to the adjacent licensed area if less than fifty (50) feet, except where two (2) licensed areas abut. It is the responsibility of the license holder/s to keep this area clear of any equipment or gear owned by the licensee/s.

7.20. Exception to Hours of Operation
As required in Section 4.7, no license holder shall harvest, dig, pile, take or carry away any shellfish or shell during the period from one half (1/2) hour after sunset to one half (1/2) before sunrise by any method whatsoever. In the event of impending natural emergencies due to storms, ice or the like, and only after notifying the Shellfish Constable, a licensee may engage in securing stock and gear during this time period. Licensees must notify the Shellfish Constable in advance of their intention to empty seed trays and plant out seed at such times when the extreme tides needed to conduct such activities occur during this time period.

7.21. Hydraulic Harvesting of Shellfish from Grant Areas
The use of hydraulic harvesting gear for the purpose of harvesting shellfish from within the boundaries of a licensed area is permitted under the following conditions and with the following restrictions:
a) Devices used shall be for the hosed ejection of water under pressure into a shellfish bed;
b) Pressure pumps shall not exceed five (5) horsepower as rated by the manufacturer;
c) Noise control devices (i.e. mufflers) shall be in place and in good repair at all times;
d) Not more than one device may be used on any grant at any time;
e) Hours of operation shall be between 7:00 a.m. and ½ hour before sunset;
f) The Shellfish Constable shall have the authority to direct an individual involved in the use of such equipment to cease and desist if the Constable feels that there is a problem that necessitates such action. Any individual so ordered shall have the right to appeal the Constable's decision to the Board of Selectmen, at their first scheduled meeting after the service of such order.

7.22. Extension of Acreage Without Permission
No aquaculture license holder may willfully extend or cause to extend his or her grant boundaries, or allow cultivation, operation, propagation or products and equipment to exist beyond the duly recorded boundaries of his or her licensed area. The Shellfish Constable may cause a licensed area to be re-surveyed by a registered civil engineer, in the event that the assigned boundaries of an aquaculture license are called into question. If a violation of this section is then established, the aquaculture license of the individual guilty of the infraction shall then be revoked.

Section 8 Commercial Shellfishing: Dragging and Dredging

8.1. Areas Closed to Dragging/Dredging
No vessel shall operate a drag or dredge north of a line (commonly know as the "no drag line") extending from the seaward end of the Indian Neck Breakwater (see Appendix for coordinates to the large rock called Old Saw (a.k.a. Egg Island Rock) thence in the same direction to Great Island at Mean High Waters.
No vessel shall operate a drag or dredge east of a line extending from the candy pole on Field Point to the boat house on Lieutenant Island (Blackfish Creek No-drag Line), or within one hundred (100) feet of properly marked grants in that area, with the exception that a license holder may drag over his own grant. (See Appendices for maps and coordinates.)

8.2. One Drag/Dredge at a Time

No vessel which operates a drag or dredge shall have more than one drag or dredge in the water in use, at any time.

8.3. Size of Drag or Dredge
No drag or dredge with or without teeth having a width greater than fifty (50) inches shall be used in Wellfleet Harbor. Any drag or dredge used for the purpose of taking oysters, shall have exposed teeth at least one and one half inches in length (1 ½") as measured from the bottom of the bar, and separated by no more than four (4") inches along the entire exposed portion of the bar which must be in contact with the bottom.

8.4. By-catch Limited to 20%
No vessel shall land more than twenty per cent (20%) of the permitted daily catch of any species of shellfish, as by-catch, other than such species which the gear used is designed to harvest.

8.5. No Hydraulic Harvesting
Hydraulic harvesting of shellfish from vessels is not allowed.

8.6. Commercial Permit Required for Dragging/Dredging
The owner or operator of a vessel engaged in commercial shellfishing in the waters of the Town involving the use of a drag, dredge or other mobile gear, shall hold a valid Town of Wellfleet Commercial Shellfish Permit.

8.7. Vessels Must be Registered/Documented
Any vessel used for commercial shellfishing in the waters of the Town employing (over the side) a drag, dredge or other gear designed for the taking of shellfish must be registered and/or documented as having Wellfleet as port of origin. The owner of said vessel found in violation of this regulation shall be fined for each violation.

8.8. Landing of Catch
All draggers engaged in shellfishing must land all catch at the Town Pier.

8.9. No Dragging/Dredging Near Licensed Areas
Dragging or dredging within 25 feet of a licensed area is prohibited, except as otherwise noted. (See Section 8.1. Areas Closed to Dragging and Dredging.)

Section 9 Commercial Shellfishing: Diving for Shellfish

9.1. Areas where Diving is Allowed

9.1.1. South of the No-drag Line
A commercial permit holder may harvest shellfish by diving from April 1st to October 1st, in the area south of a line extending from the seaward end of the Indian Neck Breakwater to the large rock called Old Saw (a.k.a. Egg Island Rock) thence in the same direction to Great Island at Mean High Water, south to Eastham/Wellfleet town line.

9.1.2. North of the No-drag Line
When recommended by the Shellfish Department and approved by the Board of Selectmen, divers may harvest shellfish from the waters north of a line extending from the seaward end of the Indian Neck Breakwater to the large rock called Old Saw (a.k.a. Egg Island Rock) thence in the same direction to Great Island at mean high water, excluding the Herring River. (Area CCB 12).

9.2. No Diving Near Licensed Areas
No person may dive within one hundred (100) feet of any properly marked licensed shellfish area except for license holders diving on their own licensed areas.

9.3. Flag Requirements

All divers and snorkelers shall display a "diver down" flag or other flag when in the water, and must stay within one hundred (100) feet of said flag.

9.4. Daily Diving Limits
Divers with commercial permits are subject to the same daily permit limits as handpickers with commercial permits. Divers with noncommercial permits are subject to the same daily permit limits as handpickers with noncommercial permits.

9.5. No Diving in Channel
No commercial permit holder shall harvest shellfish by diving within the buoyed channel.

Section 10 Eeling

10.1. Eeling Permit Required
No person shall harvest, remove, or catch eels from the waters of the Town without having first obtained an eeling permit from the Town.

10.2. Fykes Not Allowed
No eels shall be taken within the Town by the use of a fyke,

10.3. No Taking of Glass Eels
Taking of glass eels is prohibited.

10.4. Examination of Catch
On the demand of the Shellfish Constables, Police Department or other agent duly authorized by the Board of Selectmen, every permittee shall display in full view his entire catch of eels for examination.

10.5. Catch Limits
Permits for the catching or taking of eels from the waters of the Town shall be issued to domiciled residents for the taking of not more than twenty (20) pounds of eels in any one (1) day.

Section 11 Enforcement

Enforcement protocols and penalties for specific infractions may be found in other sections of these regulations, including:

5.3.1 Required Icing and Shading of Harvest in Warmer Weather
6.2.1 Required Icing of Product
6.2.3. Commercial Catch Limits
7.7.13.2. Penalization for False Report
7.12.2. Failure to Meet Production Levels
7.13.3. Notification of Failure to Meet Minimal Requirements
7.18.6. Fines for Gear Violation
7.21. Hydraulic Harvesting of Shellfish from Grant Areas
7.22. Extension of Acreage Without Permission
8.7. Vessels Must Be Registered/Documented

11.1. Enforcement Personnel
These regulations shall be enforced by the Wellfleet Shellfish Constable, Deputy Shellfish Constable, The Wellfleet Police Department (including Special Police Officers) or any duly authorized agent of the Board of Selectmen. Failure to adhere to these regulations can result in fine, suspension or loss of permit, or suspension or loss of license, or all three.

11.2. Penalties for Poaching or Theft
A licensee may in tort recover treble damages of any individual who, without his or her consent, unless otherwise authorized by law or lawful regulation to do so, takes shellfish or equipment from the licensed area during his or her term of use.
(See Sections 4.9 Poaching or Disturbance of Grant and MGL Chapter 130; Section 63 and Section 67 .)

11.3. Authority to Revoke Aquaculture License
The Board of Selectmen or the Director of the Division of Marine Fisheries may revoke an area license in accordance with the provisions set forth in MGL Chapter 130, Sections 57 & 65. In the event that a license is revoked, that individual may not possess seed nor harvest shellfish from any licenses area in the Town.

11.4. Non Criminal Disposition
Enforcement shall include without limitation the noncriminal disposition procedure provided in MGL Chapter 40; Section 21D

11.5. Penalty Fees
The penalties for violation of any of these regulations shall be assigned by the Shellfish Department and shall consist of a fine of $50 for the first offense, a fine of $150 for the second offense, and a fine of $300 for the third offense. In the event of a fourth offense within a period of 5 years, there will be an automatic permit suspension.

11.6. Duration of Shellfishing Permit Suspensions
Holders of Wellfleet shellfish permits shall have their permit suspended by the Board of Selectmen for a period of not less than three (3) days nor more than fourteen (14) days for the first offense, suspended for not less than thirty (30) days nor more than sixty (60) days for the second offense, and suspended not less than ninety (90) days for the third offense. In any instance where the permit was due to expire during the proposed suspension period, the suspension may be invoked during the next calendar year. Additionally, the beginning date of the suspension shall be determined by the Board of Selectmen.

11.7. Revocation of Shellfishing Permits
The Board of Selectmen reserves the right to revoke any such permit for particularly egregious violations and/or a pattern of abuse of these regulations. In the event that a permit is revoked, that individual may not harvest shellfish in the Town nor be aboard any vessel which is actively engaged in shellfishing until their permit is restored, with licensed areas being the only exception. A public hearing must be held within 30 days to allow a permit holder to appeal the revocation or suspension of said permit.

11.8. Acceptance of Suspension Without Request for Appeal
The enforcing officer may offer the offender of any of these regulations the opportunity to immediately accept the suspension of his or her permit for the minimum specified time to begin the following calendar day. In this case, the offender must surrender his or her permit and agree in writing to the suspension. Acceptance or rejection of this offer will in no way affect the disposition of the fine.

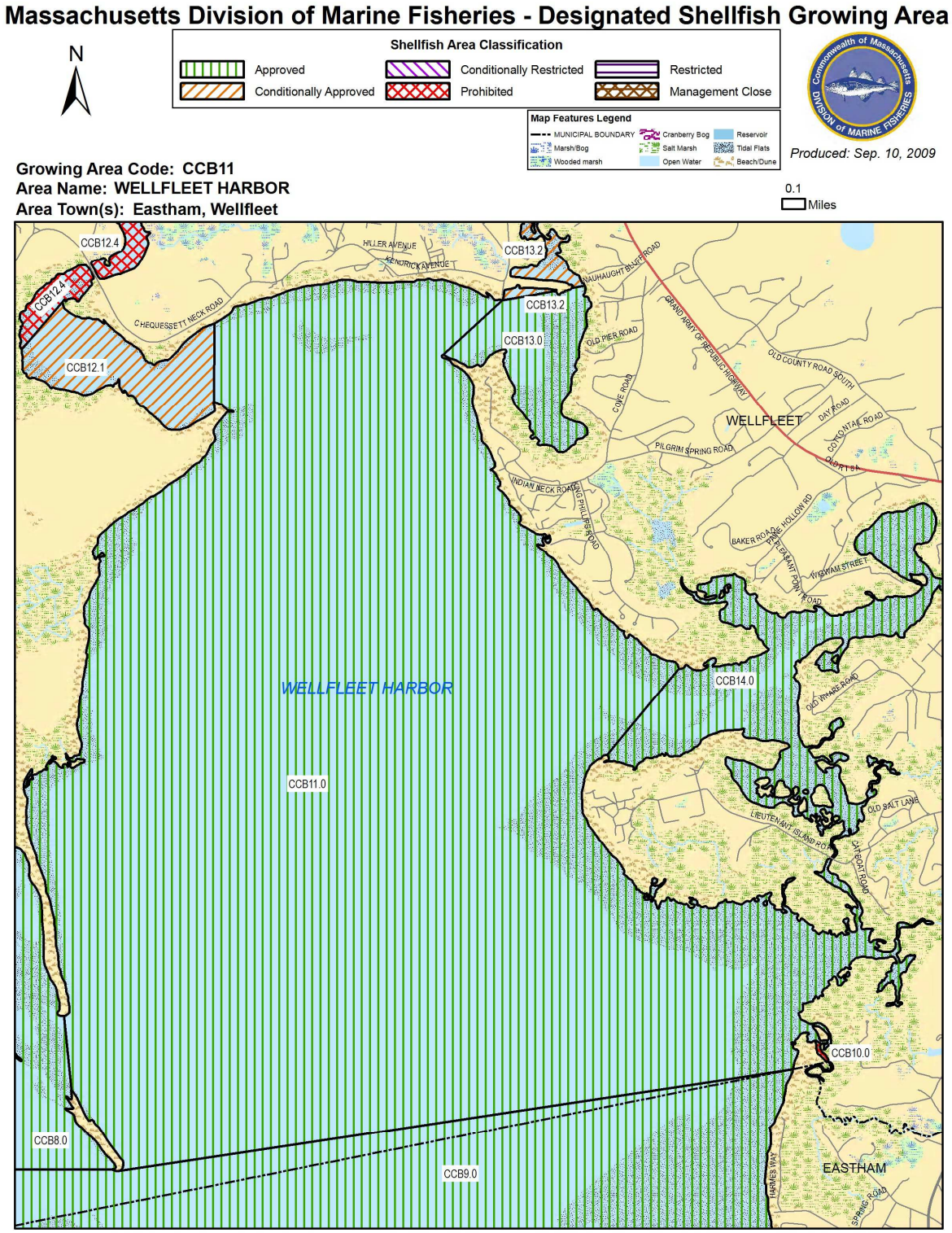
11.9. Disposition of Unlawful Catch
The enforcing officer may, at his/her discretion, seize and dispose of any unlawful catch as perMGL Chapter 130; Section 12.

11.10. Prior Terms Revoked
All regulations and specifications made prior to the date of acceptance of these regulations are hereby revoked; with the exception that nothing in these regulations shall be deemed to affect the validity, conditions, or terms of any license granted under the corresponding previous regulations of the Town until the expiration of such license.

11.11. Severability Clause
If any provision of these regulations is declared invalid by any court or tribunal of competent jurisdiction, the remaining provisions of these regulations shall continue in force and effect.

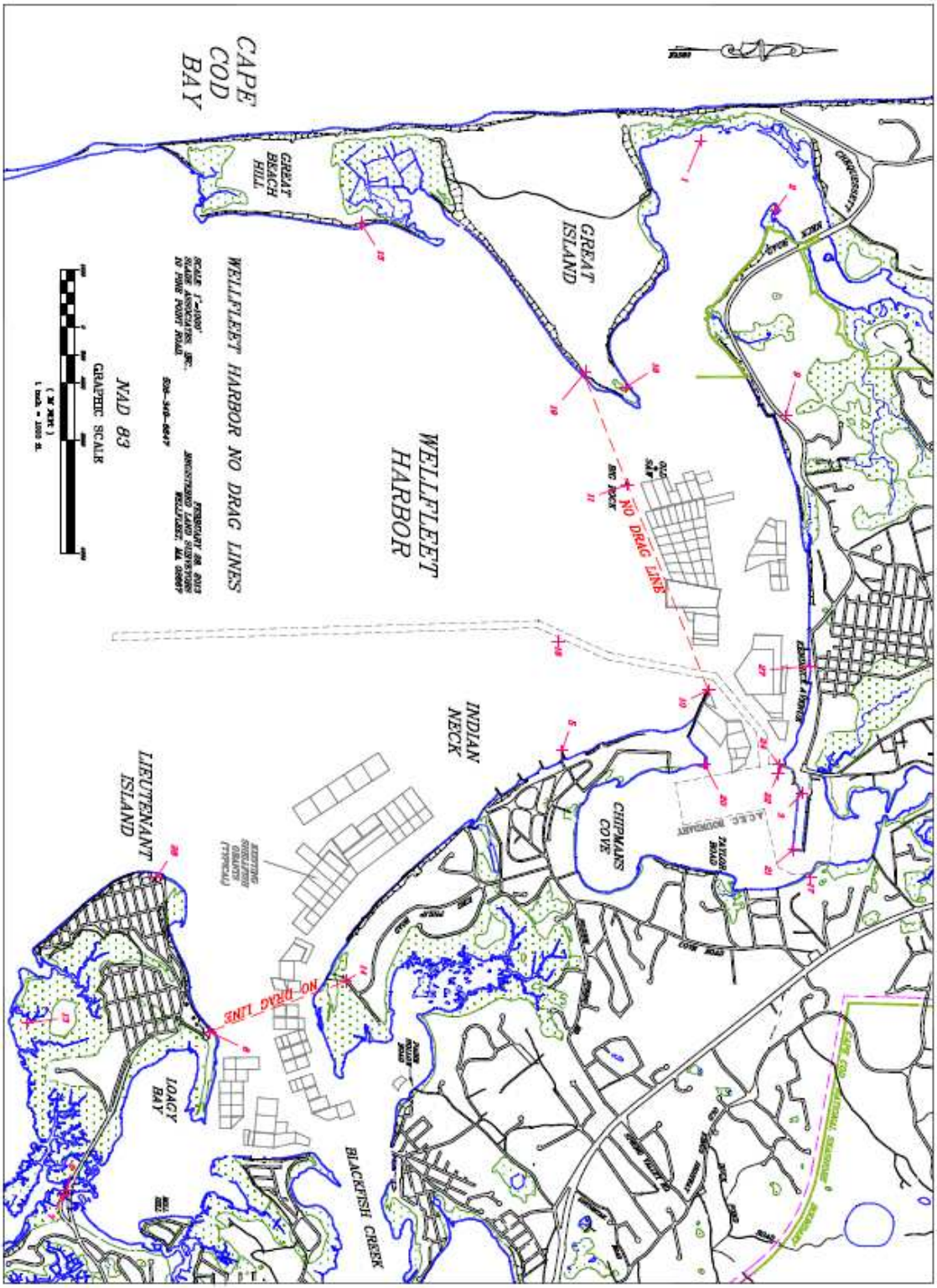
APPENDIX A:

[DMF - Designated Shellfish Growing Areas / Wellfleet]



This product is for planning and educational purposes only. It is not to be used by itself for legal boundary definition or regulatory interpretation.

APPENDIX B Latitude and Longitude Coordinates

	Point	**Latitude (N)**	**Longitude (W)**
1	Boundary determined by the MA DMF, marked with poles on either side of the river	41°55.532’	070° 04.249’
2	Boundary determined by the MA DMF, marked with poles on either side of the river	41°55.747’	070°0 3.974’
3	Eastern high point of the Town Boat Ramp	41°55.796’	070° 01.710’
4	Eastham/Wellfleet boundary marker on Billingsgate Island	41°52.317’	070° 04.000’
5	End of the first groin south of the Burton Baker Landing	41°55.095’	070° 01.891’
6	Lieutenant’s Island Bridge	41°53.627’	070° 00.219’
7	Lieutenant’s Island Bridge	41°53.617’	070° 00.200’
8	Lieutenant’s Island Boathouse	41°54.054’	070° 00.823’
9	Main flagpole at the Chequessett Neck Country Club	41°55.766’	070° 03.175’
10	Navigational beacon (#14) at the seaward end of Indian Neck Breakwater	41°55.528’	070° 02.117’
11	Near the rocks known as Old Saw	41°55.301’	070° 02.919’
12	Official boundary marker in Hatches Creek	41°52.867’	070° 00.267’
13	Osprey nest pole on the southern end of Lieutenant’s Island	41°53.519’	070° 00.871’
14	Parking lot at Fox Island, marked with a striped pole	41°54.452’	070° 01.012’
15	Point in Middle Meadow, marked with a striped pole	41°54.535’	070° 03.950’
16	Point near the #12 channel marker	41°55.091’	070° 02.317’
17	Point on the shore on the other side of the channel (across from Shirttail Point), marked with a striped pole	41°55.817’	070° 01.382’
18	Point on the tip of Great Island, marked with a striped pole (for Herring River)	41°55.301’	070° 03.297’
19	Point on the tip of Great Island, marked with a striped pole (for No Drag Line)	41°55.183’	070° 03.358’
20	Point on the tip of Indian Neck, marked with a striped pole	41°55.511’	070° 01.832’
21	Southeastern tip of Shirttail Point	41°55.768’	070° 01.493’
22	Southeastern tip of the L pier	41°55.727’	070° 01.786’
23	Southern tip of Jeremy Point	41°52.491	070° 03.818’
24	Southwestern tip of the L Pier	41°55.729’	070° 01.823’
25	Uncle Tim’s Bridge	41°56.251’	070$_o$ 01.701’
26	Uncle Tim’s Bridge	41°56.216’	070° 01.676’
27	US Geodetic and Coast Survey marker at the landward end of the third groin west of Mayo Beach	41°55.827’	070° 02.203’
28	Western edge of the house at the western tip of Lieutenant’s Island	41°53.903’	070[1] 01.425’

APPENDIX C: Wellfleet Harbor/No Drag Lines