

TOWN OF FALMOUTH
Amended regulations effective March 15, 2024

Chapter 275 Herring, Shellfish and Aquaculture

§ 275-1 Statutory authority.

Under the general authority of M.G.L. c. 130, and more specifically pursuant to M.G.L. c. 130 §§ 52 and 94, the Town of Falmouth may create rules and promulgate regulations governing the taking of alewives and herring, regulate or prohibit the taking of eels and all kinds of shellfish and seaworms, and enact regulations regarding the coastal fisheries in any water in the Town of Falmouth.

§ 275-2 Rules of the Shellfish Constable.

The Shellfish Constable, or designee, shall have authority to make any rules to assist in the administration or enforcement of this Section 275. Said rules shall not conflict with these regulations, but only supplement them.

§ 275-3 Enforcement of regulations and rules.

These regulations and any rules promulgated thereunder shall be enforced by the Shellfish Constable or designees.

Article I Herring Regulations

[Sections 275-4 – 275-9 are reserved]

Article II Shellfish and Eel Regulations

§275- 10 Permits Required.

- A. A Permit is required for the taking or harvesting, directly or indirectly, of any shellfish, eels or seaworms under these regulations.
- B. All permits required under these regulations are to be exercised by the permit holder only, unless otherwise permitted herein.

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§ 275-11 Directed harvesting prohibited.

No person shall direct, with or without compensation, another person or entity to take or harvest shellfish in any area under the jurisdiction of the Town, unless explicitly permitted to do so in accordance with state law or regulation.

§ 275-12 Family shellfish permit quantity restrictions and closed areas.

- A. A family permit to take shellfish and eels is required. Family permits are valid for use by spouse and minor children of the individual to whom the permit is issued only. Others may accompany a permit holder while shellfishing, but only one limit per permit may be taken.
- B. Quahogs. Ten quarts of quahogs may be taken per day but not more than 20 quarts in any one week.
- C. Soft shell clams. Ten quarts of soft shell clams may be taken in any one week.
- D. Scallops. Between October 1 and the following March 31, both dates inclusive, one bushel of adult scallops may be taken in any one week. For the purposes of this regulation, an adult scallop is defined as one having a well-defined, raised annual growth ring. Scallops may be taken from areas posted as "Closed to Shellfishing," if those areas are specifically opened to the harvest of scallops by the Board of Selectmen. Scallop season shall be set annually by the Board of Selectmen.
- E. Oysters. Between November 1 and the following March 31, both dates inclusive, not more than 10 quarts of oysters per week may be taken. Seed oysters must be culled from the shells of adult oysters at the harvest site. Oyster shells must be returned to the harvest site after shucking or the designated location at the Falmouth DPW located on Gifford Street.
- F. Mussels. Ten quarts of mussels may be taken in any one week.
- G. Family permits shall not allow for the taking of shellfish of a size or at a season prohibited

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by law, and the amount therefore taken for any family shall not exceed in any one week one bushel of any or all kinds of shellfish.

- H. All seed shellfish shall be immediately returned to the harvest area.
- I. Family shellfish permits shall be visibly worn at all times while shellfishing.
- J. All shellfish must be landed in shells.
- K. No shellfish may be taken from areas closed to shellfishing by order of the Board of Selectmen or the Massachusetts Division of Marine Fisheries, except as noted in § 275-7D.
- L. Family permit holders may set no more than four eel pots in the Town of Falmouth waters. All eel pots shall have the name and phone number of the owner clearly displayed on the buoy.

§ 275-13 Restrictions in family areas.

Any quahog rake greater than 13 inches across the back of the rake shall not be allowed to be used for the harvest of quahogs in any shellfish area designated for family use only by the Town of Falmouth. No holder of a commercial shellfish permit shall dig or attempt to dig shellfish in areas designated for family use only. Family areas are open on Saturdays and Sundays only. Family permits may be used in areas not designated for family use only on any day of the week.

§ 275-14 Commercial shellfish permit.

- A. No person shall take shellfish or eels from the foreshores, flats and tidal waters of the Town of Falmouth for commercial purposes without a permit therefor, prescribing the time, quantity and method of taking the same, issued by the Board of Selectmen. The permit shall be visibly worn at all times while shellfishing.
- B. No commercial shellfish permit shall be granted to any person who has not resided in the

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Town for at least six months preceding his application for a permit.

- C. Renewal applications for commercial shellfish permits shall be submitted during the month of February only. Each application may be subject to a 10 day review by the Shellfish Constable.
- D. Commercial permits may be renewed during the month of February. No commercial shellfish permits shall be issued after the end of February without a Selectmen's hearing at the request of the applicant. No commercial permits shall be issued to any individual under 16 years of age.
- E. Commercial permit holders shall carry photo identification such as a Massachusetts driver's license or Registry of Motor Vehicles identification card and a valid Commonwealth of Massachusetts Division of Marine Fisheries Commercial Shellfish Transaction card while fishing.

§ 275-15 Commercial shellfish permit quantity restrictions and closed areas.

- A. Quahogs. No more than three bushels of quahogs may be taken per day.
- B. Soft shell clams. No more than two bushels of soft shell clams may be taken per day.
- C. Scallops. Between October 1 and the following March 31, both dates inclusive, no more than five bushels of adult bay scallops may be taken per day except in areas of Buzzards Bay and Vineyard Sound where no more than 10 bushels may be taken per day. For the purposes of this regulation, an adult bay scallop is defined as one having a well defined, raised annual growth ring. Bay scallops may be taken from areas posted as "Closed to Shellfishing," if those areas are specifically opened to the harvest of bay scallops by the Board of Selectmen. Scallop season shall be set annually by the Board of Selectmen.
- D. Oysters. Between November 1 and the following March 31, both dates inclusive,

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commercial harvest of oysters shall be limited to Tuesdays, Thursdays and Saturdays only from areas open to the taking of shellfish. No more than two level Town-approved containers may be taken per day. Culling of seed oysters from the shells of adult oysters must take place at the harvest site.

- E. Mussels. No more than four level Town-approved containers of mussels may be taken per day.
- F. No more than 50 eel pots per commercial shellfish permit holder may be set in Town of Falmouth waters. Any eel pots shall be marked with a buoy with the name, phone number, and transaction card number of the owner clearly displayed. The Shellfish Constable must be notified as to the location of any eel storage containers.
- G. Commercial permit holders shall not take a family limit on their family permit on any day that they have taken commercial quantities of any species of shellfish.
- H. Commercial permit holders may not be assisted in the harvest or culling of shellfish by anyone who does not also hold a valid Town of Falmouth commercial shellfish permit. Commercial shellfish permits shall be visibly worn at all times while shellfishing.
- I. All shellfish must be landed in shells and tagged according to Massachusetts Division of Marine Fisheries and MA Department of Public Health regulations prior to leaving the harvest area.
- J. No commercial harvest of shellfish from areas closed to the taking of shellfish by the Board of Selectmen or the Massachusetts Division of Marine Fisheries, except as noted in § 275-10C.
- K. The required container for commercial harvest of any shellfish species taken from the Town of Falmouth shall be a polyethylene basket with internal measurements of 19 3/4 inches in diameter at the top by 14 1/4 inches in height by 13 1/4 inches in diameter at the bottom.

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The container may be filled up to the level of the top of the container. No other container of any description may be used to transport commercial limits of shellfish from the harvest area.

- L. No more than 1/2 bushel of uncultured shellfish may be in the possession of a commercial shellfisherman while actively harvesting and may not be in a container larger than 1/2 bushel. All culled seed shellfish shall be returned to the immediate harvest area from which it was taken.

§ 275-16 Commercial Reporting.

All commercial permit holders shall provide a written report to the Shellfish Constable of every harvest that takes place within 25 feet of a privately owned dock or within 25 feet of a known proposed dock locus. The report must include the amount and type of shellfish harvested, location of the private dock, and any payments received in connection with the harvest.

§ 275-17 Taking shellfish at night prohibited.

Shellfishing may not commence before sunrise or after sunset. All shellfish shall be landed by sunset.

§ 275-18 Wet storage of and planting of shellfish prohibited.

No shellfish from any source other than seed replanted during harvesting may be stored or returned to the water by anyone other than those holding the proper aquaculture or propagation permits issued by the Massachusetts Division of Marine Fisheries.

§ 275-19 Minimum sizes.

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All shellfish shall be measured by gauge before being placed in the catch container. The shellfish permit holder is required to carry a shellfish gauge. Minimum sizes shall be as follows:

- A. No person shall take or have in possession quahogs less than one inch shell thickness (hinge width).
- B. No person shall take or have in possession soft-shelled clams less than two inches in longest dimension
- C. No person shall take or have in possession oysters less than three inches in longest dimension.
- D. No person shall take or have in possession mussels less than two inches in longest dimension.
- E. No person shall take or have in possession eels less than nine inches in length.

§ 275-20 Display of catch.

All persons will display their catch upon request of the Shellfish Constable or designees.

§ 275-21 Manner of taking shellfish.

- A. Shellfish shall be taken only by hand, rake, plunger, dipnet and tongs, except scallops, and oysters which may be taken by hand, dipnet and dredging when prescribed by the Selectmen.
- B. Skin diving, with mask and snorkel, and scuba diving, with air tanks, may be used to take shellfish in specific areas when prescribed by the Selectmen. In no case will scuba diving for shellfish be allowed in depths of less than seven feet. During the period from June 1 to September 30, skin and scuba diving for shellfish will not be allowed within any of the coastal ponds, rivers and harbors except Megansett Harbor outside of marked navigation

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channels and coastal areas in Buzzards Bay and Vineyard Sound. Both skin and scuba divers shall display a dive flag that they shall carry with them attached by a line. Divers must stay within a ten-foot radius of their flag while shellfishing. Commercial permit holders shall display their Massachusetts commercial permit number in three-inch numbers on their dive flag. It shall be prohibited to scuba dive for shellfish at any time in the following areas: Great Pond, Green Pond, Bourne's Pond, Waquoit Bay, Falmouth Harbor and West Falmouth Harbor.

- C. "Fanning," the method of using mask and snorkel to take quahogs by hand in water depths less than three feet shall be allowed in all open areas in Quisset Harbor. Please make every attempt to avoid traversing or anchoring boats in the remains of the ancient cedar swamp in Quamquissett Cove on the southern shoreline between the golf course and Mink Island. Fanning may also be used to harvest quahogs from the open areas in Great Harbor Woods Hole.
- D. The use of any water, jet, suction and/or air tank device or shovel for the digging of shellfish is prohibited.

§ 275-22 Permit fees.

- A. The fees for shellfish permits shall be established by the Board of Selectmen.
- B. There shall be no abatement or refund of any fee required under these regulations except for those commercial permits eligible for a discounted rate upon service of volunteer hours in accordance with guidelines established by the Shellfish Constable.
- C. No permit will be issued without payment of the fee.

§ 275-23 Violations and penalties.

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- A. Any holder of a shellfish permit who violates any provisions of these regulations or the laws relative to the taking of shellfish shall forfeit his permit and shall be barred from obtaining shellfish permits for a period of not less than six months or not more than one year from the date of the violation, at the discretion of the Selectmen.
- B. Violation of any part of these regulations shall be punishable by a fine not to exceed \$50 for the first offense, \$200 for the second offense, and \$300 for subsequent offenses.

§ 275-24 Posting of changes in regulations and posting of open and closed areas.

- A. The Division of Marine and Environmental Services shall have responsibility for determining when resource areas subject to the regulations at section 275 shall be open or closed. Such determination shall be made by the Shellfish Constable, or designee, in consultation with the Massachusetts Division of Fisheries and Wildlife.
- B. Per M.G.L. c. 130 § 52, shellfish regulations for the Town of Falmouth shall be posted in at least three public places. The locations for posting general regulations shall be the Falmouth Town Hall, the Main Public Library, the North Falmouth Public Library, the West Falmouth Public Library, and the East Falmouth Public Library. Shellfish information signs with open area maps, located at Falmouth Town Hall, the Megansett Harbor parking lot, the West Falmouth Harbor boat ramp, and Seapit Landing in Waquoit Bay, shall remain in use. The Shellfish Division number is (508) 495-2550 ext. 5.

§ 275-25 Return of expired permits and catch reports.

All expired permits must be returned to the Selectmen's office, in the Town Hall, with a catch report completed before a new permit may be issued.

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§ 275-26 Adoption; effective date.

At a regular meeting of the Falmouth Board of Selectmen held on February 26, 2024, the foregoing regulations were adopted and shall be in effect, after publication as required by law, as of

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[Sections 275-27 – 275-39 are reserved]

Article II
Aquaculture Regulations

§ 275-40 Legal advertising.

The applicant shall pay for legal advertising for the public hearings required by the various boards and agencies that must review the proposal.

§ 275-41 Survey; application requirements and procedure.

- A. Prior to the issuance of the aquaculture license, the applicant shall be required to have the project area surveyed by a registered engineer or surveyor. The plan must accompany the application for the license and be of an appropriate scale to be recorded at the Barnstable County Registry of Deeds.
- B. Aquaculture license applications shall be considered on a first come, first served basis within the limitations of acceptable and available area as determined by the Board of Selectmen and the Massachusetts Division of Marine Fisheries. The Board of Selectmen may issue a moratorium on the issuance of aquaculture licenses at any time when this action is deemed appropriate and in the best interest of the Town.
- C. Any aquaculture application that is incomplete as a result of inaction on the part of the applicant for a period of six months shall be denied without prejudice. The applicant may begin the application process again, if he chooses.

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D. The aquaculture license holder must comply with all Massachusetts Division of Marine Fisheries aquaculture regulations under MGL C. 130. Failure to comply with the aforementioned laws and regulations shall be deemed cause to revoke the aquaculture license by the Board of Selectmen.

§ 275-42 License renewal.

Aquaculture licenses shall have an initial term of five years and may be renewed for a period not to exceed fifteen years. Aquaculture licenses will be renewed to the original holder provided that there are no violations of the aquaculture regulations in effect at the beginning of the current term. Upon renewal, any new or revised aquaculture regulations shall be observed by the license holder.

§ 275-43 Use of private land.

It shall be the responsibility of the applicant to determine if the proposed site is on private property. If so, written permission from the landowner is required. The aquaculture license issued by the Town does not give the applicant rights to use private land.

§ 275-44 Fees; production report.

A fee of \$25.00/acre/year cash or in kind shall be paid by the license holder to the Town of Falmouth and shall be payable no later than December 31 for the following year and shall be submitted with the annual production report. This report shall include an inventory of all seed currently on the site, shellfish harvested, and seed purchased for the year. The Board of Selectmen shall review the production report once each year as prescribed by MGL c. 130, § 65. The license holder shall produce documents upon request by the Selectmen showing shellfish seed purchased and sales slips.

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§ 275-45 Signs and markers.

- A. All aquaculture sites shall be marked at the corners with signs or buoys with three-inch letters as follows:

PRIVATE SHELLFISH AREA

NUMBER OF AQUACULTURE LICENSE

NO SHELLFISHING

- B. A hazard buoy may be required if there are structures placed on the bottom within the area.
- C. Inshore sites may be required to have bound markers surveyed and placed on shore.

§ 275-46 Site area.

- A. Inshore sites will be issued for a maximum of three acres with two acres held in reserve for expansion after the first five-year period. Additional acreage may be applied for after the first five years in no more than five-acre increments.
- B. Offshore sites, those leases located in the coastal zone outside of the ponds, rivers, and bays out to three miles offshore, shall be limited to ten acres for the first five years.
- C. Adjacent licensed sites shall maintain a fifty-foot buffer zone between each licensed area to allow for access.

§ 275-47 Removal of debris.

The license holder is responsible for any debris that washes away from the site and shall remove such material immediately. Failure to remove debris within three days after being notified by the Shellfish Constable or any other agency within the Town shall be cause for a Selectmen's Hearing.

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§ 275-48 Storage of equipment.

No cages or other equipment that is not in use may be stored at the site location.

§ 275-49 Transfer of license; employees; inspections.

- A. Aquaculture licenses shall not be transferred without written approval of the Board of Selectmen. Persons seeking licenses through transfers must meet all current criteria for aquaculture license applicants.
- B. The license holder must give written notification to the Shellfish Constable of any employees authorized to work on the site.
- C. The Shellfish Constable shall have the authority to inspect the site, including the contents of any and all rafts, floats, and other containers at any time. The Town of Falmouth reserves the right to obtain samples of any shellfish from the site for the purpose of certified testing for disease.

§ 275-50 Removal from Town waters prohibited.

It shall be unlawful for any aquaculture license holder to take seed shellfish from Town waters outside of the licensed site without written consent from the Board of Selectmen and the Director of the Division of Marine Fisheries.

§ 275-51 Seed shellfish; concentration of shellfish.

- A. Seed shellfish purchased for use on the site shall be obtained from sources approved by the Massachusetts Division of Marine Fisheries.
- B. A minimum of \$1000.00 worth of shellfish per acre shall be maintained on the site at all times after the first five years. Allowances may be made for catastrophic losses. During the

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first five years, there must be a sincere effort made to attain this minimum requirement.

§ 275-52 Termination of site.

When a licensed site is discontinued and/or terminated for any reason, the permit holder shall be required to remove all rafts, racks, floats, and other equipment from the area within 60 days from the site expiration date. Any and all equipment not removed within 60 days may be recovered by the Town at the expense of the license holder.