

*As amended September 30, 2009*

*Town of Orleans*

***SHELLFISH  
REGULATIONS,  
Orleans Town Code  
CHAPTER 176***

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The Selectmen of the Town of Orleans acting under and by virtue of the authority upon them conferred by Massachusetts General Laws, Chapter 130, as amended by Chapter 98 of the Acts of 1945, and all acts in amendment thereof or in addition to, and by virtue of a bylaw of said Town, adopted at the Annual Town Meeting of said Town held on February 21, 1944 to become effective from and after the Annual Town Meeting in the year 1945, and approved by the Attorney General on May 10, 1944, hereby make and publish the following regulations concerning the taking of eels, clams, quahogs, scallops, mussels, sea worms, whelk, and any and all kinds of shellfish within the Town. These regulations shall remain in effect and full force until modified, changed, or revoked by the then Board of Selectmen or by action of the Town.

## ***Section 1. Definitions***

In these regulations, unless the context otherwise requires, the following words shall have the following meanings:

*"Batch"*, all shellfish in each separate container.

*"Bushel"*, a standard measure of volume equaling one (1) level wire basket whose interior volume measures two thousand one hundred fifty (2,150) cubic inches.

*"Clam"*, a marine mollusk of the species *Mya arenaria* commonly called the soft-shell clam.

*"Container"*, any bag, box, basket, cage, or other receptacle containing shellfish.

*"Family permit"*, a recreational license issued which permits a husband, wife, and dependent(s), who are domiciled and living under the same roof to harvest shellfish.

*"Mussel"*, a marine mollusk of the species *Mytilus edulis*, commonly known as the blue mussel.

*"Oyster"*, a marine mollusk of the species *Crassostrea virginica*, commonly known as the American oyster.

*"Possession"*, in the immediate control of a person e.g. in a boat, car, box, bag, etc. belonging to an individual.

*"Quahog"*, a marine mollusk of the species *Mercenaria mercenaria*, commonly called the hard-shell clam.

*"Scallop"*, a marine mollusk of the species *Aequipecten irradians*, commonly known as the bay scallop.

*"Seed"*, any shellfish of a size less than the minimum prescribed in section 3 sub-section D and section 4 sub-section D.6 herein and useable for planting purposes only.

*"Shellfish"*, clams, conchs, mussels, oysters, quahogs, razor clams or razor fish, scallops, sea worms, whelk and winkles.

*"Take"*, any method of harvest of the related species from its habitat.

*"Ten quart bucket"*, a standard measure of volume equaling one (1) level wire basket whose interior volume is six hundred seventy two (672) cubic inches.

“Week”, seven (7) consecutive days beginning on Sunday at 12:01 am and ending on Saturday at 11:59 pm.

## **Section 2. Permits, fees, and permit restrictions**

### **§2.1) Types of permits:**

Shellfish permits shall be of three (3) types: *commercial permits*, whereby the holders thereof may sell the shellfish taken under such permits; *family permits*, whereby the holders thereof may *not* sell shellfish taken under such permits; and *apprentice permits*, as described in section 2 sub-section 8 herein.

### **§2.2) Possession of permit:**

All persons are prohibited from taking shellfish or eels from the coastal waters of the Town without a shellfish permit. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

### **§2.3) Transferability and carrying of permits:**

Shellfish permits are not transferable and shall be carried while shellfishing. Whoever violates any provision of this sub-section shall be punished by a fine of fifty dollars.

### **§2.4) Display of permit upon demand:**

All persons taking, carrying away, or having in their possession shellfish of any kind in any boat, vehicle, or container shall exhibit, on demand of the Shellfish Constable, his assistants, or a police officer, their permits to take such shellfish for inspection by the Shellfish Constable, his assistants, or a police officer. Whoever violates any provision of this sub-section may have their permit to shellfish in the Town of Orleans suspended for a period of no less than seven (7) days, subject to the provisions of section 2 sub-section 13 herein.

### **§2.5) Commercial permit eligibility:**

No-one shall be eligible to apply for an annual *commercial* shellfish permit unless he or she has been domiciled in the Town of Orleans or Eastham for the six (6) months preceding the date of application. Commercial permits shall be forfeited immediately to the Shellfish Department if the holder fails to continue and maintain his domicile within either municipality.

### **§2.6) Shellfishing rights of residents of Eastham:**

Domiciled persons of Eastham shall enjoy the same right to the shellfisheries of Orleans as they, enjoyed since the incorporation of the town after first obtaining a permit from the Town of Orleans.

### **§2.7) Commercial permit and apprentice permit issuance (*effective January 1, 2001*):**

Applications for *commercial* permits and *apprentice* permits shall be submitted to the Shellfish Constable between January 1 and April 30 annually. Applications may be subject to a thirty-day (30) day review period. Said permit shall be valid until April 30 of the following year and shall be valid only for the person for whom it was issued. The fee for a commercial permit for persons sixteen (16) years of age to sixty-nine (69) years of age shall be one hundred dollars. The fee for a commercial permit for persons seventy (70) years of age or older shall be fifty dollars.

**§2.8) Free commercial permits and free apprentice permits:**

Any person domiciled in the Town of Orleans or Eastham fourteen (14) or fifteen (15) years of age with a work permit shall be entitled to a *commercial permit* free of charge. At sixteen (16) years of age to sixty-nine (69) years of age, the regular *commercial permit* fee shall be charged. Persons who have not yet achieved the age of 14 years may be issued a free "*apprentice permit*". Said "*apprentice permit*" shall allow the holder to assist a duly licensed commercial harvester in the taking of shellfish provided that the limit for the harvest shall not exceed that of one *commercial permit* holder.

**§2.9) Dual permit prohibition:**

No person holding a *commercial permit* shall hold at the same time a *family permit* for the taking of shellfish. Whoever violates any provision of this sub-section shall be punished by a fine of fifty dollars.

**§2.10) Commercial permit required for dredging:**

Each person actively engaged in the dredging of shellfish in Cape Cod Bay in Orleans shall hold a *commercial permit* issued by the Town of Orleans. For the purposes of this regulation, "actively engaged" shall be defined as handling or harvesting shellfish or operating harvesting gear. Whoever violates any provision of this sub-section shall be punished by a fine of one hundred dollars.

**§2.11) Planting or transplanting without a permit:**

No person shall plant, place or transplant shellfish in or onto the waters or shellfish areas within the Town of Orleans without first obtaining a special permit from the Orleans Board of Selectmen. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

**§2.12) Family permit issuance and fees:**

A fee of twenty dollars (\$20) shall be charged for a family permit to domiciled persons of the Town of Orleans or Eastham and for persons not domiciled but owning real estate within the Town of Orleans.

A fee of seventy dollars (\$70) shall be charged for a family permit to persons not owning real estate in the Town of Orleans.

A fee of ten dollars (\$10) shall be charged for a family permit to domiciled persons of the Town of Orleans or Eastham sixty-five (65) years of age or over.

**§2.13) Suspension of commercial and family permits:**

The Board of Selectmen may suspend or revoke, for cause, any commercial or family permit granted by them for such times as they shall deem proper. Due notice, in writing, shall be given to the permit holder of said suspension. Said suspension shall occur provided that the suspension or revocation of the right to shellfish in either Orleans or Eastham shall result in the suspension or revocation of the right to shellfish in *both* towns during the period of any such suspension or revocation. Any person whose permit has been suspended shall return the same to the office of the Town Clerk, where the permit shall remain until the period for which it was suspended has expired.

### ***Section 3. General regulations***

#### **§3.1) Enforceability:**

The Shellfish Constable and his assistants shall be empowered to enforce all applicable sections of Chapters 130 and 21 of the Massachusetts General Laws and 322 CMR of the Massachusetts Division of Marine Fisheries pertaining to shellfish in the Town of Orleans.

#### **§3.2) Display of shellfish upon demand:**

All persons taking, carrying away, or having in their possession shellfish of any kind in any boat, vehicle, or container shall exhibit, on demand of the Shellfish Constable, his assistants, or a police officer, all shellfish in their possession for inspection by the Shellfish Constable, his assistants, or a police officer. Whoever violates any provision of this sub-section may, in addition to any penalties specified in M.G.L. Chapter 130, have their permit to shellfish in the Town of Orleans suspended for a period of no less than seven (7) days subject to the provisions of section 2 sub-section 13 herein. Whoever throws or dumps overboard or into the water shellfish contained within a pail, bag, barrel or other receptacle, after having been requested or signaled by the Shellfish Constable or his assistants to stand by for inspection shall be deemed to have violated this sub-section.

#### **§3.3) Seizure of shellfish:**

All shellfish taken, held, possessed or dealt with contrary to any section or sub-section of these regulations made under authority thereof may, in addition to any or all of the penalties contained therein, be seized, photographed, and replanted in the waters of the Commonwealth by the Shellfish Constable or his assistants.

#### **§3.4) Closed areas:**

The Selectmen may restrict the use of areas for the taking of all shellfish as they deem expedient, either absolutely or generally or for some particular use, or for the taking of certain kinds of shellfish only and allowing other kinds to be taken from such restricted areas, and such restrictions shall have the same force and effect as any rule or regulation made herein. No shellfish shall be taken from any area waters of the Town of Orleans unless such areas have been declared open for the taking of shellfish by the Board of Selectmen. Shellfish areas that have been classified as "Prohibited", "Restricted", or "Conditionally Restricted" by the Massachusetts Division of Marine Fisheries or the Massachusetts Department of Public Health shall also be considered closed for the taking of all shellfish by the Orleans Board of Selectmen. All private shellfish grant lease sites shall be closed for the harvesting of shellfish by anyone other than the lessee or their agents. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

#### **§3.5) Restricted methods:**

The taking of clams, quahogs, razor clams or mussels from the waters and flats of the Town of Orleans by any other method than what is commonly known as the "long rake", "scratcher", "tongs", "pitchfork", "plunger", "clam hoe", or "salting (for razor clams only)" is prohibited unless the taker has a special permit. No shovel, spade, trowel or other edged tool may be used in the harvesting of shellfish. Whoever violates any provision of this sub-section shall be punished by a fine of one hundred dollars.

**§3.6) Possession of seed shellfish:**

No person shall take or have in his possession seed mussels or clams less than two (2) inches in longest diameter, or seed oysters less than three (3) inches in longest diameter, or seed quahogs less than one (1) inch in thickness, or whelk less than two and three-quarters (2 3/4) inches shell width, or seed scallops as defined in section 4 sub-section 4.6, exceeding five percent (5%) by number of any batch. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars per offense.

**§3.7) Shellfishing during the nighttime:**

No person shall dig, take or carry away any shellfish or shells between the hours of one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise by any method whatsoever, from any water, flat or creek of the Town of Orleans. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

**§3.8) Temperature restrictions:**

No person shall harvest any shellfish, with the exception of mussels, eels, and razor clams when the air temperature is below twenty-eight (28) degrees Fahrenheit. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

**§3.9) Disposition of starfish, winkles or cockles above high water mark:**

Whoever catches or takes from, the waters of the Town any starfish, winkles, or cockles, shall deposit the same at some place above high water mark or at some suitable place designated by the Shellfish Constable.

**§3.10) Clam holes shall be filled:**

All holes dug while harvesting shellfish shall be refilled and all seed shall be replanted immediately. Whoever violates any provision of this sub-section shall be punished by a fine of fifty dollars.

**§3.11) Digging in the sedge grass:**

There shall be no digging of shellfish in the sedge grass (*spartina*). Whoever violates any provision of this sub-section shall be punished by a fine of one hundred dollars.

**§3.12) Power dredging:**

Power dredging shall be restricted to the waters of Cape Cod Bay and to the taking of bay scallops in other town waters. No shellfish, with the exception of bay scallops, shall be taken from the waters of the Town of Orleans by the use of a power dredge, drag, hydraulic jet, or any means similar thereto unless a special permit has been issued by the Board of Selectmen therefor. A fee may be charged for said special permit. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

**§3.13) Family permit areas described:**

The following areas shall be designated as *Family Permit Only Areas*:

3.13.1. "Yacht Club Area"; The Town Cove, from the boat launching ramp at the Yacht Club, going East along the shoreline to sign posted in the Southeast corner, and out to a depth of three (3) feet measured at Mean Low Tide. The "Yacht Club Area" shall be open annually for the taking of shellfish by family shellfish permit holders on Wednesdays and Sundays only, during the period from the third Sunday in September to the third Sunday in May, inclusive. This area shall be closed for the taking of shellfish at all other times.

3.13.2. "Asa's Area"; The Town Cove, from the end of Asa's Landing Road, going West along the shoreline to the point of rocks, out to a depth of three (3) feet measured at Mean Low Tide.

3.13.3. "Mill Pond Area"; The Mill Pond, from the boat launching ramp at the end of Mill Pond Road, going West along the shoreline to a sign posted at the point, at the entrance to Little Mill Pond, and out to a depth of three (3) feet measured at Mean Low Tide.

3.13.4. "Lonnie's Pond Area"; Lonnie's Pond, from the boat launching ramp, going South along the shoreline to the mouth of the Herring Run, and out to a depth of three (3) feet measured at Mean Low Tide.

3.13.5. "Quanset Pond Area"; The entire shoreline of Quanset Pond out to a depth of three (3) feet measured at Mean Low Tide.

**§3.14) Family area prohibition:**

Persons holding a commercial permit shall be prohibited from shellfishing in all areas designated for family permit holders only. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

**§3.15) Landing of shellfish:**

All shellfish commercially harvested in the Town of Orleans, except for scallops as provided for in section 4 sub-section 4.5 shall be landed at the following locations unless the Shellfish Constable is notified of an alternate location at least twenty-four (24) hours prior to landing: Quanset Pond Landing, Portanimiticut Landing, Namequoit Landing, Arey's Pond Landing, Lonnie's Pond Landing, River Road Landing, Sparrowhawk Landing, Barley Neck Landing, Route 28 Landing, or Meetinghouse Pond Landing in the Pleasant Bay estuary; Cove Road Landing, Goose Hummock Landing, Asa's Landing, Snow Shore Landing, Priscilla Landing, Mill Pond Landing, Tonset Road Landing, Collins' Landing, Hemenway Landing, or Salt Pond Landing in the Nauset estuary; Rock Harbor or Skaket Beach in Cape Cod Bay. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

**§3.16) Commercial permit catch limits:**

The following catch limits shall apply to holders of commercial permits:

3.16.1. No person having a valid commercial permit from Orleans or Eastham may take daily from the Nauset estuary, Pleasant Bay estuary, or Cape Cod Bay, except as provided for in section 3 sub-section 16.2 herein, in excess of the following: four (4) bushels of quahogs, with not more than two (2) of said bushels being necks and/or cherries; or ten (10) bushels of mussels; or may take weekly in excess of one (1) ten-quart pail-full of oysters. Said limits shall be subject to resource assessments. In addition, no such permit holder shall have in his possession while in, on, or adjacent to the waters or flats of the Town, or at any landing within the Town, shellfish in excess of the above specified limits.

3.16.2. The total limit for commercial dredging of quahogs in Cape Cod Bay shall not exceed thirty-five (35) eighty-pound bushels per day per boat.

Whoever violates any provision of section 3 sub-sections 16.1-16.2 shall be punished by a fine of two hundred dollars.

**§3.17) Family permit catch limits:**

The taking of shellfish by *family permit* holders shall not exceed one (1) ten-quart pail-full of any and all kinds of shellfish per week, except for mussels, the taking of which shall not exceed one-half (1/2) bushel per week. During the season specified for the harvesting of scallops in section 4 sub-section 4.1, family permit holders shall be allowed one (1) bushel of scallops per week. A week in this context shall begin on Sunday at 12:01 am and end on Saturday at 11:59 pm. Whomever violates any provision of this sub-section shall be punished by a fine of fifty dollars.

**§3.18) Registration of commercial boats:**

Any boat engaged in commercial shellfishing in the Town of Orleans shall be registered or documented in the Town of Orleans or Eastham, and the owner shall hold a valid *commercial permit* issued by the Town of Orleans. Whoever violates any provision of this sub-section shall be punished by a fine of fifty dollars.

## ***Section 4. Specific regulations***

### **§4.1) Mussels; culling, dragging, restricted areas**

4.1.1. All mussels shall be culled and all mussels less than two (2) inches in longest diameter shall be returned to the water in the immediate area from which they were taken.

4.1.2. Dragging for mussels shall be allowed by special permit only, issued by the Shellfish Constable, from October 1 to March 31.

4.1.3. The harvesting of mussels in the Mill Pond shall be restricted to family permits only, except by long rake in the deep holes.

Whoever violates any provision of section 4 sub-sections 1.1-1.3 shall be punished by a fine of one hundred dollars.

### **§4.2) Eels; methods, limits**

4.2.1. Eels may be taken by pot, trap, hook, line, or spear only. No other methods shall be employed, except by special permit from the Board of Selectmen.

4.2.2. A family shellfish permit holder may take thirty-six (36) eels per week.

4.2.3. Any person who sets five (5) or more pots must hold a valid Orleans commercial shellfish permit. All pots shall be registered annually with the Orleans Shellfish Department.

4.2.4. No freshwater lakes, rivers, ponds, creeks, bogs, or any part of a saltwater estuary shall be obstructed in any way so as to interfere with the habits and migration of eels.

Whoever violates any provision of section 4 sub-sections 2.1-2.4 shall be punished by a fine of one hundred dollars.

### **§4.3) Whelk; size restrictions, seasons**

4.3.1. No person shall have in his possession any whelk less than two and three quarter (2 and 3/4) inches in shell width. Whoever violates any provision of this sub-section shall be punished by a fine of one hundred dollars.

4.3.2. The harvesting of whelk shall be prohibited annually from December 15 through April 14, inclusive. All whelk harvested shall be returned to shore in the shell. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

### **§4.4) Scallops; seasons, hours, tote requirements, catch limits, landings, possession of seed, etc.**

4.4.1. The following seasonal restrictions shall apply to the harvest of scallops by any commercial or family permit holder:

4.4.1.a) The waters and flats of Cape Cod Bay in the Town of Orleans shall be open for the taking of scallops annually from October 1st through March 31st of the following year. The taking of scallops shall be prohibited in Cape Cod Bay between April 1st and September 30th, inclusive.

4.4.1.b) The waters and flats of the Nauset estuary shall be open for the taking of scallops annually from the third Sunday in October through March 31st of the following year. The taking of scallops shall be prohibited in the Nauset estuary between April 1st and the third Saturday in October, inclusive.

4.4.1.c) The waters and flats of Pleasant Bay in the Town of Orleans shall be open for the taking of scallops annually from November 1st through March 31st of the following year. The taking of scallops shall be prohibited between April 1st and October 31st, inclusive.

Whoever violates any provision of section 4 sub-sections 4.1.a-4.1.c shall be punished by a fine of two hundred dollars.

4.4.2. Hours for scalloping shall be from one-half (1/2) hour before sunrise until 4:00 pm, seven (7) days per week. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

4.4.3. All scallops taken by commercial permit holders shall be landed in plastic totes measuring eighteen (18) inches long by twelve (12) inches wide by ten and five tenths (10.5) inches deep, inside measurements, and containing two thousand two hundred sixty-eight (2,268) cubic inches. Whoever violates any provision of this sub-section shall be punished by a fine of fifty dollars.

4.4.4. The following catch limits shall apply to the commercial harvest of scallops:

4.4.4.a) The daily commercial limit of scallops taken in Cape Cod Bay shall be ten (10) level totes per day per permit holder, and there shall be a maximum of two (2) commercial permit holders allowed per boat. If two (2) limits are to be harvested, both commercial permit holders must be actively engaged in the harvesting. For the purposes of this regulation, "actively engaged" shall be defined as handling or harvesting scallops or operating harvesting gear.

4.4.4.b) The daily commercial limit of scallops taken in the Nauset estuary shall be five (5) level totes per day per permit holder, and there shall be a maximum of two (2) permit holders per boat. If two (2) limits are to be harvested, both commercial permit holders must be actively engaged in the harvesting. For the purposes of this regulation, "actively engaged" shall be defined as handling or harvesting scallops or operating harvesting gear.

4.4.4.c) The daily commercial limit of scallops taken in Pleasant Bay shall be five (5) level totes per day per permit holder, and there shall be a maximum of two (2) permit holders per boat. If two (2) limits are to be harvested, both commercial permit holders must be actively engaged in the harvesting. For the purposes of this regulation, "actively engaged" shall be defined as handling or harvesting scallops or operating harvesting gear.

Whoever violates any provision of section 4 sub-sections 4.4.a-4.4.c shall be punished by a fine of two hundred dollars.

4.4.5. Scallops taken in Cape Cod Bay in the Town of Orleans shall be landed at Rock Harbor. Scallops taken from Pleasant Bay shall be landed at Quanset Pond Landing, Portanimicut Landing, River Road Landing or Meetinghouse Pond Landing. Scallops taken from Nauset Harbor shall be landed at Goose Hummock Landing, Cove Road Landing, or Asa's Landing. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

4.4.6. All scallops taken in the waters of the Town of Orleans shall be scallops with a well-defined, raised annual growth ring and that ring shall measure at least ten (10) millimeters from the hinge of the shell. Scallops that have a raised annual growth ring located less than ten (10) millimeters from the hinge of the shell shall be lawful to harvest and possess if the shell height is at least two and one-half (2.5) inches. Any scallop that does not meet the aforementioned requirements shall be deemed a seed scallop and shall be returned to the water immediately. Whoever violates any provision of this sub-section shall be punished in accordance with section 3 sub-section 6.

4.4.7. All scallops shall be taken to shore in the shell. Whoever violates any provision of this sub-section shall be punished by a fine of two hundred dollars.

4.4.8. The presence of a scallop dredge overboard at any time shall be considered evidence of intent to take scallops.

4.4.9. Scallop dredge frames shall not measure more than thirty-six (36) inches in width and are to be the light construction type dredge, except for Cape Cod Bay. Whoever violates any provision of this sub-section shall be punished by a fine of fifty dollars.

4.4.10. No scallops shall be taken by scuba, snorkel, or any other means of diving except in designated areas. Whoever violates any provision of this section shall be punished by a fine of one hundred dollars.

4.4.11. Any boats used for commercial scalloping in the Town of Orleans shall make only one (1) trip per day. Whoever violates any provision of this section shall be punished by a fine of one hundred dollars.

4.4.12. No shellfish permit holder shall land scallops and return to the waters for the purpose of additional scalloping without written permission from the Shellfish Constable. Whoever violates any provision of this section shall be punished by a fine of two hundred dollars.