

Chapter 17

**SHELLFISH\***

- Art. I. In General, §§ 17-1—17-25**  
**Art. II. Shellfish Commission, §§ 17-26—17-50**  
**Art. III. Commercial Hydraulic Clam Harvesting, §§ 17-51—17-58**

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\*Cross reference—Parks and recreation, Ch. 14.

State law reference—Local shellfisheries, G.S. § 26-238 et seq.



## ARTICLE I. IN GENERAL

### Sec. 17-1. Designation of clam and oyster beds.

The portions of Hammonasset River and Clinton Harbor over which the town has jurisdiction with respect to shellfishing shall be declared natural clam and oyster grounds and no grants for oyster beds shall be given in that territory.  
(Ord. of 6-3-50)

### Sec. 17-2. Purpose; scope.

Pursuant to the General Statutes made and provided and upon recommendation of the shellfish commission, the shellfish regulations in this chapter are hereby adopted by the town.  
(Ord. of 9-21-81)

### Sec. 17-3. Hours, days of harvesting.

The harvesting of shellfish from the waters under the jurisdiction of the town shall be limited to the hours between sunrise and sunset and only during such periods as the shellfish commission shall designate as open season.  
(Ord. of 9-21-81, § 1)

**Cross reference**—Commercial hydraulic clam harvesting time restrictions, § 17-54.

### Sec. 17-4. Daily bag limit.

During the designated open season the shellfish commission shall establish daily bag limits for the taking of shellfish and notice of such limitation shall be published.  
(Ord. of 9-21-81, § 2)

### Sec. 17-5. Permit.

A permit shall be required of any person taking shellfish. The fee shall be established annually by the shellfish commission prior to January 1 of each year subject to the approval of the board of selectmen. Permits shall be valid for the calendar year in which issued, and may be obtained from the town clerk or such other agent designated by the shellfish commission.  
(Ord. of 5-17-82)

### Sec. 17-6. Enforcement officers.

All members of the shellfish commission shall act as enforcement officers under this chapter.  
(Ord. of 9-21-81, § 4)

### Sec. 17-7. Salaried special enforcement officer.

A special enforcement officer may be appointed by the shellfish commission when required for the supervision of transplants of shellfish and shall receive a salary as established by the shellfish commission.  
(Ord. of 9-21-81, § 5)

**State law reference**—Special constables for inspecting and measuring shellfish in Madison, G.S. § 26-277.

### Sec. 17-8. Use of dredges.

The use of dredges shall be under the control of the shellfish commission for transplanting of shellfish; no other use shall be permitted.  
(Ord. of 9-21-81, § 6)

**Cross reference**—Dredges, § 17-52.

### Secs. 17-9—17-25. Reserved.

## ARTICLE II. SHELLFISH COMMISSION\*

### Sec. 17-26. Established; members.

The board of selectmen is hereby authorized to appoint a commission of five (5) electors of the town to be known as the shellfish commission and to fill any vacancies which may hereafter occur in the commission.  
(Ord. of 5-1-52(2))

### Sec. 17-27. Powers.

The shellfish commission shall have the control and management of shellfish and oyster grounds within the jurisdiction of the town, subject to the

\***Charter reference**—Shellfish commission, § 7.1(L).

**Cross reference**—Boards, commissions and committees, § 2-76 et seq.

**State law reference**—Local shellfish commissions, G.S. § 26-257a.

provisions of the General Statutes, with power to make proper rules and regulations concerning the same.

(Ord. of 5-1-52(2))

**Sec. 17-28. Abolishment of prior commission.**

Any commission appointed by the board of selectmen pursuant to this article shall supersede and replace any similar committee which may have been elected or appointed prior to this commission.

(Ord. of 5-1-52(2))

**Secs. 17-29—17-50. Reserved.**

**ARTICLE III. COMMERCIAL HYDRAULIC CLAM HARVESTING**

**Sec. 17-51. Coast Guard regulations.**

Commercial boats shall observe and follow Coast Guard regulations.

(Ord. of 8-21-95, § 1)

**Sec. 17-52. Dredges.**

Dredges will be no more than four (4) feet in width, with cage rod spacing of no less than one (1) inch. Hydraulic pumps shall be limited to one hundred seventy-five (175) HP and adequately muffled. All operating equipment shall be kept in good working order.

(Ord. of 8-21-95, § 2)

**Cross reference—**Use of dredges, § 17-8.

**Sec. 17-53. Buffer zone.**

Commercial hydraulic clam harvesters shall not operate closer to shore than one hundred (100) yards to provide a buffer zone for recreational harvesters and accommodate shoreline recreational use.

(Ord. of 8-21-95, § 3)

**Sec. 17-54. Time restrictions.**

(a) There shall be no commercial hydraulic clamming before 7:00 a.m. nor after 4:00 p.m. or on Saturdays, Sundays and state-observed holidays, nor before sunrise or after sunset.

(b) Commercial hydraulic clam harvesting shall not take place between May 1st and October 1st of each year. During the permitted harvesting season, commercial hydraulic clam harvesting shall be limited to a period of sixty (60) continuous days. The harvesting period shall run from the first day hydraulic harvesting begins and must terminate no later than fifty-nine (59) days after that date, in order to reduce disturbances during the shellfish spawning season. Notice of the issuance of any permit for power dredging with an approximate commencement date, shall be forwarded in advance one (1) week prior to hydraulic dredging to the following three (3) associations:

(1) Highland East River Civic Corporation;

(2) The Overshore Association; and

(3) The Shoreland Association.

(Ord. of 8-21-95, §§ 4, 5)

**Cross reference—**Hours, days of harvesting, § 17-3.

**Sec. 17-55. Number of boats.**

Only two (2) boats will be allowed for commercial hardshell clam harvesting at any given time, and no more than one (1) boat in any one (1) specific LORAN area.

(Ord. of 8-21-95, § 6)

**Sec. 17-56. Disruptive activity prohibited.**

All commercial shellfishermen operating within the waters of the town under the authority of the shellfish commission shall operate their equipment and conduct their shellfishing in such a manner so as to minimize noise or disruptive activity, so as not to cause a nuisance or otherwise disturb the comfort, convenience, safety, welfare, peace and quiet of persons within the town. A town permit shall be revoked if any boat exceeds a noise level of seventy (70) decibels or greater at any time as measured from any point on shore.

(Ord. of 8-21-95, § 7)

**Sec. 17-57. Complaint procedure.**

(a) *Notice hearing and order.* Upon the written complaint by any person of any shellfishing activity, the commission shall notify the party against whom the complaint has been lodged, shall promptly investigate the facts and circumstances

alleged in the complaint, and shall hold a hearing to address the complaint at a special or regular meeting no later than fourteen (14) days after receipt of the complaint. All parties shall be provided an opportunity to present evidence in support or in opposition to the complaint, and the commission shall vote on the relief demanded by the complaint. The commission shall issue a decision stating their conclusions incorporating the factors set forth below in a written final order and shall take final action on the complaint within seven (7) days of the hearing.

(b) *Remedies.* In addition to granting or denying the relief sought by the complainant, the commission may, without limitation, take the following action:

- (1) Suspend, modify or impose any condition on any permit issued by the commission;
- (2) Propose changes to the shellfish management plan, so long as the same does not conflict with any provision of this article;
- (3) Take any other lawful action to address the circumstances alleged in the complaint.

(c) *Decision.* In determining what relief, if any, shall be provided, the commission shall consider the following factors:

- (1) The extent to which the complainant is adversely affected by the activity;
- (2) The availability of any feasible and prudent alternatives to address the adverse impacts;
- (3) The availability of any measures to mitigate the adverse impacts resulting from the activity.

The commission shall grant the complainant relief if it finds that the activity complained of is unreasonable or if either:

- (1) There are feasible and prudent alternatives; or
- (2) There are reasonably available measures to mitigate the adverse impacts.

(Ord. of 8-21-95, § 8(i)—(iii))

#### **Sec. 17-58. Penalties.**

Notwithstanding the provisions in subsections 17-57(b) and (c) above, in the event a complaint

alleges violation of this article, specifically subsections 17-51 through 17-56 above, then if such violation has occurred, the commission shall suspend the shellfisherman's permit for a period of not less than one (1) year for the first violation and for a period of not less than two (2) years for each violation thereafter, in addition to which any violation shall be subject to the penalties and fines as set forth in G.S. § 26-257a.

(Ord. of 8-21-95, § 8(iv))

