

## **CLAMMING, SEA WORM, AND EEL REGULATIONS**

*Revised and Effective September 10, 2020 (or as otherwise noted)*

**D-1 CLAMMING (Note: Clamming refers to harvesting of all species of shellfish except oysters, sea clams, and ocean quahogs. For rules pertaining to oysters, which are prohibited from commercial harvesting, see Section D-1.3).**

### **D-1.1 INDIVIDUAL FEES (effective 2019 application season)**

Annual license - April 1 to March 31           \$400 fee  
If submitted after annual deadline - \$600 fee

Student License - April 1 to March 31       \$200 fee  
If submitted after annual deadline - \$300 fee

Senior License - Essex residents over age 65 - Free  
April 1 to March 31

### **D-1.2 COMMERCIAL CLAM LICENSE - PROCEDURE**

a. All applications for commercial clam licenses for the upcoming April 1 to March 31 season must be received by the Town Clerk by close of business on the first Monday in March of each year (the annual deadline). All applications must be submitted with the appropriate fee. The fee will be returned for any license not approved by the Board of Selectmen. Student licenses will be issued to applicants who meet the criteria as outlined by the State for seasonal lobster permits, specifically that 1) students must submit proof of student status (a school transcript showing a full course load); 2) proof of age, and 3) parental consent if under the age of 17. Residents over the age of 65 will be given a free license upon the filing of an application for same with an open enrollment option. Any person obtaining a commercial clam license must show a valid Commonwealth of Massachusetts Commercial Fisherman's Permit.

b. A resident (also see definition and proof of residency requirements below) of the Town of Essex may be granted a commercial license to take or dig clams from the flats within the limits of the town for a period of not more than one year.

\* "Resident" for purposes of issuing a commercial license (and any other type of license contained within these regulations - excepting summer residents seeking family use clam licenses or sea worm or eel permits) is a person who maintains a permanent place of abode in the Town of Essex and who resides in that place of abode more than 183 days of the calendar year.

Proof of residency shall be required to substantiate resident status for any purpose required by these Regulations (excepting summer residents seeking family use clam licenses or sea worm or

eel permits - see D-1.3 e. below), unless otherwise stated, and such proof shall consist of the following:

(1) The applicant's name appears on the Town's current street census; AND

(2) The applicant supplies at least three of the following articles (with each article clearly listing the applicant's own name and the Essex street address that appears on the Town's street census): driver's license, vehicle registration, real estate tax bill, copy of lease or rental agreement for real property.

(3) Any applicant not listed on the Town's current street census by virtue of not residing in the Town between the completion of the current census and the time of application shall be entitled to a waiver of the street census list requirements after substantiating to the satisfaction of the Town Clerk when their status as a "resident" (as defined above) began. However, failure of such applicant to respond to the next street census shall be grounds for failure to establish residency at any time after the census is updated. A street census listing requirement granted under this subsection shall not alleviate the applicant from providing articles displaying identical Essex street addresses.

(4) The Board of Selectmen may, in their sole discretion, accept other articles or confirmations as proof of residency in extenuating circumstances and may, in their sole discretion, waive any or all street census list requirements.

(5) A commercial shellfish harvester who has been licensed in Essex for at least three (3) consecutive years and moves out of Essex and into a jurisdiction which: a) is an abutter or an abutter to an abutter of the Town of Essex, and b) requires the harvester to wait until a particular license application period before being allowed to hold a commercial shellfish license in said jurisdiction shall have the ability to continue to hold an Essex license (an extension license) if the following conditions are met:

- i) the harvester must show evidence of the date upon which they established residency in the other jurisdiction.
- ii) the harvester must provide a letter from the other jurisdiction that states when they are eligible to receive a license there.
- iii) the duration of the extension license shall in no case exceed the next possible eligibility date in the other jurisdiction.

c. Effective May 21, 2010, and continuing until further notice, which notice shall be made via further revision of these Regulations, the total number of commercial clam licenses that may be issued in the Town of Essex at any one time shall be 94.

Said total number shall exclude student licenses, free licenses for residents over the age of 65, and hardship licenses granted at the discretion of the Board of Selectmen.

#### D-1.3 *LICENSES FOR FAMILY USE*

a. All family use license categories shall only entitle the licensee to take or dig clams or oysters for family use. No person holding only a family use license shall harvest clams for commercial use. The commercial harvest of oysters is prohibited in the Town of Essex. No clams or oysters harvested pursuant to a family use license shall be included as part of any commercial clam catch tally. Should a commercial harvester desire to take oysters for family use, said harvester must apply for and receive a family use license (whether daily or seasonal) in the same manner as any other person, including the payment of any required fee(s). No additional, non-resident, family use, annual licenses shall be issued between September 15, 2020 and March 31, 2021 (inclusive) and this prohibition shall also apply as a limit to the number of new or renewed family use annual licenses at the time for annual renewal/new issuance in 2021 (according to the number of annual, non-resident licenses issued by September 14, 2020). One-day, non-resident, family use licenses will continue to be issued.

b. The holder of a family use license - clams - may harvest clams in an amount not to exceed one peck of two-inch minimum size clams per day, but not to take or dig daily the peck of clams for more than four days in any one week, beginning with a Sunday. This limit shall apply to the issuance of multiple, one-day licenses. A family use license - clams - does not authorize the harvesting of oysters.

c. The holder of a family use license - oysters - may harvest oysters up to twice per week, with a maximum count of eighteen (18) oysters per harvest. Taking less than eighteen (18) oysters in a harvest does not allow for any increase in the second harvest of the week. No oysters of less than four (4) inches in length in the shell shall be dug or taken within the limits of the Town of Essex. The holder of a family use license - oysters - does not authorize the harvesting of clams.

d. Any person who wishes to harvest both clams and oysters for family use must obtain separate licenses for each.

e. Any individual who is not a resident of the Town of Essex may be granted an annual license to take or dig clams or oysters for family use. All applications for non-resident, family use annual licenses must be received by the Town Clerk by close of business on the first Monday in March of each year. All such applications must be submitted with the appropriate fee and all such applications shall be countersigned by an Essex resident who is willing to serve as a sponsor. The fee for such applications will be returned for any license not approved by the Board of Selectmen and no exceptions to the above rules

pertaining to non-resident, family use annual licenses will be made.

f. Any individual who is not a resident of the Town of Essex and who does not hold a non-resident, family use annual license may be granted a one-day license to take or dig clams or oysters for family use. Each daily clam or oyster harvest shall require a new, one-day, non-resident license and associated fee and each one-day, non-resident license application shall be countersigned by an Essex resident who is willing to sponsor said application.

g. Any individual who is a resident of the Town of Essex may be granted an annual license to take or dig clams or oysters for family use.

h. Summer residents of the Town shall be regarded as residents of the Town of Essex for the purpose of issuing licenses for family use. The Town Clerk shall make a good-faith effort to verify individuals who are applying as summer residents. Proof of summer residency may include, but is not limited to documents bearing the name of the applicant such as a summer rental agreement, ownership of property in the Town of Essex, a Conomo Point lease, etc. Individuals who are denied a license by the Town Clerk as summer residents may appeal to the Board of Selectmen.

i. Family Use License Fees:

(effective 2019 application season)

Annual clam: Resident or Veteran 5/1 to 4/30	\$30/yr.
Annual oyster: Resident or Veteran 5/1 to 4/30	\$30/yr.
Annual clam: Non-resident	\$150/yr.
Annual oyster: Non-resident	\$150/yr.

(effective January 1, 2019)

One-day clam: Non-resident	\$15/day
One-day oyster: Non-resident	\$15/day

D-1.4 CLAM DIGGING REGULATIONS. No clams less than two inches in length in the shell, shall be dug or taken from the clam flats within the limits of the Town by the holder of any kind of permit or license.

Clams shall be dug only by a so-called "clam fork" or by an implement which is especially approved by the Board of Selectmen.

No digging shall be allowed from 1/2 hour after sunset to 1/2 hour before sunrise.

Effective June 1, 2018, family use digging shall again be allowed on any Sunday and commercial digging shall continue to be prohibited on every Sunday, except as otherwise allowed in the final paragraph of Section D-1.5 of these Regulations.

All clams harvested during a given tide must be transported to a licensed shellfish dealer or an approved, refrigerated shellfish holding area in accordance with all State laws and Regulations. No harvested clams shall be bagged or otherwise contained and left in the environment overnight for retrieval, landing, or transport at some other time.

The quantity of clams which may be dug and removed by a licensee or permit holder shall be as follows:

- a. Commercial License - 250 pounds per tide
- b. Resident Annual License - 15 pounds (1 peck) per day for not more than 4 days per week, beginning with a Sunday.
- c. Non Resident One-day License - 15 pounds (1 peck) - not more than four, one-day licenses may be issued to the same person within one week, beginning with a Sunday.
- d. Non Resident Annual License - 15 pounds (1 peck) per day for not more than 4 days per week, beginning with a Sunday.

The quantity of clams in the possession of a licensee or permit holder while on the clam flats and up until the point of landing shall not exceed the limits established.

Clams shall be dug only by a so-called "clam fork" or by an implement which is especially approved by the Board of Selectmen. The quantity of clams which may be dug and removed by any license holder shall not exceed any limit set forth by the Board of Selectmen.

D-1.5 *CLOSING OF CLAM FLATS.* The Selectmen, from time to time, whenever in their opinion circumstances warrant, may close the flats or any portion thereof to the digging or taking of clams within the town flats. The Shellfish Constable may utilize on-site closure postings, recorded phone messages, hard-copy or web-based maps, the Town website, or any combination of the above to communicate closures to clambers. It shall be the responsibility of each licensed clammer to monitor the closure notification methods being employed by the Shellfish Constable. The same methods may be employed relative to sea worm closures. For purposes of these regulations, the term "full closure" shall mean a period of time when no shellfish area is open to harvesting, inclusive of so-called "rain-exempt" areas that have been designated as such by the Massachusetts Division of Marine Fisheries (DMF). Typically, a full closure will occur between June 1 and December 14 when at least 6/10's of one inch of rain falls within a 24-hour period.

Clam flats known as the "winter flats", which include Joe's Creek, Jehu's Bank, and America's Bank shall be closed to the digging or taking of clams for the season between April 15 and January 15.

For commercial harvesters, effective March 1, 2020, no digging shall be allowed on Sunday unless clam flats are re-opening on a Sunday that immediately follows full closure five (5) days or longer in duration. Family use digging on any Sunday shall still be permissible, provided that clam flats are not closed to all digging for other reasons.

D-1.6 *SHELLFISH PROPAGATION NETTING.* Any shellfish propagation netting that is to be deployed in the Town of Essex under the Town's shellfish propagation license must be deployed with the prior consent of and under the supervision of the Shellfish Constable.

Prior to the removal of any shellfish propagation netting from a clam flat, the Shellfish Constable shall inspect the area(s) in question and, if in agreement that removal is in order, shall provide notice to the public via the Town's website and the shellfish hotline specifying which nets will be removed and on what day at least three days in advance of said removal.

D-1.7 *ENFORCEMENT* - The provisions of Subsection D-1 shall be enforced in the manner set forth in Subsection D-5 hereof.

## **D-2 *SEA WORMS.***

D-2.1 *PERMIT REQUIRED.* No person shall dig or take sea worms from the flats within the limits of the Town without first having obtained a permit from the Board of Selectmen to do so. As used in these regulations, for purposes of granting permits only, the term "Board of Selectmen" shall include any agent designated by them. Applicants for all licenses shall file a statement of eligibility showing residency if requested by the Board of Selectmen.

D-2.2 *PERMITS.* Permits for sea worms may be issued to the following:

a. A resident (see definition and proof requirements in Section D-1.2(b)) may be granted a commercial permit to take or dig sea worms from the flats within the limits of the Town, for a period of not more than one year.

b. Any resident of the Town of Essex may be granted a permit to take or dig sea worms for family use, but only in an amount not to exceed one pint per day.

c. Summer resident of the Town shall be regarded as residents of the Town of Essex for the purpose of issuing permits for family use.

d. Residents over 65 years of age shall be granted free permits.

D-2.3 *PERMIT FEE SCHEDULE.*

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| a. Commercial              | \$15/yr. |
| b. Family - Residents Only | \$5/yr.  |

D-2.4 *DIGGING REGULATIONS.* The quantity of sea worms which may be dug and removed by any permit holder shall not exceed any limit set forth by the Board of Selectmen.

D-2.5 *CLOSING OF FLATS.* The Selectmen, from time to time, whenever in their opinion circumstances warrant, may close the flats or any portion thereof to the digging or taking of sea worms within the town flats.

D-2.6 *ENFORCEMENT* - The provisions of Subsection D-2 shall be enforced in the manner set forth in Subsection D-5 hereof.

**D-3 *EELS.***

D-3.1 *PERMIT REQUIRED.* No person shall take eels from the waters within the limits of the Town without first having obtained a permit from the Board of Selectmen to do so. As used in these regulations, for purposes of granting permits only, the term "Board of Selectmen" shall include any agent designated by them. Applicants for all licenses shall file a statement of eligibility showing residency if requested by the Board of Selectmen.

D-3.2 *PERMITS.* Permits for eels may be issued to the following:

- a. Any resident (see definition and proof requirements in Section D-1.2(b)) of the Town of Essex may be granted a permit to take eels but only in an amount not to exceed fifteen eels in one day.
- b. Summer residents of the Town shall be regarded as inhabitants of the Town of Essex for the purpose of issuing permits.
- c. Residents over 65 years of age shall be granted free permits.

D-3.3 *PERMIT FEE SCHEDULE.*

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| a. All permits | \$1.00 |
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D-3.4 *FISHING REGULATIONS.* No eels shall be taken under 16 inches long. There shall be no bobbing of eels. No person shall catch, take, or carry away any eels between one-half hour after sunset and one-half hour before sunrise from any water, flats or creeks within the limits and bounds of the Town of Essex.

D-3.5 *ENFORCEMENT* - The provisions of Subsection D-3 shall be enforced in the manner set forth in Subsection D-5 hereof.

**D-4. *ON-PERSON LICENSE/PERMIT REQUIRED.***

Any license or permit issued by the Town of Essex under these Regulations, along with any applicable State-issued license or permit **MUST** be carried by each individual licensee or permittee on his or her person whenever a licensee or permittee is engaged in the licensed or permitted harvesting practice.

**D-5. *ENFORCEMENT.***

**D-5.1. *PERMIT/LICENSE SUSPENSION OR REVOCATION***

The Board of Selectmen may suspend or revoke any permit or license issued pursuant to these regulations for any violation of these regulations, or any other applicable General Law, regulation or by-law. Such revocation or suspension may take place after a hearing held by the Board of Selectmen of which the permit or license holder is given seven (7) days written notice. Such notice shall be deemed given upon mailing same, certified mail, return receipt requested, to the address listed on the permit application.

If the Board of Selectmen finds, after a hearing, that satisfactory proof of a violation of these regulations, or any other applicable General Law, regulation or by-law, the Board of Selectmen may consider the following sentencing guidelines:

1. First offense: one month suspension;
2. Second Offense: three month suspension;
3. Third or subsequent offense: one year suspension.

The sentencing guidelines are only a guide. The Board of Selectmen may use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than that suggested by the guidelines. The sentencing guidelines shall not be construed so as to limit the Board of Selectmen's authority to consider alternative dispositions, or further conditions on a license or permit, or even cumulative penalties.

**D-5.2 *NON-CRIMINAL DISPOSITION***

This regulation may be enforced by any Town police officer or the Shellfish Constable.

All persons over 12 years of age found violating any provision of this regulation may be penalized by a non-criminal disposition process as provided in G.L. c.40, §21D and the

Town's non-criminal disposition by-law. If non-criminal disposition is elected, then any person who violates any provision of this regulation shall be subject to a penalty in the amount set forth in the following Table D.5-2. Any applicable penalty shall begin to commence ten days following day of receipt of written notice from the Board of Selectmen. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

Table D-5.2

SECTION	NUMBER OF OFFENSES/ ASSESSMENTS		
	First	Second	Third
Section D-1.1 thru D-1.5 (Clams/Oysters)	\$100	\$200	\$300
Section D-2.1 thru D-2.5 (Seaworms)	\$50	\$100	\$300
Section D-3.1 thru D-3.4 (Eels)	\$50	\$100	\$300

D-5.3. *OTHER*

All persons over 12 years of age found violating any provision of this regulation may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be one thousand dollars (\$1,000). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

The Board of Selectmen may enforce these Regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Selectmen shall not preclude enforcement through any other lawful means.