

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES DIRECTOR
2 BATHING BEACH ROAD
NANTUCKET, MA 02554

JCARLSON@NANTUCKET-MA.GOV
508-228-7230



MEMO

10/27/2020

To: Select Board

Libby Gibson, Town Manager

Rachel Day and Gregg Tivnan, Assistant Town Managers

From: Jeff Carlson, Natural Resources Director

Re: Proposed Beach Regulation Change/Restriction on Chumming Near Swimming Areas

In response to citizen concern and changes in regulations at the state level two changes are being proposed to the existing Town of Nantucket Regulations for the Use of Town-owned Beaches.

First, under the General Beach Rules a new rule prohibiting any activity, including chumming, that might attract sharks to swimmable areas of Nantucket beaches is being proposed. The addition will read as follows:

4. No person shall participate in an activity designed to attract or that might attract any shark species into the swimmable area of any waters abutting Nantucket's beaches. Attract means to conduct any activity that lures or may lure any shark to a person or swimmable area of water abutting a beach by using food, bait, chum, dyes, decoys, acoustics or any other means.

The purpose of this amendment is to protect both humans and sharks from the dangers posed by luring sharks into the swimmable areas of Nantucket beaches. In this regard, on June 4, 2015 the Massachusetts Division of Marine Fisheries issued the following advisory: stated:

"in recent years, there has been a well- documented summertime presence of white sharks off Massachusetts' coast. In fact, Massachusetts is home to the only predictable population of white sharks in the Northwest Atlantic. The summertime presence of these sharks has resulted in substantial public interest and this interest is prompting an increase in deliberate interactions between white sharks and humans...This is problematic because it puts both the sharks and public safety at risk."

TOWN OF NANTUCKET NATURAL RESOURCES DEPARTMENT

JEFF CARLSON, NATURAL RESOURCES DIRECTOR
2 BATHING BEACH ROAD
NANTUCKET, MA 02554

JCARLSON@NANTUCKET-MA.GOV
508-228-7230



Based on this rationale, Marine Fisheries adopted a regulation in 2015 prohibiting any activity designed to attract white sharks. The Marine Fisheries regulation has since been repealed and replaced with a regulation prohibiting the harvesting of white sharks.

Although the harvesting of white sharks is prohibited in the waters of the Commonwealth, activities designed to attract less dangerous shark species are also known to attract white sharks. In fact, beaches on Nantucket were closed to swimmers on several occasions during the summers of 2019 and 2020 and large populations of seals and other known shark prey continue to frequent Nantucket's waters. Therefore, to maximize public safety, the Nantucket Natural Resources Department is proposing an amendment to the Town's beach regulations to prohibit activities that are likely to attract dangerous sharks to waters frequented by swimmers. This proposed amendment would not apply to active fisherman in boats outside of the swimmable beach areas, to the extent permitted by State law.

In addition to the amendment relating to sharks, the Natural Resources Department is also proposing a minor change to the Town officials who are authorized to enforce the Town's beach regulations. Under the current version of the regulation, enforcement authority is vested in any police officer, Beach Manager, Land Bank property manager, Town Biologist, Marine Superintendent, Park and Recreation Director, any fire fighter, and any deputy sheriff. The proposed change is to delete all referenced positions, except police officer, and to replace them with "any other designee of the Town of Nantucket Select Board." The purpose of this change is to allow greater flexibility in designating officials who are authorized to enforce the beach regulations so as to ensure that there is sufficient staff available for the task.



Draft amendments as of 10/27/20

Town of Nantucket
Regulations for the Use of Town-owned Beaches
and Town-owned Land Adjacent to Ponds and Pond Areas

Effective: August 1, 2003

Amended: August 4, 2004; January 17, 2007; April 21, 2010;
[insert date of amendments] June 24, 2020

I. Authority, Purpose and Definitions

A. Adoption

These regulations are adopted by the Board of Selectmen of the Town of Nantucket, to be effective on August 1, 2003.

B. Purpose

1. The purpose of these regulations is to protect public safety, to manage beach activities, events and commercial activities on the beaches or ancillary areas to the beaches within the limits of the Town of Nantucket as such uses are deemed to have significant effect on wetlands values, including but not limited to flood control, erosion, storm damage prevention, fisheries, shellfish, wildlife and recreation; on beach scenic views; on excessive noise; on the natural scenic, historic and aesthetic qualities of the beach environment on Nantucket; on the public safety and welfare; and on the preservation of peace and good order.

The purpose is also to regulate use and operation of motor vehicles on beaches.

The purpose is also to regulate the use of all designated pond areas in the Town of Nantucket and restrict commercial use in these areas, as such use is deemed to have significant effect on wetland values, including but not limited to public and private water supply, ground water, flood control, erosion control, storm drainage prevention, water pollution, fisheries, wildlife, scenic views and recreation; on the public safety and welfare; and on the preservation of peace and good order.

These regulations shall apply to all properties adjacent to these ponds that are owned by the Town of Nantucket and to properties adjacent to these ponds where the property owner has given the Town permission to apply these regulations to his or her property.

2. These rules and regulations apply to beaches owned by the Town of Nantucket or those beaches managed by the Town or on beaches where the property owner has given the Town the owner's permission to apply these rules and regulations.

3. Beach events on private property that have the express written permission of the property owner are exempt from the application provisions of this section. Notwithstanding the permission of a private property owner to allow a beach event or commercial activity that would otherwise require a permit from the Town of Nantucket, all applicable federal, state and local laws, bylaws and regulations shall continue to be applicable to the beach events and commercial activities described and regulated herein.
4. Additional restrictions or limitations may apply to any approved event or activity (i.e. beach erosion concerns, endangered species, anticipated storm events, requirement of special police details, etc.)

C. Definitions

Ancillary beach areas - areas in close proximity to beaches in the Town of Nantucket including but not limited to off-beach parking areas.

Beach event - any group, gathering or convergence of more than fifteen (15) persons on a designated beach area or ancillary beach area where any services provided for said event are substantially commercial in nature and which event is for social, recreational or commercial purposes. Family gatherings shall not constitute a beach event under this definition.

Commercial activity - any activity or event for which money is paid to an individual or business entity for services rendered on a beach/pond or ancillary area to a beach/pond in the County of Nantucket. Family gatherings shall not constitute a commercial activity under this definition.

For the purposes of these regulations, the erection or use of any permanent or temporary structure, kiosk, dock, mooring, stand, cart, sign for advertisement, or other real or personal property, fixtures or equipment primarily for the purpose of, or incidental or accessory thereto, manufacturing, selling, leasing or otherwise providing from that specific structure or arising from such use any property, good, product or service, shall be deemed a commercial activity.

Notwithstanding the foregoing, no sale or lease for real property within a designated pond area without further action that might be construed as a commercial activity hereunder, nor any business for which no invitee visits the designated pond area in question shall be deemed a commercial activity.

Designated beach area - a geographic section of beach or ancillary area to a beach in the Town of Nantucket as determined by the Town Manager and designated as such on a map on file with the Town Clerk and the office of the Board of Selectmen.

Designated pond area - a designated pond area shall include the following:

1. All ponds and all property directly adjacent to any portion of any pond owned by the Town of Nantucket, or to which the Town of Nantucket has a littoral or other property right, if any; and

2. All ponds and all property directly adjacent to any portion of any pond owned by the proprietors of Nantucket, or to which such proprietors have a littoral or other property right, if any; and
3. All ponds and all land, however owned, within 66 feet of the high water mark of such pond.

“Kiteboarding” - the use of a kite utilizing wind and air to lift, provide power or energy to a harnessed rider/passenger who is equipped with a board for touch down, whether such board is formally a surfboard, kite board, wake board, or other stabilizing flat object, used for the recreational purposes of kiteboarding.

Pond - any stagnant body of water without an outlet having a superficial area of fewer than 10 acres, any great pond, or any like body of water with a small outlet, including but not limited to any body of water affected by tidal action, together with the surface area of such body of water and the soil and other matter under such body of water.

II. Water Kiteboarding, Recreational

1. All kiteboards must display an appropriately numbered burgee registered with the Marine Department. A database of registered kiteboarders with assigned registration numbers shall be maintained by the Harbormaster and updated annually.
2. No kiteboarding may occur within 400 feet of the beach in a direct onshore wind.
3. All kiteboards must remain a minimum of 200 yards from endangered species.
4. All kiteboards must remain a minimum of 400 feet from lifeguarded areas.
5. Kiteboarders must comply with all other applicable laws, including without limitation MGL c. 90b and Town of Nantucket Code Chapter 137.
6. All kiteboards must be equipped with a safety system to prevent runaway kites.
7. The Town board or entity with jurisdiction over Town-owned property may regulate the specific Town-owned properties and areas where kiteboarding may occur, including without limitation prohibiting kiteboarding where, in the opinion of such Town board or entity, kiteboarding may create a public safety hazard and including without limitation restricting the days and times when kiteboarding may occur.
8. The Board of Selectmen may regulate the specific private properties and areas where kiteboarding may occur, including without limitation prohibiting

kiteboarding on properties and in areas where, in the opinion of the Board of Selectmen, kiteboarding may create a public safety hazard and including without limitation restricting the days and times when kiteboarding may occur.

III. Beach Events and Commercial Activities

1. The use of Nantucket beaches for events or activities involving a commercial enterprise or activity, including, but not limited to catering events or other such businesses, shall require a permit from the Town of Nantucket.
2. Unless otherwise authorized by the Town Manager, only three (3) beach events per week and only one (1) event per day shall be permitted on any designated beach area in the Town of Nantucket pursuant to these regulations. Permits for beach events shall be based on a "first-come, first serve basis". Permits for commercial activity where more than one (1) commercial enterprise applies to use the same beach on the same date will be based upon a "lottery" system as determined by the Town Manager.
3. No beach events or commercial activities with an expected attendance of more than two hundred fifty (250) people shall be allowed unless a Public Assembly Permit application has been submitted and approved.
4. The fee for a beach event permit or commercial activity permit is as follows: one hundred dollars (\$100.00) for events with an expected attendance of sixteen (16) to seventy-five (75) people, and two hundred dollars (\$200.00) for events with an expected attendance of over (75) people.
5. Beach events or commercial activities with an expected attendance of more than seventy-five (75) people may require a special police detail as determined by the Town Manager.
6. The following activities are prohibited at all beach events or commercial activity at beaches subject to these rules and regulations:
 - a. Electrical generators
 - b. Dance floors

There shall be no commercial activity in any designated pond area and no commercial activity that indirectly has an impact upon any designated pond area, for any period of time.

7. All applications shall be signed confirming that the applicant has read and understands all regulations pertaining to a permitted beach event or commercial activity and that such applicant will abide by such regulations, limitations and conditions placed upon such event or activity.

8. The permittee shall be required to obtain and provide proof of comprehensive liability insurance in the minimum amount of one million dollars (\$1,000,000) naming the Town of Nantucket and any other property owner of the designated beach area where the beach event or activity is taking place as an additional insured.
9. Individuals or businesses that provide catering or other food-related services on beaches subject to these rules and regulations must be licensed by the Board of Health. A copy of the food service license from the Board of Health shall be submitted with an application for a beach event or commercial activity.
10. The permittee shall remove all trash generated by their beach event or commercial activity from the beach and dispose of it properly at the landfill. Town trash cans or dumpsters may not be used.
11. Unless otherwise authorized, beach events or commercial activities may not be scheduled between the hours of 8:30 am and 5:00 pm June 15 through September 15. All events or activities shall end by 10:00 pm.
12. Beach event or commercial activity applications shall be submitted to the Town Manager for final approval or denial only after signed approval from the Police Chief, Beach Manager, Fire Chief (if applicable), Health Inspector (if applicable) and Park and Recreation Director (if applicable). Permit must be available for inspection by law enforcement personnel as identified in section V (3).
13. A cover letter explaining the purpose of the beach event or commercial activity shall be submitted with the application.
14. Applications shall be submitted at least two (2) weeks prior to the proposed beach event or commencement of commercial activity. Depending on circumstances or availability, this may be waived at discretion of Town Manager or designee.
15. The Town Manager in consultation with the Board of Selectmen and the Beach Management Advisory Committee shall promulgate application forms as well as a list of designated beach areas upon which beach events may be permitted.
16. Any regular annual commercial activities, other than food-related social beach events (i.e. surfboard rentals) shall require a new application, approval and permit fee for each calendar year.

IV. Fires

1. There are no "open-air" fires allowed except as are subject to the restrictions, limitations and exceptions of MGL c. 48, s. 13.

2. Cooking grills or fires that comply with MGL c. 48, s. 13 shall be placed a minimum of twenty-five (25) feet from any beach grass or vegetation and shall not be placed on or in any dune area.
3. All fires shall be completely extinguished after use and all contents and fire debris shall be thoroughly doused and removed from the beach. Burying charcoal or other fire debris on the beach is prohibited.
4. No glass, aluminum or other non-flammable material shall be placed or disposed of in any fire.

V. Motor Vehicle Operation and Use

It shall be a violation of these regulations for any person to use or operate a motor vehicle, registered or otherwise, on any beach on Nantucket:

1. In excess of twenty (20) miles per hour;
2. In excess of five (5) miles per hour within one hundred (100) yards of a pedestrian;
3. Between the hours of 9:00 am and 5:00 pm on any lifeguarded beach or other beach duly posted with such time limits;
4. In any area marked as a nesting site, wildlife protection area or refuge or marked as a beach or dune restoration area or so as to harass birds;
5. On a primary coastal bank or dune or in areas of beach grass at any time, except over clearly established and regularly traveled motor vehicle ways;
6. Without a valid beach sticker properly displayed on the vehicle;
7. In any area properly posted as "private property" or "no trespassing."
8. The Town of Nantucket reserves the right to limit the number of vehicles on a beach per day.
9. The Town of Nantucket reserves the right to charge an additional access fee as set by the Board of Selectmen on specific days as designated and advertised in advance by the Town of Nantucket.
10. Operators of vehicles parked on the beach shall leave a right of way at all times. The required right of way area shall be determined by the enforcing authority.

VI. Beach Activities Adverse to Federally-protected Breeding Habitat

1. No person within the territorial limits of the Town shall use, operate or otherwise allow the use or operation of any kiteboard, kite, or other airborne object other than aircraft, in order to prevent confusion as a predator to any nesting, territorial adult or unfledged juvenile endangered bird species, in, over, or upon the areas posted with signage as bird nesting areas, during the period of April 1 through August 31, in accordance with Section III, Paragraph 7 of the "Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act."
2. All persons are prohibited from allowing at all times from April 1 to August 31 any nonhuman animals or reptiles such as pets, including dogs, horses, cattle, cats and other pet life forms to enter upon, roam, or otherwise have access to the areas posted with signage as bird nesting areas, and all such life forms must be confined in cages or tanks, leashed, haltered, tethered, or bridled and firmly under control and not free to access any such posted nesting area, in accordance with Section III, Paragraph 6 of the "Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act."

Please note the Town of Nantucket's leash law, Chapter 55-4 of the Town Code.

3. Except as may otherwise be allowed or permitted by law, no fireworks, explosive device or flare shall be ignited, lit, energized or fired, anywhere in, on, over or upon any beach area designated by signage as a bird nesting area during the period such signs are in for "Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act."

Please note unauthorized fireworks are illegal in the Commonwealth of Massachusetts.

4. Except for vehicles engaged in actual necessary emergency response for the public safety or the security of the nation, all response for the public safety or the security of the nation, all two, three, three, or four-wheeled vehicles are prohibited from entering, operating, or being present within all posted nesting habitat in accordance with Section III, Paragraph 12 of the " Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act."

Please note the Town of Nantucket's bylaw Chapter 56-6a on use of all-terrain vehicles.

VII. General Beach Rules

A. Swimming and Bathing

1. No person shall bathe or swim in the waters under the jurisdiction of the Town of Nantucket during such time as the lifeguard on duty, Police Department, Fire Department, Marine Superintendent, Beach Manager or other designated Town official determines conditions to be hazardous to the health, safety and welfare of swimmers and bathers. Upon posting of signs or verbal notice from the above listed authorities all persons shall exit the water until such authorities give notice that the hazardous condition has abated.
2. All rigid devices (e.g. surfboards, kayaks, boogie boards) and any non-rigid device which is not a swim aid are prohibited within the limits of lifeguard protection on Town-owned/operated beaches. Inflatable rafts and tubes are examples of allowed non-rigid swim aids. This prohibition excludes properly sized, Coast Guard approved personal floatation devices.
3. Skimboards are prohibited within the limits of lifeguard protection on Town-owned/operated beaches.
4. No person shall participate in an activity designed to attract or that might attract any shark species into the swimmable area of any waters abutting Nantucket's beaches. Attract means to conduct any activity that lures or may lure any shark to a person or swimmable area of water abutting a beach by using food, bait, chum, dyes, decoys, acoustics or any other means.

Formatted: Font: 12 pt
Formatted: Indent: Left: 0.58", Hanging: 0.5", Right: 0", Space Before: 0 pt, No bullets or numbering, Tab stops: Not at 1.08" + 1.08"

Formatted: Normal, No bullets or numbering

B. Beach Rules

1. Glass containers of any kind are prohibited from Town-owned/operated beaches.
2. No person shall urinate or defecate in the beach or dune area.

C. Liability

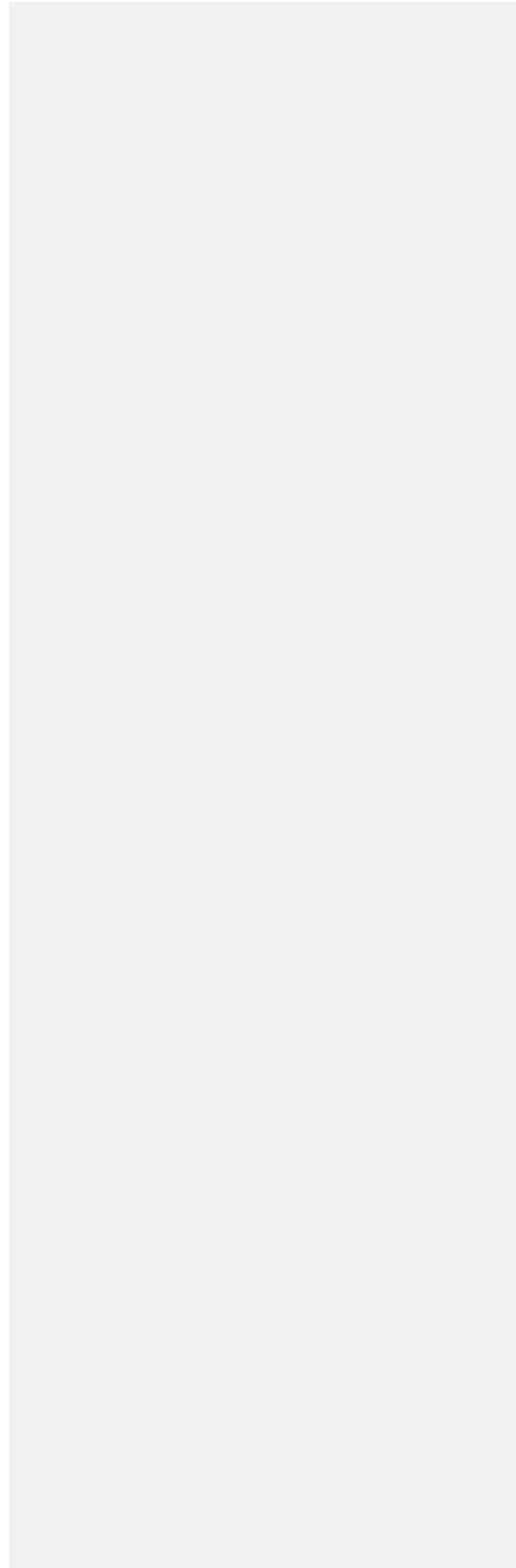
1. All persons using Town-owned/operated beaches and the waters directly abutting the beach do so at their own risk.

VIII. Penalties and Enforcement

1. Any violation of these regulations shall result in a fine of \$300.00 and revocation of the permit if any.
2. These regulations may be enforced by non-criminal disposition in accordance with Chapter 1-2 through 1-6 of the Code of Nantucket and MGL chapter 40, section 21 d.
3. Enforcing persons shall be: any police officer, Beach Manager, Land Bank property manager, Town Biologist, Marine Superintendent, Park and Recreation Director, any firefighter, any deputy sheriff or any other designee of the Town

|
|
[of Nantucket Select Board.](#)

DRAFT



|

IX. Severability

In the event any court determines any provision of these regulations to be invalid or unenforceable, then the remainder of this instrument shall not be affected except to the extent required by law.

DRAFT