

SHELLFISH CONSERVATION ORDINANCE FOR THE TOWN OF WOOLWICH

- I. Name: This Ordinance shall be known and cited as the Shellfish Conservation Ordinance for the Town of Woolwich, Maine.
- II. Authority: This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution and the provisions of Title 30-A, M.R.S.A., §3001 (Home Rule), and in accordance with Title 12, M.R.S.A., §6671.
- III. Cancellation: This Ordinance cancels and supersedes the Ordinance entitled **Shellfish Conservation Ordinance For The Town of Woolwich, Maine** which was amended and readopted on April 24th , 2024.
- IV. Purpose: To establish a shellfish conservation program for the Town of Woolwich which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:
 - a. Licensing.
 - b. Limiting the number of shellfish harvesters.
 - c. Restricting the time and area where digging is permitted.
 - d. Limiting the minimum size of shellfish taken.
 - e. Limiting the number of shellfish taken daily by a harvester.
- V. Shellfish Conservation Committee: The Shellfish Conservation Program for the Town of Woolwich will be administered by the Shellfish Conservation Committee consisting of seven members to be appointed by the

Selectmen for terms of three years. The responsibilities of the committee include:

- a. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued.
- b. Reviewing annually the status of the resource using the results of the shellfish flats, harvester(s) or dealer(s) surveys and other sources of information and preparing conjunction with and subject to implement conservation measures.
- c. Submitting to the Selectboard proposals for the expenditures of funds for the purpose of shellfish conservation.
- d. Keeping this ordinance under review and making recommendations for its amendments.
- e. Securing and maintaining records of shellfish harvest from the town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.
- f. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the area biologists of the Department of Marine Resources.
- g. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other committee activities.

VI. Definitions:

- a. Resident: The term **resident** refers to a person who has been domiciled in this municipality for at least two years next prior to the time his claim of such residence is made.
- b. Nonresident: The term **nonresident** means anyone not qualified as a resident under this ordinance.
- c. Shellfish, Clams and Intertidal Shellfish Resources: When used in the context of this ordinance the words **shellfish, clams, and intertidal shellfish resources** mean soft shell clams (*Mya arenaria*).

Quahogs (*Mercenaria mercenaria*), **Razor clams** (*Ensis directus*), **European oysters** (*Ostrea edulis*), **American oysters** (*Crassostrea virginica*) and **Surf clams** (*Spisula solidissima*)

- VII. Licensing: A municipal digging license is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance.

A commercial digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.

a. Designation, Scope and Qualifications:

- (1) Resident Commercial Shellfish License: The license is available to residents of the Town of Woolwich and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
- (2) Nonresident Commercial Shellfish License: The license is available to nonresidents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
- (3) Residential Recreational Shellfish License: The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family.
- (4) License must be signed: The licensee must sign the license to make it valid.

b. Application Procedure: Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality.

- (1) Contents of Application: The application must be in the form of an affidavit and

must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.

- (2) Misrepresentation: Any person who gives false information on a license application will cause said license to become invalid and void.

Fees: The fees for the licenses accompany in full the application for their respective license. The Town Clerk shall pay all fees received to The Town Treasurer except for \$1.00 each license which shall be credited to Account 1- 1741 (Clerk Fees). Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation, and enforcement. All fees for shellfish licenses shall be recommended and submitted to the Selectboard by October 31st for approval.

Resident and nonresident commercial shellfish diggers will not be allowed to buy recreational licenses.

- c. Limitation of Diggers: Shellfish resources vary in density and size distribution from year to year and over the limited soft clam producing area of the town. It is essential that the town carefully husband its shellfish resources. Following the annual review of the town's shellfish resources, its size distribution, abundance and the warden's reports, the Shellfish Conservation Committee, in consultation with the Department of Marine Resources area biologist, will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.

- (1) Prior to April 15th, the committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license year to the Commissioner of Marine Resources for concurrence under 12 M.R.S.A. §6671.
- (2) After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to May 15, the Shellfish

Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.

- (3) Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.
- (4) ~~The Town Clerk shall issue licenses to residents and nonresidents as allocated from June 1 and until September, after which licenses shall be issued to residents and nonresidents on a first-come, first-served basis provided that only Woolwich commercial license holders who have purchased their licenses prior to September 1 of the previous year and who have completed twenty hours of conservation work under the supervision of the town shellfish warden may purchase a commercial shellfish license during the first two business days of the licensing year. Any licenses, as allocated, remaining after this sale shall be available through a lottery(s) of the applicable open applications on the third business day of the licensing year.~~

Issuance of Licenses: Any municipal commercial licensed harvester who held a license in the immediately preceding license year and who has paid the license fee and/or completed equivalent conservations work shall be considered grandfathered (eligible for renewal). Upon meeting criteria, renewal licenses may be obtained between June 23rd and June 28th. Any licenses remaining after June 28th will be dispersed by lottery to applications received as of the date. Any license remaining as of September 21st shall be available to resident and non-residents alike, on a first come first serve basis.

Effective June 30, 2023, both resident and non-resident commercial shellfish licenses may be obtained without performing conservation work. However, the performance of conservation work will reduce a resident or non-resident commercial shellfish license fee by \$20.00 for each documented hour worked up to 10 hours. The Town Clerk shall deposit all fees received with the Town Treasurer. Fees received for shellfish licenses shall be used by the town for shellfish management, conservation, and enforcement. License applicants who complete conservation time in order to receive a reduced license fee shall remain eligible for that fee reduction until they have been issued or offered a shellfish license by the municipality so long as the applicant applies annually for the license.

- (5) Licenses may be returned to the town voluntarily, and reissued to another person at the current fee according to the priorities established in this section. Such license will be entered into a lottery drawing for reissue.
- (6) License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the 30th day of June next following the date of issuance.
- (7) Reciprocal Harvesting Privileges: Licensees from any other municipality cooperating with this municipality on a joint clam management program may harvest clams according to the terms of their licenses.
- (8) Fee Waiver: Recreation shellfish license fees will be waived for residents 65 years or older and 12 years or younger.
- (9) Suspension: Any shellfish licensee having three convictions for a violation of this ordinance shall have his shellfish license automatically suspended for a period of thirty (30) days.
 - (a) A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has

expired.

(b) The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the Licensee.

(c) Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation committee upon the filing of a written Request for Hearing with the Town Clerk within thirty (30) days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee before the Board of Selectmen by filing a written Request for Appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

VIII. Opening and Closing of Flats: The Municipal Officers, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources area biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officers may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Officers made after the hearing shall be based on findings of fact.

It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the Town of Woolwich in accordance with the Department of Marine Resources Regulation, Chapter 7. Harvesting shellfish in closed area is a violation of this municipality's ordinances and is punishable under M.R.S.A. Title 12 § 6671.

Boundaries of conservation closures are explicitly defined in the conservation closures application submitted by the town of Woolwich to the Department of Marine Resources. These permits are posted at the town office and online: on the DMR Nearshore Marine Resources Program website.

IX. **Minimum Legal Size of Soft Shell Clams:** It is unlawful for any person to possess soft shell clams within the Town of Woolwich, County of Sagadahoc, which are less than two inches in the longest diameter except as provided in this section.

a. Definitions:

(1) Lot: The word **lot** as used in this Ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container the contents of each box, barrel, or other container constitute a separate lot.

(2) Possess: For the purpose of this section, **possess** means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clamshell stock.

b. Tolerance: Any person may possess soft shell clams that are less than two inches if they compromise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by count of the entire lot if it contains less than one peck.

X. Possession of License:

a. Exhibit on Demand: When any person is engaged in an activity, which is licensed under this ordinance, he/she shall, on the request of a Law Enforcement Officer, or other authorized person, exhibit his/her license.

b. Prima Facie Evidence: A failure to exhibit a license within a reasonable amount of time, when requested, shall be prima facie evidence that the person is not licensed.

XI. Consent to Inspection:

a. Violation: Any person who signs an application

for a license or receives a license under this ordinance has a duty to submit to inspection and search for violations related to the licensed activities by a Law Enforcement Officer under the following conditions:

- (1) Watercraft or vehicles and the equipment located on watercraft or vehicle which are used primarily in a trade or business requiring a license under this ordinance may be searched or inspected at any time.
- (2) Seizure of Evidence: Any person who signs an application for a license or receives a license under this ordinance has a duty to permit seizure of evidence of a violation of this ordinance found during an inspection or search.
- (3) Refusal: Refusal to permit inspection or seizure shall be a violation of this ordinance.

XII. Stopping for Inspection

It shall be unlawful for any person:

- a. To fail or refuse to stop immediately upon request or signal of a Law Enforcement Officer in uniform.
- b. After he/she has so stopped, to fail to remain stopped until the officer reaches his/her immediate vicinity and makes known to that person the reason for the request or signal.
- c. Who has been requested or signaled to stop by a Law Enforcement Officer in uniform to throw or dump into any water any marine organism, or any pail, bag, barrel or other container of any type or the contents thereof, before the officer has inspected the same.

XIII. Enforcement: This Ordinance shall be enforced by a Shellfish Warden to be appointed by the Selectboard, The Shellfish Warden shall be certified as a Law Enforcement Officer pursuant to 25 M.R.S.A. Chapter 341 and shall hold

any other certifications and meet such other requirements as set forth in 12 M.R.S.A. § 6671.

XIV. Penalty: A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. §6671 (10).

XV. Effective Date: This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption.

XVI. Separability: If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.

Attest; A true copy as adopted at a Special Town Meeting on May 11th, 2000 and amended at Special Town meeting on May 9th, 2002 and May 6th, 2004 and May 7th, 2005 and May 9th, 2012 and April 29th, 2017 and August 22nd, 2020 and at Special Town Meeting April 24th, 2024.

I certify this is a true attested certified copy of the original ordinance adopted at the April 24th, 2024 Town Meeting.

Attest:

Kimberly Dalton
Town Clerk
Town of Woolwich