Shellfish Conservation Ordinance

Town of Westport Island

1. **Authority**: This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671.

2. **Purpose**: To establish a shellfish conservation program for the *Town of Westport Island* 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 clams taken.

E. Limiting the amount of clams taken daily by a harvester.

3. **Shellfish Conservation Committee**: The Shellfish Conservation Program for the *Town of Westport Island* will be administered by the Shellfish Conservation Committee consisting of *five* members and two alternates to be appointed by selectmen for a term of one to five years.

The Committee's responsibilities 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 clam flat, harvester or dealer surveys and other sources of information and preparing in conjunction with and subject to the approval of the department a plan for implementing conservation measures.

C. Submitting to the Board of Selectmen 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 or Council 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.

4. **Definitions**

A. Resident: The term "resident" refers to a person who has been domiciled in this municipality for at least the previous *six months* next prior to the time their 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 mercenaris), razor clams (Ensis directus), and surf clams (Spisula solidissima).

D. Municipality: Refers to the *Town of Westport Island,* Maine.

E. Municipal Officers: For this ordinance it refers specifically to Town elected Selectmen

5. **Licensing**: Municipal Shellfish 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 municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.

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. No person holding a Commercial State of Maine Shellfish License will be permitted to hold a Residential Recreational Shellfish License.

4) Nonresident Recreational Shellfish License: The license is available to any person not a resident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in any one day for the use of himself and his family. No person holding a Commercial State of Maine Shellfish License will be permitted to hold a Nonresidential Recreational Shellfish License.

5) 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.

C. Fees: The fees for the licenses are as stated below and must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer except for *$1.00* of each license which will be retained by the clerk as payment for issuing the license. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation and enforcement.

Resident Commercial: *$150*

Nonresident Commercial: *$300*

Resident Recreational: *$15*

Nonresident Recreational: *$30*

D.1. Limitation of Diggers: Clam 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. If, following the annual review of the town's clam resources, its size distribution, abundance and the warden's reports, as required by Section 3, the Shellfish Conservation Committee in consultation with the DMR area biologist determine limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year;

1) Prior to *February 1st* the committee shall reports 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.

2) After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to *March 1st* , 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 *May 1st* and until *July 31st* after which licenses shall be issued to residents and nonresidents on a first-come, first-served basis.

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.

D.2. Open License Sales: When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year;

1) Notice of the dates, places , times and the procedures for the license sales 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 initial sale date and shall be posted in the municipal offices. A copy of the notice shall be provided to Commissioner of Marine Resources.

2) For each commercial license category, the Town Clerk shall issue one license to nonresidents when six licenses are issued to residents and one more to nonresidents when four more are issued to residents; thereafter, one nonresident license will be issued for every ten additional resident license issued. For each recreational license category, the Town Clerk shall issue one license to a resident and one to a nonresidents; thereafter, one nonresident license will be issued for every ten additional resident license issued.

E. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on last day of *April* next following date of issuance.

F. Reciprocal Harvesting Privileges: Licensees from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of this license.

G. Fee Waivers: Recreational shellfish license fees will be waived for applicants 65 years or older and 12 years or younger.

H. 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.

1) A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has expired.

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

3) 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/Town Council by filing a written Request for Appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

6. **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.

7. **Minimum Legal Size of Soft Shell Clams**: It is unlawful for any person to possess soft shell clams within the municipality which are less than two (2) inches in the longest diameter except as provided by Subsection B of 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 constitutes 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 clam shell stock.

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

C. Penalty: Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. Section 6681.

8. **Enforcement:** This ordinace shall be enforced by the certified municipal shellfish conservation warden, or by any law enforcement officer appointed by the town, who within one year of appointment must be certified by the commissioner of marine resources.

9. **Possession of License**

A. 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 in uniform, exhibit his/her license.

B. 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.

10. **Consent to Inspection:**

A. 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:

a. Watercraft or vehicles and the equipment located o the watercraft or vehicles which are primarily in a trade or business requiring a license under this ordinance may be searched or inspected at any time.

B.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 violation of this ordinance found during an inspection or search.

C. Refusal to permit inspection or seizure shall be a violation of this ordinance.

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

12. **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.

13. **Period of Ordinance**: This ordinance shall remain in effect until repealed by the town or rescinded by the Commisioner of the Department of Marine Reources.

14. **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.

15. **Repeal**: Any ordinance regulating the harvesting or conservation of shellfish in the town and any provisions of any other town ordinance which is inconsistent with this ordinance is hereby repealed.

Conservation Credit Program Guidelines

This system has been established in order to set priorities in issuing commercial non-resident and commercial resident shellfish licenses. Number of licenses is to be determined annually by the Shellfish Committee.

Applicants who have completed **at least** ten (10) hours of conservation work approved by the Shellfish Committee, and earned during the prior license year, will be considered finalists. All applicants will accumulate hours according to the following schedule.

Qualifying conservation work includes:

1. attendance at posted committee meetings - 2 hours
2. participation in surveys - 4 hours
3. participation in seedings - 4 hours
4. additional conservation efforts as may be approved by the committee - hours per duration of activity.

The finalist with the greatest number of hours (ten or above), will receive the license. In the event of a tie, the license will go to the person with the greatest seniority as a Westport shellfish harvester or, if necessary, by drawing. Should there be no eligible finalist(s), procedure returns to first come, first served per state regulation.

The program will be managed by an appointed committee member or members, and cards will be kept on file for examination and tallies by the appointed manager. All hours will be presented on an official system of 3x5 cards showing the following:

WESTPORT ISLAND SHELLFISH RESIDENT & NON-RESIDENT COMMERCIAL CONSERVATION CREDIT PROGRAM

HARVESTER CREDIT FORM

HARVESTER NAME_____

HARVESTER LICENSE NO. (if existent)_____

CREDIT ACTIVITY_____

ACTIVITY DATE_____

CREDITS AWARDED_____

COMMITTEE MEMBER SIGNATURE AND DATE_____

4/25/2004 Rev. 2/26/2005
Adopted 4/12/05

DEPARTMENT OF MARINE RESOURCES

July 14th, 2008

Effective July 18th, 2008, and in accordance with Public Law 2008 Chapter 692, the Department of Marine Resources (DMR) will no longer be posting advertisements in newspapers notifying the public of shellfish harvesting area openings or closings. This will apply to all notices related to any changes of area classifications that may result from bacteriological pollution and/or Paralytic Shellfish Poisoning (Red Tide).

This information will continue to be available from the following sources:

- DMR's Shellfish Sanitation Hotline: 1-800-232-4733;
- DMR's Bacteriological Closure website: http://www.maine.gov/dmr/rm/public_health/closures/closedarea.htm; or
- DMR's Red Tide Shellfish Closure website: http://www.maine.gov/dmr/rm/public_health/closures/pspclosures.htm;

Please notify Deputy Commissioner David Etnier (207-624-6553) should you encounter any difficulties given this change in notification law.