

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 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 the 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 or 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 expenditure of funds for the purpose of shellfish conservation.
- D. Keeping this ordinance under review and making recommendations for its amendments.
- E. Recommending conservation closures and openings to the Board of Selectmen or Council in conjunction with the Area Biologists of the Department of Marine Resources.
- F. 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 prior to the time of their claim of such residence is made.
- B. **Non-resident:** The term “nonresident” means anyone not qualified as a resident under this ordinance.
- C. **Shellfish, Claims 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*), and razor clams (*Ensis directus*).
- 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:** A 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 allowable of shellfish from the shores and flats of this municipality.
- 2) **Nonresident Commercial Shellfish License:** The license is available to nonresidents of the municipality and entitles the holder to dig and take any amount allowable 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 softshell clams or one peck of razor clams or one peck of quahogs or one peck of combined clams for personal use in any one day. 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 softshell clams or one peck of razor clams or one peck of quahogs or one peck of combined clams for personal use in any one day. 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 listed in the Town Fee Schedule 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.

D.1. Limitation of Diggers: Clam resources vary in density and size distribution from year to year and over the limited soft clam producing areas of the town. It is essential that the town carefully husband its shellfish resources. If, following a review of the town's clam resources, its size distribution, abundance or the warden's reports, as required by Section 3, the Shellfish Conservation Committee, in consultation with the DMR area biologist, determines that limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year:

- 1) Prior to February 1st 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.
- 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 to reach 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) All licenses shall be issued according to DMR Regulation Chapter 7. The total number of non-resident licenses to be issued by a municipality shall be made available

from the start of the period of issuance. 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-serve 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: Should the Shellfish Conservation Committee determine that limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year, and unlimited licenses are to be issued, then all unlimited licenses shall be issued according to DMR Regulation Chapter 7.

E. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the 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/her 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 resources 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 Westport Island in accordance with DMR Regulation, Chapter 7. Harvesting shellfish in a closed area is a violation of this municipality's ordinance and is punishable under MRSA Title 12 §6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the Town of Westport Island to DMR and are part of the resulting permit issued by DMR. These permits are posted at the Town Office and online:

<http://www.maine.gov/dmr/shellfish-sanitation-management/programs/municipal/ordinances/towninfo.html>

The Department of Marine Resources (DMR) notifies the public of shellfish harvesting area openings or closings, including changes of area classifications that may result from bacteriological pollution and/or Paralytic Shellfish Poisoning (Red Tide), using 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

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 the 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 ordinance 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 on the watercraft or vehicles, which are primarily used 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 in violation of this ordinance found during an inspection or search.
- C. Refusal to permit an 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 with 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 Commissioner of the Department of Marine Resources.

14. Separability: If any section, subsection 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.

Adopted at Town Meeting: June 23, 2018

Certified: /s/ Gaye D. Wagner
Town Clerk

Town of Westport Island

Shellfish License

Town Fee Schedule

The Shellfish License fees listed below* must accompany the application to the Town Clerk for the relevant license. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement.

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|---------------------------|-------|
| Resident Commercial: | \$150 |
| Nonresident Commercial: | \$300 |
| Resident Recreational: | \$ 15 |
| Nonresident Recreational: | \$ 30 |

Shellfish License sales begin on May 1 each year and expire on April 30 of the following year. Licenses may be purchased from the Town Clerk at the Westport Island Town Office, 6 Fowles Point Road, Westport Island, ME 04578, during regular office hours: Tuesdays, 11 a.m. to 6 p.m. and Thursdays, 9 a.m. to 2 p.m. For questions or more information, call the Town Clerk at (207) 882-8477 ext. 3.

For all regulations governing the harvesting of shellfish on Westport Island, see the Shellfish Conservation Ordinance as revised in 2018.

****Recreational shellfish license fees will be waived for applicants 65 years or older and 12 years or younger.***