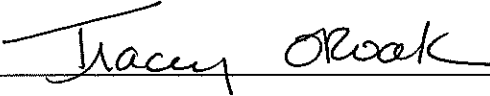


Ordinance Certification

I, Tracey O'Roak, the duly appointed Town Clerk for the Town of Kennebunkport, hereby certify pursuant to 30-A M.R.S.A. §3006 that the attached is a true and accurate copy of the **Shellfish Conservation Ordinance** of the Town of Kennebunkport, Maine as amended on June 13, 2017, as shown.

Dated: June 21, 2017



Town Clerk

KENNEBUNKPORT SHELLFISH CONSERVATION ORDINANCE

1. **Authority:** This Ordinance is enacted in accordance with 12 M.R.S.A. §6671.
2. **Purpose:** To establish a shellfish conservation program for the Town of Kennebunkport that will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means that 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 Kennebunkport will be administered by the Shellfish Conservation Committee consisting of a minimum of five (5) members and a maximum of seven (7) members, including the Shellfish Warden who may be a non-resident, to be appointed by the Selectmen of the Town of Kennebunkport for terms of three (3) years. No more than three (3) members shall possess current commercial shellfish licenses. The Shellfish Conservation Warden may not possess a Commercial Shellfish License.

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. Surveying each clam-producing area at least once each three-years to establish size distribution and density, and annually estimating the status of the Town's shellfish conservation.
- 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 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.

h. Recommending daily harvest limits to the Board of Selectmen.

4. **Definitions**

a. **Resident**: The term "resident" refers to a person who has been domiciled in this municipality for at least three months 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*).

d. **Municipality**: Refers to the Town of Kennebunkport, Maine.

e. **Shellfish Conservation Warden**: When used in the context of this Ordinance, the words "Shellfish Warden" and "Clam Warden" mean Shellfish Conservation Warden.

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. **Designation, Scope and Qualifications**:

i. **Resident 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.

ii. **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.

iii. **Resident Commercial Shellfish License**: The license is available to residents of this municipality and entitles the holder to dig and take no more than the amount of shellfish as recommended by the Shellfish Conservation Committee and approved by the Board of Selectmen in any one day, unassisted only. Commercial license holders must keep a daily log of clams harvested. This license shall be revoked if the license holder ceases to reside in the municipality.

- iv. Non-resident Commercial Shellfish License: The license is available to nonresidents of this municipality and entitles the holder to dig and take no more than the amount of shellfish as recommended by the Shellfish Conservation Committee and approved by the Board of Selectmen in any one day, unassisted only. Commercial license holders must keep a daily log of clams harvested.
 - v. Daily Recreational Shellfish License: The license is available to residents and non-residents 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. The license is good only for the date stated on the license.
 - vi. 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.
- i. 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.
 - ii. 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 shall be set by the Municipal Officers upon the approval of the Commissioner of the Department of Marine Resources and must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement.
- d. 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. 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 D.M.R. Area Biologist will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.
- i. Prior to January 1, 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.

- ii. After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to January 1, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.
- iii. 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 that the Municipal Officers consider effective in reaching persons affected, not less than ten (10) days prior to the period of issuance. This information shall also be posted in the municipal offices until the period concludes.
- iv. The Town Clerk shall issue licenses to residents and nonresidents as allocated (paragraph 5.D.1) from January 1 and until March 31 after which license shall be issued without regard to residency on a first come, first served basis or by lottery.
- e. License Expiration Date: Each license issued under authority of this Ordinance expires at midnight on the December 31st next following date of issuance. Each daily license issued under the authority of this Ordinance shall be valid only for the date stated on the license.
- f. Reciprocal Harvesting Privileges: Licenses 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. License Fee Waiver: Recreational shellfish license fees will be waived for residents 65 years or older and 12 years or younger.
- h. A shellfish license is not available to anyone whose municipal or state shellfish license is under suspension or who has been convicted of violating Maine marine statutes or state wildlife statutes within a prior 24-month period or who has a valid commercial license in another Maine municipality.
- i. Suspension/Revocation: A shellfish license issued under this Ordinance is subject to suspension as follows:
 - i. In cases where a court enforcement proceeding is brought under this Ordinance or State law:
 - a. in the case of a first court judgment finding any violation, an automatic suspension of 60 days;

- b. in the case of a second court judgment finding any violation against the same licensee, an automatic revocation of the existing license, and the person found in violation is prohibited from re-applying for a license under this Ordinance for one year.
 - ii. In cases where the Shellfish Warden believes that a licensee has violated this Ordinance, he may give notice to the licensee of such belief. If, after providing the licensee with an opportunity to rebut any evidence he has, the Clam Warden concludes that a violation has occurred, he may issue a notice of suspension not to exceed 30 days.
 - a. A licensee who has received a notice of suspension may appeal to the Board of Selectmen by filing a written request with the Town Clerk within seven (7) days of the day the Clam Warden's decision is rendered. Upon filing the request, the suspension is stayed pending the Board's decision.
 - b. The Board of Selectmen shall hear the appeal as soon as practicable and shall provide the appellant with at least 7 days written notice of hearing. It shall hear all the evidence and decide whether to uphold or reverse the decision of the Clam Warden. The rules of evidence do not apply.
6. **Conservation Credits:** A licensed commercial shellfish harvester must obtain a total of ten (10) conservation credit points between January 1 and December 31 in order to remain eligible to obtain a license for the next licensing period.

Documented certification in any of the following activities results in granting of conservation credit as specified:

Participation in any one (1) of the following activities shall deem a harvester eligible to receive five conservation credit points per activity:

- a. Participation in a Kennebunkport Shellfish Conservation Committee sponsored shellfish re-seeding project.
- b. Participation in a Kennebunkport Shellfish Conservation Committee sponsored shellfish survey.

If the Kennebunkport Shellfish Conservation Committee does not sponsor both activity 6(a) and 6(b) above during a single calendar year then participation in the single activity sponsored shall be valued at ten (10) conservation credit points.

All records and conservation credit logs will be maintained by the shellfish warden and will be held in the shellfish warden's office.

Determination of conservation credit completion - By the first business day of January the shellfish warden shall compile documented conservation time of each individual harvester and forward a list of those harvesters determined to have satisfied the conservation credit requirement to the Town Clerk.

Harvesters included on the list submitted by the shellfish warden shall be eligible for a commercial license for the upcoming license year if a notice of intent has been filed by the deadline.

Harvesters will be notified of their status in terms of conservation credit completeness by the shellfish warden by December 1 for credits earned. A final status will be mailed by December 10.

Approved absence from conservation credit requirement - Harvesters who have not completed a full ten (10) points of conservation credit in a given license year are only eligible for a license if their absence from participation in conservation credit activities is approved by the shellfish warden or marine resource committee.

Approved absences may include an extended and documented illness, or an extended illness of an immediate family member that is under the immediate care of the harvester.

Requests for a determination of approved absence must be made in writing to the shellfish warden and must be submitted no later than December 15. The request shall include evidence to support an approval of absence determination.

If the absence is approved, the harvester will be required to make up the remaining conservation credit points during the next license year.

If the absence is not approved, the harvester will not be eligible to obtain a license.

Appeal procedure - A harvester may appeal any determination of eligibility made by the shellfish warden. Request for appeals must be made in writing to the Shellfish Conservation Committee by December 31. Appeals will be decided by the Shellfish Conservation Committee during its January meeting. Decisions shall be provided to the town clerk in writing no later than five (5) days after the meeting.

7. **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 Kennebunkport 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 MSRA Title 12 §6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the Town of Kennebunkport 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>.

8. **Minimum Legal Size of Soft Shell Clams:** It is unlawful for any person to possess soft shell clams within the Town of Kennebunkport, County of York, that are less than two (2) inches in the longest diameter except as provided by Subsection B of this section.
 - a. **Definitions:**
 - i. **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.
 - ii. **Possess:** For the Purpose of this section, "possess" means dig, take, harvest, transport, or hold soft shell clam shellstock.
 - b. **Tolerance:** Any person may possess soft shell clams that are less than two (2) inches if they comprise less than 10% of any lot.
9. **Other Limitations:**
 - a. The placement of clams harvested under this section in a closed container is prohibited.
 - b. The harvesting of clams is permitted only during daylight hours which shall be defined as between one hour prior to sunrise and one hour past sunset.
10. **Penalty:** A person who violates this Ordinance shall be punished as provided by 12 M.R.S.A. §6671 (10).
11. **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.

12. **Period of Ordinance:** This Ordinance shall remain in effect until repealed by the Municipality or rescinded by the Commissioner of the Department of Marine Resources.
13. **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.
14. **Repeal:** Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions of any other Town ordinance that is inconsistent with this Ordinance is hereby repealed.

Revised June 13, 2017