TOWN OF GOULDSBORO
SHELLFISH CONSERVATION ORDINANCE

Adopted: June 19, 2001
Amended: June 11, 2008
Amended: June 12, 2013
Amended: June 10, 2015

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

2. **PURPOSE:**
To establish a shellfish conservation program for the Town of Gouldsboro 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
A. Limiting the number of shellfish harvesters
B. Restricting the number and area where digging is permitted
C. Limiting the minimum size of clams taken
D. Limiting the amount of clams taken daily by a harvester

3. **SHELLFISH CONSERVATION COMMITTEE:**
The Shellfish Conservation Committee consisting of five (5) members to be appointed by the selectmen for terms of one (1) year will administer the Shellfish Conservation Program for the Town of Gouldsboro.

The Committee's responsibilities include:

A. Surveying each clam producing area at least once every three years to establish size distribution and density and annually estimating the status of the town's shellfish resources;
B. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purposes of shellfish conservation;
C. Keeping this ordinance under review and making recommendations for its amendments;
D. 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;
E. Recommending conservation closures and openings to the Board of Selectmen in conjunction with area biologists of the Department of Marine Resources;
F. Submitting an annual report to the Municipality and Department of Marine Resources covering the above topics and all other committee activities;
G. Conducting conservation programs.

4. **DEFINITIONS:**

A. Resident: The term "resident" refers to a person who has been domiciled in this municipality for at least three (3) months directly prior to the time his/her claim of such residence is made.

B. Nonresident: The term "non resident" means anyone not qualified as a resident under this ordinance.

C. Municipality: Refers to the Town of Gouldsboro, Maine.

D. Conservation Time: Those measures and activities approved by the Shellfish Committee for the purposes of resource enhancement and the support of the Gouldsboro Shellfish Conservation Ordinance. Conservation time must be completed to be eligible for a commercial shellfish license in accordance with the shellfish ordinance.

E. Municipal License Allocation Request: Annually, as indicated by the ordinance, the Municipality must submit a request for the number of licenses to be sold during the next licensing period.

5. **LICENSING:**

A Gouldsboro Municipal Shellfish Digging License is required to harvest shellfish within the jurisdiction of this ordinance. 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. Additionally, a commercial digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources prior to harvesting clams for commercial purposes.

5.1 Designation, Scope and Qualifications:

A. Resident Commercial Shellfish License: This license is available to residents of the Town of Gouldsboro who have completed shellfish conservation requirement and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.

B. Nonresident Commercial Shellfish License: This license is available to nonresidents of this municipality who have completed conservation requirements and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.

C. Resident Junior Commercial License: This license is available to any resident, who has attained his or her 13th birthday, but has not yet attained his or her 18th birthday as of 30 June of the application year and has completed the required conservation work hours. This license entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.

D. Nonresident Junior Commercial License: This license is available to any nonresident, who has attained his or her 13th birthday but has not yet attained his or her 18th birthday as of 30 June of the application year and has completed the required conservation work hours. This license entitles the holder to dig

and take any amount of shellfish from the shores and flats of this municipality.

E. Resident Recreational Shellfish License: This license is available to residents and Maine real estate taxpayers of this municipality who does not hold a valid Maine State Commercial Shellfish License 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.

F. Nonresident Recreational Shellfish License: This license is available to any person that is not a resident nor real estate taxpayer of this municipality who does not hold a valid Maine State Commercial Shellfish License 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.

G. License must be signed: The licensee must sign the license to make it valid. License must be in possession when engaged in harvesting. By signing the license the harvester acknowledges that he/she must submit to inspection by the Municipal Shellfish Warden.

H. A person over 18 years of age enrolled in a secondary education program will be exempted from the 5 meeting requirements, but they will still be required to complete the other 5 hours of conservation time to obtain a shellfish license.

5.2 Application Procedure: Any person may apply to the Town Clerk for licenses required by this ordinance on forms provided by the municipality. Notice of available licenses shall be published in a trade or industry publication, or in a newspaper, or combination of newspapers with general circulation which the Selectmen consider effective in reaching persons affected, not less than ten (10) days prior to the period of issuance and shall be posted in the Municipal Office until the period expires. A copy of the notice shall be provided to the Commissioner of Marine Resources.

A. 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. The applicant must provide proof of residency consistent with the standard of proof that is required to register to vote.

B. In addition to completing an application, an applicant for a junior commercial license shall also provide:

(a) Proof that the applicant has attained his or her 13th birthday but has not yet attained his or her 18th birth

(b) Proof of residency.
(c) The junior's parent or legal guardian must sign the application, in person at the town office.

C. Misrepresentation: Any person who gives false information on a license application will cause said application to become invalid and void. If a license is issued as a result of the false information, said license shall become invalid and void. Licenses that are voided may be reissued to another person at the current fee according to the priorities established in this section. Fees for voided licenses are nonrefundable.

D. Change of Residency: A person applying for or holding a commercial shellfish license under this ordinance shall notify the Town Clerk within ninety (90) days of residency change. The Shellfish Committee shall vote to void a resident license after a license holder has moved from Gouldsboro and is domiciled elsewhere for ninety days.

5.3 Use of Fees and Fines, Funding: Fees for the licenses 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 for each license which will be retained by the Clerk as payment for issuing the license. Fees and fines received for shellfish licensing shall be used by the Town for costs incurred in the shellfish management, conservation and enforcement of this ordinance.

5.4 License Allocation Procedures: License sales procedures shall be determined by the Shellfish Committee, approved by the Selectmen, and submitted to the Department of Marine Resources for their approval at least thirty (30) days prior to the date of issuance. Notice of the number of licenses to be issued and the procedure for application shall be defined annually by the Municipal License Allocation Request.

A. The Town Clerk shall issue commercial licenses to those residents and non-residents who have met the requirements of obtaining a commercial license. The Town Clerk shall issue licenses allocated starting July 1st or the next business day. Non-resident licenses will be issued at a rate of 10% of all resident licenses issued on a first-come first-serve basis or by lottery.

B. Applicants who have held a commercial license for a longer period of time will have a greater opportunity of obtaining a license compared to those who have held a commercial license for a lesser period of time. In addition, those who have accomplished the required conservation time for a given year will have a greater opportunity of obtaining a license compared to those who have not completed their time. Licenses will be allocated from a list of qualified applicants prepared by the Shellfish Committee. Applicants will be prioritized in the

following order and will only be eligible after completing the required conservation time.

i. Applicants who have held a commercial license for three (3) of the last three (3) years.
ii. Applicants who have held a commercial license for two (2) of the last three (3) years.
iii. Applicants who have held a commercial license for one (1) of the last three (3) years.
iv. Applicants who are applying for a commercial license for the first time in the last three (3) years.

5.5 Limitation of Diggers: The number of licenses issued may be limited and will be issued according to the Municipal License Allocation Request as approved by Marine Resources.

A. Limited License Sales: If it is determined that Limited Licenses are necessary the Town Clerk shall issue licenses to residents and non-residents as allocated from July 1st or the next business day and then for 90 days, after which licenses shall be sold without regard to residency on a first-come first-serve basis or lottery.

B. 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. 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 licenses issued. For each recreational license category, the Town Clerk shall issue one license to a resident and one to a nonresident; thereafter, one nonresident license will be issued for every ten additional resident licenses issued.

5.6 License Expiration Date: Each license issued under the authority of this ordinance expires at midnight on the 30th day of June of the next year following date of issue.

5.7 Reciprocal Harvesting Privileges: Not available.

5.8 Military Exemption Clause: Residents serving or completing full time active duty in the U.S. Armed Forces will be exempt from licensing requirements for up to thirty (30) days after separation from those services. The Selectmen may waive the conservation requirements on a case by case basis.

5.9 Fees Waived: Recreation and Commercial Shellfish license fees will be

waived for residents and non-residents sixty-five (65) years or older and twelve (12) years or younger.

A. This amendment would make a Resident Recreation Shellfish license for a person 65 years of age or older a Lifetime License.

B. This amendment would make a Non-resident Recreational Shellfish License for person 65 years of age or older a Lifetime License. The license holder must notify the Town each year of their intent to use the Shellfish license or the license will be invalid.

6.0 Violations, Suspension of Licenses, and Fines: Any person who violates this Ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 and/or 6681.

A. A licensee whose shellfish license has been suspended pursuant to this Ordinance may request return of their license only after the suspension period has expired. A suspended license is not to be returned until the fine is paid in accordance to the court's decree.

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 violation of this ordinance may result in a license suspension.

D. All suspensions of licenses shall be authorized by the Selectmen.

E. Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Committee upon the filing of a written request for hearing with the Town Clerk within thirty (30) days following the effective date of the suspension.

F. The licensee may appeal the decision of the Shellfish Committee before the Board of Selectmen by filing a written request of appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Committee.

G. Harvesting without a municipal license: Municipal Shellfish Digging License is required to harvest shellfish within the jurisdiction of this ordinance. 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.

H. Harvesting Clams in a Closed Area: Any shellfish licensee convicted of digging in an area closed for conservation shall have his/her license automatically suspended for thirty (30) days.

I. Harvesting Clams at Night: Any shellfish licensee convicted of night

digging shall have his/her license automatically suspended for thirty (30) days.

J. Any shellfish licensee having three (3) convictions for any other violations of this ordinance shall have his/her shellfish license automatically suspended for a period of thirty (30) days.

7. Conservation Time: All commercial license applicants will be required to complete ten (10) hours of conservation time for the purpose of executing shellfish conservation measures, including, but not limited to, reseeding and brushing projects, shellfish surveys five (5) hours attending conservation committee meetings, or ten (10) hours of conservation time with Shellfish Committee approval.

A. At 65 years of age an applicant may earn their entire ten hours of conservation time by attending Shellfish Committee Meetings. (This requirement is effective as of 1 July 2008.)

B. Applicants for Junior Commercial Licenses must complete five (5) hours of conservation time. The entire five (5) hours must be completed as work on the flats. (This requirement is effective as of 1 July 2008.)

Conservation time can be earned in three ways throughout the year:

1. by participating in Conservation work days scheduled by the Shellfish Conservation Committee.

2. by attending the Shellfish Conservation Committee meetings. Attendance will be counted for conservation time to the nearest half hour in fifteen (15) minute increments. The applicant must attend the entire meeting to earn the conservations hours. Up to one half of the total conservation hours required to purchase a commercial license can be earned by attending Shellfish Conservation Meetings.

3. by contacting the Shellfish Warden. With at least seven working days notice, an applicant can schedule to complete conservation hours under the supervision of the Shellfish Warden.

7. OPENING AND CLOSING OF FLATS:

The Municipal Officers, upon the approval of the Commissioner of 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 the 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. Any area within the Town of Gouldsboro which is closed by the Department of Marine Resources to the harvesting of shellfish shall be considered a town closure.

7A. All flats closed by The Department of Marine Resources for pollution will also be closed by the Town of Gouldsboro until further notice for conservation.

8. MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS:

It is unlawful for any person to possess soft shell clams within the Town of Gouldsboro, County of Hancock 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 shellstock.

B. Tolerance: Any person may possess soft shell clams that are less than two inches if they comprise less than 5% of any lot. The tolerance shall be determined by numerical count of not less than one (1) peck nor more than four (4) pecks, taken at random from various parts of the lot or by count of the entire lot if it contains less than one (1) peck.

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

9. VOLUME LIMITS:

The volume of clams harvested is subject to a limited take. The volume limit may vary from flat to flat. Three bushel for Stave Island Bar only.

10. NIGHT DIGGING:

Clams in the Town of Gouldsboro can be harvested 30 minutes before sunrise and 30 minutes after sunset all year long. The change would allow the harvest of clams 2 hours before sunrise and 2 hours after sunset from November 1 until March 1. This change would remain permanent but still allow the Board of Selectmen to change this amendment upon recommendation by the Shellfish Committee.

11. SUNDAY DIGGING:

Clams can't be harvested Commercially on Sunday, but clams can be harvested Recreationally on Sundays. The change would allow the harvest of clams on Sunday from November 1 until March 1. This would remain permanent but still allow the Board of Selectmen to change this amendment upon recommendation by the Shellfish Committee.

12. TAGGING REQUIRED:

The holder of a commercial shellfish license issued under section 6601 shall identify shellfish the license holder has taken by means of a harvester's tag. The tag must be consistent with the format required by the department under rules adopted under this section. Each container, hod or bag of shellstock must be tagged prior to landing the shellstock. The tag must accompany the harvested product while the product is in wholesale or retail commerce within the State.

13. PENALTY:

A person who violates any provision of this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (10), (10-A).

14. 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.

15. AMENDMENTS:

15.1 Initiation: A proposal for an amendment to this ordinance may be initiated by the following:

A. A written proposal submitted to the Shellfish Committee;
B. A recommendation of the Shellfish Committee; or
C. A recommendation of the Board of Selectmen.

15.2 Procedure:

A. Any proposal for an amendment shall be made to the Board of Selectmen in writing stating the specific changes requested. All such proposals shall be transmitted to the Shellfish Committee for their review and recommendations.

B. Within thirty (30) days of receiving a properly initiated amendment, the Board of Selectmen shall hold a public hearing on the proposal. Notice of the hearing shall be posted and advertised in a newspaper of general circulation within the community at least seven (7) days prior to the hearing. The notice shall contain the time, date, and place of the hearing and sufficient detail about the proposed changes as to give adequate notice of their content. If the proposed changes are extensive, a brief summary of the changes together with an indication that a full text is available at the Town Clerk's Office shall be adequate notice.

15.3 Amendment: This ordinance may be amended after proposed changes have been reviewed by the Department of Marine Resources by a majority vote of the Board of Selectmen and approved by the legislative body of the municipality.

15.4 State Law Changes: Any change to referenced State Laws in this Ordinance shall automatically update in the Ordinance upon enactment.

16. 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.

17. 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.

18. PERIOD OF ORDINANCE:

This ordinance shall remain in effect until amended or repealed by the town.

19. INTERTIDAL MUSSEL HARVESTING:

This section is enacted in accordance with 12 M.R.S.A. Section 6671 (12) and 13-188 Chapter 7 (7.70) A copy of the Intertidal Management Plan will be made available thru the Town Clerk or on the Department of Marine Resources website at:
http://www.maine.gov/dmr/erd/smd/townplans.htm

Yvonne P. Wilkinson
Attested
Yvonne P. Wilkinson
Clerk, Town of Gouldsboro

June 10, 2015
Date Adopted