

TOWN OF HARRINGTON
MUNICIPAL 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 Harrington, which will insure the protection and optimum utilization of shellfish resources within the town limits. These goals will be achieved by means which may include:
 - A. Licensing
 - B. Limiting the number of shellfish harvesters
 - C. Restricting the number 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 Harrington will be administered by the Shellfish Conservation Committee which will consist of seven (7) members to be appointed by the Selectman for terms of one (1) year. 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 purpose 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.
 - H. Designating recreational harvesting areas.
4. **Definitions:**
 - A. **Resident:** For the purposes of this ordinance, the term "resident" refers to a person who has been domiciled in the Town of Harrington for at least twelve (12) consecutive months directly prior to the time of his/her claim of such residence is made. The burden of proof will be that which is required to become a registered voter in this municipality.
 - B. **Non-resident:** The term "non-resident" means anyone not qualified as a resident under the language of 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 Harrington, Maine.

5. **Licensing:** A Municipal Shellfish Digging License is required to dig or take shellfish in this municipality. 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 the municipality as provided by this ordinance in their possession.

A. **Designation, Scope, and Qualifications:**

1. **Resident Commercial Shellfish License:** This license is available to residents of the Town of Harrington and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
2. **Non-resident Commercial Shellfish License:** This license is available on a lottery basis to non-residents and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
3. **Resident Recreational Shellfish License:** This license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one (1) peck of shellfish in any one day for consumption by him/herself and his/her family.
4. **Non-resident Recreational Shellfish License:** This license is available to any person that is not a resident nor real estate taxpayer of this municipality and entitles the holder to dig and take no more than one (1) peck of shellfish in any one day for consumption by him/herself and his/her family.
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 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 any other 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, as established by town meeting, must accompany, in full, the application for the respective license. The license fees are:

Resident Commercial: \$150
Non-Resident Commercial: \$300
Resident Recreational: \$15
Non-Resident Recreational: \$30

Conservation Reduction: Commercial license fees will be reduced for Those applicants that complete the optional conservation time as outlined in Section 5, Subsection J. The reduced license fees are:

Resident Commercial w/Conservation Reduction: \$60
Non-Resident Commercial w/Conservation Reduction: \$120

Fees received for shellfish licenses shall be used by the town for shellfish management, conservation, and enforcement.

- D. **Issuance of licenses:** Clam resources vary in density and size distribution from year to year and over the limited soft-shell clam producing area of the town. It is essential that the town carefully husband its shellfish resources.
1. Notice of the date on which licenses will be issued and the procedure for application shall be published in a trade paper or industry publication or in a newspaper or combination of newspapers with general circulation which the municipal officers consider effective in reaching persons affected and shall be posted in the municipal offices not less than ten (10) days prior to the period of issuance.
 2. The Town Clerk shall issue commercial licenses beginning May 15th or the first business day after May 15th should the 15th fall on a weekend. Commercial licenses will be issued to residents on a first come first served basis. The town clerk shall issue the equivalent of 10% of the number of resident commercial licenses to non-residents on a lottery basis.
 3. The Town Clerk shall issue recreational licenses beginning May 15th or the first business day after May 15th should the 15th fall on a weekend. Recreational licenses will be issued to residents on a first come first served basis. The Town Clerk shall issue the equivalent of 10% of the number resident recreational licenses to non-residents on a lottery basis.
- E. **License Expiration Date:** Each license issued under the authority of this ordinance shall be valid for a maximum of one (1) year, from June 1st through May 31st. All licenses will expire at midnight on the 31st day of May next following the date of issue.
- F. **Reciprocal Harvesting Privileges:** Not available.
- G. **Military Exemption Clause:** Resident 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.
- H. **Fees Waived:** Recreational Shellfish License fees will be waived for residents sixty-five (65) years or older and twelve (12) years or younger.
- I. **Suspension:** Any shellfish licensee having three (3) convictions for violation of this ordinance shall have his/her shellfish license automatically suspended for a period of thirty (30) days.
1. Any 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 the suspension. The licensee may appeal the decision of the Shellfish Conservation 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 Conservation Committee.

- J. **Conservation Time:** For the purpose of executing shellfish conservation measures, all commercial license applicants will have the option to perform ten (10) hours of labor supervised by the Shellfish Conservation Committee and, in turn, receive a reduction in their town license fee for the coming year's license. These measures may include, but are not limited to, reseeding and brushing projects, shellfish abundance surveys, and conservation committee meetings.

6. **Opening and Closing of Flats:** The Municipal Officers, upon the approval of the Commissioner of the Department of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and with the concurrence of the Department of Marine Resource 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 Harrington, which is closed by the Department of Marine Resources, shall be considered a town closure.

- A. **Recreational Harvesting Areas:** At the annual conservation meeting each year, the Shellfish Conservation Committee shall designate two Recreational Harvesting Areas, one each in the summer and winter flats. Each Recreational Harvesting Area will be clearly marked and maps showing the boundaries will be available in the town office. These are the only areas open to Recreational License holders for harvesting.

7. **Minimum Legal Size of Soft-shell Clams:** It is unlawful for any person to possess soft-shell clams in the Town of Harrington 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. **Process:** For the purpose of this section the word "process" means to dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft-shell clam shellstock.

- B. **Tolerance:** Any person may process soft-shell clams that are less than two (2) inches if they comprise less than 10% 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.

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

9. **Effective Date:** This ordinance has been approved by the Commissioner within twenty (20) days of its adoption.
10. **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.
11. **Period of Ordinance:** This ordinance shall remain in effect until it is repealed or amended.
12. **Night Digging:** Night digging is not permitted. There will be no digging or taking of soft-shell clams from the shores or flats of the Town of Harrington from one half (1/2) hour after sunset to one half (1/2) hour before sunrise.
 - A. **Artificial Light Sources:** Artificial light sources (headlights, flashlights, etc.) shall not be used for illumination when harvesting soft-shell clams from the shores or flats of the Town of Harrington.
13. **Sunday Digging:** There will be no Sunday digging from April 1 to November 1 each year.
14. **Tagging Required:** The holder of a commercial shellfish license issued under §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 of Marine Resources under rules adopted under this section. Each container, roller, hod or bag of shellstock must be tagged prior to landing. The tag must accompany the harvested product while the product is in wholesale or retail commerce within the State.
15. **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.

PROPOSED CHANGES TO TOWN OF HARRINGTON
MUNICIPAL SHELLFISH CONSERVATION ORDINANCE

Language to be added to Section 3: Shellfish Conservation Committee

H. Designating recreational harvesting areas.

Language to be changed in Section 5: Licensing, Subsection C

C. **Fees:** The fees for the licenses, as established by town meeting, must accompany, in full, the application for the respective license. The license fees are:

Resident Commercial: \$150

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Conservation Reduction: Commercial license fees will be reduced for those applicants that complete the optional conservation time as outlined in Section 5, Subsection J. The reduced license fees are:

Resident Commercial w/Conservation Reduction: \$60

Non-Resident Commercial w/Conservation Reduction: \$120

Fees received for shellfish licenses shall be used by the town for shellfish management, conservation, and enforcement.

Language to be changed in Section 5: Licensing, Subsection D

2. The Town Clerk shall issue commercial licenses beginning May 15th or the first business day after May 15th should the 15th fall on a weekend.
3. The Town Clerk shall issue recreational licenses beginning May 15th or the first business day after May 15th should the 15th fall on a weekend.

Language to be changed in Section 5: Licensing, Subsection E

- E. **License Expiration Date:** Each license issued under the authority of this ordinance shall be valid for a maximum of one (1) year, from June 1st through May 31st. All licenses will expire at midnight on the 31st day of May next following the date of issue.

Language to be changed in Section 5: Licensing, Subsection J

Conservation Time: For the purpose of executing shellfish conservation measures, all commercial license applicants will have the option to perform ten (10) hours of labor supervised by the Shellfish Conservation Committee and, in turn, receive a reduction in their town license fee for the coming year's license. These measures may include, but are not limited to, reseeding and brushing projects, shellfish abundance surveys, and conservation committee meetings.

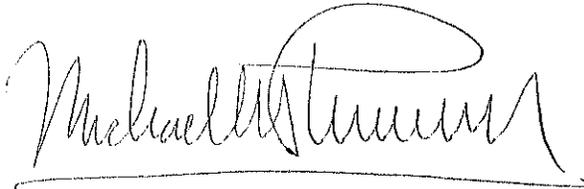
Language to be added to Section 6: Opening and Closing of Flats

- A. **Recreational Harvesting Areas:** At the annual conservation meeting each year, the Shellfish Conservation Committee shall designate two Recreational

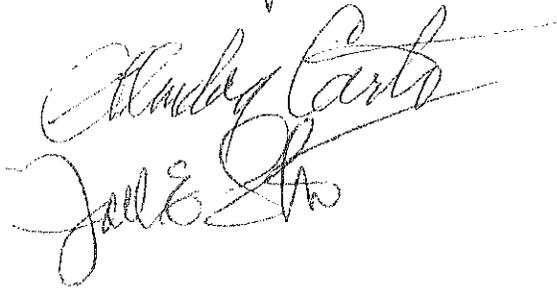
Harvesting Areas, one each in the summer and winter flats. Each Recreational Harvesting Area will be clearly marked and maps showing the boundaries will be available in the town office. These are the only areas open to Recreational License holders for harvesting.

Language to be changed in Section 12: Night Digging

12. **Night Digging:** Night digging is not permitted. There will be no digging or taking of soft-shell clams from the shores or flats of the Town of Harrington from one half (1/2) hour after sunset to one half (1/2) hour before sunrise.
- A. **Artificial Light Sources:** Artificial light sources (headlights, flashlights, etc.) shall not be used for illumination when harvesting soft-shell clams from the shores or flats of the Town of Harrington.



Chairman B of SM



March 11, 2010

A true attest copy
Karnie Cramer
Deputy Clerk
1/23/15