TOWN OF MACHIASPORT

PO BOX 267/ 8 UNITY SQUARE/ MACHIASPORT, ME 04655

Michael Murphy II *Burleigh Sprague* *Charles Ingalls*

April 29, 2015

Angel Ripley
Department of Marine Resources
PO Box 8
West Boothbay Harbor, ME 04575-0008

RE: Revised Shellfish Conservation Ordinance

Dear Ms. Ripley:

Enclosed please find the certified copy of the amended Shellfish Conservation Ordinance as approved at the Special Town Meeting held on Monday, April 27, 2015.

Should you have any questions, or if I can assist in any way, please feel free to call Monday – Friday, 8:00 – 4:00.

Sincerely,

Annemarie Davis

Annemarie Davis
Town Clerk
Town of Machiasport

Phone: (207) 255-4516
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Annemarie Davis – Town Clerk
Marlene Sprague – Deputy Clerk

email: msptclerk@machaisport.org

SHELLFISH CONSERVATION ORDINANCE

TOWN OF MACHIASPORT

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 Machiasport, which will ensure 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 areas where harvesting 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 Machiasport will be administered by the Shellfish Conservation Committee consisting of five (5) members to be appointed by the Selectmen for terms of One (1) year or more. Responsibilities of the Committee include:

    A. Establishing annually, in conjunction with the Department of Marine Resources, the number of shellfish harvesting licenses to be issued.

    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 amendments to it.

    D. Securing and maintaining records of shellfish harvesting 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 of harvesting areas to the Board of Selectmen 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. **Residents**: The term "resident" shall mean a person who has domiciled (been a legal resident) in Machiasport for at least the prior six (6) months and has been registered to vote in Machiasport for at least the prior six (6) months (this 6 month requirement shall be waived for the 2015-2016 license period) and has a current Maine drivers license or Maine State ID which shows a physical address in Machiasport.

B. **Domicile or Legal Residence**: The residence where you have your permanent home or principal establishment and to where, whenever you are absent, you intend to return; every person is compelled to have one and only one domicile at a time.

C. **Nonresident**: The word "nonresident" shall mean any persons not qualified as a resident under this ordinance.

D. **Shellfish, Clams and Inter tidal Shellfish resources**: When used in the context of this ordinance the words "shellfish," "clams," and "Inter tidal shellfish resources" all mean softshell clams, i.e. Mya arenaria.

E. **Municipality**: For the purpose of this ordinance refers of the Town of Machiasport, Maine.

F. **Certified Municipal Shellfish Conservation Warden**: The law enforcement officer appointed by the Shellfish Committee and approved by the Selectman to enforce this Ordinance.

5. Licensing:

Municipal Shellfish Harvesting License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality as provided by this ordinance, except those who meet the requirements for a free license. Those requirements are:

A. **Licenses**: Means "Town license." In order to secure a Town license, a person must be:

1. A resident as defined above in 4.A above.

2. Student: A student resident commercial license will be available at reduced cost to students who meet their schools requirements for being in good standings. (Ages 14-17 years of age). Under 14 years of age is free.

A student Non-Resident commercial license will be available by quota at a reduced cost to students who meet their schools requirements for being in good standing. (1 license for every 10 resident).

3. An over the age of sixty (60) Resident commercial license will be available at a reduced cost.

   An over the age of sixty (60) Non-Resident commercial license will be available at a reduced cost. (1 license for every 10 resident).

4. Committee members. Free provided they serve a full term.

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

1. **Resident Commercial Shellfish License**: The license is available to residents of the Town of Machiasport and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.

2. **Nonresident Commercial Shellfish Licenses**: 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. Any harvester claiming shellfish they have not harvested personally shall be in violation of this ordinance.

4. **Signatures**: The licensee must sign the license for it to be valid.

5. **Application Procedure**: Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality.

   a. The place of residence of an applicant as stated on any other license is not determinative of the applicant's true place of residence. The applicant shall be required to produce evidence of their residence before license is issued.

   b. A person applying for, or holding a license under this Ordinance, shall notify the Town Clerk within ten (10) days of an address change, regardless of whether the address change is also a change of residency.

c. Contents of the Applications: The application must be in the form of an affidavit and must contain the applicants name, current address, birth date, height, weight, signature, and whatever information the municipality may legally require.

d. Misrepresentation: It shall be a violation of Ordinance for any person to falsify or give false information in connection with a shellfish license application. In addition to any criminal penalties which may result from a violation of this Ordinance the shellfish license granted to any person who gives false information on a shellfish application shall become void.

6. **Issuance of License**:

a. A person holding a resident commercial shellfish license of any type shall be domiciled in the Town of Machiasport during the license period or shall surrender the license. If a person does not do so said license shall become void within seven (7) days of moving from Town.

b. The Town Clerk shall issue licenses only after they are certified by the Board of Selectmen.

c. Appeals must be written and turned into the Town Clerk within thirty (30) days of denial. The Board of Appeals shall be the ruling authority on any appeals.

7. **Fees**: The fees for the licenses must be paid in full upon issuance of the respective license.

a. Fee for licenses will be recommended by the Shellfish Committee prior to May 1 of each year and approved by the Selectmen.

C. **Limit of Harvesters**: Because the shellfish resources are limited and because a commercial or recreational harvester can be expected to harvest a certain volume of clams per year, the number of harvesters must be controlled. This will vary from year to year depending upon estimates of the resources, capabilities and management requirements consistent with good resource utilization. The following procedure will be followed to exercise control:

1. Prior to May 1, of the current year, the Town Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources, will establish the commercial and noncommercial licenses to be permitted following the requirements of M.R.S.A. Section 6671 Title 12, Chapter 7.

2. The Shellfish Conservation Committee will notify the Town Clerk in writing prior to June 1, of the current year, the number of licenses to be issued.

3. Notice of licenses to be issued and the procedure for application shall be published in trade or industry publication or in newspapers or combination of newspapers with circulation, that the municipal officers 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 offices until the period concluded.

4. The Town Clerk shall issue licenses to residents and nonresidents as allocated.

5. Licenses are nontransferable and non-refundable.

6. **Night-time Harvesting:** Harvesting shall be restricted to one-half hour before sunrise and one-half hour after sunset. Any person found guilty of harvesting clams during night-time shall be subject to a fine of not less than three hundred dollars ($300). Subsequent violations of this section shall see the fine increased in increments of two hundred dollars ($200) and not to exceed fifteen hundred dollars ($1500).

7. **Use of Artificial Lights:** No artificial lights, ie headlamps, flashlights, etc. may be used to harvest shellfish. Use of any artificial light to harvest shellfish will be a violation of this ordinance and subject to fine. Violations shall result in a three hundred dollar ($300) fine.

D. **License Expiration Date**: Each license issued under this ordinance shall expire at midnight on the 31st of May next, following the date of issue.

E. **Suspension**: Any shellfish licensee having three (3) convictions for a violation of this ordinance within a consecutive twelve (12) month time period shall have his\her shellfish license automatically suspended for a period of twelve (12) consecutive months.

Exception: anyone violating Section 5-B-3 shall have his\her license automatically suspended for the remainder of the current license year for the first violation. Other exceptions are outlined in the Aiding and Abetting and Stopping for Inspection sections of the Ordinance.

1. A licensee whose license has been suspended pursuant to this ordinance may re-apply for a license only after the suspension 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 filing a written request for such 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 for appeal within seven (7) days of the decision of the Shellfish Conservation Committee. (optional)

F. **Unpaid Fines:** All Municipal Ordinance fines issued on and following June 1, 2008 must be paid in full before a new town shellfish license will be issued. A receipt from the District Court Office must be filed with the town clerk for verification of payment in full for any fines accrued on or following June 1, 2008.

G. **Aiding and Abetting:** If a person holding a commercial license uses it to aid and abet the illegal harvest of clams their license shall be suspended for three (3) months and they shall receive a five hundred dollar ($500) fine upon conviction. Any second and subsequent convictions under this section of the Ordinance shall result in a twelve (12) month suspension and a one thousand dollar ($1000) fine upon conviction.

6. **Opening and Closing of Flats**: The Municipal officers, with approval of the Commissioners of Marine Resources, may open and close areas for shellfish harvesting. Upon recommendation of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources and other factors bearing on sound management practices indicate that an area should be opened or closed.

A. Current openings or closings:

1. OPENING AND CLOSINGS:

All closings by DMR are considered to be closed by the Town and the Shellfish Warden shall have the same powers as DMR Officers to police the flats.

2. **Penalties**: Any person found guilty of harvesting clams in a closed area shall be subject to a fine of not less than three hundred dollars ($300). Subsequent violations of this section shall see the fine increased in increments of two hundred dollars ($200) and not to exceed fifteen hundred dollars ($1500).

7. **Minimum Legal size of Soft Shell Clams**: It is unlawful for any person to possess soft shell clams within the Town or Township of Machiasport, Washington County, Maine, 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 shall mean 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 containers, constitutes a separate lot.

2. **Possess**: For the purpose of this section, "possess" shall mean dig, take, harvest, pull, ship, transport, hold, buy, and sell retail and wholesale soft shell clam shell stock.

B. **Tolerance**:

1. Any person may possess soft shell clams that are less than two inches if they comprise less than ten percent (10%) of any lot. The tolerance shall be determined by numerical 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.

D. **Penalty**: Any person who violates this ordinance shall be punished as provided as provided by 12 M.R.S.A., Section 6671.

8. **Littering**: A person shall not throw, drop, deposit, discard, dump or otherwise dispose of any litter in any manner or amount. Any person doing so shall be in violation of the municipal ordinance and subject to fines. First offense is a fine of not less than $300 with subsequent violations of littering to increase in increments of $200 and not to exceed $1500.

9. **Stopping for Inspection**: A person shall produce their license on demand of any Certified Municipal Shellfish Conservation Warden in uniform and having probable cause to take such action. It is unlawful for the operator of a motor vehicle, boat, vessel or conveyance of any kind, or any person:

A. To deliberately fail or refuse to stop immediately upon request or signal of any Certified Municipal Shellfish Conservation Warden.

B. After the person has stopped, to fail to remain stopped until the said Warden has reached his immediate vicinity and makes known to the operator the reason for his request or signal.

C. To fail or refuse to stand by immediately for inspection on request of said Warden.

D. To throw or dump into any coastal waters or flats after having been requested or signaled to stop by a Certified Municipal Shellfish Conservation Warden any shellfish, or any pail, bag, hod or container before said Warden has inspected the same.

E. To attempt to elude, disobey, or assault any Certified Municipal Shellfish Conservation Warden.

Penalties: The first violation of this section of this Ordinance shall result in a three (3) month suspension of the license and a three hundred dollar ($300) fine. The second and subsequent violations of this section shall result in a twelve (12) month suspension of the license and a one thousand ($1000) dollar fine.

10. **Tagging:** The holder of a commercial shellfish license shall identify shellstock the license holder has taken by means of a harvester tag. The tag shall be in accordance with Maine Department of Marine Resources (DMR) rules. Failure to tag shellfish can result in a fine not to be less than one hundred dollars ($100).

11. **Effective Date**: This ordinance, which has been approved by the Commissioners 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.

A. **Period of Ordinance**: This ordinance shall remain in effect from the effective date.

B. **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.

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

Michael Murphy II

Samuel Sprague

Charles Ingalls

Machiasport Selectmen

Attested Copy:

Town Clerk

4/27/15
Date