

SHELLFISH CONSERVATION ORDINANCE

Town of Bremen

1. Authority

This Ordinance is enacted in accordance with 1 M.R.S.A. Section 6671.

2. Purpose

To establish a shellfish conservation program for the Town 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 area where harvesting is permitted.
- d. Limiting the minimum size and/or maximum of shellfish taken.
- e. Limiting the amount of shellfish taken daily by a harvester.
- f. Recommending a conservation program.

3. Definitions

- a. Board – “Board” means the Town Board of Selectmen.
- b. Commissioner – “Commissioner” means the Commissioner of the Department of Marine Resources.
- c. Committee – “Committee” means the Town Shellfish Conservation Committee.
- d. Department – “Department” means the Department of Marine Resources.
- e. Junior Nonresident – “Junior Nonresident” means a nonresident between 10 and 18 years of age.
- f. Junior Resident – “Junior Resident” means a resident between 10 and 18 years of age.

- g. Lot – “Lot” 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.
- h. Nonresident – “Nonresident” means anyone not qualified as a resident.
- i. Possess – “Possess” means dig, take, harvest, ship, transport, hold buy and sell retail and wholesale shellfish.
- j. Resident – “Resident” means a person who has physically resided at a fixed, permanent and principal home in this Town for at least 180 days immediately prior to the time the claim of such residence is made.
- k. Shellfish – “Shellfish,” “clams,” and “intertidal shellfish resources” mean soft shell clams (*Mya arenaria*).
- l. Shellfish Conservation Work – “Shellfish Conservation Work” shall be broadly defined and shall include, but is not limited to, such activities as reseeded, shore cleanup, pollution abatement, predator eradication, surveying and information gathering, testing and sampling and any other activity that the Committee deems as fostering the general purposes of this Ordinance.
- m. Town – “Town” means Bremen, Maine.
- n. Warden – “Warden” means the Town Municipal Shellfish Warden.

4. Shellfish Conservation Committee

The Committee shall consist of five (5) members to be appointed by the Board for terms of three years, except the initial Board appointments which shall be for 1, 2, or 3 years. The Board shall appoint a person to fill a vacancy for the unexpired term if a vacancy occurs.

- a. Organization
Annually, the Committee shall choose a chairman and secretary.
- b. Absences
Any Committee member who has more than three (3) unexcused absences from Committee meetings in a year may be removed and replaced with a new member by the Board.

c. Quorum

The Committee shall only vote if there is a quorum present and voting. A quorum requires three (3) members.

d. Responsibilities

The Committee's responsibilities shall include:

- (1) Submitting annually, in consultation with the Department, to the Board proposals for the number and fees for shellfish harvest licenses to be issued;
- (2) Reviewing annually the status of the resource using the results of clam flat, harvester or dealer surveys and other sources of information and preparing in consultation with and subject to the approval of the Department, a plan for implementing conservation measures;
- (3) Submitting to the Board proposals for the expenditures of funds for the purpose of shellfish conservation;
- (4) Reviewing this Ordinance and making recommendations for amendments;
- (5) Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department;
- (6) Recommending conservation closures and openings to the Board in consultation with the area biologists of the Department;
- (7) Submitting an annual report to the Town and the Department covering the above topics and all other Committee activities;
- (8) Working with the officials of the Town and State departments and agencies to improve water quality which will result in more shellfish-producing areas to be opened for harvesting;
- (9) Recommending and implementing predator control projects; and
- (10) Recommending and implementing a Shellfish Conservation Program.

- (11) Setting a lottery time and date and a lottery application deadline, and any other rules necessary to hold a lottery of unissued licenses.

5. Licensing

A Municipal Shellfish Harvesting License is required for anyone ten (10) years or older 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 harvester must also have a valid State Commercial Shellfish license issued by the Department prior to harvesting shellfish for commercial purposes. It shall be unlawful for a harvester who holds a State Commercial Shellfish License or whose right to harvest shellfish has been suspended by the State to obtain or hold a Town Recreational License.

a. Designation, Scope and Qualifications

(1) Resident Commercial Shellfish License:

The license is available to residents of the Town and entitles the holder to dig and take any amount of shellfish from the shores and flats of this Town.

(2) Nonresident Commercial Shellfish License:

The license is available to nonresidents of this Town and entitles the holder to dig and take any amount of shellfish from the shores and flats of this Town.

(3) Junior Resident Commercial Shellfish License:

The license is available to junior residents of the Town and entitles the holder to dig and take any amount of shellfish from the shores and flats of this Town and reciprocating municipalities. Junior licenses will be issued yearly to any junior (10-18) enrolled in school. A junior license holder will be entered into the appropriate class at age 19.

(4) Junior Nonresident Commercial Shellfish License:

The license is available to junior nonresidents and entitles the holder to dig and take any amount of shellfish from the shores and flats of this Town and reciprocating municipalities. Junior licenses will be issued yearly to any

junior (10-18) enrolled in school. A junior license holder will be entered into the appropriate class at age 19.

(5) Resident Recreational Shellfish License:

The license is available to residents and real estate taxpayers of this Town who do not obtain or hold a valid State Commercial Shellfish License and entitles the holder to dig and take no more than one peck of shellfish from the shores and flats of this Town, in any one day for the use of licensee and licensee's immediate family.

(6) Nonresident Recreational Shellfish License:

The license is available to any person not a resident of this Town who does not obtain or hold a valid State Commercial Shellfish License and entitles the holder to dig and take not more than one peck of shellfish from the shores and flats of this Town, in any one day for the use of licensee and licensee's immediate family.

b. License Must be Signed

The licensee must sign the license to make it valid. The license must be in the licensee's possession when engaged in harvesting. By signing the license, the harvester acknowledges that he/she must submit to inspection by the Warden.

c. Application Process

Any person may apply to the Town Clerk for the license required by this Ordinance on forms provided by the Town. 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 the newspaper or combination of newspapers with general circulation, which the Board considers effective in reaching persons affected, not less than 10 days prior to the initial sale date and shall be posted in the municipal offices. A copy of the notice shall be provided to the Commissioner.

(1) Contents of Application:

The application must be in the form of an affidavit and must contain the applicant's name, current residential address, birth date, height, weight, and signature.

(2) Misrepresentation:

Any person who gives false information on a license application shall cause that license application to become invalid and void. If a license is issued as a result of false information, that license shall become invalid and void.

(3) Evidence:

Proof of identity and residency may be required to obtain a license.

(4) Receiving:

New applicants for a shellfish license must obtain the shellfish license in person. Previous year license holders may delegate an individual to purchase their license if they are unable to do so on the issuing dates. A written authorization must accompany the delegated individual. An application and the license must be signed in person by the license holder before the license becomes valid.

(5) Transfers:

Shellfish licenses cannot be transferred or resold.

d. Fees

(1) Board Action:

The Board shall establish shellfish license fees, conservation program participation fee reductions and the hours of activity for the reductions, under such terms and conditions as they deem advisable, after notice and public hearing. Before setting fees, the Board will consider the recommendation of the Committee.

(2) Use:

Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement.

(3) Payment:

Fees must be paid in full when a license is issued.

(4) Notice:

The fees for the licenses are as stated on the reverse side of the application for the respective license.

6. Conservation Time

A current commercial shellfish license holder may volunteer to perform shellfish conservation work in exchange for a reduction in the license fee. The fee reduction and qualifying hours shall be as set by the Board.

Work performed must be approved by the Committee.

7. Annual License Allocations

Clam resources vary in density and size distribution from year to year and over the limited soft-shell clam producing areas of the Town. It is essential that the Town carefully manage its shellfish resources. The Town, in consultation with the Department area biologist, shall determine whether limiting commercial or recreational shellfish licenses, harvest amounts or hours of harvesting are appropriate shellfish management options for the following year.

a. Annual Report

Annually, the Committee shall report its findings and recommendations for allocating the number of commercial and recreational licenses, or limits on harvest amounts or hours of harvesting to apply in the following license year to the Commissioner for concurrence.

b. Notification

After receiving approval of the license allocations or limits on harvest amounts or hours of harvesting from the Commissioner and at least thirty (30) days prior to the date for issuing the first licenses, the Town Clerk shall notify the Committee in writing of the number and allocation of shellfish licenses to be issued, or limits on harvest amounts or hours of harvesting.

c. Publication

The Town Clerk shall prepare a list of the persons eligible for renewal licenses. The public notification of license availability shall include a statement that the list is posted at the Town Office.

d. Inadequate Number

If the number of applicants exceeds the available number of licenses in that class, preference will be given to those individuals who have held a Town Commercial Shellfish License for the longest consecutive period of time.

e. Nonresident Allocation

A number equivalent to no less than ten percent of the total number of Resident Commercial Shellfish Licenses shall be issued to nonresident commercial applicants.

f. Issue Date

Starting on July 1st or the next business day the Town Clerk shall issue renewal licenses. The renewal licenses must be purchased within twelve (12) Town Office business days of first issuance. If licenses in a class remain unpurchased, the Town Clerk shall issue those remaining licenses by lottery.

g. Unissued Licenses

If license remains unpurchased after thirty (30) days from initial issuance, it shall be made available to persons who qualify for that class of license by lottery, at the approved fee. If a license still remains unpurchased after ninety (90) days from initial issuance, it shall be made available to any person by lottery, at the approved fee for that license class. Applications for Shellfish Lottery shall be accepted up to the end of business the day before the lottery.

h. Recreational Licenses

The Town Clerk or the Town Clerk's designee shall begin to issue resident and nonresident Recreational Shellfish Licenses as allocated, starting on July 1st or the next business day.

8. Open License Sales

If the Board determines, in consultation with the Committee, that limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year:

The Town Clerk shall issue licenses as allocated. On the first day of license sales, the total number of Nonresident Commercial Shellfish Licenses shall be issued in accordance with Department Regulations, Chapter 7.4 Section 1. Thereafter, nonresident licenses will be issued in accordance with the 10% rule as described in 12 M.R.S.A. § 6671(3-E) and Department Regulations, Chapter 7.4 Section 2, Table 1.

9. License Expiration Date

Each license issued under authority of this Ordinance shall expire at midnight on the thirty-first day of July of the following year.

10. Violations, Suspensions of Licenses, and Fines

It is unlawful for any person to dig or take shellfish from the shores and flats of this Town without having a current license issued by this Town as provided by this Ordinance.

Additionally, a Commercial Shellfish Harvester must also have a valid State Commercial Shellfish License issued by the Department prior to harvesting shellfish for commercial purposes.

It shall be unlawful for a harvester who holds a State Commercial Shellfish License or whose right to harvest shellfish has been suspended by the State to obtain or hold a Town Recreational License.

a. Punishment

Any person who violates this Ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 and/or 6681.

b. Suspension

Any shellfish licensee having two or more convictions for a violation of this Ordinance or any other municipal ordinance shall have his shellfish license automatically suspended for a period of thirty (30) days.

c. Effective Date

The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the licensee.

d. Appeal

Any licensee whose shellfish license has automatically been suspended pursuant to this Ordinance shall be entitled to a hearing before the 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 Committee to the Board of Appeals by filing a written Request for Appeal with the Town Clerk within seven (7) days of the decision of the Committee. Thereafter, the licensee may appeal to State Courts as provided by law or rule.

e. State Suspension

Any person who has had their State Commercial Shellfish License or their right to obtain a license suspended by the Department for any reason shall have their Town Shellfish License automatically suspended until reinstated by the Department.

f. Violation

It shall be unlawful to engage in the activity of harvesting shellfish while the right to do so is under suspension. If an individual is caught harvesting shellfish while under suspension, he/she will be charged as if he/she is harvesting shellfish without a Town license.

g. Assistance Prohibited

A Commercial Shellfish License holder may not be accompanied by a recreational harvester with the intent of assisting in the harvesting and taking of shellfish.

11. Opening and Closing of Flats

The Board, 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 Board may call a public hearing and shall send a copy of the notice to the Department of Marine Resources. The decision of the Board made after the hearing shall be based on findings of fact. Any area within the Town which is closed by the Department of Marine Resources to the harvesting of shellfish shall be considered a Town closure. The municipality will provide notification to the public of conservation closings/openings in accordance with DMR Regulations

Chapter 7.50(1)(c). This section requires a 5-day notice of openings and closings.

a. Hearing

The decision of the Board made after the hearing shall be based on findings of fact.

b. Notice

The Town will provide notification to the public of conservation closures/openings in accordance with Department Regulations, Chapter 7.50(1)(c). This section requires a 5-day notice of openings and closings.

c. Violation

It shall be unlawful for any person to harvest, take or possess shellfish from any closed area in the Town. This violation is punishable under 12 M.R.S.A. Section 6671.

12. Minimum Legal Size of Soft Shell Clams

It is unlawful for any person to possess soft shell clams within the Town which are less than two (2) inches in the longest diameter except as provided by Subsection A of this section.

a. Tolerance

Any person may possess 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 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.

b. Violation

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

13. Penalty

A person who violates this Ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (10), (10A).

14. Effective Date

This Ordinance, after having been approved by the Commissioner, shall become effective after its adoption by the Town provided a certified copy of the Ordinance is filed with the Commissioner within twenty (20) days of adoption.

15. Separability

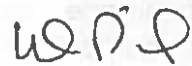
If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

16. Repeal

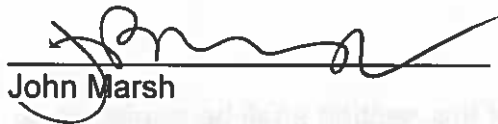
Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions of any other Town ordinance, which is inconsistent with this Ordinance, is hereby repealed.

Approved by Town Meeting of August 17, 2017.

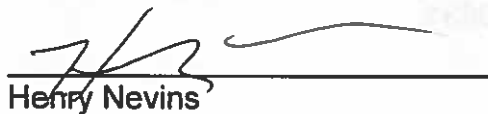
Certification of Municipal Officers



Wendy Pieh, Chairman



John Marsh



Henry Nevins

A true copy.

Attest:

Cynthia A. Hasty
Town Clerk of Bremen
Cynthia A. Hasty

