

MARINE RESOURCE CONSERVATION ORDINANCE

FOR THE

TOWN OF WEST BATH, MAINE

REVISED:

5/31/2016

DATE

EFFECTIVE:

5/31/2016

DATE

CERTIFIED:

Brandi Lohr

SIGNATURE

CERTIFIED BY:

Brandi Lohr

PRINT NAME

Town Clerk

TITLE

AFFIX SEAL

TOWN OF WEST BATH

W



219 Fosters Point Road
West Bath, ME 04530

MARINE RESOURCE CONSERVATION ORDINANCE

As Amended Through the Annual Town Meeting May 31, 2016

(Revised text is underlined)

Section 1. AUTHORITY: This Ordinance is enacted in accordance with 12 M.R.S.A. Section 6671, and repeals and replaces in its entirety "SHELLFISH CONSERVATION ORDINANCE, TOWN OF WEST BATH."

Section 2. PREAMBLE: It is determined that:

- The clam flats of the Town are a valuable shellfish resource which is important to the local economy.
- These flats are not an inexhaustible resource, and, therefore, they must be prudently managed.
- As part of the management process, it is deemed necessary to restrict the number of shellfish licenses, to restrict the size and quantity of shellfish which may be harvested, and to take other measures as outlined in this Ordinance.

Section 3. PURPOSE: To provide for and support a shellfish conservation program for the Town of West Bath which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- Licensing.
- Limiting the number of shellfish harvesters.
- Restricting the time and area where shellfish harvesting is permitted.
- Limiting the minimum size of clams taken.
- Limiting the amount of clams taken daily.
- Establish management plan(s) in West Bath for the conservation of shellfish in a manner consistent with the production of a reasonable yield to shellfish harvesters.

Section 4. WEST BATH MARINE RESOURCE BOARD: The Shellfish Conservation Program for the Town of West Bath will be administered by the West Bath Marine Resource

Board consisting of members appointed by the Selectmen. A member of the Marine Resource Board serves at the request of the Selectmen.

- A. Establishment and Appointment: There is hereby established the West Bath Marine Resource Board. The Board shall consist of an appropriate number of members as determined by the Selectmen. The members shall be appointed by the Selectmen and shall serve at the pleasure of the Selectmen.
- B. Board Responsibilities:
- (1) Administer the West Bath Marine Resource Conservation Ordinance and the shellfish conservation program.
 - (2) Establishing, in conjunction with the Department of Marine Resources, the number of shellfish harvesting licenses to be issued.
 - (3) Surveying each clam producing area periodically to establish size distribution and density and annually estimating the status of the Town's shellfish resources.
 - (4) Submitting to the Board of Selectmen proposals for the expenditure of funds for the purpose of shellfish conservation.
 - (5) Keeping this Ordinance under review and making recommendation for its amendment.
 - (6) Securing and maintaining records of shellfish harvested from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.
 - (7) Recommending conservation closures and openings to the Board of Selectmen in conjunction with the area biologists of the Department of Marine Resources.
 - (8) Submitting an annual report to the Town and the Department of Marine Resources covering the above topics and all other committee activities.
 - (9) Identifying conservation work, which may include water testing by certified water testers, which will qualify an applicant for "Renewal" or "New License" status under section 7. The Town Shellfish Warden and/or The West Bath Marine Resource Board members shall record the names and hours worked by individuals on these projects and submit them to the West Bath Marine Resource Board monthly.
 - (10) Maintain a water quality testing program on the New Meadows River flats so as to enable harvesting. Water testing by a certified water tester may qualify for conservation work under Paragraph (9) above.

- C. Removal: The membership of any member may be terminated at any time by majority vote of the Board of Selectmen with just cause and due process. In addition, if any member of the Marine Resources Board misses three consecutive scheduled meetings of the Board without the approval of the Selectmen, his/her position may be considered vacant and the Board of Selectmen shall appoint a replacement. At least a two week notice must be given for a meeting to be considered a "scheduled meeting" for the purpose of this section.

Section 5. DEFINITIONS:

- A. Resident (Commercial Licensee) – a person who has been domiciled in the Town of West Bath for a period of at least one (1) year prior to the time of submission of application for a commercial shellfish harvesting license.
- B. Resident (Recreational Licensee) – a person who is presently domiciled within the Town of West Bath as a taxpayer or as a renter of a home, apartment, cottage or camping space for at least one (1) year prior to application.
- C. Non-resident – anyone not qualified as a resident under this Ordinance.
- D. Conservation Work – work which is approved by the Marine Resource Board, such as reseeded, which will qualify an applicant for "Renewal" or "New License" status.
- E. Shellfish or Clams – when used in the context of this Ordinance means:
Soft Shell Clams (*Mya Arenaria*)
Quahog (*Mercenaria Mercenaria*)
Razor Clam (*Ensis Directus*)
Eastern Oyster (*Crassostrea Virginica*)
European Oyster (*Ostrea Edulis*)
Surf Clam (*Spisula Solidissima*)
- F. Municipality – refers to the Town of West Bath.
- G. Clam flats – means the shore area between high and extreme low water marks.
- H. Harvest – means to dig or take by any means.
- I. Take – to remove or attempt to remove a marine organism from its natural habitat.
- J. Possession – to have in one's custody or control, either personally or by another person who is under one's control.

- K. Possess – is to dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale.
- L. Student – an individual actively enrolled in grades 7 through 12 as of the date of application and who continues to be actively enrolled to maintain student status. Student status shall terminate upon graduation or leaving school.

Section 6. LICENSING:

- A. License Required: A West Bath shellfish harvesting license is required for any person to harvest or take shellfish in any area of this municipality. A commercial harvester must also have a valid State of Maine commercial shellfish license issued by the Department of Marine Resources before harvesting or taking shellfish in West Bath.
- B. Categories of Licenses:
 - (1) Resident, Commercial Shellfish Harvesting License – License available to a resident, commercial harvester entitling the licensee to harvest or take shellfish from the municipality when and where it is lawful to do so.
 - (2) Non-resident, Commercial Shellfish Harvesting License – License available to a non-resident, commercial harvester entitling the licensee to harvest or take shellfish from the municipality when and where it is lawful to do so.
 - (3) Recreational Shellfish Harvesting License – License available to any resident or non-resident for the purpose of harvesting shellfish solely for non-commercial purposes. Pursuant to 12 M.R.S.A. §6671(3-A)(G) at least 10% of these licenses shall be made available to non-residents.
 - (4) Restrictions on Recreational Licenses – Recreational licenses issued by the Town of West Bath are subject to the following restrictions:
 - (1) The residential license is valid only during the period the holder is actually in residence in the Town of West Bath.
 - (2) The license entitles the holder to harvest and take no more than one (1) peck of shellfish in any one (1) day.
 - (3) Shellfish harvested by the holder of a recreational license is for personal use and shall not be sold.
 - (4) Individuals holding commercial licenses shall not be entitled to recreational licenses.
 - (5) Resident Student Shellfish Harvesting License – License available to a resident student to enable the student to harvest or take shellfish from the municipality when and where it is lawful to do so.

- (6) Non-resident Student Shellfish Harvesting License – License available to a non-resident student to enable the student to harvest or take shellfish from the municipality when and where it is lawful to do so.

C. Limitation on Shellfish Harvesting Licenses: Because the shellfish resources are limited and because a harvester can be expected to harvest a certain volume of clams per year, the number of harvesters must be controlled. This number may vary from year to year, depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The West Bath Marine Resource Board, with the approval of the Commissioner of Marine Resources, at least thirty (30) days prior to the first date of license issuance, will establish the number of commercial licenses to be permitted for that license year. A number of licenses not less than ten percent (10%) of the total number of commercial licenses provided for residents shall be reserved and provided for non-residents. The total number of resident and non-resident commercial licenses, once determined, shall be made known to the Town Clerk in order to facilitate issuance of licenses.

D. Licensure Requirements:

- (1) Commercial Renewal License – In order for an applicant to be eligible for a commercial renewal license, the applicant must:
- (a) Have no outstanding fines in violation of this Ordinance.
 - (b) Have submitted a completed application during the month of February.
 - (c) Have been licensed for the previous year.
 - (d) Having completed a minimum of twelve (12) hours of conservation work between March 1st of the previous year and the last day of February as determined and directed by the West Bath Marine Resource Board. At least five (5) of the twelve (12) hours must be contributed to enhancement and propagation efforts. If these requirements are not met, a new license will not be issued the following year and will no longer be available to the applicant.
 - (e) Have no more than two (2) convictions for violation of this Ordinance during the preceding licensure year.
- (2) Commercial New License – Where commercial licenses are available within the current year's quota, then the applicant must:
- (a) Have no outstanding fines in violation of this Ordinance.
 - (b) Have submitted a completed application during the month of February.

- (c) Have no more than two (2) previous convictions for violations of this Ordinance during the preceding year.
- (3) Student License – Student licenses shall meet the requirements and issuance procedures (Sec.7) of the renewal license except that:
 - 1. The conservation time for students 17 years and older shall be a minimum of six (6) hours
 - 2. The applicants must submit a completed application during the month of April
 - 3. The student license shall be available on normal municipal business days to qualified applicants for the period beginning May 16th and ending May 31st.
- (4) Senior Citizen License – Senior Citizen Licenses will be issued to Commercial License holders 65 years of age and older. The number of licenses available are determined each year by the Marine Resources Committee and the Board of Selectman. Senior Citizen Licenses shall meet the requirements and issuance procedures of Section seven (7) of the renewal license except that:
 - 1. The conservation time shall be a minimum of six (6) hours
 - 2. The applicants must submit a completed application during the month of April
 - 3. The senior citizen license shall be available on normal municipal business days to qualified applicants for the period beginning May 16th and ending May 31st.

E. Application procedure:

- (1) Notice - Notice of the number of licenses 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 which the municipal officers consider effective in reaching persons affected, once the determination of the number of licenses has been provided to the Administrative Assistance, but not less than ten (10) days prior to the period of issuance of the licenses. In addition, the number and procedure shall be posted in the municipal offices until the conclusion of the issuance period.
- (2) Application –
 - (a) Submission Schedule – All commercial applications must be submitted during the month of February and prior to the close of business on the last scheduled business day at the Selectmen's

Office. All student applications must be submitted during the month of April and prior to the close of business on the last scheduled business day at the Selectmen's Office. Any applications received after this date will be considered only as licenses become available because of surrender or other reasons. Recreational license applications may be submitted at any time.

- (b) Contents – The application must be in the form of an Affidavit and must contain the applicants name, category of license sought, current address and duration there, birth date, height, weight, signature, and whatever other information the Town may require. The application shall be on a form provided by the Town and shall be made available at the Town Office beginning on February 1st, or the first business day after February 1st, of each year.

- (c) Misrepresentation – If upon complaint or otherwise, the Town Clerk becomes aware of circumstances which suggest a licensee has given false information on a license application, the Selectmen shall be notified and they shall request the Shellfish Warden or his designee to investigate those circumstances and any other circumstances related to the license application.

If the results of the investigation continue to suggest a licensee has given false information on a license application, the Selectmen shall give the licensee a minimum of seven (7) days notice of a hearing to determine whether or not the licensee has given false information on the license application. The Shellfish Warden shall present the evidence suggesting that false information has been given. The licensee shall have the right to present evidence to show that false information has not been given. If, after the hearing, the Selectmen determine that false information has been given, which materially affects the license, the Selectmen shall give the licensee written Notice of Revocation of the license. Any licensee aggrieved by the decision of the Selectmen may appeal to Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

- F. License Fees: The fees for licenses shall be determined by a concurring majority vote of both the Marine Resource Board and the Board of Selectmen and will be paid to the Treasurer in full upon issuance of the license. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation, enforcement, and other shellfish related matters. All license fees shall be paid on or before June 30th of each year. No license shall be issued until full payment is made. If full payment is not received by June 30th of that same year, the license will be considered a non-renewal and will become available as a new license.

- G. **Licensure Period Expiration:** Each license shall run from April 1st or the date of issue if after April 1st through March 31st of the following year at midnight; as of midnight, March 31st each license shall expire; excepting student commercial licenses which licenses shall run for one (1) year beginning on June 1st of that year and running through May 31st of the following year at midnight; as of midnight, May 31st each license shall expire.

Section 7. ISSUANCE OF LICENSES:

- A. **Commercial Renewal Licenses:** This commercial category of license shall be available on normal municipal business days to qualified applicants **beginning March 16th**. In the event that the number of qualifying applications exceeds the number of licenses available licenses shall be awarded according to seniority in terms of the number of years that each applicant has held a valid West Bath Commercial Shellfish Harvesting License over the last five (5) years. This seniority claim must be verifiable. Verification will be determined by reference to Town records of licenses awarded in previous years. The applicant who has held a West Bath Commercial Shellfish License the greatest number of years shall be awarded the first license, the second longest West Bath Commercial Shellfish License holder shall be awarded the second, and so on until all licenses in this category are have been sold to those applicants fulfilling the above qualifications. Years where a student held a student license shall not qualify as prior years for the purpose of awarding commercial shellfish licenses. If there are non-residents who purchased any unsold resident licenses the previous year(s), they shall not be eligible to purchase renewal licenses until residents have had an opportunity to purchase them in accordance with the provisions of this Ordinance. In the event there is a seniority tie for the last license(s) to be awarded, the remaining license(s) shall be awarded pursuant to the procedure set forth in Section 7(D) of this Ordinance. Any license not issued by the end of business on June 30th or the last business day in June of each year shall be considered a new license.
- B. **Commercial New Licenses:** If any commercial licenses are still available under this year's quota, this category shall be available to residents and non-residents on normal business days to qualified applicants for a period beginning April 1st and ending June 30th. Priority, however, will be given to a West Bath resident if he has met the minimum requirements, unless the license is a license required to be reserved as a non-resident commercial license. In the event that the number of qualifying applications exceeds the number of available licenses, they shall be awarded according to the priority list below. Conservation hours are counted between the preceding March 1st to the last day of the following February. In the event of a tie in any of the following categories the issuance of the license shall be determined by lottery as per Section 7(D) of this Ordinance.

Consideration #1 – Twelve hours of Conservation Time and held a license for Five of the last Five years.

Consideration #2 – Twelve hours of Conservation Time and held a license for Four of the last Five years.

Consideration #3 – Twelve hours of Conservation Time and held a license for Three of the last Five years.

Consideration #4 – Twelve hours of Conservation Time and held a license for Two of the last Five years.

Consideration #5 – Twelve hours of Conservation Time and held a license for One of the last Five years.

Consideration #6 – Twelve hours of Conservation Time and has not held a license, but has met the conservation hour time requirement and that is kept on the books until such time that the person is offered a license.

Consideration #7 – Less than Twelve hours of Conservation Time (issued to the applicant with the most hours).

- C. Un-issued Commercial Licenses: If any licenses still remain un-issued, this category is available on the first municipal business day in July for resident and non-resident members of the general public. In the event that the number of applications exceeds the number of available licenses, licenses shall be awarded on a first come first issued basis.
- D. Lottery Procedures: If, in any of the Renewal or New Commercial categories of licenses described in Paragraph 7(A) and (B), the number of qualifying applications exceeds the number of available licenses on issuance dates, and the provisions of those sections do not determine who shall be awarded the licenses, licenses in those categories shall be issued according to the following procedure:
- (1) The Town Clerk shall designate an assistant, who may be any appointed municipal official or municipal employee who is disinterested in the outcome of the procedure. "Disinterested" means not related by blood, marriage or adoption to any of the applicants and not having a direct or indirect pecuniary interest in the outcome of the procedure. No elected municipal official and no member of the Marine Resource Board shall serve as the assistant in carrying out this procedure.
 - (2) The Town Clerk shall prepare a list of the names of the qualifying applicants. The list need not be in any particular order. Next to each name on the list, the Town Clerk shall enter a unique three digit number, selected at random, and shall write each such number on an index card. All the index cards shall be of uniform size, color, texture, and thickness.
 - (3) The Town Clerk's assistant shall then place all the numbered index cards in a box or other container capable of being closed and sufficiently large that the index cards can be mixed by shaking the container.

- (4) The Town Clerk's assistant shall shake the container in order to mix the contents, and shall then place or hold the container at a location above the Town Clerk's eye level, so that the Town Clerk can reach into the container and withdraw cards without seeing the numbers on the cards.
- (5) The Town Clerk shall withdraw the cards one-by-one, reading each number drawn out loud. The Town Clerk's assistant shall make a list of each of the numbers drawn in the order in which they are drawn.

Then, using the list prepared under subparagraph (2) above, the Town Clerk shall place the corresponding applicant's name next to each number.

- (6) The Town Clerk shall issue the available licenses to the qualifying applicants, first to residents and then to non-residents, in the order to which their names appear on the list prepared under subparagraph (5). That list shall establish the order of priority for the issuance of any licenses in that license category until the next annual licensing procedure under this Ordinance.
- (7) The procedure set forth in this Section 7(D) shall be a public proceeding open to the public pursuant to 1 M.R.S.A. Section 403, but no applicant or any member of the public has any right to participate in the procedure. Applicants are not required to be present at the time the licenses are issued. The procedure shall be conducted at the West Bath Town Office on the dates designated for each category of license, at a time to be set by the Town Clerk. The Town Clerk shall announce the exact time for the procedure by posting a notice in the West Bath Town Office at least seven (7) days prior to the date of the procedure. Any failure to provide such a notice shall not invalidate the results of the procedure.

E. Signature and Exhibition of License; Search and Inspection:

- (1) Validity of License. No license shall become valid until signed by the license holder.
- (2) Exhibiting License. When any person is engaged in an activity which is licensed under this Ordinance, he or she shall, upon the request of a certified municipal officer, exhibit his or her license. Failure to exhibit a license within a reasonable time when requested shall be prima-fascia evidence that the person is not licensed.
- (3) Search and Inspection. Accepting an issued shellfish license shall constitute consent to search and inspection by the Shellfish Warden or any authorized law enforcement officer of any equipment, watercraft or vehicles used in connection with the license activity and to seize evidence of a violation of this Ordinance.

F. Suspension/Revocation:

- (1) Suspension Optional. The West Bath Board of Selectmen shall be empowered to suspend for up to 60 days, after public hearing, the license of any person it finds in violation of this Ordinance. The Selectmen may also suspend the right to purchase a license for up to 60 days, of person found to be harvesting without a license in violation of the terms of this Ordinance. Persons suspended may not be issued another license until the suspension period ends. Persons aggrieved by this suspension may appeal to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.
- (2) Suspension Mandatory. Any shellfish licensee having two convictions for violation of this Ordinance shall have his/her shellfish license automatically suspended for a period of 60 days or the remainder of the license year whichever is shorter. The suspension shall be effective from the date of mailing of a notice of suspension by the Board of Selectmen, said suspension being subject to the same appeals procedure as F(1) above.
- (3) Revocation. Where the license holder has been subject to suspension of his license on three or more occasions, within the current licensure year and the previous licensure year, then the Board of Selectmen may, if the licensee is determined to have committed the violation, revoke the license and prevent re-issuance of any license to that licensee for a period to be determined by the Board.

G. Re-issuance of License: A surrendered license may be reissued if it is determined by the Board that the re-issuance of that particular license(s) is consistent with good management practices and appropriate management of the resource. Procedures for re-issuance of a license shall be in accordance with the applicable provisions of this Section.

Section 8. OPENING AND CLOSING FLATS: Selectmen, with the approval of the Commissioner of Marine Resources, may open and close areas for the shellfish harvest. Upon recommendation of the West Bath Marine Resources Board and concurrence of the Department of Marine Resources that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Selectmen may call a public hearing on 10 calendar days notice published in a newspaper having general circulation in the Town, stating the time, place and subject matter of the hearing and shall send a copy of the notice to the Department of Marine Resources. The decision of the Selectmen made after the hearing shall be based on findings of fact or upon the formal minutes of the hearing.

Section 9. MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS: It is unlawful for any person to possess soft shell clams within the Town of West Bath, Sagadahoc County, 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 percent of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks take at random from various parts of the lot or by count of the entire lot if it contains less than one peck.

Section 10. VIOLATIONS: Any failure to comply with the terms and conditions set forth in this Marine Resource Conservation Ordinance shall be considered in violation of the Ordinance. Specific violations include, but are not limited to:

- A. Material misrepresentation of fact on the application.
- B. Possession of soft shell clams that do not meet the minimum size requirement.
- C. Harvesting without license.
- D. Harvesting from a closed area – It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the town of West Bath 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 MRSA Title 12 §6671.
- E. Harvesting shellfish at night using an artificial light.

Section 11. PENALTIES: Penalties for violation of Section 9(A) above relating to minimum of soft-shell clams shall be in accordance with the provisions of 12 M.R.S.A. Section 6681 (6-A). All other violations shall be punished as provided by 12 M.R.S.A. Section 6671(1).

Section 12. EFFECTIVE DATE: This Ordinance shall become effective after its adoption at a Town Meeting provided a certified copy of the Ordinance is filed with the Commissioner within 20 days of its adoption.

Section 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.

Section 14. REPEAL: Any Ordinance regulating the harvesting and conservation of shellfish in the Town and any provision of any Town Ordinance, which is consistent with this Ordinance, is hereby repealed.