

**SHELLFISH CONSERVATION ORDINANCE**  
**Town of Westport Island**  
**June 24, 2023**

COPY

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 Westport Island 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 of shellfish taken.
  - E. Limiting the amount of shellfish taken daily by a harvester.
3. **Shellfish Committee:** The Shellfish Conservation Program for the Town of Westport Island will be administered by the Shellfish Committee consisting of five members and two alternates to be appointed by the Select Board for a term of three years for members and one year for alternates.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued.
- B. Reviewing annually the status of the resource using the results of clam flat, harvester, or dealer surveys or other sources of information and preparing, in conjunction with and subject to the approval of the Department, a plan for implementing conservation measures.
- C. Submitting to the Select Board proposals for the expenditure of funds for the purpose of shellfish conservation.
- D. Keeping this ordinance under review and making recommendations for its amendments.
- E. Recommending conservation closures and openings to the Select Board in conjunction with the Marine Resource Scientists 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. **Resident:** The term "resident" refers to a person who has been domiciled or a landowner in this municipality for at least the previous six months prior to the time of their claim of such residence is made.
- B. **Nonresident:** The term "nonresident" means anyone not qualified as a resident under this ordinance.
- C. **Domiciled:** Means a person's fixed, permanent, and principled home.
- D. **Municipality:** Refers to the Town of Westport Island, Maine.
- E. **Municipal Officers:** For this ordinance, Municipal Officers refers specifically to members of the town elected Select Board.
- F. **Shellfish, Clams, and Intertidal Shellfish Resources:** When used in the context of this ordinance, the words "shellfish", "clams", and "intertidal shellfish resources" mean:
  - i. Softshell clams (*Mya arenaria*)
  - ii. Quahog (*Mercenaria mercenaria*)
  - iii. Razor clams (*Ensis directus*)
  - iv. Surf clams (*Spisula solidissima*)
  - v. Eastern oyster (*Crassostrea virginica*)
  - vi. European oyster (*Ostrea edulis*)
- G. **Clam Flats:** Means the shore area between the high and extreme low water.
- 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. **Conservation Work:** Work, which is approved by the Shellfish Committee, example activities such as reseeded and attending committee meetings, which will qualify an applicant for "Renewal" or "New License" status.
- M. **Period of Issuance:** Any twelve-month period designated by the municipality, unless a municipality chooses to limit the number of licenses it issues in which case it shall mean the first 90 days during which a municipality issues shellfish licenses each calendar year. The period of issuance shall be the same for both residents and nonresidents.

N. **Personal Use:** For consumption or use by oneself, by members of the immediate family or by invited guests.

5. **Licensing:** A 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 without having a current license issued by this municipality as provided by this ordinance. Although the purchase of this license is not contingent upon first having purchased a State license, a commercial shellfish harvester must also hold a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources prior to harvesting shellfish from the shores of Westport Island.

A. Designation, Scope and Qualifications:

- i. Resident Commercial Shellfish License: This license is available to residents of the municipality and entitles the holder to dig and take any amount allowable of shellfish from the shores and flats of this municipality.
- ii. Nonresident Commercial Shellfish License: This license is available to nonresidents of the municipality and entitles the holder to dig and take any amount allowable of shellfish from the shores and flats of this municipality.
- iii. 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 peck of shellfish for personal use in any one day. No person holding a Commercial State of Maine Shellfish License will be permitted to hold a Residential Recreational Shellfish License.
- iv. Residential Three-Day 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 peck of shellfish for personal use in any one day. No person holding a Commercial State of Maine Shellfish License will be permitted to hold a Residential Recreational Shellfish License. This license will expire three (3) days from the date of issue.
- v. Nonresident Recreational License: This license is available to any person not a resident of this municipality and entitles the holder to dig and take no more than one peck of shellfish for personal use in any one day. No person holding a Commercial State of Maine Shellfish License will be permitted to hold a Nonresidential Recreational Shellfish License.
- vi. Nonresident Three-Day Recreational Shellfish License: This license is available to any person not a resident of this municipality and entitles the holder to dig and take no more than one peck of shellfish for personal use in any one day. No person holding a Commercial State of Maine Shellfish License will be permitted to hold a Nonresidential Recreational Shellfish License. This license will expire three (3) days from the date of issue.

- vii. 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 they must submit to inspection by the municipal shellfish warden.
- B. Application Procedure: Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality.
- i. 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.
  - ii. Conservation Time: All commercial Shellfish License applicants shall complete conservation credits as outlined in the Westport Island Shellfish Conservation Credit Program by June 15 of each year prior to applying for a license. The conservation period starts June 16 and runs until June 15 of the following year.
  - iii. Misrepresentation: Any person who gives false information on a license application will cause said license to become invalid and void. If after investigation the Town learns that a licensee has given false information or is otherwise ineligible to hold a license under this ordinance, the Select Board shall give the licensee a minimum of 30 days' notice of a hearing on the matter. If the Select Board determines at the hearing that the license should be revoked, they shall give the licensee written notice of revocation. Licensees aggrieved by this suspension may appeal as per section 12.
  - iv. Unpaid Fines: No shellfish license will be issued to any with unpaid Town or State shellfish fines.
- C. Fees: The fees for the licenses are listed in the Town Fee Schedule and 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 which will be retained by the clerk as payment for issuing the license. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation, and enforcement.
- D. License Allocation Procedure:
- i. Following a review of the town's shellfish resources prior to May 1, the Shellfish Committee, in consultation with the DMR Marine Resource Scientist shall determine its recommendations for the allocation of commercial and recreational licenses to be made available for the following license year. This recommendation shall be provided to the Commissioner of Marine Resources for concurrence.
  - ii. After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to June 1, the Shellfish Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.

- iii. Notice of the number of licenses to be issued and the procedure for the 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, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes. A copy of the notice shall be provided to the Commissioner of Marine Resources.
- iv. Licenses may be returned to the town voluntarily and reissued to another person at the current fee according to the procedures established in this ordinance.

E. Limited License Sales:

- i. The Town Clerk shall issue licenses to residents and nonresidents as allocated for the first 90 days of the period of issuance, after which any unsold licenses will be made available to residents and nonresidents alike on a first-come, first-served basis, available class at the approved fee per license.
- ii. The date of issuance for all shellfish licenses will be on July 1 or the preceding business day on which the Town Office is open.
- iii. The Shellfish Committee shall record the names and credits earned for all those who do conservation work and provide this to the Town Clerk.
- iv. The Shellfish Committee shall waive all or part of the requirement for conservation time for an applicant who provides, at a regular monthly meeting of the Committee, a written statement from a physician indicating that they were unable to participate in any regularly scheduled conservation activities because of illness or injury. It may arrange for an hour-for-hour basis:
  - 1. Another time to complete conservation work for an applicant who demonstrates that the illness or incapacitation of a parent, spouse, or child has prevented them from participating in regularly scheduled conservation time; or
  - 2. Alternate, less strenuous work for an applicant who provides the Committee with a written statement from a physician indicating that they are not physically able to participate in regular conservation work.
- v. In the event that the Shellfish Committee, with the approval of the Commissioner of Marine Resources, decides to reduce the number of commercial licenses to be issued, licenses shall be awarded to applicants who are finalists in the Westport Island Shellfish Conservation Credit Program, and then according to seniority in terms of consecutive years that each applicant has held a valid Westport Island Commercial Shellfish License. The claim of seniority must be verified by reference

to town record of licenses awarded in previous years. The applicant who has held a Westport Island Commercial Shellfish License the greatest number of years shall be awarded the first license, the second-longest Westport Island license-holder shall be awarded the second and so on in both residential and nonresidential categories. Any person denied a license because such a reduction shall take precedence over others not so qualified should the original licenses be restored.

- F. Unlimited License Sales: Should the Shellfish Committee determine that limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year, and unlimited licenses are to be issued, then all unlimited licenses shall be issued according to DMR Regulation Chapter 7.
  - G. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the last of June following date of issuance, except that recreational 3-day licenses expire three days from the date of issuance.
  - H. Reciprocal Harvesting Privileges: Licensees from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of this license.
  - I. Fee Waivers: Recreational shellfish license fees will be waived for applicants 65 years or older and 12 years or younger. Recreational shellfish license fees will be waived for Town of Westport Island appointed Shellfish Warden(s).
6. **Minimum legal size of Soft Shell Clams**: It is unlawful for any person to possess soft shell clams within the municipality which are less than two (2) inches in the longest diameter except as provided by Subsection B of this section.
- A. Definitions:
    - i. 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 constitutes a separate lot.
    - ii. Possess: For the purposes of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam stock.
  - B. Tolerance: Any person may possess soft shell clams that are less than two 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.
  - C. Penalty: Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. section 6681.

7. **Other Shellfish Restrictions:**

- A. Razor Clams (*Ensis directus*) – DMR Regulations Chapter 10.06 requires a minimum size of 4" and no electro-fishing.
- B. Eastern American Oysters (*Crassostrea Virginica*) – DMR Regulations Chapter 14.30 prohibits the possession of cultchless. The minimum size is 2-1/2" in shell length.
  - i. Tolerance Any person may possess American oysters that are less than 2.5 inches if they comprise less than 10% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.
- C. Quahogs (*Mercenaria mercenaria*) – DMR Regulations Chapter 10.04 requires minimum size of 1" hinge width.
  - i. Tolerance Any person may possess quahogs that are less than one inch if they comprise less than 5% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.
- D. European Oysters (*Ostrea edulis*) – DMR Regulations Chapter 14.10 prohibits the possession of European oysters whose shells are less than 3 inches in the longest diameter. It is unlawful to take, possess, ship, transport, buy or sell European oysters from June 15 to September 15 of any year.
  - i. Tolerance Any person may possess European oysters that are less than 3 inches if they comprise less than 10% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

8. **Opening and Closing of Flats:**

- A. Upon the recommendations of the Shellfish Committee and the concurrence of the DMR Marine Resource Scientist that the status of shellfish resources 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.
- B. It shall be unlawful for any person to harvest, take, or possess shellfish from any areas closed by the Town of Westport Island 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 12 M.R.S.A. section 6671.

- C. Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the Town of Westport Island to the Department of Marine Resources and are part of the resulting permit issued by the DMR. These permits are posted at the Town Office and online of DMR's Nearshore Marine Resources Program Website.
  - D. The Department of Marine Resources notifies the public of shellfish harvesting area openings or closings, including changes of area classifications that may result from bacteriological pollution and or biotoxin, using the following sources:
    - DMR's Shellfish Sanitation Hotline: 1-800-232-4733
    - DMR's Shellfish Closures Website
9. **Enforcement:** This ordinance shall be enforced by the Municipal Shellfish Warden(s), or by any law enforcement officer appointed by the Town, who within one year of appointment must be certified by the Commissioner of Marine Resources. A person who violates this ordinance shall be provided by 12 M.R.S.A. section 6671 and/or section 6681. All fines levied by the courts under this ordinance shall be paid to the Town of Westport Island and shall be used for shellfish conservation purposes.
- A. **Exhibiting License:** When any person is engaged in an activity, which is licensed under this ordinance, they shall, on the request of a Municipal Shellfish Warden or law enforcement officer in uniform, exhibit their license. A failure to exhibit a license within a reasonable amount of time, when requested, shall be prima facie evidence that the person is not licensed.
  - B. **Search and Inspection:** Accepting an issued shellfish license shall constitute consent to search and inspection by a Municipal Shellfish Warden or law enforcement officer in uniform of any equipment, watercraft, or vehicles used in connection with the license activity and to seize evidence of a violation of this ordinance.
  - C. **Standing By:** It shall be a violation of this ordinance for any person to fail or refuse to stand by immediately for inspection at the request of a Municipal Shellfish Warden or law enforcement officer in uniform.
  - D. **Throwing or Dumping Items:** It shall be a violation of this ordinance for any person, who has been requested or signaled to stop by a Municipal Shellfish Warden or law enforcement officer in uniform, to throw or dump into any water any marine organism, or any pail, bag, barrel, or other container of any type, or the contents thereof, before the Municipal Shellfish Warden has inspected the same.

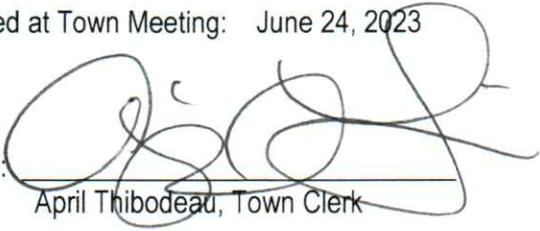


- E. **Molesting Municipal Shellfish Gear**: The Town of Westport Island may, as part of its municipal shellfish program, place protective netting, fencing, traps, or other gear in the intertidal zone to provide protection from shellfish predators. Any netting, fencing, traps, or other gear placed for the purpose must be clearly marked with signs or tags that state that the gear belongs to the Town of Westport Island and indicate the purpose of the gear. A person may not tamper with, molest, disturb, alter, destroy, or in any manner handle gear placed by the Town of Westport Island in accordance with this section.
10. **Aiding and Abetting**: A harvester holding a commercial license who knowingly helps, assists, or facilitates the harvest of shellfish in violation of this ordinance shall be subject to prosecution for the same violations and shall suffer the same penalties as the person assisted.
11. **Suspension**:
- A. **Violation of Ordinance**: The Shellfish Committee shall be empowered to suspend for up to sixty (60) days, after a public hearing, the license of any person it finds in violation of this ordinance. The Shellfish Committee may also suspend the right to purchase a license for up to sixty (60) days of persons found to be harvesting without a license in terms of this ordinance. Licensees aggrieved by this suspension may appeal as per section 12.
- B. **Leaving the Scene**: Any Shellfish Licensee who leaves the scene while being summoned by a Municipal Shellfish Warden or law enforcement officer in uniform or who refuses a summons by a Municipal Shellfish Warden or law enforcement officer in uniform shall have their shellfish license automatically suspended for a period of sixty (60) days after a public hearing. Licensees aggrieved by this suspension may appeal as per section 12.
- C. **Commercial Convictions**: Any commercial shellfish licensee who has two (2) convictions for violations of a State law or regulation or of the Westport Island Shellfish Conservation Ordinance within a 24-month period shall have their shellfish license for a period of sixty (60) days. The suspension shall be effective from the date of the second conviction. A third conviction in a 24-month period will result in the loss of eligibility for any Westport Island license for three years from the date of the third conviction.
- D. **Recreational License Convictions**: Any recreational shellfish licensee who is convicted for a violation of this ordinance shall have their shellfish license automatically suspended for the remainder of the licensing year after a hearing by the Shellfish Committee and will be ineligible for a future license as follows:
- First violation conviction – Ineligible for one year from date of suspension.
  - Second violation conviction – Ineligible for two years from date of suspension.
  - Third violation conviction – Ineligible for three years from date of suspension.
- Licensees aggrieved by this suspension may appeal as per section 12.


12. **Appeal Procedures:** Any person aggrieved by the decision of the Shellfish Committee which affects their license or issuance of a license may make an appeal to the Select Board within 14 days of such decision. The Select Board will hold an appellate hearing on the appeal (the decision of the Shellfish Committee will be reviewed based on the same evidence submitted to them). If the appellant does not agree with the decision made by the Select Board, they may appeal within 30 days to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.
13. **Penalty:** A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. section 6671 and/or section 6681.
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. **Period of Ordinance:** This ordinance shall remain in effect until repealed by the Town or rescinded by the Commissioner of the Department of Marine Resources.
16. **Separability:** If any section, subsection, or part of this ordinance 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 provision of any other town ordinance which is inconsistent with this ordinance is hereby repealed.

Adopted at Town Meeting: June 24, 2023

Signed:

  
April Thibodeau, Town Clerk

A true copy attest:

  
April Thibodeau  
Town Clerk

## Westport Island Shellfish Conservation Credit Program

This system has been established to set priorities in issuing commercial residential and commercial nonresidential shellfish licenses. The number of licenses to be issued annually is determined by the Shellfish Committee and the Department of Marine Resources.

Applicants who have completed at least ten (10) credits of conservation work approved by the Shellfish Committee, and earned during the prior license year, will be considered finalists. All applicants will accumulate credits according to the following schedule.

Qualifying conservation work includes:

1. Attendance at posted committee meetings = 2 credits
2. Participation in surveys = 4 credits
3. Participation in seedings = 4 credits
4. Additional conservation efforts a may be approved by the Committee = credits will be assessed per activity

The finalist with the greatest number of credits (ten or above), will receive the license. IN the event of a tie, the license will go to the person with the greatest seniority (as outlined in the Westport Island Shellfish Conservation Ordinance) as a Westport Island Commercial Shellfish Harvester, or if necessary, by drawing, should there be no eligible finalist(s), the procedure returns to a first come, first served per State regulation.

A record of conservation credits will be retained by the Shellfish Committee and recorded with the Town Clerk.

### Credit Activity Form

Harvester Name: \_\_\_\_\_

Harvester License No. (If exists): \_\_\_\_\_

Credit Activity: \_\_\_\_\_

Activity Date(s): \_\_\_\_\_

Credits Awarded: \_\_\_\_\_

Committee Member Signature: \_\_\_\_\_

4/12/2005 Revised 3/23/2023  
Adopted 6/24/2023