TOWN OF GOULDSBORO
SHELLFISH CONSERVATION ORDINANCE

Adopted: June 19, 2001
Amended: June 11, 2008
Amended: June 12, 2013
Amended: June 10, 2015
Rewrite approved – June 15, 2016

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 Gouldsboro 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 number and area where digging is permitted
D. Limiting the minimum size of clams taken
E. Limiting the amount of clams taken daily by a harvester

3. SHELLFISH CONSERVATION COMMITTEE:

The Shellfish Conservation Committee consisting of five (5) members to be appointed by the selectmen for terms of one (1) year will administer the Shellfish Conservation Program for the Town of Gouldsboro.

The Committee's responsibilities include:

A. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purposes of shellfish conservation;
B. Keeping this ordinance under review and making recommendations for its amendments;
C. Securing and maintaining records of shellfish harvest from the town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources;
D. Recommending conservation closures and openings to the Board of Selectmen in conjunction with area biologists of the Department of Marine Resources;
E. Submitting an annual report to the Municipality and Department of Marine Resources covering the above topics and all other committee activities;
F. Conducting conservation programs.

4. AUTHORIZATION TO MAKE CONSERVATION CHANGES:

The Board of Selectmen are authorized to make changes to certain conservation limits in this ordinance after receiving recommendations from the Shellfish Committee and after following proper hearing procedures. These changes will take effect five days from the date of approval and with public notification.

5. DEFINITIONS:

A. Resident: The term "resident" refers to a person who has been domiciled in this municipality for at least three (3) months directly prior to the time his/her claim of such residence is made.

B. Nonresident: The term "nonresident" means anyone not qualified as a resident under this ordinance.

C. Municipality: Refers to the Town of Gouldsboro, Maine.

D. Conservation Time: Those measures and activities approved by the Shellfish Committee for the purposes of resource enhancement and the support of the Gouldsboro Shellfish Conservation Ordinance. Conservation time must be completed to be eligible for a commercial shellfish license in accordance with the shellfish ordinance.

E. Municipal License Allocation Request: Annually, as indicated by the ordinance, the Municipality must submit a request for the number of licenses to be sold during the next licensing period.

F. Shellfish: When used in the context of this ordinance, the word "shellfish" means soft-shell clams, *Mya arenaria*.

G. Bulk Pile. "Bulk Pile" means any pile or contents of any box, barrel or other container.

H. Lot: The word "Lot" as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or container, constitutes a separate lot.

I. Possess: For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam stock.

J. Harvest: Means to take, dig or pull shellfish from the flats.

6. LICENSING:

A Gouldsboro Municipal Shellfish License is required to harvest shellfish within the jurisdiction of this ordinance. It is unlawful for any person to harvest or take shellfish from the shores and flats of this municipality as provided by this ordinance. Additionally, a commercial harvester must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources prior to harvesting clams for commercial purposes.

6.1 Designation, Scope and Qualifications

A. Resident Commercial Shellfish License: This license is available to residents of the Town of Gouldsboro who have completed the shellfish conservation requirement and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.

B. Nonresident Commercial Shellfish License: This license is available to nonresidents of this municipality who have completed conservation requirements and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.

C. Resident Junior Commercial License: This license is available to any resident, who has attained his or her 13th birthday, but has not yet attained his or her 18th birthday as of 30 June of the application year. Conservation work will be required of anyone 16 years of age by June 30th. This license entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.

D. Nonresident Junior Commercial License: This license is available to any nonresident, who has attained his or her 13th birthday but has not yet attained his or her 18th birthday as of 30 June of the application year. Conservation work will be required of anyone 16 years of age by June 30th. This license entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.

E. Resident Recreational Shellfish License: This license is available to residents and Maine real estate tax payers of this municipality who do not hold a valid Maine State Commercial Shellfish License and entitles the holder to harvest and take no more than one peck of shellfish in any one day for personal use.

F. Nonresident Recreational Shellfish License: This license is available to any person that is not a resident or real estate tax payer of this municipality who does not hold a valid Maine State Commercial Shellfish License and entitles the holder to harvest and take no more than one peck of shellfish in any one day for personal use.

G. License must be signed: The licensee must sign the license to make it valid. The license must be in the holder's possession when engaged in harvesting. By signing the license the harvester acknowledges that he/she must submit to inspection by the Municipal Shellfish Warden.

H. A person over 18 years of age enrolled in a secondary education program will be exempted from the 5 meeting requirements, but they will still be required to complete the 5 hours of conservation time in the field to obtain a shellfish license.

6.2 Application Procedure: A person may apply to the Town Clerk for licenses required by this ordinance on forms provided by the municipality. Notice of available licenses shall be published in a trade or industry publication, or in a newspaper or combination of

newspapers with general circulation, which the Selectmen consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the Municipal Office until the period expires. A copy of the notice shall be provided to the Commissioner of Marine Resources.

A. 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. The applicant must provide proof of residency consistent with the standard of proof that is required to register to vote.

B. In addition to completing an application, an applicant for a junior commercial license shall also provide:

(a) Proof that the applicant has attained his or her 13th birthday but has not yet attained his or her 18th birthday.

(b) Proof of residency.

(c) The junior's parent or legal guardian must sign the application, in person at the town office.

C. Misrepresentation: Any person who gives false information on a license application will cause said application to become invalid and void. If a license is issued as a result of the false information, said license shall become invalid and void. Licenses that are voided may be reissued to another person at the current fee according to the priorities established in this section. Fees for voided licenses are nonrefundable.

D. Change of Residency: A person applying for or holding a commercial shellfish license under this ordinance shall notify the Town Clerk within ninety (90) days of residency change. The Shellfish Committee shall vote to void a resident license after a license holder has moved from Gouldsboro and is domiciled elsewhere for ninety days.

6.3 Use of Fees and Fines, Funding: Fees for the license 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 for each license which will be retained by the Clerk as payment for issuing the license. Fees and fines received for shellfish licensing shall be used by the Town for costs incurred in the shellfish management, conservation and enforcement of this ordinance.

6.4 License Allocation Procedures: License sales procedures shall be determined by the Shellfish Committee, approved by the Selectmen, and submitted to the Department of Marine Resources for their approval at least thirty (30) days prior to the date of issuance. Notices of the number of licenses to be issued and the procedure for application shall be defined annually by the Municipal License Allocation Request.

A. The Town Clerk shall issue commercial licenses to those residents and nonresidents who have met the requirements of obtaining a commercial license. The Town Clerk shall issue licenses as allocated starting July 1st or the next business day. Nonresident licenses will be issued at a rate of 10% of all resident licenses issued on a first-come first-serve basis or by lottery.

B. Applicants who have held a commercial license for a longer period of time will have a greater opportunity of obtaining a license compared to those who have held a commercial license for a lesser period of time. In addition, those who have accomplished the required conservation time for a given year will have a greater opportunity of obtaining a license compared to those who have not completed their time. Licenses will be allocated from a list of qualified applicants prepared by the Shellfish Committee. Applicants will be prioritized in the following order and will only be eligible after completing required conservation time.

i. Applicants who have held a commercial license for three (3) of the last three (3) years.
ii. Applicants who have held a commercial license for two (2) of the last three (3) years.
ii. Applicants who have held a commercial license for one (1) of the last three (3) years.
iv. Applicants who are applying for a commercial license for the first time in the last three (3) years.

6.5 Limitation of Diggers: The number of licenses issued may be limited and will be issued according to the Municipal License Allocation Request as approved by Marine Resources.

A. Limited License Sales: If it is determined that Limited Licenses are necessary the Town Clerk shall issue licenses to residents and nonresidents as allocated from July 1st or the next business day and then for 90 days, after which licenses shall be sold without regard to residency on a first-come first-serve basis or by lottery.

B. Open License Sales: When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year.

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

6.6 License Expiration Date: Each license issued under the authority of this ordinance expires at midnight on the 30th day of June of the next year following date of issue.

6.7 Reciprocal Harvesting Privileges: Not available.

6.8 Military Exemption Clause: Residents serving or completing full time active duty in the U. S. Armed Forces will be exempt from Municipal licensing requirements for up to thirty (30) days after separation from those services. The Selectmen may waive the conservation requirements on a case by case basis.

6.9 Fees Waived: Recreation and Commercial Shellfish license fees will be waived for residents and nonresidents sixty-five (65) years or older and twelve (12) years or younger.

A. This amendment would make a Resident Recreation Shellfish license for a person 65 years of age or older a Lifetime License.

B. This amendment would make a Nonresident Recreational Shellfish License for a person 65 years of age or older a Lifetime License. The license holder must notify the Town each year of their intent to use the Shellfish license or the license will be invalid.

7. VIOLATIONS, SUSPENSION OF LICENSES, AND FINES:

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

A. A licensee whose shellfish license has been suspended pursuant to this Ordinance may request return of their license only after the suspension period has expired. A suspended license is not to be returned until the fine is paid in accordance to the court's decree.

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

C. Any violation of this ordinance may result in a license suspension.

D. Any shellfish licensee having three (3) convictions for any other violations of this ordinance shall have his/her shellfish license suspended for a period of thirty (30) days.

E. Any person who has their State of Maine Commercial Shellfish License or their right to obtain a license suspended by The Dept. of Maine Resources for any reason shall have their Municipal Shellfish License from the Town of Gouldsboro suspended or right to obtain a license suspended until reinstated by DMR.

F. 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 soft shell clams while under suspension he/she will be charged as if he/she is harvesting soft shell clams without a license.

G. It shall be unlawful to harvest shellfish beyond restriction of the municipal license held by the individual engaging in the activity of harvesting shellfish. The fine shall be no less than $100 or no more than $500.

H. A non-license holder or a recreational license holder may not accompany a licensed commercial harvester with the intent of assisting in the harvesting and taking of shellfish.

7.1 A. Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Committee upon the filing of a written request for hearing with the Town Clerk within thirty (30) days following the effective date of the suspension.

B. The licensee may appeal the decision of the Shellfish Committee before the Board of Selectmen by filing a written request of appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Committee.

7.2 A. Harvesting of Clams in a Closed Area: Any shellfish licensee convicted of harvesting in an area closed for conservation shall have his/her license automatically suspended for thirty (30) days.

B. Harvesting Clams at Night: Any shellfish licensee convicted of night harvesting shall have his/her license automatically suspended for thirty (30) days.

8. CONSERVATION TIME:

All commercial license applicants will be required to complete ten (10) hours of conservation time for the purpose of executing shellfish conservation measures, including, but not limited to, reseeding and brushing projects, shellfish surveys, five (5) hours attending conservation committee meetings, or ten (10) hours of conservation time in the field with Shellfish Committee approval.

A. At 65 years of age an applicant may earn their entire ten hours of conservation time by attending Shellfish Committee meetings. (This requirement is effective as of 1 July 2008.)

B. Applicants for Junior Commercial Licenses must complete five (5) hours of conservation time. The entire five (5) hours must be completed as work in the field. (This requirement is effective as of 1 July 2008.)

Conservation time can be earned in three ways throughout the year:

1. By participating in conservation work days scheduled by the Shellfish Conservation Committee.

2. By attending the Shellfish Conservation Meetings. Attendance will be counted for conservation time to the nearest half hour in fifteen (15) minute increments. The applicant must attend the entire meeting to earn the conservation hours. Up to

one half of the total conservation hours required to purchase a commercial license can be earned by attending Shellfish Conservation Meetings.

3. For those individuals who have completed their conservation time and who are not offered a shellfish license due to license limitations can carry their time forward until such time they are offered a license. The individual must apply for a shellfish license each year in order for their conservation time to carry forward. If they fail to apply for a license each year or they refuse a license after being offered one their conservation time will be taken off the books.

4. By contacting the Shellfish Warden, with at least seven working days' notice, an applicant may schedule to complete conservation hours under the supervision of the Shellfish Warden.

9. OPENING AND CLOSING OF FLATS:

The Municipal Officers, 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 Municipal Officers may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Officers made after the hearing shall be based on findings of fact. Any area within the Town of Gouldsboro 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 closures/openings in accordance with DMR Regulations Chapter 7.50(1) (c). This section requires a 5 day notice of Openings and Closings.

A. It shall be unlawful for any person to harvest, take or possess shellfish from any closed area in the Town of Gouldsboro. Harvesting shellfish in a closed area is a violation of this ordinance. Harvesting in a closed area is a violation of this ordinance and is punishable under section 6671.

10. MOLESTING MUNICIPAL SHELLFISH GEAR PLACED IN A PROTECTED AREA:

The Town of Gouldsboro 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 Gouldsboro and indicate the purpose for the gear.

A. A person may not tamper with, molest, disturb, alter, destroy or in any manner handle gear placed by the Town of Gouldsboro in accordance with the above section.

B. A person who violates Section A commits a civil violation for which a fine of not less than $300 and not more than $1000 may be adjudged.

11. MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS:

It is unlawful for any person to possess soft shell clams within the Town of Gouldsboro, County of Hancock 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 inches if they comprise less than 5% of any lot. The tolerance shall be determined by numerical count of not less than one (1) peck or more than four (4) pecks, taken at random from various parts of the lot or by a count of the entire lot if it contains less than one (1) peck.

B. Penalty: Whoever violates any provision of this section shall be punished by a fine of not less than $100 for 5% to 10% short clams under 2 inches and not less than $300 for over 15% short clams under 2 inches.

12. MAXIMUM SIZE OF SOFT SHELL CLAMS:

It shall be unlawful for any person to possess soft shell clams within the Town of Gouldsboro, Hancock County which are greater than four (4) inches in the longest diameter except as provided by subsection A.

A. Tolerance: Any person may possess soft shell clams that are greater than (4) four inches if they comprise less than 10 % of any lot. The tolerance shall be determined by using the same method listed in above in subsection A.

B. Penalty: Whoever violates any provision of this section shall be punished by a fine of not less than $100 for 10% to 20% large clams over 4 inches in length in its longest diameter and not less than $300 for over 20% clams over 4 inches.

13. VOLUME LIMITS:

The volume of clams harvested is subject to a limited take. The volume limit may vary from flat to flat. Exceptions to this section shall be regulated by the Selectmen upon recommendation from the shellfish committee. Exceptions shall be listed in the back of the ordinance packet.

14. NIGHT DIGGING:

Clams in the Town of Gouldsboro can be harvested 30 minutes before sunrise and 30 minutes after sunset all year long. Exceptions shall be regulated by the Selectmen upon recommendation from the shellfish committee. Exceptions shall be listed in the back of this ordinance packet.

15. SUNDAY HARVESTING:

It shall be unlawful for commercial license holders to harvest shellfish on Sundays. Recreation harvesters may harvest shellfish on Sunday. Exceptions shall be regulated by the Selectmen upon recommendation of the shellfish committee. Exceptions shall be listed in the back of this ordinance packet.

16. INTERTIDAL MUSSEL HARVESTING:

This section is enacted in accordance with 12 M.R.S.A. Section 6671(12) and 13-188 Chapter 7 (7.70). A copy of the Intertidal Management Plan will be made available through the Town Clerk or on the Department of Marine Resources website.

17. PENALTY:

A person who violates any provision of this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (10), (10-A).

18. CERTIFICATE AS EVIDENCE:

A certificate of the clerk of the municipality or any other custodian of the records of a municipal shellfish conservation ordinance adopted under this section stating what the records of the municipality show is admissible as evidence in all courts as proof of the municipal records. A certificate stating that the records do not show that a person held a license is prima facie evidence that a person did not hold the license on the date specified in the certificate. A certificate stating that the records show that a shellfish conservation ordinance or portions of an ordinance were in effect on particular date is prima facie evidence that the ordinance was in effect on the date specified in the certificate. The certified copy is admissible in evidence on the testimony of a municipal shellfish conservation warden that the warden received the certificate after requesting it from the municipality. Further foundation is not necessary for admission of the certificate.

19. 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.

20. AMENDMENTS:

20.1 Initiation: A proposal for an amendment to this ordinance may be initiated by the following:

A. A written proposal submitted to the Shellfish Committee;
B. A recommendation of the Shellfish Committee; or
C. A recommendation of the Board of Selectmen.

20.2 Procedure:

A. Any proposal for an amendment shall be made to the Board of Selectmen in writing stating the specific changes requested. All such proposals shall be transmitted to the Shellfish Committee for their review and recommendation.

B. Within thirty (30) days of receiving a properly initiated amendment, the Board of Selectmen shall hold a public hearing on the proposal. Notice of the hearing shall be posted and advertised in a newspaper of general circulation within the community at least seven (7) days prior to the hearing. The notice shall contain the time, date, and place of the hearing and sufficient detail about the proposed changes as to give adequate notice of their content. If the proposed changes are

extensive, a brief summary of the changes together with an indication that a full text is available at the Town Clerk's Office shall be adequate notice.

20.3 Amendment: This ordinance may be amended after proposed changes have been reviewed by the Department of Marine Resources by a majority vote of the Board of Selectmen and approved by the legislative body of the municipality.

20.4 State Law Changes: Any change to referenced State Laws in this Ordinance shall automatically update in the Ordinance upon enactment.

21. 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.

22. 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.

23. PERIOD OF ORDINANCE:

This ordinance shall remain in effect until amended or repealed by the town.

_____

Attested
Bryan Kaenrath
Clerk, Town of Gouldsboro

_____

Date Adopted

CONSERVATION EXCEPTIONS

The Board of Selectmen are authorized to make changes to certain conservation limits in this ordinance after receiving recommendations from the Shellfish Committee and after following

proper hearing procedures. These changes will take effect five days from the date of approval and with public notification.

Exception: Night Harvesting: The change would allow the harvest of clams 2 hours before sunrise and 2 hours after sunset from November 1 until March 1.

Exception: Sunday Harvesting: Clams can't be harvested commercially on Sunday but can be harvested recreationally on Sunday. The change allows the commercial harvest of clams on Sunday from November 1 until March 1.

Exception: Volume Limits: It shall unlawful to take or harvest more than 1 bushel of softshell clams from Stave Island Bar in 1 day.

I, Cheryl A. Robinson, hereby certify that the attached Municipal Shellfish Ordnance for the Town of Gouldsboro was voted on and approved at the Town Meeting on June 15, 2016.

Cheryl A. Robinson

Cheryl A. Robinson

State of Maine
Hancock, ss.

Then personally appeared the above named, Cheryl A. Robinson, and acknowledged the foregoing instrument to be her free act and deed,

Date: June 16, 2016

Before me.

Rosemary Kaiser

Notary Public

ROSEMARY KAISER
NOTARY PUBLIC
State of Maine
My Commission Expires
December 21, 2022