

R/cwd 10/13/16

**SHELLFISH CONSERVATION ORDINANCE**

TOWN OF PHIPPSBURG, May 2000

Amended through May 3, 2016

1. **AUTHORITY:** This Ordinance is enacted in accordance with 12 MRSA Section 6671, and repeals and replaces in its entirety “SHELLFISH CONSERVATION ORDINANCE, TOWN OF PHIPPSBURG” dated May 16, 1998.
  - A. All flats bordering the Popham Beach State Park as of March 12, 2009 are under the jurisdiction of the Phippsburg Shellfish Conservation Ordinance. Recreational digging in Popham Beach State Park will not require a recreational license. Access routes to the flats will be determined by the Popham Beach State Park Manager.
2. **PURPOSE:** To establish a shellfish conservation program for the Town of Phippsburg 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 shellfish harvesting is permitted.
  - D. Limiting the minimum size of clams taken.
  - E. Limiting the amount of clams taken daily by a recreational harvester.
  - F. Management plans in Phippsburg and in cooperation with other towns for the conservation of shellfish in a manner consistent with the production of a reasonable yield to shellfish harvesters.
3. **CONSERVATION AND MANAGEMENT OF SHELLFISH RESOURCES:** It is determined that:
  - A. The clam flats of the Town are a valuable shellfish resource which is important to the local economy.
  - B. These flats are not an inexhaustible resource and, therefore, they must be prudently managed.
  - C. 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.

4. **SHELLFISH CONSERVATION COMMITTEE:** The Shellfish Conservation Program for the Town of Phippsburg will be administered by the Shellfish Conservation Committee consisting of five regular members and two alternate members to be appointed by the Selectmen for terms of three years.

A. Committee Responsibilities:

- (1) Establishing annually, in conjunction with the Department of Marine Resources, the number of shellfish harvesting licenses to be issued.
- (2) Surveying each clam producing area at least once every three years to establish size distribution and density and annually estimating the status of the Town's shellfish resources.
- (3) Submitting to the Board of Selectmen proposals for the expenditure of funds for the purpose of shellfish conservation.
- (4) Keeping this Ordinance under review and making recommendations for its amendment.
- (5) 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.
- (6) Recommending conservation closures and openings to the Board of Selectmen in conjunction with the area biologists of the Department of Marine Resources.
- (7) Submitting an annual report to the Town and the Department of Marine Resources covering the above topics and all other committee activities.
- (8) Identifying conservation work which will qualify an applicant for "Renewal" or "New License" status under subsections 6.C.(5)(d) and (e). The Municipal Shellfish Conservation Warden and/or Shellfish Conservation Committee members shall record the names and hours worked by individuals on these projects and submit them to the Shellfish Conservation Committee monthly.
- (9) Maintain a water quality testing program on the Kennebec River flats so as to enable harvesting.

- B. Committee Members Missing Meetings: If a member of the Shellfish Conservation Committee misses three consecutive scheduled meetings of the committee without the approval of the Selectmen, his/her position will 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.

5. **DEFINITIONS:**

A. Resident (Commercial Shellfish Harvesting License) - a person, who has reached the age of 15 years or more on or before June 1<sup>st</sup> of the year the license is applied for, who has been domiciled in this Town for at least three months (90 days) prior to the time claim of such residence is made.

B. Resident (Recreational Shellfish Harvesting License) - an individual and his/her family who are:

- Living in town as a taxpayer
- Renting a home, apartment, or cottage
- Renting a campsite at an established state licensed campground (Hermit Island, Head Beach, Meadowbrook, Ocean View, or others as determined by the Board of Selectmen)
- Camping on private property with a camping permit issued by the Code Enforcement Officer in accordance with section 2.6.2 and 3 of the Land Use Ordinance.

Also, a guest who is residing in a “Residents” dwelling or camping on their property may purchase a license as long as the “Resident” accompanies them during the application process and signs an affidavit stating that the applicant is residing with them.

C. Nonresident - anyone not qualified as a resident under this Ordinance.

D. Conservation Work - conservation credit activities related to propagating, harvesting, cultivating, or farming shellfish which is approved by the Shellfish Conservation Committee such as re-seeding or surveys.

E. Shellfish or Clams - when used in the context of this Ordinance means soft shell clams (*Mya arenaria*), Quahogs (*Mercenaria mercenaria*), and Atlantic Surf Clams (Hen Clams – *Spisula solidissima*).

F. Municipality - refers to the Town of Phippsburg.

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. Held a License - to have a license until the end of the harvesting year (June 30<sup>th</sup>). Credit will not be given for a partial year (ie. if a Harvester surrenders his/her license he/she will not be given credit for having held a license for that year.)

J. Take - to remove or attempt to remove a marine organism from its natural habitat.

- K. Possession - to have in one's custody or control, either personally or by another person who is under one's control.
- L. Student - actively enrolled in grades 5 through 12 as of the date of application.
- M. Start to Finish for a Grid Survey -- Shellfish Harvesters must sign in and out with the supervisor of the Grid Survey to be credited with the survey time.

6. **LICENSING:**

- A. A Phippsburg shellfish harvesting license is required for any person 10 years or older to harvest or take shellfish from the shores and flats 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 shellfish in Phippsburg. Shellfish licenses are not required in order to dig and take no more than one peck in Popham Beach State Park areas where and when it is lawful to do so.
- B. Designation, Scope and Qualifications:
  - (1) Resident, Nonresident, Reciprocal and Student Commercial Shellfish License: These licenses are available to commercial harvesters and entitles the licensee to harvest or take any amount of shellfish from the tidal waters or clam flats of this municipality where and when it is otherwise lawful to do so. In addition resident commercial licensees from West Bath and any other town, which adopt and continue in effect a reciprocal agreement ordinance containing reciprocal language similar to the Phippsburg ordinance, may obtain a Phippsburg Reciprocal Commercial Shellfish License. A resident of a town that has a reciprocal agreement with Phippsburg is only eligible for a reciprocal license. Also, the number of reciprocal licenses Phippsburg issues will not exceed the number issued by the reciprocal town.
  - (2) Discontinuance of Reciprocal Agreement: Should any town discontinue its reciprocal agreement and then wish to reestablish reciprocity, such reciprocity renewal shall not become effective until one year following re-adoption of a reciprocal agreement by such town, unless approved sooner by the Phippsburg Shellfish Conservation Committee.
  - (3) Nonresident Commercial Licenses: A minimum number of Commercial Shellfish Licenses shall be provided for nonresidents which shall be a number not less than ten (10) percent of the number of Commercial Shellfish Licenses provided for residents. The purchase of a Phippsburg non-resident license does not bestow any rights to purchase non-resident licenses in other towns, nor shall the purchase of a non-resident license in the reciprocal towns qualify the holder for a Phippsburg non-resident license.

- (4) Resident Recreational License: The Resident Recreational License is valid only during the period the holder is actually residing in Phippsburg. Resident Recreational Licenses entitle the holder to harvest and take no more than one peck of soft shell clams (*Mya arenaria*), one peck of Quahogs (*Mercenaria*), and one bushel of Atlantic Surf Clams (Hen Clams – *Spisula Solidissima*) in any one day. Clams harvested by holders of Resident Recreational Licenses are for the consumption by the harvester and his/her family and shall not be sold. This license is not available to, or valid for, holders of a State of Maine Shellfish License with the following exception: *the holder of a State of Maine Shellfish license signs an affidavit stating that the State License is used to harvest species other than soft-shell clams. Use of the recreational shellfish license obtained under this exception for selling is a violation of this ordinance and will result in an automatic one year suspension of the license from the date of conviction (in addition to the penalties provided in 12 M.R.S.A section 6671.9C.)* Recreational license fees shall be waived for residents 65 years or older and 16 years or younger. A license is not required for children under the age of 10 as long as they are with an adult who has a valid shellfish license.
  - (5) Non Resident Recreational License: The Non Resident Recreational License entitles the holder to harvest and take no more than one peck of soft shell clams (*Mya arenaria*), one peck of Quahogs (*Mercenaria*), and one bushel of Atlantic Surf Clams (Hen Clams – *Spisula Solidissima*) in any one day. Clams harvested by holders of Non Resident Recreational Licenses are for the consumption by the harvester and his/her family and shall not be sold. Individuals holding a Phippsburg Commercial Non Resident License shall not be entitled to a Non Resident Recreational license. This license is not available to, or valid for, holders of a State of Maine Shellfish License with the following exception: *the holder of a State of Maine Shellfish license signs an affidavit stating that the State License is used to harvest species other than soft-shell clams. Use of the recreational shellfish license obtained under this exception for selling is a violation of this ordinance and will result in an automatic one year suspension of the license from the date of conviction (in addition to the penalties provided in 12 M.R.S.A section 6671.9C.)* Recreational license fees shall be waived for residents 65 years or older and 16 years or younger. A license is not required for children under the age of 10 as long as they are with an adult who has a valid shellfish license.
  - (6) License must be signed: The licensee must sign the license to make it valid.
- C. Application deadline and contents: Applications for licenses may be obtained at the Town Office starting May 1<sup>st</sup> of each year.
- (1) Submission: Applications must be submitted according to the following schedule:
    - (a) Commercial Renewal and New Licenses: Applications must be submitted during the month of May prior to the close of business on the last scheduled business day at the Selectmen's Office. All applications received after this date will be considered only as licenses become available because of surrender or other

reasons. The Town Administrator will send a reminder notice and application to all current license holders the last week in April by first class mail (this will be the only reminder that is made). The Town Administrator will review applications received and issue licenses in accordance with Section 6.C.(5) of this ordinance.

- (b) Commercial General and Recreational Licenses: Applications may be submitted at any time.
- (2) Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, category of license sought, current address and duration there, birth date, height, weight, signature, and whatever other information the town may require.
- (3) Misrepresentation and Ineligibility: If upon complaint or otherwise, the Town Administrator becomes aware of circumstances which suggest a licensee has given false information on a license application or is otherwise ineligible, the Selectmen shall be notified and they shall request the Police Chief or his designee to investigate those circumstances and any other circumstances related to the license application or ineligibility. If the results of the investigation continue to suggest a licensee has given false information on a license application or is otherwise ineligible to hold a license under this ordinance, 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 a license application or is otherwise ineligible. The Police Chief shall present the evidence suggesting that false information has been given or that the individual is otherwise ineligible. The licensee shall have the right to present evidence to show that false information has not been given or that he is eligible. If, after the hearing, the Selectmen determine that false information has been given or the individual is otherwise ineligible, 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 the Town's "Board of Appeals." If they do not agree with the decision made by the "Board of Appeals" they may appeal to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.
- (4) License Fees: The fees for the licenses shall be set annually in April of each licensing year by the Board of Selectmen based on the recommendation of the Shellfish Conservation Commission 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.
- (5) Limitation of Commercial 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.

- (a) DMR Approval: Prior to April 15<sup>th</sup>, the Town Shellfish Conservation Committee with the approval of the Commissioner of Marine Resources will establish the number of commercial and non-commercial licenses to be permitted.
- (b) Notification of Town Administrator: The Shellfish Conservation Committee will notify the Town Administrator in writing prior to May 1<sup>st</sup> the number of licenses to be issued.
- (c) Issuance of Licenses: The Town Administrator shall issue commercial licenses to residents and non-residents according to the priorities listed below in 6.C.(5)(d)(e) and (f). Not less than ten percent of the commercial licenses shall be retained for non-residents during the period of issuance. Recreational licenses for the new license year may be issued during normal business days starting June 16<sup>th</sup> such licenses not to be valid until July 1<sup>st</sup>.
- (d) Commercial Renewal License Category: This commercial category of license shall be available on normal municipal business days to qualified applicants for the period beginning June 16<sup>th</sup> and ending June 30<sup>th</sup>. If a Resident Commercial Student license holder applies for both a Resident Commercial Student license in the renewal category and a Resident Commercial Adult license in the new license category their Resident Commercial Student renewal license may be held after June 30<sup>th</sup> until it is determined if they qualify for a Resident Commercial Adult license. Applicants must:
  - (1) Have submitted an application during the month of May (as per section 6.C).
  - (2) Have been licensed for the previous year.
  - (3) Have completed a minimum of twelve (12) hours of conservation work between June 1<sup>st</sup> of the prior year and the last day of the following May as determined by the Shellfish Conservation Commission. Of the minimum of twelve (12) hours at least four (4) must be contributed to reseeded efforts. Also, a harvester must have completed one (1) grid survey (start to finish). Hours completed on the grid survey will count towards overall conservation hours. A harvester 65 years of age or older on the last day of May of the licensing year must complete a minimum of twelve (12) hours of conservation time but is exempt from the requirements to complete four (4) hours of reseeded and one (1) grid survey. Upon written request the Shellfish Conservation Commission may waive all or part of an applicant's conservation time requirement due to unforeseen circumstances to include, but not limited to, medical issues or family emergencies. Unless physically incapable, the applicant will still be required to complete a total of 12 conservation hours through less strenuous work, such as attending meetings. Any waiver decision made by the Shellfish Commission may be appealed to the Board of Selectmen within 14 days of such decision.

- (4) Have at least five (5) hours of any type of conservation time to renew a Student License.
- (5) Have not more than two (2) convictions for violation of this Ordinance during the preceding year.
- (6) Have purchased a shellfish license prior to the end of the period of issuance of the previous license cycle.
- (7) Failure to obtain a renewal license during the time period designated in 5(d) will result in the forfeiture of seniority (in terms of years a license has been held during the past five years) and accumulated conservation time for the purpose of obtaining a new license for the coming year. Loss of seniority and accumulated conservation time is temporary and will not apply to the next year's license sale.

In the event that the number of qualifying applications exceeds the number of available licenses, licenses shall be awarded according to seniority in terms of the number of years that each applicant has held a valid Phippsburg Commercial Shellfish Harvesting License over the last five 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 Phippsburg Commercial Shellfish License the greatest number of years shall be awarded the first license, the second longest Phippsburg Commercial Shellfish License holder shall be awarded the second license, and so on until all licenses in this category are have been sold to those applicants fulfilling the above qualifications. 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 6.C.(13) of this Ordinance.

- (e) Commercial New License Category: If any commercial licenses are still available under this year's quota, this category shall be available on normal business days to qualified applicants for the period beginning July 1<sup>st</sup> and ending July 14<sup>th</sup>. Applicants must:
  - (1) Have submitted an application during the month of May (as per section 6.C).
  - (2) Have not more than one (1) conviction for violation of this Ordinance during the preceding year.

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 June 1<sup>st</sup> to the last day of the following May. 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 6.C.(13) of

this ordinance.

- Consideration #1 - Twelve hours of Conservation Time and held a license for Five of the last Five years [must include at least 4 hours reseeding and 1 grid survey unless the harvester is 65 years of age or older on the last day of May of the licensing year or a waiver has been granted as per Section 6.C.(5)(d)(3)].
- Consideration #2 - Twelve hours of Conservation Time and held a license for Four of the last Five years [must include at least 4 hours reseeding and 1 grid survey unless the harvester is 65 years of age or older on the last day of May of the licensing year or a waiver has been granted as per Section 6.C.(5)(d)(3)].
- Consideration #3 - Twelve hours of Conservation Time and held a license for Three of the last Five years [must include at least 4 hours reseeding and 1 grid survey unless the harvester is 65 years of age or older on the last day of May of the licensing year or a waiver has been granted as per Section 6.C.(5)(d)(3)].
- Consideration #4 - Twelve hours of Conservation Time and held a license for Two of the last Five years [must include at least 4 hours reseeding and 1 grid survey unless the harvester is 65 years of age or older on the last day of May of the licensing year or a waiver has been granted as per Section 6.C.(5)(d)(3)].
- Consideration #5 - Twelve hours of Conservation Time and held a license for One of the last Five years [must include at least 4 hours reseeding and 1 grid survey unless the harvester is 65 years of age or older on the last day of May of the licensing year or a waiver has been granted as per Section 6.C.(5)(d)(3)].
- Consideration #6 - Twelve hours of Conservation Time and has not held a license, but has meet the conservation hour requirement during any of the past 5 years [must include at least 4 hours reseeding and 1 grid survey unless the harvester is 65 years of age or older on the last day of May of the licensing year or a waiver has been granted as per Section 6.C.(5)(d)(3)]. Licenses are issued to the applicants with the most years of required conservation time in a row counted back from the date of application (issued in order of number of consecutive years counted back.)

Consideration #7 - Less than Twelve hours of any Conservation Time or has Twelve or more hours of conservation time but has failed to meet the requirement of 4 hours reseeding and 1 grid survey (unless the harvester is 65 years of age or older on the last day of May of the licensing year or a waiver has been granted as per Section 6.C.(5)(d)(3) (issued to the applicant with the most hours).

- (f) Commercial General License Category: If any licenses still remain after July 14<sup>th</sup>, they will be available for those harvesters who have applications pending on file for the specific category that the license is leftover from (Resident Commercial, Non-Resident Commercial, or Student Commercial). In the event that the number of applications on file exceed the number of licenses left over, they will be awarded in accordance with the same priority list that is used in the Commercial New License Category (section 6.C.(5)(e). In the event of a tie, the issuance shall be determined by lottery as per section 6.C.(13). If any licenses remain left over in this category they will become available on the first municipal business day in October for resident and non resident members of the general public on a first come - first served basis. Applicants must have not more than one (1) conviction for violation of this Ordinance during the preceding year.
  - (g) License Notification: When notified of the availability of a license the applicant must purchase his/her license within 14 days. If the license is not purchased within 14 days the next applicant on the priority list will be notified that the license is available.
  - (h) Conservation Activity Attendance: It is the responsibility of the individual Shellfish Harvester to sign the attendance sheet at each meeting or event or otherwise ensure that their names are listed for credit. It is also the responsibility of the Shellfish Harvester to remain aware of any changes in the meeting or events schedule, which will be posted at the Town Office.
- (6) Surrender of License:
- (a) Once a license is issued for a harvest year it cannot be surrendered by the license holder during that year unless:
    - (i) The license holder has died (automatic surrender); OR
    - (ii) The license is surrendered by a Military Reservist who is called to active duty in accordance with section 6.C.(6)(b).Any surrendered license shall be reissued in a manner consistent with State Law and Section 6.C.(5)(c) of this Ordinance. The procedure established in Section 6.C.(13) of this Ordinance shall be followed if there is more than one applicant for the license which was surrendered.

- (b) A holder of a Commercial Shellfish license who is a Military Reservist and called to active duty may surrender the license to the Town by giving notice to the Town and the estimated times of the active duty. Within 30 days of the return from active duty, the individual shall submit an application to the Town for re-issuance of the license or issuance of a new license and the town shall reissue or renew the license. All conservation time shall be waived for the issuance of a renewal license. Upon notice and surrender of a license under this provision, the Town may temporarily issue the license or renewal thereof to a new harvester in the same license category in accordance with the priority list in section 6.E. "Commercial New License Category" of this ordinance, and such temporary license shall be surrendered upon the return of the Military Reservist or upon the request of the Town. The cost of the license for the Military Reservist and reimbursement to the temporary holder shall be prorated.
- (c) If a license is surrendered in accordance with section 6.C.(6)(a)(i) & (ii) the license holder (or family in the case of death) will receive a refund of the fee paid, prorated for the remaining term of the license. If a license is surrendered due to death it may be reissued upon vote of the Shellfish Commission.
- (7) Expiration of License: Each license issued under authority of this Ordinance expires at midnight on the last day of June of the following year, except that licenses issued between January 1<sup>st</sup> and the last day of June under the previous year's quota of licenses shall expire on the last day of June.
- (8) Reduction in License Allocation: If, for any reason, a reduction in license allocation is necessary, the person(s) who have held their license for the least amount of consecutive years (counted back from application date) will not be issued a renewal license. In case of a tie in the amount of time a license has been held, a lottery will be held in accordance with 6.C.(13) with the name(s) drawn being issued the available license(s).
- (9) Business Owners: Owners of Phippsburg businesses renting cottages or camping spaces may be issued sufficient recreational licenses for their customers from the Town Administrator, said license to be subject to the same restrictions as licenses purchased directly from the Town Administrator, except that the business owner shall issue these licenses only for the time their guests are scheduled to be staying at that business.
- (10) Suspension (public hearing): The Shellfish Conservation Committee 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 Shellfish Conservation Committee may also suspend the right to purchase a license for up to 60 days, of persons 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 Board of Selectmen and/or to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

(11) Suspension (automatic):

(a) Any Shellfish Licensee who leaves the scene while being summonsed by a Law Enforcement Officer/Municipal Shellfish Conservation Warden or who refuses a summons issued by a Law Enforcement Officer/Municipal Shellfish Conservation Warden shall have his/her shellfish license automatically suspended for a period of 60 days after a hearing as per section 6.C.(10) above.

(b) Commercial Shellfish Licensee: Any commercial shellfish licensee who has two convictions for violations of this ordinance within 36 months shall have his/her shellfish license automatically suspended for a period of 60 days.

(c) Recreational Shellfish Licensee: Any recreational shellfish licensee who is convicted for a violation of this ordinance shall have his/her shellfish license automatically suspended for the remainder of the licensing year and will be ineligible for a future license as follows:

First violation conviction - Ineligible for one year from the date of suspension.

Second violation conviction - Ineligible for two years from the date of suspension.

Third violation conviction - Ineligible for three years from the date of suspension.

These suspensions shall be effective from the mailing date of a notice of suspension by the Board of Selectmen. Persons aggrieved by this suspension may appeal to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

(d) If a license holder pays for their shellfish license by check and the check is returned for insufficient funds the holder will be notified by the Town Treasurer or designee and will have 30 calendar days to pay the town for the license and associated insufficient funds fees. If not settled within the 30 day period the license will be suspended.

(12) Notice of Application Procedures: Notice of the number of licenses to be issued and the procedure for application shall be published in a newspaper with general circulation in the local area, which the municipal officers consider effective in reaching the persons affected. This publication will occur prior to April 22<sup>nd</sup> and will be posted at the Town Hall until the application and licensing period ends.

(13) Lottery Procedures: If, in any of the Renewal or New Commercial categories of licenses described in paragraph 6.C.(5)(d) and (e), 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.

- (a) The Town Administrator 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 Shellfish Conservation Commission shall serve as the Town Administrator's assistant in carrying out this procedure.
- (b) The Town Administrator 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 Administrator 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.
- (c) The Town Administrator'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.
- (d) The Town Administrator'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 Administrator's eye level, so that the Town Administrator can reach into the container and withdraw cards without seeing the numbers on the cards.
- (e) The Town Administrator shall withdraw the cards one-by-one, reading each number drawn out loud. The Town Administrator'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 (b) above, the Town Administrator shall place the corresponding applicant's name next to each number.
- (f) The Town Administrator shall then issue the available licenses to the qualifying applicants, first to residents and then to non-residents, in the order in which their names appear on the list prepared under subparagraph (e). 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.
- (g) The procedure set forth in this Section 6.C.(13) shall be a public proceeding open to the public pursuant to I M.R.S.A. s403, 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 Phippsburg Town Office on the dates designated in Section 6.C.(5)(d) and (e) for each category of license, at a time to be set by the Town Administrator. The Town Administrator shall announce the exact time for the procedure by posting a notice in the Phippsburg 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.

7. **OPENING AND CLOSING FLATS:** Selectmen, with the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvesting. Upon recommendation of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources area biologist that the status of shellfish resources 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.
8. **NIGHT SHELLFISH HARVESTING:** It is prohibited to harvest shellfish at night using an artificial light from April 1<sup>st</sup> through October 31<sup>st</sup>. Night shellfish harvesting using an artificial light is permitted from November 1<sup>st</sup> through March 31<sup>st</sup> for tide completion digging only. Tide completion digging pertains to evening tides only, when low water is one hour after sunset or earlier, allowing the harvester to complete the tide. Tide calculations shall be based on those for Portland Harbor - without corrections for Phippsburg.
9. **MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS:** It is unlawful for any person to possess soft shell clams within the Town of Phippsburg, 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 taken at random from various parts of the lot or by count of the entire lot if it contains less than one peck.
  - B. Penalty: Whoever violates any provision of this section shall be punished as provided by 12 MRSA. Section 6681.
10. **PENALTY:** A person who violates this Ordinance shall be punished as provided by 12 MRSA Section 6671. All fines levied by the courts under this Ordinance shall be paid to the Town of Phippsburg and shall be used for shellfish conservation expenses.
  - A. 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 Municipal Shellfish Conservation Warden, exhibit his or her license. Failure to exhibit a license within a reasonable 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 Conservation Warden 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 Conservation Warden 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 Conservation Warden 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 Conservation Warden has inspected the same.
11. **EFFECTIVE DATE**: This amended Ordinance, which has been approved by the Commissioner of Marine Resources, 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.
12. **DURATION**: This Ordinance shall remain in effect until repealed or replaced.
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.
14. **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.
15. **ONE TIME LICENSE EXPIRATION PERIOD AND ADDITIONAL CONSERVATION HOURS FOR 2016/2017**:
- A. **Commercial Shellfish Licenses**: If the May 3, 2016 Shellfish Conservation Ordinance amendments pass town meeting vote then the 2016-2017 commercial license expiration period will be extended until June 30, 2017 (three months for a total of a 15 month license period). During this 15 month period an extra 2 hours of reseeding time and 2 hours of conservation time will be required to be considered in the Renewal Adult Commercial License Category for the 2017-2018 license issuance. This requirement for extra hours will also be additional to the hours requirements listed under the New Adult Commercial License Category. The conservation hours requirement for the Student Commercial License Category will remain at four hours of any type of conservation time.
- B. **Recreational Shellfish Licenses**: If the May 3, 2016 Shellfish Conservation Ordinance amendments pass town meeting vote then the 2017-2018 Recreational Shellfish Licenses will be reissued starting March 16, 2017 for the period April 1, 2017 to June 30, 2018 (15 month period).

<b>Amendment Summary</b>		
<b>Date</b>	<b>Section</b>	<b>Amendment</b>
5/16/01	Section 6.A.	License requirement age 10 or over
5/16/01	Section 6.B.(4)	License not required for children under 10 years
5/16/01	Section 6.B.(5)	License required for age 10 and over
5/16/01	Section 6.B.(5)(c)	Receive licenses during normal business hours
5/16/01	Section 8.	Amended night harvesting requirements
5/16/01	Section 6.C.(11)	Amended license suspension criteria & penalties
5/14/03	Section 5.L.	Changed definition of student
5/14/03	Section 8.	Changed tide calculation formula
5/14/03	Section 12.	Removed duration specification for ordinance
5/11/05	Section 6.C.(5)(d)	Change in renewal seniority
5/10/06	Section 6.C.(5)(d)	Student license hold
5/10/06	Section 6.C.(5) (d)(3)	Allows conservation time waivers
5/6/08	Section 6.C.(5)(d)(3) & 6.C.(5)(e)	Exempts harvesters over the age of 65 from reseedings and survey. Note: Also completed an administrative correction by changing "Selectmen's Clerk" to "Town Administrator" because the position title was changed.
3/11/09	Section 1. & Section 6. A.	Allows commercial harvesting at Popham State Park.
5/04/10	Section 6.C.(6)(a) & (b)	Military clause
5/04/10	Section 6.C(4)	Allows Selectmen to set annual license fees
5/03/11	Section 5. E. Definitions	Added Quahogs & Surf Clams to Shellfish Def.
5/03/11	Section 5. M. Definitions	Defined Grid Survey "Start to Finish"
5/03/11	Section 6.B.(4)	Added Quahogs & Surf Clams to Res Rec Lic
5/03/11	Section 6.B.(5)	Added Quahogs & Surf Clams to Non Res Rec Lic
5/03/11	Section 6.C.(5)(e)(2)	Changed convictions to one (1)
5/03/11	Section 6.C.(5)(f)	Added the word "License" before "Category"
5/03/11	Section 6.C.(5)(f)	Added limitation of one (1) conviction
5/03/11	Section 6.C.(11)(b)	Changed conviction to "two" vs. "more than two"
5/01/12	Section 5E.	Corrected scientific name of Quahogs & Atlantic Surf Clams
5/7/13	Section 6.C.(6)(a)	Once a license is issued it cannot be surrendered unless the harvester dies or is a Military Reservist called on active duty
5/7/13	Section 6.C.(6)(c)	Designates the prorated reimbursement for a surrendered license
5/7/13	Section 6.C.(11)	Allows suspension of a license for returned NSF checks
5/5/15	Section 5. Definitions	Redefined Conservation Work
5/5/15	6.C.(5)(h)	Harvesters have the responsibility to sign attendance sheets and remain aware of meetings and events

5/3/16	Various Sections	Changed License Issue Timeline
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Attest to be a true copy: Lisa M. Wallace  
Town Clerk  
Town of Phippsburg

I hereby certify that this is a true and correct copy of the original document.

Certified By Lisa M. Wallace

Month 09 Day 06 Year 2016

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