

# SHELLFISH CONSERVATION ORDINANCE

## TOWN OF STEUBEN

Ordinance Adopted: June 7, 2003 – Special Town Meeting

Amendments Adopted: Nov 8, 2011 – Special Referendum

Amendments Adopted: Mar 9, 2013 – Annual Town Meeting

Amendments Adopted: May 6, 2013 – Special Town Meeting

Amendments Adopted: June 30, 2014 – Special Town Meeting

Amendments Adopted: March 7, 2015 – Annual Town Meeting

Amendments Adopted: March 12, 2016 – Annual Town Meeting

Amendment Adopted: May 4, 2016 Special Town Meeting

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 Steuben which will insure 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 clams taken
  - E. Limiting the amount of clams taken daily by a harvester
3. **Shellfish Conservation Committee:** The Shellfish Conservation Program for the Town of Steuben will be administered by the Shellfish Conservation Committee consisting of five members to be appointed by the Selectmen for terms of one year. The Committee's responsibilities include:
  - A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish harvesting licenses to be issued.
  - B. Submitting to the Board of Selectmen proposals for shellfish conservation.
  - C. Keeping this ordinance under review and making recommendations for its amendments.
  - D. Recommending conservation closures and openings to the Board of Selectmen or Council in conjunction with the Area Biologists of the Department of Marine Resources.
  - E. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other committee activities.
  - F. Shellfish Conservation Committee shall be responsible for determining dates, times and methods of Conservation to be required of harvesters each licensing year.
4. **Definitions:**
  - A. **Resident:** The term "resident" refers to a person who has been domiciled in this municipality for at least three months next prior to the time his claim of such residence is made.

- B. **Non-Resident:** The word "non-resident" means anyone not qualified as a resident under this ordinance.
- C. **Shellfish, Clams and Intertidal shellfish resources:** When used in the context of this ordinance, the words "shellfish", "clams" and "intertidal shellfish resources" mean soft-shell clams, *Mya Arenaria*.
- D. **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 other container constitutes a separate lot.
- E. **Possess:** For the purpose of this section, "Possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.
- F. **Municipality:** Refers to Town of Steuben, Maine.
- G. **Senior:** The term senior refers to a person who 65 years or older.
- H. **Junior:** The term junior refers to a person who is 16 years or younger.
- I. **Donated Conservation Time:** The term means to donate time to receive a commercial license at a reduced rate.
- J. **Volume Limits:** The volume of clams harvested is subject to a limit take. The volume limit may vary from flat to flat. The Board of Selectmen may change volume limits upon the recommendation of the Shellfish Committee with 5 days public notification before the change takes effect.

5. **Licensing:** Municipal Shellfish Harvesting Licenses are required. It is unlawful for any person to harvest and take shellfish from the shores and flats of this municipality without having a current license issued by this ordinance. Additionally, a commercial harvester must have a valid State of Maine Commercial License issued by the Department of Marine Resources prior to harvesting clams for commercial purposes. A Steuben shellfish license shall be invalid if an individual's Maine Commercial Shellfish License is under suspension or revocation for any reason, at least for the period of state suspension.

A. Designation, Scope and Qualifications:

1. **Resident Commercial Shellfish License:** The license is available to residents of the Town of and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
2. **Non-resident Commercial Shellfish License:** The license is available to non-residents of the Town of Steuben and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.
3. **Senior Resident Commercial License:** This license is available to residents of the Town of Steuben 65 years old or older and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
4. **Senior Non-Resident Commercial License:** This license is available to non-residents of the Town of Steuben 65 years old or older and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.

5. Junior Resident Commercial License: This license is available to residents of the Town of Steuben 16 years old and younger and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
  6. Junior Non-Resident Commercial License: This license is available to non-residents of the Town of Steuben 16 years old and younger and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
  7. Maine state commercial shellfish license holders are ineligible for a resident or a non-resident recreational license.
  8. Resident Recreational Shellfish License: The license is available to residents and real estate taxpayers of this municipality and entitles the holder to harvest and take no more than one peck of shellfish in any one day for personal use only.
  9. Non-Resident Recreational Shellfish License: The license is available to non-residents and entitles the holder to harvest and take no more than one peck of shellfish in any one day for personal use only.
  10. 7 Day Recreational – A one (1) peck per day limit, available to residents and non-residents. Limited to one, 7 Day license per person per licensing year.
  11. License must be signed: The licensee must sign the license to make it valid
- B. Application Procedure: Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality.
1. Contents of the 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.
  2. Misrepresentation: Any person who gives false information on a license application will cause said license to be invalid and void.
  3. Commercial Application: If applying for a reduced fee commercial license, the application must be accompanied by signed statement from the Shellfish Warden or the Shellfish Conservation Committee Chairman certifying the applicant has completed the 10 hours of donated conservation time, being made up of 7 hours conservation activities and 3 hours of Shellfish Conservation Committee meeting time. There shall be no license fee credit issued for partial completion of conservation time. There will be rollover of completed conservation time for non-resident commercial applicants who are not offered a license.
  4. Prior year Non-Resident commercial applicants who completed donated conservation time but didn't succeed in the lottery should be drawn first the following year. The current year Non-Resident commercial applicants who completed donated conservation time should then be drawn second. All remaining non-resident commercial applicants who did not complete conservation time will be drawn third.

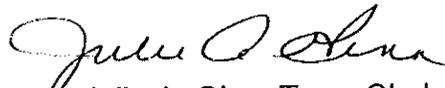
- C. Fees: The Shellfish Conservation Committee shall determine the number of licenses available and fees for licenses upon the approval of the Board of Selectmen and by the Department of Marine Resources.
1. A Commercial Resident or Non-Resident license may be issued at a reduced fee set by the Shellfish Conservation Committee and the Board of Selectmen if the applicant has completed the 10 hours of donated conservation time, being made up of 7 hours conservation activities and 3 hours of Shellfish Conservation Committee meeting time. There shall be no license fee credit issued for partial completion of conservation time.
  2. Junior or Senior Commercial Resident or Non-Resident applicant shall not be required to donate any conservation time.
- D. Limitation of Harvesters: Because the shellfish resources are limited and because a commercial or recreational harvester can be expected to harvest a certain volume of clams per year, the number of harvesters must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:
1. Prior to March 1, 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 following the requirement of 12 M.R.S.A, Section 6671 (3).
  2. The Shellfish Conservation Committee will notify the Town Clerk in writing prior to March 10 of the number of licenses to be issued.
  3. Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in 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.
  4. July 1<sup>st</sup> will be the first day of license sales. **Unless the 1<sup>st</sup> falls on a week-end then the start date would be the Friday before.** All non-resident commercial and recreational applications will be a separate drawing by lottery as advertised. The Town Clerk will sell Resident Commercial Licenses from the first working day. 10% of all resident licenses sold will be made available to non-residents. Current year Non-Resident commercial licenses based on previous year's licenses sold. On the first day of license sales a number of non-resident commercial licenses will be offered for sale based on the number of resident licenses sold in the previous year in accordance with 12M.R.S.§6671(3-E).
- E. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the 30<sup>th</sup> day of June next following date of issue.
- F. 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 their licenses.

- G. Recreational shellfish license fees will be waived for residents and non-residents 65 years or older and 16 years or younger.
- H. Suspension: Any shellfish licensee having three convictions for a violation of this ordinance shall have his shellfish license automatically suspended for a period of thirty (30) days. Any violation of this ordinance may result in suspension.
1. A licensee whose shellfish license has been suspended pursuant to this ordinance may re-apply for a license only after the suspension period has expired. A suspended license is not to be returned until the fine is paid in accordance with the court's decree.
  2. The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the Licensee.
  3. Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written Request for Hearing with the Town Clerk within thirty (30) days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee, before the Board of Selectmen/Town Council by filing a written request for Appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.
  4. Any shellfish license holder convicted of harvesting in an area closed for conservation shall have their license automatically suspended for 30 days.
  5. Any shellfish license holder convicted of night harvesting with the assistance of artificial light shall have their license automatically suspended for 30 days.
- I. Opening and Closing of Flats: The Municipal Officers, upon the approval of the Commissioner of Marine Resources, may open and/or close areas for shellfish harvest. Upon recommendation of the Shellfish Conservation Committee and the 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 on five day's 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 Municipal Officers made after the hearing shall be based on findings of fact. The municipality will provide notification to the public of conservation closures/openings in accordance with DMR Regulations Chapter 7.50(1)(c).
- a. All flats closed by the Department of Marine Resources, for pollution will also be closed by the Town of Steuben for conservation until further notice, after permitted.
  - b. It shall be unlawful to harvest shellfish in an area closed for conservation.
- J. Minimum legal size of soft-shell clams: It is unlawful for any person to possess soft shell clams within the town or township of Steuben, Washington County, which are less than two (2) inches in the longest diameter, except as provided by subsection 6 of this section.

- K. 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 peck or 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.
- L. The assistance of artificial light for night harvesting is prohibited.
- M. A non-license holder or recreational license holder may not accompany a licensed commercial harvester with the intent of assisting in the harvesting and taking of shellfish.

- 6. **Penalty:** Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. Section 6681 and/or Section 6671 (10).
- 7. **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.
- 8. **Period of Ordinance:** This ordinance shall remain in effect until amended, revoked or a new ordinance is adopted. Any amendments to the current ordinance or if a new ordinance is adopted, must receive prior approval by the Commissioner.
- 9. **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.
- 10. **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.

Ordinance Attested:

  
Julie A. Ginn, Town Clerk  
May 4, 2016