Town of Waldoboro, Maine
Shellfish Conservation Ordinance

(Revised June 14, 2016)

1. **Authority.**
This ordinance is enacted in accordance with 12 M.R.S.A. § 6671.

2. **Purpose.**
To establish a Shellfish Conservation Program for the Town of Waldoboro 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. Improving water quality;
   b. Licensing;
   c. Limiting the number of shellfish harvesters;
   d. Restricting the time and area where digging is permitted;
   e. Limiting the minimum size of clams taken.

3. **Shellfish Conservation Committee.**
The Shellfish Conservation Program for the Town of Waldoboro will be administered by the Shellfish Conservation Committee consisting of nine (9) members to be appointed by the Board of Selectmen for terms of three years, except the initial appointment which shall be for 1, 2, or 3 years. The Selectmen shall appoint a person to fill a vacancy for the unexpired term if a member terminates. The committee shall choose a chairman, vice-chairman and secretary. Any committee member who has more than three (3) unexcused absences from committee meetings in a year shall be removed and replaced with a new member by the Selectmen. The Committee shall act by majority vote calculated on the basis of those present and voting. *(Note Section 3 - Amended June 10, 2004)*

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 and other sources of information and preparing in conjunction with and subject to the approval of the department a plan for implementing conservation measures; *(Note - Section 3.b amended June 15, 2000)*
   c. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation;
   d. Keeping this ordinance under review and making recommendations for its amendments;

e. 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;

f. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Area Biologists of the Department of Marine Resources;

g. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other committee activities;

h. To work with the officials of the Town of Waldoboro and various State of Maine Departments to improve water quality which will result in more shellfish producing areas to be opened for harvesting.

4. **Definitions.**

a. Resident - The term "resident" refers to a person who has been physically resided at a fixed, permanent and principle home in this municipality for at least three (3) months next prior to the time his claim of such residence is made.

b. Nonresident - The term "nonresident" 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. Municipality - Refers to Town of Waldoboro, Maine.

e. Junior Resident - The term" Junior Resident" means a resident of the Town of Waldoboro 10-18 years of age.

f. Junior Non Resident - The term" Junior Non Resident" means a non resident of the Town of Waldoboro 10-18 years of age.

g. 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.

i. Shellfish Conservation Work – The term Shellfish Conservation as used in this ordinance shall be broadly defined and shall include, but is not limited to, such activities as reseeding, river clean up, pollution abatement, predator eradication, surveying and information gathering, testing and sampling and any another activity that the Shellfish Conservation Committee deems as fostering the general purposes of this ordinance. *(Note - amended February 25, 2014)*

5. **Licensing.**

Municipal Shellfish Digging License is required for anyone ten (10) years or older. 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. *(Amended June 9, 2015)*

A Commercial Digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.

a. Designation, Scope and Qualifications:

1. Resident Commercial Shellfish License:
The license is available to residents of the Town of Waldoboro and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.

2. Nonresident Commercial Shellfish License:
The license is available to nonresidents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.

3. Resident Recreational Shellfish License:
The 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 in anyone day for the use of licensee and licensee's immediate family. Applicants who have reached 60 years of age shall be entitled to a free license. A person holding a Maine State Commercial Shellfish license may not be issued or hold a resident or non-resident recreational clam harvest license. *(Note - Section 5.a.3 Amended June 15, 2000, June 16, 2005, June 14, 2016)*

4. Nonresident Recreational Shellfish License:
The license is available to any person not a resident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in anyone day for the use of licensee and licensee's immediate family. Applicants who have reached 60 years of age shall be entitled to a free license. A person holding a Maine State Commercial Shellfish license may not be issued or hold a resident or non-resident recreational clam harvest license. *(Note - Section 5.a.4 Amended June 15, 2000, June 16, 2005, February 12, 2008, June 14, 2016)*

5. Junior Resident Commercial Shellfish License:
The license is available to junior residents of the Town of Waldoboro and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities. Junior licenses will be issued yearly to any junior (10-18) enrolled in

school. A junior license holder will be entered into the appropriate class at age 19. *(Note - Section 5.a.5 Amended June 15, 2000, June 9, 2015.)*

6. Junior Non-Resident Commercial Shellfish License:
The license is available to junior non-residents and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities. Junior licenses will be issued yearly to any junior (10-18) enrolled in school. A junior license holder will be entered into the appropriate class at age 19. *(Note - Section 5.a.6 Adopted June 15, 2000, June 9, 2015)*

7. 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:

Notice of dates, places, times and the procedures for the license sales shall be published in a trade or industry publication, or in the 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 initial sale date and shall be posted in the municipal offices. A copy of the notice shall be provided to the Commissioner of Marine Resources.

For each commercial license category, the Town Clerk shall issue one license to nonresidents when six licenses are issued to residents and one more to nonresidents when four more are issued to residents; thereafter, one nonresident license will be issued for every ten additional resident license issued. For each recreational license category, the Town Clerk shall issue one license to a resident and one to a nonresident; thereafter, one nonresident license will be issued for every ten additional resident licenses issued. *(Note - Section 5.a.7 Adopted June 15, 2000)*

8. 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 Application:
The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, and signature *(Amended, June 9, 2015)*

2. Misrepresentation:
Any person who gives false information on a license application will cause said license to become invalid and void. Proof of identity and residency may be required to obtain a license. *(Amended June 9, 2015)*

c. Fees:
The fees for the licenses are as stated on the reverse side of the application and must accompany in full the application for the respective license. Effective January 1, 2006 the Board of Selectmen shall establish shellfish license fees under such terms and conditions as they deem advisable, after notice and public hearing. Before making any adjustment, the board will consider the recommendation of the Shellfish Conservation Committee. The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation and enforcement.

Applicants for a commercial shellfish harvester's license for the issuance year 2014-2015 and beyond may volunteer to perform (6) six hours of shellfish conservation work in exchange for a reduction in the license fee. The fee reduction can total $60. An applicant who has (6) six hours of unused conservation time is eligible to use that credit toward the future purchase of a shellfish license. If the applicable state or federal minimum wage, multiplied by (6) six, is greater than $60, then the reduction in the license fee shall be that greater amount. Work performed shall be approved by the Shellfish Conservation Committee. At a minimum four (4) hours must be conservation reseeding unless waived in whole or in part by the Shellfish Conservation Committee.

Applicants who, by the 2nd Monday in July, have not reached 19 years of age are exempt from any and all conservation work. Applicants that have reached 60 years of age, or are not able to perform voluntary shellfish conservation work due to the fact that they were on active military duty, shall also be entitled to the above described reduction in the license fee and shall not have to perform the (6) six hours of conservation work.

In the event of an occurrence of an unusual amount of river closures to shellfish harvesting during the months of June and July, the Shellfish Conservation Committee, in conjunction with the DMR, may request that the Board of Selectmen determine that an emergency situation exists for the purchasing of licenses. If an emergency situation is determined, the Board of Selectmen, with guidance from the Shellfish Committee, may adjust the issuance dates and/or payment dates for licenses. *(Note - Amended March 9, 1993; January 8, 1994; June 15, 2000; June 10, 2004, June 16, 2005, May 1, 2007, February 12, 2008, November 3, 2009, June 9, 2015)*

d. Limitation of Diggers:

Clam resources vary in density and size distribution from year to year and over the limited soft clam producing area of the town. It is essential that the town carefully manage its shellfish resources. Following the annual review of the town's clam resources, its size distribution, abundance and the warden's reports, as required by Section 3, the Shellfish Conservation Committee in consultation with the DMR area biologist will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year. *(Amended June 9, 2015)*

1. Prior to February 15 the committee shall report its findings and document recommendations for the allocating of commercial and recreational licenses to be made available for the following license-year to the Commissioner of Marine Resources for concurrence. *(Note - Section 5.d.1 Amended June 15, 2000 and February 25, 2014)*

2. After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to May 15, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued. *(Note - Section 5.d.2 Amended June 15, 2000)*

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 ten (10) days prior to the period of issuance and shall be posted in the municipal offices until the period concludes. The Town Clerk will prepare a list of the persons eligible for licenses in Classes A through C. The public notification of license availability shall include a statement that the list is posted at the Town Office. No shellfish licenses may be

reserved and licenses cannot be transferred or resold. New applicants for a shellfish license who meet the requirements of this article must obtain the shellfish license in person. Previous year license holders may delegate an individual to purchase their license if they are unable to do so on their two day issuing dates. A written authorization must accompany delegated individual.

4. The Town Clerk shall issue resident commercial and non-resident commercial licenses according to the selection process described below. Resident applications and non-resident applications shall be segregated in each class. If the number of applicants in a class exceeds the available number of licenses in that class preference will be given to those individuals that have completed conservation work and the remaining licenses will be selected by lottery. The classes shall be followed in descending order. A number equivalent to no less than ten percent of the total number of resident commercial licenses, regardless of class, shall be issued to non-resident commercial applicants. The classes are:

   a. Applicants who have held commercial licenses for three (3) of the last three (3) years.
   b. Applicants who have held commercial licenses for two (2) of the last three (3) years.
   c. Applicants who have held commercial licenses for one (I) of the last three (3) years.
   d. Applicants who have held commercial licenses for zero (0) of the last three (3) years.

   On the second Monday in July the Town Clerk shall issue licenses in Class A. The licenses shall be purchased by the end of business on Tuesday of that week.

   If licenses remain, the Town Clerk shall issue licenses in Class B on Wednesday of that week. The licenses shall be purchased by the end of business on Thursday.

   If licenses remain, the Town Clerk shall issue licenses in Class C on Friday of that week. The licenses shall be purchased by the end of business on Monday of the following week.

If licenses remain, the Town Clerk shall issue licenses in Class D on Tuesday of that week. The licenses shall be purchased by the end of business on Thursday of that week.

If licenses remain, the Town Clerk shall issue them to residents and non-residents on a first-come, first-serve basis as allocated. *(Note - amended February 25, 2014, June 9, 2015)*

The Town Clerk or the Town Clerk's designee shall begin to issue resident and non-resident recreational shellfish licenses on July 15.

For the purpose of the above selection process, a Waldoboro resident who establishes residency in another place outside of Waldoboro, shall not be considered as previously having a Waldoboro resident Commercial Shellfish License. *(Note - Section 5.d.4 - Licensing amended June 11, 1996, February 27, 2007, and February 12, 2008) (Note - Section 5.d.5 Enacted March 5, 1993 and Repealed January 8, 1994)*

e. License Expiration Date:
Each license issued under authority of this ordinance expires at midnight on the thirty-first day of July next following date of issue. *(Note - Amended March 5, 1993; June 11, 1996 and June 15, 2000)*

f. Reciprocal Harvesting Privileges:
Licenses from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of this license.

g. 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.

1. A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has expired.

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 by filing a written Request for Appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

6. **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. Notification of municipal conservation closures or openings shall be provided in accordance with DMR regulation, Chapter 7.50 (c). *(Note - Amended June 14, 2016)*

7. **Minimum Legal Size of Soft Shell Clams.**

It is unlawful for any person to possess soft shell clams within the Town of Waldoboro, County of Lincoln, which are less than two (2) inches in the longest diameter except as provided by subsection b of this section.

1. 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.

b. Tolerance:

Any person may possess soft shell clams that are less than two (2) inches if they comprise less than 10% 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 a count of the entire lot if it contains less than one peck.

c. Penalty:

Whoever violates any provision of this ordinance shall be punished as provided by 12 MRSA Section 6681.

8. **Penalty.**
A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671. *(Note - Amended April 26, 1994)* A municipal license holder who aids and abets the harvest of shellfish in violation of this Ordinance shall be subject to the same penalties as the person he/she assisted. *(Note - Amended June 12, 2012, June 9, 2015)*

9. **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 Commissioner within twenty (20) days of its adoption.

10. **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.

11. **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.

Approved June 14, 2016 by Town Meeting.

Certification of Municipal Officers

Clinton Collamore, Sr., Chair

Joanne Minzy, Vice-chair

Robert L. Butler

Abden S. Simmons

Katherine W. Winchenbach

Attest to all

Town Manager

Attest: A true copy as certified to me by the Municipal Officers of Waldoboro, Maine on June 14, 2016.

Eileen F. Dondlinger, Town Clerk

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