ATTEST
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Jennifer D Dolan CCM
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CHAPTER 305

SHELLFISH CONSERVATION ORDINANCE

Town of Yarmouth, Maine
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SHELLFISH CONSERVATION ORDINANCE

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SHELLFISH CONSERVATION ORDINANCE

ARTICLE I

A. TITLE

This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671 and shall be known and may be cited as the Municipal Shellfish Ordinance of the Towns of Yarmouth and North Yarmouth, Maine.

B. PURPOSE

The purpose of this Ordinance is to establish a shellfish conservation program for the Towns of Yarmouth/North Yarmouth which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- Licensing;
- Limiting the number of shellfish harvesters;
- Restricting the time and area where digging is permitted;
- Limiting the minimum size of clams taken;
- Limiting the amount of clams taken daily by a harvester.

C. DEFINITIONS

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/her claim of such residence is made.

Senior Resident: The term "Senior Resident" refers to a person 65 years of age or older and is qualified as a resident under this Ordinance.

Non-resident: The word "non-resident" means anyone not qualified as a resident under this Ordinance.

Senior non-resident: The term "Senior non-resident" refers to a person 65 years of age or older and is not qualified as a resident under this Ordinance.

Shellfish Clams: When used in the context of this Ordinance, the words "shellfish" and "clams" mean softshell clams, Mya Arenaria, and shall include both shell stock and shucked shellfish. "Shellfish" and/or "Clams" shall also mean Northern Quahogs, Mercenaria mercenaria and Razor Clams, commonly known as Atlantic Jackknife (Ensis directus), Eastern (aka American) Oysters (Crassostrea virginica) and European Oysters (Ostrea edulis).

Municipality: Refers to Towns of Yarmouth/North Yarmouth, Maine

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

Possess: For the purpose of this Section, "possess" means dig, take, harvest, or hold in one's custody or control, either personally or by another who is under one's control.

License Renewal: The purchase of a license of the same category and class as that currently held by an applicant. License renewal is limited to license holders who meet the criteria outlined in this ordinance.

ARTICLE II

A. LICENSES

A Municipal Shellfish Digging License is required, except for Depuration Harvesting authorized by the Commissioner of the Maine Department of Marine Resources pursuant to Title12, M.R.S.A., Section 685. 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. Resident and non-Resident children under the age of sixteen (16) shall not be required to obtain a recreational license but shall otherwise be subject to the provisions of this Ordinance.

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

B. DESIGNATION, SCOPE, AND QUALIFICATIONS

Resident Commercial Shellfish License: The license is available to residents for the Towns of Yarmouth/North Yarmouth and entitles the holder to dig and take any amount of shellfish from the shores and flats of this Municipality and consistent with the provisions of this Ordinance.

Non-resident Commercial Shellfish License: The license is available to non-residents of this Municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this Municipality and consistent with the provisions of this ordinance.

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 (1) peck of shellfish in any one (1) day for personal use. A person holding a resident recreational shellfish license may not engage in the wholesale or retail sale of any shellfish harvested under that license.

Senior Resident Shellfish License: The license is available to residents Senior Residents and entitles the holder to dig and take no more than (1) peck of shellfish in any one (1) day for personal use. A person holding a Senior resident recreational shellfish license may not engage in the wholesale or retail sale of any shellfish harvested under that license.

Non-Resident 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 (1) peck of shellfish in any one (1) day for personal use. A person holding a non-resident recreational shellfish license may not engage in the wholesale or retail sale of any shellfish harvested under that license.

Senior Non-Resident Shellfish License: The license is available to Senior non-residents and entitles the holder to dig and take not more than one (1) peck of shellfish in any one (1) day for personal use. A person holding a Senior non-resident recreational shellfish license may not engage in the wholesale or retail sale of any shellfish harvested under that license.

Three-day Recreational Shellfish License: This license is available for purchase for residents and non-residents. Each license shall authorize the holder to dig and take no more than one (1) peck of shellfish in any one (1) day for the use of himself/herself and his/her family. Such licenses shall expire after three days from the date of issue or the last calendar date on the month issued, whichever date is earlier. Such licenses shall be sold only the effective month as established by the Shellfish Conservation Commission and only up to the total number of licenses authorized for that month as established by the Shellfish Conservation Commission.

License must be signed: The licensee must sign the license to make it valid and harvesting authorities granted pursuant to any license shall not be transferable to any other person.

Aiding and abetting: Shall mean through collusion assisting someone in violating this ordinance or Title 12, Section 6671. This may include but not be limited to, possessing harvested soft shell clams that were illegally obtained; offering to lend or lending tools or containers to assist in the harvest of illegally obtained soft shell clams; or to offer to or to misrepresent facts to assist someone in violating this ordinance or Title 12, Section 6671.

C. CONTENTS OF THE APPLICATION

Licensing administration and enforcement under this Ordinance shall be carried out by the Town of Yarmouth, Maine on behalf of the combined municipalities of the Towns of Yarmouth and North Yarmouth. Any person may apply to the Town Clerk of Yarmouth for the Licenses required by this ordinance on forms provided by the municipality.

D. FEES

The fees for the licenses shall be as provided in Chapter 401 and must accompany in full the application for the respective license. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation, and enforcement.

E. LICENSE EXPIRATION DATE

Each license issued under authority of this Ordinance expires at midnight on the 30th day of April next following the date of issue, except Three-day Recreational licenses which shall expire in accordance with Article II.E of this Ordinance.

F. CHANGE OF ADDRESS

Commercial license holders shall, within 10 days, notify the Shellfish Warden in writing of a change of address.

G. STATE LICENSE SUSPENSION

Any individual whose State of Maine Commercial Shellfish License is suspended at the time of license issuance shall not be eligible for a municipal Commercial License.

ARTICLE III

A. LIMITATION OF DIGGERS

Because the shellfish resources are limited and because a commercial or recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers 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 Yarmouth Town Council, with the approval of the Commissioner of Marine Resources and advice of the Shellfish Conservation Commission will establish the number of commercial and non-commercial licenses to be permitted.

2. The Yarmouth Town Council will notify the Town Clerk of Yarmouth in writing prior to April 1, of the number of licenses to be issued. No reservation will be accepted. Notice of the number of licenses to be issued and the procedure for application shall be published in a newspaper or combination of newspapers with general circulation which the municipal officers considered effective in reaching persons affected, not less than ten days prior to the period, or periods, of issuance and shall be posted in the municipal offices until the period(s) concludes.

   (a) The Town Clerk shall issue commercial and recreational (renewal and new) licenses to residents and non-residents according to the number and type established by the Yarmouth Town Council.

(b) Commercial License Renewal: A commercial license may be renewed only on any municipal business day between April 1 and April 15, annually. To be eligible to renew a license, a person must not have lost eligibility to hold a license pursuant to the license revocation provisions of Article VI.B hereunder.

In the event that the number of qualifying applicants seeking renewal exceeds the number of available commercial licenses, the Town Clerk shall conduct a limited lottery, as specified in the following paragraphs in the sub-section(b), for the purpose of issuance of such commercial licenses as may be available. The Lottery shall be limited to those qualified to renew a license and will determine which qualifying applicant(s) seeking renewal will no longer be eligible for license renewal. The lottery will be carried out by the Town Clerk as soon as reasonably possible after April 15 (or sooner if all qualifying applicants for renewal have applied for renewal before such date).

The Lottery of qualifying commercial license holders seeking renewal will be carried out as follows:

(i.) The Town Clerk shall first hold a lottery of qualifying, resident and non-resident commercial license holders seeking renewal to determine which license holder(s) seeking renewal shall not be allowed to renew the license for that license year. The lottery shall be repeated until either of the following is reached: (a) the number of remaining qualifying applicants (resident and non-resident) seeking renewal equals the total number of authorized licenses for that license year, or (b) the number of remaining non-resident qualifying applicants seeking renewal equals the required minimum number, or required minimum percentage, of non-resident license holders, as per Title 12 MRSA Section 6671(E). When the amount specified in either part (a) or (b) of the foregoing sentence is reached, the lottery of qualifying, commercial license holders seeking renewal shall cease.

(ii.) If further reductions in the number of qualifying commercial license holders seeking renewal is necessary, the Town Clerk shall then hold additional lotteries of current, resident commercial license holders seeking renewal until such time as the total number of qualifying commercial license holders seeking renewal equals the total number of authorized commercial licenses or a change in the minimum number or percentage of non-resident license holders applies as per Title 12 MRSA Section 6671 (E), whichever comes first.

(c) Any Commercial license holder aggrieved by any decision or determination of this Shellfish Conservation Commission under Article III.A.(2)(b) of this ordinance may appeal to the Yarmouth Town Council who shall hear such appeal and make its own determination and may sustain, modify, or set aside the determination or decision of the Shellfish Conservation Commission.

3. Beginning on the first business day in May, the Town Clerk of Yarmouth shall issue new Commercial Licenses on a lottery basis. The Town Clerk, with the advice of the Shellfish Conservation Commission, shall establish rules and procedures for the conduct of the lottery, and shall post notice of the availability of commercial licenses, if any, and the procedures for lottery participation. If, for any reason, the Yarmouth Town Council with the approval of the Maine Department of Marine Resources determines that additional commercial harvesting licenses may be issued subsequent to the original lottery, a supplemental lottery may be conducted. Supplemental lottery procedures shall allow all original lottery participants not selected to be automatically re-entered into the lottery pool. In the event that additional licenses become available subsequent to the original lottery, and all original lottery participants have been issued a license under the original or supplemental lottery(ies), the Town Clerk shall post notice for a new lottery generally in accordance with the rules and procedures for the original lottery.

4. Notwithstanding ARTICLE III.A.1, in the event that any commercial licenses issued become void due to the death, change of residency, voluntary return by the licensee, or revocation pursuant to Article VI.B, the Town Clerk shall conduct a supplemental lottery for the re-issuance of such license(s) only upon the positive determination by the Yarmouth Town Council with the advice of the Shellfish Conservation Commission that re-issuance of such licenses shall be consistent with the goal of sustainable resource management. Absent such a positive determination, the total number of authorized available licenses shall be reduced through attrition. In the event a supplemental lottery is to be held pursuant to this Section III.A.4, any former commercial license holders that were eliminated from license renewal pursuant to a lottery held under Article III.A.2(b) within the immediate 24 month period will be given the opportunity to obtain a commercial license, and if there is more than one former commercial license holder who wants to obtain a commercial license, a lottery will be held amongst such former commercial license holders.

5. Any person who is issued a Commercial Shellfish License by the Maine Department of Marine Resources will not be eligible for issuance of a Yarmouth Recreational Shellfish License.

6. Any person who is issued a Yarmouth Recreational License and subsequently obtains a Commercial Shellfish license from either the Maine Department of

Marine Resources or the Town of Yarmouth will have his/her Yarmouth recreational license revoked automatically.

B. ALTERNATIVE LICENSING PROCEDURES

In the event that the Yarmouth Town Council shall establish that no limit on non-commercial licenses shall be imposed, the Yarmouth Town Council following procedure shall govern the issuance of licenses notwithstanding the provisions of Article III. A.2.

1. Beginning on the 20th day of April, the Town Clerk of Yarmouth shall issue all resident recreational licenses to residents upon application, said licenses to be effective May 1.

2. Beginning on the 20th day of April, the Town Clerk shall issue, by lottery, non-resident recreational licenses to be effective May 1 as follows:

   a. The Town Clerk shall establish a waiting list by lottery for all non-resident applicants and shall issue licenses for not less than ten (10) non-resident applicants or an amount equal to ten percent (10%) of all resident recreational licenses sold, whichever is the greater.

   b. Any non-resident may enter his/her name after April 1 for the waiting list lottery to be held on April 20 (or, if April 20 is not a regular business day, the next business day thereafter.) Any person may apply to be added to the waiting list at any time thereafter. The Town Clerk shall post all names on the waiting list.

   c. Any person notified by the Town Clerk that he/she has been selected from the waiting list and is qualified to apply for a non-resident, non-commercial license, shall make an application to the Town Clerk and pay the applicable license fee within fourteen (14) business days of the mailing of said notice of eligibility.

      In the event that the person fails to make application, qualify, or pay the license fee within the prescribed time period, he/she shall be returned to the end of the waiting list.

   d. Open License Sales: When the Yarmouth Town Council determines limiting commercial shellfish licenses is not an appropriate shellfish management option for the following year the Yarmouth Town Clerk shall provide that:

      1.) Notice of the dates, places, times and the procedures for the license sales 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 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.

2.) 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 licenses issued.

3.) Commercial and Senior citizen licenses issued shall not be counted in the calculation of licenses sold under this section.

ARTICLE IV

A. OPENING AND CLOSING OF FLATS

The Yarmouth Town Council with the advice of the Shellfish Conservation Commission, and the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest and designate areas and periods for commercial or recreational harvesting thereon. Upon concurrence of the Department of Marine Resources area biologist that the status of the shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed for either recreational or commercial harvesting, the Yarmouth Town Council may call a public hearing on ten 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 Yarmouth Town Council made after the hearing shall be based on findings of fact.

B. MINIMUM LEGAL SIZE OF SOFTSHELL CLAMS

Pursuant to 12 M.R.S.A., Section 6671 and 6681 as amended from time to time, it is unlawful for any person to possess softshell clams within the Town of Yarmouth, Cumberland County, which are less than two (2) inches in the longest diameter except as provided by Section C of this ARTICLE IV.

The possession of more than one peck of clams by anyone not possessing both a valid State Commercial Clam license and Town of Yarmouth Commercial license shall constitute a violation of this Ordinance. Upon conviction of such violation in any court of competent jurisdiction, the Town Clerk shall suspend the license of such violator pursuant to ARTICLE VI.B. of this Ordinance. Such suspension shall be in addition to any penalties or fines imposed by the court.

C. METHOD OF DETERMINING TOLERANCE

Any licensed person may possess softshell clams that are less than two (2) inches if, beginning on the effective date of this Ordinance, they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one

(1) peck, no 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.

D. NO NIGHT HARVESTING

It is illegal for any person to harvest shellfish from the shores or flats of the Town of Yarmouth at night. For the purpose of this Section, the term night shall mean that period of time from one-half after sunset until on-half hour before sunrise of the immediately following day.

E. NO HARVESTING FROM CLOSED AREAS

It is illegal for any person to harvest shellfish from any areas of the shores or flats of the Town of Yarmouth if such area has been declared closed by the Municipal Officers for conservation purposes, or by the Department of Marine Resources for pollution/sanitation purposes.

F. AIDING AND ABETTING

A harvester holding a commercial license who aids and abets the harvest of shellfish in violation of this Ordinance shall be subject to the same penalties as the person he has assisted.

ARTICLE V

A. SHELLFISH CONSERVATION COMMISSION

The Shellfish Conservation program for the Town of Yarmouth/North Yarmouth will be administered with the advice of the Shellfish Conservation Commission consisting of six (6) members. These members will be appointed, one half by the Town Council of Yarmouth and one half by the Selectmen of North Yarmouth.

The Yarmouth Town Council and the North Yarmouth Board of Selectmen shall each appoint three members, who shall serve staggered three-year terms. The Yarmouth Town Council shall establish the initial staggering of terms such that an equal number of terms shall expire each year from each community.

The Shellfish Warden shall serve as an ex-officio member of the Commission and shall have no vote.

The Commission shall elect annually from its members a chairman, vice chairman, secretary and such other officers as the Commission shall determine necessary and expedient. There shall be no requirement or condition that election of Commission officers shall be based on residency, term, tenure, or licensing status. Elections shall be held between March 1 and April 30 annually.

Votes/Quorum: All final votes of the commission shall require the affirmative vote of a majority of those members present and voting provided a quorum is present. A quorum shall be deemed present if a minimum of four (4) members are present. A

quorum shall be required for the transaction of all business except that a smaller number can adjourn to another time.

Duty of Officers: The Chairman shall cause an agenda to be circulated to each member and to the Town Clerk of each municipality at least 7 days prior to each regularly scheduled meeting, and as soon as practical, for each special meeting or continued meeting. The agenda shall indicate the date, time and place of the meeting and the nature of the business to be considered. The agenda may be amended by simple majority vote.

Chairman: The Chairman shall preside at all meetings of the Commission and shall notify the Town Clerk of each town of all actions, votes, and recommendations which shall require approval of the Yarmouth Town Council.

Vice Chairman: The Vice Chairman shall serve in the absence or disability of the Chairman.

Secretary: The Secretary shall maintain a record of all meetings and shall preserve and maintain records of reports, files, studies, and surveys and similar materials of the Commission, and shall make such materials available for public inspection and copying. This duty may be discharged by maintaining copies of all such materials and records with the Yarmouth Town Clerk.

B. THE SHELLFISH CONSERVATION COMMISSION'S RESPONSIBILITES E

The Shellfish Conservation Commission's responsibilities include:

Recommending annually to the Yarmouth Town Council in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued.

Surveying the clam flats to maintain current information on shellfish resources.

Submitting to the Board of Selectmen and/or Town Council budget proposals for the expenditures of funds for the purpose of shellfish conservation and the recommended contributions from each community.

Keeping this Ordinance under review and making recommendations for its amendments.

Securing and maintaining records of all shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.

Recommending conservation closures and opening to the Yarmouth Town Council in conjunction with the area biologists of the Department of Marine Resources.

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

Conducting appeal hearings pursuant to Section of this Ordinance and making findings and issuing orders thereunder.

Conservation Time Voluntary Work Program – The Shellfish Conservation Commission, in cooperation with the Shellfish Warden and the Department of Marine Resources may offer periodic conservation management work program opportunities which may include, but not limited to such activities as participation in resource surveys, brushing, seeding, pollution detection and abatement efforts, predator species control or similar programs or efforts, all subject to the prior approval and designation by the Commission. Current Resident and Non-Resident Commercial license holders who actively participate in such Conservation Time Voluntary Work Programs established and administered by the Commission, may submit his or her work hours to the Shellfish Warden and may receive a credit of $25.00/hour against the subsequent year license renewal, if renewed, up to a maximum of $300.00 per calendar year: If an individual obtains the appropriate conservation time, but is unable to obtain a commercial license due to the provisions of Article III.A.2.b, above, his/her conservation time credit will rollover to the next year(s) or until he/she is offered a commercial license. The Commission shall provide a minimum of ten (10) business days of actual or constructive notice before each Conservation Time Voluntary Work Program event; and all current Commercial license holder shall have equal opportunity to participate in the Conservation Time Voluntary Work Program with or without eligibility for license renewal fee credits. The Shellfish Warden shall maintain a record of hours worked and report same annually to the Town Clerk on or before February 1 so that credits may be applied to the license renewal fee, when applicable.

No person shall receive payment or credit for the Conservation Time Voluntary Work Program as described, above, and no payment or debt shall be owed to any person for participation in the Conservation Time Voluntary Work Program except as a license fee credit up to $300.00 as provided above.

Except as provided in Article III(A)(2)(c), any person aggrieved by the decision of the Shellfish Conservation Commission may appeal to the Superior Court within 30 days from the receipt of the written decision of the Commission; such appeal shall be considered pursuant to Rule 80B of the Maine Rules of Civil Procedure.

ARTICLE VI

A. PENALTIES

A person who violates this Ordinance shall be punished as provided by 12 M.R.S.A. Section 6671.

B. SUSPENSION

Violation of Shellfish Ordinance:

First Conviction:
The Town Clerk shall immediately suspend for thirty (30) days any license issued pursuant to this ordinance upon notice by the licensee, Shellfish Warden, court, or Police Chief that the licensee has been convicted in any court of competent jurisdiction of any violation of this ordinance. Such suspension shall begin on the date of conviction and run thirty (30) consecutive days.

Second Conviction:
The Town Clerk shall immediately suspend for one hundred eighty (180) days any license issued pursuant to this ordinance upon notice by the licensee, Shellfish Warden, court, or Police Chief that the licensee has been convicted, within the same license year, for a second violation of this ordinance in any court of competent jurisdiction.

Third and Additional Convictions:
Two to Five Years Following Second Conviction:
The Town Clerk shall immediately suspend for one (1) year any license issued pursuant to this ordinance upon notice by licensee, Shellfish Warden, court, or Police Chief that the licensee has been convicted of a third or additional violation of this ordinance in any court of competent jurisdiction, within five (5) years but more than two (2) years after the date of the second conviction.

For the purpose of this section, an additional violation or violations may arise out of the same set of facts as the original violation or violations. For the purposes of this section, a license year shall be the twelve (12) month period ending April 30th, annually.

C. 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 this Ordinance is filed with the Commissioner within twenty (20) days of its adoption.

D. 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.

E. 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.

F. HEARINGS AND APPEALS

Any licensee whose Shellfish license has been suspended shall be entitled to a fair hearing before the Shellfish Conservation Commission, if such person shall have filed a written request for such hearing within 30 days of the effective date of the suspension or receipt of actual notice from the Town Clerk of such suspension, whichever comes first. Upon receipt of a request for a hearing, the Chairman of the Shellfish Conservation Commission shall schedule a hearing before the Commission within 30 business days, but not sooner than 7 business days, and shall give the appellant written notice of the time, place and date of such hearing. Time limits may be waived by mutual consent of the Chairman and the appellant.