



MARINE RESOURCE CONSERVATION ORDINANCE
Amended 05-16-2024

Section 1. AUTHORITY: This Ordinance is enacted in accordance with 12 M.R.S.A. § 6671

Section 2. PREAMBLE: It is determined that:

- The flats located in the Town of West Bath are a valuable shellfish resource which is important to the local economy.
- These flats are an exhaustible resource and must be prudently managed.
- 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.

Section 3. PURPOSE: To provide for and support a shellfish conservation program for the Town of West Bath which ensures the protection and optimum utilization of shellfish resources within its limits. These goals shall be achieved by means which may include:

- Licensing.
- Limiting the number of shellfish harvesters.
- Restricting the time and area where shellfish harvesting is permitted.
- Establishing the minimum size of clams taken.
- Limiting the number of clams taken daily.
- Establishment of management plan(s) for West Bath for the conservation of shellfish in a manner consistent with the production of a reasonable yield to shellfish harvesters.

Section 4. WEST BATH MARINE RESOURCE COMMITTEE: The Shellfish Conservation Program for the Town of West Bath shall be administered by the West Bath Marine Resource Committee consisting of members appointed by the Select Board.

- A. **Establishment and Appointment:** There is hereby established the West Bath Marine Resource Committee. The Committee shall consist of at least three (3) individuals and no more than nine (9) individuals. The members shall be appointed by the Select Board and shall serve at the pleasure of the Select Board.
- B. **Committee Responsibilities:** The Marine Resource Committee shall have the following powers and responsibilities:

- (1) Administering the West Bath Marine Resource Conservation Ordinance and the shellfish conservation program.
 - (2) Establishing, in conjunction with the Maine Department of Marine Resources, the number of shellfish harvesting licenses to be issued.
 - (3) Surveying each clam producing area in the Town periodically to establish size distribution and density and annually estimating the status of the Town's shellfish resources.
 - (4) Submitting to the Select Board proposals for the expenditure of funds for the purpose of shellfish conservation.
 - (5) Regularly reviewing this Ordinance and making recommendations for its amendment to the Select Board.
 - (6) 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.
 - (7) Recommending conservation closures and openings to the Select Board in conjunction with the area biologists of the Department of Marine Resources.
 - (8) Submitting an annual report to the Town Clerk and the Department of Marine Resources covering the above topics and all other committee activities.
 - (9) Identifying conservation work, which may include water testing by certified water testers, which will qualify an applicant for "Renewal" or "New License" status under section 7 of this Ordinance. The names and hours worked by individuals on these projects shall be recorded and submitted to the Marine Resource Committee each month.
 - (10) Maintaining a water quality testing program on the New Meadows River flats to enable harvesting. Water testing by a certified water tester may qualify for conservation work under Paragraph (9) above.
- C. Removal: Any member of the Marine Resource Committee may be removed by majority vote of the Select Board, following notice and hearing. In addition, if any member of the Marine Resources Committee misses three consecutive scheduled meetings of the Marine Resource Committee without the approval of the Select Board, their position may be declared vacant by the Select Board, which may thereafter appoint a replacement member. At least two weeks' notice must be given for a meeting to be considered a "scheduled meeting" for the purpose of this section.

Section 5. DEFINITIONS:

- A. Resident (Commercial Licensee) – a person who has been domiciled in the Town of West Bath for a period of at least one (1) year prior to the time of submission of application for a commercial shellfish harvesting license.
- B. Resident (Recreational Licensee) – a person who is presently domiciled within the Town of West Bath as an owner or as a renter of a home, apartment, cottage or camping space for at least one (1) year prior to application.

- C. Non-resident – anyone not qualified as a resident under this Ordinance.
- D. Conservation Work – work which is approved by the Marine Resource Committee, such as reseeding, which will qualify an applicant for “Renewal” or “New License” status.
- E. Shellfish or Clams – when used in the context of this Ordinance means:
 - Soft Shell Clams (*Mya arenaria*)
 - Quahog (*Mercenaria mercenaria*)
 - Razor Clam (*Ensis directus*)
 - Eastern Oyster (*Crassostrea virginica*)
 - European Oyster (*Ostrea edulis*)
 - Surf Clam (*Spisula solidissima*)
- F. Municipality – refers to the Town of West Bath.
- 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. Take – to remove or attempt to remove a marine organism from its natural habitat.
- J. Possession – to have in one’s custody or control, either personally or by another person who is under one’s control.
- K. Possess – is to dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale.
- L. Student – an individual actively enrolled in grades 7 through 12 as of the date of application and who continues to be actively enrolled to maintain student status. Student status shall terminate upon graduation or leaving school.
- M. Senior – an individual aged 65 or older.
- N. License year – means the period from April 1 to March 31 during which a license issued under this Ordinance is valid.

Section 6. LICENSING:

- A. License Required: A West Bath shellfish harvesting license is required for any person to harvest or take shellfish in any area 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 or taking shellfish in West Bath.
- B. Categories of Licenses:
 - (1) Resident Commercial Shellfish Harvesting License – License available to a resident, commercial harvester entitling the licensee to harvest or take shellfish from the municipality when and where it is lawful to do so.
 - (2) Non-resident Commercial Shellfish Harvesting License – License available to a non-resident commercial harvester entitling the licensee to harvest or take shellfish from the municipality when and where it is lawful to do so.

- (3) Resident Senior Commercial Shellfish Harvesting License – License available to a resident commercial harvester aged 65 or older entitling the licensee to harvest or take shellfish from the municipality when and where it is lawful to do so.
- (4) Non-Resident Senior Commercial Shellfish Harvesting License – License available to a non-resident commercial harvester aged 65 or older entitling the licensee to harvest or take shellfish from the municipality when and where it is lawful to do so.
- (5) Resident Student Commercial Shellfish Harvesting License – License available to a resident student to enable the student to harvest or take shellfish from the municipality when and where it is lawful to do so.
- (6) Non-resident Student Commercial Shellfish Harvesting License – License available to a non-resident student to enable the student to harvest or take shellfish from the municipality when and where it is lawful to do so.
- (7) Resident Recreational Shellfish Harvesting License – License available to any resident for the purpose of harvesting shellfish solely for recreational, non-commercial purposes.
- (8) Resident Recreational Student Shellfish Harvesting License – License available to any resident under the age of 18 for the purpose of harvesting shellfish solely for recreational, non-commercial purposes.
- (9) Resident Recreational Senior Shellfish Harvesting License – License available to any resident aged 65 or older for the purpose of harvesting shellfish solely for recreational, non-commercial purposes.
- (10) Non-resident Recreational Shellfish Harvesting License – License available to any non-resident for the purpose of harvesting shellfish for non-commercial purposes only. Pursuant to 12 M.R.S.A. § 6671 (3-A)(G), one (1) non-resident license shall be issued for every ten (10) residential licenses issued.
- (11) Non-Resident Recreational Student Shellfish Harvesting License – License available to any non-resident under the age of 18 for the purpose of harvesting shellfish solely for recreational, non-commercial purposes.
- (12) Non-Resident Recreational Senior Shellfish Harvesting License – License available to any non-resident aged 65 or older for the purpose of harvesting shellfish solely for recreational, non-commercial purposes.

C. Restrictions on Recreational Licenses – Recreational licenses issued by the Town of West Bath are subject to the following restrictions:

- (1) The residential license is valid only during the period the holder is in residence in the Town of West Bath.
- (2) The license entitles the holder to harvest and take no more than one (1) peck of shellfish in one (1) day.
- (3) Shellfish harvested by the holder of a recreational license is for personal use and shall not be sold.

- (4) Individuals holding commercial licenses issued by either the State of Maine or the Town of West Bath shall not be entitled to a recreational license.

D. Limitation on 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. The West Bath Marine Resource Committee, with the approval of the Commissioner of Marine Resources, at least thirty (30) days prior to the first date of license issuance, will establish the number of commercial licenses to be permitted for that license year. A number of licenses not less than ten percent (10%) of the total number of commercial licenses provided for residents shall be reserved and provided for non-residents. The total number of resident and non-resident commercial licenses, once determined, shall be made known to the Town Clerk in order to facilitate issuance of licenses.

E. Licensure Requirements:

- (1) Commercial Renewal License – In order for an applicant to be eligible to renew a commercial license, the applicant must:
- (a) Have no outstanding fines assessed under this Ordinance.
 - (b) Have submitted a completed application during the month of February.
 - (c) Have been licensed for the previous license year.
 - (d) Have completed a minimum of twelve (12) hours of conservation work between March 1 of the previous year and the last day of February as determined and directed by the West Bath Marine Resource Committee. At least five (5) of the twelve (12) hours must contribute to enhancement and propagation efforts. If these requirements are not met, a new license will not be issued the following year and will no longer be available to the applicant.
 - (e) Have been issued no more than two (2) citations for violation of this Ordinance during the preceding license year.
 - (f) Applicants must not hold a shellfish license with another municipality.
- (2) Commercial New License – Where commercial licenses are available within the current year's quota, an eligible applicant must:
- (a) Have no outstanding fines assessed under this Ordinance;
 - (b) Have submitted a completed application during the month of February; and
 - (c) Have no more than two (2) previous citations issued for violations of this Ordinance during the preceding license year.
 - (d) Applicants must not hold a shellfish license with another municipality.
- (3) Student License – Student licenses shall meet the requirements and issuance procedures of the renewal of a commercial license except that:

Highlighted sections were not approved by DMR prior to adoption of the ordinance by the Town of West Bath.

- (a) The required conservation work for students shall be six (6) hours;
 - (b) Applicants must not hold a shellfish license with another municipality.
- (4) Senior License – Senior Licenses shall be issued to eligible Commercial License applicants **65 years of age and older**. The number of licenses available shall be determined prior to each license year by the Marine Resources Committee and confirmed by the Select Board. Senior Licenses shall meet the eligibility requirements and issuance procedures of the renewal license except that:
- (a) The required conservation work shall be six (6) hours.
 - (b) Applicants must not hold a shellfish license with another municipality.
- (5) The following activities qualify as conservation work under this section: reseeding, flat enhancement; propagation; water testing; surveys; shoreline cleanup; green crab trapping; plowing for access to the waterfront at Sabino Landing and Winter Point Road, which is a private way. Prior permission by the property owner must be granted to access Winter Point Road. Conservation work must be documented and approved by the Marine Resource Committee. Other work related to marine resources may be recognized if approved in advance by a majority of the Marine Resource Committee. (At least five (5) hours of conservation work must contribute to enhancement and propagation efforts to qualify for a Commercial Renewal License).

F. Application procedure:

- (1) Notice - Notice of the number of available licenses 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 Select Board considers effective in reaching persons affected, once the determination of the number of licenses has been provided to the Town Clerk, but not less than ten (10) days prior to the period of issuance of the licenses. In addition, the number of licenses and application procedure shall be posted in the Town Office until the conclusion of the issuance period.
- (2) Application –
 - (a) Submission Schedule – All commercial license applications must be submitted during the month of February and prior to the close of business on the last scheduled business day at the Town Office. All student applications must be submitted during the month of April and prior to the close of business on the last scheduled business day at the Town Office. Any applications received after this date will be considered only as licenses become available because of surrender or other reasons. Recreational license applications may be submitted at any time beginning March 16th for the next license year.
 - (b) Contents – Each licensing 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, signature, and whatever other relevant information the Town may require. The application shall be on a form provided by the Town and shall be made available at the Town Office beginning on February 1 or the first business day after February 1, of each year.
 - (c) Misrepresentation – If the Town Clerk becomes aware of circumstances which suggest a licensee has given false information on a license application, the Select Board shall be notified, and they shall request the Shellfish Warden or their designee to investigate.

Highlighted sections were not approved by DMR prior to adoption of the ordinance by the Town of West Bath.

If the results of the investigation suggest a licensee has given false information on a license application, the Select Board shall give the licensee a minimum of seven (7) days' notice of a hearing to determine whether the licensee has given false information on the license application. The Shellfish Warden shall present any evidence suggesting that false information has been given. The licensee shall have the right to present evidence to show that false information has not been given. If, after the hearing, the Select Board determines that false information has been given, which materially affects the license, the Select Board shall give the licensee written Notice of Revocation of the license.

- G. License Fees: The fees for licenses issued under this Ordinance shall be recommended by a majority vote of the Marine Resource Committee and shall thereafter be set by the Select Board. Once a schedule of fees is set, said schedule shall be promptly posted at the Town Office. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation, enforcement, and other shellfish related matters. All license fees shall be paid on or before June 14 of each year. No license shall be issued until full payment is made. If full payment is not received by June 14 of that same year, the license shall be considered a non-renewal and shall become available as a new license.
- H. Licensure Period Expiration: Each license shall be valid from April 1 or the date of issuance if after April 1 through March 31 of the following year at midnight. As of midnight, March 31 each license shall expire, except student commercial licenses which shall run for one (1) year beginning on June 1 of that year through May 31 of the following year at midnight. As of midnight, May 31 each license shall expire.

Section 7. ISSUANCE OF LICENSES:

- A. Commercial Renewal Licenses: This commercial category of license shall be available on normal municipal business days to qualified applicants **beginning March 16** of each year. If the number of qualifying applications exceeds the number of licenses available, licenses shall be issued according to seniority in terms of the number of years that each applicant has held a valid West Bath Commercial Shellfish Harvesting License over the last five (5) years. This seniority claim must be verifiable. Verification shall be determined by reference to Town records of licenses issued in previous license years. The applicant who has held a West Bath Commercial Shellfish License the greatest number of years shall be issued the first license, the second longest West Bath Commercial Shellfish License holder shall be issued the second, and so on until all licenses in this category have been issued to those applicants fulfilling the above qualifications. Years where a student held a student license shall not qualify as prior years for the purpose of awarding commercial shellfish licenses. If a non-resident purchased an unsold resident licenses in a previous year(s), they shall not be eligible to purchase renewal licenses until residents have had an opportunity to purchase such licenses in accordance with the provisions of this Ordinance. In the event that there is a seniority tie for the last license(s) to be issued, the remaining license(s) shall be issued pursuant to the procedure set forth in Section 7(D) of this Ordinance. Any license not issued by the end of business on June 14, or the last business day prior to June 14 of each year, shall be considered a new license.
- B. Commercial New Licenses: If any commercial licenses are still available under the current year's quota, this category shall be available to qualified residents and non-residents on normal business days for a period beginning April 1 and ending June 14. Priority, however, shall be given to a West Bath resident if they have met the minimum requirements outlined in this Ordinance, unless the license is a license required to be reserved as a non-resident commercial license. If the number of qualifying applications exceeds the number of available licenses, licenses shall be issued according to the priority list below. Conservation work hours are counted between the preceding March 1 to the last day of the following

February. 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 7(D) of this Ordinance.

Consideration #1 – Twelve hours of Conservation Work time and applicant has held a license for five of the last five years.

Consideration #2 – Twelve hours of Conservation Work time and applicant has held a license for four of the last five years.

Consideration #3 – Twelve hours of Conservation Work time and applicant has held a license for three of the last five years.

Consideration #4 – Twelve hours of Conservation Work time and applicant has held a license for two of the last five years.

Consideration #5 – Twelve hours of Conservation Work time and applicant has held a license for one of the last five years.

Consideration #6 – Twelve hours of Conservation Work time and applicant has not held a license but has met the conservation work requirement, a record of which is kept until such time that the person is offered a license.

Consideration #7 – Less than twelve hours of Conservation Work time (issued to the applicant with the most hours).

- C. Un-issued Commercial Licenses: If any licenses remain un-issued, this category is available on the first business day after June 14 for resident and non-resident members of the public. If the number of applications exceeds the number of available licenses, licenses shall be issued on a first come first issued basis.
- D. Lottery Procedures: If, in any of the Renewal or New Commercial categories of licenses described in Paragraph 7(A) and 7(B), 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 issued the licenses, licenses in those categories shall be issued according to the following procedure:
- (1) The Town Clerk shall designate an assistant, who may be any appointed municipal official or municipal employee who is disinterested in the outcome of the procedure and conduct a lottery for any remaining licenses. “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 Marine Resource Committee shall serve as the assistant in carrying out this procedure.
 - (2) The Town Clerk shall issue the available licenses to the qualifying applicants, first to residents and then to non-residents, in accordance with the results of a randomized drawing (lottery) of applicants’ names. Results of the lottery order shall be kept on file to establish the order of priority for the issuance of any licenses in that license category until the next annual licensing procedure under this Ordinance.
 - (3) The procedure set forth in this Section D (1) shall be a public proceeding open to the public pursuant to 1 M.R.S.A. Section 403, 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 lottery is

conducted, and the selected licenses are issued. The procedure shall be conducted at the West Bath Town Office on the dates designated for each category of license, at a time to be set by the Town Clerk. The Town Clerk shall announce the exact time for the procedure by posting notice at the West Bath Town Office at least seven (7) days prior to the date of the procedure. Any failure to provide notice shall not invalidate the results of the procedure.

E. Signature and Exhibition of License; Search and Inspection:

- (1) Validity of License. No license shall become valid until signed by the license holder.
- (2) Exhibiting License. When any person is engaged in an activity which is licensed under this Ordinance, they shall, upon the request of a certified municipal official, exhibit his or her license. Failure to exhibit a license within a reasonable time when requested shall be considered evidence that the person is not licensed.
- (3) Search and Inspection. Acceptance of a shellfish license shall constitute consent to search and inspection by the Shellfish Warden or any authorized law enforcement officer of any equipment, watercraft or vehicles used in connection with the licensed activity and to seize evidence related to a violation of this Ordinance.

F. Suspension/Revocation:

- (1) Suspension Optional. The West Bath Select Board shall be empowered to suspend any license issued under this Ordinance for a period of up to 60 days if, after notice and hearing, it finds that a licensee has committed one (1) or more violations of this Ordinance. The Select Board may also suspend an individual's eligibility to be issued a license for up to 60 days, if said person(s) are found to have harvested shellfish without a license, in violation of the terms of this Ordinance. Persons suspended may not be issued another license until the suspension period ends.
- (2) Suspension Mandatory. Any shellfish licensee having two convictions for violation of this Ordinance shall have their shellfish license automatically suspended for a period of 60 days or the remainder of the license year whichever is shorter. The suspension shall be effective from the date of mailing of a notice of suspension by the Select Board, said suspension being subject to the same appeals procedure as F(1) above.
- (3) Revocation. Where the license holder has been subject to suspension of their license on three or more occasions, within the current license year and the previous license year, the Select Board may, if the licensee is determined to have committed the violation, revoke the license and prevent re-issuance of any license to that licensee for a period to be determined by the Select Board.

G. Re-issuance of License: A surrendered license may be reissued if it is determined by the Select Board that the re-issuance of that license is consistent with good management practices and appropriate management of the resource. Procedures for re-issuance of a license shall be in accordance with the applicable provisions of this section.

Section 8. OPENING AND CLOSING FLATS:

The Select Board, with the approval of the Maine Commissioner of Marine Resources, may open and close areas within the Town for the shellfish harvest. Upon recommendation of the West Bath Marine Resource Committee and approval of the Select Board, the Town may file an application for conservation closure or opening in accordance with DMR Regulation Chapter 7.50 at least 20 days prior to the requested date of closure

or opening. The Municipality shall provide sufficient notification to the public of any conservation closure or opening by publishing, advertising and/or posting in public places, an official municipal closure or opening notice signed by the Shellfish Warden, or the Department issued permit five (5) days prior to the initial closure or opening date as approved by the Department prior to the issuance of the permit.

Section 9. MINIMUM LEGAL SIZE OF SOFT-SHELL CLAMS:

It is unlawful for any person to possess soft-shell clams within the Town of West Bath, that 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 ten (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 (1) peck.

Section 10. VIOLATIONS:

Any failure to comply with the terms and conditions set forth in this Marine Resource Conservation Ordinance shall be considered in violation of the Ordinance. Specific violations include, but are not limited to:

- A. Material misrepresentation of fact on the application.
- B. Possession of soft-shell clams that do not meet the minimum size requirement.
- C. Harvesting shellfish or clams without a license.
- D. Harvesting, taking, or possessing shellfish from any areas closed by the Town of West Bath in accordance with DMR Regulation, Chapter 7.
- E. Harvesting shellfish during the nighttime hours between sunset [as defined in 12 M.R.S.A. § 6001(46)] and sunrise (as defined in 12 M.R.S.A. § 6001 (45)) from March 15 to November 15. During the period of November 15 to March 15, harvesters shall be allowed to finish out a tide if low tide is before sunset. Harvesters may not harvest by headlight on the sunrise tides.

Section 11. PENALTIES:

Penalties for violation of Section 9(A) above relating to the minimum size requirement of soft-shell clams are a Class D crime, subjecting the violator to the fines and penalties outlined in 12 M.R.S.A. Section 6681 (6-A). All other violations of this Ordinance shall be punishable as provided by 12 M.R.S.A. Section 6671(1), and shall subject the violator to a minimum penalty of \$100 per day and a maximum penalty of \$2,500 per day. If the Town brings an action in Maine District Court to enforce any provision of this Ordinance and is deemed to be the prevailing party, the defendant(s) shall reimburse the Town for all costs and expenses incurred in such prosecution, including but not limited to reasonable attorney's fees.

Section 12. EFFECTIVE DATE:

This Ordinance shall become effective after its adoption at a Town Meeting provided a certified copy of the Ordinance is filed with the Commissioner of Marine Resources within 20 days of its adoption.

Section 13. SEVERABILITY:

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.

Section 14. APPEAL:

Any person aggrieved by the action or inaction of the Town under this Ordinance may file their appeal in Maine Superior Court of the date of such decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

Section 15. REPEAL:

Any Ordinance regulating the harvesting and conservation of shellfish in the Town of West Bath and any provision of any Town ordinance, which is consistent with this Ordinance, is hereby repealed.

A true, attested copy


Karly A Perry, Town Clerk

Town of West Bath
219 Fosters Point Road
West Bath ME 04530

