

TOWN OF ADDISON

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SHELLFISH CONSERVATION

ORDINANCE

TOWN OF ADDISON, MAINE

MARCH 2018

MISSION STATEMENT: This Committee will act as Stewards to Preserve, Protect, Manage and Enhance the Shellfish Resources and the Ecological Wellbeing of the Town of Addison to Ensure a Sustainable Harvest for those making a living on the Shellfish Flats.

ATTEST TRUE COPY:



Kimbley Davis, Clerk

Town of Addison

Shellfish Conservation Ordinance

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 Addison that will insure the protection and optimum utilization of shellfish resources with its limits. These goals will be achieved by means that may include:
 - A. Licensing
 - B. Limiting the number of shellfish harvesters
 - C. Restricting the time and area where digging 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 Addison will be administered by the Shellfish Conservation Committee consisting of 7 regular members plus 2 alternates to be appointed by the Selectmen for a term of One year. The Committee's responsibilities include:
 - A. Submitting to the Board of Selectman proposals for the expenditures of funds for the purpose of shellfish conservation.
 - B. Keeping this ordinance under review and making recommendations for its amendments
 - C. Recommending conservation closures and openings to the Board of Selectman or Council in conjunction with the Area Biologists of the Department of marine Resources.
 - D. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all our committee activities.
 - E. Establishing annually in conjunction with the Department of Marine Resources the Annual Shellfish License Allocation Procedure Plan and Fees to be issued for Approval.
 - F. The Shellfish Committee shall develop a Shellfish Conservation Management list and oversee conservation activities. The Committee will set dates by which commercial license applicants must comply with to receive Conservation Credit. The conservation time and location requirements, will be subject to limits set by the Shellfish Conservation Committee and posted publicly at the Town Office with a ten-day notice.
 - G. Assist in identifying possible sources of pollution harmful to the intertidal habitat and the shellfish resources.
 - H. **ATTENDANCE:** Addison Shellfish Committee members shall make every effort to regularly attend Committee Meetings. Any Committee member who has missed more than 2 consecutive meetings with unexcused absences may lose their seat on the Committee. Members who violate these attendance rules can be removed from the Committee after a 2/3 affirmative vote of the members in good standing at any meeting and with a vote of concurrence by the Addison Board of Selectmen by a simple majority.

- I. **CONVICTIONS:** Any committee member convicted of violating this ordinance shall be removed from the committee.

4. **DEFINITIONS:**

A. **Resident:** The term resident refers to a person who has been domiciled in this municipality for at least Six consecutive months directly prior to the time of their claim of such Residence is made. The burden of proof will be on the applicant. To best determine resident eligibility new residents shall provide two forms of proof of residency from the list below. At least one shall be from Section 3 in chart below. All licensed harvesters will provide proof of residency on an annual basis. Junior/Student Resident must have Parental/Custodial proof of residency.

Section 1	Section 2	Section 3
<ul style="list-style-type: none"> • Copy of Deed AND record of most recent mortgage payment • Copy of lease AND record of most recent legal affidavit from landlord affirming tenancy • Legal affidavit from landlord affirming tenancy AND record of most recent rent payment 	<p>A Utility bill or other work order dated within the past 60 days including:</p> <ul style="list-style-type: none"> *Gas Bill *Oil Bill *Electric Bill *Telephone Bill *Cable or Satellite Bill <p>Dated within the past year</p> <ul style="list-style-type: none"> *W-2 Form *Excise (vehicle) tax bill *Property Tax bill <p>Dated with the past 60 days</p> <ul style="list-style-type: none"> *Letter from approved Government Agency *Payroll Stub *Bank or Credit Card Statement 	<ul style="list-style-type: none"> • Valid Driver's License displaying physical address • Valid Maine photo ID card displaying physical address • Valid Passport displaying physical address • Current vehicle registration displaying physical address.

- B. **Nonresident:** The term non-resident means anyone not qualified as a resident under the language of 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 the Town of Addison, Washington County, Maine
- E. **Recreational:** Refers to "Personal Use Only"
- F. **Shellfish Conservation Credit Requirements:** Any applicant who has completed of two conservation activities may apply for a Conservation Credit reduction in their license fee. The conservation activities must be completed by the second Saturday in June on the set times and dates announced by the Committee. All conservation activities must be supervised by at least one Shellfish Committee Member or the Shellfish Warden in order to

validate activity. No other activities will be approved for a Conservation Credit reduction. Conservation Activities will be determined by the Shellfish Committee.

- G. Possess:** For the purpose of this section, possess means to dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.

5. **LICENSING:** Municipal Shellfish harvesting license is required. It is unlawful for any person to harvest or take shellfish from the shores and flats of this Municipality for any purpose without having a current Municipal Shellfish harvesting license issued by this Municipality as provided by this Ordinance. Furthermore, it is unlawful for any person to harvest or take shellfish from the shores and flats of this Municipality for the purpose of selling the clams without having a current commercial license issued by this Municipality as provided by this Ordinance. Additionally, a commercial harvester must also have a Valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources prior to harvesting clams for commercial purposes. An individual is not required to hold a state commercial license prior to obtaining a town commercial license. It shall be unlawful for any individual whose state license or right to harvest has been suspended by the state to harvest or possess shellfish without proof of purchase. Also, if such individual currently holds a municipal license such license shall be suspended for the same period of time. Any individual holding a State Commercial license cannot purchase a resident or nonresident recreational shellfish license. Any resident dispute will be required to submit application to the Shellfish Conservation Committee for approval before a license will be issued. An appeal to the Board of Selectman must be made in writing within 7 days of the date of decision of the Shellfish Committee for consideration.

A. Designation, Scope and Qualifications:

1. **Resident Commercial License:** The license is available to the residents of the Town of Addison and entitles the holder to harvest and take any amount of shellfish from the shore and flats of this Municipality and any reciprocating municipalities.
2. **Non-resident Commercial Shellfish License:** This license is available to nonresidents of this Municipality and entitles the holder to harvest and take any amount of shellfish from the shore and flats of this Municipality.
3. **Resident Recreational License:** This license is available to residents and Real Estate taxpayers of this municipality and entitles the holder to harvest, take, or possess no more than one peck of shellfish in any one day for the personal use of himself or his family.
4. **Nonresident Recreational License:** The license is available to any person not a resident 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.
5. **Senior Resident Commercial:** This license is available to any resident 65 years or older. Fees for this license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial resident license.
6. **Senior Non-Resident Commercial:** This license is available to any non-resident 65 years and older. Fees for this license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial nonresident license.

7. **Senior Resident Recreational License:** This license is available to residents and Real Estate Taxpayers of this Municipality 65 years and older, and entitles the holder to harvest and take no more than one peck of shellfish in any one day for personal use only.
8. **Senior Non-Resident Recreational License:** This License is available to any person not a resident of this Municipality 65 years and older, and entitles the holder to harvest and take no more than one peck of shellfish in any one day for the personal use of themselves or family.
9. **Junior/Student Resident Commercial License:** This License is available to any resident age 18 and under and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.
10. **Junior/Student Non-Resident Commercial License:** This License is available to any non-resident age 18 and under and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.
11. **1-day Recreational License:** A one peck per day limit with date of harvest specified on license, is available to a resident and non-resident. 1-day peck license per person cost to be determined during Annual Shellfish Management Review.
12. **License must be signed:** The licensee must sign the license to make it valid.
13. **Enforcement:** This ordinance shall be enforced by the Shellfish Warden designated by the Municipal Officers.

B. Application Procedure: Any person may apply to the Town Clerk for the licenses required by this ordinance on form provided by this municipality.

1. **Contents of the Application:** The application must be in the form of any affidavit and must contain the applicants 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 become invalid and void.
3. **Commercial Application:** Applicants who are eligible for a reduced fee commercial license will be documented on a list provided to the Town Clerk prior to date of sale by the Shellfish Warden or the Shellfish Conservation Committee. Shellfish Committee members must have a signature of another Shellfish Committee Member in order to receive the conservation reduction. There will be no conservation credit issued unless the applicant has received prior approval by the Shellfish Committee. If an individual obtains the appropriate conservation time, but is unable to obtain a commercial license, their conservation time will roll over until the next year, or until they are offered a commercial license.
4. **Unpaid Fines:** A shellfish license will not be issued to anyone that has outstanding fines for any violation of the Addison Shellfish Conservation Ordinance, or until the fines have been paid per court decree.

C. Fees: The fees for the Resident licenses must accompany the application in full. Non-Residents must pay the fee at the time of the lottery drawing. The Town Clerk shall pay all the fees received to the Town Treasurer. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation and enforcement. Upon recommendation from the Shellfish Committee

during Annual Shellfish Management Review, The Board of Selectman will set license fees. **FEES ARE NON-REFUNDABLE.**

- D. **License Expiration Date:** Each license issued under authority of this ordinance is valid on July 1st and expires at midnight on the 30th day of June following the date of issue (no matter the date of purchase). If Resident becomes a Non-Resident their License will only be valid for 90 days from date of becoming a nonresident.
- E. **Open License Sales & Limitation of Diggers:** Clam resources vary in size and distribution from year to year and over the limited soft-shell clam producing areas of the Town. It is essential that the Town carefully husband its resources. The Shellfish Committee in consultation with the DMR Area Biologist will determine whether limiting commercial or recreational shellfish licenses is appropriate Shellfish Management option for the following year.
 - A. Prior to March 1 of the current year the committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license year to the Commissioner of Marine Resources for concurrence.
 - B. After receiving approval of proposed license allocation from the commissioner of Marine Resources and prior to June 1 of the current year, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the allocation of shellfish licenses to be issued.
 - C. Notice of licenses to be issued with dates, times 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 Municipality Officers consider effective in reaching person affected, not less than 10 days prior to the initial sale date and shall be posted in the municipal offices until the licensing period concludes.
 - D. The Town Clerk or Designee shall issue Commercial licenses starting the 4th Friday of June for the next year's licenses.
 - E. The Town Clerk, on the first day of license sales, shall issue a number of Non-resident Commercial licenses by lottery. This number shall be 10% of the number of total resident licenses issued in the previous year. These licenses shall be made available to qualified non-residents in accordance with DMR regulations. Thereafter, non-residents licenses will be issued in accordance with the 10% rule as described in Title 12 M.R.S.A. Chapter 7.4 Section 2 Table 1.
 - F. The Town Clerk shall issue recreational licenses starting the last week of June. Non-resident recreational licenses will be issued at a rate of 10% of resident license sales.
 - G. Any license holder may not accompany a non-license holder with the intent of assisting in the taking of or harvesting of soft-shell clams.
 - H. If you hold a State of Maine Commercial Shellfish License you may not apply for or hold an Addison Recreational License.
- 5. **Night Digging:** The Town of Addison will close the Shellfish flats to harvesting of soft-shell clams at night from one half hour after sunset until one half hour before sunrise.
- 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 recommendation of the

Shellfish Conservation Committee and concurrence of the DMR 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 a 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 Municipal Officers made after the hearing shall be based on findings of fact. Public notice of municipal conservation closures or openings shall be provided in accordance with DMR Regulations Chapter 7.

- A. It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the Town of Addison in accordance with DMR regulations, Chapter 7. Harvesting shellfish in a closed area is a violation of this municipality's ordinance and is punishable under MRSA Title 12 6671.
- B. Boundaries of Conservation Closures are explicitly defined in the conservation closure application submitted by the Town of Addison to DMR and are part of the resulting permit issued by DMR. These permits are posted at the Addison Town Office and online: <http://www.maine.gov/dmr/shellfish-sanitation-management/programs/municipal/ordinances/towninfo.html>.

8. Minimum Legal Size of Soft-Shell Clams: It is unlawful for any person to possess soft shell clams with the Town of Addison, Washington County, which are less than two (2) inches in the longest diameter except as provided by subsection B of this section.

A. Definitions:

- 1. **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.
- 2. **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 inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck not 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 section shall be punished as provided by 12 MRSA Sections 6671 and 6681.

9. Suspension: Any person who violates this Ordinance or the policies adopted in the Annual Shellfish Management Plan shall be punished as provided by 12 M.R.S.A. Section 6671 and/or Section 6681. Any Shellfish licensee having three convictions in a twelve-month period for a violation of this Ordinance shall have their shellfish license automatically suspended for a period of one year.

- 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 and fines are paid in accordance to the court's decree.
- 2. The suspension shall be effective from the date of conviction.

3. Any licensee whose shellfish license has been automatically suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written request for a 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 Selectman by filing a written request for appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Committee.

10. Violations of Licenses, and Fine Conditions:

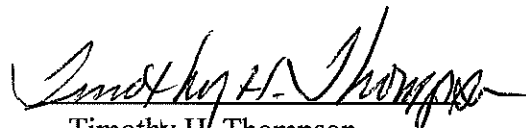
- A. If a person holding a commercial license uses it to aid and abet the illegal harvest of clams and is convicted their license shall be suspended for three (3) months and they shall receive a one thousand-dollar (\$1000) fine upon conviction. Any second and subsequent convictions under this section of the Ordinance shall result in a twelve (12) months suspension and a one thousand dollar (\$1000) fine.
- B. Any person convicted of harvesting over the peck limit while in possession of a Recreational License shall be suspended for two (2) months and they shall receive a five hundred (\$500) fine upon conviction. Any second and subsequent convictions under this section of the Ordinance shall result in a six (6) months suspension and a one thousand dollar (\$1000) fine.
- C. **Stopping for Inspection:** A person shall produce their license on demand of any Certified Municipal Shellfish Warden and having "probable cause" to take such action. It is unlawful for the operator of a motor vehicle, boat, vessel, or conveyance of any kind, or any person:
 1. To deliberately fail or refuse to stop immediately upon request or signal of any Certified Municipal Shellfish Warden
 2. After the person has stopped, to fail to remain stopped until the said Warden has reached his immediate vicinity and makes known to the operator the reason for his request or signal.
 3. To fail or refuse to stand by immediately for inspection on request of said Warden
 4. To throw or dump into any coastal waters or flats after having been requested or signaled to stop by a Certified Municipal Shellfish Warden any shellfish, or any pail, bag, hod or container before the said Warden has inspected the same.
 5. To attempt to elude, disobey, or assault any Certified Municipal Warden.
- D. **Penalties: The first violation of Section 10.C.1 of this Ordinance shall result in a one (1) month suspension of the license and a three hundred dollar (\$300) fine. The second and subsequent violations of Section 10.C.1 of this Ordinance shall result in a twelve (12) month suspension of the license and a one thousand dollar (\$1000) fine.** Harvesting Clams in any Closed Area: it is unlawful for any person to harvest clams in a closed area.
Penalties: Any person found guilty of harvesting clams in a closed area shall be subject to fine of not less than three hundred dollars (\$300) and not more than fifteen hundred dollars (\$1500) with license suspension of thirty (30) days. The second and subsequent violations of harvesting clams in a closed area shall result in a fine of not less than five hundred dollars (\$500) and not more than fifteen hundred dollars (\$1500). The second violation of this section of this Ordinance shall result in a sixty (60) day license suspension

and the third and subsequent violations shall result in a one hundred and twenty (120) day suspension of the persons license.

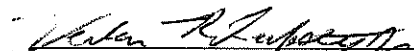
- E. **Minimum Legal Size of Shellfish:** It is unlawful for any person to violate minimum shellfish size regulations set forth in this Ordinance:
Penalties: The first violation of Section 8 shall be subject to fine of not less than three hundred dollars (\$300). The second and subsequent violations of Section 8 shall result in a fine of not less than five hundred dollars (\$500). If a person exceeds a twenty percent (20%) threshold of undersized clams as described in Section 8 at any time, their license shall be suspended for twelve (12) months and they shall receive a one thousand dollar (\$1000) fine.
- F. A commercial licensee who has had their Maine State license suspended shall forfeit their Town License for the duration of the State suspension and will not qualify for a recreational license. Such a person in possession of shellfish must carry a receipt of purchase for said shellfish.
- G. **Harvesting without a license:** It is unlawful to harvest shellfish without a license.
Penalties: Any person convicted of harvesting shellfish within the municipality without a municipal license issued by authority of Town of Addison Shellfish Ordinance shall be ineligible to apply for any municipal shellfish license for a period of three (3) years from the date of conviction.

- 11. **ENFORCEMENT:** This ordinance shall be enforced by the Addison Municipal Shellfish Conservation Warden or any Municipal Shellfish Conservation Warden appointed by the Board of Selectman for the Town of Addison.
- 12. **Statute Law Changes:** Any changes to referenced Statute Laws in this Ordinance shall automatically update in this Ordinance upon enactment.
- 13. **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.
- 14. **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 portion of this Ordinance.
- 15. **Repeal:** Any Ordinance regulating the harvesting or conservation of shellfish in the Municipality and any provisions of any other Town ordinance that is inconsistent with this ordinance, is hereby repealed.

Given under our hands on this 20th day of March, 2018


Timothy H. Thompson


Thomas W. Batson


Verlan R. Lenfestey Jr.