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**PART II - MUNICIPAL CODE OF ORDINANCES**  
**Chapter 11 - MARINE ACTIVITIES, STRUCTURES AND WAYS**  
**ARTICLE I. HARBOR, COASTAL, TIDAL AND NAVIGABLE FRESH WATERS**

**ARTICLE III. SHELLFISHING [4]**

DIVISION 1. GENERALLY

*Adopted by the Town Council on December 2, 2024*

**Sec. 11-71. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Aquaculture* means the culture or husbandry of marine organisms by any person. Storage or any other form of impounding or holding wild marine organisms, without more, shall not qualify as aquaculture. In order to qualify as aquaculture, a project must involve affirmative action by the lessee to improve the growth rate or quality of the marine organism.

*Bull rake* is a long handled rake with basket attached. Bull rakes are designed to harvest shellfish that are beneath the surface of the water.

*Bushel* means a measurement consisting of four (4) pecks or thirty-two (32) quarts of shellfish.

*Certified municipal shellfish conservation warden* means a person appointed by the town council and certified by the Department of Marine Resources to enforce this article.

*Coastal waters* means all waters of the town between the extreme low water and the highest annual tide within the marine limits of the jurisdiction of the town.

*Commercial shellfish harvester* means a person who harvests shellfish with profit as a primary aim, including student shellfish harvesters.

*Deputy marine warden* is an employee of the Brunswick Police Department that has attained pre-service law enforcement certification from the Maine Criminal Justice Academy and is appointed as a municipal shellfish conservation warden to enforce this article.

*DMR* is short for the Maine Department of Marine Resources.

*Growing Area* means any area within the town's intertidal zone that is consider a mudflat.

*Harvestable Standing Crop* means the total number of harvestable shellfish in a growing area at a given time.

*Hardship*: Something that causes or entails suffering or privation.

*Immediate family*: means spouse and children.

*Landings*: means the number of shellfish harvested taken ashore for consumption.

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*Lot* means the total number of softshell clams in bulk pile. Where softshell clams are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.

*Marine warden* is an employee of the Brunswick Police Department that has attained fulltime law enforcement certification from the Maine Criminal Justice Academy, and has been appointed by the town as the municipal shellfish conservation warden to enforce this article.

*Notification* means, unless otherwise stated herein and for the purposes of hearing notices under this article, mailing by certified mail to the last known address.

*Non Resident* means anyone who is not a Resident.

*Mudflat* means a stretch of muddy land left uncovered at low tide.

*Productive Growing Area* means an intertidal area that supports shellfish populations from which shellfish are routinely commercially or recreationally harvested.

*Possession* means to have in one's custody or control, either personally or by another who is under one's control anywhere within the municipal boundaries.

*Resident* means a person who has physically resided at a fixed, permanent, and principal home in the town for at least three (3) months next prior to the time his claim of residence is made. For the purposes of resident student licenses only, this term shall include a person who is attending a postsecondary educational institution outside of Brunswick but who maintains a residence in Brunswick to which he or she returns when school is not in session.

*Shellfish* means softshell clams (*Mya arenaria*), quahogs (*Mercenaria mercenaria*), razor clams (*Ensis directus*), American oysters (*Crassostrea virginica*), and European oysters (*Ostrea edulis*).

*Size Distribution Survey* means a method used to determine the size ranges of shellfish in a growing area.

*Shellfish Population Surveys* means a method used to count and measure the shellfish of all sizes from representative plots in a productive shellfish growing area to establish an estimated standing crop.

*Standing Crop* means the total amount of shellfish in an area at any given time.

*Take* means to remove or attempt to remove a shellfish from its natural habitat.

This article is enacted in accordance with 12 M.R.S.A. § 6671.

**Sec. 11-73. Purpose.**

The purpose of this chapter is as follows:

- (1) To regulate the harvesting of shellfish in the town.
- (2) To implement management programs and practices which allow for long-term, sustainable harvest of shellfish given an ever-changing ecosystem.

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- (3) To enhance the economic, environmental, and community benefits of shellfish resources in the Town of Brunswick.

**Sec. 11-74. Conservation, management of resources.**

It is hereby determined as follows:

- (1) The coastal waters of the town provide valuable shellfish resource's which are important to the town's cultural heritage, local economy and the health of the near-shore coastal ecosystems.
- (2) Shellfish are not an inexhaustible resource, and, therefore, they must be prudently managed in order to remain sustainable.
- (3) As part of the management process, it is deemed vitally necessary to undertake efforts to enhance the propagation of shellfish and to restrict the taking of shellfish by limiting commercial shellfish licenses; restrict the size and quantity of shellfish which may be harvested; and take other measures as outlined in this chapter.
- (4) Management programs are necessary to support coastal shellfish resiliency and equitable access to shellfish resources

**Sec. 11-75. Enforcement.**

The chapter shall be enforced by the certified municipal shellfish conservation warden who has met the requirements set forth in the Maine DMR Chapter 4 Regulations.

**Sec. 11-76. Penalty.**

A person who violates this chapter shall be punished as provided in 12 M.R.S.A. § 6671.

A person who takes or possesses shellfish in violation of a municipal ordinance commits a violation with significant fines and license suspensions.

**Sec. 11-77. Amendment**

A certified copy of an amendment to this article shall be filed with the commissioner of marine resources within twenty (20) days of its adoption to preserve its validity.

**Secs. 11-78—11-95.** Reserved.

*DIVISION 2. SHELLFISH COMMITTEE<sup>+</sup>*

**Sec. 11-96. Established, members, etc.**

- (1) Shellfish Committee shall consist of seven (7) members to be appointed by the town council. The members must include at least two (2), but no more than three (3) town licensed resident commercial shellfish harvesters.

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- (2) Members shall be appointed for three-year terms. The town council shall appoint a person to fill any vacancy for the unexpired term.
  - (3) The committee shall choose a chair, and a vice-chair. The chair shall preside at all meetings of the committee. The vice-chair shall preside in the chair's absence.
  - (4) The board secretary shall file the minutes of each meeting shall be filed with the town clerk.
  - (5) Any committee member who has three (3) or more unexcused absences from committee meetings in a year may be removed and replaced with a new member by the town council.
  - (6) The town council may appoint a student shellfish harvester as a non-voting member of the shellfish committee. The student may serve an annual term from July to June and may be reappointed but may not serve for more than three consecutive terms.
  - (7) Members shall follow the guidelines outlined in the Town of Brunswick Committee Handbook.

**Sec. 11-97. Powers and duties.**

The shellfish committee shall have the following powers and duties:

- (1) To provide the public with information on local shellfish resources.
- (2) To cooperate with the department of marine resources and others in carrying on experimental programs.
- (3) To recommend annually to the town council the number of commercial and student commercial shellfish harvesting licenses to be issued, with final approval by the town council and the DMR.
- (4) To review intertidal aquaculture applications as required by the DMR Chapter 2 Lease Regulations.
- (5) To submit annually to the Brunswick town council an update on committee activities and conservation closures and openings.
- (6) To open and close coastal waters for shellfish conservation and sustainability, conditioned on final approval from DMR.
- (7) To recommend management programs and practices which allow for long-term, sustainable harvest of shellfish and to review any town develop shellfish management plans.
- (8) To review the town's annual shellfish report to the Maine DMR.
- (9) To recommend to the town council how the money appropriated for shellfish conservation fund should be spent.

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**Secs. 11-98—11-110. Reserved.**

*DIVISION 3. SHELLFISH RESOURCE SURVEY<sup>6</sup>*

**Secs. 11-111. Shellfish Population Surveys**

Shellfish population surveys will be conducted across all productive shellfish growing areas within the Town of Brunswick from July 1 to December 1 of each year. These surveys are crucial for managing and conserving the shellfish resource, as they provide data on the current shellfish population in the town's growing areas. The surveys will follow the guidelines outlined in the Maine Shellfish Handbook, as amended from time to time.

**Sec. 11-112. Annual Shellfish License Establishment**

Managing the amount of harvesting effort through annual license allocations, based on data from shellfish population surveys, is a crucial tool for ensuring sustainability. To determine the annual license numbers, the following procedures must be conducted:

- a. Shellfish surveys. A shellfish inventory including all growing areas within the Town of Brunswick jurisdiction, to be completed annually in accordance with Sec. 11-111.
- b. Harvestable Standing Crop analysis, as determined by the shellfish population surveys to determine the estimated number of harvestable shellfish, in bushels.
- c. Local historical harvest data that provides information on the average amount of daily commercial harvests in bushels, as determined by the most recent DMR harvest data or Town of Brunswick shellfish landing reports.
- d. Number of harvest days as determined by an analysis of historical fishing days allotted, seasonal weather events, conservation closures, and any flood or red tide closures.
- e. The number of Commercial licenses will be based on the total estimated Harvestable Standing Crop in bushels, daily commercial average of harvestable bushels, and the estimated annual harvest days. The number of commercial licenses to be issued each (licensing year) equals the estimated Harvestable Standing Crop in bushels divided by the commercial average harvest in bushels, divided by the annual harvest days). An example is provided below:

A. Harvestable Standing Crop = XXX bushels

B. Daily commercial average harvest = YYY bushels

C. Annual harvest days = ZZZ days

D. Max # Commercial Licenses = QQQ Licenses

E. Formula =  $XXX / YYY / ZZZ = QQQ$

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For example, if:

XXX = 20,000 bushels, and

YYY = 2 bushels, and

ZZZ = 200 days, then

QQQ =  $(20,000)/(2)/(200) = 50$  Commercial Licenses

**Secs. 113—11-130. Reserved.**

*DIVISION 4. LICENSE<sup>2</sup>*

**Sec. 11-131. License required.**

A person shall not take or possess shellfish; unless otherwise authorized by MRS Title 12 Section 6302, from coastal waters of the town without first obtaining a license from the town clerk or the town clerk's designee.

**Sec. 11-132. Categories.**

(a) There are eight (8) types of licenses as follows:

- (1) *Resident commercial shellfish license.* This license entitles the licensee to harvest shellfish from the coastal waters of the town where and when it is otherwise lawful to do so.
- (2) *Nonresident commercial shellfish license.* This license entitles the licensee to take or possess any amount of shellfish from the coastal waters of the town where and when it is otherwise lawful to do so.
- (3) *Resident recreational shellfish license.* This license is available to residents and nonresident owners of real estate within the town as well as immediate family members of nonresident real estate owners within the town and entitles the licensee to take or possess no more than one (1) peck of any species of shellfish, or a combination thereof as regulated by this ordinance, in any one (1) twenty-four-hour period from the coastal waters of the town, not for sale, for personal use only, where and when it is otherwise lawful to do so.
- (4) *Nonresident recreational shellfish license.* This license entitles the licensee to take or possess no more than one (1) peck of any species of shellfish, or a combination thereof as regulated by this ordinance, in any one (1) twenty-four-hour period from the coastal waters of the town, not for sale, for personal use only, where and when it is otherwise lawful to do so.
- (5) *Resident student commercial shellfish license.* This license allows the licensee to harvest shellfish from May 1 to September 10 where and when it is otherwise lawful to do so.

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- (6) *Nonresident student commercial shellfish license.* This license allows the licensee to harvest shellfish from May 1 to September 10 where and when it is otherwise lawful to do so.
  - (7) *Resident and nonresident Bushel license.* This license allows the licensee to harvest commercially one (1) bushel of softshell clams and one (1) bushel of quahogs per tide.
  - (8) *One-day recreational license.* This license allows the license holder to dig, take and possess no more than one (1) peck of any species of shellfish, or a combination thereof as regulated by this ordinance, during the one (1) and only day, or any part thereof, for which the license has been purchased. A person twelve (12) years of age or younger must be accompanied by a licensed adult for personal use only.
- (b) The town shall provide ten (10) percent of all shellfish license categories to nonresidents, except one day recreational licenses.
  - (c) Any license issued under this division is subject to the partial or total closing of coastal waters under Section 11-161 of this chapter.
  - (d) Notwithstanding the above stated licensing requirements, for specific conservation or research activities sanctioned by the shellfish committee or town council, both licensed and unlicensed volunteers, students, researchers, and agents authorized by the town are allowed to dig, count, sort or study shellfish growing areas and their environs including but not limited to assessment of habitats and resources, resource health and distribution, growing conditions, public health risks, academic or educational demonstration and measurements. But they may not otherwise take any shellfish without a license. All such research or demonstrations must be coordinated with the coastal resource office. Nothing herein waives or affects applicable state laws and regulations including, but not limited to possession of any shellfish of submarket size which requires a special license issued by the department of marine resources.

**Sec. 11-133. Qualification of licensee.**

- (a) *Residency and other qualifications.*
  - (1) An applicant for a resident commercial shellfish license shall be a resident of the town whose municipal and state shellfish license, as defined by MRS Title 12 6601, is not currently under suspension.
  - (2) An applicant for a nonresident commercial shellfish license is any person who is not a resident of the town whose municipal and state shellfish license as defined by MRS Title 12 6601 is not currently under suspension.
  - (3) An applicant for a resident recreational shellfish license must be either a resident of the town or nonresident owner of real estate within the town or immediate family member of nonresident owner of real estate within the town and whose municipal and state commercial shellfish license as defined by MRS Title 12 6601 is not currently under suspension.

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- (4) An applicant for a nonresident recreational shellfish license is any person who is not a resident of the town and whose municipal and state commercial shellfish license as defined by MRS Title 12 6601 is not currently under suspension.
  - (5) The place of residence of an applicant as stated on any other license is not determinative of the applicant's true place of residence. Where necessary, the town clerk shall require the applicant to produce evidence of his residence before issuing the license.
  - (6) An applicant for a resident student shellfish license shall be a resident of the town who is actively enrolled in a primary or secondary school enrolled in at least twelve credit hours in postsecondary school, or receiving approved home instruction, who is at least ten (10) years of age but less than twenty-one (21) years of age as of the date of license application, or when no longer a student, whichever comes first.
  - (7) An applicant for a nonresident student shellfish license shall be a nonresident of the town who is actively enrolled in a primary or secondary school enrolled in at least twelve credit hours in postsecondary school, or receiving approved home instruction, who is at least ten (10) years of age but less than twenty-one (21) years of age as of the date of license application, or when no longer a student, whichever comes first.
  - (8) Prior to applying for a student shellfish license for the first time, the applicant shall attend at least one (1) educational event approved by the Town Clerk' Office. Attendance at such an event will be verified by the marine resources officer or the town clerk.
  - (9) In order to be eligible to seek to renew a license, a student must have attended at least at two (2) local, state or regional shellfish meetings between May 1 and the second Friday of April in the current licensing year. Attendance at such an event will be verified by the marine resources officer or the town clerk. Failure to do so will result in denial of the application.
  - (10) A qualified applicant for a bushel license shall be an individual who has reached the age of sixty (60) and has previously held a commercial license for the last eight (8) out of ten (10) years, or held a bushel license in the prior year. An applicant who applies for and receives a bushel license will lose all credit for having held a commercial license in prior years for purposes of any future application for a commercial license. A recipient of a bushel license will be guaranteed a bushel license in future years if all other requirements of this chapter are met.
  - (11) A qualified applicant for a one-day recreational license shall be a minimum of thirteen (13) years of age and have not held a one-day recreational license within the past seven (7) days and no more than ten (10) one-day licenses in a license year.

(b) *Shellfish Landings (Effective February 15<sup>th</sup> 2026).*

- 1) Reporting. Commercial harvesters must report annual landings to the Town Clerk by the 15<sup>th</sup> of February each year to remain eligible for the following years license.



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- a) Harvest reports must be submitted on a paper form or electronic application provided by the Town Clerk and filled out in their entirety.
  - b) Reports must indicate:
    - (1) Species harvested: softshell clams and razor clams must be reported in pounds; Quahogs and Oysters must be reported in pieces.
    - (2) The locations of harvest (*based upon the listing below*), must be as area-specific as possible, i.e. Maquoit Bay, Middle Bay, Harpswell Cove, Long Reach, New Meadows River.

**Sec. 11-134. Application.**

- (a) The application for a license required under this chapter shall be in the form of an affidavit and shall be signed by the applicant and acknowledged by the town clerk. It shall contain the applicant's name, physical location of residence, mailing address, period of residence, date and place of birth, height, weight, eye and hair color, and such other necessary information as the town clerk may require. The resident address shall be the physical location of the residence. The mailing address shall be such that the applicant utilizes to receive mail from the U.S. Postal Service.
- (b) An application for a student shellfish license shall also be in the form supplied by the town clerk, which shall include:
  - (1) Proof of residency.
  - (2) Proof of enrollment in a school or state approved educational program.
  - (3) A letter of recommendation from the superintendent or official in the school or educational program including a teacher, guidance counselor, or principal, an instructor, or advisor.
  - (4) Information or evidence regarding educational event attended (first-time applicants) or regional shellfish committee meetings attended (renewal applicants)—See Section 11-133(a)(8) and (9).

**Sec. 11-135. Misrepresentation; change of residence.**

- (a) It shall be a violation of this article for any person to falsify or give false information in connection with a shellfish license application. In addition to any criminal penalties which may result from a violation of this chapter, the shellfish license granted to any person who gives false information on a shellfish license application may be revoked after notice and opportunity for hearing.
- (b) A person holding a resident commercial shellfish license, or a resident student shellfish license shall physically reside at a fixed, permanent, and principal home in the town during the license period, or shall surrender the license. For the purposes of resident student licenses only, this term shall include a person who is attending a post secondary educational institution outside of Brunswick but who maintains a residence in Brunswick to which he or

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she returns when school is not in session. If a person does not do so, the license may be revoked after notice and opportunity for hearing.

- (c) A person holding a resident recreational shellfish license shall physically reside at a fixed, permanent, and principal home in the town or be a nonresident owner of real estate within the town or immediate family member of nonresident real estate owner within the town during the license period, or shall surrender the license. If a person does not do so, the license may be revoked after notice and opportunity for hearing.
- (d) A person applying for, or holding a shellfish license under this chapter, shall notify the town clerk within ten (10) business days of an address change, regardless of whether the address change is also a change of residency.

**Sec. 11-136. Fees.**

- 1. The applicant for a license under this chapter shall pay a fee in accordance with the Master Schedule of Revenues, Charges, Fees and Fines, Appendix B to this Municipal Code of Ordinances.

**Sec. 11-137. Exhibition of license.**

When any person is engaged in any activity which is licensed under this chapter, that person shall, on request of a certified municipal shellfish conservation warden, exhibit their license.

**Sec. 11-138. Consent to inspection for shellfish.**

A certified municipal shellfish conservation warden, within the warden's jurisdiction, has all the search powers of a marine patrol officer under 12 M.R.S.A. § 6025(4). Those powers currently include the power to search without a warrant, upon probable cause, any watercraft or container containing marine organisms possessed or taken in violation of this article.

**Sec. 11-139. Stopping for inspection.**

It shall be unlawful for the operator of a motor vehicle, boat, vessel, or conveyance of any kind, or any person:

- (1) *Stopping.* To fail or refuse to stop immediately upon request or signal of any certified municipal shellfish conservation warden in uniform.
- (2) *Remaining stopped.* After he has so stopped, to fail to remain stopped until the certified municipal shellfish conservation warden in uniform reaches their immediate vicinity and makes known to that operator the reason for the request or signal.
- (3) *Standing by.* To fail or refuse to stand by immediately for inspection on request of any certified municipal shellfish conservation warden in uniform.
- (4) *Throwing or dumping items.* Who has been requested or signaled to stop by a certified municipal shellfish conservation warden in uniform to throw or dump into any coastal waters any shellfish, or any pail, bag, barrel or other container of any type or the contents thereof before the certified municipal shellfish conservation warden in uniform has inspected the same.

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**Sec. 11-140. Issuance of annual limits on licenses.**

- (a) The shellfish resources are limited. A commercial, recreational, bushel or student shellfish harvester can be expected to harvest a certain volume of shellfish per year; therefore, the number of shellfish harvesters must be controlled to preserve the shellfish resource. The number of available shellfish licenses of each type will vary from year to year according to the determination of available resources as determined by Section 11-111. No later than the third Monday in February the town council will set the number of recreational licenses conditioned on final approval by DMR. Commencing with the first Monday of April, the town clerk shall issue resident recreational licenses until the allotted numbers have been issued. Commencing with the first Monday in April, the town clerk shall issue nonresident recreational licenses following procedures set forth in the Maine Department of Marine Resources Rules and Regulations Chapter 7.40(2). If the number of nonresident licenses outnumber the licenses available at that time the town clerk shall maintain a chronological list of nonresidents seeking recreational shellfish licenses. When the number of resident recreational shellfish licenses reaches a number where a nonresident recreational shellfish license may be issued, the town clerk shall by telephone and U.S. mail attempt notification of the applicant with the highest priority on the list. That person shall purchase the license within seven (7) business days from the date notification is attempted. If the purchase is not made in that time period, that person loses their priority and the town clerk shall attempt notification of the next person on the list using the same process. A number equivalent to ten (10) percent of the total number of resident recreational licenses shall be issued to nonresident recreational applicants.
- (b) The following procedure will be followed to control commercial and bushel license availability:
- (1) The town clerk will make available a notice of intent no sooner than the third Friday in December. The notice shall also 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 no later than by January 15 and shall be posted in the municipal offices no later than January 15 until the end of business on the second Friday of March.

Any person who does not complete and return to the town clerk by end of business on the second Friday of March a fully completed notice of intent on the form prepared by the town clerk along with satisfactory proof of residency, shall not be eligible to be an applicant for a resident or nonresident commercial license in the next coming license period, provided, however, that any person having missed the filing deadline of the second Friday of March may pay a nonrefundable late fee identified in the Town of Brunswick master fee schedule by the third Friday of March and the late fee shall be accompanied by the notice of intent form and satisfactory proof of residency. The late fee shall be in addition to those fees required under Section 11-136. Any person who does not file a notice of intent for two (2) successive license periods, shall not be considered as previously having held a Brunswick resident or nonresident commercial shellfish license.

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Any person who does not complete and return to the town clerk by the end of business on the second Friday of March a fully completed notice of intent on the form prepared by the town clerk along satisfactory proof of residency, shall not be eligible to be an applicant for a bushel license in the next coming license period and shall not be considered as previously having held a bushel license, provided, any person having missed the filing deadline of the second Friday of March may pay a nonrefundable late fee identified in the Town of Brunswick master fee schedule by the third Friday in March and the late fee shall be accompanied by the notice of intent form and satisfactory proof of residency. The late fee shall be in addition to those fees required under Section 11-136.

The notice of intent must be delivered in person, and must be received by the town clerk by the end of business on the second Friday of March, or, in the case of payment of a late fee, must be delivered in person and received by the town clerk by the third Friday of March. In the event the Brunswick municipal offices are closed during any portion of the normal office hours on either of these dates, the deadline for submitting a notice of intent shall be extended to the close of business on the next normal business day the municipal offices are open.

An applicant on active military duty, whether because of enlistment or activation by a proper authority, may preserve, but not advance, that applicant's status in the commercial license selection process by returning a notice of intent to the town clerk by the second Friday of March. The active duty applicant need not deliver the notice of intent in person. The active duty applicant must include proof from a military authority that the applicant is on active duty. The applicant is not required to participate further in the commercial license selection process, and the applicant shall not be reduced in the commercial license classes in any year the applicant complies with this paragraph.

- (2) No later than the third Monday in February the town council will establish the number of commercial shellfish licenses and bushel licenses to be made available.

The town council shall use the following protocols in order to determine the number of commercial shellfish licenses and bushel licenses as determined by Section 11-111 and 11-112, conditioned on final approval by DMR.

- (3) The town council will notify the town clerk in writing prior to the fourth Monday of February of the number of shellfish licenses, by type and class, to be made available for issue. Prior to the last business day of February, the town clerk will submit the license allocation request to the department of marine resources municipal shellfish management program.

If the town is notified by DMR of an impending closure or opening of harvestable acreage after the second Friday in February, the town council shall recalculate the number of commercial shellfish licenses made available, and notify the town clerk in writing prior to the first Monday in March. This new allocation is also conditioned on approval of DMR.

The town clerk will prepare a list of the persons eligible for licenses in classes A through K in subsection (4) and those persons eligible for any bushel licenses. The

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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 by applicants. Applicants for a shellfish license who meet the requirements of this article must obtain the shellfish license in person unless the applicant has filed with the town clerk a notarized statement designating a certain other person to obtain the license on the applicant's behalf or unless medically unable to do so. A person medically unable to obtain the shellfish license may send another person who shall present to the town clerk written authorization and a written statement from a physician regarding the applicant's condition.

- (4) The town clerk shall issue resident commercial and nonresident commercial licenses according to the selection process described below. Resident applications and nonresident applications shall be segregated in each class. The classes shall be followed in descending order. A number equivalent to ten (10) percent of the total number of resident commercial licenses, regardless of class, shall be issued to nonresident commercial applicants. The classes are:

RESIDENT

- a. Applicants who have held resident commercial licenses for ten (10) of the last ten (10) years.
- b. Applicants who have held resident commercial licenses for nine (9) of the last ten (10) years.
- c. Applicants who have held resident commercial licenses for eight (8) of the last ten (10) years.
- d. Applicants who have held resident commercial licenses for seven (7) of the last ten (10) years.
- e. Applicants who have held resident commercial licenses for six (6) of the last ten (10) years.
- f. Applicants who have held resident commercial licenses for five (5) of the last ten (10) years.
- g. Applicants who have held resident commercial licenses for four (4) of the last ten (10) years.
- h. Applicants who have held resident commercial licenses for three (3) of the last ten (10) years.
- i. Applicants who have held resident commercial licenses for two (2) of the last ten (10) years.
- j. Applicants who have held resident commercial licenses for one (1) of the last ten (10) years.
- k. Applicants who have held resident commercial licenses for zero (0) of the last ten (10) years.

NONRESIDENT

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- a. Applicants who have held nonresident commercial licenses for ten (10) of the last ten (10) years.
  - b. Applicants who have held nonresident commercial licenses for nine (9) of the last ten (10) years.
  - c. Applicants who have held nonresident commercial licenses for eight (8) of the last ten (10) years.
  - d. Applicants who have held nonresident commercial licenses for seven (7) of the last ten (10) years.
  - e. Applicants who have held nonresident commercial licenses for six (6) of the last ten (10) years.
  - f. Applicants who have held nonresident commercial licenses for five (5) of the last ten (10) years.
  - g. Applicants who have held nonresident commercial licenses for four (4) of the last ten (10) years.
  - h. Applicants who have held nonresident commercial licenses for three (3) of the last ten (10) years.
  - i. Applicants who have held nonresident commercial licenses for two (2) of the last ten (10) years.
  - j. Applicants who have held nonresident commercial licenses for one (1) of the last ten (10) years.
  - k. Applicants who have held nonresident commercial licenses for zero (0) of the last ten (10) years.

On the first Wednesday of April, the town clerk shall issue licenses to the classes in which licenses are available for each applicant. The licenses shall be purchased by the end of business on the tenth business day after issuance. In the case a licensee fails to pick up their designated license within the above time frame, the licensee will have an additional five (5) business days to purchase the license with a late fee identified in the Town of Brunswick master fee schedule.

After the issuance of licenses to the classes in this subsection (4) in which licenses are available for each applicant, the remaining classes shall be issued licenses by lottery. The lottery shall apply to the classes alphabetically. If there is at least one (1) applicant in excess of the number of available licenses in a class, the town clerk shall also hold a lottery for the next class. The lottery shall be held on the last Friday of April. If an applicant has applied for a commercial license for consecutive years and has not been successful in obtaining a license in the lottery, the applicant shall have their name entered into the lottery for each consecutive year they have applied beginning in 2016, for a maximum of five (5) entries into the lottery. As applicant names are drawn by lottery, a list will be compiled showing order of eligibility. Licenses will be available for purchase after the lottery during regular town office business hours until the end of the first business day following the lottery. If, at

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the end of the first business day following the lottery, one (1) or more licenses remain in a class, the next eligible applicant(s) in that class will have two (2) days to purchase the license(s).

If licenses remain after the issuance of licenses to each applicant in the classes in this subsection (4) during the first ninety (90) days of the issuance process, the town clerk shall issue licenses to residents or nonresidents alike according to the following process:

The town clerk shall prepare public notification of license availability which shall be published in a newspaper of general circulation in the area by the second Friday of May and posted at the town office. The notification shall inform prospective applicants to file a lottery participation notice to seek a resident or nonresident commercial shellfish license. The lottery participation notice shall be on the form prepared by the town clerk, and available at the town clerk's office.

Any person who does not complete and return the lottery participation notice to the town clerk by the end of business on the Friday following publication shall not be eligible to be an applicant.

The town clerk shall prepare a list of the persons eligible to compete for a license in this category. The list shall be posted at the town office. Resident applications and nonresident applications shall be segregated.

On the second Monday immediately following the return deadline, the town clerk shall hold a lottery to select the applicant or applicants who shall receive licenses. Licenses shall be purchased by the end of business on Tuesday, the next day. If the licenses are not purchased by that time, they shall be offered to the next succeeding person or persons in the lottery who shall have two (2) business days after notification to purchase the license.

If licenses remain after the first ninety (90) days of the issuance process, they shall be equally available to residents and nonresidents at the original allocated fee in each category, regardless of residency.

If a license becomes available because it is suspended, rendered void or surrendered prior to the end of the license year, it shall not be reissued.

Nothing in this subsection shall be interpreted to restore or expand any other rights or waive any qualification provisions under this article. For the following license year, a person who held licenses in some or all of the proceeding ten (10) years and who qualified for a license during the period of issuance but did not receive a license, shall be in the class determined by this lottery license and previous licenses. A person who receives a license in this lottery and who has held no licenses for the preceding ten (10) years shall be in a class J for the following license year.

If the Brunswick municipal offices are closed during any portion of the normal office hours on the first day set above for issuing licenses to a class, any remaining licenses for that class must be issued and purchased prior to closing of the municipal offices on the next normal business day the municipal offices are open. If the Brunswick municipal offices are closed during any portion of the normal office hours on the second day set above for issuing

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licenses to a class, any remaining licenses for that class must be issued and purchased prior to noon on the next normal business day the municipal offices are open.

For the purposes of the above selection process, a license does not remain for a class in the descending order if a person in the class above is issued a license but does not purchase the license within the required time, and others in the class above did not obtain a license because the number of persons in the class above exceed the number of available licenses. Rather, the license shall be issued to the persons in the class above who did not obtain a license, by lottery if necessary.

For the purpose of the above selection process, a person who was a Brunswick resident and subsequently established residency in another place outside the Town of Brunswick and obtained a resident commercial shellfish license in that place, shall not be considered as previously having a Brunswick resident commercial shellfish license.

For the purposes of the above selection process, a person who is issued a license but does not purchase the license within the required time for two (2) successive license years shall not be considered as previously having a Brunswick commercial shellfish license.

- (5) The town clerk or the town clerk's designee shall begin to issue resident and nonresident recreational shellfish licenses on the first Monday in April.
  - a. The town clerk's office shall make available the recreational application five (5) business days prior to the date recreational licenses go on sale.
  - b. On the date of issuance if there are more applicants than licenses available, the selection process shall be by lottery.
  - c. The lottery process shall not apply to resident recreational licenses when there are unlimited resident recreational licenses available for the licensing year.

(c) Reserved.

(d) Student Licenses: The purpose of the student shellfish license program is two-fold. The first is to provide education in applied marine science via the programs at the Brunswick High School. The second purpose is to train a young generation of residents interested in pursuing shellfish harvesting or a related business as a career. The following procedure will be followed to control student shellfish license availability:

- (1) No later than the third Monday in February, the town council will establish the number of student shellfish licenses to be made available, conditioned on approval by DMR, and the amount each student is allowed to harvest with a minimum of one (1) bushel per tide and a maximum of three (3) bushels per tide based on survey results. Not less than ten (10) percent of the student shellfish licenses shall be made available to nonresidents, except that if the number established is five (5) or fewer, none is required to be made available to nonresidents, and if the number is more than five (5) but fewer than ten (10), at least one (1) is required.

The town council will notify the town clerk in writing prior to the fourth Monday of February of the number of student licenses to be made available for issue. Prior to the



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last business day of February, the town clerk will submit the license allocation request to the department of marine resources municipal shellfish management program.

- (2) Notice of intent application for student licenses will be available on January 1 or the first business day thereafter at the town clerk's office, 85 Union Street Brunswick. The town clerk shall publish a notice of availability of student notice of intent applications for shellfish harvesting in a newspaper of general circulation no later than January 1. Student harvesters must deliver a completed notice of intent to the town clerk's department, in person, by the end of business on the first Friday of April. If there are more applicants than there are licenses available, the selection process shall be by lottery. On the second Friday in April, the town clerk shall hold a separate lottery for each license category if needed to select the applicant or applicants who shall receive licenses. Licenses shall be purchased in person by the end of business on the third Friday of April. If the licenses are not purchased by that time, they shall be offered to the next succeeding person or persons in the lottery who shall have seven (7) business days after the town clerk by telephone and U.S. mail notifies the person or persons to purchase the license.

If student shellfish licenses remain after the first ninety (90) days following the initial date available to purchase, they shall be equally available to residents and nonresidents. If a license becomes available because it is suspended, rendered void or surrendered prior to the end of the license year, it shall not be reissued.

- (3) If a student files an intent in the commercial shellfish process, they are not eligible to apply for the student license regardless of whether a commercial license was granted or not.
- (4) If a commercial license applicant has applied for a student license for consecutive years immediately preceding a first application for a commercial license, they should be entitled to additional entries in the commercial license lottery as follows:

2 or more years 1 additional entry
3 years 2 additional entries
4 or more years 3 additional entries

If a commercial license is awarded to an applicant using additional entries accumulated as a student, those additional entries will not be usable toward future commercial license applications. However, if an applicant using additional entries accumulated as a student is not awarded a commercial license, those additional entries may be carried forward to future consecutive commercial license applications until a commercial license is awarded or the applicant accumulates a total of five (5) additional entries.

(5) The maximum number of student licenses to be issued shall not be more than 15% total of commercial licenses issued, as determined in Section 11-112

(6) If the maximum number of commercial licenses calculated in Section 11-112 is 50 or below, no student licenses will be issued.

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- (e) Notice of the dates, places, times and the procedures for the recreational license sales shall be posted on the town's web page, 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 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.

**Sec. 11-141. Suspension and Revocation of Licenses.**

- (a) The shellfish committee may after notice and opportunity for hearing, suspend any and all licenses issued under this article if:

The license holder is convicted in court of violating any section of this article, or where suspension is otherwise permitted or required by this ordinance or Maine law.

- (b) If the license holder's State of Maine Department of Marine Resources Shellfish License is suspended, the Town Clerk shall administratively suspend the Town license. The suspension shall remain in effect until the license holder's State of Maine Department of Marine Resources Shellfish License is reinstated.

- (c) *Length of suspension.* The suspension of a license may not exceed the following:

- (1) Ninety (90) days for the first conviction.
- (2) The remainder of the license year for the second conviction.

In addition, a harvester with a second conviction in a twelve-month period arising out of separate events shall not qualify as an applicant for a license for one (1) year.

- (d) *Applicable standards.* Any conviction for violations occurring more than five (5) years before the most recent date of violation resulting in a conviction shall not be counted in determining lengths of suspension.

- (e) *Length of revocation.* A revocation shall be for the remainder of the license term.

- (f) *Hearing.* If the certified municipal shellfish conservation warden presents to the town clerk evidence that any licensee has committed an offense that justifies potential suspension or revocation of the license, the town clerk shall give the licensee seven (7) days' notice of the suspension of the license, stating the reason for the suspension. The licensee has the right to meet with the town clerk during that seven-day period to review the evidence of convictions or suspension and to present any evidence showing the license should not be suspended or revoked. Following any hearing pursuant to this section, the clerk shall issue a written decision to the licensee along with the findings of fact supporting the decision.

**Sec. 11-142. Aiding and abetting.**

A harvester holding a commercial license or bushel license who aids or abets the harvest of shellfish in violation of this article shall be subject to the same penalties as the person they have assisted.

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**Sec. 11- 143. Expiration.**

Resident commercial shellfish and nonresident commercial licenses and bushel licenses issued under authority of this article shall expire on the last Friday of April in the following calendar year. Resident student shellfish and nonresident student shellfish licenses issued under the authority of this article shall expire on September 11 of the licensing year, resident recreational and nonresident recreational licenses issued under authority of this article shall expire on the day before the first Monday of April of the following calendar year. Recreational day licenses expire 24 hours after purchase.

**Secs. 11-146—11-160. Reserved.**

*DIVISION 5. REGULATIONS*

**Sec. 11-161. Opening and closing of coastal waters.**

- (a) The shellfish committee, with the approval of the commissioner of marine resources, and the direct consent of the town council, and this consent to be given by the town council on an annual basis at their first regular meeting after the organization meeting, may open and close coastal waters. Any opening or closing of coastal waters must be approved by the DMR Near Shore Marine Resources Program and noticed at least five (5) days in advance on the town’s website and in a newspaper of common circulation to the Brunswick area.
- (b) The shellfish committee shall make findings of fact on the relevant evidence presented by town staff. Opening and closing coastal waters procedures shall include the following.
  - (1) A shellfish size distribution survey to determine relevant shellfish size classes throughout the defined growing area.
  - (2) An evaluation of predation, resource competition, or other resource problems.
  - (3) When sublegal shellfish populations in a designated growing area exceed 65 (sixty- five) percent of the total harvestable standing crop measured in bushels the area must be closed for conservation.

The committee shall then make a conclusion based on those findings of fact as to whether opening or closing of coastal waters is warranted. If so, the shellfish committee, with the concurrence of DMR, shall order the coastal waters opened or closed and shall set such time limitations and other shellfish management measures, as are consistent with good conservation practices. If the request is to close the coastal waters, the shellfish committee shall make a conclusion based on its findings of fact as to whether closing the coastal waters is warranted by depletion of shellfish, destruction of existing juvenile populations, predation, competition or other resource problems. If the shellfish committee orders the coastal waters to be closed, it shall request a reevaluation of the area within 6 months based upon appropriate staff and expert reports, and prior to setting an opening date. All proposals for opening or closing of coastal waters shall be approved by the commissioner of DMR prior to enactment.

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- (c) When the shellfish committee opens or closes the coastal waters, the committee's action may be reviewed at a regularly or specially scheduled town council meeting. The town council may uphold, reverse or amend the opening or closing decision of the shellfish committee. Any proposed or requested changes to a closure or opening must first be approved by DMR.
  - (d) It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the Town of Brunswick in accordance with DMR Regulation, chapter 7. Harvesting shellfish in a closed area is a violation of this ordinance and is punishable under 12 M.R.S.A. § 6671.

**Sec. 11-162. Shellfish size and tolerance of harvest.**

A person shall not harvest or possess softshell clams which are less than two (2) inches in the longest diameter to the amount of not more than ten (10) percent of any lot; quahogs which are less than one (1) inch in at the hinge to the amount of not more than five (5) percent of any lot; razor clams which are less than four (4) inches; European oysters which are less than three (3) inches in length; American oysters which are less than two and a half (2½) inches in the longest diameter to the amount of not more than ten (10) percent of any lot, unless otherwise authorized by MRS 12 Section 6073 (A)

**Sec. 11-163. Method of determining tolerance.**

The tolerance must be determined by a numerical count of not less than one (1) nor more than four (4) pecks taken at random from various parts of the lot. If the entire lot contains less than one (1) peck, the tolerance must be determined by numerical count of the entire lot.

**Sec. 11-164. Night shellfish harvesting prohibited.**

It is unlawful to harvest, take or possess shellfish unless otherwise authorized by MRS Title 12 Section 6302 shellfish from one (1) hour after sunset until one (1) hour before sunrise. The timetable prepared by the Nautical Almanac Office of the U.S. Navy for Augusta, Maine will be the official time.

**Sec. 11-165. Harvesting prohibitions.**

- (a) Harvesting prohibitions are established under the authority of M.R.S.A Title 12 Section 6671 (3.) (A) (1)
  - (1) It is unlawful for any commercial harvester to harvest or take shellfish from the coastal waters of the town on Sundays between June 1 and October 1.
  - (2) It is unlawful to harvest or take quahogs from the coastal waters of the town between January 1 and March 31.

**Sec. 11-166. Shellfish growing areas.**

It shall be unlawful for a person to harvest shellfish from intertidal areas when they are covered with water. Any areas of high-water harvest shall be determined by the Brunswick shellfish Committee and approved by the department of marine resources.

**APPENDIX B MASTER SCHEDULE OF REVENUES, CHARGES, FEES AND FINES**

<b>Chapter 11—Marine Activities, Structures and Ways</b>			
Sec. 11-136	12-02-2024	Residential commercial shellfish with \$50 going to conservation fund	\$550.00
		Nonresident commercial shellfish license with \$75 going to conservation fund	\$825.00
		Resident recreational shellfish license/over age 62	\$50.00/free
		Nonresident recreational shellfish license/over age 62	\$75.00/free
		Resident student shellfish license. \$10 to go toward conservation fund	\$210.00
		Nonresident student shellfish license \$25 to go toward conservation fund	\$325.00
		Bushel license	\$225.00
Sec. 11-140(b)(1)	12/18/2017	Nonrefundable late fee for a late letter of intent for commercial resident/nonresident 100% <u>to go into the conservation fund</u>	\$600.00
		Nonrefundable late fee for a late letter of intent for a bushel license <u>to go into the conservation fund</u>	\$400.00
		Nonrefundable late fee for additional 5 business days to purchase the license <u>to go into the conservation fund</u>	\$600.00
Sec. 11-168	12/7/2020	Aquaculture review fees are set by 12	

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		M.R.S.A. § 6088	

Adopted by the Town Council on December 2, 2024

This is a True Attest Copy of the Ordinance



Town Clerk:

*Fran Smith*