

Town of Whiting

169 US Rte 1 - PO Box 101
Whiting, Maine 04691
Tel/Fax 207-733-2027

September 20, 2017

Heidi Leighton, Area Biologist
Shellfish Program Coordinator
Shellfish Management Program
P.O. Box 8
West Boothbay Harbor, Me. 04575-0008

Dear Ms. Leighton,

Amendments to the Whiting "Shellfish Conservation Ordinance" were approved at annual town meeting held on September 18, 2017. I am enclosing those amendments as presented and approved at town meeting for the approval of the Shellfish Management Program.

Thank you.

Sincerely,



Caron Kilton, Administrative Assistant

SHELLFISH CONSERVATION ORDINANCE

TOWN OF WHITING

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 Whiting which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:
 - A. Licensing.
 - B. Limiting the number of shellfish harvesters.
 - C. Restricting the time and area where ~~digging~~ *harvesting* 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 Whiting will be administered by the Shellfish Conservation Committee consisting of three members to be appointed by the selectmen for three years, serving staggered terms.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the department of marine Resources the number of shellfish ~~digging~~ *harvesting* licenses to be issued;
- B. Submitting proposals for the expenditures of funds for the purpose of shellfish conservation;
- C. Keeping this ordinance under review and making recommendations for its amendments;
- D. Securing and maintaining records of shellfish harvest from the Town's managed Shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources;
- E. Recommending conservation closures and openings in conjunction with the area Biologists of the Department of Marine Resources;
- F. Submitting an annual report to the Town and the Department of Marine Resources covering the above topics and all other committee activities.

4. **Definitions:**

A. **Resident:** The term "resident" refers to a person who owns or rents residential real estate and has been domiciled in this municipality for at least three months(90 days) prior to the time their claim of residency is made for the purpose of applying for a shellfish license. To prove they are a resident, a person must provide documentation of real estate ownership in the form of a deed or property tax bill, or if rented real estate, rent receipts or a lease agreement signed by the property owner that provides residency for the three months (90 days) prior to applying for the shellfish license.

In addition to the above domicile requirements, the applicant must show documentation of at least one of the additional residence criteria from:

1. Motor vehicle license registration
2. Motor vehicle registration address
3. Voter registration address
4. Hunting licenses
5. Utility service address

B. **Non-resident:** The term “non-resident” means anyone not qualified as a resident under this ordinance.

C. **Shellfish, Clams, and Intertidal shellfish resources:** When used in the context of this ordinance, the words “shellfish,” “clams,” and “intertidal shellfish resources” mean soft shell clams(*Mya arenaria*).

D. **Municipality:** Refers to the Town of Whiting, Maine.

5. **Licensing:** Municipal Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance. No person shall be issued a Municipal Shellfish License who, upon the time of request, has failed to appear in court for a shellfish license violation, or has failed to pay outstanding shellfish violation fines.

A. **Designation, Scope and Qualifications:**

- (1). **Resident Commercial Shellfish License:** The license is available to residents Town of Whiting and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality. ~~and reciprocating municipalities.~~
- (2). **Non-resident Commercial Shellfish License:** The license is available to non-residents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
- (3). **Resident Junior Commercial License:** This license is available to residents of this municipality who have attained his or her 10th 16th birthday but has not yet attained his or her 18th birthday as of June 1st of the year of application. The student applicant shall be enrolled fulltime in a primary or secondary school or educational program. The student must remain enrolled, or had graduated, for the period of issuance. This license entitles the student to dig and take any amount of shellfish to sell from the shores and flats of this municipality.
- (4). **Non-Resident Junior Commercial License:** This license is available to non-residents of the Town of Whiting who have attained his or her 10th 16th birthday but has not yet attained his or her 18th birthday as of June 1st of the year of application. The applicant shall be enrolled fulltime in a primary, secondary, or educational program. The student must remain enrolled, or had graduated, for the period of issuance. This license entitles the student to dig and take any amount of shellfish from the shores, flats of this municipality.
- (5). *Senior Commercial License: This license is available to residents of this municipality who have attained his or her 60th birthday as of June 1st of the year of application. This license entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.*
- (6). *Senior Non-resident Commercial License: This license is available to non-residents of the Town of Whiting who have attained his or her 60th birthday as of June 1 of the year of application. This license entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality*
- ~~(5)-(7).~~ **Residents Recreational Shellfish License:** The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for ~~the use~~

of himself and his family. *personal use only.*

~~(6)-(8)~~. **Non-Resident Recreational Shellfish License:** The license is available to non-residents and entitles the holder to dig and take no more than one peck of shellfish in any one day for ~~the use of himself and his family.~~ *personal use only.*

~~(7)~~. **(9) Restrictions on Recreational License:**

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

b. Any person who is issued a Whiting Recreational License and subsequently obtains a Commercial Shellfish License from either the Maine Department of Marine Resources or the Town of Whiting will have his or her Whiting Recreational License revoked immediately.

~~(8)-(10)~~. **License must be signed:** The licensee must sign the license to make it valid. *The license must be in your possession when engaged in harvesting. By signing the license, the harvester acknowledges that they must submit to inspection by the municipal shellfish warden.*

~~(9)~~. **(11) Change of Residence:** ~~If a person holding a Resident Shellfish License moves out of town, the license will be invalid 30 days after moving.~~ *A person holding a commercial shellfish license under this ordinance shall notify the town clerk within 30 days of an address change. Failure to do so will be considered and treated as misrepresentation.*

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

(1). **Contents of Application:** The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require. An application for a junior shellfish license shall also be in the form of an affidavit, which shall include:

a. Proof that the applicant has attained his or her ~~10th~~ 16th birthday but has not yet attained his or her 18th birthday as of June 1st of the license year.

b. Proof of residency.

c. Proof of enrollment in a school or state approved educational program.

(2). **Misrepresentation:** Any person who gives false information on a license application will cause said license to become invalid and void.

C. Fees: The number of licenses and fees for the licenses will be determined annually by the Shellfish Conservation Committee. Fees for the licenses must *be received when the license is issued.* ~~accompany in full the application for the respective license.~~ The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licenses shall be used by the Town for shellfish management, conservation, and enforcement.

D. Limitation of Diggers: Limited Licenses Sales Clam resources vary in density and size distribution from year to year and over the limited soft shell clam producing area of the Town. It is essential that the town carefully husband its shellfish resources. Following the annual review of the Town's clam resources, its size distribution, abundance, and the warden's reports, ~~as required by the Section 3,~~ the Shellfish Conservation Committee in consultation with the DMR area biologist will determine whether limiting

commercial or recreational shellfish licenses is appropriate shell fish conservation management option for the following year.

- (1) ~~Prior to **June 1**~~ †The Town Shellfish Conservation Committee with the approval of the Commissioner of Marine Resources will establish the number of commercial and noncommercial licenses to be permitted following the requirements of 12 M.R.S.A. Section 6671(3).
- (2) The Shellfish Conservation Committee shall notify the Town Clerk in writing ~~prior to June 1~~ of the number of licenses to be issued.
- (3) Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with the general circulation, which the Board of Selectmen consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the Town Office until the period concludes.
- (4) The Town Clerk shall issue licenses to residents and non-residents as allocated (paragraph 5C) from **June 1** and until **September 1** after which licenses shall be issued to residents and non-residents on a first come first serve basis or by lottery.
- (5) Licenses may be returned to the Town voluntarily and reissued to another person at the current fee according the priorities established in this section.

E. **Open License Sales:** When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year;

- (1). Notice of dates, places, times and procedures for the license sales shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the initial sale date and shall be posted in the municipal offices.

- (2).
~~For each commercial license category, the Town Clerk shall issue one license to non-residents when six licenses are issued to residents and one more to non-residents when four more are issued to residents; thereafter, one non-resident will be issued for every ten additional resident license issued.~~

The town clerk shall issue licenses as allocated. On the first day of license sales, the total number of nonresident licenses shall be issued in accordance with DMR Regulations Chapter 7.4 section 1. Thereafter, nonresident licenses will be issued in accordance with the 10% rule as described in 12 M.R.S.A. §6671(3-E) and DMR Regulations Chapter 7.4, Section 2, Table 1.

F. **License Expiration Date:** Each license issued under authority of this ordinance expires at midnight on the 31st of May next following date of issue.

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

H. **Suspensions:** Any shellfish licensee having been convicted for violation of this ordinance or in a Municipal closed Conservation Area shall have his shellfish license automatically suspended.

- (1) A ~~license~~ licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has expired.
- (2) The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the licensee.
- (3) Any licensee whose shellfish license has automatically been suspended pursuant to this

section shall be entitled to a hearing before the Shellfish Conservation committee upon filing of a written Request for Hearing with the Town Clerk within thirty (30) days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee before the Board of Appeals by filing a written Request for Appeal with the Town Clerk within (7) days of the decision of the Shellfish Conservation Committee.

- (4) **Length of Suspension:** The suspension of a license may not exceed the following:
- a. 30 days from the date of the first ~~conservation~~ conviction
 - b. 365 days(one year) from the date of the second ~~conservation~~ conviction

6. Opening and Closing of Flats: The Board of Selectmen, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources area biologist that the status of shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed, the Board of Selectmen may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Board of Selectmen made after the hearing shall be based on findings of fact.

A. Closed Areas: It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the Town of Whiting in accordance with DMR Regulation, chapter 7. Harvesting shellfish in a closed area is a violation of this municipality's ordinance and is punishable under MSRA Title 12§ 6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the Town of Whiting to DMR and are part of the resulting permit issued by DMR. These permits are posted at the town office and online.

Public notice of municipal conservation closures or openings shall be provided in accordance with DMR Regulations Chapter 7.50(1)9c).

7. Minimum Legal Size of Soft Shell Clams: It is unlawful for any person to ~~prøeess~~ possess soft shell clams within the Town of Whiting, County of Washington, 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, the word "possess" means dig, take, harvest, ship, transport, hold, buy, and sell retail and wholesale soft shell clam shell stock.

B. Tolerance: Any person may possess soft shell clams that are less than two (2) inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by count of the entire lot if it contains less than one peck.

C. Penalty: A person who violates any provision of this section shall be punished as provided in 12 M.R.S.A. Section 6681.

8. Penalty: A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671(10).

9. Effective Date: This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the Town of Whiting provided a certified copy of this ordinance is filed with the Commissioner within twenty (20) days of its adoption.

10. Period of Ordinance: This Ordinance shall remain in effect for from the effective date until repealed by the municipality or rescinded by the commission.

11. **Separability:** If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such as decisions **shall not affect the validity of the remaining portions of the ordinance.**

12. **Repeal:** Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions of any other Town ordinance which is inconsistent with this ordinance is hereby repealed.

This certifies to the municipal clerk of Whiting that the within is a true copy of the amendments proposed to an ordinance entitled "Shellfish Conservation Ordinance" to be acted upon by the voters at a town meeting to held on September 18, 2017.

Dated: August 14, 2017

Municipal Officers of Whiting

Steven C Pressley Jr.
Steven C. Pressley I

Mary-Alice Look
Mary-Alice Look

Janice E. Bronson
Janice Bronson

Attest: A true copy of proposed amendments to an ordinance entitled "Shellfish Conservation Ordinance" as certified to me by the municipal officers of Whiting on August 14, 2017.

Caron Kilton 9-1-2017
Caron Kilton, Town Clerk of Whiting

CERTIFICATION OF ORDINANCE

I, Caron Kilton, the duly appointed Town Clerk for the Town of Whiting, hereby certify that the attached is a true and accurate copy of the amendments to "SHELLFISH CONSERVATION ORDINANCE" approved at Annual Town Meeting, September 18, 2017, 6:30 P.M. Vote by show of hands:

YES – ALL NO- 0

Caron Kilton 9-20-2017

Caron Kilton, Town Clerk