

Approved at Special Town Meeting – June 2, 2008

SHELLFISH CONSERVATION ORDINANCE

TOWN OF MACHIASPORT

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 Machiasport, 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 areas where 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 Machiasport will be administered by the Shellfish Conservation Committee consisting of five (5) members to be appointed by the Selectmen for terms of One (1) year or more. Responsibilities of the Committee include:
 - A. Establishing annually, in conjunction with the Department of Marine Resources, the number of shellfish harvesting licenses to be issued.
 - B. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation.
 - C. Keeping this ordinance under review and making recommendations for amendments to it.
 - D. Securing and maintaining records of shellfish harvesting 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 of harvesting areas to the Board of Selectmen in conjunction with the Area Biologists of the Department of Marine Resources.
 - F. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other committee activities.

4. Definitions:

- * A. **Residents:** The term “resident” shall mean a person who has physically resided at a fixed, permanent, and principal home in the Town for at least six (6) months next prior to the time the claim of residence is made
- B. **Nonresident:** The word “nonresident” shall mean any persons not qualified as a resident under this ordinance.
- C. **Shellfish, Clams and Inter tidal Shellfish resources:** When used in the context of this ordinance the words “shellfish,” “clams,” and “Inter tidal shellfish resources” all mean softshell clams, i.e. Mya arenaria.
- D. **Municipality:** For the purpose of this ordinance refers of the Town of Machiasport, Maine.

5. Licensing:

Municipal Shellfish Harvesting License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality as provided by this ordinance, except those who meet the requirements for a free license. Those requirements are:

- A. **Licenses:** Means “Town license.” In order to secure a Town license, a person must be:
 - 1. A resident as defined above in 4, (A) above.
 - 2. Student: A student resident commercial license will be available at reduced cost to students who meet their schools requirements for being in good standings. (Ages 14-17 years of age). Under 14 years of age is free.

A student Non-Resident commercial license will be available by quota at a reduced cost to students who meet their schools requirements for being in good standing. (1 license for every 10 resident).
 - 3. An over the age of sixty (60) Resident commercial license will be available at a reduced cost.

An over the age of sixty (60) Non-Resident commercial license will be available at a reduced cost. (1 license for every 10 resident).
 - 4. Committee members. Free provided they serve a full term.

B. Designation, Scope, and, Qualifications:

1. **Resident Commercial Shellfish License:** The license is available to residents of the Town of Machiasport and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
2. **Nonresident Commercial Shellfish Licenses:** The license is available to nonresidents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality
3. Any harvester claiming shellfish they have not harvested personally shall be in violation of this ordinance.
4. **Signatures:** The licensee must sign the license for it to be valid.

- i. **Application Procedure:** Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality.

i.a. The place of residence of an applicant as stated on any other license is not determinative of the applicant's true place of residence. The applicant shall be required to produce evidence of their residence before license is issued.

i.b. A person applying for, or holding a license under this Ordinance, shall notify the Town Clerk within ten (10) days of an address change, regardless of whether the address change is also a change of residency.

1. **Contents of the Applications:** The application must be in the form of an affidavit and must contain the applicants name, current address, birth date, height, weight, signature, and whatever information the municipality may legally require.
2. **Misrepresentation:** It shall be a violation of Ordinance 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 Ordinance the shellfish license granted to any person who gives false information on a shellfish application shall become void.

3. Issuance of License:

3.a. A person holding a resident commercial shellfish license of any type shall physically reside at a fixed, permanent and principal home in Town during the license period or shall surrender the license. If a person does not do so said license shall become void within seven (7) days of moving from Town.

5.b.4. The Town Clerk shall issue licenses only after they are certified by the Shellfish Committee at the next regular scheduled meeting.

5.c.4. Appeals must be written and turned into the Town Clerk within thirty (30) days of denial. The Board of Selectmen shall be the ruling authority on any appeals.

ii. **Fees:** The fees for the licenses must be paid in Full upon issuance of the respective License.

ii.a. Fee for licenses will be recommended by the Shellfish Committee prior to May 1 of each year and approved by the Selectmen.

C. **Limit of Harvesters:** Because the shellfish resources are limited and because a commercial or recreational harvester can be expected to harvest a certain volume of clams per year, the number of harvesters must be controlled. This will vary from year to year depending upon estimates of the resources, capabilities and management requirements consistent with good resource utilization. The following procedure will be followed to exercise control:

1. Prior to May 1, of the current year, the Town Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources, will establish the

commercial and noncommercial licenses to be permitted following the requirements of M.R.S.A. Section 6671 (3).

2. The Shellfish Conservation Committee will notify the Town Clerk in writing prior to June 1, of the current year, the number of licenses to be issued.
3. Notice of licenses to be issued and the procedure for application shall be published in trade or industry publication or in newspapers or combination of newspapers with circulation, that the municipal officers consider effective in reaching persons affected, not less than ten (10) days prior to the period of issuance and shall be posted in the municipal offices until the period concluded.
4. The Town Clerk shall issue licenses to residents and nonresidents as allocated.
5. Licenses are nontransferable and non-refundable.
6. Night-time Harvesting: Harvesting shall be restricted to one-half hour before sunrise and one-half hour after sunset.

D. **License Expiration Date:** Each license issued under this ordinance shall expire at midnight on the 31st of May next, following the date of issue.

E. **Suspension:** Any shellfish licensee having three (3) convictions for a violation of this ordinance within a consecutive twelve (12) month time period shall have his/her shellfish license automatically suspended for a period of twelve (12) consecutive months. Exception: anyone violating Section 5-B-3 shall have his/her license automatically suspended for the remainder of the current license year for the first violation.

1. A licensee whose license has been suspended pursuant to this ordinance may re-apply for a license only after the suspension 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 a written request for such with the Town Clerk within thirty (30) days following the effective date of the suspension. The licensee may appeal the decision of the

Shellfish Conservation Committee before the Board of Selectmen by filing a written request for appeal within seven (7) days of the decision of the Shellfish Conservation Committee. (optional)

- F. Unpaid Fines. All Municipal Ordinance fines issued on and following June 1, 2008 must be paid in full before a new town shellfish license will be issued. A receipt from the District Court Office must be filed with the town clerk for verification of payment in full for any fines accrued on or following June 1, 2008.

 - G. Aiding and Abetting. A harvester holding a commercial license who aids or abets the harvest of shellfish in violation of this Ordinance shall be subject to the same penalties as the person he has assisted.
6. **Opening and Closing of Flats:** The Municipal officers, with approval of the Commissioners of Marine Resources, may open and close areas for shellfish harvesting. Upon recommendation of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources and other factors bearing on sound management practices indicate that an area should be opened or closed.
- A. Current openings or closings:
 - 1. OPENING AND CLOSINGS:

All closings by DMR are considered to be closed by the Town and the Shellfish Warden shall have the same powers as DMR Officers to police the flats.
7. **Minimum Legal size of Soft Shell Clams:** It is unlawful for any person to possess soft shell clams within the Town or Township of Machiasport, Washington County, Maine, 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 shall mean 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 containers, constitutes a separate lot.
 - 2. **Possess:** For the purpose of this section, “possess” shall mean dig, take, harvest, pull, ship, transport, hold, buy, and sell retail and wholesale soft shell clam shell stock.

- B. **Tolerance:**
 - 1. Any person may possess soft shell clams that are less than two inches if they comprise less than ten percent (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 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 M.R.S.A., Section 6681.
 - D. **Penalty:** Any person who violates this ordinance shall be punished as provided as provided by 12 M.R.S.A., Section 6671.
8. **Effective Date:** This ordinance, which has been approved by the Commissioners 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.
- A. **Period of Ordinance:** This ordinance shall remain in effect from the effective date.
 - B. **Separability:** If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance.
 - C. **Repeal:** Any Ordinance regulating the harvesting or conservation of shellfish in the Town of Machiasport and any provisions of any other Town Ordinance which is inconsistent with this ordinance is hereby repealed.

Philip Rose

Margaret Flaherty

Michael Murphy II:

Machiasport Selectmen

Jeremy Wood

Jeremy Bridges

Justin Erickson

Jeremy Gray

Brian Olsen

Machiasport Shellfish
Conservation Committee

Attested Copy:

Town Clerk

Date

(Affix Seal)

Revised and approved at the Special Town Meeting on March 25, 2003.
Revised and approved at the Special Town Meeting on April 11, 2006.
Revised and approved at the Annual Town Meeting on July 31, 2006.
Revised and approved at the Special Town Meeting on June 2, 2008.