

Shellfish Conservation Ordinance, 2018 Revision

1. Authority: This ordinance is enacted in accordance with 12 M.R.S.A. §6671.

2. Purpose: To establish a shellfish conservation program for the Town of Brooklin, which will insure 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 harvesting is permitted
- d. Limiting the minimum size of shellfish taken
- e. Limiting the amount of shellfish taken daily by a harvester

3. Shellfish Conservation Committee: The Shellfish Conservation Program for the Town of Brooklin will be administered by the Shellfish Conservation Committee, consisting of 5 members, and up to 2 alternates. Each member or alternate of the Committee shall be appointed by the selectmen for a term of three years.

The Committee's responsibilities include:

- a. Annually establishing 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 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 to the Board of Selectmen in conjunction with 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: For the purpose of this section the following definitions apply:

- a. **Resident:** The term "resident" refers to a person who has been domiciled in this municipality for at least three months prior to the time of his/her claim of such residence is made.
- b. **Nonresident:** The word "nonresident" refers to 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", "shellfish stock", "clams" and "intertidal shellfish resources" means soft-shelled clams (*Mya arenaria*), hen or surf clams (*Spisula Solidissima*), and razor clams (*Ensis directus*).
- d. **Municipality:** Refers to the Town of Brooklin.
- e. **Island:** Is defined as any land mass within the municipality that is not accessible by a motor vehicle or on foot at low water while walking or driving on dry land.
- f. **Main Land:** Is defined as any and all land exposed at high water that would commonly be known to the general public as the main land. *(Exceptions: Any sand or mussel bar that attaches or makes an island accessible by motor vehicle or by foot at low water shall be considered to be part of the main land).*
- g. **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.
- h. **Possess:** For the purpose of Section 17, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and/or wholesale of hen clams, razor clams and softshell clam stock.

5. Licensing: A 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 the municipality as provided by this ordinance.

6. Designation, Scope and Qualifications: In order to determine eligibility for resident licenses, the applicant will need to provide one item from each of the following columns at time of application for licensure. All licensed harvesters will provide proof of residency on an annual basis.

Any license holder that is not domiciled as a resident in the Town of Brooklin for a period of thirty (30) days, shall make that license null and void.

License Requirements Table

<u>Column A</u>	<u>Column B</u>	<u>Column C</u>
<ul style="list-style-type: none"> • Copy of Deed and record or most recent mortgage payment • Copy of lease agreement and recent rent payment and legal affidavit from landlord affirming tenancy • Legal affidavit from landlord affirming tenancy and record of most recent rent payment • Section 8 Agreement 	<p>A utility bill or 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 Bill • Satellite Bill 	<ul style="list-style-type: none"> • Valid Driver's license displaying physical address • Current vehicle registration • Valid Maine photo ID card • Valid Passport <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 within the past 60 days:</p> <ul style="list-style-type: none"> • Letter from approved government agency • Payroll stub • Bank or credit card statement

Landlord Affidavit may be obtained from the town office upon request.

7. Types of Licenses

Resident

- 7.1.a **Resident Junior Commercial Shellfish License:** Available to residents under 18 years at time of application. Where the parent or legal guardian is a resident as defined in the License Requirements table above, and entitles the holder to dig and take any amount of softshell clams and no more than one bushel of hen clams **in any one day** from the shores and flats of this municipality.
- 7.1.b **Resident Commercial Shellfish License:** Available to residents of the Town of Brooklin and entitles the holder to dig and take any amount of softshell clams, and no more than one bushel of hen clams **in any one day** from the shores and flats of this municipality.
- 7.1.c **Resident Junior Recreational Shellfish License:** Available to residents under 18 years at time of application. Where the parent or legal guardian is a resident as defined in the License Requirements table above, and entitles the holder to dig and take one peck of softshell clams and no more than one bushel of hen clams **in any one day** for the use of him/herself and their family. Persons holding a State Commercial Shellfish License cannot hold a Resident Junior Recreational Shellfish License.
- 7.1.d **Resident Recreational Shellfish License:** Available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of softshell clams and no more than one bushel of hen clams **in any one day** for the use of him/herself and their family. Persons holding a State Commercial Shellfish License cannot hold a Resident Recreational License in the Town of Brooklin.
- 7.1.e **Resident Recreational Shellfish License Over 65 Years:**
Available to residents and real estate taxpayers of this municipality over the age of 65, at the time of application, and entitles the holder to dig and take no more than one peck of softshell clams and no more than one bushel of hen clams **in any one day** for the use of him/herself and their family. Persons holding a State Commercial Shellfish License cannot hold a Resident Residential Over 65 Years in the town of Brooklin.

7.2 Non-Resident

- 7.2.a **Non-resident Junior Commercial Shellfish License:** Available to non-residents under 18 years at time of application, and entitles the holder to dig and take any amount of softshell clams and no more than one bushel of hen clams **in any one day** from the shores and flats of this municipality.
- 7.2.b **Non-resident Commercial Shellfish License:** Available to non-residents of this municipality and entitles the holder to harvest and take any amount of softshell clams daily and no more than one bushel of hen clams **in any one day** from the shores and flats of this municipality.
- 7.2.c **Non-resident Junior Recreational License:** Available to non-residents under 18 years at time of application. Entitles the holder to dig and take one peck of softshell clams and no more than one bushel of hen clams **in any one day** for the use of his/herself and their family. Persons holding a State Commercial Shellfish License cannot hold a Non-Resident Junior Recreational License in the Town of Brooklin.
- 7.2.d **Non-resident Recreational Shellfish License:** Available to non-residents of this municipality and entitles the holder to dig and take no more than one peck of softshell clams and no more than one bushel of hen clams **in any one day** for the use of his/herself and their family. Persons holding a State Commercial Shellfish license cannot hold a Non-Residential Recreational License in the Town of Brooklin.
- 7.2.e **Non-Resident Recreational Shellfish License Over 65 Years:**
Available to non-residents of this municipality and entitles the holder to dig and take no more than one peck of softshell clams and no more than one bushel of hen clams **in any one day** for the use of his/her self and their family. Persons holding a State Commercial Shellfish License cannot hold a Non-Residential Recreational Over 65 Years in the Town of Brooklin.

8. Signature: Any license issued by the municipality must be signed by the licensee to be valid.

9. Application Process: Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality. Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or an industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching the persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concluded. A copy of the notice shall be provided to the Commissioner of Marine Resources.

- a. **Violations:** Within a twelve month period, qualified applicants must have no more than two State Shellfish violations within the Town of Brooklin; or two violations of Town Ordinance, to be eligible for a license.
- b. **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 any information the municipality may require.
- c. **Misrepresentation:** Any person providing false information on a license application will cause said application to become invalid and void, if a license is issued as a result of the false information, said license to become invalid and void.

10. Use of Fees and Fines, Funding: All fees for the licenses must accompany the application for the respective licenses. Fees will be established and may be subject to change annually. The Town Clerk shall pay all fees received to the Town Treasurer, excluding \$2.00 for each license, which will be retained by the Clerk as payment for issuing the license. Fees and fines received by the Town for shellfish licensing shall be used for shellfish management, conservation and enforcement.

Recreational shellfish license fees will be waived for residents and non-residents 65 years or older.

Licenses cannot be returned, resold or refunded under any circumstances.

11. Limitation of Harvesters: If, following the annual review of the Town's shellfish resources, it's size distribution, abundance and the Warden's reports as required by Section 3 above, the Shellfish Conservation Committee in consultation with the DMR area biologist determine limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year;

- a. License sales procedures shall be determined by the Shellfish Conservation Committee, approved by the Town Council/Board of Selectmen, and submitted to the Commissioner of Marine Resources for concurrence at least 30 days prior to the licenses going on sale.
- b. After receiving approval of proposed license allocation from the Commissioner of Marine Resources, and prior to February 1st, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.
- c. The Town Clerk will issue licenses to residents and non-residents as allocated on the first Tuesday in May for a 90 day period. After which, licenses shall be issued without regard to residency, on a first come first served basis.

12. 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:

On the first day of license sales, the Town Clerk will make available a quantity of non-resident license sales, based on the prior year's resident license sales. Thereafter, non-resident licenses will be issued according to the 10% rule in accordance with 12 M.R.S. §6671 (3-E).

In accordance with 12 M.R.S. §6671 (3-A) (E) and (F), the application of the minimum 10% ratio for allocation and issuance of nonresident commercial licenses is summarized in Table 1. The Town of Brooklin may issue more than the minimum number of non-resident licenses listed.

Table 1.

<u>Number of Resident licenses</u>	<u>Number of Non-resident licenses</u>
1-5	0
6-10	1
11-20	2
21-30	3 etc.

13. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the night before the first Tuesday in May next following date of issue.

14. Suspension: Any shellfish licensee having two convictions for a violation within a 12 month period of this Town Ordinance, shall have his/her shellfish license automatically suspended for the remainder of the licensing year.

- A. A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after suspension period has expired.
- B. The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the licensee.
- C. Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing from the Shellfish Conservation Committee upon the 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 Selectman by filing a written request for appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.
- D. An applicant who has been denied issuance of a license by the Town Clerk may appeal the decision to the Shellfish Conservation Committee upon the 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 Selectmen by filing a written request for appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

15. Opening and Closing Flats: The Shellfish Committee, 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 Department of Marine Resource's 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 Shellfish Committee may call a public hearing on ten (10) 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 Shellfish Committee made after the hearing shall be based on finding of fact. Public notice of municipal conservation closures or openings shall be provided in accordance with DMR Regulation, Chapter 7.50(c). It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the town of Brooklin in accordance with DMR Regulation, Chapter 7. Harvesting shellfish in a closed area is a violation of this municipalities ordinance and is punishable under §6671.

16. Minimum Legal Size of Shellfish Clams:

- 16.a. Softshell Clams: It is unlawful for any person to possess soft shell clams within the town of Brooklin, Hancock County, which are less than two (2) inches in the longest diameter except as provided by Section 17 (Tolerance) below.
- 16.b. Surf/Hen Clams: It is unlawful for any person to possess surf/hen clams within the town of Brooklin, Hancock County, which are less than four (4) inches in the longest diameter. There will be a zero tolerance for an entire lot.

17. Harvest Limit:

- Razor Clams: The Razor Clam harvest limits may vary from year to year, and will be determined annually, and made available to all license holders.

18. Night Harvesting:

It is unlawful for any person to harvest shellfish from the shores and flats between the hours of 30 minutes after sunset and 30 minutes before sunrise.

19. 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 (1) peck, nor more than four (4) 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.

20. Penalty: A person who violates this ordinance shall be punished as provided by 12 M.R.S. Section 6671 §(10)(10-A). All monies received from fines for Town violations shall go into the Town's shellfish fund.

21. Effective Date: This ordinance, upon approval 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.

22. Period of Ordinance: This ordinance shall remain in effect until repealed.

23. 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.

24. 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.

Approved by Select Board 3/27/2018

Attest: True Copy: _____

Town Clerk

Date: _____