

Shellfish Conservation Ordinance Town of Friendship

Enacted on March 19, 2001

Amended on March 15, 2004

Amended on March 18, 2008

Amended on July 28, 2008

Amended on March 21, 2011

Amended on March 19, 2013

Amended on March 18, 2014

Amended on April 9, 2018

This certifies that the within ordinance is a true copy of the **Town of Friendship, Shellfish Conservation Ordinance-2001** enacted by voters of the Town of Friendship at an annual Town Meeting on **March 19th, 2001**. This Ordinance was amended on **March 15th, 2004**, **March 18th, 2008**, **July 28th, 2008**, **March 21st, 2011**, **March 19th, 2013**, **March 18th, 2014**, and **April 9, 2018**

This version will supersede any other versions you may now have on file.

Sincerely,

Joel Fearn
Town Clerk

Attest
Joel Fearn

Shellfish Conservation Ordinance-2001

Town of Friendship

1. Authority: This ordinance is enacted in accordance with 12M.R.S. A. section 6671.
2. Purpose: To continue a shellfish conservation program for the Town of Friendship which will insure the protection and optimum utilization of shellfish resources within it's 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 size of shellfish taken;
- E. Limiting the amount of shellfish taken by a harvester.

3. Shellfish Conservation Committee: The Shellfish Conservation Program for the Town Of Friendship will be administered by the Shellfish Conservation Committee consisting of 5 members to be appointed by the Board of Selectmen for the staggered terms of 1,2, and 3 years duration. The responsibilities of the committee include:

- A. Establishing annually in conjunction with the Board of Selectmen and the Department of Marine Resources, the number of shellfish licenses to be issued.
- B. Reviewing annually the status of the resource using the results of shellfish flat, harvester or dealer surveys and other sources of information and preparing in conjunction with and subject to the approval of the department a plan for implementing conservation measures.
- C. Submitting to the Board of Selectmen proposal for the expenditure of funds for the purpose of shellfish conservation.
- D. Keeping this ordinance under review and making recommendations for its amendments.
- E. Securing and maintaining records of shellfish harvest from the towns managed shellfish area's and closed areas that are conditionally opened by the Department of Marine Resources.
- F. Recommending conservation closings and openings to the Board of Selectmen in conjunction with the area Biologists of the Department of Marine Resources.
- G. 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. Resident: The term "resident" refers to a person who has been domiciled in the town for a period of at least 12 continuous months prior to application, and can show proof of said residency upon application for a license to harvest - shellfish within the town,, or who has purchased a permanent dwelling and pays taxes in the Municipality.
- B. Nonresident: The term "nonresident" 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 terms "shellfish", "clams", and "intertidal shellfish resources" mean soft-shell clams, Mya arenaria., shellstock, and -razor clams,.

Ensis directus, also referred to as Atlantic Jackknife.

D. Municipality: The word "municipality" refers to the Town of Friendship, Maine.

E. Conservation Work /Fee – The term "conservation work fee" refers to the fee reduction when a commercial renewal license is purchased. This fee is available to commercial harvesters older than the age of 18 and under the age of 65 year who have completed conservation work. The Chairman of the Shellfish Conservation Committee will provide list of harvesters who have done their conservation work to the Town Clerk before May 15th.

5. Licensing: A Municipal Shellfish Harvesting License is required. It is unlawful for any person to harvest or take shellfish from the shores of this municipality without having a current shellfish harvesting license issued by this municipality as provided by this ordinance. Although the purchase of a municipal license is not contingent upon first having purchased a state license, a commercial shellfish harvester must also hold a valid State of Maine Commercial Shellfish license issued by the Department of Marine Resources prior to harvesting from the shores of the Town of Friendship.

A. Designation, Scope and Qualifications:

1) Resident Commercial Shellfish License: the license is available to residents of the Town of Friendship and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocity municipalities.

2) Nonresident-Commercial Shellfish License: 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) Resident 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 him/herself and his/her family.

4) Nonresident Recreational Shellfish License: The license is available to nonresidents 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 him/herself and his/her family.

5) A recreational shellfish License holder may not hold a State of Maine Commercial Shellfish License or any other municipal Commercial Shellfish License.

6) License must be signed : The licensee must sign the license to make it valid.

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

1) Contents of the 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.

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

C. The fees for the licenses are as stated below and must accompany in full the application for the respective license. The Town Clerk shall pay all monetary fees received to the Town Treasurer. Fees received from the shellfish program shall be used for the Town for shellfish management, conservation, and enforcement.

Resident Commercial

18 yrs and under but over 10 yrs.....\$100.00
over 18 and under 65.....\$300.00
65 and over, 10 and under.....\$ no charge

Non Resident Commercial

18 yrs and under but over 10 yrs.....\$200.00
over 18 and under 65..... \$450.00
65 and over, 10 and under.....no charge

Resident Recreational:

over 10 and under 65.....\$10.00
65 and over, 10 and under.....no charge

Non Resident Recreational

over 10 and under 65.....\$20.00
65 and over, 10 and under.....no charge

C.1 Renewal License and Conservation Work/Fee

1) Renewal License- Applicants who held a commercial shellfish license from the previous year will be qualified for renewal and may apply for the same commercial license the previously possessed Renewal licenses may be purchased at the Town Office beginning May 15th until the last business day before June 2nd when licenses go on sale to the general public.

2) Conservation Work/Fee: Conservation work is voluntary and shall be approved by the Shellfish Conservation Committee. A Committee member must be present at the time the work is being performed. Any Commercial licensed harvester who has completed (5) hours of conservation work or any current shellfish conservation committee member who has a commercial license and has attended at least 6 meetings shall be permitted to purchase a Commercial license with a \$100 fee reduction. The Conservation Work/Fee is not available for Commercial Licenses holders younger than the age of 18 and over the age of 65.

D. Limitation of Harvesters: Because the shellfish resources are limited and because a commercial or recreational harvester can be expected to harvest a

certain volume of shellfish per year, the number of harvesters must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:

1) Prior to April 15th the town Shellfish Conservation Committee and the Board of Selectmen, 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 will notify the Town Clerk in writing prior to May 15 of the number of licenses of each type to be issued.

3) Notice of the number of licenses to be issued and the procedure for application a) 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 period of issuance, and b) shall be posted in the municipal offices until the period concludes.

4) The Town Clerk shall issue licenses to residents and nonresidents as allocated (paragraph 1) on a first-come first served basis in person and at the Town Office, from the first business day after June 1st for a ninety day period thereafter, after which any remaining licenses shall be issued to residents and nonresidents on a first-come first-served basis in person and at the Town Office. In the event that, following the sale of all available licenses, the Shellfish Conservation Committee and the Board of Selectmen seek the approval of the Commissioner of Marine Resources to sell additional licenses; any person wishing to obtain one of said licenses must fill out and file with the Town Clerk an application for said license. If approval for the sale of additional licenses is received from the Commissioner, those individuals who have filed a valid application (as described in section 5.B of this ordinance) with the Town Clerk will be notified in writing by the Town Clerk that additional licenses have become available, and will be allowed to purchase one of said licenses on a first-applied first-served basis. If, however, an applicant has not claimed the license being held for him/her at the Town Office within three business days of the time notice was sent, said applicant will forfeit said license, and the next person, if any, having filed a valid application will be notified and offered the forfeited license. After the last applicant has been notified and 3 business days have expired, any additional licenses still not claimed shall be issued to residents and nonresidents on a first come first served basis in person and at the town office.

D.2. 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 the 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. A copy of the notice shall be provided to Commissioner of Marine Resources.

2. The number of limited shellfish licenses allocated among municipal residents and nonresidents shall be as established by the municipality and approved by the Commissioner prior to the period of issuance (Chapter 7.10(6)). Licenses unsold during the period of issuance shall be made available to residents and nonresidents alike on a first come, first served basis using an official, written waiting list that is posted publically or by lottery. 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. Municipalities may issue more than the minimum number of non-resident licenses listed.

Table 1.

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

E. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the eve of the first business day after June 1st next following period of issue.

F. Reciprocal Harvesting Privileges: Licenses from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of their licenses.

G. -Shellfish License Fee Waiver: The fee requirement regarding a recreational shellfish license will be waived for residents and real estate taxpayers and non-residents 65 years of age or older and 10 years of age or younger

H. Suspension: Any harvester, convicted commercial or recreational, in violation of this ordinance, such as digging or taking shellfish from either a State closed area of a town conservation area, shall receive a 30 day suspension for the first offense and shall have his/her license revoked for 6 months for the second

offense. For the third offense his/her license shall be revoked until the next period of issuance.

- 1) A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has expired.
- 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 action shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written Request for Hearing with the Town Clerk within 30 days following the effective date of the suspension. The licensee may appeal the decision on the Shellfish Conservation Committee before the Board of Selectmen by filing a written Request for Appeal with the Town Clerk within 7 days of the decision of the Shellfish Conservation Committee.
- 4) Any licensed recreational digger, digging or possessing more than 1 peck (12.5 pounds) of clams daily shall receive a 30 day suspension for the first offense, shall have his/her license revoked for 6 months for the second offense, and have his/her license revoked until the next period of issuance for the third offense.

6. Opening and Closing Flats: The Municipal Officers, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendation of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources area biologist that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officers may call a public hearing on ten-day's notice published in a newspaper having general circulation in the town, stating the time, place, and subject matter of the hearing, and shall send a copy of the notice to the Department of Marine Resources. The Decision of the Municipal Officers made after the hearing shall be based on findings of fact.

It shall be unlawful for any person to harvest take or possess shellfish from any areas closed by the of Friendship 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 Friendship to DMR and are part of the resulting permit issued by DMR. These permits are posted at the town office and online:

7. Minimum Legal Size of Shellfish - It is unlawful for any person possess softshell clams within the Town of Friendship, Knox County, which are less than 2 inches in the longest diameter except as provided by subsection B of this section. It is unlawful for any person to possess razor clams which are less than 4 inches.

A. Definitions:

1) Lot: The word "lot" as used in this ordinance means the total number of softshell clams in any 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.

2) Possess: For the purpose of this section, "possess" means dig, take, harvest, ship transport, hold, buy, and sell retail and wholesale softshell clam shellstock.

B. Tolerance: Any person may possess softshell clams that are less than 2 inches if they compromise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than 1 peck not more than 4 pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than 1 peck.

C. Penalty: Whoever violates any provision of this section shall be punished as provided by 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 municipality provided a certified copy of the ordinance is filed with the Commissioner within 20 days after its adoption.

10. 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 effect the validity of the remaining portions of this ordinance.

11. Repeal: Any ordinance regulating the harvest or conservation of shellfish in the Town and any provision of any other town ordinance which is inconsistent with this ordinance is hereby repealed.

12. Restrictions: This ordinance prohibits:

A. The harvesting of shellfish between the hours of 1/2 hour after sunset to 1/2 hour before sunrise, and

B. Razor clams may be hand harvested only.

13. Stopping for inspection: A person shall produce their license on demand of any Certified Municipal Shellfish Conservation Warden in uniform and having "probable cause" to take such action. It is unlawful for the operator of a motor vehicle, boat, vessel, or conveyance or any kind, or person:

A. To deliberately fail or refuse to stop immediately upon request or signal of any Certified Municipal Shellfish Conservation Warden.

B. After the person has stopped, to fail to remain stopped until the said Warden has reached his immediate vicinity and makes known to the operator the reason for his request or signal

C. To fail or refuse to stand by immediately for inspection on request of said Warden.

D. To throw or dump into any coastal waters or flats after having been requested

or signaled to stop by a Certified Municipal Shellfish Conservation Warden any shellfish, or any pail, bag, hod or container before said Warden has inspected the same.

E. To attempt to elude, disobey, or assault any Certified Municipal Shellfish Conservation Warden.