

# Shellfish Conservation Ordinance, 2024 Revision

## Town of Surry

Effective Date: 04/27/2024

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 Surry which will ensure the protection and environmentally sound 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. Limit the amount of shellfish taken daily by a harvester.
  - f. Recommending a shellfish conservation program.
3. **Definitions:**
  - a. **Town, Municipal, Municipality**– “Town” “Municipal” and “Municipality” refers to the Town of Surry, Maine.
  - b. **DMR** – “DMR” means the Department of Marine Resources.
  - c. **Resident** – The term “Resident” refers to a person who has been physically residing in this municipality for at least three months prior to the time his/her claim on such residence is made.
  - d. **Non-resident** – “Non-resident” means anyone not qualified as a resident under this ordinance.
  - e. **Warden** – “Warden” means the Town of Surry Shellfish Warden.
  - f. **Shellfish** - “Shellfish” and “clams” mean soft-shell clams (*Mya arenaria*), hen or surf clams (*Spisula solidissima*), hard clams, quahogs, cherrystones (*Mercenaria mercenaria*), razor clams (*Ensis directus*), and American oysters (*Crassostrea virginica*).
  - g. **Shellfish Conservation** – “Shellfish conservation” shall be broadly defined and shall include, but is not limited to such activities as reseeding, shore cleanup, pollution abatement, predator eradication, surveying and information gathering, testing and sampling, and any other activity the Shellfish Conservation Committee deems as fostering the general purposes of this ordinance.
  - h. **Lot:** The word “lot” as used in this ordinance means the total number of soft-shell clams in any bulk pile. Where shellfish are in a box, barrel, or other container, the contents of each box, barrel, or other container constitute a separate lot.
  - i. **Possess:** For the purpose of this Ordinance “possess” means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale shellfish stock.  
**Enforcement:** A Town Shellfish Warden shall be appointed by the Select Board to enforce provisions of this Ordinance.

4. **Shellfish Conservation Committee:** The Shellfish Conservation Program for the Town of Surry will be administered by the Shellfish Conservation Committee, consisting of three members, to be appointed by the Surry Select Board for staggered terms of three years. The Surry Select Board shall appoint a person to fill a vacancy for the duration of the unexpired term if a vacancy occurs.
- a. The Committee shall only vote if all three members are present and able to vote.
  - b. Responsibilities:  
**The Committee's responsibilities include:**
    - (1) Submit annually, in consultation with the Department of Marine Resources (DMR), the number of shellfish harvester licenses to be issued;
    - (2) Keeping this ordinance under review and making recommendations for its amendments;
    - (3) Securing and maintaining records of shellfish harvest from the Town's open areas for shellfish harvesting and closed areas that are conditionally opened by the DMR;
    - (4) Recommending conservation closures and openings to the Select Board in conjunction with the Area Biologist of the DMR;
    - (5) Submitting to the Select Board proposals for the expenditures of funds for the purpose of shellfish conservation;
    - (6) Submitting an annual report to the Municipality and the DMR covering the above topics and all other committee activities.
5. **Licensing:** A Municipal Shellfish Harvester License is required. It is unlawful for any person to dig or take shellfish from the shore and the flats of this municipality without having a current license issued by this municipality as provided by this ordinance. A "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use as described in 12. M.R.S.A Section 6671,3, G-1. A Commercial Harvester must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources before a town license becomes valid.
- a) **Resident Recreational Shellfish License:** The license is available to residents and real estate taxpayers of this municipality that can take or possess shellfish only for personal use. It 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 their immediate family. The license is not available to, or valid for, holders of a state commercial shellfish license.
  - b) **Non-resident Recreational Shellfish License:** The license is available to a person who is not a resident of this municipality. The non-resident recreational shellfish licenses will be limited to 10% of those who hold resident recreational shellfish licenses. For example, if 1-5 resident recreational licenses are issued, 0 non-resident recreational license fees will be issued. If 6-10 resident recreational licenses are issued, only 1 non-resident recreational licenses will be issued. The 10% ratio is in accordance with the 10% rule as described in 12 M.R.S.A section 6671(3-E) and Department of Regulations, Chapter 7.4 Section 2, Table 1. It 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 their family combined. The license is not available to, or valid for, holders of a state commercial shellfish license.

- c) **One-Day Recreational Shellfish License:** This license is available to both residents and real estate taxpayers of this municipality, as well as to non-residents of this municipality. This license entitles the holder to dig and take no more than one peck of shellfish in the day for which the license is issued, for the use of him/herself and their immediate family. The license is not available to, or valid for, holders of a state commercial shellfish license. This license expires one half-hour after sunset on the day for which it is issued.
- d) **Resident Commercial Shellfish License:** The license, from Surry, is not available to residents of the Town of Surry. This ordinance may be amended to include a limited number of commercial licenses after an appropriate study of the shores and flats of this municipality is undertaken. (See # 8)
- e) **Non-resident Commercial Shellfish License:** The license is not available to non-residents of this municipality. This ordinance may be amended to include a limited number of commercial licenses after an appropriate study of the shores and flats of this municipality is undertaken. (See #8)
- f) **License must be signed:** The licensee must sign the license to make it valid.

6. **Application Procedure:** Any person may apply to the Town Office for the licenses required by this ordinance on forms provided by the municipality.
  - a. **Contents of Application:** The application must be in the form of an affidavit and must contain the applicant's name, current address, proof of residence (current Surry resident for 3 months or more), signature, and whatever information the municipality may require.
  - b. **Misrepresentation:** Any person who gives false information on a license application will cause said license to become invalid and void.
  
7. **Fees:** A schedule of fees shall be available at the Surry Town Office. The fees for the license shall be determined annually by the Shellfish Conservation Committee and the Surry Select Board. Licensees shall submit fees, in full, upon issuance of license. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement.
  
8. The Shellfish Conservation Committee determines management options for limiting shellfish harvesting in conjunction with the Select Board, and submitted to the Department of Marine Resources for their approval at least thirty (30) days prior to the date of issuance. For the first year of this ordinance, there will be zero Residential Commercial Licenses and zero Non-resident Commercial Licenses issued. The limit of license categories will be reviewed annually by the Shellfish Conservation Committee and the Surry Select Board in consultation with the DMR. Should the Shellfish Committee and Surry Select Board initiate commercial licenses, the application of a 10% ratio for allocation and issuance of non-resident commercial licenses to resident commercial licenses. For example, if 1-5 resident commercial licenses are permitted to be issued, 0 non-resident commercial licenses will be issued. If 6-10 resident commercial licenses are issued, only 1 non-resident commercial license would be permitted. The 10% ratio is in accordance with the 10% rule as described in 12 M.R.S.A section 6671(3-E) and Department of Regulations, Chapter 7.4 Section 2, Table 1.

9. **Fees and Fines for Funding:** Fees for shellfish licenses will be set forth in the annual license allocation application and will accompany the municipal application for the respective license. The Town Clerk shall pay all fees and fines collected from violators to the Town of Surry. Fines received shall be used to defray costs incurred in the enforcement and management of this ordinance.
- a. **Non-Lapse Provision:** Monies in the shellfish management account shall not lapse at the end of the year but shall be carried over to the next year account.
  - b. **Funding:** The shellfish management program will be self-supporting as much as possible. Funds for operating the program may be generated by license fees, fines, and financial support from the Town.
10. **Limitation of Harvesters:** Shellfish resources vary in density and size distribution from year to year and over the limited shellfish producing area of the Town. It is essential that the Town carefully husband its shellfish resources. Following the annual review of the Town's shellfish resources, its size distribution, abundance, and the warden's reports, as described #4, Section 4 (p.2), the Shellfish Conservation Committee, in consultation with the DMR area biologist, will determine whether limiting recreational or commercial shellfish licenses is an appropriate shellfish management option for the following year.
- a. The committee shall report its findings and document the recommendations for the allocation of commercial and recreational licenses to be made available for the following license year to the Commissioner of Marine Resources for concurrence by February 1.
  - b. After receiving approval of proposed license allocation from the Commissioner of Marine Resources and prior to February 15, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.
  - c. 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 general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.
  - d. The Town Clerk shall issue licenses to residents and non-residents as allocated beginning on the first working day in April until the first working day in July. After which licenses shall be sold without regard to residency on a first-com first -serve basis or by lottery
  - e. Applicants for a commercial license who have performed a minimum of ten hours of voluntary conservation service under the direction of the Shellfish Conservation Committee during the previous license year period may apply for a new license on the last working day in March. **There will be no harvesting of shellfish from January 1 to March 31.**
11. **License Expiration Date:** Each license under the authority of this ordinance shall be valid for:
- a. **Resident and Non-Resident recreational harvesters license** - from the date the license is issued and will expire one half hour after sunset at the end of that calendar year (December 31. One person 10 and under shall be permitted to assist a licensed recreational shellfish harvester to harvest one peck of shellfish per day. The license

holder and person 10 and under combined may possess no more than one peck of shellfish per day.

- b. **One-Day Recreational Shellfish License:** This license will expire one half hour after sunset on the day it is issued. No day passes will be issued between January 1 to March 31. One person 10 and under shall be permitted to assist a licensed recreational shellfish harvester to harvest one peck of shellfish per day. The license holder and person 10 and under combined may possess no more than one peck of shellfish per day.

**12. Shellfish Harvesting Hours Restricted:** Shellfish harvesting shall be restricted to daylight hours, from one half hour before sunrise to one half hour after sunset.

- 13. Suspension:** Any shellfish licensee having one conviction for a violation of this ordinance shall have this shellfish license automatically suspended for one year from the date of suspension.
- a. The suspension shall be effective from the date of mailing of a Notice of a Suspension by The Town Clerk to the Licensee.
  - b. 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 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 Select Board by filing a written Request for Appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

**14. Opening and Closing of Flats:**

The Select Board, 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 resource and other factors bearing on sound management indicate that an area should be opened or closed, the Select Board may call a public hearing and shall send a copy of the notice along with a conservation closure application to DMR. The decision of the Select Board made after the hearing shall be based on the findings of fact. Any area within the Town which is closed by DMR to the harvesting of shellfish shall be a Town closure. The municipality will provide notification to the public of conservation closings/opening in accordance with DMR Regulations Chapter 7.50(1)(c). This section requires a 5-day notice of openings and closings.

**15. Shellfish size and tolerance:** It shall be unlawful for any person to possess shellfish within the Town of Surry, Hancock County which are:

- a. **Soft-shell Clams:** Less than two (2) inches and greater than four (4) inches in the longest diameter to the amount of not more than ten (10) percent of any lot
- b. **Hard Clams:** Which are less than one (1) inch in thickness as measured across the hinge width to the amount of not more than five (5) percent of any lot. Hinge width is measured at the thickest part of the clam near where the shells are joined together.

- c. **Atlantic Razor Clams** which are less than four (4) inches
- d. **American Oyster** which are less than two and a half (2.5) inches in the longest diameter to the amount of not more than ten (10) percent of any lot.

**16. Method of determining** is determined by numerical count of the entire lot.

**17. Intertidal Mussel Harvesting - Mussels (*Mytilus edulis*)** Other names: common mussel. This section is enacted in accordance with the 12 MRSA Section 6671(12) and 13-188 Chapter 7 (7.70). A copy of the Intertidal Management Plan will be made available through the Town Office or the Department of Marine Resources website.

**18. Penalty:** Whoever violates any provision of minimum and maximum size limits in Sections 16 and 17 shall be punished as provided by MRSA Section 6681 (10) and (10A).

**19. 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 is filed with the Commissioner within 20 days of its adoption.

**20. Period of Ordinance:** This Ordinance shall remain in effect until repealed by the municipality or rescinded by the Commissioner of Marine Resources.

**21. Separability:** If any section, subsection, sentence of 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.

**22. 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.



Mary Allen



Tom Welgoss



Chris Stark

Attest. A true copy of an ordinance entitled "Shellfish Conservation Ordinance, 2024 Revision" as certified to me by the municipal officers of the Town of Surry, Maine, and adopted by the town meeting on the 27<sup>th</sup> day of April, 2024.



Emily C. Morrow  
Town Clerk

