

## SHELLFISH CONSERVATION ORDINANCE

Amended 6 March 1985	Amended 18 June 1994	Amended 12 June 2004
Amended 11 June 1988	Amended 10 June 1995	Amended 17 June 2006
Amended 16 June 1990	Amended 10 June 1995	Amended 16 June 2007
Amended 8 June 1991	Amended 14 June 1997	Amended 14 June 2008
Amended 13 June 1992	Amended 17 June 2000	Amended 18 June 2016
Amended 12 June 1993	Amended 15 June 2002	Amended 17 June 2017
Amended 18 November 1993	Amended 12 June 2004	Amended 16 June 2018
Amended 15 June 2019	Amended 18 June 2022	Amended 17 June 2023

**I. Authority:** This Ordinance is enacted in accordance with 12 MRSA § 6671.

**II. Purpose:** To establish a shellfish conservation program for the Town of Georgetown 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 is permitted
- D Limiting the minimum size of ~~elams-shellfish~~ taken
- E Limiting the amount of ~~elams-shellfish~~ taken daily by a harvester

**III. Shellfish Conservation Committee:** The shellfish conservation program for the Town of Georgetown will be administered by the Shellfish Conservation Committee, consisting of five or more members, of which one may be a non-resident of Georgetown, to be appointed by the Board of Selectmen for staggered three-year terms. The Committee's responsibilities include:

- A Establishing annually, in conjunction with the Department of Marine Resources, the number and kind of shellfish digging licenses to be issued;
- B Surveying each ~~elamshellfish~~-producing area at least once each three years to establish size distribution and density and annually to estimate the status of the Town's shellfish resources;
- C Submitting to the Board of Selectmen proposals for the expenditure of funds for the purpose of shellfish conservation;
- D Keeping this Ordinance under review and making recommendations for its amendment;
- E 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;
- F Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Area Biologist of the Department of Marine Resources;

- G Identifying and qualifying shellfish conservation projects and determining yearly how many hours of conservation time applicants or license holders must complete to qualify for new licenses or license renewals; and
- H Submitting an annual report to the Town and the Department of Marine Resources covering the above topics and all other committee activities.

**IV. Definitions:**

- A Resident
  1. For commercial licenses: The term “resident” refers to a person who owns or rents real estate in the Town of Georgetown which is his or her permanent, fixed place of abode and principal place of residence. If a person claiming to be a resident neither owns nor rents real estate in the Town of Georgetown, he or she shall be required to produce such other evidence of residence as the Town Clerk may require. A person shall not qualify as a resident of Georgetown unless he or she has maintained a permanent, fixed place of abode and principal place of residence in Georgetown for three months prior to claiming residence. A person shall cease to be a resident of Georgetown on the date he or she acquires a permanent, fixed place of abode and principal place of residence in any other Town or moves from the Town of Georgetown.
  2. For recreational licenses, the term resident also includes, in addition to a person meeting the definition of “resident” under paragraph IV.A.1 above, any person owning real residential property in the Town of Georgetown which is his or her seasonal or secondary place of residence.
- B Non-resident: The term “non-resident” shall apply 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 terms “shellfish,” ~~“clams,”~~ and “intertidal shellfish resources” mean soft-shell clams (*Mya arenaria*), hen/~~surf~~ clams (*Spisula solidissima*), razor clams (*Ensis directus*), quahogs (*Mercenaria mercenaria*), American Oysters (*Crassostrea virginica*) and European Oysters (*Ostrea edulis*).
- D ~~Clam-Shellfish~~ Flats: The term “~~clam-shellfish~~ flats” means the area between high water and extreme low water.
- E Lot: The word “lot” as used in this Ordinance means the total number of ~~soft-shell clamshellfish~~ in any bulk pile. Where ~~soft-shell clams-shellfish~~ are in a container, the contents of each container constitutes a separate lot.
- F Possess: For the purpose of this Ordinance, “possess” means dig, take, harvest, ship, transport, hold, buy and sell, retail and wholesale, ~~soft-shell clamshellfish~~ shellstock.
- G Student: For the purpose of this Ordinance, “student” shall apply to any person actively

enrolled in or entering grades 5 through 12 as of the date of application.

**V. Licensing:** A Town Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of Georgetown without having a current license issued by the Town as provided by this Ordinance. A commercial digger must also have a valid State of Maine commercial shellfish license issued by the Department of Marine Resources, but need not purchase the State license before obtaining the Town license. Of the total licenses issued, both commercial and recreational, ten percent shall be reserved for non-residents. Applicants for non-resident recreational licenses will follow the lottery routine specified in paragraph D.12 below; they need not be present at the lottery.

A Designation, Scope, and Qualifications:

- 1 Resident Commercial Shellfish License: This license is available to residents of the Town of Georgetown over the age of 16 by the date the license is valid and entitles the holder to dig or take any amount of shellfish from the shores and flats of Georgetown and reciprocating municipalities, with no more than one peck daily being the acceptable level of harvest from Reid State Park.
- 2 Non-Resident Commercial Shellfish License: This license is available to non-residents of the Town of Georgetown over the age of 16 by the date the license is valid and entitles the holder to dig or take any amount of shellfish from the shores and flats of Georgetown, with no more than one peck daily being the acceptable level of harvest from Reid State Park.
- 3 Resident Recreational Shellfish License: This license is available to residents and real-estate taxpayers of the Town of Georgetown and entitles the holders to dig or take no more than one peck (combined) of soft-shell clams, quahogs, American or European oysters, and/or razor clams ~~or of soft-shell clams and~~ one and one half bushels of hen clams in any one day. Shellfish so harvested are for the use of the holders, their families, and their guests, and shall not be sold. This license is not available to holders of State of Maine commercial shellfish licenses.
- 4 Non-Resident Recreational Shellfish License: This license is available to any person not a resident of Georgetown and entitles the holders to dig and take not more than one peck (combined) of soft-shell clams, quahogs, American or European oysters, and/or razor clams ~~or of soft-shell clams and~~ one and one half bushels of hen clams in any one day. Shellfish so harvested are for the use of the holders, their families, and their guests, and shall not be sold. This license is not available to holders of State of Maine commercial shellfish licenses.
- 5 Non-Resident Seven-Day Recreational Shellfish License: This license is available to any person not a resident of Georgetown and entitles the holders to dig and take not more than one peck (combined) of soft-shell clams, quahogs, American or European oysters, and/or razor clams ~~or of soft-shell clams and~~ one and one half bushels of hen clams in any one day. Shellfish so harvested are for the use of the holders, their

families, and their guests, and shall not be sold. This license is not available to holders of State of Maine commercial shellfish licenses and expires seven days from the date of issue.

- 6 License must be signed: The licensee must sign the license to make it valid. If the licensee is under the age of 18, the license must also be signed by the licensee's guardian.
- 7 A license is not required to harvest one peck (combined) of soft-shell clams, quahogs, American or European oysters, and/or razor clams or three bushels of hen clams of clams from the shores of Reid State Park.

B Application Procedure: Any person may apply in person to the Town Clerk ~~or mail in a completed application~~ for the license required by this Ordinance on forms provided by the Town. If the applicant is under the age of 18, their guardian must also be present when filling out the application.

1 ~~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 Town may require.

2 Evidence of residency will be required when filling out an application.

3 ~~2~~ Misrepresentation and Ineligibility: If after investigation the Town learns that a licensee has given false information or is otherwise ineligible to hold a license under this ordinance, the Selectmen shall give the licensee a minimum of seven days notice of a hearing on the matter. If the Selectmen determine at the hearing that the license should be revoked, they shall give the licensee written notice of revocation. Any licensee aggrieved by their decision may appeal to the Superior Court.

4 ~~3~~ No shellfish license will be issued to anyone with unpaid Town or State shellfish fines.

5 If the applicant is serving in the armed forces on active duty during the application period, they may send a family member to complete their application. This family member must present to the Town Clerk certification from the commander of the applicant's post, station or base, or the commander's designated agent, as to the location and dates of the service.

C Fees: The fees for the licenses ~~are as stated below~~ will be published annually with the notice of the number of licenses to be issued, not less than 10 days prior to the period of issuance. Fees and must accompany in full the application for a recreational license. Applicants for commercial licenses through the lottery must pay the fee required when they pick them up. The Town Clerk shall pay all fees received to the Town Treasurer except for \$1 for each license which she will retain as payment for issuing the license.

Recreational license fees are waived for persons sixty-five years of age or older, those twelve years of age or younger, ~~and those who have contributed four hours of conservation time in accordance with Article III, Section G of this Ordinance.~~

<del>Resident Commercial:</del>	<del>\$ 200 per year</del>
<del>Resident Student Commercial:</del>	<del>\$ 100 per year</del>
<del>Non-Resident Commercial:</del>	<del>\$ 400 per year</del>
<del>Non-Resident Student Commercial</del>	<del>\$ 200 per year</del>
<del>Resident Recreational:</del>	<del>\$ 20 per year</del>
<del>Non-Resident Recreational:</del>	<del>\$ 35 per year</del>
<del>Non-Resident Seven-Day Recreational</del>	<del>\$ 25 per license</del>

Visitors may purchase Non-Resident Seven-Day Recreational licenses from the Town Clerk or from agents appointed by the Board of Selectmen, in consultation with the Town Clerk and members of the Shellfish Conservation Committee. With their licenses they shall receive brochures outlining license restrictions and other applicable information. The Board of Selectmen shall approve agents to purchase Non-Resident Seven-Day Recreational licenses from the Town Clerk for resale and shall authorize them to charge no more than \$1 in addition to the fee set above. The Selectmen may withdraw their approval during the year for cause and may set additional conditions for selling these licenses as necessary.

D Limitation of Diggers: ~~Clam-Shellfish~~ resources vary in density and size distribution from year to year and over the limited ~~soft clam-shellfish~~-producing area of the Town. It is essential that the Town carefully manage its shellfish resources. Following the annual review of the Town's ~~clam-shellfish~~ resources, its size, distribution, and abundance, and the Shellfish Warden's reports, as required by Article III, the Shellfish Conservation Committee in consultation with the DMR Area Biologist and Shellfish Warden will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year. The following procedures will be followed to exercise the control.

- 1 Prior to 1 May, the Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources, will establish the number of commercial and non-commercial licenses to be issued following the requirements of 12 MRSA § 6671.
- 2 The Shellfish Conservation Committee will notify the Town Clerk in writing prior to 15 May 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 general circulation, which the Selectmen consider effective in reaching persons affected, not less than ten 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 recreational licenses to residents and non-residents as allocated from the first business day in July. The Town Clerk shall issue allocated commercial licenses as outlined in paragraphs D 6 or D 11 of this section.
- 5 Licenses returned to the Town voluntarily or made available for any reason may be reissued to another person at the current fee according to the priorities established in paragraph D 11 of this section.
- 6 All commercial shellfish license holders who have purchased their licenses prior to 1 October of the previous year and who have completed the prescribed number of hours of shellfish conservation work under the supervision of the Town Shellfish Warden or a member of the Shellfish Conservation Committee shall have one month prior to the first business day in July to purchase their licenses. They may appear in person at the Town Office or mail in a completed Commercial Shellfish License application prior to the first business day in July. Anyone who mails an application is responsible for ensuring that the Town has received it. Exempt military commercial harvesters, as defined in D.8 can assign an agent to purchase and obtain their license. Holders of student commercial licenses are not eligible to purchase non-student commercial licenses prior to the first business day in July, unless they have completed 30 days of digging, as verified by dealer records, in the year prior to transitioning from a student commercial license to a non-student commercial license.
- 7 The Shellfish program coordinator shall record the names and hours worked for all those who do conservation work and provide this information to the Committee and to the Town Clerk.
- 8 The Shellfish Conservation Committee may waive all or part of the requirement for conservation time for a commercial shellfish license holder in the following situations:
  - (a) Where the license holder was serving in the armed forces on active duty for at least 180 days of the year during which the conservation work was otherwise required.

To receive the waiver, the harvester must present to the Town Clerk certification from the commander of the harvester's post, station or base, or the commander's designated agent, as to the location and dates of the service.
  - (b) Where the license holder had a medical condition or other unusual hardship that prevented them from fulfilling all or part of the conservation work hours. Where a medical condition is cited, the license holder must present a medical certification indicating that the person was or is unable to fulfill the physical requirements of the conservation work. The Shellfish Conservation Committee may require appropriate documentation to verify any other hardship for which a waiver is requested.
  - (c) Where a medical condition or other hardship permits partial completion of the conservation work, the Shellfish Conservation Committee may require, at a regular monthly meeting, an alternative work plan involving:

- (1) Additional time to complete conservation work; or
- (2) Alternate, less strenuous work for an applicant who provides the Committee with physician certification demonstrating the need for work modifications.

(d) Where the license holder is under the age of 16 at the time of the prescribed conservation work, they are exempt from all required conservation work.

- 9 In the event that the Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources, decides to reduce the number of commercial licenses to be issued, licenses shall be awarded according to seniority in terms of the number of consecutive years that each applicant has held a valid Georgetown Commercial Shellfish License. The claim of seniority must be verified by reference to Town records of licenses awarded in previous years. The applicant who has held a Georgetown Commercial Shellfish License the greatest number of years shall be awarded the first license, the second-longest Georgetown license-holder shall be awarded the second license, and so on until all commercial licenses have been issued to applicants fulfilling the qualifications listed above. Any person denied a license because such a reduction shall take precedence over others not so qualified should the original number of licenses be restored.
- 10 New resident, resident student, non-resident student, and non-resident commercial licenses will be issued according to lottery. The first lottery will consist of the names of those applicants as allocated who have completed the prescribed hours of conservation work. A student commercial lottery, if needed, shall be held prior to any non-student commercial lottery. If necessary, further lotteries may be held for applicants who have not completed the prescribed hours of conservation work.
- 11 Applicants for all commercial licenses must register in person for the lottery on the first two business days of July and must be present for the drawing, regardless of whether or not there are available licenses. If the applicant is under the age of 18, their guardian must also be present for the drawing. No one may register for the lottery on the day of the drawing. The lottery will be held in public at the Town Office at 9:30am on the third business day of July. The Town Clerk will record all names in the order in which they are drawn. Available licenses will be issued to those present. Any licenses that become available at a later date will be issued according to the order of draw and are not subject to the October 1 purchase deadline set in Section D.6. In the event a commercial license is returned and there are no eligible names on the waiting list, that license will not be reissued during that fiscal year.
- 12 Applicants for non-resident recreational licenses must register for a lottery to be held after the lottery for commercial licenses on the third business day of July. Those who have registered on the first two business days of July will be eligible for that drawing. Those who register after that drawing will have their names added at the end of the list. 10% of the total number of resident recreational licenses issued in the previous year will be issued to non-residents at the time of the lottery. Thereafter, non-resident recreational licenses will be issued according to the 10% rule.

13 If an applicant for a commercial license has completed the prescribed conservation time but is not issued a license, the completed prescribed conservation time will remain valid until that applicant has been issued or offered a shellfish license by the Town of Georgetown so long as the applicant applies annually for the license.

- E License Expiration Date: Each license issued under authority of this Ordinance expires at midnight on the 30th day of June next following the date of issue, except that Non-Resident Recreational Seven-Day licenses expire seven days from the date of issue.
- F Reciprocal Harvesting Privileges: Licensees from any other municipality cooperating with this Town on a joint shellfish management program may harvest shellfish according to the terms of their licenses.
- G Suspension: Any commercial shellfish license holder having two convictions for any State or Georgetown shellfish violation in a twelve-month period shall have his or her shellfish license suspended for a period of sixty days. The suspension shall be effective from the date of the second conviction. A third conviction in a twelve-month period will result in the ~~loss~~ loss of eligibility for any Georgetown license for three years from the date of the third conviction. Any recreational shellfish license holder having one conviction shall have his or her shellfish license suspended for a period of sixty days, effective from the date of conviction. A second conviction within twenty-four months of the first will result in the loss of eligibility for any Georgetown shellfish license for three years from the date of the second conviction.

**VI. Opening and Closing of Flats:** The Selectmen, with 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 DMR 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 Selectmen may call a public hearing on ten days notice published in a newspaper having general circulation in Georgetown, 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 Selectmen made after the hearing shall be based on findings of fact.

**VII. Conservation Work:** The Shellfish Conservation Committee will determine the annual Conservation Work for the year at Shellfish Conservation Committee meetings in winter months, with the work planned for April or May. Information regarding the type of activity, the hours of activity, and the conservation work meeting time and location will be posted inside and outside of the Georgetown Town Office, and on the Town Website at least 10 days prior to the date of the conservation activity.

**VIII. ~~Minimum Legal Size of Soft-shell Clams:~~ Shellfish Restrictions:**

- A -Soft-shell clams (*Mya arenaria*) - It is unlawful for any person to possess soft-shelled clams in the Town of Georgetown which are less than two inches in the longest diameter, except as provided by Section A of this Article.

1 Tolerance: Any person may possess soft-shelled clams that are less than two inches if they comprise less than ten percent 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 pile if it contains less than one peck.

2 Penalty: Anyone who violates this section shall be punished as provided by 12 MRSA § 6681.

B Razor clams (*Ensis directus*) – DMR Regulations Chapter 10.06 requires a minimum size of 4” and no electro-fishing.

C Quahogs (*Mercenaria mercenaria*) – DMR Regulations Chapter 10.04 requires a minimum size of 1” hinge width.

1 Tolerance: Any person may possess quahogs that are less than one inch if they comprise less than 5% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

D European oysters (*Ostrea edulis*) – DMR Regulations Chapter 14.10 prohibits the possession of European oysters whose shells are less than 3 inches in the longest diameter. It is unlawful to take, possess, ship, transport, buy or sell European oysters from June 15 to September 15 of any year.

1 Tolerance: Any person may possess European oysters that are less than 3 inches if they comprise less than 10% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

E American oysters (*Crassostrea virginica*) – DMR Regulations Chapter 14.30 prohibits the possession of cultchless oysters. The minimum size is 2½” in shell length.

1 Tolerance: Any person may possess American oysters that are less than 2.5 inches if they comprise less than 10% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

**VIII. Harvesting at Night:** It is unlawful to harvest shellfish at night using artificial light. The Shellfish Warden and the Marine Patrol may harvest shellfish at night with artificial light for the Officer Salty program and the Boothbay Aquarium, but only after notifying the Marine Patrol office in Boothbay.

**IX. Enforcement:** The Shellfish Warden is charged with enforcing this Ordinance. Anyone who violates its terms shall be punished as provided by 12 MRSA § 6671, §6621, §6025(4) and

§6953.

- A DMR Pollution Closures: It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed in the Town of Georgetown in accordance with DMR Regulation, Chapter 23; and it shall be unlawful to wash, hold, or keep shellfish in any area closed by DMR regulation or to possess, ship, transport, or sell shellfish so washed, held, or kept. Harvesting shellfish in a closed area is a violation of this municipality's ordinance and is punishable under MRSA Title 12 §6671.
- B Conservation Closures: It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the Town of Georgetown 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 MRSA Title 12 §6671
- C Stopping for Inspection & Penalty: It shall be unlawful for the operator of a motor vehicle, boat, vessel, airplane or conveyance of any kind, or any person:
  - 1. Stopping: To fail or refuse to stop immediately upon request or signal of any certified municipal shellfish conservation warden in uniform;
  - 2. Remaining stopped: After he has so stopped, to fail to remain stopped until the certified municipal shellfish conservation warden reached his immediate vicinity and makes known to that operator the reason for the request or signal;
  - 3. Standing By: To fail or refuse to stand by immediately for inspection on request of any certified municipal shellfish conservation warden in uniform;
  - 4. Throwing or dumping items: Who has been requested or signaled to stop by a certified municipal shellfish conservation warden in uniform to throw or dump into any water any marine organism, or any pail, bag, barrel or other container of any type, or the contents thereof, before the certified municipal shellfish conservation warden had inspected the same.

Violation of this section is a Class D crime, except that the court shall impose a fine of not less than \$500. A court may not suspend a fine imposed under this section.

**XI. Aiding and Abetting:** A harvester holding a commercial license who knowingly helps, assists, or facilitates the harvest of shellfish in violation of this Ordinance shall be subject to prosecution for the same violations and shall suffer the same penalties as the person assisted.

**XII. Effective Date:** This Ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the Town of Georgetown provided a certified copy of it is filed with the Commissioner within twenty days of its adoption. It shall be the responsibility of the licensee to keep informed of all amendments to this Ordinance.

**XIII. 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.

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