

TOWN OF ISLESBORO
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FILE COPY

Janet R. Anderson
Town Manager
manager@townofislesboro.com

June 27, 2018

Hannah Annis
Dept. Marine Resources Shellfish Program Coordinator
P.O. Box 8
West Boothbay Harbor, ME 04575

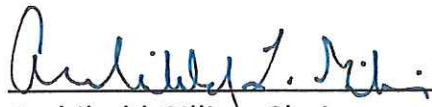
RE: 2018 Amendments to the Shellfish Conservation Ordinance

Dear Ms. Annis,

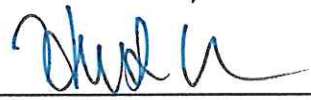
The Town of Islesboro voted April 28, 2018 on the amendments to our Shellfish Conservation Ordinance. Article 4 passed by unanimous show of hands. Enclosed please find a certified copy of the minutes covering Article 4.

We will send you a copy of the final updated version when it is ready.

From the Islesboro Select Board:



Archibald Gillies, Chair



Hanna Kerr



Sandra Oliver, Vice-Chair



Gabriel Pendleton

jra
cc: Deputy Twn Clerk Cindy Gorham
Encls./Minutes 4-28/18 Annual Town Meeting
Amendments to Shellfish Conservation Ordinance

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RESULTS
ANNUAL TOWN MEETING
Town of Islesboro, Maine
Saturday, April 28, 2018

Registered Voters: 119

In Attendance: Approx. 160

Also in attendance were Vern Ziegler – Assessor, Patrick Phillips – School Superintendent, Vicki Doudera, Betty Johnson, Erin Herbig, Joe Greenier, and Jayne Crosby Giles

Clerks: Lauren Bruce, Cindy Gorham, Roxanne Pendleton, Rachel Rolerson-Smith, Brenda Thomas, Jennifer West

Counters: Judy Gardner, Kathy Kerr, Donna Seymour

Before the meeting started, Select Board Chair Arch Gillies and School Board Chair Laura Houle spoke to the assemblage about the proposed ferry rate increase.

Candidates Erin Herbig, Joe Greenier, Jayne Crosby Giles, Vicki Doudera, Betty Johnson, and Craig Olson also spoke.

Deputy Town clerk, Tina Pendleton, opened the meeting at 9:42 AM.

**Article 1. Tom Tutor was elected moderator BY WRITTEN BALLOT
4 Yes; 1 Invalid – Total of 5 votes.**

➔ *Permission to speak was requested for nonresidents: Vern Ziegler – Assessor, and Patrick Phillips – School Superintendent.*

PASSED BY SHOW OF HANDS

Article 2. The following officials were elected (BY WRITTEN BALLOT):

A. Gabe Pendleton was re-elected as **SELECT BOARD MEMBER** for a term of **three years**, to expire at the 2021 Annual Town Meeting. **49 VOTES**
TOTAL of 53 votes cast – 49 Gabe Pendleton, 4 Invalid

B. Melissa Jagger was elected as **SCHOOL BOARD MEMBER** for a term of three years, to expire at the 2021 Annual Town Meeting. **49 VOTES**
TOTAL of 112 votes cast – 49 Melissa Jagger, 38 Janis Petzel, 25 Nakomis Nelson

C. WILLIAM KELLEY was re-elected as **SCHOOL BOARD MEMBER** for a term of three years, to expire at the 2021 Annual Town Meeting. **67 VOTES**
TOTAL of 101 votes cast – 67 William Kelley, 33 Janis Petzel, 1 invalid

Article 3. Shall an ordinance entitled “Town of Islesboro Municipal Broadband Ordinance” be enacted? PASSED BY UNANIMOUS SHOW OF HANDS

Prior to the vote Roger Heinen spoke and thanked Jack McConnell for creating artwork on the cover of the town report. There were no questions.

Article 4. Shall and ordinance entitled “2018 Amendments to the Shellfish Conservation Ordinance” be enacted?

The proposed ordinance is available for review and inspection at Town Office and will be available at Town Meeting. PASSED BY UNANIMOUS SHOW OF HANDS

Article 5. Shall an ordinance entitled “2018 Amendments to the Municipal Shore Areas, Pier and Float Use” be enacted? PASSED BY UNANIMOUS SHOW OF HANDS

Prior to the vote Ken Smith spoke and answered questions.

Article 6. To see if the Town will vote to approve the Board of Selectmen’s Order of Discontinuance of a portion of County Road without reservation of a public easement in the same, dated April 11, 2018 and filed with the Town Clerk, and to raise and appropriate the sum of \$0 to pay damages as stated in said Order.

PASSED BY UNANIMOUS SHOW OF HANDS

Article 7. To see if the Town will vote to approve the Board of Selectmen’s Order of Discontinuance of a portion of Point Comfort Road without reservation of a public easement in the same, dated April 11, 2018 and filed with the Town Clerk, and to raise and appropriate the sum of \$0 to pay damages as stated in said Order.

PASSED BY UNANIMOUS SHOW OF HANDS

NEXT: School Articles 8 – 29

*Town of Islesboro, ME
Monday, October 25, 2021*

Chapter 209. Shellfish Conservation

[HISTORY: Adopted by the Town of Islesboro 6-21-1998; amended 6-5-1999; 4-29-2000; 4-26-2003. Subsequent amendments noted where applicable.]

§ 209-1. Authority.

This chapter is enacted in accordance with 12 M.R.S.A. § 6671.

§ 209-2. Purpose.

The purpose of this chapter is to establish a shellfish conservation program for the Town of Islesboro 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 harvesting is permitted.
[Amended 4-28-2018]
- D. Limiting the minimum size of soft shell clams taken.
[Amended 4-28-2018]
- E. Limiting the amount of clams taken daily by a harvester.

§ 209-3. Shellfish Conservation Committee.

The shellfish conservation program for the Town of Islesboro will be administered by the Shellfish Conservation Committee consisting of five full and three associate members to be appointed annually by the Town of Islesboro Board of Selectmen for a term of one year. The Committee's responsibilities include:

- A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish harvesting licenses to be issued.
[Amended 4-28-2018]
- B. Reviewing annually the status of the resource using the results of clam 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 proposals for the expenditures of funds for the purpose of shellfish conservation.
- D. Keeping this chapter under review and making recommendations for its amendments.

- 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 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.

§ 209-4. Licensing.

[Amended 4-28-2018]

A municipal shellfish harvesting license is required. It is unlawful for any person to harvest or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this chapter. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement.

A. Designation, scope and qualifications.

(1) Commercial shellfish license.

- (a) Resident commercial shellfish license. This license is available to residents of the Town of Islesboro and entitles the holder to harvest and take a daily amount of shellfish as determined on a yearly basis by the Islesboro Shellfish Conservation Committee.
- (b) Nonresident commercial shellfish license. This license is available to nonresidents of this municipality and entitles the holder to harvest and take a daily amount of shellfish as determined on a yearly basis by the Islesboro Shellfish Conservation Committee.
- (c) Any commercial harvester whether resident or nonresident, must also have a valid State of Maine commercial shellfish license issued by the Department of Marine Resources.
- (d) Each commercial license holder over the age of 16 will be responsible for five hours per year of required shellfish conservation work. The conservation work will be approved and determined by the Islesboro Shellfish Conservation Committee.

(2) Recreational shellfish license.

- (a) Resident recreational shellfish license. This license is available to residents and real estate taxpayers of this municipality and entitles the holder to harvest and take no more than one peck of soft shell clams and two bushels of hen clams in any one day for the use of the resident or real estate taxpayer and his/her family. No charge under the age of 12 or over the age of 65.
- (b) Nonresident recreational shellfish license. This license is available to any person not a resident of this municipality and entitles the holder to harvest and take not more than one peck of soft shell clams and two bushels of hen clams in any one day for the use of the license holder and his/her family.

B. License must be signed to make it valid. The licensee must sign the license to make it valid. The license must be in the possession of the licensee when engaged in harvesting. By signing the license the harvester acknowledges that he/she must submit to inspection by the Municipal Shellfish Warden.

C. Validity. The license will be valid from May 1 to April 30 of the following year.

D. Application procedure. Any person may apply to the Town Clerk or Deputy Town Clerk for the

licenses required by this chapter on forms provided by the municipality.

- E. Contents of application. Current application is Attachment 1 of this chapter.^[1] Application may be changed/upgraded upon the recommendation of the Shellfish Conservation Committee and with the approval of the Board of Selectmen and without changing any other part of this chapter.
- [1] *Editor's Note: Attachment 1 is available at the Town Clerk's office.*
- F. Misrepresentation. Any person who gives false information on a license application will cause said license to become invalid and void.

§ 209-5. Fees.

[Amended 5-10-2014; 4-28-2018]

Fees must be paid in full when a license is issued. All fees for shellfish licenses shall be recommended annually by the Shellfish Committee and submitted to the Select Board prior to the sale of licenses.

§ 209-6. Issuance of licenses.

[Amended 4-28-2018]

- A. Prior to March 15 the Committee shall report its findings and document 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 approval.
- B. After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to April 15, the Shellfish Conservation Committee shall notify the Town Clerk or Deputy Town Clerk in writing of the number and allocation of shellfish licenses to be issued. The number of license allocations is determined yearly and submitted to the Department of Marine Resources.
- C. Licenses are required by each individual over the age of six.
- D. Clam resources vary in density and size distribution from year to year and over the limited softshell clam producing area of the Town. It is essential that the Town carefully husband its shellfish resources. Following the annual review of the Town's clam resources, its size distribution, abundance and the Warden's reports, as required by § 209-3, the Shellfish Conservation Committee in consultation with the Department of Marine Resources area biologist will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.
- (1) Limited license sales. If it is determined that limited license sales are necessary the Town Clerk or Deputy Town Clerk shall issue licenses to residents and nonresidents as allocated May 1 or the next business day and then for 90 days. After which licenses shall be sold without regard to residency on a first come first serve basis or by lottery.
- (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:
- (a) The Town Clerk or Deputy Town Clerk shall issue commercial shellfish licenses to residents who have met the requirements of obtaining a license. The Town Clerk or Deputy Town Clerk shall issue licenses on May 1 or the next business day. On the first day of license sales, the total number of nonresident commercial shellfish licenses shall be issued in accordance with Department Regulations, Chapter 7.4 section 1.

Thereafter, nonresident licenses will be issued in accordance with the 10% rule as described in 12 M.R.S.A. § 6671(3-E) and Department Regulations, Chapter 7.4 section 2, Table 1 on a first-come first-serve basis or by lottery.

Chapter 7.4 Section 2 Table 1

Number of Resident Licenses:	Number of Nonresidential Licenses:
1 to 5	0
6 to 10	1
11 to 20	2
21 to 30	3 etc.

(b) For each recreational license category, the Town Clerk or the Deputy Town Clerk shall issue one license to a resident and one to a nonresident; thereafter, one nonresident license will be issued for every 10 additional resident licenses issued.

(3) Notice of the dates, places, times and the 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 the Commissioner of Marine Resources.

§ 209-7. Expiration, revocation and suspension of licenses.

- A. Commercial licenses may be returned to the Town voluntarily and reissued to another person at the current fee according to the priorities established in this chapter.
- B. License expiration date. Each license issued under authority of this chapter expires at 12:00 midnight on the 30th day of April next following the date of issue.
- C. Renewal of commercial licenses. Commercial licenses will be automatically renewed unless the conservation service requirement [See § 209-4A(1)(d).] has not been completed or other violations have occurred. Though automatically renewed, each applicant must fill out an application form and submit proof of a state license.
- D. Inspection and search. Any person who receives a commercial license from the Town of Islesboro has a duty to stand by and to submit to inspection and search for violations relating to the activities authorized by this chapter by the Town of Islesboro Shellfish Warden.
- E. Suspension. Any commercial shellfish licensee having one conviction for a violation of this chapter shall have his or her shellfish license automatically suspended for a period of 30 days. [Amended 6-6-2012]
- F. Restoration of suspended license. A licensee whose shellfish license has been suspended pursuant to this chapter shall have his or her shellfish license restored only after the suspension period has expired. [Amended 6-6-2012]
- G. Suspension effective date. The suspension shall be effective from the date of mailing of a notice of suspension by the Town Clerk or Deputy Town Clerk to the licensee. [Amended 4-28-2018]

§ 209-8. Opening and closing of flats.

[Amended 4-28-2018]

- A. 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 resources and other factors bearing on sound management indicate that an area should be opened or closed.
- B. If the status of shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed then the Select Board working with the approval of the Shellfish Conservation Committee and the Department of Marine Resources area biologist may call a public hearing to discuss the opening or closing. A notice of such a meeting shall be sent to the Department of Marine Resources.

§ 209-9. Minimum legal size of soft shell clams; tolerance; penalty.

[Amended 4-28-2018]

It is unlawful for any person to possess soft shell clams within the Town of Islesboro, County of Waldo, which are less than two inches in the longest diameter, except as provided by Subsection A of this section.

- A. Tolerance. Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of any lot as defined by this chapter. 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. (Note: See § 209-12 for definitions of "lot" and "possess.")
- B. Penalty. Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. § 6681.

§ 209-10. Exclusion.

Warren Island State Park is excluded from the restrictions of this chapter.

§ 209-11. Enforcement; violations and penalties.

The Town's Shellfish Warden shall be responsible for enforcement of this chapter, and a person who violates this chapter shall be punished as provided by 12 M.R.S.A. § 6671, Subsection 10.

§ 209-12. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

LOT

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.

MUNICIPALITY

Refers to the Town of Islesboro, Maine.

NONRESIDENT

Anyone not qualified as a resident under this chapter.

POSSESS

Dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.

RESIDENT

Refers to a person who has been domiciled in this municipality for at least three months next prior to the time the claim of such residence is made.

[Amended 6-6-2012]

SHELLFISH, CLAMS AND INTERTIDAL SHELLFISH RESOURCES

Soft shell clams (*Mya arenaria*) and hen clams (*Spisula solidissima*).

§ 209-13. When effective.

This chapter, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality, provided that a certified copy of the ordinance is filed with the Commissioner within 20 days of its adoption. This chapter shall remain in effect until repealed or rescinded.

§ 209-14. Repealer.

Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions of any other Town ordinance which are inconsistent with this chapter are hereby repealed.

§ 209-15. Separability.

[Added 4-28-2018]

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.