

A true copy.

Attest:

Mary-Anne Gyzinski

June 21, 2017

## Shellfish Conservation Ordinance



### Town of York, Maine

**Most Recently Amended: May 20, 2017**

Prior Dates of Amendment: May 16, 2015

May 19, 2001

Date of Original Enactment: February 10, 1998

#### ENACTMENT BY THE LEGISLATIVE BODY

Date of the vote to amend this Ordinance: May 20, 2017.

Certified by the Town Clerk:

Mary-Anne Gyzinski  
(signature)

on

May 22, 2017  
(date)



**SHELLFISH CONSERVATION ORDINANCE**  
**ADOPTED FEBRUARY 10, 1998**  
**AND AS AMENDED**

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 York 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 digging is permitted;
  - D. Limiting the minimum size of clams taken; and
  - E. Limiting the amount of clams taken daily by a harvester.
  
3. SHELLFISH CONSERVATION COMMITTEE: The Shellfish Conservation Program for the Town of York will be administered by the Shellfish Conservation Committee consisting of five (5) members to be appointed by the Selectmen for terms of three (3) years.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued;
  
- B. Surveying each clam producing area at least once every three years to establish size, distribution and density and annually estimating the status of the Town's shellfish resources;
  
- C. Submitting to the Board of Selectmen proposals for the expenditures 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 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.

4. DEFINITIONS:

- A. RESIDENT: The term "resident" refers to a person who has been domiciled in the Municipality for at least three months next prior to the time his claim of such residence is made.

EXCEPTION: Any person who is a real estate taxpayer of the Town of York shall be considered a "resident" for the purpose of licensing, digging, and taking of shellfish.

- B. NONRESIDENT: The word "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 words "shellfish", "clams", and "intertidal shellfish resources" means soft-shell clams, Mya arenaria, quahog, and cherry stones.

- D. MUNICIPALITY: Refers to the Town of York, Maine.

- E. JUNIOR LICENSEE: This term refers to any person 14 years old and younger.

- 5. LICENSING: 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.

A. DESIGNATION, SCOPE AND QUALIFICATIONS:

- 1. 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 the licensee and their family.

2. Nonresident Recreational Shellfish Licensee: The license is available to any person not a resident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in any one-day for the use of the licensee and their family.
3. License must be signed: The licensee must sign the license to make it valid.
4. Junior Resident Shellfish License: The license is available to junior residents 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 the licensee and their family.
5. Nonresident Junior Shellfish License: The license is available to junior 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 the licensee and their family.

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

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

Resident Recreational:	\$15.00
Nonresident Recreational:	\$30.00
Junior Resident	No Charge
Junior Non-resident	No Charge

D. LIMITATION OF DIGGERS: Because the shellfish resources are limited and because a commercial or recreational digger can be expected to

harvest a certain volume of clams per year, the number of diggers 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 July 1st, the Town Shellfish Conservation Committee with the approval of the Commissioner of Marine Resources will establish the number of noncommercial licenses to be permitted following the requirements of 12 M.R.S.A. § 6671 (3).
  2. The Shellfish Conservation Committee will notify the Town Clerk in writing prior to July 1st of the number of licenses to be issued.
  3. Notices 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 ten (10) days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.
  4. The Town Clerk shall issue licenses to residents and nonresidents on a first-come first-served basis.
  5. Shellfish may be taken only between the first day of October and the thirtieth day of April. During this period, digging will be allowed on Sunday only from Sunrise to Sunset.
- E. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the 30th day of April next following date of issue unless extended by the Shellfish Conservation Commission and Commissioner of Marine Resources.
- 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.
6. **OPENING AND CLOSING OF 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 shellfish resource and other factors bearing sound management indicate that an area should be opened or closed,

the Municipal Officers may call a public hearing on ten-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 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 Town of York in accordance with DMR Regulation, Chapter 7. Harvesting shellfish in a closed area is a violation of the Town of York Shellfish Conservation Ordinance and is punishable under MRSA Title 12 section 6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the Town of York to DMR and are part of the resulting permit issued by DMR. These permits are posted at the town office and online: <http://www.maine.gov/dmr/shellfish-sanitation-management/programs/municipal/ordinances/towninfo.html> .

7. MINIMUM LEGAL SIZE OF SOFTSHELL CLAMS: It is unlawful for any person to possess soft-shell clams within the Town of York, York County, which are less than two (2) inches in the longest diameter except as provided by subsection B of this section.

A. DEFINITIONS:

1. 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.
2. Possess: For the purposes of this section, "possess" means dig, take, harvest, ship, transport, hold, buy, and sell retail and wholesale soft-shell clam shell stock.

- B. TOLERANCE: Any person may possess soft-shell clams that are less than two inches if they comprise less than 10% 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 lot if it contains less than one peck.

8. PENALTY: Any person who violates this ordinance shall be subject to a civil penalty of \$100.00 for the first offense per day per violation, \$150.00 for the second offense per day per violation, and \$250.00 for the third and subsequent offenses per day per violation, except that for taking shellfish from a closed area or digging for shellfish

without a license, the fine shall be \$750.00 per day per violation.

9. WAIVER/PAYMENT OF FINES: Any person charged with a violation of this section, shall be allowed to waive such violation and tender to the Town of York the fine amount if paid within 20 days of issuance of the summons. If the waiver fine is paid, no appearance before a District Court Judge or other judicial officer shall be required. If the offender pays the waiver fine, the matter will be closed in the York Police Records system and listed as a subsequent offense for future violations.

If the offender chooses not to pay the waiver fine, he/she shall appear in court on the specified date to answer for the ordinance violation. If the offender is found to have committed the offense in court, fines, applicable court fees, attorney's fees, and prosecution costs may apply.

10. 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 twenty (20) days of its adoption.

11. 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.

12. 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.

Adopted at Special General Referendum February 10, 1998.