

HARPSWELL SHELLFISH ORDINANCE

ADOPTED	DECEMBER	2, 1981	ARTICLE # 9
AMENDED	MARCH	5, 1983	ARTICLE #29
RE-ENACTED & AMENDED	MARCH	10, 1984	ARTICLE #40
AMENDED	MARCH	16, 1985	ARTICLE #29
AMENDED	MARCH	15, 1986	ARTICLE #39
RE-ENACTED & AMENDED	MARCH	28, 1987	ARTICLE #36
AMENDED	MARCH	19, 1988	ARTICLE #25
AMENDED	MARCH	18, 1989	ARTICLE #54
RE-ENACTED & AMENDED	MARCH	10, 1990	ARTICLE #39
RE-ENACTED & AMENDED	MARCH	9, 1991	ARTICLE #35
RE-ENACTED & AMENDED	MARCH	13, 1993	ARTICLE #35
RE-ENACTED & AMENDED	MARCH	12, 1994	ARTICLE #44
AMENDED	JUNE	10, 1994	ARTICLE # 5
AMENDED	MARCH	11, 1995	ARTICLE #50
RE-ENACTED & AMENDED	MARCH	26, 1996	ARTICLE # 3
AMENDED	MARCH	15, 1997	ARTICLE #33
AMENDED	MARCH	14, 1998	ARTICLE #13
RE-ENACTED & AMENDED	MARCH	6, 1999	ARTICLE #18
AMENDED	OCTOBER	23, 1999	ARTICLE # 5
AMENDED	MARCH	11, 2000	ARTICLE #17,18 & 19
AMENDED	MARCH	10, 2001	ARTICLE #50
RE-ENACTED & AMENDED	MARCH	9, 2002	ARTICLE #55
AMENDED	NOVEMBER	23, 2002	ARTICLE # 8
AMENDED	MARCH	8, 2003	ARTICLE #70
AMENDED	MARCH	13, 2005	ARTICLE #20
AMENDED	MARCH	10, 2007	ARTICLE#30
AMENDED	MARCH	14, 2009	ARTICLE# 7
AMENDED	MARCH	20, 2010	ARTICLE #5
AMENDED	MARCH	10, 2012	ARTICLE#7
AMENDED	MARCH	9, 2013	ARTICLE#8
AMENDED	MARCH	14, 2015	ARTICLE#13
AMENDED	MARCH	11, 2017	ARTICLE#11
AMENDED	MARCH	9, 2019	ARTICLE #6
AMENDED	APRIL	23, 2022	ARTICLE #14
AMENDED	MARCH	11, 2023	ARTICLE #4

CHAPTER 1. AUTHORITY, TITLE PURPOSE AND DEFINITIONS

Sec. 101 **Authority**

This Ordinance is enacted in accordance with 12 M.R.S.A. § 6671, as may be amended from time to time. The title of this Ordinance is the Harpswell Shellfish Ordinance.

Sec. 102 **Purpose**

The purpose of this Ordinance is as follows:

- 102.1 To regulate the harvesting of shellfish in the Town of Harpswell.
- 102.2 To provide management programs in Harpswell for the conservation of shellfish in a manner consistent with the production of a reasonable yield to shellfish harvesters.

Sec. 103 **Conservation and Management of Shellfish Resources**

It is hereby determined as follows:

- 103.1 The clam flats of the Town are a very valuable shellfish resource which is important to the local economy.
- 103.2 These flats are not an inexhaustible resource, and therefore, they must be prudently managed in order to remain viable.
- 103.3 As part of the management process it is deemed vitally necessary to restrict the taking of shellfish by limiting shellfish licenses; restrict the size and quantity of shellfish which may be harvested; and, take the other measures outlined in the Ordinance.

Sec. 104 **Definitions**

- 104.1 "Clam flats" mean the area between high and extreme low water.
- 104.2 "Harvest" means to dig or take by hand implements only.
- 104.3 The term "resident" refers to a person who has physically resided at a fixed, permanent and principal home in the town for at least six months next prior to the date of application for a license under this Ordinance and for the duration of the license period or, in the case of student, to a student living temporarily outside of Harpswell while enrolled in a College, university or post-secondary school, provided such student maintains his/her fixed permanent principal home in Harpswell.
- 104.4 "Non-resident" means a person who does not qualify as a resident.
- 104.5 "Shellfish" means soft shell clams (*Mya arenaria*), quahogs (*Mercenaria mercenaria*), American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), and razor clams (*Ensis directus*).
- 104.6 "Municipal Shellfish Conservation Warden" means the law enforcement officer appointed by the Board of Selectmen to enforce this Ordinance.
- 104.7 "Bulk Pile" means any pile or the contents of any box, barrel or other container.
- 104.8 "Possession" means to have in one's custody or control, either personally or by another who is under one's control.
- 104.9 "Conservation License Fee Reduction" means a license fee reduction that a commercial license holder or applicant may qualify for by reporting for and

- completing three (3) Conservation Time projects during three scheduled tide cycles per calendar year.
- 104.10 “Conservation Time” means projects approved by the Marine Resources Committee from time to time that serve to preserve and protect the Town’s clam flats for the purpose of taking, propagating, harvesting, or cultivating shellfish therefrom.
- 104.11 “Personal Use” means for consumption or use by oneself, by members of the immediate family or by invited guests.
- 104.12 “Suspension” means the temporary withdrawal of a license or privilege to obtain a license through the Harpswell Town Office.
- 104.13 “Adjudication” means formal, final pronouncement of a judgment in a court or administrative proceeding.
- 104.14 “Student” means an individual actively enrolled in school or who is receiving approved home instruction, who is at least ten (10) years of age but less than twenty (20) years of age as of the date of license application, and who continues to be actively enrolled in school or receiving approved home instruction to maintain his/her student status. Student status shall terminate upon the earlier of the individual’s graduating from high school; the individual’s dropping out of school or discontinuance of home instruction; or the individual’s reaching his/her twentieth (20th) birthday.
- 104.15 “Period of Issuance” means the first ninety (90) days during which the Town issues shellfish harvest licenses each calendar year.

CHAPTER 2. MARINE RESOURCES COMMITTEE

Sec. 201 Marine Resources Committee

There is hereby established a Marine Resources Committee consisting of seven (7) members and two alternate members to be appointed by the Board of Selectmen. At least four (4) of the Committee members shall be holders of Town-issued commercial shellfish licenses. The alternate members shall be available to fill a vacancy and vote when necessary to meet the quorum requirement of 4 members present and voting. Each Committee member shall have been a resident of the Town for at least three years immediately preceding his/her appointment and shall continue as a resident during his/her term. The term of office of the members of the Committee shall be for three years and shall terminate on April 30 of the applicable year; three shall be for a term of three years, two shall be for a term of two years and two shall be for a term of one year. Any Committee member with three consecutive unexcused absences from the regularly scheduled meetings may be replaced by the Board of Selectmen. Upon conviction for violation of any sections of the Harpswell Shellfish Ordinance, a standing member of the Committee will be subject to censure, suspension or any other lawful penalty determined to be appropriate by the Board of Selectmen. The Board of Selectmen shall appoint a person to fill a vacancy for the unexpired term. The Committee shall choose a Chairman, Vice Chairman, and Secretary. The Chairman shall preside at all meetings of the Committee. The Vice Chairman shall preside in the Chairman’s absence; and the Secretary shall record and keep minutes of each meeting. A copy of the minutes of each meeting shall be submitted to the Town Clerk or his/her designee as soon as they are approved by the Committee.

Sec. 202 Powers and Duties of Committee

The Marine Resources Committee has the following powers and duties.

- 202.1 To administer and coordinate the shellfish conservation programs and any other duties required under this Ordinance.
- 202.2 To recommend to the Board of Selectmen how the money appropriated for shellfish conservation programs should be spent.
- 202.3 To administer and coordinate a survey of all clam flats to obtain and maintain current information on shellfish resources, including:
 - 202.3.1 The determination of size frequency.
 - 202.3.2 The determination of growth rate.
 - 202.3.3 The estimation of the available standing crop.
 - 202.3.4 The estimation of the potential yield.
 - 202.3.5 The identification of sources of harmful pollution.
 - 202.3.6 The identification of other resource problems, such as green crab predation and mussel competition.
 - 202.3.7 To determine the current level of use of the shellfish resources.
 - 202.3.8 To conduct a conservation program for Licenses as follows:
 - 202.3.8.1 The Marine Resources Committee shall, for the months of April through August, develop and approve a list of conservation dates and hours during which harvesters can qualify for their Conservation License Fee Reduction. Such list of conservation dates shall be completed by the Marine Resources Committee and forwarded to the Town Clerk on or before April 1st of each year. The Marine Resources Committee shall, for the months of September through December, develop and approve a second list of conservation dates and hours during which harvesters can qualify for their Conservation License Fee Reduction. Such list of conservation dates shall be completed by the Marine Resources Committee and forwarded to the Town Clerk on or before July 1st each year. Existing Harpswell commercial license holders and all applicants for a commercial license, exclusive of student license holders, may sign up for three (3) conservation dates only. Effective April 1 of the following year, holders of Harpswell commercial licenses and all applicants for a commercial license, exclusive of student licenses, will be eligible to qualify for a Conservation License Fee Reduction as established by the Board of Selectmen pursuant to Section 302. Conservation Time performed by a license holder or applicant is eligible for qualification for the Conservation License Fee Reduction only until the award or renewal of the next commercial license. A maximum of twenty-five (25) people will be allowed to participate in each conservation date. The Conservation Time requirements to qualify for a Conservation License Fee Reduction for licensees age seventy (70) and over is waived if the licensee has held a Town-issued commercial shellfish license for at least the previous two (2) years.

- 202.3.8.2 At least one (1) Shellfish Conservation Warden or a qualified person designated by the Committee and approved by the Selectmen shall be present during each Conservation Time period and shall determine that each harvesters requirements to qualify for a Conservation License Fee Reduction has been fulfilled.
- 202.3.8.3 The Shellfish Conservation Warden shall maintain records of compliance with this program for each conservation date. The Shellfish Conservation Warden shall fill out a 3-part receipt for each participant. A receipt shall be considered valid only if it contains the following items: the name of the participant; the date and time of the conservation activity; the type and location of the conservation activity; the legible signature of the issuing official; and the serial number preprinted on each part of the 3-part receipt. The Shellfish Conservation Warden shall be responsible for managing the attendance sheet and overseeing the distribution of each part of the 3-part receipt booklet. One part of the receipt shall be issued to the conservation participant; one part of the receipt shall be retained by the Shellfish Conservation Warden and filed with the Town Clerk's Office within two (2) weeks following the conservation date; and one part of the receipt shall be filed by the Marine Resource Administrator with the permanent records of the Marine Resources Committee. Credit toward the fee for a commercial license is contingent upon satisfaction of the requirements for the Conservation License Fee Reduction prior to December 31st of the preceding year. The Marine Resources Administrator is responsible for compiling and forwarding to the Town Clerk's Office an annual listing of all Conservation Time performed each calendar year on or before January 1st of the following year in preparation for the annual licensing process.
- 202.3.8.4 It shall be the responsibility of the Commercial Licensee to sign up for Conservation Time. Any person signing up must hold either a Harpswell Resident or Non-resident Commercial Shellfish License unless an unlicensed person wishes to voluntarily donate time which may enhance his/her chance of obtaining a Commercial License. The list will be available at the Town Clerk's Office during regular office hours. Pursuant to Section 202.3.8.1 above, said list shall be available by April 1st of each year.
- 202.3.8.5 The Marine Resources Committee may waive all or part of the requirements for a Conservation License Fee Reduction for an existing Harpswell commercial license holder who provides the Shellfish Conservation Warden a written statement from a physician indicating that the existing license holder was not able to participate in any regularly scheduled Conservation Time due

to incapacitation by illness or injury; or, if an illness or incapacitation of a parent, spouse or child prevented that person from participating in regularly scheduled Conservation Time; provided, however, that any waiver granted by the Committee shall not preclude the Committee from allowing the existing license holder to perform alternate, less strenuous work.

202.3.8.6 Any member of the Marine Resources Committee, who has documented attendance at 80% of the regularly scheduled Marine Resource Committee meetings from January 1st to December 31st, will earn their full Conservation Time and will be eligible for a Conservation License Fee Reduction the following year.

202.4 To cooperate with the Department of Marine Resources in carrying on experimental shellfish programs.

202.5 To prepare and promulgate a shellfish conservation plan in cooperation with the Department of Marine Resources based on the results of the clam flat survey, incorporating recommended levels of harvesting on the various flats as delineated on maps prepared by the Committee consisting of area rotation, seeding, predator control, and the opening and closing of clam flats.

202.6 To collect harvest data documenting local values of shellfish resources.

202.7 To make an annual written report to the Town and Department of Marine Resources detailing funds available, expenditures made, harvest date results of all conservation and experimental programs, enforcement activities, and sources of pollution, predation, competition and other resource problems.

Sec. 203 Opening and Closing Clam Flats

The Board of Selectmen with the approval of the Commissioner of Marine Resources has the power to open and close clam flats. When information in the possession of the Marine Resources Committee indicated that a clam flat should be opened or closed, it shall immediately advise the Board of Selectmen. The Board of Selectmen shall 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. At the hearing, the Committee shall present evidence obtained from its surveys and other sources, and members of the public may present evidence in support or refutation of the evidence presented by the Committee.

After the hearing is closed, the Board of Selectmen shall make findings of fact on the relevant evidence presented. The Board of Selectmen shall then make a conclusion based on those findings of fact as to whether opening the flat as requested is warranted by the recovery of the resource; or the freedom from predation, competition, or other resource problem.

If so, the Board of Selectmen shall order the flat opened and shall set such time limitations and other harvesting conditions as are consistent with good conservation practice, contingent upon approval from the Department of Marine Resources (DMR). If the request is to close the flat, the Board of Selectmen shall make a conclusion based on its findings of

fact as to whether closing the flat is warranted by depletion of the shellfish; destruction of existing seed; or predation, competition, or other resource problem. If so, the Board of Selectmen, with the approval of the DMR area biologist, shall order the flat closed until further request for opening by the Committee. Any proposal for opening or closing the flats shall be approved by the Commissioner of Marine Resources prior to enactment.

CHAPTER 3. LICENSES AND FEES

Sec. 301 Licenses Defined

The types of licenses are as follows:

- 301.1 **Resident Commercial Shellfish License.** This license entitles the Licensee to harvest any amount of shellfish from the tidal waters or clam flats of the Town where and when it is otherwise lawful to do so. This license may be a renewal or a non-renewal license pursuant to Section 304.5 or 304.6.
- 301.2 **Non-resident Commercial Shellfish License.** This license entitles the Licensee to harvest any amount of shellfish from the tidal waters or clam flats of the Town where and when it is otherwise lawful to do. Ten percent of the number of resident commercial shellfish licenses shall be reserved for non-resident commercial shellfish licenses. This license may be a renewal or a non-renewal license pursuant to Section 304.5 or 304.6.
- 301.3 **Resident Recreational Shellfish License.** This license is available to residents of the Town and real estate owners within the Town and entitles the holder to dig, take and possess no more than one peck of soft-shell clams or one peck of quahogs or one peck of a combination of shellfish per day for personal use. This license is not available to, or valid for, holders of a State of Maine Shellfish License. Use of the recreational license for the purposes of selling, trading or bartering is a violation of this Ordinance.
- 301.4 **Non-resident Recreational License.** This license is available to non-residents and entitles the holder to dig, take and possess no more than one peck of shellfish per day for personal use. This license is not available to, or valid for, holders of a State of Maine Shellfish License. Use of the recreational shellfish license for the purposes of selling, trading or bartering is a violation of this Ordinance. Ten percent of the number of resident recreational shellfish licenses issued shall be reserved for non-resident recreational shellfish licenses.
 - 301.4.1 **Waiting List:** A waiting list for non-resident recreational license applicants shall be maintained by the Town Clerk. Any prospective applicants for non-resident recreational shellfish licenses who wish to have their names placed on the waiting list must, beginning on March 15 of each year, report to the Town Clerk's Office, in person, to have their name placed on the waiting list. Proof of identification and place of residence, to the satisfaction of the Town Clerk, shall be provided by the applicant. Each name on the waiting list shall be assigned a separate number. Licensees will be selected by a lottery conducted by the Town Clerk's Office beginning on April 1 of each year and repeated throughout the license year as non-resident recreational licenses become available.

The lottery shall be conducted by placing all of the numbers corresponding to the names of applicants on the waiting list into a bin or hat and by then drawing a number from the bin or hat. Once a new licensee's name is selected, that applicant will be contacted by the Town Clerk's Office to pick up his/her license. The Town Clerk shall maintain a record of the date and time of actual or attempted contact with the selected applicant. If the applicant does not pick up his/her new license within 72 hours of the date and time of the earliest actual or attempted contact by the Town Clerk's Office, the same system shall be employed to draw another number from the lot and the same practice repeated to keep the number of non-resident recreational licenses equal to 10% of the number of resident recreational licenses.

- 301.5 **Lifetime Recreational License.** Any Harpswell Resident or Harpswell real estate owner who is age 65 or older may be issued a one-time license for the lifetime of the licensee. A licensee under this section is entitled to dig, take, and possess no more than one peck of shellfish per day for personal use.
- 301.6 **Resident Student Commercial Shellfish License.** This license is available to a resident student and entitles the holder to harvest no more than one (1) bushel of shellfish per day from the tidal waters or clam flats of the Town when and where it is lawful to do so. If a student licensee is drawn in the lottery to hold a Resident Commercial Shellfish License in the licensing year immediately following, that licensee may apply their consecutive student licensing years to the provisions of a Resident Commercial – Non Resident Commercial License as defined in Section 301.8
- 301.7 **Non-resident Student Commercial Shellfish License.** This license is available to a non-resident student and entitles the holder to harvest no more than one (1) bushel of shellfish per day from the tidal waters or clam flats of the Town when and where it is lawful to do so. Ten percent of the number of resident student commercial shellfish licenses shall be reserved for non-resident student commercial shellfish licenses.
- 301.8 **Resident Commercial – Non Resident License**
The holder of any residential commercial license, who changes their permanent and principal place of residence to a location outside of the Town of Harpswell and who notifies the Town Clerk within 30 days of change, after having resided and held that license in Harpswell for five (5) consecutive or more years from the date of change of residency, the license holder may obtain a Resident Commercial to Non Resident Commercial License without the need to participate in the new commercial license selection process as described in Section 304.
- 301.8.1 Notwithstanding the provisions of M.R.S. § 302 or any law to the contrary and regardless of the effective date of this Section 301.8, the date of applicability of this section shall be April 1, 2022, such that license renewals for the year beginning on that date will be affected thereby, to the extent permitted by law.

301.8.2 Any license that expires after having been converted as a result of a change in residency as described above shall, upon reissuance, be allocated to the type of license previously issued using the selection process as described in Section 304.

Sec. 302 Fees

Except as expressly provided in this section, no license fees shall be pro-rated for a portion of a license year. All license fees are non-refundable. The Board of Selectmen may establish from time to time a Conservation License Fee Reduction for fees imposed under this section. A non-refundable fee, in such amount as may be established by the Board of Selectmen from time to time, shall be charged for the following license categories:

- 302.1 **Resident Commercial Shellfish License.** License fee is not refundable even if proven a non-resident. For residents 65 years or older who have such a license for at least the previous year, the license fee shall be half the regular fee.
- 302.2 **Non-resident Commercial Shellfish License.** For non-residents 65 years or older who have such a license for at least the previous year, the license fee shall be half the regular fee.
- 302.3 **Resident Recreational Shellfish License.** (License fees will be waived for residents 65 years or older for this category.)
- 302.4 **Non-resident Recreational Shellfish License.** Shall be the maximum fee allowed by the State; if none, then the fee shall be twice the fee for a Resident Recreational Shellfish License (except that license fees for ten percent of the number of resident recreational shellfish licenses issued to residents 65 years or older will be waived for non-residents 65 years or older for this category).
- 302.5 **Resident Student Commercial Shellfish License.** License fee is not refundable even if the student is proven to be a non-resident.
- 302.6 **Non-resident Student Commercial Shellfish License.**
- 302.7 **Resident Commercial – Non Resident License**
License fee shall be set at the same rate as a Non-Resident Commercial License as determined by the Harpswell Board of Selectmen. Reduced rates for ages 65 and older will not apply to this category.

Sec. 303 License Expiration Date

All licenses expire at midnight March 31. Exceptions: Resident Recreational Age 65 or older lifetime licenses are valid for the lifetime of the licensee and Student Commercial Licenses expire as set forth in Section 304.7.

Sec. 304 Qualifications of License

- 304.1 An applicant for a Resident Commercial Shellfish License or a Student Commercial License must be a resident of the Town of Harpswell as defined in Section 104.3 and whose prior shellfish license is not currently under suspension pursuant to this Ordinance.
- 304.2 An applicant for a Non-resident Commercial Shellfish License or a Student Commercial License is any person who does not meet the residency

requirements in Section 104.3 and whose prior shellfish license is not currently under suspension pursuant to this Ordinance.

- 304.3 An applicant for a Resident Recreational Shellfish License must be either a resident as defined in Section 104.3 or the owner of real estate within the Town of Harpswell and whose prior shellfish license is not currently under suspension pursuant to this Ordinance.
- 304.4 The place of residence of a licensed applicant as stated on any other license is not determinative of the applicant's true place of residence. Before issuance of the license, excluding students, the applicant shall be required to produce three proofs of his/her residence of the types outlined in Title 21-A M.R.S.A. Section 112 with the applicant's name and physical address clearly stated or written evidence satisfactory to the Shellfish Conservation Warden before issuance of the license.

304.5 Commercial Renewal License Criteria

Once received by the Town Clerk and no later than March 1 of each year, all applications for Resident Commercial Renewal Shellfish licenses and Non-resident Commercial Renewal Shellfish licenses shall be separated.

Applicants for renewal licenses must have been licensed in the Town of Harpswell for the previous year, and must have submitted an application form and paid any applicable fees by March 1 pursuant to Section 305. Commencing April 2, 2013 and thereafter, applicants for renewal licenses must have attended two Marine Resources Committee meetings in the previous 12-month period prior to renewal; provided, however that attendance credit will be granted to a harvester in the event the harvester attends a meeting at which there fails to be a quorum of the Committee present. Attendance sheets, signed by attendees, must be provided by the Marine Resources Committee to the Town Clerk's Office on a monthly basis. An applicant who has failed to qualify as a resident in the preceding year is not eligible for a Resident Commercial renewal license. Reciprocal licenses from previous years do not qualify as commercial renewal licenses. Renewal licenses will be available during the last five (5) working days of March and will be limited to the number of licenses to be issued that year. In case the number of applicants exceeds the number of licenses available, a seniority system based on the date of first licensure by the Town shall be employed in order to eliminate the most recently issued licenses until the required number of licenses is achieved. If multiple licenses have the same date of first licensure by the Town, a lottery shall be conducted by the Town Clerk to choose by lot only those few licenses that shall be eliminated. Nothing in Section 304.5 shall be interpreted to increase the available number of Non-resident Commercial licenses to more than ten percent of the available number of Resident Commercial licenses.

304.6 Commercial Non-Renewal License Criteria

Any license holder who does not fulfill all criteria set forth in Section 304.5 does not qualify for a renewal license. Commercial non-renewal licenses shall be issued pursuant to the following ordered priorities:

- 304.6.1 Any remaining commercial licenses available after the completion of the renewal process set forth in Section 304.5 will first be issued to an applicant who has held a valid Harpswell Commercial license for at least the previous year, who has satisfied the requirements for a Conservation License Fee Reduction but who submitted the application form after March 1 but before the last business day of March. In case the number of such applicants exceeds the number of licenses available, a seniority system based on the date of first licensure by the Town shall be employed in order to eliminate the most recently issued licenses until the required number of licenses is achieved. If multiple licenses have the same date of first licensure by the Town, a lottery shall be conducted by the Town Clerk to choose by lot only those few licenses that shall be eliminated.
- 304.6.2 Any remaining commercial licenses available after the completion of the process set forth in Section 304.6.1 will be issued by the conduct of a lottery by the Town Clerk's Office, the time and date to be published prior to April 1st, with priority given to those who have completed voluntary Conservation Time in the previous year sufficient to qualify for a Conservation License Fee Reduction. An individual must be present at the lottery in order to receive a license or a position on the waiting list. Even if there are no remaining commercial licenses available, the annual lottery shall be conducted to determine an applicant's position on the waiting list in the event that licenses become available after the period of issuance. The lottery shall be conducted by placing all of the names of resident applicants present who have completed voluntary Conservation Time in the previous year into a bin or hat and by then drawing a name from the bin or hat until all the commercial licenses are sold and continued until all names are drawn. The same process shall be repeated with all of the names of the non-resident applicants present who have completed voluntary Conservation Time in the previous year sufficient to qualify for a Conservation License Fee Reduction.
- 304.6.3 The lottery shall be continued by placing all of the names of resident applicants present who have not completed voluntary Conservation Time in the previous year into a bin or hat and by then drawing a name from the bin or hat until all the commercial licenses are sold and continued until all names are drawn. The same process shall be repeated with all of the names of the non-resident applicants present who have not completed voluntary Conservation Time in the previous year.
- 304.6.4 All names shall be drawn in order to assign each applicant present a priority position on the resident, Conservation Time completed waiting list; the non-resident Conservation Time completed waiting list; the resident, no-Conservation Time completed waiting list; or the non-resident, no-Conservation Time completed waiting list to be maintained

in the Town Clerk's Office in the event that commercial licenses become available after the period of issuance.

- 304.6.5 Commercial licenses that become available after the period of issuance, whether by voluntarily return, death of licensee or otherwise, may be reissued by the Town Clerk at the current fee to an applicant of the same license category (resident or non-resident) as the available license according to the waiting list priorities established pursuant to this section. Once a new licensee's name is selected from the waiting list, that applicant will be contacted by the Town Clerk's Office to pick up his/her license. The Town Clerk shall maintain a record of the date and time of actual or attempted contact with the selected applicant. If the applicant does not pick up his/her new license within 72 hours of the date and time of the earliest actual or attempted contact by the Town Clerk's Office, the same system shall be employed to select the next name on the waiting list of the same license category (resident or non-resident) as the available license and the same procedure repeated to keep the number of Non-resident Commercial licenses equal to ten percent of the number of Resident Commercial licenses.
- 304.6.6 Nothing in Section 304.6 shall be interpreted to increase the available number of Non-resident Commercial licenses to more than ten percent of the available number of Resident Commercial licenses.

304.7 **Student Commercial License**

Sections 304.5 and 304.6 do not apply to Student Commercial licenses. The following procedures and requirements apply to Student Commercial licenses:

- 304.7.1 Applicants must annually submit a completed application form to the Town Clerk on or before April 30.
- 304.7.2 Student Commercial licenses shall be available during normal Town business hours to qualified applicants beginning May 16.
- 304.7.3 Any Student Commercial license issued becomes effective on June 1 of the year of issuance and expires at midnight on May 31 of the following year.
- 304.7.4 A maximum of nine (9) Resident Student Commercial licenses and one (1) Non-resident Student Commercial license will be issued each year. Licenses will be issued on a first come, first served basis, except that if on May 16 the number of applicants exceeds the number of licenses available, then names shall be drawn from lot until all licenses are issued. An applicant must be present at the time of the lottery or else be passed over. All Student Commercial licenses are annual, non-renewable licenses. The fact that an individual held a Student Commercial license in a prior year does not affect his/her eligibility for a Student Commercial license in a succeeding year.
- 304.7.5 All Student Commercial licensees must have a legal size measuring device for clams in his/her possession when engaged in any activity permitted under such license.

304.7.6 All Student Commercial licensees shall maintain their student status as defined herein throughout the term of the license. Failure to do so shall result in the suspension of the license for the remainder of the license term.

304.8 Any license issued under this Ordinance is subject to the partial or total closing of the coastal waters or flats.

304.9 No person may hold more than one Town-issued shellfish license at one time.

Sec. 305 **Application**

All applicants must submit a completed application form to the Town Clerk prior to issuance of a license to the applicant.

Applicants for a renewal Commercial License must annually submit a completed application form to the Town Clerk by the 15th day of February. If any portion of the application form is not filled out in its entirety, the application will not be considered. Applicants submitting applications after February 15 are subject to a \$100 late fee. No application will be accepted after the close of business on March 1. If a prospective applicant fails to submit an application by the March 1 deadline, such person shall not be licensed for that year unless through the “non-renewal” procedure set forth in Section 304.6 of this Ordinance; if a license is issued to such late applicant under Section 304.6 of the Ordinance, the applicant shall pay a \$200 late fee. This paragraph does not apply to student commercial licenses.

The annual application will be in the form of an affidavit and will include the applicant’s name, current address, period of residence, date of birth, height, weight and other such necessary information as the Town Clerk may require. There must also be included the physical location of residence. The application must be signed by the applicant and acknowledged by the Town Clerk.

The completed application will be reviewed by the Shellfish Conservation Warden(s) for accuracy and the applicant shall be notified by first class and certified mail of any discrepancies found. The applicant will have 10 business days from receipt of notice to respond to any discrepancies that may have been found. After midnight of the 10th day, if the applicant does not respond to a Shellfish Conservation Warden in writing regarding the notice received, the application will be deemed denied. If the license has already been issued before such discrepancy is found, the Selectmen shall suspend or revoke the license upon notice and hearing (provided that a hearing shall be held only if requested by the licensee) and until the discrepancy is resolved. If the discrepancy is not resolved in the licensee’s favor, the license may be revoked pursuant to Section 311.

Any person applying for (or holding) a shellfish license under the Ordinance shall notify the Town Clerk within 10 days of an address change, regardless of whether the address change is also a change of residency.

Sec. 306 **Possession of License**

306.1 **Exhibition on demand.** When any person is engaged in any activity which is licensed under this Ordinance, he shall, on request of a Shellfish Conservation Warden or other authorized person, exhibit a license.

306.2 **Prima facie evidence.** A failure to exhibit a license within a reasonable time, when requested, shall be prima facie evidence that the person is not licensed.

Sec. 307 **Search, Consent to Inspection; Violation**

307.1 **Search Powers.** Any Shellfish Conservation Warden, in uniform, may search without a warrant and examine any watercraft, aircraft, conveyance, vehicle, box, bag, locker, trap, crate or other receptacle or container for any marine organism when he has probable cause to believe that any marine organism taken, possessed or transported contrary to law is concealed thereon or therein.

307.2 **Consent to Inspection.** Any person who signs an application for a license or receives a license under this part has a duty to submit to inspection and search for violations related to the licensed activities by a Shellfish Conservation Warden under the following conditions.

A. Watercraft or vehicles and the equipment located on watercraft or vehicles which are used primarily in a trade or business requiring a license under this part may be searched or inspected at any time.

B. Any other location where activities subject to this part are conducted may be inspected or searched during the hours when those activities occur.

C. A location specified in subparagraph B above may be inspected at any time if a Shellfish Conservation Warden has a reasonable suspicion of a violation of this part.

D. No residential dwelling may be searched without a search warrant unless otherwise allowed by law.

307.3 **Seizure of Evidence.** Any person who signs an application for a license or received a license under this part has a duty to permit seizure of evidence of a violation of this Ordinance found during an inspection or search.

307.4 **Refusal.** Refusal to permit inspection or seizure shall be a basis for suspension of any license under this Ordinance.

Sec. 308 **Limitation of Harvesters**

The shellfish resources are limited. A commercial or recreational harvester can be expected to harvest a certain volume of shellfish per year; therefore, the number of harvesters must be controlled to preserve the shellfish resource. The number of available Shellfish licenses of each type may vary from year to year according to the finding and estimates of the

Marine Resources Committee and the DMR area biologist based on data concerning the resource capabilities and management requirement consistent with proper resource utilization as determined by surveys conducted pursuant to Section 202 of this Ordinance. The following procedures will be followed to control Shellfish License availability:

- 308.1 Prior to the first business day in March the Marine Resources Committee in conjunction with the DMR area biologist will establish the number of commercial Shellfish Licenses to be made available. If there is a difference between the number of licenses recommended by the DMR area biologist and the Marine Resources Committee, then the Marine Resources Committee will make a recommendation to the Board of Selectmen, which will make a final determination of the number of licenses to be issued.
- 308.2 The Marine Resources Committee will notify the Town Clerk in writing prior to the first business day in March of the number of Shellfish Licenses, by type, to be made available for issue. No Shellfish Licenses may be reserved.

Sec. 309 Misrepresentation

It shall be unlawful and a violation of this Ordinance for any person to falsify, or give false information in connection with a Shellfish License application. In addition to any criminal penalties which may result from a violation of this Ordinance, the Shellfish License granted to any person who gives false information on a Shellfish License application shall be void after notice and hearing by the Board of Selectmen.

Sec. 310 Suspension

- 310.1 In the event any Shellfish Licensee has two Adjudications, within a thirty-six month period, for a violation of either this Ordinance and/or State law regarding shellfish regulation, 12 M.R.S.A. §§ 6601-6681, as may be amended from time to time, that have taken place within the territorial limits of the Town of Harpswell, then the licensee shall receive a notice of suspension of the license for thirty (30) days from the Board of Selectmen or its designee. Any subsequent Adjudication will result in a notice of suspension of the license for ninety (90) days. *Exceptions:* Licensee may not be suspended or revoked for adjudications of Section 306 of this Ordinance.
- 310.2 A resident recreational licensee whose Shellfish License has been suspended or revoked pursuant to this Ordinance may reapply for a recreational license only after the suspension or revocation period has expired.
 - 310.2.1 A non-resident recreational licensee whose license has been suspended or revoked pursuant to this Ordinance may not reapply for a recreational license in Harpswell for five (5) years. Whenever a non-resident recreational license is revoked, that license shall be offered to the next person on the waiting list maintained by the Town Clerk's Office pursuant to this Ordinance.
- 310.3 The Board of Selectmen or its designee shall send a notice of suspension via first class and certified mail to the licensee upon learning the License Holder's State of Maine Department of Marine Resources License is suspended. This municipal license suspension shall remain in effect until such time as the

License Holder's State of Maine Department of Marine Resources License is reinstated.

- 310.4 The notice of suspension or revocation shall be sent to the Licensee's last known address as recorded at the Town Clerk's Office. The suspension or revocation shall become effective if the appeal period as indicated in Section 310.5 of this Ordinance expires or after the Board of Selectmen's decision upholding the suspension or revocation is announced. If the licensee does not sign for the certified mail notice, the Board of Selectmen may appoint a Law Enforcement Officer to serve a copy of the notice on the licensee.
- 310.5 Any Licensee who receives notification of a suspension or revocation pursuant to this Ordinance shall be entitled to a hearing before the Board of Selectmen upon filing of a written Request for Hearing within seven (7) days of receipt of notification.
- 310.6 After notice of revocation as described in section 310.4, the license shall become available to the next eligible person on the waiting list in that license category. If no waiting list exists, the license shall become available by process of a lottery on the 10th business day, after public notice from the Town Clerks Office. The lottery shall be conducted by the same method as described in section 304.

Sec. 311 Revocation

- 311.1 Any License that has been suspended pursuant to this Ordinance for at least 210 consecutive days, upon recommendation of the Marine Resources Committee, may be revoked by the Board of Selectmen. A license may also be revoked if it is discovered that the licensee has provided false information on the application. Licensee shall be notified pursuant to Section 310.4 and may request a hearing before the Board of Selectmen as set forth in Section 310.5.

CHAPTER 4. ENFORCEMENT

Sec. 401 Harvesting Prohibited

A person shall not harvest, take or possess shellfish from the tidal waters or clam flats of the Town of Harpswell without first obtaining a Shellfish License from the Town Office.

Sec. 402 Clam Size and Possession of Harvest

A person shall not possess soft shell clams that are less than two (2) inches in the largest diameter to the amount of more than 10% of any bulk pile.

402.1 Quahog size restrictions

It shall be unlawful to take, possess, ship, transport, buy or sell quahogs that are less than one inch in thickness as measured across the hinge width to the amount of more than 5% of any bulk pile. Hinge width: Hinge width means the thickness of a quahog as measured between the convex apex of the right shell and the convex apex of the left shell. Exception: Quahog size

restriction will apply unless these quahogs are properly identified as raised by means of aquaculture.

402.2 American Oyster Size Restrictions

It shall be unlawful to take, possess, ship, transport, buy, or sell American oysters whose shells are less than 2.5 inches in the longest diameter.

402.3 European oyster size restrictions

It shall be unlawful to take, possess, ship, transport, buy, or sell European oysters that are less than three (3) inches in the longest diameter.

402.4 Razor clam size restrictions

It shall be unlawful to take, possess, ship, transport, buy, or sell Razor clams that are less than four (4) inches.

Sec. 403 Method of Determining Shellfish Size Tolerance

For Softshell Clams: The tolerance of 10% must be determined by a numerical count of not less than one (1) nor more than four (4) pecks taken at random from various parts of any bulk pile.

For Quahogs: the tolerance of 5% must be determined by a numerical count of not less than one (1) nor more than four (4) pecks taken at random from various parts of the bulk pile.

For American Oysters: 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.

For European Oysters: 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.

403.1 If the entire bulk pile contains less than one (1) peck, the tolerance must be determined by a numerical count of the entire bulk pile.

Sec. 404 Stopping for Inspection

It shall be unlawful for the operator of a motor vehicle, boat, vessel, or conveyance of any kind, or any person:

404.1 **Stopping:** To fail or refuse to stop immediately upon request of any Shellfish Conservation Warden in uniform.

404.2 **Remaining Stopped:** After a person has stopped, to fail to remain stopped until the Shellfish Conservation Warden has released them.

404.3 **Standing By:** To fail to refuse to stand by immediately, for inspection upon request of any Shellfish Conservation Warden in uniform

404.4 **Throwing or Dumping Items:** Who has been requested or signaled to stop by any Shellfish Conservation Warden in uniform, to throw, dump or destroy any type of marine resource, from any type of container, pail,

barrel, or expose to the water or mud, before the Shellfish Conservation Warden has inspected the product.

Sec. 405 Conservation Area

405.1 Taking From A Conservation Area Prohibited: It shall be unlawful for any person to harvest, take, or possess shellfish from any areas closed by the Town of Harpswell in accordance with DMR Regulation, Chapter 7. Harvesting shellfish in a closed area is a violation of this ordinance and is punishable under Title 12 M.R.S.A. §6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the Town of Harpswell 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>.

405.2 Washing or Holding In A Conservation Area Prohibited: It shall be unlawful to wash, hold or keep shellfish in any area closed by regulation or to possess, ship, transport, or sell shellfish so washed, held or kept.

Sec. 406 Enforcement

The Ordinance shall be enforced by a law enforcement officer appointed by the Board of Selectmen to be known as the Municipal Shellfish Conservation Warden.

Sec. 407 Penalty

A person who violates this Ordinance shall be punished as provided in Title 12 M.R.S.A. § 6671, as may be amended from time to time.

Sec. 408 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 penalties as the person the licensee has assisted.

Sec. 409 Appeals

Except as otherwise provided herein, any decision made by the Shellfish Conservation Warden shall stand unless appeal is made in writing to the Board of Selectmen within seven (7) days of the date of the decision.

CHAPTER 5. SEPARABILITY, DURATION AND REPEAL

Sec. 501 Separability

If any provision of this Ordinance is declared to be invalid, that declaration does not affect the remainder of the Ordinance.

Sec. 502 **Duration**

This Ordinance and any amendments thereto shall remain in effect until Repealed by the Town or rescinded by the Commissioner of Marine Resources.

Sec. 503 **Repeal**

Any ordinance regulating the harvesting or conservation of shellfish in the Town that is inconsistent with this Ordinance is hereby repealed.