

SHELLFISH CONSERVATION ORDINANCE TOWN OF STEUBEN

1. **Authority:** This ordinance is enacted in accordance with 12 M.R.S.A Section 6671.

2. **Purpose:** To establish a shellfish conservation program for the Town of Steuben 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 harvesting is permitted
 - D. Limiting the minimum size of clams taken
 - E. Limiting the amount of clams taken daily by a harvester

3. **Shellfish Conservation Committee:** The Shellfish Conservation Program for the Town of Steuben will be administered by the Shellfish Conservation Committee consisting of five members to be appointed by the Selectmen for terms of one year. In order to be a Board Member of the Steuben Shellfish Committee you must be a resident of the Town of Steuben.

The Committee's responsibilities include:

 - A. Submitting to the Board of Selectmen proposals for the expenditure of funds for the purpose of shellfish conservation.
 - B. Keeping this ordinance under review and making recommendations for its amendments.
 - C. Securing and maintaining records of shellfish harvest from the town's managed shellfish areas that are conditionally opened by the Department of Marine Resources.
 - D. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Area Biologists of the Department of Marine Resources.
 - E. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other committee activities.
 - F. Shellfish Conservation Committee shall be responsible for determining dates, times and methods of Conservation to be required of harvesters each licensing year.

4. **Authorization to make Conservation Changes:**

The Board of Selectmen are authorized to make changes to certain conservation limits in this ordinance after receiving recommendations from the Shellfish Committee and after following proper hearing procedures. These

changes will take effect five (5) days from the date of approval and with public notification.

5. Definitions:

A. **Resident:** The term “resident” refers to a person being a Maine resident who has proof of being domiciled in Steuben continuously for a minimum of six (6) months prior to the time his/her claim of such residence is made. In order to determine resident eligibility new residents shall provide two forms of proof of residency from the lists below. At least one shall be from Section 3 in chart below. All harvesters will provide proof of residency on an annual basis or as requested.

Section 1	Section 2	Section 3
*Copy of deed AND record of most recent mortgage payment. *Copy of Lease AND record of most recent legal affidavit from landlord affirming tenancy. *Legal affidavit from landlord affirming tenancy AND record of most recent rent payment.	*A utility bill or other work order dated within the past 60 days including: *Gas Bill *Oil Bill *Electric Bill *Telephone Bill *Cable or Satellite Bill Dated within the past year: *W2 form *Excise tax receipt *Property tax bill Dated within the past 60 days: *Letter from approved Government agency *Payroll Stub *Bank or Credit Card Statement	*Valid Driver’s License displaying physical address *Valid Maine photo ID card displaying physical address *Valid passport displaying physical address *Current vehicle registration displaying physical address

- B. **Non-Resident:** The term “non-resident” 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” mean soft-shell clams, *Mya Arenaria*.
- D. **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.
- E. **Possess:** For the purpose of this section, “possess” means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.

- F. **Municipality:** Refers to Town of Steuben, Maine.
- G. **Municipal License Allocation Request:** Annually as indicated by the ordinance the Municipality must submit a request for the number of licenses to be sold during the next licensing period.
- H. **Bulk Pile:** "Bulk Pile" means any pile or contents of any box, barrel or other container.
- I. **Conservation Time:** Those measures and activities approved by the Shellfish Committee for the purposes of resource enhancement and support of the Steuben Shellfish Conservation Ordinance. Conservation time must be completed to be eligible for a commercial shellfish license in accordance with the shellfish ordinance.
- J. **Harvest:** Means to take, dig or pull shellfish from the flats.

6. **Licensing:** A Steuben Municipal Shellfish Harvesting License is required to harvest shellfish within the jurisdiction of this ordinance. 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 ordinance. Additionally, a commercial harvester must also have a valid State of Maine Commercial License issued by the Department of Marine Resources prior to harvesting clams for commercial purposes.

6.1 **Designation, Scope and Qualifications:**

- A. **Resident Commercial Shellfish License:** The license is available to residents of the Town of Steuben and who have completed the shellfish conservation requirements and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.
- B. **Non-resident Commercial Shellfish License:** The license is available to non-residents of the Town of Steuben who have completed the conservation requirements and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.
- C. **Senior Resident Commercial License:** This license is available to residents of the Town of Steuben 65 years old or older and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.
- D. **Senior Non-Resident Commercial License:** This license is available to non- residents of the Town of Steuben 65 years old or older and entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.
- E. **Junior Resident Commercial License:** This license is available to any resident of the Town of Steuben who has attained his or her 13th birthday but has not yet attained his or her 18th birthday as of June 30th of the application year. Conservation work will be required of any one 16 years of age by June 30th. This license entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.

- F. Junior Non-Resident Commercial License: This license is available to any non- resident of the Town of Steuben who has attained his or her 13th birthday but has not yet attained his or her 18th birthday as of June 30th of the application year. Conservation work will be required of anyone 16 years of age by June 30th. This license entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality.
- G. Maine state commercial shellfish license holders are ineligible for a resident or a non-resident recreational license.
- H. Resident Recreational Shellfish License: This license is available to residents and real estate taxpayers of this municipality who do not hold a valid Maine State Commercial Shellfish License and entitles the holder to harvest and take no more than one peck of shellfish in any one day for personal use only.
- I. Non-Resident Recreational Shellfish License: This license is available to any person that is not a resident or real estate taxpayer of this municipality and who does not hold a valid Maine State Commercial Shellfish License and entitles the holder to harvest and take no more than one peck of shellfish in any one day for personal use only.
- J. 7 Day Recreational – A one (1) peck per day limit, available to residents and non-residents. Limited to one, 7 Day license per person per licensing year.
- K. License must be signed: The licensee must sign the license to make it valid. The license must be in the holder’s possession when engaged in harvesting. By signing the license the harvester acknowledges that he/she must submit to inspection by the Municipal Shellfish Warden.
- L. A person over 18 years of age enrolled in a secondary education program will be exempt from the 2 meeting requirement but will still be required to complete the 2 conservation events to obtain a shellfish license.

6.2 Application Procedure:

- Any person may apply to the Town Clerk for the license required by this ordinance on forms provided by the municipality. Notice of available licenses 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 (10) days prior to the period of issuance and shall be posted in the Municipal Office until the period expires. A copy of the notice shall be provided to the Commissioner of Marine Resources.
- A. 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 municipality may require. The applicant must provide proof of

residency consistent with the standard of proof that is required to register to vote.

- B. In addition to completing an application, an applicant for a junior commercial license shall also provide, proof that the applicant has attained his/her 13th birthday but has not yet attained his/her 18th birthday- proof of residency and the juniors parent or legal guardian must sign the application in person at the Town Office.
- C. Misrepresentation: Any person who gives false information on a license application will cause said license to be invalid and void. Licenses that are voided may be reissued to another person at the current fee according to the priorities established in this section. Fees for voided licenses are nonrefundable.
- D. Change of Residency: A person applying for or holding a commercial shellfish license under this ordinance shall notify the Town Clerk within (90) days of residency change. The Shellfish Committee shall vote to void a resident license after a license holder has moved from Steuben and is domiciled elsewhere for ninety days.

6.3 Use of Fees and Fines, Funding: Fees for the license must accompany, in full, the application for the respective license. The Town Clerk will retain \$1.00 for each license as payment for issuing the license. Fees and fines received for shellfish licensing shall be used by the Town for costs incurred in the shellfish management, conservation and enforcement of this ordinance.

6.4 License Allocation Procedures: License sales procedures shall be determined by the Shellfish Committee, approved by the Selectmen, and submitted to the Department of Marine Resources for their approval thirty (30) days prior to the date of issuance. Notice of the number licenses to be issued and the procedure for application shall be defined annually by the Municipal License Allocation Request.

- A. The Town Clerk shall issue commercial licenses to those residents and non residents who have met the requirements of obtaining a commercial license. The Town Clerk shall issue licenses as allocated starting July 1st or should July 1st fall on a weekend the licenses would then be issued on the Friday before. Non-resident licenses will be issued at a rate of 10% of all resident licenses and will be issued by lottery.
- B. Limitation of Harvesters: The number of licenses issued may be limited and will be issued according to Municipal License Allocation Request approved by Marine Resources.
- C. Limited License Sales: If it is determined that limited licenses are necessary the Town Clerk shall issue licenses to residents and nonresidents as allocated from July 1st or the Friday before (if the 1st falls on a weekend) 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.

D. 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.

1. The Town Clerk shall issue licenses as allocated. On the first day of license sales, the total number of non-resident commercial licenses shall be issued in accordance with DMR regulations Chapter 7.4 section

2. Thereafter, non-resident licenses will be issued in accordance with the 10% rule as described in 12 M.R.S.A. § 6671(3-E) and DMR regulations Chapter 7.4, Section 2, Table 1.

6.5 **License Expiration Date:** Each license issued under authority of this ordinance expires at midnight on the 30th day of June next following date of issue.

6.6 **Reciprocal Harvesting Privileges:** Not Available

6.7 **Military Exemption Clause:** Residents serving or completing full time active duty in the U.S. Armed Forces will be exempt from Municipal licensing requirements. This exemption is for each year the resident applies for a license.

6.8 **Night Harvesting:** It is unlawful to harvest shellfish at night. The use of artificial light is prohibited.

7. **Violations, Suspension of License and Fines:** Any person who violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 and/or 6681.

A. Any licensee whose shellfish license has been suspended pursuant to this Ordinance may request return of their license only after the suspension period has expired. A suspended license is not to be returned until the fine is paid in accordance to the court's decree.

B. The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the licensee.

7.1 **Any violation of this ordinance may result in a license suspension.**

A. Any shellfish licensee having three (3) convictions for any other violations of this ordinance shall have his/her license suspended for a period of thirty (30) days.

B. Any person who has their State of Maine Commercial Shellfish License or their right to obtain a license by the Dept. of Marine Resources for any reason shall have their Municipal Shellfish License from the Town of Steuben suspended or right to obtain a license suspended until reinstated by DMR.

C. It shall be unlawful to engage in the activity of harvesting shellfish while the right to do so is under suspension. If an individual is caught harvesting soft shell clams while under suspension he/she is harvesting soft shell clams without a license.

- D. It shall be unlawful to harvest shellfish beyond restriction of the municipal license held by the individual engaging in the activity of harvesting shellfish. The fine shall be no less than \$100 or no more than \$500.
- E. A non-license holder or a recreational license holder may not accompany a licensed commercial harvester with the intent of assisting in the harvesting and taking of shellfish.

- 7.1
 - A. Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Committee upon the filing of a written request for a hearing with the Town Clerk within thirty (30) days following the effective date of the suspension.
 - B. The licensee may appeal the decision of the Shellfish Committee before the Board of Selectmen by filing a written request of appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Committee.

- 7.2
 - A. **Harvesting of Clams in a closed Area**: Any shellfish licensee convicted of harvesting in an area closed for conservation shall have his/her license automatically suspended for thirty (30) days.
 - B. **Harvesting Clams at Night**: Any shellfish licensee convicted of night harvesting shall his/her license automatically suspended for thirty (30) days.

8. **Conservation Time**:

All commercial license applicants will be required to complete conservation time, including but not limited to, reseedling and brushing projects, shellfish surveys and attending conservation committee meetings. Conservation time needs to be completed by May 25 of each year to be eligible for a Commercial Shellfish License in the upcoming year. The amount of conservation time which includes committee meetings and flat work will be regulated by the Selectmen upon recommendation from the Shellfish Committee.

Conservation time can be earned in three ways throughout the year:

1. By participating in conservation work days scheduled by the Shellfish Conservation Committee.
2. By attending the Shellfish Conservation meetings. Attendance will be counted for conservation time by the applicant attending the entire meeting to earn their conservation time.
3. For those individuals who have completed their conservation time and who are not offered a shellfish license due to license limitations can carry their time forward until such time they are offered a license. The individual must apply for a shellfish license each year in order for their conservation time to carry forward. If they fail to apply for a license each year or they refuse a license after being offered one their conservation time will be taken off the books.

9. **Opening and Closing of Flats:** The Municipal Officers, upon the approval of the Commissioner of Marine Resources, may open and/or close areas for shellfish harvest. Upon recommendation of the Shellfish Conservation Committee and the concurrence of the Department of Marine Resources area biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officers may call a public hearing on five 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. The decision of the Municipal Officers made after the hearing shall be based on findings of fact. The municipality will provide notification to the public of conservation closures/openings in accordance with DMR Regulations Chapter 7.50(1)(c).
- A. It shall be unlawful for any person to harvest, take or possess shellfish from any closed area in the Town of Steuben. Harvesting shellfish in a closed area is a violation of this ordinance and is punishable under section 6671.
10. **Molesting Municipal Shellfish Gear Places In A Protected Area:**
The Town of Steuben may as part of its municipal shellfish program place Protective netting, fencing, traps or other gear in the intertidal zone to Provide protection from shellfish predators. Any netting, fencing, traps, brush or other gear placed for the purpose must be clearly marked with signs or tags that state that the gear belongs to the Town of Steuben and indicate the purpose for the gear.
1. A person may not tamper with, molest, disturb, alter, destroy or in any manner handle the gear placed by the Town of Steuben in accordance with the above section.
 2. A person who violates section 1 commits a civil violation for which a fine of not less than \$300 and not more than \$1000 may be adjudged.
11. **Minimum legal size of soft-shell clams:** It is unlawful for any person to possess soft shell clams within the town or township of Steuben, Washington County, which are less than two (2) 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 5% of any lot. The tolerance shall be determined by numerical count of not less than one (1) peck or more than four (4) pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one (1) peck.
- B. Penalty: Whoever violates any provision of this section shall be punished by a fine not less than \$100 for 5% to 10% short clams under 2 inches and not less than \$300 for over 15% short clams under 2 inch.

12. Volume limits:

The volume of clams harvested is subject to a limited take. The volume limit may vary from flat to flat. Exceptions to this section shall be regulated by the Selectmen upon recommendations from the shellfish committee. Exceptions shall be listed in the back of the ordinance packet.

13. Intertidal Mussel Harvesting:

This section is enacted in accordance with 12 M.R.S.A. (12) and (13) 188 chapter 7 (7.70). A copy of the Intertidal Management Plan will be made available through the Town Clerk or on the Department of Marine Resources website.

14. Penalty:

A person who violates any provision of this ordinance shall be punished as provided by 12 M.R.S.A. 6671 (10), (10-A).

15. Certificate As Evidence:

A certificate of the clerk of the municipality or any other custodian of the records of a municipal shellfish conservation ordinance adopted under this section stating what records of the municipality show is admissible as evidence in all courts as proof of the municipal records. A certificate stating that the records do not show that a person held a license is prima facie evidence that a person did not hold the license on the date specified in the certificate. A certificate stating that the records show that a shellfish conservation ordinance or portions of an ordinance were in effect on a particular date is prima facie evidence that the ordinance was in effect on the date specified in the certificate. The certified copy is admissible in evidence on the testimony of a municipal shellfish conservation warden that the warden received the certificate after requesting it from the municipality. Further foundation is not necessary for admission of the certificate.

16. 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.

17. Amendments:

Initiation: A proposal for an amendment to this ordinance may be initiated by the following:

- A. A written proposal submitted to the Shellfish Committee:
- B. A recommendation of the Shellfish Committee; or
- C. A recommendation of the Board of Selectmen.

Procedure:

- A. Any proposal for an amendment shall be made to the Board of Selectmen in writing stating the specific changes requested. All such proposals shall be transmitted to the Shellfish Committee for their review and recommendation.
- B. Within thirty (30) days of receiving a properly initiated amendment, the Board of Selectmen shall hold a public hearing on the proposal. Notice of the hearing shall be posted and advertised in a newspaper of general circulation within the community at least seven (7) days prior to the hearing. The notice shall contain the time, date and place of the hearing and sufficient detail about the proposed changes as to give adequate notice of their content. If the proposed changes are extensive, a brief summary of the changes together with an indication that a full text is available at the Town Clerk's Office shall be adequate notice.

Amendment:

This ordinance may be amended after proposed changes have been reviewed by the Department of Marine Resources by a majority vote of the Board of Selectmen and approved by the legislative body of the municipality.

State Law Changes:

Any changes to referenced State Laws in this ordinance shall automatically update in the ordinance upon enactment.

18. 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.

19. 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

20. Period of Ordinance:

This ordinance shall remain in effect until amended, revoked, repealed by the town or a new ordinance is adopted.

21. Conservation Exceptions:

The Board of Selectmen are authorized to make changes to certain conservation limits in this ordinance after receiving recommendations from the Shellfish Committee and after following proper hearing

procedures. These changes will take effect five (5) days from the date of approval and public notification.

Exception: Volume Limits:

It shall be unlawful to take or harvest more than one (1) bushel of soft shell clams from the following areas: Goose Island, Pyne Cove, Club House Cove, Over Cove and Small Shore.

It shall be unlawful to take or harvest more than one (1) peck of soft shell clams from the following area: Parker Head.

Exception: Conservation Time:

Conservation time will be completed by attending at least two (2) committee meetings and completing two (2) events as required.

22. **Effective date:** The effective date of this ordinance is June 26, 2019.

Ordinance Attested:  _____

Joy Robinson-Deputy Town Clerk

