CITY OF EASTPORT, MAINE

Shellfish Conservation
Ordinance

Date Adopted: May 11, 2016
Effective Date: May 26, 2016
Attest:

Revised:
Date Adopted: May 11th, 2016
Effective Date: May 26th, 2016
Attest: Dee C Kewal, City Clerk

An Ordinance to ensure the protection and optimum utilization of shellfish resources within Eastport City limits.

EASTPORT SHELLFISH CONSERVATION ORDINANCE

Mission Statement

The City of Eastport and licensed harvesters act collaboratively as stewards to preserve, protect, manage, and enhance the shellfish resources and ecological well-being to ensure a sustainable harvest of shellfish and opportunity for those who make their living on the tide.

Purpose: To establish a shellfish conservation program for the City of Eastport which shall insure the protection and optimum utilization of shellfish resources within the City limits. These goals shall be achieved by means which may include:

A. Licensing

B. Restricting the time and area where digging is permitted.

C. Limiting the size of clams harvested.

CHAPTER 1. AUTHORITY, TITLE, PURPOSE, AND DEFINITIONS

Section 101 <u>Authority</u>

This ordinance is enacted in accordance with 12 MRSA § 6671 and will be reviewed annually. The title of this ordinance is the Eastport Shellfish Conservation Ordinance.

Section 102 <u>Purpose</u>

The purpose of this ordinance is as follows:

102.1 To regulate the harvesting of shellfish in the City of Eastport.

102.2 To provide management programs in Eastport for the conservation of shellfish.

Section 103 <u>Conservation and Management of Shellfish Resources</u>

It is hereby determined as follows:

103.1 The clam flats of the City are a valuable shellfish resource which is important to the local economy.

103.2 These flats are not an inexhaustible resource; therefore, they must be prudently managed and viable.

103.3 As part of the management process, it is deemed vitally necessary to: restrict the taking of shellfish by limiting shellfish licenses; restricting the size and quantity of shellfish which may be harvested; restricting when and where shellfish may be harvested; and implementation of the other measures outlined in this ordinance.

Section 104 Definitions

104.1 **City** means the City of Eastport and its jurisdiction

104.2 **Clam Flats** denotes the area between high and low water

104.3 **Harvest** means to dig or take by means of implements operated solely by hand.

104.4 **Resident** is a person who has domiciled in the City of Eastport for at least 90 days prior to the time a claim of residence is made.

104.5 **Non-resident taxpayer** is an Eastport real estate owner who does not qualify as a resident or a member of a resident's household.

104.6 **Non- resident** means any person that is not a resident or real estate tax payer of this municipality.

104.7 **Shellfish** denotes the soft shell clams (Mya Arenaria).

104.8 **Shellfish Warden** refers to the law enforcement officer appointed by City Council to enforce this ordinance.

104.9 **Lot** is 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.

104.10 **Possession** means to dig, take, harvest, ship, transport, buy, or sell retail or wholesale soft shell clam shell stock.

104.11 **Period of Issuance** Any twelve month period designated by the City, unless the City chooses to limit the number of licenses it issues, in which case it shall mean the first 90 days during which the City issues shellfish licenses each calendar year. The period of issuance shall be the same for both residents and nonresidents.

CHAPTER II MARINE RESOURCE COMMITTEE

Section 201. Marine Resource Committee

There is hereby established a Marine Resource Committee consisting of no fewer than three and no more than five members Terms of office of the committee members are three years and to be appointed by the City Council. Terms of office of the committee are three years and terminate on the day of the Council's organizational meeting in January. Any committee member with three consecutive, unexcused absences from the regularly scheduled meetings may be removed by the City Council. The Council shall appoint a person to fill a vacancy for the remainder of the unexpired term. The committee shall choose a chairperson. The chairperson shall preside at all meetings of the committee. Meetings will be recorded and kept on file with the City Clerk

Section 202. Powers and Duties of Committee

The Marine Resource Committee has the following powers and duties:

202.1 To plan and coordinate the shellfish conservation programs.

202.2 To recommend to the City Council how the money appropriated for the shellfish conservation should be spent.

202.3 To survey clam flats to obtain and maintain current information on shellfish resources including:

202.3.1 Estimation of the available standing crop.

202.3.2 Identification of readily visible sources of harmful pollution.

202.3.3 Conduction of a conservation program for commercial licenses as follows:

1. The Marine Resources Committee shall develop a list of conservation activities by which commercial applicants can volunteer for conservation time.
2. Notification of volunteer conservation time will be posted in three public locations, one of which must be the City website.

202.3.4 Annual establishment of the number of licenses to be issued in conjunction with the DMR.

202.3.5 Submission of the Annual Report to the City and DMR.

202.3.6 Suggesting/implementing conservation closures/openings.

Section 203. Opening and Closing of Flats

It shall be unlawful for any person to harvest, take or possess shellfish from any closed area in the City of Eastport.
The City Council, with the approval of the Commissioner of Marine Resources, may open or close clam flats. When the Marine Resource Committee recommends opening or closing a clam flat, the Council shall be advised. The Council shall schedule a public hearing with notice published in a newspaper having general circulation in the City. The notice shall occur not less than ten days before the scheduled hearing. The notice shall state the time, place, and subject matter of the hearing and a copy of the notice shall be forwarded to the Department of Marine Resources. All processes for opening and closing of flats will adhere to DMR Regulations Chapter 7.
At the hearing, the Committee shall present evidence obtained from its survey and/or other sources. Members of the public may present evidence in support or refutation of the evidence by the Committee.

After the hearing is closed, the Council shall make findings of fact of the relevant evidence presented. They shall make a conclusion based on those findings of fact as to whether opening of the flats as requested is warranted because of recovery of the resource or freedom from predation, competition or other resource problem. In cases of requested flat closings, the Council shall make a conclusion based on its finding of facts as to whether closing is warranted due to depletion of the shellfish; destruction of existing seed; or predation, competition or other resource problem. The Council, with the approval of the DMR area biologist, shall order either flat openings with such time limitations and other harvesting conditions as are consistent with good conservation practice or flat closings until further request for opening by the Committee.

Any proposal for opening or closing of flats shall be approved by the Commissioner of Marine Resources prior to enactment. When an area that has been closed by the State becomes open by the state, it will remain closed by the City of Eastport for purposes of conservation as long as the appropriate application has been filed with the DMR.

CHAPTER III HARVESTING, LICENSES AND FEES

Section 301

Harvesting Prohibited

A person may not harvest, take or possess shellfish from the tidal waters or clam flats of the City of Eastport without first obtaining a license from the City.

Section 301.1

Harvest Limits

All commercial licenses are subject to harvest limits which may be set by the Eastport Marine Resources Committee after a public hearing held with a ten day notice.

Section 302

Clam Size and Possession of Harvest.

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

Section 303

Method of Determining Tolerance

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

Section 304

Licenses Defined

There are five (5) types of licenses as follows:

304.1 **Resident Commercial Shellfish License**
This license entitles the licensee to harvest any amount of shellfish from the tidal waters or clam flats of Eastport where it is otherwise lawful to do so. Should a resident become a non-resident, the license will remain valid for 90 days after terminating resident in Eastport.

304.2 **Non-Resident Commercial Shellfish License**
This license entitles the licensee to harvest any amount of shellfish from the tidal waters or clam flats of Eastport where and when it is otherwise lawful to do so.

304.3 **Resident Recreation Shellfish License**
This license is available to residents and non-resident real estate taxpayers of Eastport and entitles the holder to dig no more than one peck of shellfish per day for the use of the holder and immediate family.

304.4 **Non-Resident Recreational Shellfish License**
This license is available to non-residents and entitles the holder to dig no more than one peck of shellfish per day for the use of the holder and immediate family.

304.5 **Three Day Recreational Shellfish License**
This license is available to resident and non-resident and non-residents and entitles the holder to dig no more than one peck of shellfish per day for the use of the holder and immediate family.
This license is for a specific three (3) day period.

304.6 Prior to May 1st, 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 Maine Resources for concurrence.

304.7 After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to June 1st, the Shellfish Conservation Committee shall notify the City Clerk in writing of the number and allocation of shellfish licenses to be issued.

304.8 Notice of the number of licenses to be issued and the procedure for application shall be published in 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. A copy of the notice shall be provided to the Commissioner of Marine Resources.

304.9 Licenses may be returned to the City voluntarily, and reissued to another person at the current fee according to the priorities established in this section.

304.10 Limited License Sales: The number of licenses issued may be limited and will be issued according to the Municipal License Allocation Request as approved by DMR.

1. The City Clerk shall issue licenses to residents and nonresidents as allocated for the first 90 days of the period if issuance after which any unsold licenses shall be made available to residents and nonresidents alike on a first-come, first-served basis or by lottery, at the approved fee per available license class.
2. Nonresident Commercial Shellfish licenses will be awarded on a first-come basis or lottery. There will be a minimum number of commercial licenses available for non-residents, which shall be a number not less than 10% of the number of commercial licenses provided to residents.

304.11 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 City Clerk shall issue licenses as allocated. Licenses shall be issued in accordance with DMR Regulations – Chapter 7.

304.12 License Expiration Date:
Each license issued under authority of this ordinance expires at midnight on the *last* day of *June* next following date of issuance.

304.13 License Must be Signed: The licensee must sign the license to make it valid. The License must be in the licensee's possession when engaged in harvesting. By signing the license, the harvester acknowledges that they must submit to inspection by the municipal shellfish warden.

Section 305 Fees

305.1 Resident Commercial Shellfish License: $200.00 each, per year.

305.2 Non-resident Commercial Shellfish License: $400.00 each, per year.

305.3 Resident Recreational Shellfish License: $20.00 each, per year. Fee will be waived for residents aged 60 and over, or age 10 and under.

305.4 Non-resident Recreational Shellfish License: $35.00 each, per year. Fee will be waived for non-residents aged 60 and over, or age 10 and under.

305.5 Three (3) Day Recreational Shellfish License: $10.00 each, for a specific three (3 day period.

305.6 The Treasurer shall pay all fees received to the City except for $1.00 of each license, which will be retained by the City as payment for issuing the license. Fees received for shellfish licensing shall be used by the City for shellfish management, conservation, and enforcement.

Section 306 Application

The application for a license must be in the form of affidavit. It must contain the applicant's name, current address, period of residency, date of birth, height, weight, and such other necessary information as may be required. It must be signed by the applicant. **The application must contain a section which indicates that, by signing, the applicant specifically agrees to respect Eastport conservation and management measures, including any harvest limit, and any shellfish closed areas and acknowledge that failure to follow these measures shall result in loss of license.** The application shall contain the

date the license was issued and shall be filed with the City Clerk.

306.1 Misrepresentation
Any person who gives false information in connection with a Shellfish license application will cause said license to become invalid and void.

306.2 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.

306.3 Violations, Suspension of Licenses, and Fines
A person who violates this ordinance shall be penalized as provided by 12 M.R.S.A § 6671 and/or 6681.

1. A 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 with the court's decree.
2. The suspension shall be effective from the date of mailing of a Notice of Suspension by the City Clerk to the licensee.
3. Any violation of this ordinance may result in a license suspension.
4. All suspensions of licenses shall be authorized by the City Council.
5. Any licensee whose shell license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon filing a written request with the City Clerk within thirty (30) days following the effective date of the suspension.
6. The licensee may appeal the decision of the Shellfish Conservation Committee before the City Council by filing a written request of appeal with the City Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

Section 306.4 Any shellfish harvester with a Commercial License should be issued an ordinance for information on laws and regulations.

Section 306.5 Effective Date: The Eastport City Council hereby ordains this Ordinance will take effect on May 26, 2016.

This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the City, provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption.

Date Adopted: May 11, 2016

Scott Emery

Attest:
City Clerk
5-11-2016