AGENDA

SHELLFISH CONSERVATION COMMISSION

Tuesday, August 13, 2024 – 6:30 p.m.
Town Hall

Item 1. Call to Order.

Item 2. Those Present.

Item 3. Approval of Minutes: June 11, 2024

Item 4. Harbor Master's Report.

Item 5. Council Liaison's Report.

Item 6. General Public Comments.

Item 7. Old Business.

- Discussion and possible action on proposed amendments to Chapter 1002 – the Town of Scarborough Shellfish Conservation Ordinance.

Item 8. New Business. *[An item may be added to this agenda provided a majority of the committee votes to waive the rules to add said item.]*

- Discussion on town issued crab traps.

Item 9. Set Next Agenda.

Item 10. Adjournment.

CHAPTER 1002
TOWN OF SCARBOROUGH
SHELLFISH CONSERVATION ORDINANCE

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 Scarborough which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

a. Licensing

b. Limiting the number of shellfish harvesters

c. Restricting the time and area where digging is permitted

d. Limiting the minimum size of clams taken

e. Limiting the amount of clams taken daily by a harvester

f. Engaging in activities intended to protect and enhance the resource such as transplanting or seeding of shellfish. [Adopted 06/03/15]

3. Shellfish Conservation Committee:

The Shellfish Conservation Program for the Town of Scarborough will be administered by the Shellfish Conservation Committee consisting of 7 members to be appointed by the Town Council for terms of 3 years. The Committee's responsibilities include:

a. Establishing annually in conjunction with the Dept. of Marine Resources, the number of shellfish digging licenses to be issued.

b. Surveying the clam flats to maintain current information on shellfish resources.

c. Submitting to the Town Council, proposals for the expenditures of funds for the purpose of shellfish conservation.

d. Keeping this Ordinance under review and making recommendations for its amendments.

e. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the D.M.R.

f. Approving conservation closures and openings in conjunction with the Area Biologists of the D.M.R. [Amended 01/03/01].

g. Submitting an annual report to the Municipality and the D.M.R. covering the above topics and all other committee activities.

4. Definitions:

a. Resident

The term "resident" refers to a person who has physically resided at a fixed, permanent and principal home in the town for at least twelve months next prior to the date of application

for a license under this Ordinance or, in the case of student, to a student living temporarily outside of Scarborough while enrolled in a college, university or post-secondary school, provided such student maintains his or her fixed permanent principal home in Scarborough. [Amended 07/17/02; 01/17/24]

b. Non-resident
The term "non-resident" means anyone not qualified as a resident under this Ordinance.

c. Shellfish, Clams
When used in the context of this Ordinance, the words "shellfish and clams" mean soft-shell clams **MYA ARENARIA.**

d. Municipality
Refers to the Town of Scarborough, Maine.

e. Conservation Projects
Conservation Projects may include seeding projects, crab projects, school projects, surveys or any other project accepted by the Shellfish Conservation Commission. [Adopted 06/03/15]

5. Licensing - Municipal Shellfish Digging is required:

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this Ordinance.
A Commercial Digger must also have a valid **STATE OF MAINE COMMERCIAL SHELLFISH LICENSE** issued by the Department of Marine Resources, if state law makes possession of the state license a prerequisite to issuance of a municipal license.

A. Designation, Scope and Qualifications:

1. Resident Commercial Shellfish License:
The license is available to residents of the Town of Scarborough who are 18 years or older and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.[Amended 03/21/13]

2. Non-resident Non-reciprocating Commercial Shellfish License:
The license is available to non-residents of this municipality who are 18 years or older and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.[Amended 03/21/13]

3. Resident Student Commercial License:
The license is available to residents of the Town of Scarborough who are full time students between the minimum age of twelve (12) years old and the maximum age of twenty-two (22) years old on May 1 of the year in which the application is made. Applicants must show proof of age and proof of school attendance and students attending college must also show proof of a minimum of twelve (12) college credit hours per semester to be considered full-time students. Applicants under the age of 18 must also have the signature of a parent or guardian on the application for the license to be valid. This license entitles the holder to dig or take any amount of shellfish from the shores and flats of this municipality. [Amended 01/03/01; 07/17/02; 06/03/15]

4. Non-resident Student Commercial License:
The license is available to non-residents of the Town of Scarborough who are full time students between the minimum age of twelve (12) years old and the maximum age of twenty-two (22) years old on May 1 of the year in which the application is made. Applicants must show proof of age and proof of school attendance and students attending college must also show proof of a minimum of twelve (12) college credit hours per semester to be considered full-time students. Applicants under the age of 18 must also have the signature of a parent or guardian on the application for the license to be valid. This license entitles the holder to dig or take any amount of shellfish from the shores and flats of this municipality. [Amended 01/03/01; 07/17/02]

5. Over 60 Resident Commercial Bushel License:
The license is available to residents of the Town of Scarborough who are 60 years old and over. Applicants must show proof of age and residence. This license entitles the holder to dig or take one (1) bushel of shellfish from the shores and flats of this municipality at each tide. [Amended 02/18/98; 01/20/99]

6. Residential Recreational Shellfish License:
The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use the holder and his or her family. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a residential recreational shellfish license. Any holder of a recreational license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(H)(3). [Amended 06/03/15]

6-a. Non-resident Recreational Shellfish License:
The license is available to non-residents of the Town of Scarborough and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of the holder and his or her family. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a non-resident recreational shellfish license. Any holder of a non-resident recreational shellfish license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(H). [Amended 03/19/03; 06/03/15]

7. 65 and Over Resident Complimentary Shellfish License:
The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use the holder and his or her family. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a 65

and over residential complimentary recreational shellfish license. Any holder of a 65 and over resident complimentary recreational shellfish license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(J). [Adopted 01/17/24]

7.a. 65 and Over Non-Resident Complimentary Shellfish License:
The license is available to non-residents of the Town of Scarborough and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of the holder and his or her family. It is a violation of this ordinance for any person to sell, or otherwise receive remuneration for, any shellfish harvested pursuant to a 65 and over non-resident complimentary recreational shellfish license. Any holder of a 65 and older non-resident complimentary recreational shellfish license who is cited by the Shellfish Conservation Officer for selling or otherwise receiving remuneration for any shellfish harvested pursuant to that license, in addition to being subject to the other penalties provided in this ordinance, shall be ineligible for a recreational license in the next licensing year following that violation. The Shellfish Conservation Officer's determination of violation may be appealed in the same manner as a license suspension under Section 5(J). [Adopted 01/17/24]

8. Resident Recreational Day Licenses.
This license entitles residents and real estate taxpayers of the Town of Scarborough to dig or take up to one peck of shellfish from the shores and flats or this municipality during a single calendar day specified in the license. The duration of this license is one calendar day only. [Adopted 02/18/98]

9. Non-resident Recreational Day Licenses.
This license entitles non-residents of the Town of Scarborough to dig or take up to one peck of shellfish from the shores and flats or this municipality during a single calendar day specified in the license. The duration of this license is one calendar day only. [Adopted 02/18/98]

10. License must be signed.
The licensee must sign the license to make it valid.

11. Commercial and Recreational License Applicant. A commercial and recreational license applicant may apply for those licenses that they quality for; however, an applicant can only hold no more than one license. [Amended 01/17/24]

B. Contents of Application:
Any person may apply to the Town Clerk for the license required by this ordinance on forms provided by the municipality.

1. Contents of the Application:
The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever other information the Town Clerk may require.

2. False Statements.

Any person who provides information in support of an application under this ordinance must do so in the form of an affidavit. If the applicant provides false information, the applicant forfeits the right to a license and a license previously issued to that applicant shall become void. Any other person who gives false information in support of an application under this ordinance commits a violation of this ordinance punishable under section 5(K). [Adopted 02/18/98].

C. Fees:

The fees for the licenses are as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council, and must accompany in full the application for the respective license. License fees for residents and non-residents will be established in accordance to M.R.S.A. Title 12, Section 6671.3-A.(b). The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licenses shall be used by the Town for shellfish management, conservation and enforcement. Fees are non-refundable, except that the holder of a student commercial license who surrenders the license within seventy-five (75) days after the date of issuance shall receive a refund of one-half the license fee. [Amended 01/05/00; 01/17/24; 01/17/24]

D. Conservation Activities: [Adopted 06-03-15]

The Town encourages all shellfish diggers to protect and enhance the resource by participating in conservation activities such as seeding clam beds, participating in shellfish surveys, and participating in other approved resource management activities. All Commercial License holders 18 years of age or older are required to participate in shellfish conservation projects as deemed necessary by the Shellfish Conservation Committee. Seeding or other approved conservation activities also may be undertaken on a volunteer basis. Commercial License Holders who complete the specified number of hours of conservation activities which may include required shellfish seeding hours and volunteer hours for a total of twelve (12), will be eligible for license renewal pursuant to Section 5.E.4.(a) of this Ordinance. [Amended 01/07/24]

The Shellfish Conservation Committee will approve all accepted conservation activities by a majority vote. The names and number of hours completed on an accepted conservation activity will be recorded in writing by the Shellfish Conservation Officer and submitted to the Shellfish Committee or the Town Clerk on a monthly basis for their records. All conservation time must be submitted by January 15th by close of business, unless the 15th falls on a weekend, then must be submitted the following Monday. [Amended 01/07/24]

It shall be the sole responsibility of the Commercial License holder to contact the Shellfish Committee Members or the Shellfish Officer to determine the conservation available to participate in. The Shellfish Committee Chair, with consent of the majority membership of the Committee, may designate special conservation work during any period of State closure of the Town of Scarborough shellfish beds. The Chair may poll the Committee by telephone, email, fax or in person for the purposes of this section. Each Commercial License holder is encouraged to contribute at least half of their voluntary conservation activity in the form of low tide work. All crab trapping is considered low tide work. The conservation year will run from May 1st to November 30th. Surveys of the shellfish resource shall be conducted annually conservation activity, with the date and

location to be determined by the Shellfish Commission or the Marine Resource Officer. [Amended 01/07/24]

The Shellfish Conservation Committee may waive all or part of the requirement for shellfish seeding for an applicant who provides the Committee with a written statement from a physician indicating that the applicant was not able to participate in any regularly scheduled shellfish seeding due to incapacitation by illness or injury. The Committee may also allow the following alternative conservation work, on an hour for hour basis, upon the request of an applicant made at a regular monthly meeting of the Committee. Such alternative work may be used to meet the shellfish seeding requirement or may be used to qualify as additional volunteer conservation activity:

i. Another time to complete conservation time for an applicant who demonstrates to the Committee that the illness or incapacitation of a parent, spouse or child prevented that person from participating in regularly scheduled conservation time; or,

ii. Alternate, less strenuous work for an applicant who provides the Committee with a written statement from a physician indicating that the applicant is not physically able to participate in regular conservation work.

iii. At the discretion of the Project Leader, any scheduled conservation project may be canceled and/or terminated due to severe weather or safety concerns for those involved. Any participate present or arriving within ten minutes at the designated meeting area and start time must still sign in and sign out. These participants will receive the allotted hours of conservation time for that particular project regardless of performing the activity.

E. Issuance of Shellfish Licenses: [Amended 06-03-15]

Clam resources vary in density and size distribution from year to year and over the limited soft clam producing area of the Town. It is essential that the town carefully husband its shellfish resources. Following the annual review of the town's clam resources, its size distribution, abundance and the warden's reports, as required by Section 3, the Shellfish Conservation Committee, in consultation with the D.M.R. area biologist, will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.

1) Prior to February 1 of 1998 and each succeeding year, the committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license-year to the Commissioner of Marine Resources for concurrence.

2) After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to February 1 of 1998 and each succeeding year, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.

3) Notice of the number of licenses and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider

effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.

4) The Town Clerk shall accept applications for shellfish licenses annually commencing on the first day of March through to the first Monday and Tuesday in April. [Amended 03/19/03; 01/17/24]

(a) Commercial Renewal Licenses.

(i): The Clerk shall issue license only to holders of resident and non-resident commercial shellfish licenses who seek renewal and who have completed at least 12 hours of approved conservation activities which may include mandatory shellfish seeding as well as voluntary conservation work approved under this Ordinance during the term of their current licenses or at least 4 hours of such work if the holder is 70 years of age or older. Such applicants may apply by mail or must appear in person at the office of the Town Clerk during that two day period and pay the application fee at the time of issuance of the license. The Clerk shall issue commercial licenses to such qualified applicants on a first come, first served basis during those two business days. Any holder of a commercial license whose status as a resident or non-resident has changed at the time of application or who did not complete the requisite hours of approve conservation activities shall not be entitled to apply for renewal under this subsection (a) but may apply for a new license under subparagraph (b) below. [Amended 03/16/05; 06/03/1; 01/17/24]

(ii): Effective March 1, 1998 in lieu of applying in person pursuant to subparagraph (I) above, Applicants for a renewal resident or non-resident commercial license may apply by mail. Applications by mail must be received at the Town Clerk's office on a day that office is open for business no earlier than March 1 and no later than the Tuesday following the first Monday in April. The application must be accompanied by the required license fee, a copy of the applicant's driver's license, a copy of the applicant's motor vehicle registration certificate, and any other information upon which the applicant relies to document residency. The Clerk shall mark all applications with the date and time of receipt. If more than one application is received at the same time, the Clerk shall determine their order or receipt of random drawing and mark them accordingly. The Clerk's marks concerning order of receipt shall be conclusive for purposes of applying the first-come first-served provisions of paragraph (i) above. [Amended 01/17/24]

(b) Non-Renewal Resident Commercial and Non-Resident Non-Reciprocating Commercial Licenses.

(i) On the third and fourth subsequent business days following the renewal process as noted in paragraphs 4.a (i)(ii) above, the Clerk shall accept applications for any remaining resident commercial shellfish licenses and non-resident non-reciprocating commercial shellfish licenses. Applicants must apply in person and be 18 years of age at the time of application, at the office of the Town Clerk. The Clerk shall not issue any licenses during the third and fourth

business days, but shall inform each applicant that licenses will be awarded on the basis of a lottery and advise each applicant of the time and place where the lottery will be held. On the fifth subsequent business day, the Clerk shall conduct a lottery for the issuance of the remaining resident commercial shellfish licenses and a lottery for the issuance of non-resident non-reciprocating commercial shellfish licenses. In order to be entered into the lottery, an applicant must be present and must tender the application fee at the time of the lottery drawing. The Clerk shall award the remaining resident commercial shellfish licenses by drawing the names of qualified applicants at random and then shall award the non-resident non-reciprocating commercial shellfish licenses by drawing the names of qualified applicants at random. [Amended 01/17/24]

(ii) If, after June 1 annually, any allocated licenses remain unissued, on the first *consecutive* Monday, Tuesday and Wednesday in June applications shall be taken and placed in a lottery pool. Applicants must apply in person and be 18 years of age at the time of application. On the following ~~Friday~~ Monday, applicants' names shall be drawn at random by the Town Clerk. Physical presence and full payment are required at the time of drawing, and all applicants must meet eligibility requirements for the license category that they apply for. The lottery shall be conducted in the same fashion as the lottery under section 5(E)(4)(b)(i).

(iii)Lottery Bonus Points shall be awarded to applicants who have successfully applied in previous years, as follows:

Applicants who apply to multiple lotteries in a row without winning a permit can earn bonus points (extra chances in drawing). Points are non-transferrable and are accumulated, as follows:

0-5 Lotteries: 1 Points/Lottery
6-10 Lotteries: 2 Points/Lottery
11-15 Lotteries: 3 Points/Lottery
16+ Lotteries: 10 Points/Lottery

Bonus points are tracked by the Town Clerk using your name and date of birth. To receive bonus points, an applicant must enter the correct name and date of birth on the application. The applicant will also need to indicate that they applied for the lottery the last year that it was held. The Town Clerk upon receiving an application will review the applicant's record and provide applicants with a number of bonus points which will be entered in the lottery.

An applicant will forfeit bonus points if the applicant:

- Fails to apply for bonus point in any one (1) Lottery; or,
- Obtains a Municipal Residential and/or non-residential Commercial Shellfish License through the Lottery; or,
- Is selected for a Municipal Residential and/or non-residential Commercial Shellfish License, but declines it, and/or fails to meet the criteria for legally possessing it; or,
- Is found to have not legally applied in the current year; or,

- Enters the incorrect name or date of birth on the application or fails to indicate that the applicant applied for a permit in the previous year. [Adopted 01/17/24]

(c) Resident Student Commercial Renewal Licenses, Non-Resident Student Commercial Renewal Licenses and Over 60 Resident Commercial Bushel Renewal Licenses.
Shall be renewable in the same manner as Resident and Non-Resident Commercial Licenses under Section 5.E.4(a), except that required shellfish seeding hours and additional voluntary conservation hours shall be:

Resident & Non-Resident Student Commercial Licenses under the age of 18. [Amended 06/03/15]	No conservation time required. [Voluntary participation is encouraged.] [Amended 06/03/15]
Resident & Non-Resident Student Commercial Licenses 18 years of age or older at time the license is issued. [adopted 06-03-15]	Twelve (12) hours of approved conservation activities. [Adopted 06-03-15]
Over 60 Resident Commercial Bushel Licenses	Eight (8) Hours of approved conservation activities. [Amended 03/16/05; 11/02/05; 06/03/15]
All Commercial License Holders 70 or Older	Four (4) hours of approved conservation activities. [Amended 03/16/05; 11/02/2005; 06/03/15]

Any holder of a student commercial license or over 60 license whose status as a resident or non-resident has changed at the time of application or who did not complete the requisite hours of approved conservation activities shall not be entitled to apply for renewal under this subsection (a) but may apply for a new license under subparagraph (d) below.

(d) Non-Renewal Resident Student Commercial Licenses, Non-Resident Student Commercial Licenses and Over 60 Resident Commercial Bushel Licenses. Applications for new (non-renewal) Resident Student Commercial Licenses, Non-Resident Student Commercial Licenses and Over 60 Resident Commercial Bushel License shall be processed in the same manner as applications for non-renewal Resident Commercial and Non-Resident Non-Reciprocating Commercial Licenses under Section 5.E.4(b), except that for Resident Student Commercial Licenses and Non-Resident Student Commercial Licenses the clerk shall continue drawing names after all licenses have been awarded and until all applicants have been placed on a list in the order their names have been drawn. Any Student Commercial License which is surrendered after issuance shall be made available to the remaining applicants on that list in the order their names were drawn, and then to other applicants on a first-come, first-served basis.

(e) Resident Recreational Licenses.
Commencing on the second Monday in April annually the Town Clerk shall accept applications for resident recreational shellfish licenses. Applicants must appear in

person at the office of the Town Clerk. Licenses shall be awarded on a first come, first served basis.

(f) 65 and Over Complimentary Resident Recreation Licenses.
Commencing on the second Monday in April annually, the Town Clerk shall accept application for 65 and over resident recreational shellfish licenses. Applicants must appear in person at the office of the Town Clerk. Licenses shall be awarded on a first come, first served basis. [Adopted 01/17/24]

(g) Non-resident Recreational Licenses.
Commencing on the second Monday in April annually, the Town Clerk shall accept applications for non-resident recreational licenses. Applicants must appear in person at the office of the Town Clerk. Licenses shall be awarded on a first come, first serve basis. [Amended 01/17/24]

(h) 65 and Over Complimentary Non-resident Recreational Licenses.
Commencing on the second Monday in April annually, the Town Clerk shall accept application for the 65 and over non-resident recreational shellfish licenses. Applicants must appear in person at the office of the Town Clerk. Licenses shall be awarded on a first come, first served basis. [Amended 01/17/24]

(i) Remaining Licenses.
If, after August 1 annually, any allocated licenses remain unissued, the clerk shall issue such licenses on a first-come, first served basis, without regard to the residency of the applicant or the allocation between resident and non-resident licenses. [Amended 03/16/05; 11/02/05]

(j) Day Licenses.
After all available resident and non-resident recreational licenses have been issued under Section 5(E)(4)(d) and 5(E)(4)(e) above, the clerk may receive applications for and issue resident recreational day licenses and non-resident recreational day licenses, on a first-come, first-served basis. Applicants must appear in person at the office of the Town Clerk no earlier than five (5) calendar days before the day for which the license is requested. The five (5) calendar days starts the day the initial visit to obtain the permit is made. An applicant may obtain only a day license for up to three (3) ~~consecutive~~ days [within the five (5) calendar days noted above]. and must appear in person for each license requested. Each license issued under this section shall specify the calendar day for which it is issued and shall be valid for that day only. If multiple licenses are requested, a license for each day shall be issued. [Amended 03/16/2005; 11/02/2005; 01/17/24]

(i) One – Peck Day License must be used on the date listed on the license. In the event of flat closures, per the State, please contact the Town Clerk's Office at 207-730-4020 the day of the closure to inform staff your license was not used. If the office is closed, you must leave a voicemail stating your name, contact information and date of the closure. In some cases, a credit for the unused licenses may be issued at the discretion of the Town Clerk. All credits must be used within 30 days of the original license date or the credit will be forfeited. [Adopted 01/17/24]

F. License expiration date:
Each license issued under authority of this Ordinance expires at midnight the 30th of April next following the date of issue. Day licenses shall expire at midnight on the day they are issued for. [Amended 01/17/24]

G. Reciprocal Harvesting Privilege:
Licensees from any other municipality co-operating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of their management program, may harvest shellfish according to the terms of their licenses.

H. Children 16 years or younger may accompany a recreational license holder:
The recreational license holder and accompanying children are entitled to dig no more than the previously stated amount, "one peck of shellfish in any one day for the use of the holder and his or her family." [Amended 07/17/02; 06/03/15]

I. Suspension:

1. Any shellfish licensee having one conviction for a violation of this Ordinance or for a violation occurring within the Town of Scarborough of any state statute regulating the digging or taking of shellfish shall have his or her shellfish license automatically suspended for a period of 14 days. Subsequent convictions during the same license year (May 1 - April 30) shall result in an automatic suspension of sixty (60) days. A licensee shall have his or her record cleared if there are no convictions within one year from the time of a conviction. As used in this paragraph, the term "digging" means using a shovel, spade, rake, tool or hands to uncover shellfish from the ground and the term "taking" means removing a marine organism from its natural habitat. [Amended 04/18/01; 06/03/15]

2. Any shellfish licensee having one conviction for a violation occurring within the Town of Scarborough of 12 M.R.S.A. § 6625 (governing identification and tagging of shellfish) shall have his or her shellfish license automatically suspended for a period of seven (7) days. Subsequent convictions during the same license year (May 1 - April 30) shall result in an automatic suspension of fourteen (14) days. A licensee shall have his or her record cleared if there are no convictions within one year from the time of a conviction. [Amended 04/18/01; 06/03/15]

3. A licensee whose shellfish license has been suspended pursuant to this section shall automatically have his or her license reinstated after the period of suspension has been served. [amended 04/18/01; 06/03/15]

4. The suspension shall be effective from the third business day after the date of mailing of a Notice of Suspension by the Town Clerk to the Licensee or upon presentation of a Notice of Suspension by the Town Marine Resource Officer, whichever is earlier. [amended 02/18/98].

5. Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon filing of a written Request for Hearing with the Town Clerk within 30 days following the effective date of suspension. Filing of the request for hearing with the Town Clerk stays the suspension until the end of the seventh day

following the decision of the Shellfish Conservation Committee. The licensee may appeal the decision of the Shellfish Committee before the Town Council by filing a written Request for Appeal with the Town Clerk within 7 days of the decision of the Shellfish Conservation Committee. Filing of the Request for Appeal with the Town Clerk stays the suspension until the Town Council has rendered its decision. [Amended 04/18/01; 03/01/06;`]

6. No holder of a commercial license under this Ordinance shall dig or take shellfish during any time that holder's State of Maine Shellfish License is suspended. During any such period of suspension, the holder's license under this Ordinance is automatically suspended. [Amended 02/18/09]

J. Opening and Closing of Flats:

The Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources, may open and close the areas for shellfish harvest (the "Conservation Areas"). Except in the case of emergencies, the Shellfish Conservation Committee shall follow the following procedure prior to opening or closing a Conservation Area:

1. Upon determination by the Shellfish Conservation Committee or by the Chair of the Committee that the opening or closing of a Conservation Area should be considered, the Chair shall place the proposed opening or closing on an agenda for a public hearing.

2. No less than 7 days prior to the hearing, a notice of the hearing describing the location of the Conservation Area proposed to be opened or closed shall be: (a) posted at the Town Office; (b) published in a newspaper of general circulation in the Town of Scarborough; and, (c) communicated to the Department of Marine Resources. The notice may also be placed on the Scarborough Shellfish Conservation Officer's telephone recording.

3. At the public hearing, the Shellfish Conservation Committee shall present and entertain evidence obtained from shellfish surveys and other sources. Members of the public may then comment on such evidence and may present additional evidence relevant to the proposed opening or closing.

4. At the conclusion of the evidence, the Shellfish Conservation Committee shall make findings of fact based on the evidence presented, shall reach conclusions based on those findings of fact, shall order whether the Conservation Area in question shall be opened or closed, and may set such time limitations and other harvesting conditions as are consistent with good conservation practices.

5. The order of the Shellfish Conservation Committee shall be forwarded to the Commissioner of Marine Resources and shall not take effect until approved by the Department of Marine Resources.

In the event the Shellfish Conservation Committee determines that an emergency closing of a Conservation Area is necessary, the Committee may take action without following the procedures described above, provided that the Committee makes a reasonable effort to give adequate public notice and allow for public participation. [Amended 01/03/01]

K. Hours Prohibited:
It shall be unlawful to dig any shellfish anywhere in the Town of Scarborough between the hours of one half hour after sundown and one half hour before sunrise. [Amended 10/17/07; 03/21/13]

L. Penalty:
Any person who violates any provision of this ordinance commits a crime, not a civil violation, punishable by a fine of up to $1,500 per offense, as provided in 12 M.R.S.A. §6671(10). Any person holding a commercial license under this Ordinance who aids or abets the harvest of shellfish in violation of this Ordinance also commits a violation of this Ordinance and shall be subject to the same fines as the person he or she assisted. [Amended 04/04/07]

M. Administrative Suspension of Recreational License:
If the Shellfish Conservation Officer determines that the holder of a recreational license has sold or otherwise received remuneration for shellfish harvested pursuant to the recreational license, or that the holder of a license has violated Section 5(N) of this ordinance the Shellfish Conservation Officer may impose an administrative suspension of the License and of eligibility for a license in the next licensing year. The Shellfish Conservation Officer shall give written notice to the license holder of the administrative suspension, which shall be effective from the third business day after mailing of the Notice of Suspension or upon presentation of the Notice of Suspension by the Shellfish Conservation Officer, whichever is earlier. The license holder may appeal the administrative suspension in the same manner as an automatic suspension under section 5.H.(3). The Shellfish Conservation Officer may, at their discretion, employ the administrative suspension in addition to or as an alternative to the penalties provided in section 5.K. The administrative suspension process and determinations resulting from that process are separate from and shall not be affected by the pendency or outcome of any court proceeding for the imposition of penalties under section 5.K. [Amended 02/18/98; 06/03/15]

N. Clam Size and Tolerance of Harvest:

1) Clam size and tolerance of harvest. A person shall not harvest or possess softshell clams which are less than two (2) inches in the longest diameter to the amount of more than ten (10) percent of any lot.

2) The method of determining tolerance. The tolerance of ten (10) percent 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 lot. If the lot contains less than one (1) peck, the tolerance must be determined by numerical count of the entire lot.

O. Unlawful Sale of Shellfish.
It is a violation of this Ordinance for any holder of a license under this Ordinance to sell or otherwise receive remuneration for any shellfish dug or taken within the Town of Scarborough by any person who does not hold a valid shellfish license issued by the Commissioner of Marine Resources pursuant to 12 M.R.S.A. § 6601. [Amended 02/18/98]

P. Method of Harvest.
The only acceptable method of harvest shall be by use of the hand-held clamrake, with a handle no more than eighteen inches in length. Use of shovels, spades and pitch forks shall be prohibited. [Amended 03/01/06]

Dates Amended:
Adopted December 4, 1985
Amended January 6, 1986
Re-Adopted February 15, 1989
Amended February 7, 1990
Amended December 19, 1990
Re-Adopted February 19, 1992
Amended February 19, 1992
Amended March 3, 1993
Amended February 2, 1994
Re-Adopted as amended February 15, 1995
Amended September 5, 1995
Amended 02/28/96
Amended 02/19/97
Re-Adopted as Amended February 18,1998
Amended January 20, 1999
Amended January 5, 2000
Amended January 3, 2001
Re-Adopted February 7, 2001
Amended April 4, 2001
Amended July 17, 2002
Amended March 19, 2003
Re-Adopted as Amended March 17, 2004
Amended March 3, 16, 2005
Amended November 11, 2005
Amended March 3, 2006
Amended April 4, 2007
Amended October 17, 2007
Amended February 18, 2009
Amended March 3, 201303/20/13
Amended June 3, 2015
Amended October 5, 2016
Amended January 17, 2024

Chapter 311 – Schedule of Fees

Chapter 1002 - Shellfish Ordinance, Fees	**Fee**
Resident Commercial	$200.00
Non-resident Non-reciprocating Commercial	$400.00
Resident Student Commercial	$100.00
Non-resident Student Commercial	$200.00
Over - 60 Years Resident Commercial (Bushel)	$100.00
Resident Recreational - (Over 65 Free)	$25.00
Non-Resident Recreational 20 Available – (Over 65 Free -14 Available) [Adopted 12-17-2003]	$50.00
Resident Recreational Day Pass (Amended 04/06/05; 01/17/24)	$10.00
Non-Resident Recreational Day Pass (Adopted 01/17/24)	$20.00