

**TOWN OF PHIPPSBURG**  
**SHELLFISH CONSERVATION ORDINANCE**  
**May 3, 2017**  
**Amended through May 3, 2018**

1. **AUTHORITY:** This Ordinance is enacted in accordance with 12 MRSA Section 6671, and repeals and replaces in its entirety “SHELLFISH CONSERVATION ORDINANCE, TOWN OF PHIPPSBURG” dated May 3, 2016.
  - A. All flats bordering the Popham Beach State Park as of March 12, 2009 are under the jurisdiction of the Phippsburg Shellfish Conservation Ordinance. Recreational digging in Popham Beach State Park will not require a recreational license. Access routes to the flats will be determined by the Popham Beach State Park Manager.
  
2. **PURPOSE:** To establish a shellfish conservation program for the Town of Phippsburg which will ensure 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 shellfish harvesting is permitted.
  - D. Limiting the minimum size of clams taken.
  - E. Limiting the amount of clams taken daily by a recreational harvester.
  - F. Management plans in Phippsburg and in cooperation with other towns for the conservation of shellfish in a manner consistent with the production of a reasonable yield to shellfish harvesters.
  
3. **CONSERVATION AND MANAGEMENT OF SHELLFISH RESOURCES:** It is determined that:
  - A. The clam flats of the Town are a valuable shellfish resource which is important to the local economy.
  - B. These flats are not an inexhaustible resource and, therefore, they must be prudently managed.
  - C. As part of the management process it is deemed necessary to restrict the number of shellfish licenses, to restrict the size and quantity of shellfish which may be harvested, and to take other measures as outlined in this Ordinance.

4. **SHELLFISH CONSERVATION COMMITTEE:** The Shellfish Conservation Program for the Town of Phippsburg will be administered by the Shellfish Conservation Committee consisting of five regular members and two alternate members to be appointed by the Selectmen for terms of three years.

A. Committee Responsibilities:

- (1) Establishing annually, in conjunction with the Department of Marine Resources, the number of shellfish harvesting licenses to be issued.
- (2) Schedule surveys as needed to gain data to determine the status of the Town's shellfish resources.
- (3) Submitting to the Board of Selectmen proposals for the expenditure of funds for the purpose of shellfish conservation.
- (4) Keeping this Ordinance under review and making recommendations for its amendment.
- (5) Securing and maintaining records of shellfish harvested from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.
- (6) Recommending conservation closures and openings to the Board of Selectmen in conjunction with the area biologists of the Department of Marine Resources.
- (7) Submitting an annual report to the Town and the Department of Marine Resources covering the above topics and all other committee activities.
- (8) Identifying conservation work which will qualify an applicant for "Renewal" or "New License" status. The Municipal Shellfish Conservation Warden and/or Shellfish Conservation Committee members shall record the names and hours worked by individuals on these projects and submit them to the Shellfish Conservation Committee monthly.
- (9) Maintain a water quality testing program on the Kennebec River flats so as to enable harvesting.

5. **DEFINITIONS:**

- A. Clam flats - means the shore area between high and extreme low water marks.
- B. Conservation Work - conservation credit activities related to propagating, harvesting, cultivating, or farming shellfish which is approved by the Shellfish Conservation Committee such as re-seedings or surveys.

- C. Domiciled – means a person’s fixed, permanent and principal home.
- D. Harvest - means to dig or take by any means.
- E. Held a License - to have a license until the end of the harvesting year (June 30<sup>th</sup>). Credit will not be given for a partial year (i.e. if a Harvester surrenders his/her license he/she will not be given credit for having held a license for that year).
- F. License Reduction through Attrition - a program which reduces commercial adult licenses by not reissuing them once surrendered and not allowing licenses left over from the Commercial Adult Renewal Category to go into the Commercial Adult New License Category. Resident Commercial Student licenses are exempt from this program.
- G. Municipality - refers to the Town of Phippsburg.
- H. Nonresident - anyone not qualified as a resident under this Ordinance. Domiciled means a person’s fixed, permanent and principal home.
- I. Possession - to have in one’s custody or control, either personally or by another person who is under one’s control.
- J. Required Conservation Time - A minimum of twelve (12) hours of conservation work between May 1<sup>st</sup> of the prior year and the last day of the following April. Of the minimum of 12 hours at least 8 must be contributed to reseeded efforts. A harvester 65 years of age or older on the last day of April of the licensing year must complete a minimum of twelve (12) hours of conservation time but is exempt from the requirements to complete 8 hours of reseeded. Students must have at least five (5) hours of any type of conservation time to renew a Resident Commercial Student License.
- K. Resident (Commercial Shellfish Harvesting License) - a person who has been domiciled in this Town for at least six months (180 days) prior to the time claim of such residence is made, and who shall remain domiciled during the period of time the license is valid.
- L. Resident (Recreational Shellfish Harvesting License) - an individual and his/her family who are:
- Living in town as a taxpayer
  - Renting a home, apartment, or cottage
  - Renting a campsite at an established state licensed campground (i.e. Hermit Island, Head Beach, Meadowbrook).
  - Camping on private property with a camping permit issued by the Code Enforcement Officer in accordance with the Town’s Land Use Ordinance.

Also, a guest who is staying at a “Residents” dwelling or camping on their property may purchase a Resident Recreational license which is valid as long as the guest remains in Phippsburg overnight (cannot day trip from outside of Phippsburg on a Resident Recreational license).

- M. Shellfish or Clams - when used in the context of this Ordinance means soft shell clams (*Mya arenaria*), Quahogs (*Mercenaria mercenaria*), Atlantic Surf Clams (Hen Clams - *Spisula solidissima*), Razor Clams (*Ensis Directus*), Eastern/American Oysters (*Crassostrea Virginica*), and European Oysters (*Ostrea Edulis*).
- N. Start to Finish for a Grid Survey – Shellfish Harvesters must sign in and out with the supervisor of the Grid Survey to be credited with the time.
- O. Student - actively enrolled in grades 5 through 12 as of the date of application for consideration of a Resident Commercial Student License.
- P. Take - to remove or attempt to remove a marine organism from its natural habitat.

## 6. LICENSING:

- A. A Phippsburg shellfish harvesting license is required for any person 10 years or older to harvest or take shellfish from the shores and flats of this municipality. A commercial harvester must also have a valid State of Maine commercial shellfish license issued by the Department of Marine Resources before harvesting shellfish in Phippsburg. Shellfish licenses are not required in order to dig and take no more than one peck in Popham Beach State Park areas where and when it is lawful to do so.
- B. Designation, Scope and Qualifications:
  - (1) Resident, Nonresident and Student Commercial Shellfish Licenses: These licenses are available to commercial harvesters and entitles the licensee to harvest or take any amount of shellfish from the tidal waters or clam flats of this municipality where and when it is otherwise lawful to do so.
  - (2) Nonresident Commercial Licenses: A minimum number of Commercial Shellfish Licenses shall be provided for nonresidents which shall be a number not less than ten (10) percent of the number of Commercial Shellfish Licenses provided for residents.
  - (3) Resident and Non Resident Recreational Licenses: A Recreational License entitles the holder to harvest and take no more than one peck of soft shell clams (*Mya arenaria*), one peck of Quahogs (*Mercenaria mercenaria*), one bushel of Atlantic Surf Clams (Hen Clams – *Spisula Solidissima*), one peck of Razor Clams (*Ensis Directus*), one peck of Eastern/American Oysters (*Crassostrea Virginica*) and one peck of European Oysters (*Ostrea Edulis*) in any one day. Shellfish harvested by holders of a Recreational License are for the consumption by the harvester and his/her family and shall not be sold. This license is not available to holders of a State of Maine

Commercial Shellfish License. Recreational license fees shall be waived for residents 65 years or older and 16 years or younger. A license is not required for children under the age of 10 as long as they are with an adult who has a valid town shellfish license.

(4) License must be signed: The licensee must sign the license to make it valid.

C. Application deadline and contents: Applications for licenses may be obtained at the Town Office starting May 1<sup>st</sup> of each year.

(1) Submission: Applications must be submitted according to the following schedule:

(a) Commercial Renewal and New Licenses: Applications must be submitted during the month of May prior to the close of business on the last scheduled business day at the Town Hall. The Town Administrator will mail a reminder notice and application to all current license holders the last week in April. The first week in May the Town Administrator will review applications received with the Chairman of the Shellfish Commission and issue licenses in accordance with this ordinance.

(b) Commercial General and Recreational Licenses: Applications may be submitted at any time.

(2) Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, category of license sought, current address and duration there, birth date, height, weight, signature, and whatever other information the town may require.

(3) Misrepresentation and Ineligibility: If the Town Administrator becomes aware of circumstances which suggest a licensee has given false information on a license application or is otherwise ineligible the Police Chief or his designee will investigate those circumstances. If the results of the investigation suggest a licensee has given false information on a license application or is otherwise ineligible to hold a license under this ordinance, the Shellfish Commission will hold a hearing as per section 12. The Police Chief shall present the evidence suggesting that false information has been given or that the individual is otherwise ineligible. The licensee shall have the right to present evidence to show that false information has not been given or that he/she is eligible. Persons aggrieved by this suspension may appeal as per section 13.

(4) Limitation of Commercial Shellfish Harvesting Licenses: Because the shellfish resources are limited and because a harvester can be expected to harvest a certain volume of shellfish per year, the number of harvesters must be controlled. This number may vary from year to year, depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization.

(a) License Fees and Allocation: The fees and allocation of licenses shall be set by May 1st of each year by the Board of Selectmen based on a recommendation from

the Shellfish Conservation Commission. The Town Administrator will send the “notification of license allocation” to the Department of Marine Resources by May 5<sup>th</sup> for their approval. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation, enforcement, and other shellfish related matters.

- (b) Issuance of Licenses: The Town Administrator shall issue commercial licenses to residents and non-residents according to the priorities listed in this ordinance. Recreational licenses for the new license year may be issued during normal business days starting June 16<sup>th</sup> such licenses not to be valid until July 1st.
- (c) Commercial Renewal License Category: This commercial category of license shall be available on normal municipal business days to qualified applicants for the period beginning June 16th and ending June 30th. If a Resident Commercial Student license holder applies for both a Resident Commercial Student license in the renewal category and a Resident Commercial Adult license in the new license category their Resident Commercial Student renewal license may be held after June 30th until it is determined if they qualify for a Resident Commercial Adult license. Applicants must:
- (1) Have submitted an application during the month of May.
  - (2) Have been licensed for the previous year.
  - (3) Have completed the number of conservation hours described in the definitions section of this ordinance under “Required Conservation Time.” Upon written request the Shellfish Conservation Commission may hold a hearing as per section 12 to waive all or part of an applicant’s conservation time requirement due to unforeseen circumstances to include, but not limited to, medical issues or family emergencies. Any request for hearing must be submitted by the date of the April Shellfish Conservation Meeting or earlier. Unless physically incapable, the applicant will still be required to complete a total of 12 conservation hours through less strenuous work, such as attending meetings. Any licensee aggrieved by the decision of the Shellfish Conservation Commission may appeal as per section 13.
  - (4) Have at least five (5) hours of any type of conservation time to renew a Resident Student Commercial License.
  - (5) Have not more than two (2) convictions for violation of this Ordinance during the preceding year.
  - (6) Have purchased a shellfish license prior to the end of the period of issuance of the previous license cycle.

- (7) Failure to obtain a renewal license during the time period designated in section 6.C.(4)(c) will result in the forfeiture of seniority (in terms of years a license has been held during the past five years) and accumulated conservation time for the purpose of obtaining a new license for the coming year. Loss of seniority and accumulated conservation time is temporary and will not apply to the next year's license sale.
- (8) If a harvester held a Commercial license the previous year and did not meet the required conservation time as defined in section 5.I. (Definitions) for a renewal license then he/she is not eligible to participate and receive a license in the new license category. The unissued renewal license may then be eliminated by vote of the Shellfish Commission and Selectmen by reducing the annual allocation request to the Department of Marine Resources. This is referred to as a "license reduction through attrition."

In the event that the number of qualifying applications exceeds the number of available licenses, licenses shall be awarded according to seniority in terms of the number of years that each applicant has held a valid Phippsburg Commercial Shellfish Harvesting License consecutively over the last five years. In the event there is a seniority tie for the last license(s) to be awarded, the remaining license(s) shall be awarded by lottery.

- (d) Commercial New License Category: If any commercial licenses are still available under this year's approved license allocation, this category shall be available on normal business days to qualified applicants for the period beginning July 1<sup>st</sup> and ending July 14<sup>th</sup>. Credit (seniority) of "years having held a license" is not transferable between categories (Non Resident to Resident Commercial Licenses or Resident to Non Resident Commercial Licenses). Applicants must:

- (1) Have submitted an application during the month of May.
- (2) Have no convictions for violation of this Ordinance during the preceding year.

In the event that the number of qualifying applications exceeds the number of available licenses, they shall be awarded according to the priority list below. In the event of a tie in any of the following categories the issuance of the license shall be determined by lottery. Years that a harvester held a Resident Commercial Student license counts towards the issuance of a regular Commercial Resident or Nonresident License.

Consideration #1 - Completed the "Required Conservation Time" and held a license for Five of the last Five years

Consideration #2 - Completed the "Required Conservation Time" and held a license for Four of the last Five years.

- Consideration #3 - Completed the “Required Conservation Time” and held a license for Three of the last Five years.
- Consideration #4 - Completed the “Required Conservation Time” and held a license for Two of the last Five years.
- Consideration #5 - Completed the “Required Conservation Time” and held a license for One of the last Five years
- Consideration #6 - Completed the “Required Conservation Time” and has not held a license, but has completed the “Required Conservation Time” during any of the past 5 years. Licenses are issued to the applicants with the most years of “Required Conservation Time” in a row counted back from the date of application.
- Consideration #7 - Less than Twelve hours of any Conservation Time or has Twelve or more hours of Conservation Time but has failed to meet the requirement of 8 hours reseeding (issued to the applicant with the most hours).
- (e) Un-issued Commercial Licenses: If any licenses still remain un-issued after July 14<sup>th</sup>, they will be available for those harvesters who have applications pending on file for the specific category that the license is left over from (Resident Commercial, Non-Resident Commercial, or Resident Commercial Student). In the event that the number of applications on file exceeds the number of licenses left over, they will be awarded in accordance with the same priority list that is used in the Commercial New License Category. In the event of a tie, the issuance shall be determined by lottery. If any licenses remain left over after considering all applications on file as of July 14<sup>th</sup> then the licenses will be issued in order of applications received after July 14<sup>th</sup> for the specific category. If any licenses remain left over on the first municipal business day in October they will be issued to resident and nonresident members of the general public on a first come - first served basis. Student Commercial licenses must be issued to students. Applicants must have no convictions for violation of this Ordinance during the preceding year.
- (f) License Notification: When notified of the availability of a license the applicant must purchase his/her license within 14 days. If the license is not purchased within 14 days the next applicant on the priority list will be notified that the license is available.

- (g) Conservation Activity Attendance: It is the responsibility of the individual Shellfish Harvester to sign the attendance sheet at each meeting or event or otherwise ensure that their names are listed for credit. It is also the responsibility of the Shellfish Harvester to remain aware of any changes in the meeting or events schedule, which will be posted at the Town Office.
- (5) Surrender of License: Once a license is issued for a harvest year it cannot be surrendered by the license holder during that year unless:
- (a) The license holder has died (automatic surrender). The surrendered license would either be reissued in a manner consistent with the procedures of the “New License Category” and “Unissued License Category” or it may be eliminated by vote of the Shellfish Commission to reduce the number of available licenses in the future as part of a “license reduction through attrition program.”
  - (b) A Commercial Resident license holder moves out of town and establishes a fixed, permanent and principal home elsewhere. In this case they must surrender their license within 30 days. The same applies to a Commercial Nonresident License holder who moves into town. A surrendered license would either be reissued in a manner consistent with the procedures of the “New License Category” and “Unissued License Category” or it may be eliminated by vote of the Shellfish Commission to reduce the number of available licenses in the future as part of a “license reduction through attrition program.” However, the number of nonresident commercial licenses allocated can never fall below 10% of the resident commercial licenses allocated.
  - (c) A holder of a Commercial Shellfish license who is a Military Reservist or National Guard member is called to active duty. They may surrender their license to the Town by giving notice to the Town and the estimated times of the active duty. Within 30 days of the return from active duty, the individual shall submit an application to the Town for re-issuance of the license or issuance of a new license and the town shall reissue or renew the license. All conservation time shall be waived for the issuance of a renewal license. Upon notice and surrender of a license under this provision, the Town may temporarily issue the license or renewal thereof to a new harvester in the same license category in accordance with the priority list in section 6.C.(4)(d) “Commercial New License Category” of this ordinance, and such temporary license shall be surrendered upon the return of the Military Reservist or National Guard member or upon the request of the Town. The cost of the license for the Military Reservist or National Guard member and reimbursement to the temporary holder shall be prorated.
  - (d) If a license is surrendered in accordance with the above sections the license holder (or family in the case of death) will receive a refund of the fee paid, prorated for the remaining term of the license.

- (6) Expiration of License: Each license issued under authority of this Ordinance expires at midnight on the last day of June of the following year, except that licenses issued between January 1<sup>st</sup> and the last day of June under the previous year's quota of licenses shall expire on the last day of June.
- (7) Reduction in License Allocation: If, for any reason, a reduction in license allocation is necessary, and cannot be accomplished through the "license reduction through attrition" program, the person(s) who have held their license for the least amount of consecutive years (counted back from application date five years) will not be issued a renewal license. In the case of a tie a lottery will be held with the winner(s) being awarded the licenses.
- (8) Business Owners: Owners of Phippsburg businesses renting cottages or camping spaces may be issued sufficient recreational licenses for their customers. These licenses will have the same restrictions as licenses purchased directly from the Town Office, except that the business owner shall issue these licenses only for the time their guests are scheduled to be staying at that business.
- (9) Suspensions:
- (a) Violation of Ordinance: The Shellfish Conservation Commission shall be empowered to suspend for up to 60 days, after public hearing as per section 12, the license of any person it finds in violation of this Ordinance. The Shellfish Conservation Commission may also suspend the right to purchase a license for up to 60 days, of persons found to be harvesting without a license in violation of the terms of this Ordinance. Licensees aggrieved by this suspension may appeal as per section 13.
- (b) Leaving the Scene: Any Shellfish Licensee who leaves the scene while being summonsed by a Law Enforcement Officer/Municipal Shellfish Conservation Warden or who refuses a summons issued by a Law Enforcement Officer/Municipal Shellfish Conservation Warden shall have his/her shellfish license automatically suspended for a period of 60 days after a hearing as per section 12. Persons aggrieved by this suspension may appeal as per section 13.
- (c) Commercial Convictions: Any commercial shellfish licensee who has two convictions for violations of this ordinance within 36 months shall have his/her shellfish license automatically suspended for a period of 60 days after a hearing as per section 12. Licensees aggrieved by this suspension may appeal as per section 13.

- (d) Recreational License Convictions: Any recreational shellfish licensee who is convicted for a violation of this ordinance shall have his/her shellfish license automatically suspended for the remainder of the licensing year after a hearing as per section 12 and will be ineligible for a future license as follows:

First violation conviction - Ineligible for one year from the date of suspension.

Second violation conviction - Ineligible for two years from the date of suspension.

Third violation conviction - Ineligible for three years from the date of suspension.

Licensees aggrieved by this suspension may appeal as per section 13.

- (e) If a Licensees pays for their shellfish license by check and the check is returned for insufficient funds the holder will be notified by the Town Treasurer and will have 30 calendar days to pay the town for the license and associated insufficient funds fees. If not settled within the 30 day period the license will be automatically suspended for non-payment.
- (10) Notice of Application Procedures: Notice of the number of licenses to be issued and the procedure for application shall be published in the Bath-Brunswick Times Record This publication will occur prior to May 15th and will be posted at the Town Hall until the application and licensing period ends.
- (11) Lottery Procedures: If, in any of the commercial license categories, the number of qualifying applications exceeds the number of available licenses on issuance dates, and the provisions of those sections do not determine who shall be awarded the licenses, licenses in those categories shall be issued according to the following procedure.
- (a) The Town Administrator shall designate an assistant, who is disinterested in the outcome of the procedure. "Disinterested" means not related by blood, marriage or adoption to any of the applicants and not having a direct or indirect pecuniary interest in the outcome of the procedure. No member of the Shellfish Conservation Commission shall serve as the assistant in carrying out this procedure.
- (b) The Town Administrator shall write the name of each eligible person for a license category on an index card of uniform size, color, texture and thickness.
- (c) The Town Administrator's assistant shall then place all the numbered index cards in a container and shake the container to mix them up.
- (d) The Town Administrator shall withdraw the cards one-by-one, reading each name drawn out loud. The available licenses in each category will be issued in the order of names drawn.

- (e) The procedure set forth in this section shall be a public proceeding which is advertised at least 7 calendar days prior to the event in the same manner as municipal meetings.

7. **OPENING AND CLOSING FLATS:** Selectmen, with the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvesting. Upon recommendation of the Shellfish Conservation Committee, after review at a scheduled and publicized Shellfish Conservation meeting, and concurrence of the Department of Marine Resources area biologist that the status of shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed, the Selectmen will consider it at a regularly scheduled and publicized Selectmen's Meeting and may, at their discretion, call a public hearing on a 7 calendar days' notice published in the Bath Brunswick Times Record, stating the time, place and subject matter of the hearing. A copy of the decision shall be sent to the Department of Marine Resources.
8. **NIGHT SHELLFISH HARVESTING:** It is prohibited to harvest shellfish at night using an artificial light from April 1<sup>st</sup> through October 31<sup>st</sup>. Night shellfish harvesting using an artificial light is permitted from November 1<sup>st</sup> through March 31<sup>st</sup> for tide completion digging only. Tide completion digging pertains to evening tides only, when low water is one hour after sunset or earlier, allowing the harvester to complete the tide. Tide calculations shall be based on those for Portland Harbor - without corrections for Phippsburg.
9. **MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS:** It is unlawful for any person to possess soft shell clams within the Town of Phippsburg, Sagadahoc County, which are less than two (2) inches in the longest diameter except as provided by subsection (A) of this section. One peck a day allowed for recreational harvesters.
  - A. Tolerance: Any person may possess soft shell clams that are less than two (2) inches if they comprise less than 10 percent of any lot. The tolerance shall be determined by numerical count of not less than one peck or more than four pecks taken at random from various parts of the lot or by count of the entire lot if it contains less than one peck.
  - B. Penalty: Whoever violates any provision of this section shall be punished as provided by 12 MRSA. Section 6681.
10. **OTHER SHELLFISH RESTRICTIONS:**
  - A. Razor Clams (*Ensis Directus*) - DMR Reg. Ch 10.06. Requires a minimum size of 4" and no electro-fishing.
  - B. Eastern/American Oysters (*Crassostrea Virginica*) - DMR Reg. Ch.14. Prohibits the possession of cultchless.
  - C. Quahogs (*Mercenaria mercenaria*) - DMR Reg, Ch. 10 requires minimum size of 1" hinge width.

11. **PENALTY:** A person who violates this Ordinance shall be punished as provided by 12 MRS Section 6671. All fines levied by the courts under this Ordinance shall be paid to the Town of Phippsburg and shall be used for shellfish conservation expenses.

- A. Exhibiting License: When any person is engaged in an activity which is licensed under this Ordinance, he or she shall, upon the request of a Municipal Shellfish Conservation Warden, exhibit his or her license. Failure to exhibit a license within a reasonable time when requested shall be prima-facie evidence that the person is not licensed.
- B. Search and Inspection: Accepting an issued shellfish license shall constitute consent to search and inspection by a Municipal Shellfish Conservation Warden of any equipment, watercraft or vehicles used in connection with the license activity and to seize evidence of a violation of this Ordinance.
- C. Standing By: It shall be a violation of this ordinance for any person to fail or refuse to stand by immediately for inspection at the request of a Municipal Shellfish Conservation Warden in uniform.
- D. Throwing or Dumping Items: It shall be a violation of this ordinance for any person who has been requested or signaled to stop by a Municipal Shellfish Conservation Warden in uniform, to throw or dump into any water any marine organism, or any pail, bag, barrel or other container of any type, or the contents thereof, before the Municipal Shellfish Conservation Warden has inspected the same.
- E. Molesting Municipal Shellfish Gear: The Town of Phippsburg 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 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 Phippsburg and indicate the purpose for the gear. A person may not tamper with, molest, disturb, alter, destroy or in any manner handle gear placed by the Town of Phippsburg in accordance with this section.
- F. Harvesting in a Closed Area: It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the Town of Phippsburg in accordance with DMR Regulation, Chapter 7. Harvesting shellfish in a closed area is a violation of this municipality's ordinance and is punishable under MSRA Title 12 §6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the town of Phippsburg to DMR and are part of the resulting permit issued by DMR. These permits are posted at the town office and on the DMR website.

12. **HEARING PROCEDURES:** If an hearing is to be held by the Shellfish Commission as per this ordinance the following procedure will be followed:
  - A. The Chairman of the Shellfish Commission will advise the Town Administrator of the date for the hearing.
  - B. The Town Administrator will give written notification to the licensee involved at least 14 days prior to the hearing. This notification shall explain the reason for the hearing. It will also be advertised in the same manner as meeting notifications.
  - C. The Shellfish Commission will hold the hearing and prepare a written decision including a findings of fact. This decision will be issued within 14 days of the final hearing and will include the appeal process outlined in Section 13.
  
13. **APPEAL PROCEDURES:** Any person aggrieved by the decision of the Shellfish Conservation Commission which affects their license or issuance of a license may make an appeal to the Board of Selectmen within 14 days of such decision. The Board of Selectmen will hold an appellate hearing on the appeal (the decision of the Shellfish Commission will be reviewed based on the same evidence submitted to them). If the appellant does not agree with the decision made by the Board of Selectmen they may appeal within 30 days to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.
  
14. **EFFECTIVE DATE:** This Ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective on July 1, 2017 after its adoption at a Town Meeting provided a certified copy of the Ordinance is filed with the Commissioner within 20 days of its adoption.
  
15. **DURATION:** This Ordinance shall remain in effect until repealed or replaced.
  
16. **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.

<b>Shellfish License Issuance Timeline</b>	
April Shellfish Meeting	Shellfish Commission votes on license allocation and fees. This is also the deadline for any conservation time waiver requests
Last week in April	T/A sends notification letter, application and conservation hours to all current commercial licenses holders
April 30th	Deadline for conservation hours (May 1st to April 30th)
May 1st	Deadline for Selectmen to vote on license allocation and fees. T/A sends license allocation and fees request to DMR as soon as possible but no later than May 5th.
May 15th	Advertise license allocation and procedures in Times Record and post at Town Hall
During May	Commercial license applications have to be submitted for priority
First week in June	T/A and Chair of the Shellfish Commission determine issuance list for Renewal Licenses and priority list for the New License Category. T/A sends out notification letters to those who will be receiving Renewal Licenses or are listed on the New License priority list.
Commercial Renewal Licenses issued	June 16th to July 1st
Recreational Licenses available	June 16th
Commercial New Licenses issued	July 1st to July 14th
Un-issued Commercial licenses issued in each category	After July 14th
Un-issued Commercial licenses issued for anyone (no category)	After October 1st

<b>Amendment Summary</b>		
<b>Date</b>	<b>Section</b>	<b>Amendment</b>
May 3, 2018	Section 6.C.(4)(e)	Allows licenses to be issued after July 14th in order of applications received after July 14 <sup>th</sup> instead of waiting until October 1 <sup>st</sup> .