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ARTICLE 6

MUNICIPAL OFFICERS' CERTIFICATION OF THE OFFICIAL TEXT OF PROPOSED ORDINANCE(S)
[30-A M.R.S.A. § 3002(2)]

To the Town Clerk of the Town of Ogunquit, Maine:

We hereby certify to you that the documents to which we have affixed this certificate are a true copy of the official text of an ordinance(s) entitled:

1. **Chapter 147 – Public Resources and Conservation**, including:

- **Article 6 – Shellfish Management Ordinance**

Which is to be presented to the voters for their consideration on June 6, 2026.

Pursuant to 30-A M.R.S.A. § 3002(2), you will retain this copy of the complete text of the ordinance as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the town meeting/polling places on the day of the vote.

Approved on this 31st day of March 2026, by a majority of the Select Board

Michael Collins
Michael F. Collins, Chair

Carole Aaron
Carole J. Aaron, Vice-Chair

Richard Dolliver
Richard A. Dolliver

Scott A. Vogel

Robert M. Whitelaw

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ARTICLE VI
Shellfish Management Ordinance

[Added 6-16-1998 STM by Art. 3; as amended through 6-11-2013 ATM]

§ 147-27

§ 147-25. Authority.

This article is enacted in accordance with 12 M.R.S.A. §§ 6571 and 6681.

§ 147-26. Purpose.

The purposes of this article are:

A. ~~is~~ to establish a Shellfish Conservation Program for the Town of Ogunquit that ~~which~~ will seek to ensure the protection and optimum utilization of shellfish resources within its geographical limits. ~~These goals will be achieved by means which may include:~~

B. consistent with the Comprehensive Plan for the Town of Ogunquit, to assist in (x) protecting, preserving, and enhancing Ogunquit's coastal dune system, shoreline, the Ogunquit River estuary (including this Municipality's shellfish flats therein), wetlands, and marine ecosystems, (y) improving watershed health and water quality, especially within the Ogunquit River estuary, and (z) managing risks from sea-level rise, storm surge, and coastal flooding; and

C. to increase public awareness regarding shellfish management and resources within the Town of Ogunquit.

These purposes shall be achieved by various means, which may include:

A. Licensing of shellfish harvesters (diggers);

B. Limiting the number of shellfish harvesters;

C. Restricting the time and area which harvesting is permitted;

D. Limiting the minimum size of ~~clams taken~~ shellfish harvested; and

E. Limiting the amount of ~~clams taken~~ shellfish harvested daily by a harvester.

§ 147-27. Shellfish Conservation Commission.

The Shellfish ~~Conservation Program~~ Management Program for the Town of Ogunquit ~~will~~ shall be administered by the Shellfish Conservation Commission consisting of five regular and two alternate members to be appointed by the Select Board for terms of three years and one year, respectively. The vacancy in the office of a member shall be filled for the unexpired term only. Each member's term of office shall expire June 30th of the year, in which the member's term ends, except that a member may continue to serve until reappointment or until a successor has been appointed to the position. The Commission's responsibilities include:

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A. Establishing annually, in conjunction with the Department of Marine Resources of the State of Maine **(DMR)**, the number of shellfish **harvesting** ~~digging~~ licenses to be issued.

B. Surveying the ~~clam~~ **shellfish** flats **periodically** to maintain current information on shellfish resources. Such surveys **may** include:

(1) Determination of size frequency of the shellfish;

(2) Determination of growth;

(3) Estimation of the standing crop of shellfish;

(4) Collection of harvest data documenting local values of shellfish resources;

(5) Estimation of potential yield of the flats;

(6) Identification of sources of pollution impacting shellfish populations and location of sources on charts; **and**

(7) Identification of other resource problems such as green crab predation on shellfish and competition from mussels~~;~~

~~(8)~~ **C.** Reseeding and transplanting to make fallow areas productive; and **placing netting and other means to keep spat in the area and to provide for the protection from predators.**

~~(8) Placing barriers to keep spat in the area.~~

D. In collaboration with other applicable Town committees, DMR and other resources, (i) monitoring the health of the shellfish flats and bacteria levels within the Ogunquit River estuary and (ii) making the Town and public aware of high bacteria levels and, when necessary, the need to close the shellfish flats.

E. Evaluating whether there is a desire to strengthen shellfish harvesting in this Municipality and making recommendations to the Select Board to accomplish this if necessary.

~~C.~~ **F.** Submitting to the Select Board proposals for the expenditures of funds for the purpose of shellfish ~~conservation~~ **management**.

~~D.~~ **G.** Reviewing this article periodically and making recommendations for amendments**.** ~~on a timely basis.~~

~~E.~~ **H.** Securing and maintaining records of shellfish harvest from ~~the~~ **this** ~~m~~**M**unicipality's managed shellfish areas (and closed areas that are conditionally opened by ~~the Department of Marine Resources~~ **DMR**).

~~F.~~ **I.** Recommending conservation closures and openings to the Select Board in conjunction with the ~~Area Biologist~~ **Marine Resource Scientist** of ~~the Department of Marine Resources~~ **DMR**.

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~~G.~~ J. Designing and promulgating a Shellfish ~~Conservation~~ Management Plan in cooperation with ~~the Department of Marine Resources~~ DMR, based on the results of the ~~clam~~ shellfish flat survey, incorporating recommended levels of harvesting on the various flats (as shall be delineated on maps prepared by the Shellfish Conservation Commission). Possible inclusions in such a plan are crop rotation, seed programs and predator control.

~~H.~~K. Submitting an annual report to ~~the~~ this ~~m~~Municipality and ~~Department of Marine Resources~~ DMR, detailing all funds available, fund expenditures, harvest data, results of all experimental and ~~conservation~~ management programs, enforcement activities and sources of pollution.

~~I.~~L. Submitting a recommended fee schedule to the Select Board on an annual basis for licenses, whereupon the Select Board shall then have the authority to accept, reject or amend such fees, as it deems necessary. [Amended 4-7-2003 ATM]

§ 147-28. Definitions.

As used in this article, the following terms shall have the meanings indicated:

HARVEST — To dig, take, remove or otherwise harvest shellfish in ~~the~~ this ~~m~~Municipality.

LOT — The total number of ~~clams~~ shellfish in any bulk pile. Where ~~clams~~ shellfish are in a box, barrel or other container, the contents of each box, barrel or other container constitute a separate lot.

MUNICIPALITY — The Town of Ogunquit, Maine.

NONRESIDENT — Any ~~resident~~ person who has resided in the State of Maine for at least six months prior to the time their claim of such residence is made and who is otherwise not qualified as a resident ~~of the State of Maine who is otherwise qualified as a resident~~ under this article.

PERIOD OF ISSUANCE — The first 90 days during which this ~~m~~Municipality reserves or sells ~~issues~~ shellfish harvesting ~~digging~~ licenses each year.

PERSONAL USE – For consumption or use by a license holder or by members of the immediate family or invited guests of the license holder. For avoidance of doubt, personal use does not include sale, trade or barter.

POSSESS — Dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft-shelled clam shell stock.

RESIDENT — A person who has resided in the State of Maine for at least six months ~~next~~ prior to the time ~~his~~their claim of such residence is made, and who has resided in this ~~m~~Municipality for at least three months prior to the time ~~his~~their claim of such residence is made. "Resident" is extended to include (i) ~~nonresident~~ property tax paying owners of real estate in this ~~m~~Municipality (and their immediate family members) for at least three months prior to the time their claim of such residence is made, and (ii) full-time employees of this Municipality.

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SHELLFISH/CLAMS — Soft-shell clams ("Mya arenaria")

~~MUNICIPALITY~~ SHELLFISH ~~CONSERVATION COMMISSION~~ WARDEN— Any certified Municipal Shellfish Conservation Warden of this Municipality who has met the requirements set forth in the DMR Chapter 4 Regulations.

§ 147-29. Licensing.

A. Shellfish ~~digging~~ harvesting license.

(1) A municipal shellfish ~~digging~~ harvesting license is required to harvest shellfish in this Municipality. It is unlawful for any person to harvest shellfish in this ~~m~~Municipality without having a current license issued by this ~~m~~Municipality as provided by this article. It shall be lawful to harvest ~~clams~~ only during the approved date(s) for which ~~stated on~~ the license relates, and it shall be unlawful to harvest on all other dates. Harvesting. ~~Actual digging~~ is limited to daylight hours on such dates. It ~~will~~ shall be ~~un~~lawful to ~~dig~~ harvest only from ~~sunset to~~ 1/2 hour before sunrise to 1/2 hour after sunset on such dates, and it shall be unlawful to harvest at all other times.

(2) A licensee under the age of eight must be accompanied by an adult licensee at least 18 years of age at all times when harvesting shellfish. [Amended 4-7-2003 ATM]

B. ~~Type~~ Categories of licenses. There are six (6) categories of licenses, as follows:

(1) Resident, ~~real property taxpayer and Town employee~~ recreational shellfish license. This category of license is available to residents~~, real property taxpayers and Town employees~~ only of this ~~m~~Municipality. ~~and entitles the holder to harvest no more than one peck of shellfish in any one day for the use of himself and his family, from the shore, flats or coastal waters of this municipality, when and where it is lawful to do so.~~ [Amended 6-11-2013 ATM]

(2) Nonresident recreational shellfish license. This category of license is available to any ~~Maine~~ nonresident. ~~who is not a resident of Ogunquit and entitles the holder to harvest not more than one peck of shellfish in any one day for the use of himself/herself and his/her family, from the shores, flats or coastal waters of Ogunquit when and where it is lawful to do so.~~ [Amended 4-7-2003 ATM]

(3) Resident commercial shellfish license. ~~No~~ This category of license is not available.

(4) Nonresident commercial shellfish license. ~~No~~ This category of license is not available.

(5) One-time, specific date recreational shellfish license ~~permit~~. This category of license is ~~Will be~~ available on a specified ~~dig~~ harvest date to anyone (resident, nonresident or otherwise) on a first-come, first-served basis, ~~any state,~~ at areas designated by ~~the Town~~ this Municipality. [Amended 4-7-2003 ATM; 10-18-2005 Select Board; 6-11-2013 ATM]

(6) Ogunquit Shellfish Conservation Commission reserved recreational shellfish licenses. ~~These~~ This categoryof licenses shall be issued to each member serving on the

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Commission for less than one year, upon payment of stated fees. Those Commission members having served for more than one year and accumulating 10 or more hours of service time doing ~~clam~~ **shellfish** surveys, testing, or anything that benefits the Commission during the previous year shall be entitled to a free license. **[Amended 4-7-2001 ATM]**

~~(7)~~ **C**. License must be signed **and consent to inspection**. The licensee must sign ~~his or her~~ **their** license in order to validate it. Any person harvesting ~~clams~~ **shellfish** in this ~~m~~Municipality shall have on ~~his/her~~ **their** person and show to any **Shellfish** ~~w~~Warden or **other** law enforcement officer positive identification, when requested, in addition to the license, where required. **Any person who signs a shellfish license issued by this Municipality has an obligation to submit to inspection and search for violations related to the license activity by any Shellfish Warden or other law enforcement officer. Any Municipal Shellfish Conservation Warden, within this Municipality, has all the search powers of a marine patrol officer under 12 M.R.S.A. §6025(4). Those powers currently include the power to search without a warrant, upon probable cause, any watercraft or container containing marine organisms possessed or taken in suspected violation of this article.**

~~C~~.**D. Application procedure**. Any person may apply to the Town Clerk for ~~the~~ **a** license **or, on a harvesting date, the applicable member of the Shellfish Conservation Commission for a one-time, specific date recreational license,** required by this article on forms **or in the manner** provided by ~~the~~ **this** ~~m~~Municipality.

~~(7)~~ **(1)** Contents of the application. The application must be in the form on an affidavit and must contain the applicant's name, current address, birth date, ~~height, weight,~~ signature and other information ~~the~~ **this** ~~m~~Municipality may require.

~~(8)~~**(2)** Misrepresentation. Any person who gives false information on a license application ~~will~~ **shall** cause said license to become invalid and void.

(9) **(3)** Records. The **Town** Clerk or **other** designated ~~official~~ **person** ~~of this municipality~~ shall note on the application the date **on which** the license was issued, sign it and file the application with **the** ~~his or her~~ records **of this Municipality**.

(10)**(4)** Notice. Notice of the number and the procedure for application shall be published in a trade or industry publication which the **applicable** ~~M~~municipal ~~O~~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.

(5) Fees. Fees for the various categories of licenses shall from time to time be established by the Select Board, upon recommendation by the Shellfish Conservation Commission. The applicable license fee must accompany in full an application for any license. The Town Clerk shall transfer all such fees received, as well as any fines received from violations of this article to the Town Treasurer. Such fees and fines shall be used by this Municipality for shellfish management, conservation and enforcement.

a. Notwithstanding the foregoing, recreational shellfish license fees shall be waived for

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residents 65 years of age or (not to exceed the number therefor set forth in this Municipality's shellfish license allocation application to DMR) older and for individuals 12 years of age or younger on an annual "Youth Day" approved by the Select Board at the recommendation of the Shellfish Conservation Commission. On Youth Day, children 12 years and younger may harvest up to one (1) peck when supervised by a licensed parent or guardian. For example, if a licensed parent or guardian brings five (5) youths, the licensed parent or guardian may harvest one (1) peck, and the youths may collectively harvest one (1) peck.

~~C.~~**E.** Limitation of ~~diggers~~ **Harvesters**. Because the shellfish resources are limited and because a commercial or recreational ~~digger~~ **harvesters** can be expected to harvest a certain volume of ~~clams~~ **shellfish** per year, the number of licenses must be controlled. The number ~~will~~ **may** vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures ~~will~~ **shall** be followed to exercise the control:

~~(11)~~ **(1) Number of Licenses Established.** Prior to October 1 of each year, the Shellfish Conservation Commission with the approval of the **Select Board and the** Commissioner of Marine Resources ~~will~~ **shall** establish the number of licenses to be permitted.

~~(12)~~ **(2) Notice to Town Clerk.** The Shellfish Conservation Commission ~~will~~ **shall** notify the Town Clerk, in writing, prior to October 1 of each year the number of licenses to be issued **after approval from DMR**.

(13) **(3)** During the period of issuance, the Town Clerk shall issue licenses to residents and nonresidents as allocated for each year on or after November 1 until ~~January 29~~ **90 days after the date on which the first license is sold or reserved for issuance**, after which the then-remaining unsold licenses shall be issued on a first-come, first-served basis to residents and nonresidents alike. **Pre-sales of licenses may occur prior to November 1, but no license shall be effective until November 1.**

~~A.~~ **F.** Open license sales. When the Shellfish Conservation Commission determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year, **it can change to unlimited license sales within a category.**

(1) Notice of the dates, places, times and the procedures for the license sales shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the **applicable** municipal officers consider effective in reaching persons affected, not less than 10 days prior to the initial sale date and shall be posted in the municipal offices. A copy of the notice shall be provided to the Commissioner of Marine Resources.

(2) For ~~each~~ **all license categories, this Municipality shall issue licenses following the issuance guidance set forth in Chapter 7.40(3) of the DMR Regulations.** ~~commercial license category, the Town Clerk shall issue one license to nonresidents when six licenses are issued to residents and one more to nonresidents will be issued for every 10 additional resident licenses issued. For each recreational license category, the Town Clerk shall issue one license to a resident and one to a nonresident; thereafter, one nonresident license will be issued for every 10 additional resident~~

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~~licenses issued.~~ [Amended 10-18-2005 Select Board]

~~B.~~ G. License expiration date. Each license issued under authority of this article shall expires at 12:00 midnight on the last date of this Municipality's harvesting season for the applicable year ~~31st day of March~~, except that one-time, specific date licenses shall be valid only on the specific date for which they were issued.

H. Suspension. Any licensee whose municipal and state shellfish license, as defined in 12 M.R.S.A. §6601, is suspended shall have his/her shellfish harvesting license hereunder automatically suspended for the duration of such state suspension. Any licensee convicted of a violation of this article shall have his/her shellfish harvesting license hereunder automatically suspended for a period of thirty (30) days. Any subsequent conviction shall result in loss of shellfish license for a period of twelve (12) months.

(1) Reapplication. A license whose shellfish harvesting license has been suspended pursuant to this article may reapply for a license only after the suspension period has expired.

(2) Effective date of suspension. The suspension shall be effective from the date of mailing of a notice of suspension by the Town Clerk to the licensee.

§ 147-30. ~~Minimum legal~~ Limitations on size, amount and use of shellfish.

A. Minimum legal size. It is unlawful to possess in this ~~m~~Municipality shellfish which are less than two inches in the longest diameter, except that a licensee may possess shellfish that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck. ~~Diggers~~ Harvesters must use a ~~clam digger's~~ harvester's fork or a tined fork with two-inch separation of tines and with a handle no longer than two feet.

B. Maximum amount and personal use of harvested shellfish. A recreational license entitles the licensee to harvest no more than one peck of shellfish on any one day for personal use from the shore, flats or coastal waters of this Municipality, when and where it is lawful to do so.

§ 147-31. Opening and closing of flats.

The ~~Municipal Officers~~ Select Board, with the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendation of the Shellfish Conservation Commission and concurrence of the ~~Department of~~ Marine Resources Scientist of DMR ~~Area Biologist~~ that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the ~~Municipal Officers~~ Select Board may call a public hearing on at least 10 days notice published in a newspaper having general circulation in ~~the~~ this ~~m~~Municipality stating the time, place and subject matter of the hearing, and shall send a copy of the notice to ~~the Department of Marine Resources~~ DMR. The decision of the ~~Municipal Officers~~ Select Board made after the hearing shall be based on findings of fact.

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Notification of the conservation closures or openings within this Municipality shall be provided in accordance with DMR Regulation, Chapter 7.50(C). It shall be unlawful for any person to harvest or possess shellfish from any areas closed by this article in accordance with DMR Regulations, Chapter 7.

§ 147-32. ~~Violations and penalties~~ Enforcement.

This article shall be enforceable by any Shellfish Warden or any other applicable law enforcement officer. ~~A person who violates this article, in any way, shall be punished as provided by 12 M.R.S.A.§§ 6671 and 6681.~~

§ 147-3~~2~~3. Violations and penalties.

A person who violates this article, in any way, shall be punished as provided by 12 M.R.S.A. §6671 and §6681.

§ 147-3~~3~~4. When effective; Severability.

This article, which has been approved by the Commissioner of Marine Resources, shall become effective, and continue to be effective after its adoption by ~~the~~ this ~~m~~Municipality, provided a certified copy of this article is filed with the Commissioner within 20 days of its adoption.

If any provision of this article or the application thereof to any person or in any way is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this article, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this article shall be severable.