

## **ARTICLE III. SHELLFISHING<sup>1</sup>**

### **DIVISION 1. GENERALLY**

#### **Sec. 11-71. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Aquaculture* means the culture or husbandry of marine organisms by any person. Storage or any other form of impounding or holding wild marine organisms, without more, shall not qualify as aquaculture. In order to qualify as aquaculture, a project must involve affirmative action by the lessee to improve the growth rate or quality of the marine organism.

*Bull rake* is a long handled rake with basket attached. Bull rakes are designed to harvest shellfish that are beneath the surface of the water.

*Bushel* means a measurement consisting of four (4) pecks or thirty-two (32) quarts of shellfish.

*Certified municipal shellfish conservation warden* means the law enforcement officer appointed by the town council to enforce this article.

*Coastal waters* means all waters of the town within the rise and fall of the tide and within the marine limits of the jurisdiction of the town.

*Commercial shellfish harvester* means a person who harvests shellfish with profit as a primary aim.

*Deputy marine warden* is an employee of the Brunswick Police Department that has attained pre-service law enforcement certification from the Maine Criminal Justice Academy and is appointed as a municipal shellfish conservation warden to enforce this article.

*Immediate family* means spouse and children.

*Lot* means the total number of softshell clams in bulk pile. Where softshell clams are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.

*Notification* means, unless otherwise stated herein and for the purposes of hearing notices under this article, mailing by certified mail to the last known address.

*Marine warden* is an employee of the Brunswick Police Department that has attained fulltime law enforcement certification from the Maine Criminal Justice Academy, and has been appointed by the town as the municipal shellfish conservation warden to enforce this article.

*Possession* means to have in one's custody or control, either personally or by another who is under one's control anywhere within the municipal boundaries.

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<sup>1</sup>Cross reference(s)—Conservation Commission, § 2-76 et seq.; parks and recreation areas, § 14-96 et seq.

State law reference(s)—Municipal Shellfish Conservation Programs, 12 M.R.S.A. § 6671 et seq.

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*Resident* means a person who has physically resided at a fixed, permanent, and principal home in the town for at least three (3) months next prior to the time his claim of residence is made. For the purposes of resident student licenses only, this term shall include a person who is attending a postsecondary educational institution outside of Brunswick but who maintains a residence in Brunswick to which he or she returns when school is not in session.

*Shellfish* means softshell clams (*Mya arenaria*), quahogs (*Mercenaria mercenaria*), razor clams (*Ensis directus*), American oysters (*Crassostrea virginica*), and European oysters (*Ostrea edulis*).

*Take* means to remove or attempt to remove a shellfish from its natural habitat.

(Ord. of 3-6-89, § 104; Ord. of 2-5-90, § 104; Ord. of 2-18-92, Ord. of 4-5-93, Ord. of 2-22-94; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1); Ord. of 4-7-08(1); Ord. of 12-7-09; Ord. of 4-1-13; Ord. of 4-7-14; Ord. of 9-18-17; Ord. of 5-4-20(1) )

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

### **Sec. 11-72. Authority.**

This article is enacted in accordance with 12 M.R.S.A. § 6671.

(Ord. of 3-6-89, § 101; Ord. of 2-5-90, § 101; Ord. of 2-18-92; Ord. of 3-16-99; Ord. of 12-7-09)

### **Sec. 11-73. Purpose.**

The purpose of this chapter is as follows:

- (1) To regulate the harvesting of shellfish in the town.
- (2) To provide management programs in the town for the sustainability of shellfish in a manner consistent with the production of a reasonable yield to sustain commercial shellfish harvesters.

(Ord. of 3-6-89, § 102; Ord. of 2-5-90, § 102; Ord. of 2-18-92; Ord. of 1-16-96; Ord. of 3-16-99; Ord. of 2-6-01(1); Ord. of 12-7-09)

### **Sec. 11-74. Conservation, management of resources.**

It is hereby determined as follows:

- (1) The coastal waters of the town are a very valuable shellfish resource which is important to the local economy.
- (2) These marine resources are not an inexhaustible resource, and, therefore, they must be prudently managed in order to remain viable.
- (3) As part of the management process, it is deemed vitally necessary to undertake efforts to enhance the propagation of shellfish and to restrict the taking of shellfish by limiting shellfish licenses; restrict the size and quantity of shellfish which may be harvested; and, take other measures as outlined in this chapter.

(Ord. of 3-6-89, § 103; Ord. of 2-5-90, § 103; Ord. of 2-18-92, Ord. of 4-5-93; Ord. of 3-16-99; Ord. of 12-7-09; Ord. of 12-1-14(1))

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**Sec. 11-75. Enforcement.**

The chapter shall be enforced by the certified municipal shellfish conservation warden who has met the requirements set forth in the Maine Department of Marine Resources Chapter 4 Regulations.

(Ord. of 3-6-89, § 501; Ord. of 2-5-90, § 501; Ord. of 2-18-92; Ord. of 4-5-93, Ord. of 8-15-94; Ord. of 3-16-99; Ord. of 12-7-09; Ord. of 9-18-17)

**Sec. 11-76. Penalty.**

A person who violates this chapter shall be punished as provided in 12 M.R.S.A. § 6671.

A person who takes or possesses shellfish in violation of a municipal ordinance commits a violation with significant fines and license suspensions.

(Ord. of 3-6-89, § 502; Ord. of 2-5-90, § 502; Ord. of 2-18-92, Ord. of 4-5-93; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 12-7-09)

**Sec. 11-77. Amendment.**

A certified copy of an amendment to this article shall be filed with the commissioner of marine resources within twenty (20) days of its adoption to preserve its validity.

(Ord. of 3-6-89, § 504; Ord. of 2-5-90, § 504; Ord. of 2-18-92, Ord. of 4-5-93; Emergency Ord. of 8-5-96; Ord. of 8-19-96; Ord. of 3-16-99; Ord. of 11-3-03; Ord. of 12-7-09)

**Secs. 11-78—11-95. Reserved.**

*DIVISION 2. MARINE RESOURCE COMMITTEE<sup>2</sup>*

**Sec. 11-96. Established, members, etc.**

There is hereby established a marine resource committee consisting of seven (7) members and two (2) alternates to be appointed by the town council. The members must include three (3) town licensed resident commercial shellfish harvesters, three (3) residents of the community who do not possess a town or state shellfish license and one (1) town licensed resident recreational shellfish harvester. The two (2) alternate members can be from any category and may fill a vacancy to constitute a quorum. Members and alternates shall be appointed for three-year terms. The town council shall appoint a person to fill a vacancy for the unexpired term. The committee shall choose a chairman, vice-chairman and secretary. The chairman shall preside at all meetings of the committee. The vice-chairman shall preside in the chairman's absence. Minutes of each meeting shall be filed with the town clerk. Any committee member who has three (3) or more unexcused absences from committee meetings in a year may be removed and replaced with a new member by the town council.

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<sup>2</sup>Cross reference(s)—Boards, committees, commissions, § 2-51 et seq.

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(Ord. of 3-6-89, § 201; Ord. of 2-5-90, § 201; Ord. of 2-18-92, Ord. of 4-5-93; Ord. of 9-5-95; Ord. of 1-16-96; Emergency Ord. of 8-5-96; Ord. of 8-19-96, Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1); Ord. of 12-7-09; Ord. of 12-1-14(1); Amend. of 4-3-17(1))

### **Sec. 11-97. Powers and duties.**

The marine resource committee shall have the following powers and duties:

- (1) To administer and coordinate the shellfish sustainability program.
- (2) To recommend to the town council how the money appropriated for shellfish sustainability programs should be spent.
- (3) To survey the coastal waters to obtain and maintain current information on shellfish resources, including:
  - a. The determination of size frequency.
  - b. The determination of growth rate.
  - c. The estimation of the available standing crop.
  - d. The estimation of potential yield.
  - e. The identification of sources of harmful pollution.
  - f. The identification of other resource problems, such as green crab predation and mussel competition.
- (4) To determine the current level of use of the shellfish resources.
- (5) To cooperate with the department of marine resources and others in carrying on experimental programs.
- (6) To prepare and promulgate a shellfish management plan in cooperation with the department of marine resources based on the results of the shellfish survey, recommending area rotation, seeding, transplanting, predator control, and the opening and closing of the coastal waters.
- (7) To collect harvest data documenting local values of shellfish resources.
- (8) To make an annual written report to the town and the department of marine resources detailing funds available, expenditures made, shellfish population data, results of all conservation and experimental programs, enforcement activities, and sources of pollution, predation, competition and other resource problems.
- (9) To establish annually in conjunction with the department of marine resources the number of commercial shellfish harvesting licenses to be issued.
- (10) To review intertidal aquaculture applications as required by the Maine Department of Marine Resources Chapter 2 Lease Regulations.

(Ord. of 3-6-89, § 202; Ord. of 2-5-90, § 202; Ord. of 2-18-92, Ord. of 4-5-93; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 6-5-00(1); Ord. of 12-7-09; Ord. of 9-18-17; Ord. of 12-7-20 )

### **Secs. 11-98—11-110. Reserved.**

*DIVISION 3. SHELLFISH REGIONAL ADVISORY COMMISSION<sup>3</sup>*

**Secs. 11-111—11-130. Reserved.**

*DIVISION 4. LICENSE<sup>4</sup>*

**Sec. 11-131. License required.**

A person shall not take or possess shellfish from coastal waters of the town without first obtaining a license from the town clerk or the town clerk's designee.

(Ord. of 3-6-89, § 301; Ord. of 2-5-90, § 301; Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93, Ord. of 2-22-94; Ord. of 8-15-94; Ord. of 3-16-99; Ord. of 12-7-09)

**Sec. 11-132. Categories.**

(a) There are eight (8) types of licenses as follows:

- (1) *Resident commercial shellfish license.* This license entitles the licensee to harvest any amount of shellfish from the coastal waters of the town where and when it is otherwise lawful to do so.
- (2) *Nonresident commercial shellfish license.* This license entitles the licensee to take or possess any amount of shellfish from the coastal waters of the town where and when it is otherwise lawful to do so.
- (3) *Resident recreational shellfish license.* This license is available to residents and nonresident owners of real estate within the town as well as immediate family members of nonresident real estate owners within the town and entitles the licensee to take or possess no more than one (1) peck of shellfish in any one (1) twenty-four-hour period from the coastal waters of the town, not for sale, for personal use only, where and when it is otherwise lawful to do so.
- (4) *Nonresident recreational shellfish license.* This license entitles the licensee to take or possess no more than one (1) peck of shellfish in any one (1) twenty-four-hour period from the coastal waters of the town, not for sale, for personal use only, where and when it is otherwise lawful to do so.
- (5) *Resident student shellfish license.* This license allows the licensee to harvest shellfish from June 15 to September 1 and throughout the remainder of the license year during weekends and holidays where and when it is otherwise lawful to do so.

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<sup>3</sup>Editor's note(s)—Former Div. 3, §§ 11-111—11-114, relative to the shellfish advisory commission, was deleted by an ordinance adopted Aug. 15, 1994, due to no remaining reciprocal agreements. The provisions of former Div. 3, derived from §§ 401—404 of an ordinance of March 6, 1989; §§ 401—404 of an ordinance of Feb. 5, 1990; an ordinance of Feb. 18, 1992; an ordinance of April 5, 1993; and an ordinance of Feb. 22, 1994.

<sup>4</sup>Cross reference(s)—Licenses and business regulations, ch. 10.

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- (6) *Nonresident student shellfish license.* This license allows the licensee to harvest shellfish from June 15 to September 1 and throughout the license year during weekends and holidays where and when it is otherwise lawful to do so.
  - (7) *Bushel license.* This license allows the licensee to harvest commercially one (1) bushel of soft shell clams and one (1) bushel of quahogs per tide.
  - 8) One Day Recreational License. This license allows the license holder to dig, take and possess no more than one peck of shellfish during the one and only day, or any part thereof, for which the license has been purchased. A person 12 years of age or younger must be accompanied by a licensed adult.

- (b) The town shall provide ten (10) percent of all shellfish license categories to nonresidents.
- (c) Any license issued under this division is subject to the partial or total closing of coastal waters under section 11-161 of this chapter.

(Ord. of 3-6-89, § 304; Ord. of 2-5-90, § 304; Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 2-22-94; Ord. of 8-15-94; Ord. of 1-16-96; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1); Ord. of 12-7-09; Ord. of 4-1-13; Ord. of 9-18-17; Ord. of 12-18-17)

### **Sec. 11-133. Qualification of licensee.**

- (a) *Residency and other qualifications.*
  - (1) An applicant for a resident commercial shellfish license shall be a resident of the town whose municipal and state shellfish license is not currently under suspension.
  - (2) An applicant for a nonresident commercial shellfish license is any person who is not a resident of the town whose municipal and state shellfish license is not currently under suspension.
  - (3) An applicant for a resident recreational shellfish license must be either a resident of the town or nonresident owner of real estate within the town or immediate family member of nonresident owner of real estate within the town and whose municipal and state commercial shellfish license is not currently under suspension.
  - (4) An applicant for a nonresident recreational shellfish license is any person who is not a resident of the town and whose municipal and state commercial shellfish license is not currently under suspension.
  - (5) The place of residence of an applicant as stated on any other license is not determinative of the applicant's true place of residence. Where necessary, the town clerk shall require the applicant to produce evidence of his residence before issuing the license.
  - (6) An applicant for a resident student shellfish license shall be a resident of the town who is actively enrolled in a primary, secondary or postsecondary school or who is receiving approved home instruction, who is at least ten (10) years of age but less than twenty-two (22) years of age as of the date of license application, or when no longer a student, whichever comes first.
  - (7) An applicant for a nonresident student shellfish license shall be a nonresident of the town who is actively enrolled in a primary, secondary school or postsecondary or who is receiving approved home instruction, who is at least ten (10) years of age but less than twenty-two (22) years of age as of the date of license application, or when no longer a student, whichever comes first.
  - (8) Prior to applying for a student shellfish license for the first time, the applicant shall attend at least one (1) educational event sponsored by the town marine resources committee. Attendance at such an event will be verified by the marine resources officer or the town clerk.

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- (9) In order to be eligible to seek to renew his/her license, a student must have attended at least at two (2) local, state or regional shellfish meetings between June 15 and the second Friday of April in the current licensing year. Attendance at such an event will be verified by the marine resources officer or the town clerk. Failure to do so will result in denial of the application. The student must provide a shellfish species harvest report annually.
- (10) A qualified applicant for a bushel license shall be an individual who has reached the age of sixty (60) and has previously held a commercial license for the last eight (8) out of ten (10) years, or held a bushel license in the prior year. An applicant who applies for and receives a bushel license will lose all credit for having held a commercial license in prior years for purposes of any future application for a commercial license. A recipient of a bushel license will be guaranteed a bushel license in future years if all other requirements of this chapter are met.
- (b) *Conservation time.* . A licensed commercial shellfish harvester must obtain a total of ten (10) ten conservation credit points between May 1 and February 15-to remain eligible to obtain a license for the next licensing year. Bushel license holders are exempt from any conservation time requirements. Student shellfish license holders and commercial license holders over the age of sixty-two (62) as of the date of the application deadline set forth in [section 11-134](#) are exempt from any conservation credit requirements. Conservation Credits can be purchased in lieu of participation at (\$100.00) one hundred dollars per credit point. Conservation credits must be purchased through the Town Clerks Office during normal business hours by February 15 of each year.
- (1) *Conservation credit activities.* Participation in any of the following activities results in the granting of conservation credit as specified:
- Participation in any one (1) of the following activities shall deem a harvester eligible to receive two (2) conservation credit points per event attended:
- a. Documented attendance at a Brunswick Marine Resource Committee meeting or Brunswick Marine Resource Committee public hearing.
  - b. Documented attendance at a regional or state shellfish management committee meeting.
  - c. Documented attendance at a shellfish conference or shellfish advisory meeting.
- Participation in any one (1) of the following activities shall deem a harvester eligible to receive five (5) conservation credit points per event attended:
- a. Participation in a Brunswick Marine Resource Committee sponsored shellfish reseeding project.
  - b. Participation in a Brunswick Marine Resource Committee sponsored shellfish enhancement project.
  - c. Participation in Town of Brunswick annual shellfish surveys.
  - d. Participation in Town of Brunswick shellfish growing area water quality monitoring event.
  - e. Participation in an organized environmental shellfish growing area restoration event within the Town of Brunswick.
  - f. Participation in non-point pollution identification or remediation project within the Town of Brunswick.
  - g. Participation in a Town of Brunswick shellfish predation control project or habitat restoration effort.

A currently licensed harvester who does not complete the required conservation time credit will not receive a license for the next license year.

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The accumulation of conservation credit must be completed by February 15 of the current license year.

- (2) *Documentation of conservation credit.* Participation in any of the conservation credit activities specified in this section must be documented. Documentation shall be in the form of a signature on an event sign in sheet, name appearing as an attendee in official meeting minutes, receipt of conference registration, or records maintained by the Brunswick Marine Warden or designee, in order for conservation credit points to be awarded.

All records and conservation credit logs will be maintained by the marine warden and will be held in the shellfish warden's office.

- (3) *Determination of conservation credit completion.* By the second Monday in March, the marine warden shall compile documented conservation time of each individual harvester and forward a list of those harvesters determined to have satisfied the conservation credit requirement to the town clerk.

Harvesters included on the list submitted by the marine warden shall be eligible for a commercial license for the upcoming license year if a notice of intent has been filed by the deadline.

- (4) *Approved absence from conservation credit requirement.* Harvesters who have not completed a full ten (10) points of conservation credit in a given license year are only eligible for a license if their absence from participation in conservation credit activities are approved by the marine resource committee.

Approved absences may include an extended and documented illness, or an extended illness of an immediate family member that is under the immediate care of the harvester.

Requests for a determination of approved absence must be made in writing to the marine warden and must be submitted to the marine resource committee no later than February 10. The request shall include evidence to support an approval of absence determination. The marine resource committee will rule on the absence at its March meeting.

If the absence is approved, the harvester will be required to make up the remaining conservation credit points during the next license year.

(Ord. of 3-6-89, § 307; Ord. of 2-5-90, § 307; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 2-22-94; Ord. of 8-15-94; Ord. of 1-16-96; Emergency Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1); Ord. of 11-2-05(1); Ord. of 4-7-08(1); Ord. of 12-7-09; Ord. of 4-1-13; Ord. of 4-7-14; Ord. of 12-1-14(1); Ord. of 9-18-17; Ord. of 12-3-18(2); Ord. of 5-4-20(1) )

### **Sec. 11-134. Application.**

- (a) The application for a license required under this chapter shall be in the form of an affidavit and shall be signed by the applicant and acknowledged by the town clerk. It shall contain the applicant's name, physical location of residence, mailing address, period of residence, date and place of birth, height, weight, eye and hair color, and such other necessary information as the town clerk may require. The resident address shall be the physical location of the residence. The mailing address shall be such that the applicant utilizes to receive mail from the U.S. Postal Service.
- (b) An application for a student shellfish license shall also be in the form supplied by the town clerk, which shall include:
- (1) Proof of residency.
  - (2) Proof of enrollment in a school or state approved educational program.
  - (3) A letter of recommendation from the superintendent or equivalent official in the school or educational program.



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- (4) Information or evidence regarding educational event attended (first-time applicants) or regional shellfish committee meetings attended, and the amount harvested (renewal applicants)—See section 11-133(a)(8) and (9).

An application for a student shellfish license shall include a statement in bold print: **THE RECEIPT OF A STUDENT SHELLFISH LICENSE OR LICENSES PROVIDES NO CREDIT IN THE COMMERCIAL LICENSE SELECTION**

(Ord. of 3-6-89, § 308; Ord. of 2-5-90, § 308; Ord. of 2-18-92; Ord. of 2-22-94; Emergency Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Ord. of 3-16-99; Ord. of 2-6-01(1); Ord. of 11-3-03; Ord. of 12-7-09; Ord. of 9-18-17; Ord. of 12-3-18(2))

### **Sec. 11-135. Misrepresentation; change of residence.**

- (a) It shall be a violation of this article for any person to falsify or give false information in connection with a shellfish license application. In addition to any criminal penalties which may result from a violation of this chapter, the shellfish license granted to any person who gives false information on a shellfish license application shall be void after notice and hearing.
- (b) A person holding a resident commercial shellfish license or a resident student shellfish license shall physically reside at a fixed, permanent, and principal home in the town during the license period, or shall surrender the license. For the purposes of resident student licenses only, this term shall include a person who is attending a postsecondary educational institution outside of Brunswick but who maintains a residence in Brunswick to which he or she returns when school is not in session. If a person does not do so, the license shall be void after notice and hearing.
- (c) A person holding a resident recreational shellfish license shall physically reside at a fixed, permanent, and principal home in the town or be a nonresident owner of real estate within the town or immediate family member of nonresident real estate owner within the town during the license period, or shall surrender the license. If a person does not do so, the license shall be void after notice and hearing.
- (d) A person applying for, or holding a shellfish license under this chapter, shall notify the town clerk within ten (10) business days of an address change, regardless of whether the address change is also a change of residency.

(Ord. of 3-6-89, § 310; Ord. of 2-5-90, § 310; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 1-16-96; Emergency Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 6-5-00(1); Ord. of 2-6-01(1); Ord. of 4-7-08(1); Ord. of 12-7-09; Ord. of 12-7-20 )

### **Sec. 11-136. Fees.**

The applicant for a license under this chapter shall pay a fee in accordance with the Master Schedule of Revenues, Charges, Fees and Fines, Appendix B to this Municipal Code of Ordinances.

(Ord. of 3-6-89, § 305; Ord. of 2-5-90, § 305; Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 2-22-94; Emergency Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 6-5-00(1); Ord. of 2-6-01(1); Ord. of 4-7-08(1); Ord. of 12-7-09; Ord. of 4-1-13; Ord. of 11-16-2015(3))

### **Sec. 11-137. Exhibition of license.**

When any person is engaged in any activity which is licensed under this chapter, that person shall, on request of a certified municipal shellfish conservation warden, exhibit his license.

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(Ord. of 3-6-89, § 301 (1), (2); Ord. of 2-5-90, § 301(1), (2); Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 3-16-99; Ord. of 12-7-09)

### **Sec. 11-138. Consent to inspection for shellfish.**

A certified municipal shellfish conservation warden, within the warden's jurisdiction, 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 violation of this article.

(Ord. of 3-6-89, § 301 (3); Ord. of 2-5-90, § 301 (3); Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 2-22-94; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 12-7-09; Ord. of 9-18-17)

### **Sec. 11-139. Stopping for inspection.**

It shall be unlawful for the operator of a motor vehicle, boat, vessel, or conveyance of any kind, or any person:

- (1) *Stopping.* To fail or refuse to stop immediately upon request or signal of any certified municipal shellfish conservation warden in uniform.
- (2) *Remaining stopped.* After he has so stopped, to fail to remain stopped until the certified municipal shellfish conservation warden in uniform reaches his immediate vicinity and makes known to that operator the reason for the request or signal.
- (3) *Standing by.* To fail or refuse to stand by immediately for inspection on request of any certified municipal shellfish conservation warden in uniform.
- (4) *Throwing or dumping items.* Who has been requested or signaled to stop by a certified municipal shellfish conservation warden in uniform to throw or dump into any coastal waters any shellfish, or any pail, bag, barrel or other container of any type or the contents thereof before the certified municipal shellfish conservation warden in uniform has inspected the same.

(Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 2-22-94; Ord. of 3-16-99; Ord. of 12-7-09)

Editor's note(s)—Former § 11-139, relative to a prohibition on night shellfish harvesting, was amended in its entirety by an ordinance adopted Feb. 18, 1992. The provisions of former § 11-139 derived from § 301(4) of an ordinance adopted March 6, 1989 and § 301(4) of an ordinance adopted Feb. 5, 1990.

### **Sec. 11-140. Limitation on number of licenses.**

- (a) The shellfish resources are limited. A commercial, recreational, bushel or student shellfish harvester can be expected to harvest a certain volume of shellfish per year; therefore, the number of shellfish harvesters must be controlled to preserve the shellfish resource. The number of available shellfish licenses of each type will vary from year to year according to the findings and estimates of the marine resource committee and the state marine resource regional biologist based on data concerning resource capabilities and management requirements consistent with proper resource utilization as determined by shellfish population surveys conducted pursuant to section 11-97. Prior to the first Friday in February the Town Council will set the number of recreational licenses. Commencing with the first Monday of April, the town clerk shall issue resident recreational licenses until the allotted numbers have been issued. Commencing with the first Monday in April, the town clerk shall maintain a chronological list of nonresidents seeking recreational shellfish licenses. When the number of resident recreational shellfish licenses reaches a number where a

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nonresident recreational shellfish license may be issued, the town clerk shall by telephone and U.S. mail attempt notification of the applicant with the highest priority on the list. That person shall purchase the license within seven (7) business days from the date notification is attempted. If the purchase is not made in that time period, that person loses their priority and the town clerk shall attempt notification of the next person on the list using the same process.

(b) The following procedure will be followed to control commercial and bushel license availability:

- (1) The town clerk will make available a notice of intent no sooner than the third Friday in December. The notice shall also 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 no later than by January 15 and shall be posted in the municipal offices no later than January 15 until the end of business on the second Friday of March.

Any person who does not complete and return to the town clerk by end of business on the second Friday of March a fully completed notice of intent on the form prepared by the town clerk along with satisfactory proof of residency, shall not be eligible to be an applicant for a resident or nonresident commercial license in the next coming license period, provided, however, that any person having missed the filing deadline of the second Friday of March may pay a nonrefundable late fee identified in the Town of Brunswick master fee schedule by the third Friday of March and the late fee shall be accompanied by the notice of intent form and satisfactory proof of residency. The late fee shall be in addition to those fees required under section 11-136. Any person who does not file a notice of intent for two (2) successive license periods, shall not be considered as previously having held a Brunswick resident or nonresident commercial shellfish license.

Any person who does not complete and return to the town clerk by the end of business on the second Friday of March a fully completed notice of intent on the form prepared by the town clerk along with satisfactory proof of residency, shall not be eligible to be an applicant for a bushel license in the next coming license period and shall not be considered as previously having held a bushel license, provided, any person having missed the filing deadline of the second Friday of March may pay a nonrefundable late fee identified in the Town of Brunswick master fee schedule by the third Friday in March and the late fee shall be accompanied by the notice of intent form and satisfactory proof of residency. The late fee shall be in addition to those fees required under section 11-136.

The notice of intent must be delivered in person, and must be received by the town clerk by the end of business on the second Friday of March, or, in the case of payment of a late fee, must be delivered in person and received by the town clerk by the third Friday of March. In the event the Brunswick municipal offices are closed during any portion of the normal office hours on either of these dates, the deadline for submitting a notice of intent shall be extended to the close of business on the next normal business day the municipal offices are open.

An applicant on active military duty, whether because of enlistment or activation by a proper authority, may preserve, but not advance, that applicant's status in the commercial license selection process by returning a notice of intent to the town clerk by the second Friday of March. The active duty applicant need not deliver the notice of intent in person. The active duty applicant must include proof from a military authority that the applicant is on active duty and that the applicant is a resident of Brunswick, Maine, as defined in this chapter. The applicant is not required to participate further in the commercial license selection process, and the applicant shall not be reduced in the commercial license classes in any year the applicant complies with this paragraph.

- (2) Prior to the first Friday in February the Town Council will establish the number of commercial shellfish licenses and bushel licenses to be made available.

The Town Council shall use the following protocols in order to determine the number of resident commercial shellfish licenses and bushel licenses:

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- a. Shellfish surveys. A shellfish inventory including all growing areas within the Town of Brunswick jurisdiction shall be completed every two (2) years, or upon the recommendation of the marine resources officer or the marine resources committee.
  - b. Standing crop analysis, as determined by the shellfish population surveys.
  - c. License availability, based on the standing crop analysis.
  - d. Historical harvest data, as determined by the Maine Department of Marine Resources.
  - e. Harvester and public input.
  - f. The Town Council must take into account all of the above factors in determining the number of resident commercial shellfish licenses to be made available. However, the final number of licenses made available shall not vary more than fifteen (15) percent from the number determined solely by the standing crop analysis under criterion (c) above.
- (3) The Town Council will notify the town clerk in writing prior to the second Friday of February of the number of shellfish licenses, by type and class, to be made available for issue. Prior to the last business day of February the town clerk will submit the license allocation request to the department of marine resources municipal shellfish management program.

If the town is notified by the Maine Department of Marine Resources of an impending closure or opening of harvestable acreage after the second Friday in February, the Town Council shall recalculate the number of commercial shellfish licenses made available, and notify the town clerk in writing prior to the first Monday in March.

The town clerk will prepare a list of the persons eligible for licenses in classes A through K in subsection (4) and those persons eligible for any bushel licenses. The public notification of license availability shall include a statement that the list is posted at the town office. No shellfish licenses may be reserved and licenses cannot be transferred or resold by applicants. Applicants for a shellfish license who meet the requirements of this article must obtain the shellfish license in person unless the applicant has filed with the town clerk a notarized statement designating a certain other person to obtain the license on the applicant's behalf or unless medically unable to do so. A person medically unable to obtain the shellfish license may send another person who shall present to the town clerk written authorization and a written statement from a physician regarding the applicant's condition.

- (4) The town clerk shall issue resident commercial and nonresident commercial licenses according to the selection process described below. Resident applications and nonresident applications shall be segregated in each class. The classes shall be followed in descending order. A number equivalent to ten (10) percent of the total number of resident commercial licenses, regardless of class, shall be issued to nonresident commercial applicants. The classes are:

RESIDENT

- a. Applicants who have held resident commercial licenses for ten (10) of the last ten (10) years.
- b. Applicants who have held resident commercial licenses for nine (9) of the last ten (10) years.
- c. Applicants who have held resident commercial licenses for eight (8) of the last ten (10) years.
- d. Applicants who have held resident commercial licenses for seven (7) of the last ten (10) years.
- e. Applicants who have held resident commercial licenses for six (6) of the last ten (10) years.
- f. Applicants who have held resident commercial licenses for five (5) of the last ten (10) years.
- g. Applicants who have held resident commercial licenses for four (4) of the last ten (10) years.
- h. Applicants who have held resident commercial licenses for three (3) of the last ten (10) years.

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- i. Applicants who have held resident commercial licenses for two (2) of the last ten (10) years.
  - j. Applicants who have held resident commercial licenses for one (1) of the last ten (10) years.
  - k. Applicants who have held resident commercial licenses for zero (0) of the last ten (10) years.

NONRESIDENT

- a. Applicants who have held nonresident commercial licenses for ten (10) of the last ten (10) years.
- b. Applicants who have held nonresident commercial licenses for nine (9) of the last ten (10) years.
- c. Applicants who have held nonresident commercial licenses for eight (8) of the last ten (10) years.
- d. Applicants who have held nonresident commercial licenses for seven (7) of the last ten (10) years.
- e. Applicants who have held nonresident commercial licenses for six (6) of the last ten (10) years.
- f. Applicants who have held nonresident commercial licenses for five (5) of the last ten (10) years.
- g. Applicants who have held nonresident commercial licenses for four (4) of the last ten (10) years.
- h. Applicants who have held nonresident commercial licenses for three (3) of the last ten (10) years.
- i. Applicants who have held nonresident commercial licenses for two (2) of the last ten (10) years.
- j. Applicants who have held nonresident commercial licenses for one (1) of the last ten (10) years.
- k. Applicants who have held nonresident commercial licenses for zero (0) of the last ten (10) years.

On the first Wednesday of April, the town clerk shall issue licenses to the classes in which licenses are available for each applicant. The licenses shall be purchased by the end of business on the tenth business day after issuance. In the case a licensee fails to pick up their designated license within the above time frame, the licensee will have an additional five (5) business days to purchase the license with a late fee identified in the Town of Brunswick master fee schedule.

After the issuance of licenses to the classes in this subsection (4) in which licenses are available for each applicant, the remaining classes shall be issued licenses by lottery. The lottery shall apply to the classes alphabetically. If there is at least one (1) applicant in excess of the number of available licenses in a class, the town clerk shall also hold a lottery for the next class. The lottery shall be held on the last Friday of April. Beginning in 2018, if an applicant has applied for a commercial license for consecutive years and has not been successful in obtaining a license in the lottery, the applicant shall have their name entered into the lottery for each consecutive year they have applied beginning in 2016, for a maximum of five (5) entries into the lottery. As applicant names are drawn by lottery, a list will be compiled showing order of eligibility. Licenses will be available for purchase after the lottery during regular town office business hours until the end of the first business day following the lottery. If, at the end of the first business day following the lottery, one (1) or more licenses remain in a class, the next eligible applicant(s) in that class will have two (2) days to purchase the license(s).

If licenses remain after the issuance of licenses to each applicant in the classes in this subsection (4) during the first ninety (90) days of the issuance process, the town clerk shall issue licenses to residents or nonresidents according to the following process:

The town clerk shall prepare public notification of license availability which shall be published in a newspaper of general circulation in the area by the second Friday of May and posted at the town office. The notification shall inform prospective applicants to file a lottery participation notice to seek a resident or nonresident commercial shellfish license. The lottery participation notice shall be on the form prepared by the town clerk, and available at the town clerk's office.

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Any person who does not complete and return the lottery participation notice to the town clerk by the end of business on the Friday following publication shall not be eligible to be an applicant.

The town clerk shall prepare a list of the persons eligible to compete for a license in this category. The list shall be posted at the town office. Resident applications and nonresident applications shall be segregated.

On the second Monday immediately following the return deadline, the town clerk shall hold a lottery to select the applicant or applicants who shall receive licenses. Licenses shall be purchased by the end of business on Tuesday, the next day. If the licenses are not purchased by that time, they shall be offered to the next succeeding person or persons in the lottery who shall have two (2) business days after notification to purchase the license.

If licenses remain after the first ninety (90) days of the issuance process, they shall be equally available to residents and nonresidents.

If a license becomes available because it is suspended, rendered void or surrendered prior to the end of the license year, it shall not be reissued.

Nothing in this subsection shall be interpreted to restore or expand any other rights or waive any qualification provisions under this article. For the following license year, a person who held licenses in some or all of the preceding ten (10) years and who qualified for a license during the period of issuance but did not receive a license, shall be in the class determined by this lottery license and previous licenses. A person who receives a license in this lottery and who has held no licenses for the preceding ten (10) years shall be in a class J for the following license year.

If the Brunswick municipal offices are closed during any portion of the normal office hours on the first day set above for issuing licenses to a class, any remaining licenses for that class must be issued and purchased prior to closing of the municipal offices on the next normal business day the municipal offices are open. If the Brunswick municipal offices are closed during any portion of the normal office hours on the second day set above for issuing licenses to a class, any remaining licenses for that class must be issued and purchased prior to noon on the next normal business day the municipal offices are open.

For the purposes of the above selection process, a license does not remain for a class in the descending order if a person in the class above is issued a license but does not purchase the license within the required time, and others in the class above did not obtain a license because the number of persons in the class above exceed the number of available licenses. Rather, the license shall be issued to the persons in the class above who did not obtain a license, by lottery if necessary.

For the purpose of the above selection process, a person who was a Brunswick resident and subsequently established residency in another place outside the Town of Brunswick and obtained a resident commercial shellfish license in that place, shall not be considered as previously having a Brunswick resident commercial shellfish license.

For the purposes of the above selection process, a person who is issued a license but does not purchase the license within the required time for two (2) successive license years shall not be considered as previously having a Brunswick commercial shellfish license.

(5) The town clerk or the town clerk's designee shall begin to issue resident and nonresident recreational shellfish licenses on the first Monday in April.

(c) Reserved.

(d) The purpose of the student shellfish license program is two-fold. The first is to provide education in applied marine science via the programs at the Brunswick High School. The second purpose is to train a young generation of residents interested in pursuing shellfish harvesting or a related business as a career. The following procedure will be followed to control student shellfish license availability:

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- (1) Prior to the first Friday in February, the Town Council will establish the number of student shellfish licenses to be made available and the amount each student is allowed to harvest with a minimum of one (1) bushel per tide and a maximum of three (3) bushels per tide based on survey results. Not less than ten (10) percent of the student shellfish licenses shall be made available to nonresidents, except that if the number established is five (5) or fewer, none is required to be made available to nonresidents, and if the number is more than five (5) but fewer than ten (10), at least one (1) is required.

The Town Council will notify the town clerk in writing prior to the second Friday of February of the number of student licenses to be made available for issue. Prior to the last business day of February, the town clerk will submit the license allocation request to the department of marine resources municipal shellfish management program.

- (2) Notice of intent application for student licenses will be available on the first Friday in April at the Town Clerk's Office, 85 Union Street Brunswick. The town clerk shall publish a notice of availability of student notice of intent applications for shellfish harvesting in a newspaper of general circulation no later than the first Friday of April. Student harvesters must deliver a completed notice of intent to the town clerk's department, in person, by the end of business on the first Friday of May. If there are more applicants than there are licenses available, the selection process shall be by lottery. On the second Friday in May, the town clerk shall hold a separate lottery for each license category if needed to select the applicant or applicants who shall receive licenses. Licenses shall be purchased in person by the end of business on the third Friday of May. If the licenses are not purchased by that time, they shall be offered to the next succeeding person or persons in the lottery who shall have seven (7) business days after the town clerk by telephone and U.S. mail notifies the person or persons to purchase the license.

If student shellfish licenses remain after the first ninety (90) days following the initial date available to purchase, they shall be equally available to residents and nonresidents. If a license becomes available because it is suspended, rendered void or surrendered prior to the end of the license year, it shall not be reissued.

- (3) If a student files an intent in the commercial shellfish process, he/she is not eligible to apply for the student license regardless of whether a commercial license was granted or not.
- (4) Beginning in 2021, if a commercial license applicant has applied for a student license for consecutive years immediately preceding a first application for a commercial license, they should be entitled to additional entries in the commercial license lottery as follows:

2 or more years 1 additional entry
3 years 2 additional entries
4 or more years 3 additional entries

Credit toward additional entries will be given for the 2018 application year and beyond. If a commercial license is awarded to an applicant using additional entries accumulated as a student, those additional entries will not be usable toward future commercial license applications. However, if an applicant using additional entries accumulated as a student is not awarded a commercial license, those additional entries may be carried forward to future consecutive commercial license applications until a commercial license is awarded or the applicant accumulates a total of five (5) additional entries.

- (e) Notice of the dates, places, times and the procedures for the recreational license sales shall be posted on the town's web page, 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 ten (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.

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(Ord. of 3-6-89, § 309; Ord. of 2-5-90, § 309; Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 2-22-94; Ord. of 8-15-94; Ord. of 1-16-96; Emergency Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Emergency Ord. of 3-16-98; Ord. of 3-16-98, Ord. of 3-16-99; Emergency/Regular Ord. of 7-6-99; Ord. of 1-18-00(1); Ord. of 6-5-00(1); Ord. of 2-6-01(1); Ord. of 12-2-02; Ord. of 11-3-03; Ord. of 2-22-05; Ord. of 10-24-05; Ord. of 11-2-05(2); Ord. of 11-15-06(1); Ord. of 4-7-08(1); Ord. of 12-7-09; Ord. of 4-1-13; Ord. of 12-1-14(1); Ord. of 9-18-17; Ord. of 12-4-17; Ord. of 12-18-17; Ord. of 12-3-18(2); Ord. of 12-7-20 ; Ord. of 11-1-21)

### **Sec. 11-141. Suspension.**

- (a) *Violation of article.* The town marine resource committee shall, after notice and hearing, suspend any and all licenses issued under this article if a person is convicted in court of violating any section of this article.
- (b) Suspension based on conviction in a town closed conservation area. The marine resource committee shall, after notice and hearing, suspend any and all licenses issued under this article when the license holder has been convicted in court of harvesting shellfish from a town closed conservation area. The suspension shall be one hundred eighty (180) days for a first conviction; and the remainder of the shellfish year for a second conviction. In addition, a person with a second conviction shall not qualify as an applicant for five (5) years from the date of the second conviction.
- (c) Suspension based upon violation of recreational license or bushel license requirement. The marine resource committee shall, after notice and hearing, suspend any and all licenses issued under this article when they find the harvester has violated the requirements of this article for recreational, student or bushel licenses. The suspension shall be twelve (12) months for the first finding. The suspension shall be for the balance of the license year for the second finding and, in addition, a harvester with a second finding shall not qualify as an applicant for a recreational, student or bushel license for five (5) years from the date of the second finding.
- (d) The marine resource committee shall, after notice and hearing, suspend any and all licenses issued under this article, if the license holder refuses to allow inspection or seizure under section 11-138. This suspension may not exceed two (2) years.
- (e) *Length of suspension where otherwise not specified.* The suspension of a license may not exceed the following:
  - (1) Ninety (90) days for the first conviction.
  - (2) The remainder of the license year for the second conviction.In addition, a harvester with a second conviction in a twelve-month period arising out of separate events shall not qualify as an applicant for a license for one (1) year.
- (f) *Applicable standards.* Any conviction for violations occurring more than five (5) years before the most recent date of violation resulting in a conviction shall not be counted in determining lengths of suspension.

(Ord. of 3-6-89, § 311; Ord. of 2-5-90, § 311; Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 2-22-94; Ord. of 8-15-94; Emergency Ord. of 1-13-97; Emergency Ord. of 2-3-97; Ord. of 2-3-97; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1); Ord. of 12-7-09; Ord. of 4-1-13)

### **Sec. 11-142. Aiding and abetting.**

A harvester holding a commercial license or bushel license who aids or abets the harvest of shellfish in violation of this article shall be subject to the same penalties as the person he has assisted.



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(Ord. of 3-6-89, § 312; Ord. of 2-5-90, § 312; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 12-7-09; Ord. of 4-1-13)

**Sec. 11-143. Suspension based on state shellfish license being suspended.**

The marine resource committee shall, after notice and hearing, suspend any and all licenses issued by this article when the license holder's State of Maine Department of Marine Resources Shellfish License is suspended. The suspension shall remain in effect until the license holder's State of Maine Department of Marine Resources Shellfish License is reinstated.

(Ord. of 3-6-89, § 313; Ord. of 2-5-90, § 313; Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 8-15-94; Ord. of 3-16-99; Ord. of 12-7-09)

**Sec. 11-144. Hearing.**

If the certified municipal shellfish conservation warden presents to the marine resource committee evidence that any licensee has been convicted of violating this article or the licensee's State of Maine Department of Marine Resources Shellfish License has been suspended, the marine resource committee shall give the licensee seven (7) days' notice of the suspension of the license, stating the reason for the suspension. The licensee has the right to meet with the marine resource committee during that seven-day period to review the evidence of convictions or suspension in the marine resource committee's possession and to present any evidence showing the licensee does not have the convictions or the suspension.

(Ord. of 3-4-91; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 3-16-99; Ord. of 12-7-09)

**Sec. 11-145. Expiration.**

Resident commercial shellfish and nonresident commercial licenses and bushel licenses issued under authority of this article shall expire on the last Friday of April in the following calendar year. Resident student shellfish and nonresident student shellfish licenses issued under the authority of this article shall expire the third Friday of May in the following calendar year. Resident recreational and nonresident recreational licenses issued under authority of this article shall expire on the day before the first Monday of April.

(Ord. of 3-6-89, § 306; Ord. of 2-5-90, § 306; Ord. of 2-18-92; Ord. of 8-15-94; Ord. of 3-16-99; Ord. of 12-2-02; Ord. of 11-3-03; Ord. of 12-7-09; Ord. of 4-1-13; Ord. of 12-18-17)

**Secs. 11-146—11-160. Reserved.**

*DIVISION 5. REGULATIONS*

**Sec. 11-161. Opening and closing of coastal waters.**

- (a) The marine resource committee, with the approval of the commissioner of marine resources, and the direct consent of the town council, and this consent to be given by the town council on an annual basis at their first regular meeting after the organization meeting, may open and close coastal waters. Any opening or closing of coastal waters must be noticed at least five (5) days in advance in a newspaper of common circulation to the Brunswick area.

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- (b) The marine resource committee shall make findings of fact on the relevant evidence presented. They shall then make a conclusion based on those findings of fact as to whether opening of coastal waters as requested is warranted by the recovery of the resource; or the freedom from predation, competition or other resource problem. If so, the marine resource committee with the concurrence of the department of marine resources shall order the coastal waters opening and shall set such time limitations and other harvesting conditions as are consistent with good conservation practices. If the request is to close the coastal waters, the marine resource committee shall make a conclusion based on their findings of fact as to whether closing the coastal waters is warranted by depletion of the shellfish, destruction of existing seed; or predation, competition or other resource problem. If so, the marine resource committee shall order the coastal waters closed until further request for opening by the staff. All proposals for opening or closing of coastal waters shall be approved by the commissioner of marine resources prior to enactment.
  - (c) When the marine resource committee opens or closes the coastal waters, the committee's action may be reviewed at a regularly or specially scheduled town council meeting. The town council may uphold, reverse or amend the opening or closing decision of the marine resource committee. Any proposed or requested changes to a closure or opening must first be approved by Maine Department of Marine Resources.
  - (d) It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the Town of Brunswick in accordance with DMR Regulation, chapter 7. Harvesting shellfish in a closed area is a violation of this ordinance and is punishable under 12 M.R.S.A. § 6671.

(Ord. of 3-6-89, § 203; Ord. of 2-5-90, § 203; Ord. of 2-18-92; Ord. of 4-5-93; Ord. of 2-22-94; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 2-6-01(1); Ord. of 12-7-09; Ord. of 9-18-17)

### **Sec. 11-162. Shellfish 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 not more than ten (10) percent of any lot; quahogs which are less than one (1) inch in at the hinge to the amount of not more than five (5) percent of any lot; razor clams which are less than four (4) inches or any European oysters which are less than three (3) inches in length.

(Ord. of 3-6-89, § 302; Ord. of 2-5-90, § 302; Ord. of 2-18-92; Ord. of 3-16-99; Ord. of 1-18-00(1); Ord. of 4-7-08(1); Ord. of 12-7-09; Ord. of 9-18-17)

### **Sec. 11-163. 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 entire lot contains less than one (1) peck, the tolerance must be determined by numerical count of the entire lot.

(Ord. of 3-6-89, § 303; Ord. of 2-5-90, § 303; Ord. of 2-18-92; Ord. of 3-16-99; Ord. of 12-7-09)

### **Sec. 11-164. Night shellfish harvesting prohibited.**

It is unlawful to harvest, take or possess shellfish from one (1) hour after sunset until one (1) hour before sunrise. The time table prepared by the Nautical Almanac Office of the U.S. Navy for Augusta, Maine will be the official time.

(Ord. of 1-16-96; Ord. of 3-16-99; Ord. of 12-7-09)

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**Sec. 11-165. Sunday shellfish harvesting prohibited.**

It is unlawful for any commercial harvester to harvest or take shellfish from the coastal waters of the town on Sundays between June 1 and October 1.

(Ord. of 4-7-08(1); Ord. of 12-7-09; Ord. of 2-6-12; Ord. of 9-18-17)

**Sec. 11-166. Harvesting areas.**

It shall be unlawful for a person to harvest shellfish from intertidal areas when they covered with water. Any areas of high water harvest shall be determined by the Brunswick Marine Resource Committee and approved by the department of marine resources.

(Ord. of 12-7-09; Ord. of 9-18-17)

**Sec. 11-167. Leaving unguarded ice holes.**

- (a) Any person who removes ice or causes its removal from any stream, pond, lake, or coastal waters, within the jurisdictional boundaries of the Town of Brunswick, thereby leaving an opening that exceeds one and one-half (1½) feet in width or exceeds four and one-half (4½) feet in length, shall place a fence around the entire perimeter of the opening made by such removal as described below:
  - (1) Wooden stakes or poles, no more that one and one-half (1½) inches in width and at least three and one-half (3½) feet in height above the surface of the ice shall be properly spaced around the perimeter of the opening.
  - (2) Safety tape, no less that two (2) inches in width, shall be displayed in such a manner that it will enclose the entire perimeter of the opening in the ice. Safety tape shall have the name of the person responsible for creating the ice hole, along with that person's phone number and address, clearly printed in one-inch block letters.
  - (3) The safety tape shall be suspended not less than three and one-half (3½) feet above the surface of the ice.
  - (4) It shall be the responsibility of the person who removes the ice and erects the fence to retrieve the fence and tape when the opening has safely frozen over or before the melting of the ice at the end of the winter season.
- (b) Any person who removes ice or causes its removal from any stream, pond, lake, or coastal waters within the jurisdictional boundaries of the Town of Brunswick, thereby leaving an opening that is less than one and one-half (1½) feet in width and less than four and one-half (4½) feet in length, shall place a visual warning device of pine or evergreen boughs or any natural biodegradable debris such as tree limbs or brush around the entire perimeter of the opening made by such removal; provided, however, that an opening that is less than twelve (12) inches in diameter is exempt from the requirements of this section.

(Ord. of 3-1-10(1))

**Sec. 11-168. Intertidal aquaculture review.**

- (a) The marine resource committee shall review and approve by majority vote any intertidal area for which a department of marine resources intertidal aquaculture application is proposed. The review, as prescribed by

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the Maine Department of Marine Resources Chapter 2 Aquaculture Lease Regulations, shall consist of the following:

- (1) A shellfish inventory to determine existing managed shellfish resources, if any;
  - (2) A survey of existing and historical flora and fauna, including eel grasses, and marine worms; and
  - (3) The applicant shall submit a report detailing the findings of a shellfish inventory and flora and fauna study to the committee at least fourteen (14) business days in advance of the meeting date at which the application is to be reviewed by the committee.
- (b) *Aquaculture review fees.* A person who has submitted an application to the Maine Department of Marine Resources for an aquaculture lease or license, intertidal or not, pursuant to 12 M.R.S.A. ch. 605, subchapter 2, and who has sought review by the Town of Brunswick shall pay a fee, as set forth in the master schedule of fees, adopted as an appendix to this Code, for the administrative costs associated with the application. The fee shall not exceed the amount as defined in 12 M.R.S.A. § 60.

(Ord. of 12-7-20 )