

Maine Shellfish Easement Template and Companion Resource

March 23, 2026

Shellfish harvesters in Maine often access the intertidal through private property. In many cases, harvesters are granted permission informally, through verbal or ‘hand-shake’ agreements. Town shellfish committees and researchers have documented the loss of this type of access, and are identifying approaches and tools to preserve intertidal access.

Several tools include a license agreement (developed by Maine Coast Heritage Trust), a conservation easement that includes shellfish access (developed by Kennebec Estuary Land Trust), and a shellfish trail easement (developed in collaboration with Freeport Conservation Trust). This document provides a template of a shellfish trail easement, with a municipality as the easement holder. Towns can use this template as a starting point for negotiating an easement with a property owner.

Following the shellfish easement template, is a companion resource. This resource highlights discussions and considerations for the parties listed in the easement, including the landowner(s), municipality, and/or land trust. This companion resource provides considerations for parties to an easement, and does not constitute legal advice. When developing an easement, it is recommended to hire a land use attorney.

Key consideration – In the beginning of this process, the parties should discuss which entity/organization will hold the easement. This template is designed for a municipality to hold the easement. Other avenues for holding an easement include local, regional, or statewide land trusts. This template could be amended throughout to have a land trust (or other conservation organization) hold the easement. Upon completion, the town shellfish commission and/or marine warden should inform municipal shellfish license holders about the easement, so harvesters are aware of all stipulations.

The easement template was written by Robert H. Levin, Esq. The companion document was prepared by: Jessica Gribbon Joyce (Tidal Bay Consulting) and Carrie Kinnie (Freeport Conservation Trust), and reviewed by Jeremy Gabrielson, Bob DeForrest, and Adam Pereira (Maine Coast Heritage Trust).

Shellfish Access Easement

This Shellfish Access Easement (the "Easement") is made effective as of the _____ day of _____, 202_, by and between the **Town of** _____, a municipal body corporate and politic, [**or** _____ **Land Trust**, a Maine nonprofit corporation,] with a mailing address of _____ (hereinafter called "Town"), and _____, with a mailing address of _____, (hereinafter called "Owner").

In consideration of the mutual agreements herein, Owner hereby grants to Town [or Land Trust] a perpetual easement (the "Easement") for the use of the Easement Area for the purpose of the Easement Activities, as both terms are described below.

The following terms and conditions comprise this Easement:

1. **EASEMENT AREA:** The Easement Area is that portion of Owner's land southeasterly of _____, described in a deed recorded at the _____ County Registry of Deeds at Book _____, Page _____, (Town Tax Map __, Lot __), depicted and delimited on the sketch map attached hereto by this reference in Exhibit A (hereafter, the Easement Area). Exhibit A also identifies road access to the Easement Area and any current trails and roads within the Easement Area. Upon prior written notice to the Town, Owner may adjust the Easement Area, provided that the adjusted Easement Area provides, in the discretion of the Owner, reasonably convenient access to the intertidal flats from the public road. In the event of such adjustment, the parties shall cooperate to revise and re-record Exhibit A to show the adjusted location.
2. **EASEMENT ACTIVITIES:** The activities the Town may permit within the Easement Area (the "Easement Activities") shall consist of overland access only by currently municipally-licensed harvesters of shellfish (hereafter, "License Holders"), to use the Easement Area for access to intertidal flats for the purpose of hand-tool-based, non-mechanized harvesting. Except for maintenance activities as set forth in Section 4, access within the Easement Area shall be limited to pedestrian uses over trails. Motorized vehicles shall be allowed over roadways or parking areas, as depicted on Exhibit A. No other activities other than the Easement Activities shall be permitted by the Town within the Easement Area, except as expressly permitted by Owner in writing. Fires or overnight camping are not permitted hereby.
3. **ESTABLISHMENT OF TRAILS, ROADS OR PARKING AREAS:** Exhibit A

depicts the approximate extent and location of current or future trails within the Easement Area, as well as the road(s) and parking area(s). Neither party has an obligation to construct such improvements. Changes to trails if any, shall be designated on an amended Exhibit A.

4. **MAINTENANCE AND IMPROVEMENT:** Upon prior written approval by the Owner, employees, agents and volunteers authorized by the Town may carry on reasonable and necessary maintenance activities within the Easement Area at the risk and expense of the Town, including but not limited to, maintenance of a single-track pedestrian trail, construction of new trails, and removal of any trash or rubbish within the Easement Area. No unpaved trail within the Easement Area may be paved or hard-surfaced without the written consent of the Owner. Neither the Owner nor the Town shall have a duty to maintain the Easement Area for the intended use.
5. **LIABILITY:** Owner makes no representation regarding the suitability of the Easement Area for its intended use or the absence of hazardous conditions; and shall have no duty of care to the Town, their invitees, or any authorized or unauthorized users of the Easement Area or Owner's other lands. The Owner and the Town each claims the full benefit of 14 M.R.S. § 159A, Maine's Recreational and Harvesting Use Act. Owner is not responsible nor liable for any injury to person or property resulting from the entry and use of the Easement Area for any recreational or harvesting purposes.
6. **LIMITATIONS OF USE:** The following activities are expressly not permitted within the Easement Area or any other lands of Owner. The Town agrees to take all reasonable measures necessary to prevent any of the following activities by those to whom they authorize to use and enter the Easement Area:
 - a. Any use of motorized or mechanized vehicles or tools, except as expressly stated herein.
 - b. Any entry to any portion of the lands of Owner, including but not limited to entry into any buildings, roads, and parking areas on the other lands of Owner, other than authorized entry on the Easement Area. Owner shall have no obligation to provide restroom, shelter, or any other facilities to any person using the Easement Area under this Easement.
 - c. Use of the Easement Area for Harvesting Activities shall be conducted quietly, without the playing of music or other sounds through speakers, or other loud noises such as mechanized equipment or shouting.
 - d. Any entry to the Easement Area shall be between [~~x~~-minutes]

before dawn and [~~x~~-minutes] after dusk.

7. **NON-COMPLIANCE:** If the Owner believes that the License Holders have failed to comply with the Limitations of Use or other terms of this Easement, Owner should contact the Town, via the _____ or other authorized Town official. The non-compliance may be due to misunderstanding or inadequate communication between the Town or its Shellfish Conservation Commission and the harvesters or other users. The Town will create a written description of the Owner's complaint and verify with the Owner that the description is accurate. The Town will visit the Easement Area to collect information about the complaint and will present a written description of the complaint and findings promptly, or at the next regular meeting of the Shellfish Conservation Commission, if any. The Town will provide the Owner with a written description of the actions it will take to address the complaint.
8. **NON-EXCLUSIVITY:** This Easement shall not be exclusive. The Owner reserves the right to use, or allow others to use, any part of the Easement Area provided such use does not unreasonably interfere with the access and use of the Easement Area, including the intertidal area, for Easement Activities.
9. **TERMINATION:** This Easement may be terminated upon the mutual written consent of Owner and the Town, and only where both the Owner and Town agree that this Easement no longer serves any public benefit. Town shall remove, within thirty (30) days of the termination of this Easement, any equipment, signage, and other personal property, which may have been placed on or near the Easement Area, and shall clean and restore the site to the reasonable satisfaction of the Owner.
10. **ASSIGNMENT:** This Easement is issued to the Town herein named and is not assignable or transferable, except that the Town may authorize License Holders, to use the Easement Area for Easement Activities.
11. **PERMITS AND APPROVALS:** The Town shall be solely responsible for obtaining and complying with any governmental permits and approvals required for the construction and maintenance of trails and other improvements within the Easement Area authorized under this Easement.

Signed and Delivered

Date

Owner name

STATE OF _____

COUNTY OF _____

Date: _____

Personally appeared before me the above-named _____ and
acknowledged the foregoing to be [his/her/their] free act and deed.

Before me, _____
Notary Public/Attorney

Please type or print name of notary
My commission expires:

The above and foregoing Shellfish Access Easement was authorized to be accepted by the Town of _____, and the said Town does hereby accept the foregoing Easement, by and through _____, its _____, hereunto duly authorized, this _____ day of _____, 202_.

TOWN OF _____

By: _____

Title: _____

STATE OF MAINE

COUNTY OF _____, 202__

Personally appeared _____, _____ and authorized representative of the above-named Town of _____, and acknowledged the foregoing instrument to be [his/her/their] free act and deed in [his/her/their] said capacity, and the free act and deed of said corporation.

Before me, _____

Notary Public

(Please type or print name of notary)

My commission expires:

EXHIBIT A – EASEMENT AREA

Exhibit A should be a sketch map depicting:

- *The Location of real property owned by the Owner and any road frontage or ROW access.*
- *The “Easement Area” – designation of the limited area to be used by license holders for overland access to the intertidal and the shore.*
- *The general locations of trail(s) for pedestrian use, and of roads, and parking areas (or portions thereof) that may be used by harvesters’ motor vehicles.*
- *Other significant landmarks such as the location of public roadways or private rights of way to access the Easement Area, and any buildings, fences or property lines that serve to clarify the location of the Easement Area.*

Companion Document to the Shellfish Access Easement

1. **Easement Area** – Based on the nature of the trail and access, the owner should decide whether the easement area, including the trail, should include exact GPS coordinates or a more general location. Owners may desire the flexibility to change the location of the trail in the future. If the property is subdivided in the future, the easement would only convey with the parcel(s) of the property the easement area/trail is located on.
2. **Easement Activities** – The template includes language to allow municipally-licensed shellfish harvesters only. Additional access may be considered, including for harvesting marine worms, rockweed, periwinkles or other species harvested in the intertidal or subtidal waters. Depending on the activity, and the licensing/enforcement authority, there may be enforcement considerations beyond the municipal shellfish warden or local police department.
3. **Establishment of Trails, Roads or Parking Areas** – Exhibit A should include a map that clearly depicts the location of trail (including GPS coordinates, if applicable), as well as any relevant roads or parking areas. If parking is not permitted on private property, including roads, any no parking zones should be noted as well.
4. **Maintenance and Improvement** – This section is written to allow ‘reasonable and necessary maintenance activities’ on the easement area/trail, although the land owner may prefer to keep the trail natural and in its unimproved state (as long as it continues to provide safe access). Consideration should also be discussed regarding restricting the land owner from intentionally erecting barriers or otherwise discouraging access by license holders, if there is a change in ownership from the original owner who created the easement.
5. **Liability** – The landowner should not take on any additional liability from holding this easement. Maine’s Recreational and Harvesting Use Act protects landowners from liability for injuries to people using their land for recreational or harvesting activities, regardless of whether permission was granted. This law applies to both improved and unimproved land, including trails, waters, and private ways. If the easement is held by a land trust, it is important to understand whether Terrafirma (easement enforcement insurance) would be applicable.
6. **Limitations of Use** – Consider any activities that the landowner may desire to prohibit. In addition, municipal shellfish ordinances often include daylight restrictions to harvesting that can be mirrored in the easement (e.g., 1-hour before dawn, or 1-hour after dusk), or the easement can be more restrictive than the ordinance.
7. **Non-Compliance** – In order to determine the contact person for non-compliance, it should be discussed whether the town’s shellfish warden or other town employee would have the authority to enforce the terms of the agreement. Also, anticipating that future

landowners may not share the current landowners' motivations, additional language on the enforcement of the easement and monitoring by the town/easement holder, should be discussed. If the easement is held by a land trust, this section would be revised accordingly.

8. **Non-Exclusivity** – No additional considerations.
9. **Termination** – This clause could be removed if the owner prefers not to grant the town/easement holder the option to terminate the easement if the property changes hands or under other extenuating circumstances. As written, both the owner and the easement holder would have to agree to terminate the easement.
10. **Assignment** – No additional considerations.
11. **Permits and Approvals** – No additional considerations.

Map (Exhibit A) – If possible, utilize GIS software to develop this exhibit, as described in the template.