

**THE SHELLFISH CONSERVATION ORDINANCE OF THE TOWNS  
OF BOOTHBAY, BOOTHBAY HARBOR, SOUTHPORT, AND  
EDGECOMB, MAINE**

Towns of Boothbay Harbor, Boothbay, Edgecomb and Southport

Re-Adopted by voters at the Annual Town Meeting of each Town held in 2016

## **1. Title.**

This ordinance shall be known, and may be cited as the "Shellfish Conservation Ordinance of the Towns of Boothbay Harbor, Southport, Boothbay, Edgecomb, Maine," and will be referred to herein as "this chapter."

## **2. Definitions.** (As used in this Ordinance):

**RESIDENT:** A person who has been domiciled in this municipality for at least 12 months prior to the time his claim of such residency is made. Residency will be determined using the criteria in Attachment A.

**NONRESIDENT:** Anyone not qualified as a resident under this ordinance and not a holder of a resident license from a reciprocating town.

**SHELLFISH, CLAMS AND INTERTIDAL SHELLFISH RESOURCES:** Softshell clams (*Mya arenaria*).

**MUNICIPALITY:** The Town of Boothbay, Boothbay Harbor, Southport and Edgecomb, as the case may be.

**LOT:** The total number of softshell clams in any bulk pile. Where softshell clams are in a box, barrel or other container, each shall constitute a separate lot.

**POSSESS:** Dig, take, harvest, ship, transport, hold, buy and sell, retail and/or wholesale, softshell clam shellstock.

## **3. Authority.**

This Ordinance has been prepared in accordance with the provisions of 12 M.R.S.A. § 6671, et seq., as revised, § 6681, as revised.

## **4. Purpose.**

The purpose of this chapter is to establish a shellfish conservation program for the Towns of Boothbay, Boothbay Harbor, Southport and Edgecomb which will ensure the protection and optimum utilization of shellfish resources within the limits of these municipalities. These goals will be achieved by means, which may include:

- A. Licensing.
- B. Restricting the time and area where digging is permitted.
- C. Limiting the minimum size of clams taken.
- D. Limiting the amount of clams taken daily by a harvester.

## **5. Validity and severability.**

If any section, subsection, sentence or part of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

## **6. Effective Date.**

This Ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective following approval by all participating municipalities, provided that a certified copy of this chapter is filed with the Commissioner within 20 days of its adoption.

## **7. Shellfish Conservation Committee.**

There is hereby established a Shellfish Conservation Committee composed of representatives from each of the municipalities which enact this ordinance. The municipal officers of each town shall appoint two of its Shellfish Committee members and at least one licensed commercial clam digger to be a member of the Committee. The Municipal Shellfish Warden(s) shall be a nonvoting member of the Committee.

- A. The Committee's responsibilities include:
1. Establishing, annually, in conjunction with the Department of Marine Resources, the number of shellfish digging licenses to be issued.
  2. Reviewing annually the status of the resource using the results of clam flat, harvester or dealer surveys and other sources of information preparing in conjunction with and subject to the approval of the Department of Marine Resources a plan for implementing conservation measures.
  3. Submitting, to the Administrative Committee proposals for the expenditures of funds for the purpose of shellfish conservation.
  4. Periodically reviewing this chapter and making recommendations for its amendment.
  5. Securing and maintaining records of shellfish harvest from the municipally managed shellfish areas and of closed areas that are conditionally opened by the Department of Marine Resources.
  6. Recommending conservation closures and openings to the Administrative Committee or Council in conjunction with the Area Biologist of the Department of Marine Resources.
  7. Submitting an annual report to the municipalities and Department of Marine Resources covering the above topics and all other Committee activities.
- B. Term of office and vacancy. The term of office of any member of the Committee shall be for a period of three years from the date of appointment. The municipal officers shall appoint a person to fill a vacancy for any unexpired term.
- C. Committee officers. The Committee shall elect a Chairman, a Vice Chairman and Secretary from its members. The Chairman shall preside at all meetings of the Committee; the Vice Chairman shall preside in his absence; and the Secretary may record and keep minutes of each meeting.
- D. The Committee shall advise the officers of each municipality of all matters pertaining to conservation and harvesting of its shellfish resources, including, but not limited, to the opening and closing of clams flats. It shall act as a liaison between the municipalities and the state. It shall aid in the development of programs to help each municipality manage its shellfish resource. It shall represent the interest of the region with regard to shellfish resources and shall take such other action as may be necessary, or desirable, to implement harvesting and conservation management programs.
- E. For a meeting to be valid, a quorum of five members must be present.
- F. Any member not attending at least six meetings a year will be dropped from the Committee.
- G. Elections will be held each year at the January meeting.

H. Meetings will be held monthly with the time and place for next meeting being determined at the current month's meeting.

## **8. Amendments.**

- A. Initiation. A proposal for an amendment to this chapter may be initiated by the following, but may be considered only if accompanied by Department of Marine Resources approval:
1. The municipal officers;  
Or
  2. An individual, through a request to the Shellfish Conservation Committee and subsequent favorable majority vote of the Committee;  
Or
  3. A written petition of the number of voters equal to at least 10% of the voters in the last gubernatorial election of the municipality in which the petition is originated.  
Or
  4. Any amendment that is adopted in one Community must also be approved in the other three communities for the amendment to take effect.
- B. Procedure.
1. Any proposal for an amendment shall be made to the Shellfish Conservation Committee, in writing, stating the specific changes requested. Amendments initiated by petition shall be presented to the municipal officers who shall transmit them to the Shellfish Conservation Committee, for recommendation. When an amendment proposed by an individual receives a favorable vote of a majority of the Committee, the individual shall pay a fee to cover the costs of hearings and advertisements.
  2. Within thirty (30) days of receiving a properly initiated amendment, the Committee shall hold a public hearing on the proposal. Notice of the hearing shall be posted and advertised in a newspaper of general circulation in the municipality at least seven days prior to the hearing. The notice shall contain the time, date and place of hearing and sufficient detail about the proposed changes as to give adequate notice of their content. If the changes are extensive, a brief summary, together with an indication that a full text is available at the Town Clerk's office, shall be adequate notice.
  3. Following the public hearing, the Committee shall make a written recommendation regarding passage to the municipal officers, which will be accompanied by the required Department of Marine Resources approval of the proposal, prior to any action on the amendment by them.
- C. Adoption. Any amendment to this chapter shall only be adopted by a majority vote of the Town Meeting.
- D. Period of Ordinance. This ordinance and any amendments thereto shall remain in effect until repealed by the municipality or rescinded by the Commissioner of Marine Resources.

## **9. Licensing.**

A municipal shellfish digging license is required for any person to dig, or take, shellfish from the shores and flats of the reciprocating municipalities without having a current license issued by a municipality as provided by this chapter. Additionally, a commercial digger also must have a valid State of Maine commercial shellfish license issued by the Department of Marine Resources or a receipt of payment from the Department of Marine Resources.

- A. License classification.
1. Resident commercial shellfish license. This license is only available to residents of the municipality and entitles the holder to dig, and take, any amount of shellfish from the shore and flats of the reciprocating municipalities.
  2. Nonresident commercial shellfish license. This license is available to nonresidents of the municipality and entitles the holder to dig, and take, any amount of shellfish from the shores and flats of the reciprocating municipalities.
  3. Resident recreational shellfish license. This license is available to the residents of the municipality and entitles the holder to dig, and take, no more than one peck of shellfish, in any one day, for the use of oneself or one's family, from the shores and flats of the reciprocating municipalities. It shall be unlawful for anyone holding a State commercial shellfish license to obtain a recreational license in all towns in the interlocal agreement.
  4. Nonresident recreational shellfish license. This license is available to nonresidents of the municipality and entitles the holder to dig and take no more than one peck of shellfish, in any one day, for the use of oneself or one's family, from the shores and flats of the reciprocating municipalities. It shall be unlawful for anyone holding a State commercial shellfish license to obtain a recreational license in all towns in the interlocal agreement.
- B. Open license sales. When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year:
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 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.
    - a. Licenses shall be sold as according to DMR Regulation Chapter 7.40, Municipal Licensing of Shellfish Harvesters.
- C. All shellfish licenses must be signed. The licensee must sign the license to make it valid.
- D. Application procedure. Any person may apply to the Town Clerk for the licenses required by this chapter on forms provided by the municipality. (See Attachment B.[1]) [1] Editor's Note: Attachment B is on file in the town offices.
- E. Contents of application. The application must be in the form of affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.
- F. All license fees must accompany, in full, the application for the respective license before license is issued.
- G. Misrepresentation. Any person who gives false information on a license application will cause said license to become invalid and void.
- H. Procedure. The Town Clerk prepares a form to list the names, addresses and phone numbers of license purchasers along with a license number listed sequentially and indicative of residency status (e.g., R1 for resident license No. 1 and N1 for nonresident license No. 1). In the case of commercial licenses, the license numbers would begin R1 and continue through R5; the next number would be N1 followed by R6 through R10. The next set of 11 would begin with N2 followed by R11 through R20. Each

successive set of 11 repeats the previous (i.e., N3, R21-R30, R31-40). Because of a difference in the statutes between commercial and recreational licenses, the listing of the first 10 for recreational licenses differs from commercial licenses. The license numbers would begin with R1 followed by N1 then R2 through R10. Thereafter the listing is the same as for the commercial licenses. A separate but similar form is prepared for each license category for which the municipality has requested open sales. Since a number of resident licenses need to be sold before a nonresident license becomes available, more nonresidents may apply for licenses than are available, particularly during the initial sales. A second form needs to be prepared. It should contain information on nonresidents who apply for a license listed sequentially. As nonresident licenses become available, as indicated on the first form, the information is transferred from the second to the first and the applicant notified.

1. Each applicant shall perform eight hours mandatory conservation work or if serving on the Shellfish Conservation Committee must have attended at least six meetings before obtaining a commercial shellfish license. Conservation work shall be approved by the Shellfish Conservation Committee, and a Committee member must be present at the time the work is being performed under supervision of the Town Warden.
2. All licenses, resident commercial, nonresident commercial, resident recreational and nonresident recreational issued to individuals 65 years of age or older will be issued free of charge.
3. No individual may hold a valid resident commercial and a valid nonresident commercial license at the same time.
4. All commercial licenses will be sold at one location.

## **10. Violations and penalties.**

Any person who violates this chapter shall be punished as provided by 12 M.R.S.A. § 6671(10) or 6681, as appropriate in the circumstances.

## **11. Fee; use of revenues from fees and penalties.**

All fees for shellfish licenses will be set by a vote of the Shellfish Committee at annual shellfish committee meeting. Additionally, an agent fee of \$2 will be charged for each license and shall be retained by the local clerk as payment for issuing the license. Fees and penalties received shall be used for costs incurred in the enforcement and management of the Shellfish Conservation Chapter.

## **12. Limitation of Diggers.**

In that clam resources may vary in density and size distribution over the limited soft shell clam producing areas of the municipality, from year to year municipality carefully husband its shellfish resources. Following the annual review of these resources (i.e. size distribution, abundance and the warden's reports) as required by the Shellfish Conservation Committee, in consultation with the DMR's area Biologist, the Shellfish Conservation Committee will determine whether limiting commercial and/or recreational shellfish licenses is an appropriate shellfish management option for the following year.

- A. Prior to annual shellfish committee meeting, each year, the Shellfish Conservation Committee shall document and report its findings, as regards to the allocation of commercial and recreational licenses to be made available for the following license year, to the Commissioner of Marine Resources for approval.

- B. After receiving approval of proposed license allocations from the Commissioner of Marine Resources, the Shellfish Conservation Committee shall notify the municipal town clerk, in writing, the number and allocation of shellfish licenses to be issued by that municipality.
- C. Notice of the number of licenses to be issued, and the procedure for application, shall be published in a newspaper, or combination of newspapers, of general circulation in the municipality not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until said period expires.
- D. The Municipal Town Clerk shall issue licenses to those residents who have met the requirements of obtaining a resident commercial license. The Town Clerk shall issue licenses to residents and non-residents July 1st to June 30th of the following year.
- E. License Expiration Date – Resident and Nonresident Commercial and Recreational licenses issued under authority of this ordinance expire at midnight on June 30<sup>th</sup> following date of issue.

### **13. Reciprocal Harvesting Privileges.**

Resident Commercial, Nonresident Commercial, Nonresident Recreational and Resident Recreational license holders may harvest shellfish within any municipality governed by the ordinance.

### **14. Suspension.**

Any shellfish licensee having three or more convictions for a violation of this Ordinance within the preceding three years shall have his shellfish license automatically suspended for a period of thirty (30) days, unless specified elsewhere in this Ordinance.

### **15. Opening and Closing of Flats for Conservation Purposes.**

The Municipal Officers, conditioned upon the approval of the Commissioner of Marine Resources, may open and/or close areas of shellfish harvesting. Within fourteen (14) days of receipt of written request of the Shellfish Conservation Committee, the Municipal Officers may hold a public hearing on the proposal. The decision of the Municipal Officers shall be based on the recommendation of the DMR's area biologist and public input. The decision of the Municipal Officers will be in the form of request letter to the Department of Marine Resources. The Municipal Officers shall provide sufficient notification to the public of any conservation closure or opening by publishing, advertising and/ or posting in public places, an official municipal closure or opening notice signed by the Shellfish Warden or the Department issued permit, five (5) days prior to the initial closure or opening date. The method of notification must be approved by the Department prior to issuance of the permit.

### **16. Minimum Legal Size of Soft Shell Clams**

- A. In accordance with DMR Statute 6681 Sec. 3 it is unlawful for any person to possess soft shell clams within the municipality which are less than two inches in the longest diameter except as provided by Subsection B of this section.

- B. Tolerance – any person may possess soft clams that are less than two inches if they comprise less than 10% of a 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.

### **17. Depuration Digging.**

While Depuration Digging is controlled by the State it is the intent of the clam committee to recommend whenever possible, this digging be done by local diggers. Any moneys received by the towns in the ordinance, shall be turned over to the Shellfish Conservation Committee.

### **Attachment A – Residence Criteria**

1. Motor Vehicle License Address
2. Motor Vehicle Registration Address
3. Voter Registration Address
4. Location of owned residential real estate
5. Location of rented residential real estate
6. Hunter License Address
7. Utility Service Address
8. Address and physical location for spouse and/or children
9. Location for children's school registration
10. Any other physical evidence of physical character demonstrating residency