

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

1 of 11

Article 3 Special Town Meeting May 25, 2000; adopted as amended  
Amended May 7, 2001 to add Southport  
Amended May 5, 2003, Article 35, no expiration date on ordinance  
Amended, May 4, 2009, Article 13 - no rec with comm

I. Title:

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

II. Definitions (as used in this Ordinance):

A. Resident: the term "resident" shall mean 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.

B. Nonresident: The term "nonresident" shall mean anyone not qualified as a resident under this ordinance and not a holder of a resident license from a reciprocating town.

C. Shellfish, Clams and Intertidal Shellfish Resources: Words "shellfish", "clams", and intertidal shellfish resources shall mean soft-shell clams (*Mya arenaria*).

D. Municipality: Shall mean the town of Boothbay, Boothbay Harbor, Southport and Edgecomb as the case may be.

E. Lot: The word "lot" shall mean the total number of soft-shell clams in any bulk pile. Where soft-shell clams are in a box, barrel, or other container, each shall constitute a separate lot.

F. Possess: "Possess" shall mean dig, take, harvest, ship, transport, hold, buy and sell retail, and/or wholesale, soft shell clam shellstock.

III. Authority:

This Ordinance has been prepared in accordance with the provisions of 12 MRSA Section 6671, et seq., as revised and Section 6681, as revised.

IV. Purpose:

To establish a shellfish conservation program for the towns of Boothbay, Boothbay Harbor, Southport and Edgecomb which will insure 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.

V. 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 or the remaining portions of the Ordinance.

VI. Effective Date:

This Ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective June 1, 2001, provided a certified copy of the Ordinance is filed with the Commissioner within (20) days of its adoption.

VII. 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) and a liaison member from the Department of Marine Resources, appointed by the state commissioner, shall be non-voting members 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 Board of Selectmen, proposals for the expenditures of funds for the purpose of shellfish conservation.
4. Periodically reviewing this ordinance 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 Board of Selectmen 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 un-expired 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 clam 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 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 who has more than six un-excused absences a year will be removed 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.

VIII. Amendments:

A. Initiation: A proposal for an amendment to this Ordinance 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 ten percent (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 two 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 Ordinance shall be 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.

**(Article 35, May 5, 2003 Town Meeting Amendment)**

IX. 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 Ordinance. 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 one-self 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 the Town of Boothbay.

**(Article 13, May 4, 2009 Town Meeting Amendment)**

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 one's-self 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 the Town of Boothbay.

**(Article 13, May 4, 2009 Town Meeting Amendment)**

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.

2. For each commercial license category, the Town Clerk shall issue one license to nonresidents when six licenses are issued to residents and one more to nonresidents when four more are issued to residents; thereafter, one nonresident license will be issued for every ten additional resident licenses issued. For each recreational license category, the Town Clerk shall issue one license to a resident and one to a nonresident; thereafter, one nonresident license will be issued for every additional resident license issued.

**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 Ordinance on forms provided by the municipality (See attachment B.)

**E. Contents of Application:**

This Application must be in the form of an 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 the application for the respective license.**

**G. Misrepresentation:**

Any person who gives false information on a license application will cause said license to become invalid and void.

**Procedure:**

The Town Clerk prepares a form to list the name, address and phone number of license purchasers along with a license number listed sequentially and indicative of residency status (e.g. R1 for resident license #1 and N1 for nonresident license #1). In the case of commercial licenses, the license numbers would begin with R1 and continue through R5; the next number would be N1 followed by R6 through R10. The next set of eleven would begin with N2 followed by R11 through R20. Each successive set of eleven repeats the previous (i.e., N3, R21-R30; N4, R31-40). Because of a difference in the statutes between commercial and recreational licenses, the listing of the first ten for a recreational license 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.

**A. Each applicant shall perform 8 hours mandatory conservation work or if serving on the Shellfish Conservation Committee must have attended at least 6 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.

B. All licenses, resident commercial, non-resident commercial, resident recreational and nonresident recreational issued to individuals 65 years of age or older, will be issued free of charge.

C. No individual may hold a valid resident commercial and a valid nonresident commercial license at the same time.

D. All non-resident licenses will be issued by lottery.

X. Violation:

Any person who violates this ordinance shall be punished as provided by 12 MRSA Section 6671 (10) or Section 6681 as appropriate in the circumstances.

XI. Fees/Penalties:

The following license application fees will be charged: Residential Commercial - \$175.00, Non-Resident Commercial - \$350.00, Resident Recreational - \$2.00, Non Resident Recreational - \$5.00 and must accompany, in full, the application for the respective license. Additionally, a \$2.00 agent fee will be charged for each license and shall be retained by the local clerk as payment for issuing the license. (Resident Recreational licenses are not assessed the agent fee) Fees and penalties received shall be used for costs incurred in the enforcement and management of the Shellfish Conservation Ordinance.

XII. Limitation of Diggers:

In that clam resources 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 May 1, 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, and prior to May 15, 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 as allocated (see Article XIII, A.) June 1, to May 31, of the following year.

E. License Expiration Date:

Resident and Nonresident Commercial and Resident Recreational licenses issued under authority of this ordinance expires at midnight on May 31 next following date of issue.

XIII. Reciprocal Harvesting Privileges:

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

XIV. 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.

XV. 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 for 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.

XVI. Minimum Legal Size of Soft Shell Clams:

A. 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 shell 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.

**XVII. Access:**

In that access to that flats across private property is a privilege, not a right, an agreement of access may be made between the property owner and the town and may be registered at the town office. This agreement, which can be modified and re-registered with the town at any time, will detail the limitations and/or constraints on access across that private property where such limitations may include, but is not limited to, items such as:

- \*Access only during daylight hours
- \*Restrictions of vehicles on property
- \*Designated pathways to the flats
- \*Areas off bounds

Those granted a clamming license:

- \*Shall be shown these agreements and acknowledge that fact.
- \*Are responsible for adhering to agreement constraints
- \*The first two violations of these agreements will result in written warnings issued by signing the back of the license. The third violation shall constitute a violation of the Ordinance.

**XVIII. 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 of spouse and/or children
9. Location of children's school registration
10. Any other physical evidence of physical character demonstrating residency

**Attachment B. Application for Commercial Shellfish License Statement of Domicile:**

DATE: \_\_\_\_\_

1. Name \_\_\_\_\_
2. Home Address \_\_\_\_\_
3. Phone Number \_\_\_\_\_
4. Mailing Address \_\_\_\_\_
5. Address of Motor Vehicle Registration \_\_\_\_\_
6. Voter Registration Address \_\_\_\_\_
7. Where is your Permanent Address? \_\_\_\_\_
8. Social Security Number \_\_\_\_\_
9. Name of Landlord or Mortgagor \_\_\_\_\_
10. Copies of Rent Receipts or mortgage payments for Previous 3 Months (Yes/No) \_\_\_\_\_
11. Place of Birth \_\_\_\_\_
12. Date of Birth \_\_\_\_\_
13. Height \_\_\_\_\_ Weight \_\_\_\_\_ Eye Color \_\_\_\_\_ Hair Color \_\_\_\_\_
14. State Claming License Number \_\_\_\_\_ ME Drivers License \_\_\_\_\_

I AFFIRM THAT I AM DOMICILED IN THE TOWN OF \_\_\_\_\_  
And that I DISAVOW ALL CLAIMS AND PRIVILEGES OF DOMICILE IN ANY OTHER  
COMMUNITY IN OR OUT OF THE STATE OF MAINE.

SIGNATURE OF APPLICANT \_\_\_\_\_

DATE:

WITNESS:

Personally appeared the above named \_\_\_\_\_  
and swore that the statements contained herein are true to the best of the applicants  
knowledge and information.

Notary Public \_\_\_\_\_

