

TOWN OF BLUE HILL

Shellfish Conservation Ordinance

Effective Date: April 3, 2010

Certified by: John R. Bannister 4-9-10
Duane B. Gray 4-9-10
[Signature] 4-9-10
Municipal Officers Date

Attest True Copy: Etta Perkins 4-9-10
Town Clerk Date

Town of Blue Hill Shellfish Conservation Ordinance

1. **Authority:** This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671
2. **Purpose:** To establish a shellfish conservation program for the town of Blue Hill which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means, which may include:
 - A. Licensing
 - B. Limiting the number of shellfish harvesters
 - C. Restricting the time and area where digging is permitted
 - D. Limiting the size of clams taken.
 - E. Limiting the amount of clams taken daily by a harvester daily.
3. **Shellfish Conservation Committee:** The Shellfish Conservation Program for the Town of Blue Hill will be administered by the Shellfish Conservation Committee a sub- committee of the Marine Resources Committee of the town of Blue Hill appointed by the selectmen of Blue Hill for a term of three years.

The committee's responsibilities include:

- A. Establishing annually in conjunction with the Dept of Marine Resources the number of shellfish digging licenses to be issued.
- B. Reviewing annually the status of the resource using the results of clam flat, harvester or dealer surveys and other sources of information and preparing in conjunction with and subject to the approval of the department a plan for implementing conservation measures
- C. Submitting to the board of selectmen proposals for the expenditures of funds for the purpose of shellfish conservation
- D. Keeping this ordinance under review and making recommendations for its amendments
- E. Securing and maintaining records of shellfish harvest from the town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources
- F. Implementing conservation closures and openings or recommending conservation closures and openings to the Marine Resources Committee and the board of Selectmen in conjunction with the area biologists of the Department of Marine Resources.
- G. Submitting an annual report to the municipality and the Department of Marine Resources covering the above topics and all other committee activities.

4. **Definitions:**

- A. **Resident:** The term “resident” refers to a person who has been domiciled in this municipality for at least three months next prior to the time his claim of such residence is made.
- B. **Nonresident:** the term nonresident means anyone not qualified as a resident under this ordinance.
- C. **Shellfish, Clams and intertidal Shellfish Resources:** When used in the context of this ordinance the words “shellfish”, “clams” and “intertidal shellfish resources” mean soft shell clams.
- D. **Municipality:** Refers to the Town of Blue Hill, Maine

5. **Licensing:** Municipal shellfish digging license is required. Is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance. A commercial digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.

A. **Designation, Scope and Qualifications:**

- 1. **Resident Commercial Shellfish License:** The license is available to residents of the municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities
- 2. **Non Resident Commercial Shellfish license:** This license is available to nonresidents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
- 3. **Residential Recreational Shellfish License:** The license is available to residents and real estate tax payers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself or family.
- 4. **Nonresident Recreational Shellfish license:** The license is available to any person not a resident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in any one day for the use of himself and his family.
- 5. **License must be signed:** The licensee must sign the license to make it valid.

B. **Application procedure:** Any person may apply to the town clerk for the licenses required by this ordinance on forms provided by the municipality:

- 1) Contents of Application: The application must be in the form of an affidavit and must contain the applicants name, current address, birth date, height, weight, signature and whatever information the municipality may require.
 - 2) Misrepresentation: Any person who gives false information on a license application will cause said license to become invalid and void.
- C. Fees: The fees for the licenses must accompany in full the application for the respective license. The town clerk shall pay all fees received to the town treasurer except \$1.00 of each license, which will be retained by the clerk as payment for issuing the license. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation and enforcement. Fees shall be determined yearly by the Shellfish Conservation Committee and the Board of Selectmen of the Town of Blue Hill, Maine.
- D. Use of Fees and Fines and Funding: Fees for shellfish licenses will be set forth in the Annual Shellfish Management plan and will accompany the application for the respective license. The municipal town clerk shall pay all fees and fines collected from violators to the municipality. Fines and fees received shall be used for costs incurred in the enforcement and management of this ordinance.
1. Non-Lapse Provision: Monies in the Clam management account shall not lapse at the end of the year but shall be carried over to the next year account.
 2. Funding: The Clam management program will be self supporting as much as possible. Funds for operating the program may be generated by license fees, fines, and financial support from the town.
- E. Limitations of Diggers: If, following the annual review of the towns clam resources, its size distribution, abundance and the warden's report as required by section 3, the shellfish conservation Committee in consultation with the DMR area biologist determine limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year
1. Prior to Jan 1st: the committee shall reports its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license year to the commissioner of DMR for concurrence.

2. After receiving approval of proposed license allocations from the Commissioner of DMR and prior to Feb 1st the shellfish Conservation Committee shall notify the town clerk in writing of the number and allocation of shellfish licenses to be issued.
3. Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the periods conclude.
4. The town clerk shall issue licenses to residents and nonresidents as allocated from March 1st and until May 31st after which licenses shall be without regard to residency on a first come first served basis or by lottery.
5. Licenses may be returned to the town voluntarily, and reissued to another person at the current fee according to the priorities established in this section.

F. 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 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 municipal officers consider effective in reaching persons affected, not less than 10 days prior to the initial sale date and 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 non residents when four more are issued to residents; thereafter, one nonresident license will be issued for every ten additional resident license 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 ten additional resident licenses issued.

G. Conservation Benefit: Individuals holding a shellfish license issued by the municipality who perform 15 hours of conservation work authorized by the Shellfish Committee may purchase a license of the same category one week prior to the regular sale date.

- H. Seniority: When the Shellfish Committee decides that the number licenses must be reduced, licenses will be issued to eligible individuals on the basis of seniority; individuals holding a municipal license of the same category to be reduced for a greater number of years will receive a license before those who have less.
- I. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the last day of February next following date of issuance.
- J. Reciprocal Harvesting Privileges: Licenses from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of this license.
- K. Fee Waivers: Recreational shellfish license fees will be waived for individuals 65 years or older and 12 years and younger
- L. Suspension: Any shellfish licensee having three convictions for violation of this ordinance within a three year period shall have his shellfish license suspended for a period of ninety (90) days.

- 1) A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension has expired.
- 2) The suspension shall be effective from the date of mailing a Notice of Suspension by the town clerk to the Licensee.
- 3) Any licensee whose shellfish license has been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written Request for Hearing with the town clerk within thirty (30) days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee before the Board of Selectmen by filing a written request for Appeal with the town clerk within (7) days of the decision of the Shellfish Conservation Committee.

6. **Opening and Closing of Flats**: The Board of Selectmen and the Shellfish Conservation Committee, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon concurrence of the D M R area Biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Board of Selectmen and the Shellfish Conservation Committee may call a public hearing, and shall send a copy of the notice to the D M R. The decision of the Board of Selectmen and Shellfish Conservation Committee made after the hearing shall be based on findings of fact.

7. **Minimum Legal Size of Soft Shell Clams**: It is unlawful for any persons to possess soft shell clams within the municipality which are less than two (2) inches in the longest diameter except as provided by Subsection B of this section.
- A. **Definitions**:
- 1) **Lot**: the word lot as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.
 - 2) **Possess**: For the purpose of this section, “possess” means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.
- B. **Tolerance**: Any person may possess soft shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by 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.
- C. **Penalty**: Whoever violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6681
8. **Penalty**: A person who violates this ordinance shall be punished as provided by 12 M.S.R.A. Section 6671 (10,10-A)
9. **Effective Date**: This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy of the ordinance is filed with the Commissioner within (20) Twenty days of its adoption.
10. **Separability**: 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.
11. **Repeal**: Any ordinance regulating the harvesting or conservation of shellfish in the town and any provisions of any other town ordinance, which is inconsistent with this ordinance, is hereby repealed.