

SHELLFISH CONSERVATION ORDINANCE TOWN OF DEER ISLE

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 Deer Isle which will ensure 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 harvesting is permitted.
 - D. Limiting the minimum size of shellfish taken.
 - E. Limiting the amount of shellfish taken daily by a harvester.

3. **Shellfish Conservation Committee:** The Shellfish Conservation Program for the Towns of Deer Isle and Stonington will be administered by a joint Shellfish Conservation Committee consisting of five members from each Town, to be appointed by the selectmen of each Town for terms of three years. Any committee member who has more than three unexcused absences from committee meetings in a twelve month period shall be removed and replaced with a new member by the selectmen. The Committee's responsibilities include:
 - A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish harvesting licenses to be issued.
 - B. Submitting to the Boards of Selectmen of each Town proposals for the expenditures of funds for the purpose of shellfish conservation.
 - C. Keeping this ordinance under review and making recommendations for its amendments.
 - D. Securing and maintaining records of shellfish harvest from each town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.
 - E. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Area Biologists of the Department of Marine Resources.
 - F. 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 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”, “hen clams”, and “intertidal shellfish resources” mean soft shell clams (*Mya arenaria*) and hen clams (*Spisula solidissima*).
- D. **Municipality**: Refers to the Towns of Deer Isle, Maine.
- E. **Junior**: The term “junior” means anyone 13-18 years of age and attending school.

5. **Licensing**: Municipal Shellfish Digging License is required for anyone 13 years of age or older. It is unlawful for any person who is a resident or non-resident to dig or take shellfish from the shores and flats of this municipality without having a current license issued by the municipality as provided by this ordinance. It shall be unlawful for a harvester who holds a Maine State Commercial Shellfish license or whose right to harvest Shellfish has been suspended by the State of Maine to obtain or hold a Town Recreational License.

A Commercial harvester 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 Town of Deer Isle and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
- 2) **Nonresident Commercial Shellfish License**: The license is available to nonresidents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores of this municipality and reciprocating municipalities.
- 3) **Junior Resident Commercial**: The license is available to junior residents of the Town of Deer Isle and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
- 4) **Junior Nonresident Commercial**: The license is available to junior

nonresidents and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.

- 5) Senior Resident Commercial: The license is available to any resident of the Town of Deer Isle 65 years of age or over at time of application and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
- 6) Senior Nonresident Commercial: The license is available to any nonresident 65 years of age or over at time of application and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
- 7) Resident Recreational Shellfish License: The license is available to residents and real estate taxpayers of this municipality who does not obtain or hold a Maine State Commercial Shellfish License and entitles the holder to dig and take no more than one peck of shellfish from the shores and flats of this municipality and reciprocating municipalities, in any one day for the use of himself and his family.
- 8) Nonresident Recreational Shellfish License: The license is available to any person not a resident of this municipality who does not obtain or hold a Maine State Commercial Shellfish License and entitles the holder to dig and take not more than one peck of shellfish from the shores and flats of this municipality and reciprocating municipalities, in any one day for the use of himself and his family.
- 9) Senior Resident Recreational: The license is available to any resident or real estate taxpayer of this municipality 65 years of age or over at time of application who does not obtain or hold a Maine State Commercial Shellfish License and entitles the holder to dig and take no more than one peck of shellfish from the shores and flats of this municipality and reciprocating municipalities, in any one day for the use of himself and his family.
- 10) Senior Nonresident Recreational: The license is available to any nonresident 65 years of age or over at time of application who does not obtain or hold a Maine State Commercial Shellfish License and entitles the holder to dig and take no more than one peck of shellfish from the shores and flats of this municipality and reciprocating municipalities, in any one day for the use of himself and his family.
- 11) 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 applicant's 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.
- 3) Unpaid fines: A shellfish license shall not be issued to anyone that has outstanding fines for any violation of this ordinance, or until the fines have been paid.
- 4) Mandatory Conservation Time Requirements: No Resident Commercial or Nonresident Commercial License shall be issued in the Town of Deer Isle until applicant has completed a minimum of Seven (7) hours of mandatory conservation work. Mandatory Conservation work includes conservation work done on the flats OR approved by the Deer Isle Stonington Shellfish Committee. Conservation requirement will be waived for all seniors 65 and older, and Junior Resident Commercial and Junior Nonresident Commercial license applicants. Applicants who have completed conservation time will maintain eligibility for a municipal license in accordance with DMR regulation Chapter 7.40(3).

C. Fees: The fees must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer except for \$1.00 (recognizes that Stonington does not have a \$1.00 clerk payment) 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.

Resident and Nonresident Commercial and Recreational licenses will be issued free for ages 65 and older. No municipal license is required for ages 12 and under.

D. License Allocation Procedure: Clam resources vary in density and size distribution from year to year and over the limited shellfish producing area of the town. It is essential that the town carefully husband its shellfish resources. Following the annual review of the town's shellfish resources, its size distribution, abundance and the warden's reports, as required by Section 3, the Shellfish Conservation Committee in consultation with the DMR area biologist determine if limited or unlimited commercial or recreational shellfish licenses are the appropriate shellfish management option for the following year.

- 1) Prior to March 1st the committee shall report 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 Marine Resources for concurrence.
 - 2) After receiving approval of proposed license allocations from the Commissioner of Marine resources and prior to April 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 combination of newspapers 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 period concludes.
 - 4) The Town Clerk or designate shall issue resident and nonresident licenses beginning May 1 (or on the next business day). Licenses will become valid June 1. The Town Clerk shall issue licenses and hold a lottery for nonresident commercial licenses by procedure described in the Town of Deer Isle Annual Shellfish License Allocation Procedure Plan.
 - 5) The Town Clerk or designate shall issue non-resident commercial licenses at a rate of 10% of resident commercial licenses sold in accordance with DMR Regulation, Chapter 7.
- E. License Expiration Date: Each license issued under authority of the ordinance expires at midnight on the 31st day of May next following date of issuance.
- F. Reciprocal Harvesting Privileges: Licenses from any other municipality cooperating with this municipality on a reciprocal shellfish management program may harvest shellfish according to the terms of this license. The Town of Stonington will reciprocate.
- G. Suspension: Any shellfish licensee having two convictions for a violation of this ordinance shall have his shellfish license automatically suspended for a period of thirty (30) days. Any municipal shellfish license holder whose Maine State Commercial License has been suspended shall have their municipal license automatically suspended for the same period of time.
- H. Suspension: Any shellfish licensee having three convictions in a 12 month period for violations of this ordinance shall have his shellfish license suspended for a period of one year.
- 1) A licensee whose shellfish license has been suspended pursuant to this ordinance may re-apply for a license only after the suspension period has expired.

2) The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the Licensee.

3) Any licensee whose shellfish license has automatically 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 or designate 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/Town Council by filing a written Request for Appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

6. **Opening and Closing of Flats:** The Municipal Officers, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources 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 Municipal Officers may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Officers made after the hearing shall be based on findings of fact. Notification of Municipal conservation closures or openings shall be provided in accordance with DMR regulation, Chapter 7.50 (c).

A. It shall be unlawful for any person to harvest, take or possess shellfish from any closed area in the Town of Deer Isle. Harvesting shellfish in a closed area is a violation of this ordinance and is punishable under M.R.S.A 6671.

7. **Minimum Legal Size of Soft Shell Clams, and Hen Clams:** It is unlawful for any person to possess soft shell clams within the Towns of Deer Isle, County of Hancock which are less than two (2) inches in the longest diameter except as provided by Subsection B of this section. It is unlawful for any person to possess hen clams which are less than four 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 shellfish in any bulk pile. Where shellfish 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 and hen clam shellstock.

B. Tolerance: Any person may possess soft-shell clams that are less than two inches and hen clams less than four 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 any provision of this section 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.R.S.A. Section 6671 (10) and (10A).

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 twenty (20) days of its adoption.

10. Period of Ordinance: This ordinance shall remain in effect until repeal by a vote of a Town Meeting.

11. 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 remaining portions of this ordinance.

12. 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.

A True Copy Attest: _____
Heather Cormier, Town Clerk

Adopted June 27, 2002
Amended February 21, 2008
Amended January 24, 2013
Amended March 23, 2017