

**Town of Rockport, Maine**  
**SHELLFISH CONSERVATION ORDINANCE**

Adopted 3/11/97

Reauthorized, Amended, and Enacted June 13, 2000

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 Rockport which will insure the protection and optimum utilization of the 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 minimum size of clams taken
  - e. Limiting the amount of clams taken daily by a harvester
  
3. **SHELLFISH CONSERVATION COMMITTEE:** The Shellfish Conservation Program for the Town of Rockport will be administered by the Shellfish Conservation Committee, appointed by the Selectmen. The Committee's responsibilities include:
  - a. Establishing annually, in conjunction with the Department of Marine Resources, the number of shellfish digging licenses to be issued;
  - b. Surveying each clam-producing area at least once each three years to establish size distribution and density, and annually estimating the status of the town's shellfish resources;
  - 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. Recommending conservation closures and openings to 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 prior to the time the claim of such residence is made.
  - b. Nonresident: The word "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" means softshell clams, *Mya arenaria*.
  - d. Municipality: Refers to the Town of Rockport, Maine.
  - e. Personal Use: "Personal use" when used in the context of this ordinance means for consumption or use by oneself, by members of the immediate family, or by invited guests.
- 5. LICENSING:** Municipal Shellfish Digging License is required. It 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. Designation, Scope, and Qualifications:
    - (1) Resident Recreational Shellfish License: The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for personal use.
    - (2) Non-Resident Recreational Shellfish License: The license is available to nonresidents and entitles the holder to dig and take no more than one peck of shellfish in any one day for personal use.
    - (3) Commercial Diggers: A commercial digger who holds a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources may not hold a Resident Recreational Shellfish License.
    - (4) 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 the 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.
  - c. Fees: The fee for the license is as stated below and must accompany in full the application for the license. The Town Clerk shall pay all fees received to the Town Treasurer except for \$5.00 for 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 Recreational: \$25.00.
    - Nonresident Recreational: \$50.00
  - d. Limitation of Diggers: Because the shellfish resources are limited, and because a recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:
    - (1) Prior to November 15 the Town Shellfish Committee, with the approval of the Commissioner of Marine Resources, will establish the number of non-

commercial licenses to be permitted following the requirements of 12 M.R.S.A. Section 6671 (3).

- (2) The Shellfish Conservation Committee will notify the Town Clerk in writing, prior to December 1, of the number of licenses to be issued and any conditions to obtain a license during the next calendar year.
- (3) Notice of the number of licenses to be issued and the procedure for application shall be published in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than ten (10) days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.
- (4) The Town Clerk shall issue licenses as allocated (paragraph 1) from January 1, and until December 31, each calendar year on a first-come first-served basis.
- e. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the 31st day of December next following date of issue.
- f. Fees Waived: Recreational shellfish license fees will be waived for applicants 65 years or older. An individual 12 years of age or younger may assist a license holder without holding a recreational shellfish license.
- g. Suspension: Any shellfish licensee having three convictions for a violation of this ordinance shall have his shellfish license automatically suspended for a period of one (1) year.
  - (1) A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license 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 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 seven (7) days of the decision of the Shellfish Conservation Committee.

6. **OPENING AND CLOSING OF FLATS:** The Municipal Officers, upon approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendation of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources area biologists that the status of the 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 on ten-day's notice published in a newspaper having a general circulation in the Town, stating the time, place, and subject matter of the 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.

7. **MINIMUM LEGAL SIZE OF SOFTSHELL CLAMS:** It is unlawful for any person to possess soft shell clams within the Town of Rockport, Knox County, 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 softshell 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 shellstock.
- b. Tolerance: Any person may possess soft shell clams that are less than two (2) inches if they comprise less than 10% of any 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.
- 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.S.R.A. Section 6671 (10).
9. **ENFORCEMENT:**  
The Shellfish Conservation Committee shall appoint a shellfish conservation warden or wardens, with the advice and consent of the Board of Selectmen, to enforce this ordinance.
10. **EFFECTIVE DATE:** This ordinance, which has been approved by the Commissioner of Marine Resources, may 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.
11. **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.
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.

