

Town of Milbridge 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 Milbridge, 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 harvesting 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 Milbridge will be administered by the Shellfish Conservation Committee consisting of seven (7) members to be appointed by the Selectmen for terms of three (3) years. The committee's responsibilities include:
 - A. Establishing annually, in conjunction with the Department of Marine Resources, the shellfish license's to be issued.
 - B. Submitting to the Board of Selectmen proposals for the expenditure 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 the Towns managed shellfish areas.
 - E. Recommending conservation closures and openings to the Board of Selectmen or Council in conjunction with the area Biologist of the Department of Marine Resources.
 - F. Submitting an annual report to the Municipality and the Department of Marine Resources covering above topics and all other committee activities.
 - G. Conducting conservation programs.
- 4. Definitions:**
 - A. Resident:** The term "resident" refers to a person who has been domiciled in this Municipality for at least six (6) consecutive months directly prior to the time his claim of such Residence is made. The burden of proof will be that which is required to become a registered voter in this municipality.
 - 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 (*Mya Arenaria*).
 - D. Municipality:** Refers to the Town of Milbridge, Washington County, Maine.

Any residency dispute will be required to submit an application to the Shellfish Conservation Committee for approval.

5. Licensing: A Municipal shellfish harvesting 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.

Exception: Any person who has not attained the age of (16) sixteen years old may harvest and take no more than one (1) peck of shellfish in any one (1) day for personal use.

A. Designation, Scope and Qualifications:

1. Mandatory Shellfish Conservation Requirements: All (Resident and Non-Resident) Commercial license holders will be required to perform two (2) conservation activities by **May 20th** of each year, supervised by the Shellfish Committee or the Shellfish Warden for the purpose of executing shellfish conservation measures. These measures may include reseedling, picking brush, brushing, placing netting, removing netting, or shellfish abundance surveys.

A. **Conservation Requirements waived:** Conservation requirements will be waived for all individuals 65 and older, and all children aged 16 and under.

B. **Transferability:** Those individuals who have completed their conservation time and who are not offered a shellfish license due to license limitations, can carry their time forward until such time they are offered a license. Each individual must apply for a license each year in order for their conservation time to carry forward. If they fail to apply for or they refuse a license after being offered one, their conservation time will be forfeited.

B. Commercial licensing: A commercial license entitles the holder to dig and take any amount of shellfish from the shores and flats of this Municipality.

1. **Resident Commercial License:** This license is available to the residents of this Municipality.

2. **Nonresident Commercial License:** This license is available to nonresidents of this Municipality.

3. **Senior Resident Commercial:** This license is available to any resident of this Municipality. 65 years and older.

4. **Senior Non-Resident Commercial:** This license is available to any non-resident of this Municipality 65 years and older.

C: Recreational License: A recreational license entitles the holder to dig and take no more than one (1) peck of shellfish in any one (1) day for personal use.

Any person holding a valid State of Maine Commercial Shellfish license may not apply for or receive a Municipal Recreational License from the Town of Milbridge.

1. **Resident Recreational License:** This license is available to residents and Real Estate Taxpayers of this Municipality.

2. **Nonresident Recreational License:** The license is available to any person not a resident of this

Municipality.

3. Senior Resident Recreational License: The license is available to any person not a resident of this Municipality 65 years and older.

4. Senior Nonresident Recreational License: The license is available to any person not a resident of this Municipality 65 years and older.

D: License must be signed: All licenses issued by this Municipality must be signed to make it valid.

E. Application procedure: Any person may apply to the Town Clerk or Designee 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 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.

3. Unpaid Fines: A new shellfish license will not be issued to anyone that has outstanding fines for any violation of the Milbridge Shellfish Conservation Ordinance until all fines have been paid in full.

F. Fees: Upon recommendation from the Shellfish Committee, the Board of Selectmen will set license fees.

The Town Clerk or Designee shall pay all fees received to the Town Treasurer, except for **\$1.00** 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.

ALL FEES ARE NON-REFUNDABLE.

G. Limitation of Diggers: Clam resources vary in size and distribution from year to year and over the limited soft shell clam producing areas of the Town. It is essential that the Town carefully husband its resources. The Shellfish Committee in consultation with the DMR Area Biologist will determine whether limiting commercial or recreational shellfish licenses is an appropriate Shellfish Management option for the following year.

1. The Shellfish Conservation 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, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the allocation of shellfish license's to be issued.

3. Notice of licenses to be issued and the procedure for application 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 period of issuance and shall be posted in the Municipal Offices until the period concludes. A copy of the notice shall be provided to the Commissioner of the Marine Resources.

4. The Town Clerk or Designee shall issue Commercial licenses starting the last week in June to applicants who have completed the mandatory shellfish conservation requirements by May 20th each year.

5. The Town Clerk on the first day of license sales shall issue the total number of Non-resident Commercial License in accordance with DMR Regulations Chapter 7.4 section 1 and who have completed the mandatory conservation requirements on a lottery basis. Thereafter, non-residents licenses will be issued in accordance with the 10% rule as described in Title 12 M.R.S.A. Section 6671(3-E) and DMR regulations Chapter 7.4 Section 2, table 1 who have completed the mandatory conservation requirements on a lottery basis.

6. The Town Clerk shall issue recreational licenses to residents starting the last week in June and to non-residents at a rate of 10% on a lottery basis.

H. License expiration date: Each license issued under authority of this Ordinance shall be valid for a maximum of one (1) year and will expire at midnight on the 30th day of June of the next year following the date of issue. All licenses will expire at midnight on the 30th day of June next following the date of issue or 30 days after claiming Residency in another town

I. 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.

J. Suspension: Any Milbridge shellfish license holder having two convictions in the same year for a violation of this Ordinance shall have his/her license automatically suspended for a period of thirty (30) days.

- A. Any shellfish licensee having three convictions in a twelve (12) month period for a violation of this Ordinance shall have his/her shellfish license automatically suspended for a period of one (1) year.
- B. The suspension shall be effective from the date of mailing of a notice of suspension by the Town Clerk to the licensee.
- C. Any licensee whose shellfish license has been automatically suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written request for a 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 Committee

K. Engaging in activities while suspended:

- 1. **Prohibited acts.** It is unlawful for any person whose license or right to obtain a license is under suspension to:
 - A. Engage in any licensed activity.

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 recommendation of the Shellfish Conservation Committee and concurrence of the DMR 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 finding of fact. Public notice of the municipal conservation closures or openings shall be provided in accordance with DMR Regulations Chapter 7.50(1) ©.

A. It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the town of Milbridge in accordance with DMR Regulation, Chapter 7. Harvesting shellfish in a closed area is a violation of this municipality's ordinance and is punishable under MSRA Title 12 §6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the town of Milbridge to DMR and are part of the resulting permit issued by DMR. These permits are posted at the town office and online:

7. Minimum Legal Size of Soft Shell Clams: It is unlawful for any person to possess soft shell clams within the Town of Milbridge, County of Washington 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 numerical count of not less than one peck not 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.

1. Any Town of Milbridge Shellfish license holder may not accompany or assist a non-license holder in the harvesting, taking of, or digging soft-shell clams.

8. Night digging: Night digging is not permitted.

A: There will be no digging or taking of soft-shell clams from the shores or flats of the Town of Milbridge from one half (1/2) hour after sunset to one half (1/2) hour before sunrise.

B: Artificial light sources (headlights, flashlights, etc.) shall not be used for illumination when harvesting soft-shell clams from the shores or flats of the Town of Milbridge.

9. Tagging of shellfish: The holder of a commercial license issued under this ordinance shall identify shellfish the license holder has taken by means of a harvester's tag. The tag must be consistent with the format

required by the Department of Marine Resources under rules adopted under Title 12 §6625. Each container, roller, hod or bag of shellstock must be tagged prior to landing. The tag must accompany the harvested product while the product is in wholesale or retail commerce within the State.

10. Penalty:

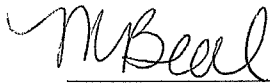
Whoever violates any provision of this ordinance shall be punished as provided by 12 M.R.S.A. § 6671, §6681, and §6406

11. 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.

12. 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 portion of this Ordinance.

13. Repeal: Any Ordinance regulating the harvest or conservation of shellfish in the Town and any provisions of any other Town Ordinance which is inconsistent with this Ordinance is hereby repealed.

I, Melynda Beal, Clerk for the Town of Milbridge, attest this to be a true copy.



Melynda Beal, Clerk

November 24, 2003

Amended on June 21, 2010

Amended on February 13, 2012

Amended on November 14, 2012

Amended on June 15, 2020