

ARTICLE II. SHELLFISHING*

***Editor's note:** An ordinance adopted Sept. 22, 1997, amended the town's shellfish ordinance in its entirety as set out in Art. II, §§ 9-50--9-69. An ordinance adopted Sept. 25, 2000, provided for the renewal of the shell fish conservation ordinance for a period of three years. Formerly, such article had pertained to the same subject matter, derived from ordinances adopted Nov. 26, 1984; Aug. 24, 1987; Oct. 24, 1988; and Sept. 26, 1994.

Cross references: Division of health, § 2-300; licenses, permits and business regulations, Ch. 8.

State law references: Shellfish, scallops, miscellaneous licenses, 12 M.R.S.A. § 6601 et seq.

Sec. 9-50. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Guest means any person, adult, or child, invited to assist the holder of a recreational shellfish license.

Municipality refers to the Town of Falmouth, Maine.

Nonresident refers to anyone not qualified as a resident under the article.

Possess means dig, take, harvest, ship, transport, hold, buy and sell retail soft-shelled clam shell stock.

Resident refers to a person who has been domiciled in this municipality for at least one hundred eighty (180) days prior to the time the claim of such residence is made and shall be deemed to be a resident of Falmouth.

Shellfish means soft-shell clams (*Mya Areniaria*) and quahogs (*Mercenaria Mecenaria*).

Town closed conservation area means a clam flat or clam flats closed pursuant to section 9-63 of this article.

(Ord. of 9-22-97)

Sec. 9-51. Short title.

This article shall be known and may be cited as the Municipal Shellfish Ordinance of the Town of Falmouth, Maine.

(Ord. of 9-22-97)

Sec. 9-52. Purpose.

The purpose of this article is to establish a shellfish conservation program for the town which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- (1) Licensing;
- (2) Limiting the number of shellfish harvesters;

- (3) Restricting the time and area where digging is permitted;
- (4) Limiting the minimum size of clams taken; and
- (5) Limiting the amount of clams taken daily by a harvester.

(Ord. of 9-22-97)

Sec. 9-53. Shellfish conservation warden.

A shellfish conservation warden shall be appointed by the town council. The warden shall complete a training program and be certified by the State Commissioner of Marine Resources. The warden shall enforce the shellfish ordinance of the town and may arrest all violators. The warden may serve all processes pertaining to this article. The warden shall also have within his jurisdiction the power of a marine patrol officer provided in 12 M.R.S.A. § 6025(4). Powers conferred herein, pursuant to 12 M.R.S.A. § 6671 (8) shall be limited to enforcement of this article.

(Ord. of 9-22-97)

Sec. 9-54. Shellfish conservation commission.

The shellfish conservation program for the town will be administered by the shellfish conservation commission consisting of five (5) members. These members will be appointed by the town council for three-year terms. In addition, the shellfish conservation warden shall serve as an ex-officio member. The commission's responsibilities include:

- (1) Establishing annually, in conjunction with the department of marine resources, the number of shellfish digging licenses to be issued;
- (2) Surveying the clam flats to maintain current information on shellfish resources;
- (3) Submitting to the town council proposals for the expenditures of funds for the purpose of shellfish conservation;
- (4) Keeping this article under review and making recommendation for its amendments;
- (5) 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;
- (6) Recommending conservation closures and openings to the town council in conjunction with the department of marine resources;
- (7) Submitting an annual report to the municipality and the department of marine resources covering the above topics and all other commission activities.

(Ord. of 9-22-97)

Sec. 9-55. Conservation and management of shellfish resources.

It is hereby determined as follows:

- (1) The clam flats of the town are a very valuable shellfish resource which is important to the community.
- (2) These flats are not an inexhaustible resource, and, therefore, they must be prudently managed in order to remain viable.
- (3) As part of the management process it may be necessary to: restrict the taking of shellfish by limiting shellfish licenses; restrict the size and quantity of shellfish which may be harvested; and, take other measures outlined in this article.

(Ord. of 9-22-97)

Sec. 9-56. Municipal shellfish license required.

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current, valid license issued by this municipality as provided by this article.

(Ord. of 9-22-97)

Cross references: Licenses, permits and business regulations, ch. 8.

State law references: License authorized, 12 M.R.S.A. § 6671(3).

Sec. 9-57. Harvesting.

The harvesting of shellfish within the Town of Falmouth is permitted only during those hours starting one-half (1/2) hour before sunrise and ending one-half (1/2) hour after sunset. It is unlawful to harvest shellfish during the time starting one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise.

(Ord. of 9-22-97)

Sec. 9-58. Designation, scope and qualifications.

There shall be the following described license, each of which must be signed by the licensee and by the town clerk to be valid. The license is valid from September 1 to August 31.

Recreational shellfish license. This license is available to residents and nonresidents and entitles the holder and one (1) or more guests to dig and take no more than one (1) peck of shellfish for any one (1) day for the holder.

The recreational shellfish license holder may not engage in the wholesale or retail sale of any shellfish harvested under that license.

(Ord. of 9-22-97)

Sec. 9-59. Application.

(a) Any person qualifying under the terms of this article may apply to the town clerk for a license as required by this article on forms provided by the town clerk. No other person may apply for or be issued or retain the license that is provided by this article. The town clerk may require the applicant to produce evidence of these qualifications before issuing the license.

(b) The application must obtain the applicant's name, period of residence, current address, birth date, height, weight, signature and whatever other information, if any, the town council may from time to time require.

(c) Any person who gives false information on a shellfish license application will cause the shellfish license to become invalid and void.

(Ord. of 9-22-97)

Sec. 9-60. Limit.

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 June 1, the town shellfish commission, shall submit its recommendation of the number of resident and nonresident recreational shellfish licenses to be made available to the commissioner of marine resources for approval.

(2) The shellfish conservation commission will notify the town clerk and the town council of Falmouth in writing prior to July 1 of the number of resident and nonresident recreational shellfish licenses to be made available. The town council then shall adopt a shellfish license allocation. The shellfish conservation commission, in preparing a recommended allocation of shellfish licenses, and the town council, in adopting an allocation of shellfish licenses, shall provide and reserve a minimum number of recreational licenses for nonresidents, which shall be a number less than ten (10) percent of the number of recreational shellfish licenses provided for residents.

(3) Notice of the number of licenses available and the procedure for application shall be published in a trade or industry publication or in a newspaper with general circulation effective in reaching persons affected, not less than ten (10) days prior to the period of issuance, and will be posted in the town offices until the period for issuance concludes.

(4) The town clerk shall issue resident and nonresident recreational shellfish licenses, if made available by the town council, in the following manner. Commencing on the first business day of September annually the town clerk shall accept applications for resident and nonresident recreational licenses. Applicants must appear in person at the office of the town clerk. In each of those two (2) categories licenses shall be awarded on a first come, first served basis.

(5) Any of the quotas established in subsection (1) above not used by November 30 shall be issued by the town clerk without regard to residence eligibility.

(6) A copy of the Falmouth Shellfish Ordinance shall be given with each shellfish license issued and a map of the Falmouth flats with open and closed areas.

(Ord. of 9-22-97)

Sec. 9-61. Records.

The town clerk shall note on the application the date the license was issued, sign it, and file the application with the clerk's records. A photostatic copy of the recreational license shall be provided for each family member.

(Ord. of 9-22-97)

Sec. 9-62. Fees.

The fee for a license shall be on file in the town clerk's office. All fees are to be paid upon presentation of the application. The town clerk shall pay all fees received to the town treasurer. The fees are as follows:

(1) Recreational shellfish license fifteen dollars (\$15.00); over age sixty-two (62), free.

(2) Nonresident recreational shellfish license thirty dollars (\$30.00); over age sixty-two (62), free.

(Ord. of 9-22-97)

Sec. 9-63. Regulating and opening and/or closing shellfish areas.

The town council, upon information from the shellfish commission and shellfish conservation warden, may order appropriate action concerning the opening and closing of shellfish areas in the town. Any proposed changes in the status of the shellfish areas shall have the approval of the state commissioner of marine resources and in no case may the town council regulate an area closed by regulations of the state commissioner.

(Ord. of 9-22-97)

Sec. 9-64. Minimum size limit for soft-shelled clams.

(a) It is a violation of this article and 12 M.R.S.A. § 6681(3) to possess soft-shelled clam stock whose shells are less than two (2) inches in the largest diameter.

(b) Any person may possess soft-shell clams less than two (2) inches if they comprise less than ten (10) percent of any bulk pile. The tolerance shall be determined by the numerical count of not less than one (1) peck nor more than four (4) pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one (1) peck.

(c) Whoever violates the provisions of this section shall be punished as provided by 12 M.R.S.A. § 6681(6) or by appropriate noncriminal proceedings or both.

(Ord. of 9-22-97)

Sec. 9-65. Enforcement, penalty, separability, repeal and duration.

(a) *Enforcement.* The Falmouth Police Department, special police officers as provided in 30-A M.R.S.A. § 2672, and the Shellfish Conservation Warden, shall enforce this article.

(b) *Penalty.* A person who violates this article shall be punished as provided in 12 M.R.S.A. § 6671 as amended from time to time.

(c) *Separability.* If any provision of this article is declared to be invalid, the declaration does not affect the remainder of the article.

(d) *Repeal.* Any article regulating the harvesting or conservation of shellfish in the town and any provision of [or] other town article which is inconsistent with this article is hereby repealed.

(Ord. of 9-22-97)

Sec. 9-66. Misrepresentation.

In addition to any criminal penalties which may result from a violation of this article, the shellfish license granted to any person who gives false information on a shellfish license application will be automatically void.

(Ord. of 9-22-97)

Sec. 9-67. Suspension.

(a) *Violation of shellfish ordinance.* The town clerk shall suspend any and all shellfish licenses issued under this article, if the license holder is convicted in court of violating any section of this article.

(b) *Suspension based on conviction in a town closed conservation area.* The town clerk shall suspend any and all shellfish licenses issued under this article if the license holder has been convicted in court of possessing shellfish from a town closed conservation area.

(c) *Length of suspension for (a) and (b) above.* The suspension of a license may not exceed the

following:

- (1) Thirty (30) days from the date of the first conviction.
 - (2) Three hundred sixty-five (365) days (one year) from the date of the second conviction.
- (d) *Application standards.* Any conviction more than three (3) years before last conviction shall not be counted in determining lengths of suspension.

(Ord. of 9-22-97)

Sec. 9-68. Hearing.

Any licensee whose shellfish license has been suspended shall be entitled to a hearing before the town manager upon the filing of a written request for hearing with the town manager within thirty (30) days following the effective date of suspension; the applicant shall be given at least seven (7) days' prior written notice of the date, time and place of hearing before the town manager. Any person aggrieved by the town manager's decision may appeal to the superior court within thirty (30) days from the receipt of the town manager's written decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

(Ord. of 9-22-97)

Sec. 9-69. Sale of shellfish.

Any shellfish confiscated in violation of the Town of Falmouth's Shellfish Conservation Ordinance may be sold and the revenues returned to the Town of Falmouth's Shellfish Conservation Program.

(Ord. of 9-22-97)

Secs. 9-70--9-79. Reserved.