

**SHELLFISH CONSERVATION ORDINANCE
TOWN OF SWAN'S ISLAND, MAINE**

Adopted
December 28, 2010

- 1. Authority:** This Ordinance is adopted in accordance with 12 M.R.S.A. Section 6671.
- 2. Purpose:** To establish a shellfish conservation program for the Town of Swan's Island 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 areas 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 Swan's Island will be administered by the Shellfish Conservation Committee consisting of five (5) members to be appointed by the Selectmen for terms of three (3) years. Anyone convicted of violating this ordinance or being convicted of a felony within the last five (5) years, shall not serve on this committee.

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. 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 amendment;
- D. 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;
- 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.
- G. Recommending to the Selectmen enforcement actions for the protection of the resource.
- H. Assist in identifying possible sources of pollution harmful to the intertidal habitat and the shellfish resources.

4. **Definitions:**

A. Resident: The term “resident” refers to a person being a Maine resident who has proof of being domiciled in the Town of Swan’s Island continuously for a minimum of one year prior to the time his claim of such residence is made. The burden of proof of residency lies solely with the person applying for a Swan’s Island Municipal Shellfish License. A domicile cannot be a transient address that would not typically be considered as a permanent residence address. The applicant shall provide the following in order to determine resident eligibility:

1. Proof of being domiciled in Swan’s Island for the 12 month period prior to applying for a municipal shellfish license. The preponderance (or greater weight) of the evidence must support the establishment of Swan’s Island domicile. If renting, a legal affidavit from your landlord affirming tenancy AND record of rent payments for the last 12 months.
2. Signed affidavit stating that, “Swan’s Island is my full time domicile and that I have severed my residential ties with my former municipality of residence and that it is my intent to make Swan’s Island my full time domicile and that I have no mailing address or domicile elsewhere. My residency does not derive from my spouse, nor, since I am an adult, from any other relative”.
3. Provide at least three items from the following list. If you are a minor, you must provide the items from your parent/s or legal guardian. If you cannot provide one of these items, submit an explanation of why you cannot provide it:
 - a. Valid Driver’s License with your Swan’s Island address on it.
 - b. Valid Vehicle Registration displaying Swan’s Island physical address
 - c. Voter Registration Card with Swan’s Island address on it.
 - d. Maine State Income Tax Return with Swan’s Island address on it.
 - e. One of the following with your Swans Island address on it: Property tax bill, utility bill, lease for at least 12 months.

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 softshell clams (*Mya arenaria*).
- D. Municipality or Town: refers to Town of Swan's Island, Maine.

5. Licensing: 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.

A. Designation, Scope and Qualifications:

- 1) Resident Commercial Shellfish License: The license is available to residents of the Town of Swan's Island and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
- 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 and flats of this municipality.
- 3) Resident Recreational Shellfish License: The license is available to residents and real estate taxpayers of this municipality who does not have a State of Maine Commercial Shellfish license issued by the Department of Marine Resources, as determined by the records of the Department of Marine Resources, and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family.
- 4) Nonresident Recreational Shellfish License: The license is available to any person not a resident of this municipality who does not have a State of Maine Commercial Shellfish license issued by the Department of Marine Resources, as determined by the records of the Department of Marine Resources, and entitles the holder to dig and take no 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. License must be in possession when engaged in harvesting. By signing the license the harvester acknowledges that they must submit to inspection by the Municipal Shellfish Warden.

B. Application Procedure: Any person may apply to the Town Clerk for the license 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.

3) Address change: A person holding a commercial shellfish license under this ordinance shall notify the Town Clerk within ninety (90) days of address change outside of the municipality. His or her license will be invalid and shall be returned to the municipality at the time of his address change.

C. Fees: Fees for licenses will be recommended by the Shellfish Conservation Committee prior to March 1 of each year and approved by the Selectmen. The fees for the licenses must accompany in full the application for the respective license. The Town Clerk shall submit fees received to the Town Treasurer except for \$1.00 for each license which shall be retained by the Clerk as payment for issuing the license. Fees received for shellfish licenses shall be used by the Town for shellfish management, conservation and enforcement.

D. Limitation of Diggers: Because the shellfish resources are limited and because a commercial or 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 execute the control:

1) Prior to March 1, the Town Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources will establish the number of commercial and noncommercial licenses to be permitted following the requirements of 12 M.R.S.A Section 6671, paragraph 3-A.

2) The Shellfish Conservation Committee will notify the Town Clerk in writing prior to April 1 of the number of 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 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 shall issue licenses to residents and nonresidents as allocated (paragraph 1) until July 1 after which licenses shall be issued to

residents and nonresidents on a first-come first-served basis.

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.

E. 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 the 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 the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the initial sale date and shall be posted in the municipal offices. A copy of the notice 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 nonresidents when four more are issued to residents; thereafter, one nonresident license will be issued for every ten additional resident license issued.

3) 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. Additional nonresident recreational licenses may be approved as long as they do not exceed the total recreational licenses approved by the Maine Department of Marine Resources for that year.

F. License Expiration Date: Each license issued under authority of this Ordinance expires at midnight on the 31st day of March next following date of issue.

G. Waiver of Fee: Recreational and commercial shellfish license fees will be waived for persons 65 years or older and 12 years or younger.

H. Suspension: Any shellfish licensee convicted of a violation of this Ordinance shall have his shellfish license automatically suspended for a period of thirty (30) days.

1) A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has expired

2) The suspension shall be effective from the date of conviction for the

offense.

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.

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 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 on ten-days' notice published in a newspaper having 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 softshell clams within the Town of Swan's Island, Hancock 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 softshell 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 purposes of this section, "possess" means to dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale softshell clam shell stock.

B. Tolerance: Any person may possess softshell 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 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 (6-A).

8. Penalty: A person who violates this Ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (10)(10-A). All monies received from fines for Town violations shall go into the Town's shellfish fund.

9. Stopping for inspection: A person shall produce their license on demand of any Certified Municipal Shellfish Conservation Warden in uniform and having "probable cause" to take such action. It is unlawful for the operator of a motor vehicle, boat, vessel, or conveyance or any kind, or any person:

- A. To deliberately fail or refuse to stop immediately upon request or signal of any Certified Municipal Shellfish Conservation Warden.
- B. After the person has stopped, to fail to remain stopped until the said Warden has reached his immediate vicinity and makes known to the operator the reason for his request or signal.
- C. To fail or refuse to stand by immediately for inspection on request of said Warden.
- D. To throw or dump into any coastal waters or flats any pail, bag, hod or container of shellfish after having been signaled to stop by a Certified Municipal Shellfish Conservation Warden.
- E. To attempt to elude, disobey, or assault any Certified Municipal Shellfish Conservation Warden.

Penalties: The first violation of Section 9 of this Ordinance shall result in a one (1) month suspension of the license and a three hundred dollar (\$300) fine. The second and subsequent violations of Section 9 of this Ordinance shall result in a twelve (12) month suspension of the license and a one thousand dollar (\$1000.00) fine.

10. Penalties for Harvesting Without a License: Any person convicted of harvesting shellfish without a municipal license issued by authority of the Shellfish Conservation Ordinance- Town of Swan's Island, Maine, shall be ineligible to apply for a Swan's Island municipal shellfish license for a period of (3) three years from the date of the conviction.

11. Effective Date: This Ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective on its adoption by the municipality provided that a certified copy of the Ordinance shall be 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 decision shall not affect the validity of the remaining portions of this ordinance.

13. Repeal: Any Ordinance regulating the harvesting or conservation of shellfish in this Town which is inconsistent with this Ordinance is hereby repealed.

14. AMENDMENTS:

14.1 Initiation: A proposal for an amendment to this Ordinance may be initiated by the following:

- A.** Submitting a written petition submitted with the number of signatures equaling at least 10% of the voters in the last gubernatorial election on Swan’s Island;
- B.** A recommendation of the Shellfish Conservation Committee; or
- C.** A recommendation of the Board of Selectmen.

14.2 Procedure: Any proposal for an amendment shall be made to the Board of Selectmen, in writing, stating the specific changes requested.

14.3 Adoption: Any amendment to this Ordinance shall be adopted by a majority vote of Town meeting. Amendments to this Ordinance do not take effect until approved by the Commissioner of the Department of Marine Resources.

14.4 Statute Law Changes: Any changes to referenced Statue Laws in this Ordinance shall automatically update in this Ordinance upon enactment.

Certification of Ordinance

I, _____, Town Clerk of Swan’s Island certify that the foregoing is a true copy of the Ordinance entitled “Shellfish Conservation Ordinance Town of Swan’s Island, Maine” as adopted December 28, 2010.

Attest, this ___ day of _____, _____

Town Clerk