

AMMENDED SHELLFISH CONSERVATION ORDINANCE
TOWN OF PEMBBROKE, MAINE
APRIL 9, 2003

1. Authority: This is enacted with 12 M.R.S.A. SECTION 6671.
2. Purpose: To establish a shellfish conservation program for the Town of Pembroke, which will insure the protection and optimum utilization of shellfish 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 daily by a harvester
 - E. Limiting the amount of clams taken daily by a harvester
 - F. Shellfish Warden/Deputy Shellfish Wardens
3. Shellfish Conservation Committee: The Shellfish Conservation Program for the Town of Pembroke will be administered by the Shellfish Conservation Committee consisting of 5 members to be appointed by the Selectmen for terms of (1) year.

The Committee's responsibilities include.

- A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to issued.
- B. Submitting to the Board of Selectmen 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 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. "When an area that has been closed by the State becomes opened by the State, it will remain closed by the Town of Pembroke for purposes of conservation." The area shall be opened by the Selectmen, on the majority quorum vote of the Shellfish Conservation Committee.

G. Submitting an annual report to the Municipality and Department of Marine Resources covering the above topics and all other committee activities.

H. Establishing a Shellfish Warden (and Deputy Wardens), the Warden and Deputy Wardens to be appointed by the Selectmen for a term of one year, and subject to the control and direction of the Selectmen.

4. Definitions:

A. Resident: The term “resident” refers to a person who has been domiciled in this municipality for at least three months next prior to the time his 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” mean soft-shell clams, quahogs other than mahogany, and oysters.

D. Municipality: Refers to the Town of Pembroke.

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 municipality without having a current license issued by this municipality as provided by this ordinance. A Commercial Digger 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 Pembroke, and entitles the holder to dig and take any amount of shellfish from the shores and flats of the 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 the municipality.

3. Resident Recreation Shellfish License: The license is available To residents and real estate taxpayers of this municipality, who do not hold a valid Commercial State of Maine Shellfish license issued by 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 hold a valid Commercial State of Maine Shellfish license issued by the Department of Marine Resources, and entitles the license 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.

B. 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 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 fees for the licenses are as stated and must accompany in full the application for the respective license. The Town Clerk or designee shall pay all fees received to the Town Treasurer except for \$1.00 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.

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 resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:

1. Prior to February 1 the Town Shellfish Conservation Committee with the approval of the Commissioner of Marine Resources will establish commercial and noncommercial licenses under open license sales 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 April 1 of the licenses to be issued.

3. Notice of the licenses to be issued and 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 or designee shall issue commercial licenses to residents, and a limited number of commercial licenses to non-residents from May 1 by Lottery System.

E. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the 30th day of April next following the date of issue.

F. Recreation shellfish license fees will be waived for residents 60 years or older, and 12 years or younger, and who do not hold a valid commercial State of Maine Shellfish license issued by the Department of Marine Resources.

G. Suspension. Any shellfish licensee having one conviction for a violation of this ordinance shall have his shellfish license automatically suspended for a period of 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 with seven (7) days of the decision of the Shellfish Conservation Committee.

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 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 with 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.

4. 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 in a 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.

5. Minimum legal size of soft-shell clams: It is unlawful for any person to possess soft shell clams within the Town of Pembroke, Washington County, which are less than two (2) inches in the longest diameter except as provided by subsection B of this section.

A. Definitions

6. 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.

B. Tolerance: Any person may possess shell clams that are less than (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 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 6671 (10).

7. Penalty: A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (10).

8. 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.

9. 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.

10. Repeal: Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions on any other Town ordinance which is inconsistent with this ordinance is hereby repealed.