

**THE SHELLFISH CONSERVATION ORDINANCE OF THE
TOWN OF DAMARISCOTTA, MAINE**

ADOPTED: JUNE 11, 2008

CERTIFIED BY:


Cheryl M. Pinkham
Town Clerk

Title:

This ordinance shall be known, and may be cited as, the "Shellfish Conservation Ordinance of the Towns of Newcastle and Damariscotta, Maine", and will be referred to herein as "this Ordinance".

II. Definitions (as used in this Ordinance):

- A. **Resident:** The term "resident" shall mean a person who owns or rents residential real estate and has been domiciled in this municipality for at least six months prior to the time their claim of residency is made for the purpose of applying for a shellfish license . To prove they are a resident, a person must provide documentation of real estate ownership in the form of a deed or property tax bill, or if rented real estate, rent receipts or a lease agreement signed by the property owner that proves residency for the six months prior to applying for the shellfish license.

In addition to the above domicile requirement, the applicant must show documentation of at least one of the additional residence criteria from Attachment A.

- B. **Nonresident:** The term "nonresident" shall mean anyone not qualified as a resident under this ordinance.
- C. **Shellfish, Clams, and Intertidal Shellfish Resources:** The words "shellfish", "clams" and "intertidal shellfish resources" shall mean soft-shell clams (*mya arenaria*).
- D. **Municipality:** Shall mean the town of Newcastle and Damariscotta, as the case may be.
- E. **Lot:** The word "lot" shall mean the total number of soft-shell clams in any bulk pile. Where soft-shell clams are in a box, barrel, or other container, each shall constitute a separate lot.
- F. **Possess:** "Possess" shall mean dig, take, harvest, ship, transport, hold, buy and sell retail, and/or wholesale, soft-shell clam shellstock.
- G. **Grandfathered License:** "Grandfathered license" means a commercial shellfish license issued to a commercial shellfish holder who has purchased a license prior to September 1 of the previous year and who has completed eight (8) hours of shellfish conservation work under the supervision of the shellfish warden, or an appointee of the shellfish committee, or has served on the shellfish conservation Committee and attended at least six meetings of the committee in the previous year. Grandfathered licenses will not lose their grandfathering status while a resident of any town within this ordinance.

III. Authority:

This Ordinance has been prepared in accordance with the provisions of 12 M.R.S.A. Section 6671, et seq., as revised and Section 6681, as revised.

IV. Purpose:

To establish a shellfish conservation program for the towns of Newcastle and Damariscotta, which will insure the protection and optimum utilization of shellfish resources within the limits of these Municipalities. These goals will be achieved by the 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

V. Repeal:

Any ordinance regulating the harvesting or conservation of shellfish in the Municipality and/or any provisions of any other Municipal Ordinance which is inconsistent with this Ordinance, is hereby repealed.

VI. Validity and Severability:

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 or the remaining portions of this Ordinance.

VII. 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.

VIII. Shellfish Conservation Committee:

There is hereby established a Shellfish Conservation Committee composed of representatives from each of the municipalities which enact this ordinance. The municipal officers of each town shall appoint two of its shellfish committee members and at least one licensed commercial clam digger, to be a member of the Committee. The municipal shellfish warden(s) and a liaison member from the Department of Marine Resources, appointed by the state commissioner, shall be non-voting members of the Committee.

A. The Committee's responsibilities include:

- 1. Establishing, annually, in conjunction with the Department of Marine Resources (DMR), the number of shellfish digging licenses to be issued and the fees for licenses.
- 2. Reviewing annually, the status of the resource using the results of clam flat harvester or dealer surveys and other sources of information and preparing, in conjunction with and subject to the approval of the Department, a plan for implementing conservation measures.
- 3. Submitting, to the Board of Selectmen, proposals for the expenditures of funds for the purpose of shellfish conservation.
- 4. Periodically reviewing this ordinance and making recommendations for its amendment.

5. Securing and maintaining records of the shellfish harvest from the municipally-managed shellfish areas and of closed areas that are conditionally opened by the Department of Marine Resources.
 6. Recommending conservation closures and openings to the Board of Selectmen or Council in conjunction with the Area Biologist of the Department of Marine Resources.
 7. Submitting an annual report to the Municipalities and Department of Marine Resources covering the above topics and all other committee activities.
- B. **Term of Office & Vacancy:** The term of office of any member of the Committee shall be for a period of three years from the date of appointment. The Municipal Officers shall appoint a person to fill a vacancy for any unexpired term.
- C. **Committee Officers:** The committee shall elect a Chairman, a Vice-Chairman, and a Secretary from its members. The Chairman shall preside at all meetings of the Committee; the Vice-Chairman shall preside in the Chairman's absence; and the Secretary may record and keep minutes of each meeting.
- D. The Committee shall advise the officers of each Municipality of all matters pertaining to conservation and harvesting of its shellfish resources, including, but not limited to, the opening and closing of clam flats. It shall act as a liaison between the Municipality and the State. It shall aid in the development of programs to help each Municipality manage its shellfish resources. It shall represent the interest of the region with regard to shellfish resources subject to municipal control and oversight and shall take such other action as may be necessary, or desirable, to implement harvesting and conservation management programs.
- E. For a meeting to be valid, a quorum of four members must be present.
- F. Any member not attending at least six meetings a year will be dropped from the committee.
- G. Elections will be held each year at the January meeting.
- H. Meetings will be held monthly with the time and place for the next meeting determined at the current month's meeting.

IX. Amendments:

- A. **Initiation:** A proposal for an amendment to this Ordinance may be initiated by the following, but may be considered only if accompanied by the Department of Marine Resources approval:
1. The Municipal Officers, at the request of a majority of the Shellfish Conservation Committee; or
 2. An individual, through a request to the Shellfish Conservation Committee and subsequent favorable majority vote of the Committee; or
 3. A written petition of the number of voters equal to at least ten percent (10%) of

the voters in the last gubernatorial election of the municipality in which the petition is originated.

B. Procedure:

1. Any proposal for an amendment shall be made to the Shellfish Conservation Committee, in writing, stating the specific changes requested. Amendments initiated by petition shall be presented to the Municipal Officers who shall transmit them to the Shellfish Conservation Committee, for recommendation. When an amendment proposed by an individual receives a favorable vote of a majority of the Committee, the individual shall pay a fee to cover the costs of hearings and advertisements.
2. Within thirty (30) days of receiving a properly initiated amendment, the Committee shall hold a public hearing on the proposal. Notice of the hearing shall be posted and advertised in a newspaper of general circulation in the municipality at least seven (7) days prior to the hearing. The notice shall contain the time, date, and place of hearing, and sufficient detail about the proposed changes as to give adequate notice of their content. If the proposed changes are extensive, a brief summary, together with an indication that a full text is available at the Town Clerk's office shall be adequate notice.
3. Following the public hearing, the Committee shall make a written recommendation regarding passage to the Municipal Officers, which will be accompanied by the required Department of Marine Resources approval of the proposal, prior to any action on the amendment by them.

C. **Adoption:** Any amendment to this Ordinance shall only be adopted by a majority vote of the Town Meeting.

D. **Repetitive Petitions:** No proposed changes to this Ordinance which have been unfavorably acted upon by the Town Meeting shall be considered on its merits by the Town Meeting within two (2) years after the date of such unfavorable action unless adoption of the proposed change is recommended by a two-thirds majority of the Committee.

E. **Period of Ordinance:** This ordinance shall remain in effect until rescinded by the Town or The Commissioner, Department of Marine Resources.

X. Licensing:

A municipal Shellfish Digging license is required for any person to possess shellfish from the shores and flats of the reciprocating municipalities. Although the purchase of a municipal license is not contingent upon first having purchased a state license, a commercial shellfish digger must also hold a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources prior to digging from the shores of the Town of Damariscotta.

A. License Classification:

1. **Resident Commercial Shellfish License:** This license is only available to residents of the municipality and entitles the holder to possess any amount of

- shellfish from the shore and flats of the reciprocating municipalities.
2. **Non-resident Commercial Shellfish License:** This license is available to nonresidents of the municipality and entitles the holder to possess any amount of shellfish from the shores and flats of the reciprocating municipalities.
 3. **Residential Recreational Shellfish License:** This license is available to the residents and real estate taxpayers of the municipality and entitles the holder to possess no more than one peck of shellfish in any one day, for the use of oneself or one's family, from the shores and flats of the reciprocating municipalities. Recreational license holders may not dig in company with a commercial licensee. A person holding a Maine State Commercial Shellfish license may not be issued or hold a resident or non-resident recreational clam harvest license.
 4. **Non-resident Recreational Shellfish License:** This license is available to nonresidents of the municipality and entitles the holder to possess no more than one peck of shellfish in any one day, for the use of one's-self or one's family, from the shores and flats of the reciprocating municipalities. Recreational license holders may not dig in company with commercial licensee. A person holding a Maine State Commercial Shellfish license may not be issued or hold a resident or non-resident recreational clam harvest license.

- B. **All Shellfish Licenses Must Be Signed:** The licensee must sign the license to make it valid.
- C. **Application Procedure:** Any person not possessing a Maine State Commercial shellfish license may apply to the Town Clerk for the recreational licenses required by this Ordinance on forms provided by the municipality. Any person wishing to obtain a commercial license application is required to do eight (8) hours of conservation work during the conservation dates determined by the Shellfish Committee or have been a member in good standing of the Shellfish Committee for the year previous to the date of application.
- D. **Contents of 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. *(See Definition of Resident at Section II.A. and Attachments A and B).*
- E. All license fees must accompany the application for the respective license.
- F. **Misrepresentation:** Any person who gives false information on a license application will cause said license to become invalid and void.

XI. **Violations:**

- A. Any person who violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (10) and/or Section 6681.
- B. **Unlawful Use of a Recreational License and Aiding and Abetting By a Commercial License Holder:**

A commercial license holder found to be aiding and abetting the illegal activity of a recreational license holder by allowing the recreational license holder's harvest to be included in the commercial license holder's harvest, shall be subject to the following penalties:

1. FIRST AIDING AND ABETTING VIOLATION: A written warning will be issued.
2. SECOND AIDING AND ABETTING VIOLATION: The commercial license will be suspended for twelve months from the date of the violation.

To avoid aiding and abetting charges, commercial license holders shall clearly separate their harvest from the harvest of a recreational license holder while harvesting, selling or processing shellfish.

XII. Fees/Penalties:

All fees for shellfish licenses will be set by a vote of the Shellfish Committee prior to May 1st of each year and must accompany, in full, the application for the respective license.

Additionally, a \$2.00 agent fee will be charged for each license and shall be retained by the local clerk as payment for issuing the license. Fees and penalties received shall be used for costs incurred in the enforcement and management of the Shellfish Conservation Ordinance.

XIII. Limitation of Diggers:

In that clam resources vary in density and size distribution over the limited soft clam producing areas of the municipality, from year to year it is essential that the municipality carefully husband its resources. Following the annual review of these resources (i.e. size distribution, abundance and the warden's reports) as required by the Shellfish Conservation Committee, in consultation with the DMR's Area Biologist, the Shellfish Conservation Committee will determine whether limiting commercial and/or recreational shellfish license is an appropriate shellfish management option for the following year.

- A. Prior to May 1 each year, the Shellfish Conservation Committee shall document and report its findings, as regards to the allocation of commercial and recreational licenses to be made available for the following license year, to the Commissioner of Marine Resources for approval.
- B. After receiving approval of proposed license allocations from the Commissioner of Marine Resources, and prior to May 15, the Shellfish Conservation Committee shall notify the municipal Town Clerk, in writing, the number and allocation of shellfish licenses to be issued by that municipality.
- C. Notice of the number of licenses to be issued, and the procedure for application, shall be published in a newspaper, or combination of newspapers, of general circulation in the municipality not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until said period expires.
- D. The municipal Town Clerk shall issue licenses to those applicants who have met the

requirements of obtaining a shellfish license.

1. **Commercial Licenses** – The sale of both resident and non-resident licenses will be held in the Damariscotta Town Office at 10:00 a.m. on the first business day after June 1st except that those applicants holding grandfathered licenses may buy licenses in the two business days preceding the regular sale date. If applicants outnumber the number of licenses available, a lottery will be held to determine the order of granting licenses to either residents or non-residents as allocated. If any licenses remain unsold, the Town Clerk shall issue licenses to resident and non-resident applicants as allocated from June 1st and until September 1st. After September 1st, undistributed licenses shall be made available to resident and non-resident applicants alike, regardless of allocation, in the form of a lottery at which the applicant must be present to qualify. This lottery shall be conducted on the first business day following September 1st at 10:00 a.m. at the administrating town's Town Office.
2. **Recreational Licenses** – The sale of both resident and non-resident licenses will be held at the Damariscotta Town Office at 10:00a.m. on the first business day after June 1st. If applicants outnumber the number of licenses available, a lottery will be held to determine the order of granting licenses to either residents or non-residents as allocated. If any licenses remain unsold the Town Clerk shall issue licenses to resident and non-resident applicants as allocated from June 1st and until September 1st. After September 1st, undistributed licenses shall be made available to resident and non-resident applicants alike, regardless of allocation, in the form of a lottery at which the applicant must be present to qualify. This lottery shall be conducted on the first business day following September 1st at 10:00 a.m. at the Damariscotta Town Office.

E. Licenses may be returned to the municipality voluntarily, and reissued to another person at the current fee according to the priorities established in this Ordinance.

F. Municipal commercial shellfish license holders who have purchased their licenses prior to September 1 of the previous year and who have completed eight (8) hours of shellfish conservation work under the supervision of the shellfish warden or an appointee of the shellfish committee or have served on the Shellfish Conservation Ordinance Committee and attended at least six meetings shall be permitted to purchase a shellfish license during the first two business days preceding the regular sale date.

G. **License Expiration Date:**
Resident Commercial, and Non-Resident Commercial, and Non-Resident Recreational and Resident Recreational licenses issued under authority of this ordinance expire at midnight on the 31st day of May following date of issue.

XIV. Reciprocal Harvesting Privileges:

Resident Commercial, Non-Resident Commercial, Non-Resident Recreational and Resident Recreational license holders may harvest shellfish within any municipality governed by this Ordinance.

XV. Suspension:

Any shellfish licensee having three or more convictions for a violation of this Ordinance within the preceding three years shall have his shellfish license automatically suspended for a period of thirty (30) days, unless specified elsewhere in this Ordinance.

XVI. Opening and Closing of Flats for Conservation Purposes:

The Municipal Officers, conditioned upon the approval of the Commissioner of Marine Resources, may open and/or close, areas for shellfish harvesting. Within Fourteen (14) days of receipt of written request of the Shellfish Conservation Committee, the Municipal officers shall hold a public hearing on the proposal. The decision of the Municipal Officers shall be based on the recommendation of the DMR's area biologist and public input. The decision of the Municipal Officers will be in the form of request letter to the DMR.

XVII. Minimum Legal Size of Soft-shell Clams:

- A. It is unlawful for any person to possess soft-shell clams within the municipality which are less than two inches in the longest diameter except as provided by Subsection B of this Section.
- B. **Tolerance:** Any person may possess soft-shell clams that are less than two inches if they comprise less than 10% of a 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.

XVIII: Access:

In that access to the flats across private property is a privilege, not a right, an agreement of access may be made between the property owner and the town and may be registered at the town office. This agreement, which can be modified and re-registered with the town at any time, will detail the limitations and/or constraints on access across that private property where such limitations may include, but is not limited to, items such as:

- * Access only during daylight hours
- * Restrictions of vehicles on property
- * Designated pathways to the flats
- * Areas off bounds

Those granted a clamming license:

- * Shall be shown these agreements and acknowledge that fact.
- * Are responsible for adhering to agreement constraints
- * The first two violations of these agreements will result in written warnings issued by signing the back of the license. The third violation shall constitute a violation of the Ordinance.

XIX. Depuration Digging:

While Depuration Digging is controlled by the State, it is the intent of the Shellfish Conservation Committee to recommend that, whenever possible, this digging be done by local diggers. Any monies received by the towns in this Ordinance, shall be turned over to the Shellfish Conservation Committee.

ATTACHMENT A

ADDITIONAL RESIDENCE CRITERIA

1. MOTOR VEHICLE LICENSE REGISTRATION
2. MOTOR VEHICLE REGISTRATION ADDRESS
3. VOTER REGISTRATION ADDRESS
4. HUNTING LICENS
5. UTILITY SERVICE ADDRESS

**ATTACHMENT B
AFFIDAVIT
APPLICATION FOR COMMERCIAL SHELLFISH LICENSE**

DATE: _____

1. NAME _____
2. HOME ADDRESS _____
3. MAILING ADDRESS _____
4. PHONE NUMBER _____
5. DATE OF BIRTH _____
6. HEIGHT _____ WEIGHT _____ EYE COLOR _____ HAIR COLOR _____
7. STATE SHELLFISH LICENSE NUMBER _____
8. FOR OBTAINING A *RESIDENTIAL* COMMERCIAL LICENSE, I AFFIRM THAT I MEET THE DEFINITION OF *RESIDENT* IN SECTION II. OF THE SHELLFISH CONSERVATION ORDINANCE IN THE TOWN OF DAMARISCOTTA _____ NEWCASTLE _____ (*MARK ONE*)

SIGNATURE OF APPLICANT _____

DATE: _____

STATE OF MAINE
COUNTY OF LINCOLN

_____ BEING BY ME DULY SWORN, DECLARES THAT THE ABOVE/FOREGOING STATEMENT IS TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

APPLICANT'S SIGNATURE _____

SUBSCRIBED AND SWORN/AFFIRMED TO BEFORE ME BY _____ THIS
_____ DAY OF _____,

_____ NOTARY PUBLIC

MY COMMISSION EXPIRES _____

ATTACHMENT B-2
AFFIDAVIT
APPLICATION FOR RECREATIONAL SHELLFISH LICENSE

DATE : _____

1. NAME _____
2. HOME ADDRESS _____
3. MAILING ADDRESS _____
4. PHONE NUMBER _____
5. DATE OF BIRTH _____
6. HEIGHT _____ WEIGHT _____ EYE COLOR _____ HAIR COLOR _____
7. FOR OBTAINING A RESIDENTIAL RECREATIONAL LICENSE, I AFFIRM THAT I MEET THE DEFINITION OF RESIDENT IN SECTION II. OF THE SHELLFISH CONSERVATION ORDINANCE IN THE TOWN OF DAMARISCOTTA

SIGNATURE OF APPLICANT

DATE _____

STATE OF MAINE
COUNTY OF LINCOLN

BEING BY ME DULY SWORN, DECLARES THAT
THE ABOVE FOREGOING STATEMENT IS TRUE AND CORRECT TO THE BEST
OF HIS KNOWLEDGE AND BELIEF

APPLICANTS SIGNATURE _____

SUBSCRIBED AND SWORN/AFFIRMED TO BEFORE ME BY _____
THIS _____ DAY OF _____.

NOTARY PUBLIC _____

MY COMMISSION EXPIRES _____