

## Chapter 190: SHELLFISH CONSERVATION PROGRAM

[HISTORY: Adopted by the Town of Wells 3-8-1985; readopted 3-4-1989; readopted 11-7-2000. Amendments noted where applicable.]

### § 190-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

LOT — 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."

NONRESIDENT — Anyone not qualified as a resident under this chapter.

POSSESS — To dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft-shell clam shell stock.

RESIDENT — A person who has been domiciled in this Town for at least three months next prior to the time his/her claim of such residence is made. No person shall be considered a resident if he/she:

- A. Has not, if registered to vote, registered in Wells.
- B. Does not, if licensed to drive a motor vehicle, possess a Maine driver's license that reflects a local address.
- C. Has not, if owning a motor vehicle located within the state, registered such vehicle in Maine.

SHELLFISH or CLAMS — Soft-shell clams, *Mya arenaria*.

### § 190-2. Statutory authority.

This chapter is enacted in accordance with 12 M.R.S.A. § 6671.

### § 190-3. Purpose.

The purpose of this chapter is to establish a shellfish conservation program for the Town of Wells which will ensure 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 digging is permitted.
- D. Limiting the minimum size of clams taken.
- E. Limiting the amount of clams taken daily by a harvester.

### § 190-4. Shellfish Conservation Committee.

- A. The shellfish conservation program for the Town of Wells will be administered by the Shellfish Conservation Committee, consisting of seven members to be appointed by the Selectmen for terms of three years, except that initial appointments shall be such that the terms of office of no more than three members shall expire in any single year. Terms shall expire in March.
- B. The Committee'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 each clam producing area at least once each three years to establish size, distribution and density and annually estimating the status of the Town's shellfish resources.
  - (3) Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation.
  - (4) Keeping this chapter under review and making recommendations 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 Board of Selectmen in conjunction with the area biologists of the Department of Marine Resources.
- (7) Submitting an annual report to the Town and the Department of Marine Resources covering the above topics and all other Committee activities.

**§ 190-5. Shellfish digging license required.**

- A. A municipal shellfish digging license shall be required. It is unlawful for any person to dig or take shellfish from the shores and flats of this Town without having a current license issued by the Town Clerk of this Town as provided by this chapter.
- B. A commercial digger must also have a valid State of Maine commercial shellfish license issued by the Department of Marine Resources.

**§ 190-6. License provisions.**

- A. Types of licenses.
  - (1) Resident commercial shellfish license: no license available.
  - (2) Nonresident commercial shellfish license: no license available.
  - (3) Resident and real property taxpayer recreational shellfish license. The license is available to residents and real property taxpayers only of this Town and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself/herself and his/her family.
  - (4) Nonresident recreational shellfish license. This license is available to any person not a resident of this Town and entitles the holder to take no more than one peck of shellfish in any one day for the use of himself/herself and his/her family.
- B. The licensee must sign the license to make it valid.
- C. Actual digging is limited to daylight hours. It will be unlawful to dig from sunset to 1/2 hour before sunrise.
- D. Licensee must be 12 years or older.
- E. Digger must use a clam digger's fork or a tined fork with two-inch separation of tines and with a handle no longer than two feet.

**§ 190-7. License application.**

- A. Individuals must apply in person to the Town Clerk for the licenses required by this chapter on forms provided by the Town. The Clerk may require an applicant to produce evidence of his/her qualifications before issuing the license.
- B. Contents of the application. The application must contain the applicant's name, current address, birth date, height, weight, signature and whatever other information the Town may require. The Clerk shall note on the application the date the license was issued, sign it and file it with his/her records.
- C. Misrepresentation. Any person who gives false information on a license application will cause said license to become invalid and void.

**§ 190-8. License fees.**

The fees for the licenses shall be established by the Board of Selectmen, following notice and a public hearing, and must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licensing shall be used by the Town for shellfish management and conservation and enforcement of this chapter. Such fees shall be kept in a separate account entitled "Shellfish Conservation and Control." Any money not expended for this purpose shall not lapse but shall be carried over to the next fiscal year.

**§ 190-9. Limit on licenses.**

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 exercise control:

- A. Prior to October, the Town Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources, will establish the number of commercial or noncommercial licenses to be permitted.
- B. The Shellfish Conservation Committee will notify the Town Clerk in writing prior to November of the number of licenses to be issued. No reservations will be accepted by telephone. 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 Town 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.
- C. The Town Clerk shall issue licenses to residents and nonresidents as allocated from January 1 until March 31, after which licenses shall be issued to residents and nonresidents on a first-come-first-served basis.

**§ 190-10. Size limit for soft-shell clams.**

- A. It is unlawful for any person to possess soft-shell clams within the Town of Wells, York County, 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 any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks (if allowed by ordinance) taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck. **[Amended 4-7-2001]**

**§ 190-11. License expiration date.**

Each license issued under authority of this chapter expires at 12:00 midnight on the 31st day of December next following the date of issue.

**§ 190-12. License fees waived. [Amended 4-16-2004]**

License fees will be waived for residents and real property taxpayers and nonresidents age 65 years or older.

**§ 190-13. Opening and closing of areas.**

The Town officers, with 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 biologists that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Town officers may call a public hearing on 10 days' notice to the Department of Marine Resources. The decision of the Town officers made after the hearing shall be based on findings of fact.

**§ 190-14. Violations and penalties.**

A person who violates this chapter shall be guilty of a crime punishable as provided by 12 M.R.S.A. § 6671, except that fines for violation of § 190-10 shall be provided in 12 M.R.S.A. § 6681.

**§ 190-15. When effective. [Amended 4-12-2003]**

This chapter, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the Town, provided that a certified copy of this chapter is filed with the Commissioner within 20 days of its adoption.