SHELLFISH CONSERVATION ORDINANCE

FOR THE

TOWN OF PENOBSCOT

PREPARED BY THE PENOBSCOT SHELLFISH CONSERVATION COMMITTEE

ADOPTED BY THE TOWN OF PENOBSCOT

MARCH 4, 2008

AMENDED

MARCH 3, 2009 MARCH 8, 2011 MARCH 6, 2012

MARCH 3, 2015

SELECTMEN:

Paul J. Bowen

PAUL BOWEN

Stanley C. Shorey

STANLEY SHOREY

Harold A. Hatch

HAROLD HATCH

Mary Ellen Gross

MARY ELLEN GROSS

TOWN CLERK

DATE: March 10, 2015

SHELLFISH CONSERVATION ORDINANCE FOR THE TOWN OF PENOBSCOT

ADOPTED AT TOWN MEETING MARCH 3, 2015

1. Authority: This Ordinance is enacted in accordance with 12 M.R.S.A. Section 6671.

2. Purpose : To establish a shellfish conservation program for the Town of Penobscot 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 area 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 Penobscot will be administered by the Shellfish Conservation Committee consisting of five members to be appointed by the Selectmen for staggered terms of two –three year terms, two – two year terms, and one – one year term.

   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. 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.

C. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation.

D. Keeping this Ordinance under review and making recommendations for its amendments.

E. 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.

F. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Area Biologist of the department of Marine Resources.

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

3.1 The Shellfish Conservation Committee shall include an Alternate position.

4. Definitions:

A. Repealed

B. Resident: A person occupying a residence within the Town of Penobscot to make that place their permanent home. A person shall be so domiciled in this Town for at least six months prior to the claim of residency.

C. Nonresident: The term "nonresident" means anyone not qualified as a resident under this Ordinance.

D. Shellfish, Clams, and Intertidal Shellfish Resources: When used in the context of this Ordinance the words " shellfish", "clams" and " intertidal shellfish resources" means soft shell clam (mya arenaria) .

E. Municipality: Refers to the Town of Penobscot, Maine .

F. Quorum: 4 of 5 members shall constitute a quorum.

g. DMR: Department of Marine Resources.

5. Licensing: Municipal Shellfish 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 Shellfish License issued by the Municipality as provided by this Ordinance

A. Design, Scope and Qualifications :

1. Resident Commercial Shellfish License: The License is available to residents of this Municipality 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, when available to nonresidents of this Municipality, entitles the holder to dig and take any amount of shellfish from the shores and flats of this Municipality.

3. Residential Recreational Shellfish License : The License is available to residents and real estate taxpayers of this Municipality and entitles the holder to dig and take not 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 and entitles the holder to dig and take not 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.

5. A. 6. Multiple Licenses: No person shall hold both a Commercial and Recreational License for this Municipality.

A. Any person possessing a State Commercial Shellfish License is ineligible to receive a Town Recreational License.

7. Residential License holders must be domiciled in the Municipality during the time the license is valid. If not, said license shall be invalid and void.

8. Sunday commercial harvesting shall be legal.

9. Harvesting of shellfish shall be unlawful from 30 minutes after sunset through 30 minutes before sunrise.

B. Application Procedure : Any person may apply to the Town Clerk for the Licenses required by this Ordinance on forms provided by the Municipality .

1. Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, and signature and whatever information the Municipality may require.

2. Misrepresentation : Any person who gives false information on a license application will cause the license application and license to become invalid and void.

5. B. 3. Proof of Residency : The Selectmen may ask for proof of residency. Acceptable documents may include: properly registered and recorded deed to real estate with existing dwelling, current Municipal property tax bill, copy of rental / lease agreement, notarized affidavit stating applicant is domiciled by a third party or any other proof the Selectmen approve.

4. Repealed

5. Application Registration : Upon receiving an application the Town Clerk shall number each application in the order it was received.

6. Application Deadlines: All Commercial applications must be received by the Town Clerk by April 1st.

C. Fees : The Town Clerk shall pay all fees received to the Town Treasurer except for $1.00 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 : If, following the annual review of the Town's clam resources, its size distribution, abundance and the Warden's Reports (as required by Section 3), the Shellfish Conservation Committee, in consultation with the Area DMR Biologist, determine limiting Commercial or Recreational Shellfish Licenses is an appropriate shellfish management option for the following year:

1. Prior to March 6th the Committee shall report its findings and document recommendations for the allocation of Commercial and Recreational Licenses to be made available for the license-year to the Commissioner of Marine Resources for concurrence.

5. D. 2. After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to April 1st, the Shellfish Conservation Committee shall notify the Town Clerk in writing the number and allocation of shellfish 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 non-residents as allocated on April 15th. If the Penobscot Municipal Offices are closed during any portion of the normal office hours on the first day set above for issuing licenses, then the licenses will go on sale the next normal business day the Municipal Offices are open. If licenses remain after the first (90) ninety days of the issuance process, licenses shall be issued without regard to residency by lottery.

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 catagories for the following year :

1. Notice of the dates, places, times and procedure 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 those 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.

5. E. 2. Repealed

3. 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 licenses issued.

4. For each Recreational License category, the Town Clerk shall issue a license to anyone that wants one.

5. Applicants for Commercial Licenses may volunteer to perform no more than 8 hours of conservation work in exchange for a reduced license fee.

6. First time Commercial License holders and those less than 18 years old prior to April 1st, shall qualify for a reduced fee without performing conservation work.

7. For each Commercial License Category, when there are more applicants than licenses available, preference shall be given to applicants that are eligible for a reduced license fee and seniority.

8. Applicants that complete less than 8 hours of conservation work shall have their hours carried forward to the next license year.

F. Seniority : When the Shellfish Committee decides that the number of licenses must be reduced, licenses will be issued to eligible individuals on the basis of seniority; individuals holding a Municipal License, of the same category to be reduced, for a greater number of years will receive a license before those who have less.

G. License Expiration Date : Each License issued under the authority of this Ordinance expires at midnight an April 14 next following date of issuance.

1. If the Penobscot Municipal Offices are closed on April 15th, Licenses shall be valid until the next day the Offices are open.

H. Suspension : Any shellfish licensee having three convictions for a violation of this Ordinance within a three year period shall have his Shellfish License suspended for a period of (30) thirty 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 mailing a Notice of Suspension by the Town Clerk to the licensee.

3. Any licensee whose Shellfish License has 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. The licensee may appeal the decision of the Shellfish Conservation Committee before the Board of Selectmen by filing a written Request of Appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

5. I. Fee Waivers : Repealed.

J. Lottery System : In the event there are more applicants than Licenses available, a lottery will be held.

1. Winners will be chosen by chance. A bottle with numbered balls will be used to determine winners.

2. For each numbered application there will be a matching numbered ball.

3. Any application that does not comply with this Ordinance will not be eligible and its number will be omitted from the lottery.

4. Lottery will be held on the Tuesday on or before April 15 at the Selectmen's Meeting.

K. Repealed.

L. Revoked Licenses :

1. When the Shellfish Committee and the Board of Selectmen agree that a harvester's license will be revoked, the affected party shall be notified by the Town Clerk in writing and sent a copy of the decision by certified mail.

2. Any person whose license is to be revoked may appeal to the Municipality pursuant to Section H.3 of this Ordinance.

3. Any revoked license shall be advertised for sale pursuant to Section D.3 of this Ordinance.

4. Any license revoked after the first ninety (90) days of the issuance process shall be advertised for sale, pursuant to Section D.3 of this Ordinance, and sold to the lottery winner without regard to residency.

5. M. Conservation Work : The Shellfish Committee shall approve conservation work and record the date, participants, hours worked and goal of the project.

1. The Shellfish Committee shall set compensation rates that shall be no less than the current Federal or State hourly minimum wage. Compensation shall only be used to reduce license fees.

6. Opening and Closing of Flats : The Town Board of Selectmen, upon approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon 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 open or closed, the Board of Selectmen, may call a Public Hearing , and shall send a copy of the notice to the Department of Marine Resources. The decision of the Town Board of Selectmen made after the hearing shall be based on findings of fact.

7. Minimum Legal Size of Soft Shell Clams : It is unlawful for any person to possess soft shell clams within the Municipality 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 the 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.

2. Possess : For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam stock.

7. 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 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 this Ordinance shall be punished as provided by 12 M.R.S.A. section 6681.

8. Penalty : A person who violates this Ordinance shall be punished as provided by 12 M.R.S.A. Section 6681 (10).

9. Effective Date : This Ordinance, which has been approved by the Commissioner of the Department 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.

10. 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.

11. Repeal : Any Ordinance regulating the harvest or conservation of shellfish in this Town and any provisions of any other Town Ordinance , which is inconsistent with this Ordinance, is hereby repealed.