



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
MARINE RESOURCES LABORATORY  
P.O. BOX 8, 194 MCKOWN POINT RD  
W. BOOTHBAY HARBOR, MAINE  
04575-0008

PATRICK C. KELIHER  
COMMISSIONER

September 18, 2015

Teresa Bragg, Town Clerk  
P.O. Box 236  
Cutler, ME 04626

Re: Cutler Conservation Ordinance

Dear Ms. Bragg:

This is to acknowledge receipt of the enactment of the ordinance for Cutler. We have reviewed and approve the above-referenced enactment dated June 23, 2015 with the following **requests**:

- 3. - The term for a shellfish committee member is unclear. Please strike one or the other.
- 3.B. – Remove the survey requirement as this is not currently happening every 3 years.
- 6.2.D. and 6.2.E. – Shellfish licenses must be offered to residents and non-residents alike starting on the same day. Please remove all text stating that resident and non-resident license sales begin on different days. Additionally, non-resident license issuance procedure must follow the process outlined in DMR Regulations Chapter 7.40. On the first day of license sales each year, municipalities are required to offer non-resident licenses for sale based on the number of resident licenses sold in the previous year.
- 7. – DMR Regulations Chapter 7 requires towns to provide a five day notification of conservation closures and openings.
- 7.B.1. – Area biologists do not post state pollution closure notices.

**You will need to update your ordinance to comply with chapter 7 regulation changes. When completed, please send an updated, certified copy to the Department of Marine Resources.**

This approval is with reference to the requirements of 12 M.R.S.A. §6671(4)(B) and is not an opinion as to the validity of the ordinance in law.

Sincerely,

Denis-Marc Nault, Shellfish Management Program Supervisor

cc: Heidi Leighton, Area Biologist  
Kohl Kanwit, Director, Bureau of Public Health

## 2003 SHELLFISH CONSERVATION ORDINANCE

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 Cutler which will insure the protection and optimum utilization of the 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 areas where clams may be taken.
- D. Restricting the hours during which harvesting may take place.
- E. Limiting the size of clams that may be taken.
- F. Limiting the quantity of clams that may be taken by a harvester in any one (1) day.
- G. A shellfish warden will be employed to enforce this ordinance.

3. **Shellfish Conservation Committee:** The shellfish conservation program for the Town of Cutler will be administered by the Shellfish Conservation Committee consisting of five (5) members to be appointed by the Selectmen for a term of one (1) year to run from July 1 April 1st through June 30 March 31st of the following year. 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 in each category.
- B. Surveying each clam-producing area at least once every three (3) years to establish size, distribution, density and annually estimating the Town's shellfish resources.
- C. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation.
- D. Securing and maintaining records of shellfish harvested 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 area biologists of the Department of Marine Resources.
- F. Keeping this ordinance under review and making recommendation for its amendments.
- G. Submitting an annual report to the Town and the Department of Marine Resources covering the above topics and all other Committee activities.

4. **Definitions:** For the purpose of the ordinance:

A. *Resident:* A person who is a Maine resident and who has proof of being domiciled in the Town of Cutler prior to the date that his/her claim of such residence is made. In order to demonstrate resident qualification, an applicant shall provide three (3) separate and different forms of evidence of residency in Cutler from the chart below. At least one form of evidence of residency from each section of the chart shall be submitted with the application. An applicant age 16 or under shall provide three (3) separate and different forms of evidence of residency in Cutler of his/her parent(s) or legal guardian from the chart below. The only exception to this requirement shall be for those residents who reside elsewhere much of the year solely for the purpose of pursuing full-time higher education or while a member of the U.S. Armed Forces. If

the Town Clerk is uncertain of an applicant's residency, the Town Clerk shall refer the matter to the Shellfish Conservation Committee for a determination.

Section 1	Section 2	Section 3
<ul style="list-style-type: none"> <li>* Copy of deed or property tax bill</li> <li>* Copy of lease AND recently executed affidavit by landlord affirming applicant's tenancy.</li> <li>* Recently executed affidavit by landlord affirming applicant's tenancy AND evidence of most recent rent payment.</li> </ul>	<ul style="list-style-type: none"> <li>* A utility bill or other work order dated within the past 60 days including:               <ul style="list-style-type: none"> <li>▪ Gas Bill</li> <li>▪ Oil Bill</li> <li>▪ Electric Bill</li> <li>▪ Telephone Bill</li> <li>▪ Cable or Satellite Bill</li> </ul> </li> <li>* Dated within the past year:               <ul style="list-style-type: none"> <li>▪ W-2 Form</li> </ul> </li> <li>* Dated within the past 30 days:               <ul style="list-style-type: none"> <li>▪ Payroll stub with physical address of applicant</li> <li>▪ Bank or credit card statement with physical address of applicant</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>* Any valid form of photo ID and evidence of residency, that may include:               <ul style="list-style-type: none"> <li>▪ A valid Maine Driver's License displaying a physical address.</li> <li>▪ A valid Maine photo ID card displaying a physical address.</li> <li>▪ A current vehicle registration displaying a physical address.</li> </ul> </li> </ul>

B. *Nonresident*: Anyone not qualifying as resident under this ordinance.

C. *Shellfish, Clam*: Refers to the soft shell clam, *Mya arenaria*.

D. *Shores, Flats*: Refers to areas within the Town where clams are to be found.

E. *Dig, Take, Harvest*: Refers to the means of taking clams from their natural habitat.

F. *Municipality, Town*: Refers to the Town of Cutler in Washington County, Maine.

G. *Licenses*: Refers to the Town-issued permit for the harvesting of shellfish.

**5. Licensing:** It is unlawful for any person to take shellfish from the shores of this Municipality without having a current license to do so issued by the Town as provided by this ordinance.

A. Designation, Scope and Qualifications:

(1.) *Resident Commercial Shellfish License*: Available only to residents of the Town of Cutler, it entitles the licensee to dig any amount of shellfish from the flats of this Municipality where and when it is lawful to do so.

(2.) *Nonresident Commercial Shellfish License*: Available to those who do not live in this Municipality, it entitles the licensee to dig any amount of shellfish from the flats of this Town where and when it is lawful to do so. No less than ten percent (10%) of the commercial licenses to be issued will be offered to nonresidents.

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 the Application*: The application is in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, and whatever other information the Town may require. It must be signed by the applicant.

- (2.) *Misrepresentation:* Any person who gives false information on a license application will cause said license to become invalid and void.
- (3.) *Issuance:* Upon acceptance of the application and appropriate fee, the Town Clerk will issue the license which must be signed before leaving the Town Office. Only one (1) license will be sold to any individual.

C. Fees: The fees for the licenses must be paid-in-full at the time of the application for the respective license. The fees will be turned over to the Town Treasurer to be used by the Town for shellfish management, conservation and enforcement.

- (1.) *Exception:* There shall be no fee for resident and nonresident commercial diggers aged sixty-five (65) and over, but any such licenses issued count toward the 10% rule set forth in 12 M.R.S.A. Section 6671(3-A(E)).
- (2.) *Exception:* There shall be no fee for resident and nonresident commercial diggers aged sixteen (16) years and under, but any such licenses issued count toward the 10% rule set forth in 12 M.R.S.A. Section 6671(3-A(E)).

D. Licensing Period: All Cutler-issued shellfish licenses are valid from May 1st through April 30th of the following year, regardless of the actual date of issue.

E. Possession of License: The license is to be carried by the licensee any time he is on the flats harvesting clams, and is to be shown to any lawful authority on demand.

**6. 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. The Town shall provide and reserve a minimum number of commercial licenses for nonresidents in accordance with the 10% rule set forth in 12 M.R.S.A. Section 6671(3-A(E)).
  - (A.) The Shellfish Conservation Committee, under the direction of and with approval from the Commissioner of Marine Resources, will establish commercial licenses to be issued that year, following requirements of 12 M.R.S.A. Section 6671(3-A).
  - (B.) The Shellfish Conservation Committee will notify the Town Clerk in writing, prior to March 1st, of licenses to be issued in each category.
  - (C.) Notice of licenses to be issued and the procedure for application shall be published in one (1) or more newspapers having general circulation which the Selectmen consider effective in reaching the persons concerned. It shall appear at least ten (10) days prior to the first date of issuance and shall remain posted in the Town Office until the period concludes and/or all the licenses have been issued. No licenses may be reserved.
  - (D.) The Town Clerk shall begin to issue residential licenses on the fourth, or last, Thursday of the month of April, such licenses to become valid on May 1st of that year.
  - (E.) The Town Clerk shall issue nonresidential licenses at 10 a.m. on the first Thursday of the month of May by lottery, such licenses to become valid upon issuance.
    - (1.) Persons applying for such a license shall, prior to the lottery date, complete and return to the Town Clerk an application on a form obtained from the Clerk.

- (2.) Such applications must be signed by the applicant.
- (3.) Only one (1) application may be submitted per person. Submitting a second application voids one's chance to participate in the lottery drawing.
- (4.) Applicants must be present in person to obtain a license. Should an applicant not be present when his name is drawn, it will be discarded and another drawn in its place.

(F.) At the time of issuance of a clam license to an individual, the Clerk shall inform that individual that this license is his for the life of the license, it cannot be returned for a refund, nor traded or sold to anybody else.

**7. Opening and Closing of Flats:** The Municipal Officers, upon approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. The Shellfish Conservation Committee, with the concurrence of the Department of Marine Resources area biologist, can recommend that an area should be open or closed for management purposes. Methods include:

A. Recommendation is made to the Selectmen who then call a public hearing on ten (10) days notice in a generally circulated newspaper and by posting within the Town of the time, place and subject matter of said hearing.

- (1.) A copy of the notice shall be sent to the Department of Marine Resources
- (2.) At the close of the hearing, action is to be taken or not by the Selectmen, based on the facts presented. Notice of the action taken, if any, will be sent to the Department of Marine Resources.

B. When notice is received by the Town Clerk of an area ordered closed by the Department of Marine Resources due to pollution, etc., the following steps are to be taken:

- (1.) One (1) or more closure notices are posted near the affected area by the Department's area biologist or by someone acting as his agent.
- (2.) The Town shellfish wardens are informed and, if necessary, they are to post more home-made notices of closure as near the affected area as possible.
- (3.) A copy of the letter or newspaper legal advertisement of the closure area, including the geographic specifics is to be posted at the Town Office.

**8. Minimum Legal Size of Clams:** It is unlawful for any person to harvest soft shell clams which are less than two (2) inches in the longest diameter.

A. Definitions: For the purpose of this ordinance:

- (1.) *Lot:* The total number of clams in any bulk pile. When the clams are in boxes, barrels or other containers, the contents of each constitutes a separate lot.
- (2.) *Possess:* Means to dig, take, harvest, ship, transport, hold, buy or sell, either wholesale or retail soft shell clams.

B. Tolerance: Any properly licensed person may possess soft shell clams that are less than two (2) inches so long as the undersized comprise less than ten percent (10%) in any one (1) lot. The Tolerance shall be determined by the numerical count of not less than one (1) peck nor of more than four (4) pecks taken at random from various part of the lot, or by a count of the entire lot if it contains less than one (1) peck.

C. Penalty: A person who violates any provision of this section of this ordinance shall be punished as provided by 12 M.R.S.A. Section 6681.

**9. Night Digging:** Night digging is not permitted. There shall be no digging or taking of soft-

shell clams from the shores or flats of the Town from one (1) hour after sunset to one (1) hour before sunrise. Artificial light sources (e.g., headlights, flashlights, etc.) shall not be used for illumination when harvesting soft-shell clams from the shores or flats of the Town.

**10. Suspension:** Any shellfish licensee convicted in a court of law of violating this ordinance shall have his license suspended. Beginning the date of the conviction, the suspension will last:

- A. Thirty (30) days from the date of the first offense.
- B. Sixty (60) days from the date of the second conviction.
- C. Ninety (90) days from the date of the third conviction.
- D. With a fourth conviction, the license will be suspended for the balance of the shellfish year.
- E. Any conviction concurring more than three (3) years before the last conviction shall not be counted in determining lengths of suspension.

(1.) Records of convictions resulting in suspension must be given to and maintained by the Town Clerk to insure the enforcement of this ordinance.

(2.) Notice of suspension and the duration are to be conveyed by the Town Clerk to the licensee involved and the Town shellfish wardens.

F. 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 a hearing with the Town Clerk within thirty (30) days following the effective date of the suspension. Any person aggrieved by the hearing by the Shellfish Conservation Committee may appeal to the Superior Court within thirty (30) days pursuant to Rule 80B of the Maine Rules of Civil Procedures.

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

**12. Effective Date:** This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the Municipality, within twenty (20) days of its adoption.

**13. 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.

**14. Repeal:** Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions of any other Town ordinance which is inconsistent with this ordinance and bears an earlier or nonexistent date is hereby repealed.

Adopted August 04, 2003 at the Annual Town Meeting  
Amended July 10, 2013 at the Annual Town Meeting  
Amended June 23, 2015 at the Annual Town Meeting

*A true copy attest,  
J.M. Bragg*