


SHELLFISH CONSERVATION ORDINANCE

of the Town of Chebeague Island
MAINE

Adopted by the Town Meeting:
Effective: June 6, 2015
Amended: June 11, 2016

Attest:



Town Clerk

Seal:

Section 101. TITLE

This Ordinance shall be known as and may be cited as the "Shellfish Conservation in the Town of Chebeague Island, Maine," and shall be referred to herein as "this Ordinance" or "this chapter".

Section 102. PURPOSE AND AUTHORITY

The purpose of this Ordinance is to establish a shellfish conservation program for the Town of Chebeague Island's coastal waters, which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means that 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.
- f) Establishing the Town of Chebeague Island as an interested part in aquaculture activities in accordance with State of Maine law.

This Ordinance is adopted pursuant to 12 M.R.S.A. § 6671. 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.

This Ordinance shall remain in effect until repealed by the Town of Chebeague Island, or rescinded by the Department of Marine Resources.

Section 103. DEFINITIONS

- a) Municipality. The term 'Municipality' shall refer to the Town of Chebeague Island.
- b) Non-Resident. The term "non-resident" means anyone not qualified as a resident under this ordinance.
- c) Resident. The term "resident" refers to a person who has been domiciled in the Town of Chebeague Island for at least three months prior to the time his claim of such residence is made. The term "resident" also includes persons who own real property in the Town of Chebeague Island.
- d) Shellfish, Clams, Intertidal Shellfish Resource. Shellfish, Clams, Intertidal Shellfish Resource When used in the context of this ordinance the words "shellfish", "clams", intertidal shellfish resource shall mean soft-shell clams (*Mya arenaria*), surf clams and quahogs.
- e) Hand Implements. The term 'hand implements' shall refer to implements such as clam hoes or a gloved hand.
- f) The definitions contained in Title 29-A M.R.S.A. shall govern the construction of words contained in this Ordinance.
- g) Any words not otherwise defined therein shall be given their common and ordinary meaning.

Section 104. SHELLFISH CONSERVATION COMMITTEE

The Shellfish Conservation Program for the Town of Chebeague Island will be administered by the Shellfish Conservation Committee, consisting of five (5) to seven (7) members. The Selectmen will appoint the members. The Committee's responsibilities include:

- a) Recommending annually - after consultation with the Department of Marine Resources - the number of shellfish digging licenses to be issued. This recommendation shall be sent to the Board of Selectmen, who (after approval or revision) will send to the Town Clerk for implementation.
- b) Surveying the clam-flats to maintain current information on shellfish resources.
- c) 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 of Marine Resources, a plan for implementing conservation measures.
- d) Submitting to the Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation.
- e) Keeping this Ordinance under review and making recommendations for its amendments.
- f) Securing and maintaining records of shellfish harvest from the Town of Chebeague Island's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.
- g) Recommending conservation closures and openings to the Selectmen in conjunction with the Department of Marine Resources.
- h) Submitting an annual report to the Selectmen and the Department of Marine Resources covering the above topics and all other Committee activities.

The clam-flats of the Town of Chebeague Island are a very valuable shellfish resource, which is important to the local economy. These flats are not an inexhaustible resource, and, therefore, must be prudently managed in order to remain viable.

As part of the management process, it may be necessary to (a) restrict the taking of shellfish by limiting the number of shellfish licenses, (b) restrict the size and quantity of shellfish which may be harvested, and (c) take other measures as outline in the Ordinance.

Section 105. SHELLFISH CONSERVATION WARDEN

The Selectmen shall appoint a Shellfish Conservation (Clam) Warden yearly and shall recommend the Warden's compensation. The Shellfish Conservation Warden shall regularly attend meetings of the Shellfish Conservation Committee, but shall not be a member of the Committee. The Selectmen, for cause by them declared in writing, after due notice to the officer and hearing, if requested, may remove the Shellfish Conservation Warden and appoint another one.

Section 106. LICENSING

A Town of Chebeague Island 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, valid license issued by this municipality as provided by this ordinance (except that children twelve and under can dig when they are accompanied by a licensed adult). A commercial digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.

No person shall be issued a Shellfish License who, upon the time of the request, has failed to appear in court for a shellfish violation, or has failed to pay any outstanding shellfish violation fines.

The licensee must be present and must have their license on their person.

Licensing will be compliant with PS Law Chapter 47, LD 1735.

Section 107. COMMERCIAL LICENSES

The Shellfish Commission shall annually review and recommend to the Board of Selectman license fees for three types of Commercial licenses: Resident, Resident Senior and Non-resident.

- a) Resident Commercial Shellfish License: This license is available to residents of the Town of Chebeague.
- b) Resident Senior Commercial Shellfish License: This license is available to residents of the Town of Chebeague Island that are over the age of 70 and for a reduced license fee.
- c) Non-Resident Commercial Shellfish License: This license is available to non-residents of this municipality.
- d) At license issue, the licensee will choose any 90 days out of the 365 days available to harvest commercially. The license will serve as a recreational license the remaining 275 days except as may be modified in f) below.
- e) A commercial license under this section entitles the holder to dig and take one (1) bushel of shellfish per tide from the shores and flats of this municipality and reciprocating municipalities.
- f) The Shellfish Conservation Committee may specifically recommend the period of license validity as well as the areas open to commercial harvesting each year through the conservation closure process.
- g) Commercial Shellfish License Holders are supplied with, and required to keep, a Shellfish Harvesting Log, which must be submitted to the Town Clerk monthly, by the 10th day of the following month. The Log will include the license holder's name and address, and will show the date, location and quantity harvested during each tide. Commercial license holders, who do not submit Harvesting Logs, as required, will not be eligible for a commercial License during the next period of issuance of Commercial licenses.
- h) All commercial license holders that participate for a minimum of 10 hours in the annual Conservation Activities undertaken by the Shellfish conservation committee shall be guaranteed a renewal of their license for the following year. If the number of licenses available is less than the number of licenses guaranteed in this fashion, then a lottery will be held by the Town Clerk prior to the day licenses go on sale to determine which of the Conservation Activities participants receives their guaranteed license. Any license holder wishing to renew their license must have submitted a Shellfish Harvesting Log under Section 107(g) of this ordinance. The license holder who wishes to take advantage of the license guarantee must also indicate in writing to the Town Clerk their intention to take advantage of this guarantee at least one week prior to the day licenses go on sale. Any party who wishes to apply for a commercial license must have participated in Conservation Activities in any prior or current year, as described above.

Section 108. RECREATIONAL LICENSES

- a) A person holding a recreational shellfish license may not engage in the wholesale or retail sale of any shellfish harvested under that license. Maine certified shellfish wardens of the Town of Chebeague Island shall be issued a recreational shellfish license.

- b) Resident Recreational Shellfish License: This category of license shall be made available as an Individual license and as an "individual plus one" license. This category of license is available to residents of the Town of Chebeague Island and entitles the holder (or the holder plus one guest) to dig and take no more than one peck of shellfish per day per license for the use of the licensee, guests and immediate family. The Resident Recreational Shellfish license may be issued for the following durations:
 - Annual (individual or individual plus one)
 - Month (individual)
 - Day (individual)
- c) Resident Senior Recreational Shellfish License: This category of license shall be made available as an Individual license. This license is available to residents of the Town of Chebeague Island who are over the age of 65 for a reduced license fee. The Individual license entitles the licensee to dig and take no more than one peck of shellfish per day for the use of the licensee, guest and licensee's immediate family.
- d) Non-Resident Recreational Shellfish License: This license is available to non-residents of the Town of Chebeague Island, and entitles the holder to dig and take no more than one peck of shellfish per day for the use of the licensee, guests, and immediate family and may be issued for the same durations as the Resident Recreational Shellfish License described in a) above.
- e) To facilitate weekend recreational clammers, the Town Clerk and the Shellfish Warden have arranged for a few licenses to be 'delegated' to the Shellfish Warden, who may be available on the weekend to sell daily licenses (within the annually approved quantity of licenses to be issued for that year). The Shellfish Warden can then complete the license issuing process, collect the funds, etc. A daily license can also be obtained by mail in advance from the Town Clerk. At no time shall any recreational license enable the harvest of more than one peck of shellfish per license per day.

Section 109. REQUIREMENTS

- a) Signature: The licensee must sign the shellfish license to make it valid.
- b) A Shellfish license must be on the licensee's person when harvesting shellfish.
- c) Fees: The fees for licenses will be maintained on a separate fee schedule reviewed annually by the Shellfish Conservation Commission, recommended to the Board of Selectmen and approved by the Maine Department of Marine resources. The fee structure and number of licenses available must be available at the Town Office.
- d) Misrepresentation: Any person who gives false information on a shellfish license application will cause said shellfish license to become invalid and void.
- e) Expiration Date: Each shellfish license issued under the authority of this Ordinance expires at midnight on the December 31st next following date of issue, unless otherwise specified in this Ordinance.
- f) Reciprocal Harvesting: Privileges: License holders from other municipalities cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of their shellfish licenses, according to the terms of their shared ordinance.
- g) Numbers of Licenses and Notice of Period of Issuance: Numbers of licenses and period of issuance will be reviewed annually by the Town of Chebeague Island Shellfish Conservation Committee, submitted for approval of the Commissioner of the Department of Marine Resources and by the Board of Selectmen.

- h) Minimum Legal Size: Pursuant to 12 M.R.S. §§ 6671 and 6681, as amended from time to time, it is unlawful to possess soft-shelled clam shell stock whose shells are less than 2 inches in the largest diameter. For purposes of this Ordinance the term, "possess", means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft-shelled clam shell stock.
- i) Legal Hours: shellfish may only be harvested from ½ hour before sunrise until ½ hour after sunset.
- j) Method of Determining Tolerance: Pursuant to 12 M.R.S. §§ 6671 and 6681, as amended from time to time, any person may possess soft-shelled clams that are less than 2 inches if they comprise less than 10% of any bulk pile. The tolerance shall be determined by numerical count of not less than one (1) peck nor more than four (4) pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.
- k) Implements: Shellfish may be harvested by hand implement only, such as clam hoes.

Section 110. OPENING/CLOSING OF FLATS

The Selectmen with the approval of the Commissioner of Marine Resources may open and close areas for shellfish harvest.

When information in the possession of the Shellfish Conservation Committee indicates a clam-flat should be opened or closed, it shall advise the Selectmen. 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 opened or closed, the Selectmen may call a public hearing or address the advisement at a regular Selectmen meeting, and shall send a copy of the notice to the Department of Marine Resources.

After the hearing is closed the Selectmen shall make findings of fact on the relevant evidence presented. The Selectmen shall then make a decision based on those findings of fact as to whether opening or closing of the flat is warranted, with the concurrence of the Department of Marine Resources, and shall order the flat opening or closing, and shall set such time limitation and other harvesting conditions as are consistent with good conservation practices. The Commissioner of Marine Resources prior to enactment shall approve any proposal for opening or closing of flats.

Section 111. ADMINISTRATION AND ENFORCEMENT

This Ordinance shall be administered by the Town Administrator. This Ordinance shall be enforced by the shellfish warden, special officers as provided in 30-A M.R.S.A. § 2672, municipal officers, code enforcement officer or law enforcement officer with jurisdiction in the Town of Chebeague Island.

Section 112. PENALTIES

A person who violates this ordinance shall be punished as provided in 12 M.R.S.A. § 6671, as amended from time to time.

Section 113. SUSPENSION OF LICENSE

- a) Violation of Shellfish Ordinance: The Town Clerk shall suspend any and all shellfish licenses issued under this Ordinance, if the license holder is convicted in court of violating any section of this Ordinance.
- b) Suspension based on conviction in a Town closed Conservation area: The Town Clerk shall suspend any and all shellfish licenses issued under this Ordinance if the license holder has been convicted in court of possessing shellfish from a Town Closed Conservation Area.

- c) Length of Suspension for Section 113a) and Section 113b) above for a first conviction is 30 days from the date of first conviction or, for a second conviction; 365 days (one year) from the date of the second conviction. Any conviction more than three (3) years before last conviction shall not be counted in determining lengths of suspension.
- d) Suspension Based on Refusing Inspection. The Town Clerk shall suspend any and all shellfish licenses if the license holder refuses to allow inspection in the enforcement of the Ordinance. This suspension may not exceed 90 days.
- e) Any licensee whose shellfish license has been suspended shall be entitled to a hearing before the Selectmen, upon the filing of a written request for hearing with the Selectmen within thirty (30) days following the effective date of suspension. The applicant shall be given at least seven (7) days prior written notice of the date, time and place of hearing before the Selectmen. Any person aggrieved by the Selectmen's decision may appeal to the Superior Court within thirty (30) days from receipt of the Selectmen's written decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

Section 114. AMENDMENTS

This Ordinance may be amended by Town Meeting at any properly noticed meeting after it has been approved by the Commissioner of Marine Resources and 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.

Section 115. SEVERABILITY

In the event any portion of this Ordinance is declared invalid by a court of competent jurisdiction, the remaining portions shall continue in full force and effect.