

**2001  
TOWN OF LUBEC**

**SHELLFISH CONSERVATION ORDINANCE**

**AMENDED: Town Meeting October 27, 2015**

**AMENDED: Annual Town Meeting August 4, 2015**

**AMENDED: Annual Town Meeting August 6, 2013**

**AMENDED: Annual Town Meeting August 5, 2008**

**AMEMDED: Annual Town Meeting August 5, 2002**

**ENACTED ANNUAL TOWN MEETING**

**EFFECTIVE DATE: JULY 30, 2001**

Attested: *Suzette Francis*, Lubec Town Clerk 10/27/2015

**Section 1. – Authority**

This Ordinance is enacted in accordance with 12 MRSA, Section 6671.

**Section 2. – Purpose**

To establish a shellfish conservation program for the Town of Lubec, which will insure the protection and optimum utilization of shellfish resources within its limits. The goals will be achieved by means which may include:

- a. Licensing
- b. Limiting the number of shellfish harvesters
- c. Restricting the time and area digging is permitted
- d. Limiting the minimum size of clams taken
- e. Limiting the amount of clams taken

**Section 3. – Shellfish Conservation Committee**

The Shellfish Conservation Program for the Town of Lubec will be administered by the Shellfish Conservation Committee consisting of Five (5) members to be appointed by the Selectmen for terms of one (1) year.

The Committee's responsibilities include:

- a. Annually establishing, in conjunction with the Department of Marine Resources, herein referred to as DMR, the number of shellfish digging licenses to be issued.
- b. Submitting to the Board of Selectmen, proposals for the expenditure of funds for the purpose of shellfish conservation.
- c. Keeping this Ordinance under review and making recommendations for its amendments.
- d. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the DMR.
- e. Recommending conservation closures and openings to the Board of Selectmen, in conjunction with the Area Biologist of the DMR.

- f. Submitting an annual report to the municipality and DMR covering the above topics and all other committee activities.
- g. All committee members shall attend meetings as called by the Shellfish Committee; three (3) unexcused absences from meetings will result in the committee member being replaced.

#### **Section 4. – Definitions**

- A. **Resident:** The term “resident” refers to a person who has been domiciled in this municipality for at least three (3) months prior to the time his/her claim of such residence is made.
- B. **Non-Resident:** The word “non-resident” means anyone not qualified as a resident under this Ordinance.
- C. **Shellfish, Clams and Intertidal Shellfish Resources:** When used in context of this Ordinance, the words “shellfish”, “clams”, “intertidal shellfish resources” mean soft shell clams *Mya arenaria*
- D. **Municipality:** Refers to Town of Lubec, Maine.

#### **Section 5. – Licensing**

It is unlawful for any person to dig or take shellfish from the shores or flats of this Municipality without having a current license issued by the Town of Lubec, as provided in this Ordinance.

##### **A. Designation, Scope And Qualifications:**

- 1. **Resident Commercial Shellfish License** – This License is available to residents of the Town of Lubec and entitles the holder to dig and take any amount of shellfish from the shores of this Municipality and reciprocating municipalities, if any.
- 2. **Non-resident Commercial Shellfish License** – This License is available to non-residents of the Town of Lubec and entitles the holder to dig and take any amount of shellfish from the shores, flats of this Municipality.
- 3. **Resident Recreational Shellfish License** – This License is available to residents and real estate tax payers of this Municipality and entitle the holder to dig and take, not more than one (1) peck of shellfish in any one day for personal use. Said License will remain valid for a period of one (1) week from date of issue. No one with a State of Maine Commercial Clam License may purchase a recreational License.
- 4. **Non-resident Recreational Shellfish License** – This License is available to any person not a resident of the Town of Lubec and entitle the holder to dig and take no more than one (1) peck of shellfish in any one day for personal use. Said License will remain valid for a period of one (1) week from date of issue.

5. The Shellfish Warden and the Deputy Shellfish Warden are authorized to sell Recreational Licenses. The Town Clerk has an audit process of licenses issued to the wardens for sale by them.
6. Resident Annual Recreational Shellfish License – This License is available to residents and real estate tax payers of this Municipality and entitle the holder to dig and take not more than one (1) peck of shellfish in any one day for the use of him/herself and his/her immediate family. Said License will expire June 30<sup>th</sup> each year.
7. Non-resident Annual Recreational Shellfish License – This License is available to any person not a resident of the Town of Lubec and entitles the holder to dig and take no more than one (1) peck of shellfish in any one day for personal use. Said License will expire June 30<sup>th</sup> each year.
8. Resident Student Commercial Shellfish License: This license is available to residents of this Municipality who has not yet attained his or her 21<sup>st</sup> birthday as of June 10<sup>th</sup> of the year of application. The student applicant shall be enrolled fulltime in a primary or secondary school or educational program. The student must remain enrolled, or had graduated, for the period of issuance. This license entitles the student to dig and take any amount of shellfish to sell from the shores and flats of this municipality.
9. Non-resident Student Commercial License: This license is available to non-residents of the Town of Lubec who has not yet attained his or her 21<sup>st</sup> birthday as of June 10<sup>th</sup> of the year of application. The applicant shall be enrolled fulltime in a primary, secondary or educational program. The student must remain enrolled, or had graduated, for the period of issuance. This license entitles the student to dig and take any amount of shellfish from the shores, flats of this Municipality.

NOTE: ALL LICENSES MUST BE SIGNED BY THE LICENSEE TO BE VALID.

B. Application Procedure:

1. Any person may apply to the Town clerk for the licenses required by this Ordinance on forms supplies by the Municipality.
2. 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, signature whatever other pertinent information that maybe required by the Municipality.
3. Misrepresentation – Any person who gives false information on a license application will cause said license to become invalid and void.
4. An application for a student shellfish license shall also be in the form of an affidavit, which shall include:
  - (a) Proof that the applicant has not yet attained his or her 21<sup>st</sup> birthday as of June 10<sup>th</sup> of the license year.

- (b) Proof of residency.
- (c) Proof of enrollment in a school or state approved educational program.

### C. Limitation Of Diggers:

1. 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 on estimates of the resource capabilities and management requirements, consistent with good resource utilization. The following procedures will be followed to exercise control:
2. Prior to June 1<sup>st</sup>, the Town Shellfish Conservation Committee, with the approval of the commissioner of DMR, will establish the number of commercial and non-commercial licenses to be permitted following the requirement of 12 MRSA, Section 6671 (3).
3. The Shellfish Conservation Committee will notify the Town Clerk in writing, prior to June 10<sup>th</sup>, of the number of licenses to be issued. No reservation will be accepted by telephone.
4. Notice of the number of licenses to 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 ten (10) days prior to the period of issuance; and shall be posted in the municipal offices until the period concludes. The Town clerk shall issue licenses to Residents and Non-residents as allocated, from the beginning July 1<sup>st</sup> to the last Friday in September, after which licenses shall be sold without regard to residency on a first-come, first-served basis or by lottery.
5. Annual licenses will be sold at a ratio of 10-1 Resident to Non-resident throughout the year. In order to maintain a 10-1 ratio of resident to non-resident, the following procedure will be maintained:
  - a. The Town Clerk will prepare a form to list the names and phone numbers of license purchasers, along with a sequentially listed number and indicative of residency status. On the first day of license sales, the total number of non-resident licenses shall be issued in accordance with DMR Regulations Chapter 7.40, sections 1, 2, and 3. According to DMR Chapter 7.40, the 10% rule is applied in the following manner: the first non-resident license is issued after 6 resident licenses are sold, the second non-resident license is issued after 11 resident licenses are sold, and so on.

The following chart explains the 10:1 ratio of resident license to non-resident license sales:

<u>Number of Resident Licenses</u>	<u>Number of Non-resident Licenses</u>
1-5	0
6-10	1
11-20	2
21-30	3
31-40	4
41-50	5

And so on.....

Since a number of resident licenses need to be sold before a non-resident license becomes available, more non-residents may apply for licenses than are available, particularly during the initial sales. A second form needs to be prepared by the Town Clerk and it should contain information on non-residents who apply for a license sequentially. As non-resident licenses become available, as indicated on the first form, the information is transferred from the second to the first and applicant is notified, and given a time period of forty eight hours (48) hours or two (2) working days to redeem said license. If the applicant does not pick up the license within that time period, then their name is removed from the lists.

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;
  - A. 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 Commissioner of Marine Resources.
  - B. For each commercial license category, the Town Clerk shall issue licenses to nonresidents according to the 10% rule in DMR Regulations Chapter 7.40
  - C. Omitted
  - D. License Expiration Date: Each license issued under authority of this Ordinance expires at midnight on June 30<sup>th</sup>, in each year.
  - E. Reciprocal Harvesting Privileges: Licenses from any other municipality cooperating with the Town of Lubec on a joint shellfish management program

may harvest shellfish according to the terms of the Shellfish Ordinance of the Town of Lubec.

- F. Waiver of Resident and Non-Resident Recreational Fee: Resident and non-residents 65 years or older. See Terms for Recreational Ratio.
- G. Suspension: Any shellfish licensee having three (3) convictions or violation of this Ordinance shall have his/her license automatically suspended for a period of thirty (30) days.
1. A licensee whose shellfish license has been suspended pursuant to this Ordinance may re-apply for a license only after the suspension period has expired.
  2. The suspension shall be effective from the date of mailing of Notice of Suspension by the Town clerk to the Licensee.
  3. Any Licensee, whose shellfish license has automatically 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 seven (7) 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 for Appeal with the Town clerk within seven (7) days of the decision of the Shellfish Conservation Committee.
- H. License Requirements
1. Commercial License - Licenses must be purchased by the applicant. Cost for the license shall be determined by the shellfish committee annually. Separate fees shall be established for those who complete conservation time as well as for those do not complete conservation time. The Shellfish Conservation Committee shall approve voluntary conservation work and at the time the work is being performed, a committee member and/or the town shellfish warden must be present. Voluntary conservation time shall consist of 6 hours total. At least four (4) of the six hours must be work done to the flats for the purpose of enhancing the shellfish resource. No more than two (2) hours from attending meetings will be counted toward the six (6) hours. No person may perform voluntary conservation work as a surrogate for the applicant. Commercial License applicants sixty (60) years and over are only required to attend two (2) hours of meetings for their voluntary conservation requirements. The conservation time reduction in license fees does not apply to students aged 16 and under.
  2. Student Commercial License - Students age 16 and under license fee is free. A one to two hour free training course will be offered to anyone who would like to participate (this includes adults). The training will consist of the proper way to dig and care for your clams, state clam laws, and safety tips.

## **Section 6. - Shellfish Seeding Projects:**

The Shellfish Conservation Committee may approve a Shellfish seeding project in partnership with an agency such as the University of Maine to aid in the growth of seed clams in Lubec. All participants other than those from the sponsoring agency must have a State of Maine Commercial License and a Residential Commercial License from the Town of Lubec.

#### **Section 7. – Opening and Closing of Flats:**

The Municipal Officers, upon the approval of the Commissioner of DMR, may open and close areas for Shellfish Harvest. Upon recommendation of the Shellfish Conservation Committee, and concurrence with the DMR Area Biologist that the status of the shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officers shall call a Public Hearing on ten (10) notice published in a newspaper having general circulation in the Town, stating the time, place and subject matter of the hearing; and shall send a copy of the Notice to DMR. The decisions of the Municipal Officers make after the hearing shall be based on a finding of fact. The Municipality will provide notification to the public of conservation closures/openings in accordance with DMR Regulations Chapter 7.50(1) (C).

#### **Section 8. – Minimum Legal Size of Soft Shell Clams**

It is unlawful for any person to possess soft shell clams within the Town of Lubec, Washington County, which are less than two (2) inches in the longest diameter except as provided by Subsection B of this Sections.

##### **A. Definitions:**

1. Lot – The word “Lot”, as used in this Ordinance, means the total number of soft shell clams in any bulk pile. When soft shell clams are in a box, barrel or other container, the contents of said container will constitute a separate lot.
2. Possess – For the purposes of this Section, “Possess” means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shell stock.

##### **B. Tolerance:**

1. Any person may possess soft shell clams that are less than two (2) inches if the clams under 2” comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck, or 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 any provision of this Section shall be punished as provided by 12 MRSA, Section 6671 (10).

**Section 10. – Penalty**

A person who violates this Ordinance shall be punished as provided by 12 MRSA, Section 6671 (10).

**Section 11. – Effective Date**

This Ordinance, which has been approved by the Commissioner of DMR, shall become effective after its adoption by the Town, provided a Certified Copy of the Ordinance is filed with the Commissioner within twenty (20) days of its adoption.

**Section 12. – Period of the Ordinance**

This Ordinance or amendment to this ordinance remains in effect until repealed by the municipality or rescinded by the commissioner. A certified copy of the ordinance or amendment to the ordinance must be filed with the commissioner within twenty (20) days of its adoption. If a copy of the ordinance or an amendment to the ordinance is not filed within twenty (20) days, the ordinance reverts to the ordinance previously in effect until the new ordinance or amendment is filed.

**Section 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.

**Section 14. – Repeal**

Any Ordinance regulating the harvesting or conservation of shellfish in the Town of Lubec and any provisions of any other Town Ordinance, which is inconsistent with this Ordinance, is, hereby repealed.