

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 Southwest Harbor 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

3. SHELLFISH CONSERVATION COMMITTEE

The Shellfish Conservation Program for the Town of Southwest Harbor will be administered by the Shellfish Conservation Committee consisting of up to seven (7) members to be appointed by the selectmen of the town for terms of from one (1) to three (3) years. Committee decisions will require an affirmative vote of four (4) members. The committee's responsibilities include:

- A. With approval of the Board of Selectmen, establishing annually in conjunction with the Department of Marine Resources (DMR) the number of each type of shellfish license to be issued and the limits on daily take for commercial licensees.
- 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.
- E. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Department of Marine Resources Area Biologist.
- F. Submitting an annual report to the Town of Southwest Harbor and the Department of Marine Resources covering above topics and all other committee activities.

4. DEFINITIONS

- A. Resident** - The term "resident" refers to a person who has been domiciled in this municipality for at least three months prior to the time his claim of such residence is made.
- B. Nonresident** - The term "nonresident" means anyone not qualified as a resident under this ordinance.
- C. Shellfish, Clams and Intertidal Shellfish Resources** - When used in the context of this ordinance the words "shellfish," "clams," and "intertidal shellfish resources" mean soft shell clams (*Mya arenaria*).

- D. Municipality** is the Town of Southwest Harbor, Maine.
- E. DMR** is the State of Maine Department of Marine Resources.
- F. Committee** is the Town of Southwest Harbor Shellfish Conservation Committee.

5. LICENSING

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance. The Town Clerk (or a designee) or an on-duty shellfish warden shall issue all licenses.

A. Designation, Scope and Qualifications

1. Resident Recreational License The license is available to any resident or real estate taxpayer of this municipality who does not hold current a commercial shellfish digger license issued by the State of Maine DMR and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself or his family.

2. Nonresident Recreational License The license is available to any person not a resident or real estate taxpayer of this municipality who does not hold a current commercial shellfish digger license issued by the State of Maine DMR and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself or his family.

3. Resident Commercial License The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take an amount of shellfish in any one day as set annually by the Board of Selectmen and publicly noticed by the Shellfish Conservation Committee prior to issuance of licenses each year. Except as otherwise limited by State of Maine law or Department of Marine Resource regulation or order, the holder may sell shellfish harvested under the terms of this license.

4. Nonresident Commercial License The license is available to any person not a resident or real estate taxpayer of this municipality and entitles the holder to dig and take an amount of shellfish in any one day as set annually by the Board of Selectmen and publicly noticed by the Shellfish Conservation Committee prior to issuance of licenses each year. Except as otherwise limited by State of Maine law or Department of Marine Resource regulation or order, the holder may sell shellfish harvested under the terms of this license.

5. License must be signed The license must be signed by the holder to make it valid.

B. Application Procedure Any person may apply to the Town Clerk (or a designee) or to an on-duty shellfish warden for the license required by this ordinance on forms provided by the municipality.

1. Contents of the Application The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, a statement as to whether the applicant holds a commercial shellfish digger license issued by the State of Maine DMR, and the basis for the claim of status as a town resident or real estate taxpayer and must be signed by the applicant attesting to the accuracy of this information.

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

C. Fees The fees for the license must accompany in full the application for the respective license. The fee for a Resident Recreational License is \$20.00 and the fee for a Nonresident Recreational License is \$40.00, except that there will be no fee for a recreational license for a person 15 years of age and younger whether a resident or a nonresident. The fee for a resident commercial license is \$200, and for a nonresident license it is \$400. Fees received for shellfish licensing shall be received by the Town Treasurer and shall be used by the town for shellfish management, conservation, and enforcement.

D. Limitation of Diggers Clam resources vary in size and distribution from year to year and over the limited soft shell clam producing areas of the town. It is essential that the town carefully husband its resources. Following the annual review of the town's clam resource, its size, distribution, abundance, and the reports as required by Section 3, the Shellfish Conservation Committee in consultation with the DMR Area Biologist will determine whether limiting the number of recreational or commercial shellfish licenses or allowable daily take is an appropriate shellfish management option for the following year. Results of this determination shall be presented to the Board of Selectmen for its approval prior to November 1st of each year. In the event that the Board of Selectmen finds that the number of any type of licenses must be limited, available licenses will be issued by means of a drawing from all applications for each type received during a ten (10) day application period ending on the day prior to the effective date of the license. Fees submitted with applications not selected will be mailed within three (3) business days to the applicant at the address shown on the unsuccessful application.

1. Prior to November 10th of each year the committee shall report the findings of the Board of Selectmen and document recommendations for the allocation of recreational and commercial licenses and daily limits on commercial take to be made available for the following license year to the Commissioner of Marine Resources for concurrence.

2. After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to December 15th, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the allocation of shellfish licenses to be issued.

3. Notice of licenses to be issued, daily commercial take, and 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 Town Board of Selectmen considers 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.

4. No digging will be allowed from ½ hour after sunset to ½ hour before sunrise.

5. No licenses of either type will be issued unless the committee recommends and the Board of Selectmen finds that the shellfish resource will support the expected harvest and makes a license allocation that is approved by the DMR to issue a specified number of either or both types of licenses for the following license year.

E. License Expiration Date Each license issued under authority of this ordinance expires at midnight the

31st day of December following the date of issuance.

F. Suspension The license of any shellfish licensee having two convictions for a violation of this ordinance shall be automatically suspended for a period of thirty (30) days.

G. Suspension continued The license of any shellfish licensee having three convictions in a twelve-month period for a violation of this ordinance shall be automatically suspended for a period of one year.

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 of a notice of suspension by the Town Clerk to the licensee.
3. Any licensee whose shellfish license has been automatically 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 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. Fines All monies received as fines for violation of this ordinance will be received by the Town Treasurer and will be used by the town for shellfish management, conservation, and enforcement.

6. OPENING AND CLOSING FLATS

The Town Board of Selectmen, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the DMR 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 Town 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.

Any area of the Town of Southwest Harbor that is closed to shellfish harvest by state regulation on the effective date of this ordinance that is subsequently opened by the state shall remain closed by the town until reopened by decision of the Town Board of Selectmen after a public hearing.

7. MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS

It is unlawful for any person to possess soft shell clams within the Town of Southwest Harbor, County of Hancock which are less than two (2) inches in the longest dimension except as provided by subsection B of this section.

A. Definitions

1. **Lot** The word "lot" as used in this 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 shell stock.

B. Tolerance Any person may possess soft-shell clams that are less than two (2) inches if they comprise less than 10% of any lot. 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 lot or by a count of the entire lot if it contains less than one (1) peck.

C. Penalty Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. § 6681.

8. PENALTY

A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. § 6671 (10).

9. EFFECTIVE DATE

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 by the Town of Southwest Harbor.

10. PERIOD OF THE ORDINANCE

This ordinance shall remain in effect until amended or repealed by the town.

11. 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 portion of this ordinance.

12. REPEAL

Any ordinance regulating the harvest or conservation of shellfish in the town and any provision of any other town ordinance which is inconsistent with this ordinance is hereby repealed.