



# TOWN OF BRISTOL

## SHELLFISH CONSERVATION ORDINANCE

Amended March 16, 2010

1. **Authority:** this ordinance is enacted in accordance with 12 MRSA Section 6671.
2. **Purpose:** to establish a shellfish conservation program for the Town of Bristol 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 Bristol will be administered by the Shellfish Conservation Committee consisting of five (5) regular members, terms of three (3) years, and two (2) alternate members, terms of one (1) year, to be appointed by the Selectmen.

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 biologists 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.
4. **Definitions:**
    - A. *Resident:* the term "resident" refers to a person who has been domiciled in this municipality for at least one year next prior to the time his 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 the context of this ordinance the words "shellfish," "clams," and "intertidal shellfish resources" mean soft-shell clams (*Mya arenaria*), hard-shell clams (*Mercenaria mercenaria*), American/eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), and razor clams (*Ensis directus*).
    - D. *Municipality:* refers to the Town of Bristol, Maine.
  5. **Licensing:** municipal shellfish digging 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 license issued by this municipality as provided by this ordinance. A Commercial Digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.

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

- 1.) *Resident Commercial Shellfish License:* this license is available to residents of The Town of Bristol and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
- 2.) *Non-Resident Commercial Shellfish License:* this license is available to non-residents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
- 3.) *Resident Recreational Shellfish License:* this license is available to residents and real estate

taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family. A person holding a Maine State Commercial Shellfish license may not be issued or hold a resident or non-resident recreational clam harvest license.

4.) *Non-Resident Recreational Shellfish License:* this license is available to non-residents of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family. A person holding a Maine State Commercial Shellfish license may not be issued or hold a resident or non-resident recreational clam harvest license.

5.) *License must be signed:* the licensee must sign the license to make it valid.

6.) *Grandfathered Licenses:* Licensees holding valid commercial licenses issued prior to April 1 may be grandfathered providing they perform eight (8) hours of conservation time per year. Licensed members of the Municipal Shellfish Conservation Committee who are members in good standing shall retain grandfathered status provided they attend 50% of meetings held by the Shellfish Conservation Committee during the calendar year. Grandfathered licenses will be issued from the first business day after January 1 for a period of fourteen (14) days, after which remaining licenses will be dispersed by lottery, as allocated. Licenses remaining after the lottery shall be available to any resident or non-resident on a first come, first served basis.

**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 must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.

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 licenses must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation and enforcement. All fees for shellfish licenses shall be recommended annually by the Shellfish Committee and submitted to the Board of Selectmen by October 31<sup>st</sup> for approval.

**D. Limitation of Diggers:** 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 upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise control:

1.) Prior to November 15 the Town Shellfish Conservation Committee with the approval of the Commissioner of Marine Resources will establish the number of commercial and non-commercial licenses to be permitted following the requirements of 12 MRSA Section 6671 (3).

2.) The Shellfish Conservation Committee will notify the Town Clerk in writing prior to December 1 of the number of 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.) A license may not be returned to the Town and re-issued or transferred in the same year it was issued.

**E. License Expiration Date:** each license issued under authority of this ordinance expires at midnight on the 31<sup>st</sup> day of December next following date of issue.

**F. Reciprocal Harvesting Privileges:** licensees from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of their licenses.

**G. Recreational Shellfish License:** recreational shellfish license fees will be waived for applicants 65 years or older and 12 years or younger.

**H. Suspension:** any shellfish licensee having three convictions for a violation of this ordinance shall have his shellfish 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 a Notice of Suspension 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 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.

**6. Opening and Closing of flats:** the Municipal Officers, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendation of the Shellfish Conservation Committee and 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 Municipal Officers may call a public hearing on ten days' 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 the Department of Marine Resources. The decision of the Municipal Officers 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 Town of Bristol, Lincoln County, 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 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 the 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:** any person who violates any provision of this section shall be punished as provided by 12 MRSA Section 6681.

**8. Penalty:** a person who violates this ordinance shall be punished as provided by MRSA Section 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.

**10. Period of Ordinance:** this ordinance shall remain in effect until amended or repealed by the Town's legislative body.

**11. Severability:** 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.

**12. Repeal:** any ordinances regulating the harvesting or conservation of shellfish in the town and any provisions of any other Town ordinance which is inconsistent with this ordinance are hereby repealed.

**13. SHELLFISH REGIONAL ADVISORY COMMISSION**

**A. Shellfish Regional Advisory Commission:** there is hereby established a Shellfish Regional Advisory Commission composed of representatives from each of the towns which enact this ordinance. The Municipal Officers of each town shall appoint one member of its shellfish committee and one licensed commercial clam digger as member of the Commission. The Shellfish Warden from each town and a liaison member from the Department of Marine Resources appointed by its Commissioner are non-voting members of the Commission.

**B. Term of Office; Vacancy:** the term of office of the member of the Commission terminates the first Monday of April. The Municipal Officers of the interested town shall appoint a person to fill a vacancy for the unexpired term.

**C. Officers of Commission:** the Commission shall choose a Chairman, Vice-Chairman, and Secretary. The Chairman shall preside at all meetings of the Commission; the Vice-Chairman shall preside in his absence; and the Secretary shall record and keep minutes of each meeting.

The Commission shall advise the Shellfish Committee of each town on all matters pertaining to conservation and harvesting of shellfish, including but not limited to the opening and closing of clam flats. It shall act as a liaison between the towns and the State. It shall aid in the development of programs to help each town manage its shellfish resource. It shall represent the interests of the region with regard to shellfish resources, and shall take such other action as may be necessary or desirable to implement harvesting and conservation programs.