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SHELLFISH CONSERVATION ORDINANCE

Washington County Territories

Amended May 13, 2021

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 Washington County Territories which will ensure the protection, management 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 the harvester
- F. Issuing Aquaculture permits
- G. Promote reseeded activities
- H. Conduct surveys to determine size distribution and density
- I. Establishing conservation areas for flat rotation

3. **Shellfish Conservation Committee:**

The Shellfish Conservation Committee for the Washington County Unorganized Territories (UT) will consist of six members (all being full time residents of the Washington County Territories) to be elected annually at the first shellfish conservation committee meeting for a term of one year.

The purpose of this committee is to serve in an advisory role in regards to shellfish conservation in the UT. This committee's mission is to provide the UT administration with recommendations based on being knowledgeable experts in these matters. These recommendations will be used to develop the best plan that best serves the UT as the administration sees fit.

4. **U.T. Administration:**

The Shellfish Conservation Program for the Washington County Territories will be administered by the UT Supervisor.

The UT Supervisor responsibilities include:

- A. Establishing annually, in conjunction with the Department of Marine Resources, the number of licenses to be issued;
- B. Submitting to the Washington County Commissioners, 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 townships' managed shellfish areas and closed areas that are conditionally opened by the Maine Department of Marine Resources (DMR);
- E. Implementing conservation closures and openings and/or recommending conservation closures and openings to the Washington County Commissioners in conjunction with the Area Biologists from the DMR;
- F. Reviewing annually the status of the resource using 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.
- G. Submitting an annual report to the Washington County Commissioners and the DMR covering the above topics and all other committee activities.
- H. Establishing an objective process for sales of Shellfish Licenses.
- I. Scheduling and facilitating Shellfish committee meetings periodically. Develop an agenda for the meeting, using input from the Shellfish Conservation Committee. Taking minutes from the meetings.
- J. Administering the Aquaculture permitting process outlined in the Washington County Territories Aquaculture permit policy.
- K. Ensuring that the recommendations put forward from the Committee are considered when developing, resourcing, and executing plans that affect this local resource.

5. **Definitions:**

A. *Resident:* The term "resident" refers to a person who has been domiciled (domicile: a person's permanent residence) in the township for at least three months (90 days) prior to the time his/her claim of such residence is made.

B. *Non-Resident:* The term "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*).

D. *Townships:* Refers to the Unorganized Townships, County of Washington, State of Maine.

6. **Licensing:**

Unorganized Territory Shellfish Harvester's License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of the Washington County Territories without having a current license issued by the Office of the U.T. Supervisor, or the designated agent, as provided by this ordinance.

A Commercial Harvester must obtain a State license after the issuance of the UT commercial license.

Pursuant to Title 12 M.R.S.A., Section 6671, subsection 3A-F, " ... the combined number of commercial licenses for nonresidents provided by those municipalities shall be a number not less than 10% of the combined total number of commercial licenses issued for residents.

A. Designation, Scope and Qualifications:

- 1) Resident Commercial Shellfish License: This license is available to residents of the Washington County Territories who have completed conservation requirements and entitles the holder to harvest and take any amount of shellfish from the shores and flats of these territories.
- 2) Junior Commercial Shellfish License: This license is available to applicants who have completed conservation requirements and entitles the holder to harvest and take any amount of shellfish from the shores and flats of these territories.
- 3) Non-residents Commercial Shellfish License: This license is available to non-residents of the Washington County Territories who have completed conservation requirements and entitles the holder to harvest and take any amount of shellfish from the shores and flats of these territories.
- 4) Resident Recreational Shellfish License: This license is available to residents and real estate taxpayers of these territories who do not hold a valid Maine State Commercial Shellfish License and entitles the holder to harvest and take no more than one peck of shellfish in any one-day for personal use.
- 5) Non-resident Recreational Shellfish License: This license is available to any person not a resident to these territories or real estate tax payer of these territories who does not hold a valid Maine State Commercial Shellfish License and entitles the holder to harvest and take not more than one peck of shellfish in any one day for personal use.
- 6) Veteran Commercial License: This license is available to any person that has proof of Veteran status from the U.S. military (DD-214).
- 7) Junior/Senior Recreational Shellfish License: This license is available the applicants, age 62 years or older and 16 years or younger and entitles the holder to harvest and take no more than one peck of shellfish in any one day for personal use.

- 8) Veteran Recreational License: This license is available to any person that has proof of Veteran status from the U.S. military (DD-214).
- 9) License must be signed: The licensee must sign the license to make it valid. The license must be in the holder's possession when engaged in harvesting. By signing the license the harvester acknowledges that he/she must submit to inspection by the Municipal Shellfish Warden.

B. Application Procedure:

Any person may apply to the agent designated by the Washington County Commissioners, for the license required by this ordinance on forms provided by the Office of the U.T.

- 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, signature and whatever information the U.T. may require. The applicant must provide proof of residency consistent with the standard of proof that is required to register to vote.
- 2) Junior Commercial License: In addition to completing an application, an applicant for a junior commercial license shall provide:
 - a. Proof that the applicant has attained his/her 13th birthday but has not yet attained his/her 18th birthday.
 - b. Proof of residency.
 - c. The junior's parent or legal guardian must sign the application, in person at the UT office.
- 3) Misrepresentation: Any person who gives false information on a license application will cause said license to become invalid and void.

C. Fees:

The designated agent, shall pass all fees received to the County Treasurer. The fees will be deposited into the "shellfish special projects reserve" account. Fees received for shellfish licensing shall be used by the U.T. for shellfish management and conservation. Fees will be determined annually prior to license sales.

License Allocation Procedures: License sales procedures shall be determined by the Shellfish Committee, approved by the County Commissioners, and submitted to the Department of Marine Resources for their approval at least thirty (30) days prior to the date of issuance. Notices of the number of licenses to be issued and the procedure for application shall be defined annually by the Municipal License Allocation Request.

D. Limitation of Diggers:

Open license sales: When the UT Administration 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 newspaper or combination of newspapers with general circulation, which the U.T. administration consider effective in reaching persons affected, not less than 10 days prior to the initial sale date. A copy of the notice shall be provided to the Commissioner of the Department of Marine Resources.
- 2) Conservation Credits Program: As a prerequisite to purchasing a commercial shellfish digging license, each digger will be required to earn a conservation credit. The UT will advertise dates that conservation activities will be scheduled annually.

A conservation credit may consist of a combination of the following activities coordinated by the Shellfish Program Manager:

- a. Digging undersized clams (1"), for reseeding purposes.
 - b. Brushing beaches.
 - c. Performing a clam flat survey.
 - d. Perform reseeding activities with seed clams.
 - e. Performing predator trapping/removal activities.
 - f. Performing predator prevention activities (Netting).
 - g. Clam recruitment research
- The Conservation program is outlined in detail annually by the Shellfish Conservation Manager at the first (1st) Shellfish Committee meeting each year. The Shellfish Warden can provide information about the program at any time after the meeting.
- 3) For each commercial license category, the designated agent, shall issue 10% of the previous year's license sales to non-residents (rounded up to next whole license). For each recreational license category, there is no limit on licenses issued.
 - 4) The designated agent, shall issue licenses as allocated, from the last friday in May. (License will carry a date of June 1 of the same year). Non-resident commercial licenses will be distributed by lottery. Any non-resident may submit an application to the Washington County Territories, after May 1 each year. The lottery drawing will be held at the Office of the U.T. Supervisor on the third friday of May, and the licenses will be available at that time. (Applications are available from the Office of the U.T. Supervisor.) Notified applicants will have 10 days to purchase this license. At which time the next name from the lottery will be awarded the license.
 - 5) There will be no commercial digging a half hour before sunrise or a half hour after sunset.

E. License Expiration Date:

Each license issued under authority of this ordinance expires at midnight on the 31st day of May, of the next year following date of issue.

F. Reciprocal Harvesting Privileges:

Licenses from any other municipality cooperating with these townships on a joint shellfish management program may harvest shellfish according to the terms of this ordinance.

G. 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 by the designated agent, 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 Washington County Commissioners upon the filing of a written Request for Hearing with the designated agent, within thirty (30) days following the effective date of suspension.

7. **Opening and Closing of Flats:**

The Washington County Commissioners, 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 Department of Marine Resources area biologist that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the County Commissioners may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Washington County Commissioners made after the hearing shall be based on findings of fact.

All areas reopened by the State shall remain closed to shellfish harvesting until the County Commissioners have approved and notified the public of its opening.

8. **Minimum Legal Size of Soft Shell Clams:**

It is unlawful for any person to possess soft-shell clams within the Washington County Territories, that are less than two (2) inches in the longest anterior-posterior 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 purposes of this section "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shellstock.

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 peck nor more than four peck 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 M.R.S.A., Section 6681.

9. **Maximum Legal Size of Soft Shell Clams:**

It shall be unlawful for any person to possess soft shell clams within the Washington County Territories which are greater than three and one half inches (3 ½") in the longest diameter except as provided by subsection A.

A. 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 peck nor more than four peck taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

B. Penalty:

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

10. Cobscook Bay State Park:

- A. No person is required to have a license to harvest one peck of soft-shell clams or less per day from the shores or flats within Cobscook Bay State Park.
- B. No person shall take more than one peck of soft-shell clams per day from the shores or flats within Cobscook Bay State Park. (This area includes Broad Cove).
- C. From the mouth of Broad Cove southerly including Burnt Cove is open to commercial shellfish harvesting. All commercial harvesting in this area will be by boat access only. These flats are adjacent to Cobscook Bay State Park.

11. Aquaculture Lease:

An Aquaculture permit is a subset of the overall Washington County U.T. Shellfish management program. It is an integral conservation tool used in our local best management practices.

This ordinance provides opportunities for citizens of the U.T. to obtain a Municipal shellfish aquaculture permit. In annex A of this ordinance the following three documents appear:

- A. The Washington County Aquaculture Permit Policy
- B. Application for Aquaculture Permit
- C. Aquaculture Permit Renewal Application

12. Penalty:

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

13. Effective Date:

This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the townships, provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption.

14. 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.

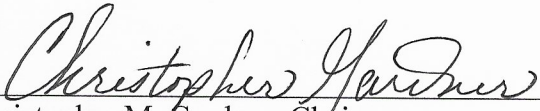
15. Repeal:

Any ordinance regulating the harvesting or conservation of shellfish in the townships and any provisions of any other township ordinance which is inconsistent with this ordinance is hereby repealed.

.....
Ordinance approved by Department of Marine Resources _____
(Date)

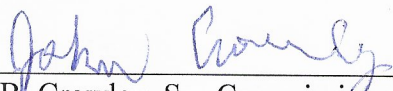
Ordinance adopted by the Washington County Commissioners _____
(Date)
.....

WASHINGTON COUNTY COMMISSIONERS




Christopher M. Gardner, Chairman

6/10/21
Date



John B. Crowley, Sr., Commissioner

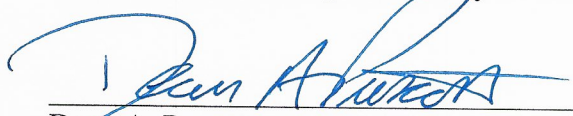
6/11/21
Date



Vinton Cassidy, Commissioner

6/10/21
Date

Witness for Washington County Commissioners:



Dean A. Preston
U.T. Supervisor

6/10/2021
Date

THREE (3) ORIGINAL ORDINANCES EXECUTED; ONE KEPT IN EACH OF THE FOLLOWING OFFICES:

1. State of Maine District Court, Machias, Maine.
2. Washington County Commissioners', Machias, Maine.
3. Department of Marine Resources, Hallowell, Maine.

