SHELLFISH CONSERVATION ORDINANCE

TOWN OF MOUNT DESERT

Enacted March 8, 2000, Annual Town Meeting

Amended March 3, 2003 Annual Town Meeting

Amended March 7, 2007 Annual Town Meeting

Amended May 3, 2011 Annual Town Meeting

Amended May 7, 2013 Annual Town Meeting

Amended May 6, 2014 Annual Town Meeting

Amended May 5, 2015 Annual Town Meeting

Attest: A true copy.

Joelle D. Nolan
Town Clerk, Mount Desert

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 Mount Desert 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 Mount Desert will be administered by the Shellfish Conservation Committee consisting of a minimum of five (5) members to be appointed by the selectmen of the town for terms of two (2) years.

The committee's responsibilities include:

A. Establishing annually in conjunction with the Department of Marine Resources (DMR) the shellfish 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.

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 Mount Desert and the Department of Marine Resources covering above topics and all other committee activities.

G. Committee members shall make every effort to regularly attend Committee meetings. Any Committee member who misses more than two consecutive unexcused absences shall lose their seat on the Committee.

H. The Committee is authorized to approve the number of shellfish licenses to be issued, approve license fees, open and close the flats, set times when digging is allowed, set permitted quantities that may be harvested, and to take such actions as authorized by the Board of Selectmen, and subject to the Department of Marine Resources approval.

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} and hard shell clams {mercenaria mercenaria}.

D. Municipality Refers to the Town of Mount Desert, Maine.

E. Annual License Allocation Procedure Plan A plan written by the Committee that shall outline in detail how licenses are to be allocated on an annual basis and shall establish priority status for the allocation of licenses.

F. Conservation Time Those measures and activities approved by the Committee for the purposes of resource enhancement and the support of this ordinance.

5. LICENSING

A Municipal shellfish-digging license is required for all persons age sixteen (16) and over. 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 shall issue Resident and Nonresident Recreational and Commercial licenses.

A. Designation, Scope and Qualifications

1. Resident Recreational License The 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 or his family.

2. Nonresident Recreational license The license is available to any person not a resident 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 or his family.

3. Resident Commercial License The license is available to residents and real estate taxpayers of this municipality.

4. Nonresident Commercial License The license is available to any person not a resident of this municipality.

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

B. Application Procedure Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality. Notice of available commercial and recreational licenses shall be published in a newspaper with general circulation not less than ten (10) days prior to the period of issuance and shall be posted in the

municipal office until the period expires. Applications for commercial licenses must be received at the Town Office as required by the Allocation Plan. A license may not be returned to the Town and be re-issued or transferred in the same year it was issued.

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. License Allocation Procedures License sales procedures shall be determined by the Committee and submitted to the Department of Marine Resources for their approval at least thirty (30) days prior to the licenses going on sale. Notice of the number of licenses to be issued and the procedure for application shall be defined by an Annual License Allocation Plan.

1. The Town Clerk shall issue licenses to those residents and non-residents who have met the requirements of obtaining a commercial license. The Town Clerk shall issue licenses allocated starting July 1 or the next business day. A lottery for commercial licenses will be held according to the Allocation plan.
2. Conservation time must be completed prior to the issuance of a municipal commercial shellfish *renewal* licenses in accordance with the Annual License Allocation Plan.
3. Any license holder convicted of any violation of this ordinance shall forfeit seniority. Those who have held a commercial license uninterrupted from the first year of receipt of said license shall maintain seniority.

Details explaining how licenses are issued are described in the Annual License Allocation Plan.

D. Fees The fees for the license must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer. All fees shall be determined by the Shellfish Conservation Committee each year prior to May 1.. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation and enforcement.

E. 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 resources, its size distribution, abundance, and the wardens' reports, as required by Section 3, the Shellfish Conservation Committee in consultation with the DMR Area Biologist will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.

1. Prior to May 1 the committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses 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 the Town Clerk shall file said approval in the Town Office.

3. No digging will be allowed ½ hour before sunrise and 1/2 hour after sunset, except from November 1 to March 1 digging is allowed until 6:00 p.m.

a) With prior notification to the Town of Mount Desert Dispatcher(s), Town of Mount Desert Commercial License holders shall be allowed to dig after dark. Notification is defined as, for each occasion, the name of the digger, the specific date of digging, and the general location of digging.

4. The number of licenses issued shall be determined by the Shellfish Conservation Committee each year prior to May 1st.

F. License Expiration Date Each license issued under authority of this ordinance is valid for a term of one year, expiring June 30 of each year.

G. Suspension Any shellfish licensee having two convictions for a violation of this ordinance shall have his license automatically suspended for a period of thirty (30) days.

H. Suspension cont'd Any shellfish licensee having three convictions in a twelve-month period for a violation of this ordinance shall have his shellfish license 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.

6. OPENING AND CLOSING FLATS

The Municipal Officers, 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 Municipal Officers may call a public 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 Mount Desert, County of Hancock 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 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, as amended.

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 THE ORDINANCE

This ordinance shall remain in effect for a period of fifteen (15) years from the effective date.

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 provisions of any other town ordinance, which is inconsistent with this ordinance, is hereby repealed.