THE JOINT SHELLFISH CONSERVATION ORDINANCE

FOR THE TOWNS OF

DAMARISCOTTA AND NEWCASTLE MAINE

Adopted at the Special Town Meeting by both Towns: December 10, 2024

Replaces Ordinances Adopted by the Towns of Damariscotta and Newcastle at their June 2017 Town Meetings.

I. Title

This ordinance shall be known, and may be cited as, the "Joint Shellfish Conservation Ordinance of the Towns of Damariscotta and Newcastle", and will be referred to herein as "this Ordinance".

II. Definitions

A. Administering Town: The Town Office designated by the Towns' Select Boards as the office that will carry out all of the administrative functions required to implement this Ordinance.

B. Select Boards: The Select Boards in Damariscotta and Newcastle.

C. Lot: The total number of soft-shell clams, razor clams, quahogs, or hard-shell clams, and American Oyster shell stock in any bulk pile. Where shellfish are in a box, barrel, or other container, each shall constitute a separate lot.

D. Nonresident: Anyone who does not meet the criteria to be a resident as defined in section G of this section.

E. Participating Towns: The Towns of Newcastle and Damariscotta. When words appear in lower case they refer to the land area encompassed within the corporate boundaries of each town.

F. Possess: dig, take, harvest, ship, transport, hold, buy, and sell retail or wholesale, soft-shell clam, razor clam, quahog or hard-shell clam, and American Oyster shell stock.

G. Resident: A person who owns or rents residential real estate and has been domiciled in one of the participating towns for at least six months prior to the time their claim of residency is made for the purpose of applying for a shellfish license.

H. Shellfish "intertidal" resources: Soft-shell clams (Mya Arenaria), razor clams (Ensis Directus), quahog or hard-shell clams (Merceraria Mercenaria), and American Oyster (Crassostrea Virginica).

I. Period of issuance: The first 90 days during which the Administering Town reserves or sells shellfish harvest licenses each year. For the Participating Town's, this would start five business days before the first business day after June 1st each year.

III. Authority

This Ordinance has been prepared in accordance with the provisions of 12 M.R.S.A § 6671, et seq., as revised and § 6681, as revised. The Ordinance also constitutes an Interlocal Agreement in accordance with 30-A M.R.S.A § 2201-2207.

IV. Purpose

To establish a joint shellfish conservation program for the Towns of Damariscotta and Newcastle, that will insure the protection and optimum utilization of shellfish resources within the limits of these towns. These goals will be achieved by the means that may include:

a) Licensing
b) Limiting the number of shellfish harvesters
c) Restricting the time and area where harvesting is permitted
d) Limiting the minimum size of shellfish taken
e) Limiting the amount of shellfish taken daily by a harvester

V. Previous Ordinances

This Ordinance shall supersede any previous ordinances regarding the harvesting or conservation of shellfish in the Towns of Damariscotta and Newcastle / or any provisions of any other ordinance that are inconsistent with this Ordinance.

VI. Validity and Severability

If any section, subsection, sentence, or part of this Ordinance, is for any reason determined to be invalid or unconstitutional, such determination shall not affect the validity of the remaining portions of this Ordinance.

VII. Effective Date

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

VIII. Shellfish Conservation Committee

The Shellfish Conservation Program for the Towns of Damariscotta and Newcastle will be administered by a joint Shellfish Conservation Committee consisting of six members. The Select Board of each Town shall appoint three members. At least one of the three members from each Town shall be a licensed commercial shellfish harvester. The Shellfish Warden shall be a non-voting member of the Committee.

A. The Committee's responsibilities include:

1. Establishing, annually, in conjunction with the Department of Marine Resources (DMR), the number of shellfish harvesting licenses to be issued and the fees for licenses.

2. Reviewing annually, the status of the resource using the results of shellfish flat, harvester, or dealer surveys and other sources of information and preparing, in consultation with the DMR, a plan for implementing conservation measures.

3. Establishing annually the conservation requirements to obtain a commercial shellfish license and submitting those requirements to the DMR for review.

4. Periodically reviewing this Ordinance and making recommendations for its amendment.

5. Securing and maintaining records of the shellfish harvest from managed shellfish areas and closed areas within the Towns that are conditionally opened by the DMR.

6. Recommending conservation closures and openings to the DMR Area Biologist.

7. Submitting an annual report to the Towns and DMR covering the above topics and all other committee activities.

B. Term of Office and Vacancy: The term of office of any member of the Committee shall be for a period of three years from the date of appointment. The Select Boards of the Town having a vacancy shall appoint a person to fill a vacancy for any unexpired term.

C. Committee Officers: The Committee shall elect a Chair and a Vice-Chair from its members. The Administering Town staff shall provide secretarial support to the Committee. The Chair shall preside at all meetings of the Committee. the Vice-Chair shall preside in the Chair's absence. Administering Town staff shall record and keep minutes of each meeting.

D. The Committee 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 resources. It shall represent the interest of the region with regard to shellfish resources subject to the Towns' control and oversight and shall take such other action as may be necessary, or desirable, to implement harvesting and conservation management programs.

E. For a meeting to be valid, a quorum of three members must be present.

F. Elections will be held each year at a January meeting. Additional meetings shall be determined by the Committee. All meetings must be posted and advertised in a newspaper of general circulation in the municipality at least seven (7) days prior to the meeting. The notice shall contain the time, date, and location of the meeting.

IX. Administering Town

The Select Boards shall designate one of the participating Town Offices to administer all of the provisions of the Ordinance unless formal actions by the individual Towns are required or desired. The Administering Town will process the licenses and permits required by this Ordinance; maintain records of such licenses and permits as requested by the Committee, administrators and the Towns' Select Boards; and shall develop and enforce any procedures, guidelines, and rules necessary for the implementation of this Ordinance.

X. Amendments

A. Initiation: A proposal for an amendment to this Ordinance may be initiated by the following, but may be considered only if accompanied by the DMR's approval:

1. A Select Board from either of the municipalities: or

2. At the request of the Shellfish Conservation Committee; or

3. An individual, through a request to the Shellfish Conservation Committee and subsequent favorable vote of the Committee; or

4. A written petition of the number of voters equal to at least ten percent (10%) of the voters in the last gubernatorial election of the town in which the petition originated.

B. Procedure

1. Any proposal for an amendment shall be made to the Shellfish Conservation Committee, in writing, stating the specific changes requested. Amendments initiated by petition shall be presented to either of the Select Boards who shall transmit them to the Shellfish Conservation Committee for recommendation.

2. Within thirty (30) days of receiving a properly initiated amendment, the Committee shall hold a public hearing on the proposal. Notice of the hearing shall be posted and advertised in a newspaper of general circulation in the participating towns at least seven (7) days prior to the hearing. The notice

shall contain the time, date, and place of hearing, and sufficient detail about the proposed changes as to give adequate notice of their content. If the proposed changes are extensive, a brief summary, together with an indication that a full text is available at each of the two Towns' Clerk's Offices shall be adequate notice.

3. Following the public hearing, the Committee shall submit a written recommendation regarding passage to the DMR for approval. If approved by the DMR, the amendment shall then be submitted to the Select Boards. If the amendment is not approved by the DMR, it cannot be considered further.

C. Adoption

Amendments to the Ordinance are contingent upon Town Meeting approval in both Towns. If an amendment is approved by one Town and not the other, and the amendment substantively changes the administration of the shellfish management function, the approved amendment shall be considered a rescission of the Ordinance per section D.

D. Period of Ordinance

This Ordinance shall remain in effect until rescinded by either of the Towns or the DMR Commissioner. If one of the Participating Towns rescinds the Ordinance, the rescinding Town shall, if feasible, provide the remaining Town with 90 days' notice in order for the Town to develop and approve a replacement ordinance.

XI. Licensing

A shellfish harvesting license, issued by the administering Town, is required for any person to possess shellfish from the shores and flats within the participating Towns. Although the purchase of this license is not contingent upon first having purchased a State license, a commercial shellfish harvester must also hold a valid State of Maine Commercial Shellfish License issued by the DMR prior to harvesting shellfish for commercial purposes from the shores of the participating Towns.

A. License Classification:

1. Residential Commercial Shellfish License: This license is only available to residents of the participating towns and entitles the holder to possess any amount of shellfish from the shores and flats of the Participating Towns. To prove they are a resident, a person must provide documentation of real estate ownership in the form of a deed or property tax bill, or if rented real estate, rent receipts or a lease agreement signed by the property owner that proves residency.

2. Non-Resident Commercial Shellfish License: This license is available to non-residents of the participating towns and entitles the holder to possess any amount of shellfish from the shores and flats of the Participating Towns.

3. Residential Recreational Shellfish License: This license is available to the residents and real estate taxpayers of the participating towns and entitles the holder to possess no more than one peck of shellfish in any one day, for their own or their family's use, from the shores and flats of the Participating Towns. A person holding a Maine State Commercial Shellfish license shall not be issued or hold a resident or non-resident recreational shellfish harvest license. The fee for this category would be waived for holders of a tribal sustenance license.

4. Non-Resident Recreational Shellfish License: This license is available to non-residents of the participating towns and entitles the holder to possess no more than one peck of shellfish in any one day, for their own or their family's use, from the shores and flats of the Participating Towns. A person holding a Maine State Commercial Shellfish license shall not be issued or hold a resident or non-resident recreational shellfish harvest license. The fee for this category would be waived for holders of a tribal sustenance license.

B. All Shellfish Licenses Must Be Signed: The licensee must sign the license in order for the license to be valid. The license must be in the licensee's possession when engaged in harvesting. By signing the license, the harvester acknowledges that they must submit to inspection by the municipal Warden.

C. Application Procedure: Any person not possessing a Maine State Commercial Shellfish license issued by DMR may apply to the Administering Town Office for the recreational licenses required by this Ordinance on forms provided by the Administering Town. Any person wishing to obtain a commercial shellfish license application is required to comply with any conservation requirements established annually.

D. 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, and any additional information the Administering Town may require.

E. Upon approval of the application for the respective license, the licensee must submit the applicable license fees.

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

XII. Violations

A. Violators of this Ordinance are subject to the penalties provided in 12 M.R.S.A. § 6671 (10, 10A, 10B) and / or § 6681 (6A).

B. Unlawful Use of a Recreational License and Aiding and Abetting By a Commercial or Recreational License Holder:

A commercial or recreational license holder found to be aiding and abetting the illegal activity of having the recreational license holder's harvest included in the commercial license holder's harvest, shall be subject to the following penalties:

1. FIRST AIDING AND ABETTING VIOLATION: A written warning will be issued.
2. SECOND AIDING AND ABETTING VIOLATION: The license will be suspended for twelve months from the date of the violation.

To avoid aiding and abetting charges, commercial license holders shall clearly separate their harvest from the harvest of a recreational license holder while harvesting, selling, or processing shellfish.

XIII. Fees / Penalties

All fees for shellfish licenses shall be set by a vote of the Shellfish Conservation Committee prior to March 1 of each year.

In addition to the license fee, a $2.00 agent fee will be charged for each license and shall be retained by the Administering Town as payment for issuing the license. All other shellfish license fees and penalties received, shall be deposited in the shellfish conservation budget and used for costs incurred in the enforcement and management of Shellfish Conservation-related activities.

XIV. Limitation of Harvesters

In that shellfish resources vary in density and size distribution over the limited shellfish producing areas of the participating towns, from year to year it is essential that the Towns carefully husband their resources. Following the annual review of these resources (i.e. size distribution, abundance, and the warden's reports) the Shellfish Conservation Committee, in consultation with the DMR Area Biologist, shall determine whether limiting commercial and / or recreational shellfish licenses is an appropriate shellfish management option for the upcoming licensing period.

A. Prior to March 1 each year, the Shellfish Conservation Committee shall document and report its findings, with regard to the allocation of commercial and recreational licenses to be made available for the following license year, to the DMR Commissioner for approval.

B. After receiving approval of proposed license allocations from the DMR Commissioner of, and prior to April 1, the Shellfish Conservation Committee shall notify the Administering Town, in writing, of the number and allocation of shellfish

licenses to be issued. The total number of licenses shall include those licenses available for early renewal under section XIV, D, (1).

C. Notice of the number of licenses to be issued, and the procedure for application shall be published in a newspaper, of general circulation, in participating towns not less than 10 days prior to the period of issuance and shall be posted in the Participating Town Offices until said period expires.

D. The Administering Town shall issue licenses to those applicants who have met the requirements of obtaining a shellfish license.

1. Commercial Licenses: The sale of both resident and non-resident commercial licenses will be held in the Administering Town's Town Office at 10:00 a.m. on the first business day after June 1st, except that those applicants who have purchased a commercial license in the prior year may apply for an early renewal license in the five business days preceding the specified sale date (start of the period of issuance). If applicants outnumber the number of licenses available, a lottery will be held to determine the order of granting licenses to either residents or non-residents as allocated.

   If any licenses remain unsold, the Town Clerk shall issue licenses to resident and non-resident applicants as allocated during the period of issuance . After the period of issuance, undistributed licenses shall be made available to residents and non-residents alike, regardless of allocation and at the fee specified for that particular license, in the form of a lottery at which the applicant must be present to qualify. This lottery shall be conducted on the first business day following the period of issuance, at the Administering Town's Town Office after public notice has been provided on the availability of the undistributed licenses. Should any licenses remain after the period of issuance lottery, they shall be made available to residents and non-residents alike on a first come, first served basis.

2. Recreational Licenses: The sale of both resident and non-resident recreational licenses will be held at the Administering Town's Town Office at 11:00 a.m. on the first business day after June 1. If applicants outnumber the number of licenses available, a lottery will be held to determine the order of granting licenses to either residents or non-residents as allocated. If any licenses remain unsold, the Town Clerk shall issue licenses to resident and non-resident applicants as allocated during the period of issuance. After the period of issuance, the undistributed licenses shall be made available to resident and non-resident applicants alike, regardless of allocation, in the form of a lottery at which the applicant must be present to qualify. This lottery shall be conducted on the first business day following the period of issuance at the Administering Town's Town Office.

E. Licenses may be returned to the Administering Town voluntarily, and reissued to another person at the current fee according to the priorities established in this

Ordinance for new licenses. There shall be no reimbursement for any unused time on the returned license. The reissued license application fee shall be the same as the annual fee for that type of license.

F. License Expiration Date: Resident Commercial, Non-Resident Commercial, Resident Recreational and Non-Resident Recreational licenses issued under authority of this Ordinance expire at midnight on the 31st of May, following the effective date of the license.

XV. Harvesting Privileges

Municipal Shellfish License holders may harvest shellfish within any intertidal area within the participating towns, except in areas closed by the state due to water quality issues or in town conservation closures.

XVI. Suspension

Any shellfish licensee who has had three or more convictions for a violation of this Ordinance within the preceding three years shall have their license suspended by the Administering Town. The license shall be suspended for a period of thirty (30) days, unless specified elsewhere in this Ordinance.

XVII. Opening and Closing of Flats for Conservation Purposes

Notification of the conservation closures or openings within the participating towns shall be provided in accordance with DMR regulation, Chapter 7.50 (C). It shall be unlawful for any person to harvest, take, or possess shellfish from any areas closed by this Ordinance in accordance with DMR Regulation, Chapter 7. Harvesting Shellfish in a closed area is a violation of this Ordinance and is punishable under 12 M.R.S.A §6671.

XVIII. Minimum Legal Size of Shellfish

A. It is unlawful for any person to possess shellfish within the participating towns that are less than the minimum sizes shown in Attachment C except within the tolerances shown in this attachment.

XIX. Depuration Harvesting

While depuration harvesting is controlled by the DMR, it is requested that, whenever possible, the harvesting be done by local harvesters. Any monies received by the Towns for depuration harvesting shall be transferred to the Shellfish Conservation Committee's budget account.

ATTACHMENT A

ADDITIONAL RESIDENCE CRITERIA

1. MOTOR VEHICLE LICENSE
2. MOTOR VEHICLE REGISTRATION ADDRESS
3. VOTER REGISTRATION ADDRESS
4. HUNTING LICENSE
5. UTILITY SERVICE ADDRESS

ATTACHMENT B

AFFIDAVIT
APPLICATION FOR COMMERCIAL SHELLFISH LICENSE

Circle one: RESIDENT OR NON-RESIDENT

1. NAME: _____ DATE: _____

2. HOME ADDRESS: _____

3. MAILING ADDRESS: _____

4. PHONE NUMBER: _____

5. EMAIL ADDRESS: _____

6. DATE OF BIRTH: _____

7. HEIGHT: _____ WEIGHT: _____ EYE COLOR: _____ HAIR COLOR: _____

8. STATE SHELLFISH LICENSE NUMBER: _____

9. FOR OBTAINING A RESIDENTIAL COMMERCIAL LICENSE, I AFFIRM THAT I MEET THE DEFINITION OF RESIDENT IN SECTION II. OF THE JOINT SHELLFISH CONSERVATION ORDINANCE OF THE TOWNS OF DAMARISCOTTA _____ NEWCASTLE _____
(MARK ONE)

SIGNATURE OF APPLICANT: _____

DATE: _____

STATE OF MAINE
COUNTY OF LINCOLN

_____ BEING BY ME DULY SWORN, DECLARES THAT THE ABOVE / FOREGOING STATEMENT IS TRUE AND CORRECT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF.

SIGNATURE OF APPLICANT: _____

SUBSCRIBED AND SWORN / AFFIRMED TO BEFORE ME BY _____

THIS _____ DAY OF _____, 20____.

_____
NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

ATTACHMENT B

AFFIDAVIT
APPLICATION FOR RECREATIONAL SHELLFISH LICENSE

Circle one: RESIDENT OR NON-RESIDENT

1. NAME: _____ DATE: _____

2. HOME ADDRESS: _____

3. MAILING ADDRESS: _____

4. PHONE NUMBER: _____

5. EMAIL ADDRESS: _____

6. DATE OF BIRTH: _____

7. HEIGHT: _____ WEIGHT: _____ EYE COLOR: _____ HAIR COLOR: _____

8. STATE SHELLFISH LICENSE NUMBER: _____

9. FOR OBTAINING A RESIDENTIAL RECREATIONAL LICENSE, I AFFIRM THAT I MEET THE DEFINITION OF RESIDENT IN SECTION II. OF THE JOINT SHELLFISH CONSERVATION ORDINANCE OF THE TOWNS OF DAMARISCOTTA _____ NEWCASTLE _____ **(MARK ONE)**

   SIGNATURE OF APPLICANT: _____
   DATE: _____

STATE OF MAINE
COUNTY OF LINCOLN

_____ BEING BY ME DULY SWORN, DECLARES THAT THE ABOVE / FOREGOING STATEMENT IS TRUE AND CORRECT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF.

SIGNATURE OF APPLICANT: _____

SUBSCRIBED AND SWORN / AFFIRMED TO BEFORE ME BY _____

THIS _____ DAY OF _____, 20____.

_____
NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

ATTACHMENT C

Minimum Shellfish Size

DMR Regulations:

Quahogs:

A. Definitions
    1. Quahog
       Quahog means *Mercenaria mercenaria*, commonly referred to as hard shelled clams.
    2. Hinge width
       Hinge width means the thickness of a quahog as measured between the convex apex of the right shell and the convex apex of the left shell.

B. Minimum Size
   It shall be unlawful to take, possess, ship, transport, buy or sell quahogs that are less than one inch in thickness as measured across the hinge width.

C. Tolerance
   Any person may possess quahogs that are less than one inch if they comprise less than 5% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

Razor Clams:

A. Definitions
    1. Razor Clam
       Razor Clam means *Ensis directus*, commonly known as the Atlantic Jackknife.

B. Minimum Size
   It shall be unlawful to take, possess, ship, transport, buy or sell razor clams that are less than 4 inches.

American Oysters:

A. Definitions
    1. American Oyster
       American Oyster means Crossostrea virginica

B. Minimum Size
   It shall be unlawful to take, possess, ship, transport, buy or sell American Oysters that are less than two and a half (2.5) inches as measured along the longest access.

C. Tolerances
   Any person may possess American Oysters that are less than two and a half (2.5) inches if they comprise less than 10% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

State Statutes:

Soft Shell Clams:
3. Minimum size. A person may not possess **soft-shelled clam** shell stock whose shells are less than 2 inches in the largest diameter:

4. Tolerance. Any person may possess soft-shelled clams that are less than 2 inches if they comprise less than 10% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.