

PART II CODE OF ORDINANCES

ART. II-9-2. SHELLFISHING

Sec. 9-50. Purpose and Findings

It is hereby determined as follows:

1. The clam flats of the town are a very valuable resource which is important to the community.
2. These flats are an exhaustible resource, and therefore, they must be prudently managed in order to remain viable.
3. As part of the management process it may be necessary to: restrict the taking of shellfish by limiting shellfish licenses; restrict the size and quantity of shellfish which may be harvested; and take other measures outlined in this article.

The purpose of this article is to establish a shellfish conservation program for the Town which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

1. Licensing;
2. Limiting the number of shellfish harvesters;
3. Restricting the time and area where digging is permitted;
4. Limiting the minimum size of clams taken; and
5. Limiting the number of clams taken daily by a harvester.

Sec. 9-51. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Guest means any person, adult or child, invited to assist the holder of a recreational shellfish license.

Intertidal Zone refers to the shores, flats, or other land below the high-water mark and above subtidal lands.

Personal Use refers to consumption or use by oneself, by members of the immediate family or by invited guests.

Municipality refers to the Town of Falmouth, Maine.

Nonresident refers to anyone not qualified as a resident under the article.

Possess means dig, take, harvest, ship, transport, hold, buy and sell retail soft-shelled clam shell stock.

Resident refers to a person who has been domiciled in this municipality for at least one hundred eighty (180) days prior to the time the claim of such residence is made and shall be deemed to be a resident of Falmouth.

Shellfish means soft-shell clams (*Mya Areniaria*) and quahogs (*Mercenaria Mecenaria*).

Town closed conservation area means a clam flat or clam flats closed pursuant to Sec. [9-63](#) of this article.

(Ord. of 9-22-97)

Sec. 9-52. Short title.

This article shall be known and may be cited as the Municipal Shellfish Ordinance of the Town of Falmouth, Maine.

Sec. 9-53. Shellfish conservation warden.

A Shellfish Conservation Warden shall be appointed by the Town Manager. The Warden shall complete a training program and be certified by the State Commissioner of Marine Resources. The Warden shall enforce the shellfish ordinance of the town and may arrest all violators. The Warden may serve all processes pertaining to this article. The Warden shall also have within their jurisdiction the power of a marine patrol officer provided in 12 M.R.S.A. § 6025(4). Powers conferred herein, pursuant to 12 M.R.S.A. § 6671(8) shall be limited to enforcement of this article.

Sec. 9-54. Shellfish conservation commission.

The shellfish conservation program for the town will be administered by the Shellfish Conservation Commission consisting of five (5) members. These members will be appointed by the Town Council for three-year terms. In addition, the Shellfish Conservation Warden shall serve as an ex-officio member. The commission's responsibilities include:

1. Establishing annually, in conjunction with the Department of Marine Resources, the number of shellfish recreational digging licenses to be issued;
2. Surveying the clam flats to maintain current information on shellfish resources;
3. Submitting to the town council proposals for the expenditures of funds for the purpose of shellfish conservation;
4. Keeping this article under review and making recommendation for its amendments;
5. 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;
6. Recommending conservation closures and openings to the town council in conjunction with the Department of Marine Resources;

7. Submitting an annual report to the municipality and the Department of Marine Resources covering the above topics and all other commission activities.

Sec. 9-55. Municipal shellfish license required.

1. A municipal shellfish 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, valid license issued by this municipality as provide by this chapter.
2. No person shall be issued a municipal license who, upon time of request, has failed to appear in court for a shellfish violation or has failed to pay any outstanding shellfish violation fines.

Sec. 9-56. Harvesting.

1. The harvesting of shellfish for personal use within the Town of Falmouth is permitted only during those hours starting one-half ($\frac{1}{2}$) hour before sunrise and ending one-half ($\frac{1}{2}$) hour after sunset. It is unlawful to harvest shellfish during the time starting one-half ($\frac{1}{2}$) hour after sunset to one-half ($\frac{1}{2}$) hour before sunrise.
2. As appropriate, the Shellfish Conservation Commission, based on recommendations from the Department of Marine Resources, may designate areas in Falmouth to open to recreational digging and will properly notify the public.
3. Rules shall be promulgated annually by the Shellfish Conservation Commission. The rules shall include areas for harvesting as well as a recommendation for the number of licenses to be issued each year in each category of license.
4. Reciprocal Harvesting Privileges: Falmouth does not currently participate in a reciprocal harvesting agreement with any other municipality.

Sec. 9-57. Commercial and recreational licenses.

Commercial Shellfish licenses:

1. Annual Resident Commercial Shellfish License: This entitles the holder to dig and take two bushels of shellfish per day from the shores and flats of this municipality in the areas to be designated pursuant to Sec. 9-56 of this chapter. The licensee will maintain an accurate log of the days harvested commercially in his or her required shellfish harvesting log, which is due by June 30 each year to the office of the Town Clerk.
2. Annual Nonresident Commercial Shellfish License. This license is available to nonresidents of this municipality and entitles the holder to dig and take two bushels of shellfish per day from the areas designated pursuant to Sec. 9-56. The licensee will maintain an accurate log of the days harvested commercially in his or her required

shellfish harvesting log, which is due by June 30 of each year to the office of the Town Clerk.

3. Qualifications specific to commercial shellfish licenses.
 - a. The Shellfish Conservation Commission may specifically designate the period of validity as well as the areas open to commercial harvesting each year.
 - b. Commercial shellfish license holders are supplied with, and required to keep, a shellfish harvesting log, which must be submitted to the Town Clerk by June 30 of each year. The log will include the license holder's name and address and will show the date, location, and number of bushels harvested during each tide. Commercial license holders who do not submit harvesting logs as required will not be eligible for a commercial license during the next period of issuance of commercial licenses.
 - c. A shellfish license must be on your person when harvesting shellfish.

Recreational Shellfish License: a person holding a recreational shellfish license may not engage in the wholesale or retail of any shellfish harvested under that license. Recreational shellfish licenses are not available and not valid for a person who holds as shellfish licenses issued by the State of Maine Commissioner of Marine Resources.

1. Annual Resident Recreational Shellfish License: this license is available to residents and/or taxpayers of the Town and entitles the holder to dig and take no more than one peck of shellfish per day;
2. Annual Nonresident Recreational Shellfish License: This license is available to nonresidents of the Town and entitles the holder to dig and take no more than one peck of shellfish per day.
3. Guest: One guest shall be permitted to assist a licensed recreational shellfish harvester to harvest on peck of shellfish per day. The license holder and guest combined may possess no more than one peck of shellfish per day;

Sec. 9-58. Application.

1. Any person qualifying under the terms of this article may apply to the Town Clerk for a license as required by this article on forms provided by the Town Clerk. No other person may apply for or be issued or retain the license that is provided by this article. The Town Clerk may require the applicant to produce evidence of these qualifications before issuing the license.
2. The application must obtain the applicant's name, period of residence, current address, birth date, height, weight, signature and whatever other information, if any, the Town may from time to time require.
3. Any person who gives false information on a shellfish license application will cause the shellfish license to become invalid and void.

4. The licensee must sign the shellfish license to make it valid.
5. Each shellfish license issued under the authority of this chapter is valid for one year. The date of issuance will be established by the Town Council.

Sec. 9-59. Limit.

Because the shellfish resources are limited and because a commercial or recreational digger can be expected to harvest a certain volume of shellfish 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 the control:

1. Prior to November 1 of each year, the Town Shellfish Conservation Commission shall submit its recommendation of the number of resident and nonresident commercial and recreational shellfish licenses to be made available to the Commissioner of Marine Resources for approval.
2. The Shellfish Conservation Commission will notify the Town Clerk and the Town Council of Falmouth in writing prior to December 1 of the number of commercial and recreational shellfish licenses to be made available. The Town Council then shall adopt a shellfish license allocation. The Shellfish Conservation Commission, in preparing a recommended allocation of shellfish licenses, and the Town Council, in adopting an allocation of shellfish licenses, shall provide and reserve a minimum number of commercial and recreational licenses for nonresidents, which shall be a number no less than ten (10) percent of the number of commercial and recreational shellfish licenses provided for residents. When the number of commercial resident shellfish licenses is fewer than 10 but more than five, at least one nonresident commercial shellfish license shall be provided. When the number of resident commercial shellfish licenses is five or fewer, nonresident commercial shellfish licenses shall not be required.
3. Notice of the number of licenses available and the procedure for application shall be published in a local newspaper with general circulation effective in reaching persons affected, not less than ten (10) days prior to the period of issuance, and will be posted in the town offices until the period for issuance concludes.
4. The Town Clerk shall issue resident and nonresident commercial and recreational shellfish licenses, if made available by the Town Council, in the following manner. Commencing on the first business day of December annually, the Town Clerk shall accept applications for resident and nonresident commercial and recreational licenses. Applicants must appear in person at the office of the Town Clerk. In each of those four (4) categories licenses shall be awarded on a first come, first served basis.
5. A copy of the Falmouth Shellfish Ordinance shall be given with each shellfish license issued and a map of the Falmouth flats with open and closed areas.

Sec. 9-60. Records.

The Town Clerk shall note on the application the date the license was issued, sign it, and file the application with the Clerk's records.

Sec. 9-61. Fees.

An application fee shall be paid in accordance with a fee schedule established by the Town Council and as may be amended from time to time.

Sec. 9-62. Regulating and opening and/or closing shellfish areas.

The Town Council, upon information from the Shellfish Conservation Commission and Shellfish Conservation Warden, may order appropriate action concerning the opening and closing of shellfish areas in the town. Any proposed changes in the status of the shellfish areas shall have the approval of the State Commissioner of the Department of Marine Resources and in no case may the town council regulate an area closed by regulations of the State Commissioner.

Sec. 9-63. Minimum size limit for shellfish.

1. Soft-shelled clams. It is a violation of this article and 12 M.R.S.A. § 6681(3) to possess soft-shelled clam stock whose shells are less than two (2) inches in the largest diameter.
 - a. Any person may possess soft-shell clams less than two (2) inches if they comprise less than ten (10) percent of any bulk pile. The tolerance shall be determined by the numerical count of not less than one (1) peck nor more than four (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 (1) peck.
 - b. Whoever violates the provisions of this section shall be punished as provided by 12 M.R.S.A. § 6681(6) or by appropriate noncriminal proceedings or both.
2. Quahogs. Pursuant to Department of Marine Resources Regulations (13 188), Chapter 10, Section 10.04, 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.

Sec. 9-64. Enforcement, penalty, separability, repeal and duration.

1. *Enforcement.* The Falmouth Police Department, special police officers as provided in 30-A M.R.S.A. § 2672, and the Shellfish Conservation Warden, shall enforce this article.
2. *Penalty.* A person who violates this article shall be punished as provided in 12 M.R.S.A. § 6671 as amended from time to time.
3. *Separability.* If any provision of this article is declared to be invalid, the declaration does not affect the remainder of the article.
4. *Repeal.* Any article regulating the harvesting or conservation of shellfish in the town and any provision of [or] other town article which is inconsistent with this article is hereby repealed.

Sec. 9-65. Misrepresentation.

In addition to any criminal penalties which may result from a violation of this article, the shellfish license granted to any person who gives false information on a shellfish license application will be automatically void.

Sec. 9-66. Suspension.

1. *Violation of shellfish ordinance.* The Town Clerk shall suspend any and all shellfish licenses issued under this article, if the license holder is convicted in court of violating any section of this article.
2. *Suspension based on conviction in a town closed conservation area.* The Town Clerk shall suspend any and all shellfish licenses issued under this article if the license holder has been convicted in court of possessing shellfish from a town closed conservation area.
3. *Length of suspension for (a) and (b) above.* The suspension of a license may not exceed the following:
 - a. Thirty (30) days from the date of the first conviction.
 - b. Three hundred sixty-five (365) days (one year) from the date of the second conviction.
4. *Application standards.* Any conviction more than three (3) years before last conviction shall not be counted in determining lengths of suspension.

Sec. 9-67. Hearing.

Any licensee whose shellfish license has been suspended shall be entitled to a hearing before the Town Council upon the filing of a written request for hearing with the Town Council within thirty (30) days following the effective date of suspension; the applicant shall be given at least seven (7) days' prior written notice of the date, time and place of hearing before the town manager. Any person aggrieved by the Town Council's decision may appeal to the superior court within thirty (30) days from the receipt of the Town Council's written decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

Sec. 9-68. Sale of shellfish.

Any shellfish confiscated in violation of the Town of Falmouth's Shellfish Conservation Ordinance may be sold and the revenues returned to the Town.

Sec. 9-69. Unlawful washing or holding of shellfish.

A person may not:

1. Wash, hold or keep shellfish in any area closed by state regulation.
2. Possess, ship, transport or sell shellfish washed, held or kept in any area closed by regulation per 12 M.R.S.A. § 6621.

Secs. 9-70—9-79. Reserved.

FOOTNOTE(S):

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Editor's note— An ordinance adopted Sept. 22, 1997, amended the town's shellfish ordinance in its entirety as set out in Art. II-9-2, §§ 9-50—9-69. An ordinance adopted Sept. 25, 2000, provided for the renewal of the shellfish conservation ordinance for a period of three years. Formerly, such article had pertained to the same subject matter, derived from ordinances adopted Nov. 26, 1984; Aug. 24, 1987; Oct. 24, 1988; and Sept. 26, 1994.

Cross reference— Division of health, § 2-300; licenses, permits and business regulations, Ch. II-8.

State Law reference— Shellfish, scallops, miscellaneous licenses, 12 M.R.S.A. § 6601 et seq

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