

ORDINANCE NO. 977

**AUTHORIZATION TO HARVEST SEAFOOD AND ENGAGE
IN THE SEAFOOD INDUSTRY ORDINANCE**

WHEREAS, by virtue of the authority contained in Section 232 of Article 25 – County Commissioners, of the Annotated Code of Maryland (2005 Replacement Volume, 2007 Supplement), the County Commissioners of Somerset County are authorized to adopt ordinances to authorize a person to use the person’s personal property or real estate to operate a seafood business; buy or sell seafood; store equipment used in the person’s seafood business; enjoy the quiet conduct of the person’s seafood business in conformance with county and state requirements; and harvest seafood; and

WHEREAS, the adoption of this ordinance is necessary to serve the public interest and to ensure the efficient regulation of land use in Somerset County; and

WHEREAS, the County Commissioners of Somerset County duly advertised this ordinance, have conducted a public hearing upon it, have obtained the written consent of the Secretary of Natural Resources, and have fully considered its effect.

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS FOR SOMERSET COUNTY, do hereby ordain as follows:

ARTICLE I:

Section 1. Findings and Policy

- A. It is declared policy of the County to preserve, protect and encourage the development and improvement of its waterways for the harvesting of seafood. The purpose of this Ordinance is to reduce the loss to the County of its commercial seafood and fishing industry. This Ordinance limits the circumstances under which commercial seafood and fishing industry operations may be deemed to constitute a nuisance or trespass. In addition, this Ordinance limits interference with the reasonable practices associated with the preparation of commercial seafood, including handling, harvesting, buying, selling, loading, unloading, transporting, and processing commercial seafood. Such practices and associated conditions include but, are not limited to, boats leaving and returning at all hours, painting crab pots, chemicals, paints, dust, power tools, maintenance of boats and other equipment, noise, smell and presence of machinery and equipment associated with commercial seafood operating at any hours. Nothing in this chapter shall in any way restrict or impede the authority of the State and of the County to protect the public health, safety and welfare.

It is in the public interest to promote a clear understanding between seafood industry operators and residential neighbors concerning the normal inconveniences caused by seafood industry operations that follow generally accepted seafood industry practices and do not endanger public health or safety.

This ordinance is not intended to, nor should it be construed as in any way modifying or abridging local, state or federal laws relating to health, safety, zoning, licensing requirements or environmental standards (including those standards which relate to air and water quality).

An additional purpose of this chapter is to promote a policy of advising purchasers and users of property adjacent to or near commercial seafood operations of the potential inconveniences associated with such purchases or uses. These potential inconveniences include, but are not limited to the following: boats leaving and returning at all hours; painting crab pots; chemicals; paints; dust; power tools; maintenance of boats and other equipment; running and operation; noise; smell; and machinery and equipment associated with commercial seafood operating at all hours. It is intended that, through mandatory disclosures, purchasers and users will fully understand the impact of living near commercial seafood operators and accept attendant conditions as the natural consequence thereof. However, this chapter shall be effective regardless of whether disclosure was made in accordance with Section 8 herein ("Seafood Industry Right To Work Notice and Real Estate Transfer Disclosure").

Section 2. Definitions

- A. "Land" means real property within the boundaries of Somerset County and all territorial waters, rivers, bays and creeks located within Somerset County.
- B. "Commercial Seafood Operation" means the industry of the harvest of seafood in Somerset County. This includes, but is not limited to, boats leaving and returning at all hours; painting of crab pots; bait; salt; paints; dust; power tools; maintenance of boats and other equipment; running and operation; noise; smell; presence of machinery and equipment associated with commercial seafood constantly operating; workers; generators; ice making; refrigerated trucks; chum trucks; boilers; steam generators; cooking; fork lifts; heating equipment; cooling equipment; soft crab

Book 5 Page 885

shedding equipment; tanks; pallets; cooling baskets; and drums.

- C. "Generally Accepted Seafood Industry Practices" means methods used in connection with the commercial seafood and fishing industries which do not violate federal, state or local laws for public health safety and welfare and which are generally accepted practices in the commercial seafood and fishing industry. Generally accepted seafood industry practices include practices which are recognized as best management practices, and those methods which are authorized by various governmental agencies, bureaus and departments. If no generally accepted seafood industry practices exists or there is no method authorized by those agencies mentioned herein that governs a practice, the practice is presumed to be a generally accepted seafood industry practice.
- D. "Health Officer" means the Director of the Health Department for Somerset County or his/her designee.

Section 3. Limitation of Actions

- A. A private action may not be maintained against a seafood industry operation on the grounds that the seafood industry operation interferes or has interfered with the use or enjoyment of property, whether public or private, if:
1. The seafood operation has existed for a period of one (1) year or more, and
 2. If the operation or any future change in the operation did not constitute a nuisance from the date the operation or change in the future operation began; and
 3. The seafood operation is conducted substantially in accordance with generally accepted seafood industry practices.
- B. Notwithstanding any provision of this section, no private action alleging that a seafood industry operation has interfered with the reasonable use of or enjoyment of real property, or personal well-being, shall be maintained if the plaintiff has not sought arbitration through the Seafood Reconciliation Board.

Section 4. Somerset County Seafood Reconciliation Board

- A. There is hereby created and established the Somerset County Seafood

Reconciliation Board, which shall mediate and arbitrate disputes involving seafood operations and issue binding opinions to decide whether seafood operations are conducted in a manner consistent with generally accepted seafood industry management practices.

- B. The Seafood Reconciliation Board shall be composed of five persons, all Somerset County residents, and shall be appointed by the County Commissioners. Members of the Board shall serve four year terms; however, the initial appointments shall be as follows:
 - 1. One member shall be chosen to serve a one-year term;
 - 2. Two members shall be chosen to serve two-year terms;
 - 3. Two members shall be chosen to serve four-year terms;
 - 4. After these initial appointments, all subsequent appointments shall serve four-year terms.
- C. Not less than two but not more than three members of the Board shall be individuals who engage in seafood industry operations.
- D. The Board may elect a chairman and adopt forms and procedures.
- E. The Board shall be subject to the State Open Meetings Law.
- F. The Board shall meet one time per year and members shall serve as volunteers, with no monetary compensation other than expense reimbursement as provided by the County Commissioners.
- G. In a hearing, the Board shall first attempt to mediate disputes. If mediation fails, the Board shall arbitrate the conflict.

Section 5. Procedures for Resolution of Disputes Regarding Seafood Industry Operations

- A. If any conflict cannot amicably be resolved regarding an interference with the use or enjoyment of property by seafood industry operations, the parties to that conflict shall seek mediation and shall submit the controversy to the Seafood Reconciliation Board, in writing, through the Somerset County Department of Technical and Community Services. The Director the Department, or his/her designee, shall then notify all board members and interested parties in writing at least thirty (30) days prior to any scheduled hearing. Forms, if provided, shall be used. The fee shall be paid upon filing.

- B. The Seafood Reconciliation Board shall conduct such a proceeding in an informal manner and the rules of evidence shall not apply. The Board has the power to hold hearings and to compel testimony under oath, and to order the production of documents in each case before it. The Seafood Reconciliation Board shall make findings of fact and issue orders settling or otherwise resolving controversies arising out of seafood industry operations. An order of the Board may be mandatory or directory. The Board shall have the right to issue opinions and to make suggestions respecting matters brought before it, and shall have continuing jurisdiction to rehear any matter to make further findings or issue further orders respecting the matter.
- C. Three (3) Seafood Reconciliation Board Members shall constitute a quorum.
- D. If the hearing ends in a tie vote, no action shall be taken on the complaint that formed the basis of the hearing. The applicant shall be entitled to an appeal *de novo* to the Board of Zoning Appeals. No case may be maintained if based upon the same set of facts between the same parties on a matter than has been conclusively decided by the Board unless either party can demonstrate substantial change in circumstances.
- E. Where indicated, orders of the Seafood Reconciliation Board shall be binding upon the parties as a matter of law, however their enforcement shall be suspended by operation of law if, within thirty (30) days of the date of the Board's order, a party appeals such order to the Board of Zoning Appeals. Appeals shall be heard *de novo*.
- F. If the Seafood Reconciliation Board finds that the conduct of a party in bringing or maintaining an action in connection with a seafood industry operation was in bad faith or without substantial justification, the Seafood Reconciliation Board may require that party to pay the owner of the seafood industry operation (or any other party opponent) the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by that party in defending against the action. The Seafood Reconciliation Board, while finding for either party in a particular case may, in addition, make non-binding recommendations to the parties in an attempt to mediate the situation.
- G. Upon the filing of the complaint, the Department charged with administering this law shall make an investigation of the complaint. This

investigation may include a visit to the site, interviews with witnesses and parties, and personal observations of the subject matter of the complaint. In the event the Department determines that there is no reasonable cause to proceed to hearing before the Seafood Reconciliation Board, the Department may dismiss the application. In the event of dismissal by the Department, the applicant shall have the right to file an appeal to the Board of Zoning Appeals within fifteen (15) days of notification of the dismissal. All costs associated with such an appeal shall be borne by the applicant and shall be those fees as prescribed in the Board of Zoning Appeals fee schedule as may be amended from time to time.

- H. The Seafood Reconciliation Board shall have broad jurisdiction to resolve all matters relating to disputes involving seafood industry operations brought before it regardless of the exact complaint filed. The Board shall attempt to resolve all issues between the applicant and the seafood industry operation involved in the application. The Seafood Reconciliation Board's decision with respect to an application may resolve the issues brought to it regardless of the exact complaint filed. The Seafood Reconciliation Board's decision has precedence and may resolve such issues for future occurrences.

Section 6. Somerset County Seafood Reconciliation Board Standards

- A. Any condition caused by an action that is conducted in accordance with generally accepted seafood industry operation practices and in accordance with all zoning and other regulatory requirements shall be considered lawful by the Board, but the Board may attempt pursuant to its powers to ameliorate any such condition or lessen its impact on neighboring properties.
- B. The Board shall consider the nature of the complaint in the light of the necessity, as a part of the seafood industry operation, of creating the condition complained of.
- C. The severity of the condition caused by the seafood industry operation shall be considered. Physical characteristics of the land and improvements in the area of the seafood industry operation condition complained of shall be taken into consideration.
- D. Use of the land and improvements located thereupon existing at the time parties take title to the real estate shall be considered.

- E. If unconscionable difficulty or undue expense would be involved to make changes to the seafood industry operation to mitigate the condition complained of, it shall be considered.
- F. Time of onset of such condition shall be considered.
- G. If a notice pursuant to subsection (1) hereof was or should have been given it will be considered.
- H. Prior decisions of the Board shall be considered.

Section 7. Additional Board Requirements and Procedures

- A. Standing. Any person filing a complaint before the Board must have standing. For the purposes of this section, standing shall require that the person filing the complaint must regularly reside, own, or be engaged in work on a property near the seafood industry operation, or so near the property upon which the seafood industry operation is conducted that an improperly conducted operation would have undue and unwarranted adverse effect on the person's health, quiet enjoyment or property values. All complainants must be natural persons.
- B. Fees. It being the intent that the Board shall be essentially self-sufficient, the activities of the Seafood Reconciliation Board shall, where practical, be paid for the application fees. The application fee shall be set by the County Commissioners by resolution. The applicant seeking relief before the Seafood Reconciliation Board shall pay the application fee upon the filing of the application.
- C. Consolidation. The Seafood Reconciliation Board may consolidate similar cases.
- D. Other than to enforce a finding or order of the Seafood Reconciliation Board or Board of Zoning Appeals, complaints based upon substantially identical facts, shall be dismissed by the Department pursuant to Article I, Section 5(G) hereof.
- E. Parties shall be given at least thirty (30) days written notice prior to the proceedings of the Seafood Reconciliation Board. Notice shall be presumed sufficient if sent certified mail, return receipt requested, to the address of the applicant as given in the application and to the other parties as reflected by the county tax assessments records. In cases where the

certified letter is returned, the Department shall make at least two (2) other attempts via other forms of communication to advise the party of the proceeding.

- F. Upon request and for good cause shown, the Department may reschedule a proceeding and notices of the rescheduled hearing shall be given in the same manner as notices for an original proceeding. Any person actively engaged in a seafood industry operation shall have the right to a continuance of sufficient time so that, if requested, no proceeding of the Seafood Reconciliation Board shall be held during the period of time from April 1st through December 15th, provided, however, that the Department may schedule a proceeding during that period of time if the Department determines that the condition complained of is an emergency situation having a significant effect on the applicant's property rights or reasonable enjoyment of the applicant's property. Continuances must be requested in writing no less than fifteen (15) days prior to the hearing.

Section 8. Authorization to Harvest Seafood and Engage in the Seafood Industry Notice and Real Estate Transfer Disclosure.

- A. Upon any transfer of real property by any means, the transferor shall provide the purchaser or lessee a statement that specifically advises the purchaser or lessee of the existence of the AUTHORIZATION TO HARVEST SEAFOOD AND ENGAGE IN THE SEAFOOD INDUSTRY ORDINANCE which shall be in substantially the form set forth in Appendix A.
- B. In addition, because of the County's desire to maintain a good neighbor policy and the County's desire to provide this information to county real property owners, Somerset County shall publish an "AUTHORIZATION TO HARVEST SEAFOOD AND ENGAGE IN THE SEAFOOD INDUSTRY NOTICE" (Appendix B) once each fiscal year in a newspaper of general circulation.
- C. Penalty for Violation. Any person who violates any provision of this Section is guilty of an infraction punishable by a civil penalty not exceeding one hundred dollars (\$100.00). Failure to comply with any provision of this Authorization to Harvest Seafood and Engage in the Seafood Industry Notice and Real Estate Transfer Disclosure section shall not prevent the recording of any document, or the title to real property or any mortgage or deed of trust made in good faith or for value, and it shall not affect the application of this ordinance.

**ARTICLE II.
SEVERABILITY**

Should any provision, section, paragraph or subparagraph of this Ordinance, including any code of text adopted hereby, be determined null and void, illegal, unconstitutional, or otherwise determined to be unenforceable by a court having competent jurisdiction, the same shall not affect the validity, legality, or enforceability of any other provision, section, paragraph or subparagraph hereof, including any code or text adopted hereby. Each such provision, section, paragraph or subparagraph is expressly declared to be and is deemed severable.

**ARTICLE III.
SECTION HEADINGS, CHAPTER HEADINGS, TITLES**

Section headings, chapter headings, titles, etc., are for the purpose of description or ease of use and do not form a part of the text of this Ordinance or any code or text adopted hereby.

**ARTICLE IV.
EXISTING LIABILITIES**

Except to the extent specifically provided herein, this Ordinance shall not discharge, impair or release any contract, obligation, duty, liability or penalty whatever existing on the date or its enactment. It is not intended hereby that the law of nonconforming use be changed, or that the court's rule of construction concerning the application of changes in the law during the pendency of actions be modified hereby, but simply that this Ordinance should not affect a change between private parties.

**ARTICLE V.
EFFECTIVE DATE**

This Ordinance shall become effective when adopted.

ADOPTED THIS 8th day of July, 2008.

Book 5 Page 892

THE BOARD OF COUNTY COMMISSIONERS
FOR SOMERSET COUNTY, MARYLAND

ATTEST:

Daniel W. Powell
Daniel W. Powell, Clerk

James N. Ring
James N. Ring, President

Rex Simpkins
Rex Simpkins, Vice-President

Sam Boston
Sam Boston, Commissioner

Michael K. McCready
Michael K. McCready, Commissioner

Paul T. Ward, Jr.
Paul T. Ward, Jr., Commissioner

Approved for legal sufficiency:

Kirk G. Simpkins
Kirk G. Simpkins
County Attorney

Book 5 Page 893

APPENDIX A

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY LOCATED IN THE COUNTY OF SOMERSET, STATE OF MARYLAND, DESCRIBED AS

THIS STATEMENT IS A DISCLOSURE OF THE EXISTENCE OF THE SOMERSET COUNTY AUTHORIZATION TO HARVEST SEAFOOD AND ENGAGE IN THE SEAFOOD INDUSTRY ORDINANCE IN COMPLIANCE WITH SOMERSET COUNTY ORDINANCE NO. _____ (Authorization to Harvest Seafood and Engage in the Seafood Industry)

SELLER'S INFORMATION

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE AGENT (S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

SOMERSET COUNTY VALUES SEAFOOD INDUSTRY OPERATIONS (as defined by the Somerset County Authorization to Harvest Seafood and Engage in the Seafood Industry Ordinance) WITHIN THE COUNTY. You may be subject to inconveniences or discomforts arising from such operations, including but not limited to noise, odors, fumes, dust, flies, the operation of machinery of any kind during any 24-hour period (including vibration, the storage and disposal of seafood waste). Somerset County has determined that inconveniences or discomforts associated with such seafood industry operations shall not be considered to be an interference with reasonable use and enjoyment of land, if such operations are conducted in accordance with generally accepted seafood industry practices. Somerset County has established a reconciliation committee to assist in the resolution of disputes which might arise between persons in this County regarding whether seafood industry operations conducted on seafood industry lands are causing an interference with the reasonable use and enjoyment of land or personal well being and whether those operations are being conducted in accordance with generally accepted seafood industry practices. If you have any questions concerning this policy or the reconciliation committee, please contact the Somerset County Department of Technical and Community Services for additional information.

SELLER: _____ DATE: _____

SELLER: _____ DATE: _____

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT:

BUYER: _____ DATE: _____

BUYER: _____ DATE: _____

Book 5 Page 894

APPENDIX B

SOMERSET COUNTY AUTHORIZATION TO HARVEST SEAFOOD
AND ENGAGE IN THE SEAFOOD INDUSTRY NOTICE

Somerset County recognizes and supports the authorization to harvest seafood and engage in seafood industry operations on seafood industry lands in a manner consistent with generally accepted seafood industry practices. Residents of property on or near seafood industry lands should be prepared to accept the inconveniences or discomforts associated with seafood industry operations, including but not limited to noise, odors, flies, fumes, dust, the operation of machinery of any kind during any 24-hour period, vibration, the storage and disposal of seafood waste. Somerset County has determined that inconveniences and discomforts associated with such seafood industry operations shall not be considered to be an interference with reasonable use and enjoyment of land, if such operations are conducted in accordance with generally accepted seafood industry practices. Somerset County has established a seafood reconciliation committee to assist in the resolution of disputes which might arise between persons in this County, regarding whether seafood industry operations conducted on seafood industry lands are causing an interference with the reasonable use and enjoyment of land or personal well being and whether those operations are being conducted in accordance with generally accepted seafood industry practices. If you have any questions concerning this policy or the reconciliation committee, please contact the Somerset County Department of Technical and Community Services.

Book 5 Page 895

FILED

2008 JUL 11 A 10: 53

ITP
RECORDED IN S FOLIO 884
LIBER NO. 5
I. THEODORE PHOEBUS, CLK. CI. CT.

BY VLT DEPUTY