

Guidance document regarding intertidal mussel harvesting for municipalities with a shellfish conservation program

Law and Regulations:

12 M.R.S §6671 sub-§3A(5): Within any area of the municipality, a shellfish conservation ordinance may specify areas of the intertidal zone in which the dragging of mussels may be limited to the degree necessary to support a municipal shellfish conservation program.

12 M.R.S. §6671 sub-§12: With the advice of the municipality, the Commissioner may issue a permit that authorizes the permit holder to fish for and take mussels from an area designated by the municipality under the shellfish conservation program. The permit may specify limits on the amount of mussels taken, when the mussels may be taken and gear usage and any other conditions necessary for consistency with the shellfish conservation program.

DMR Procedural Rules, Chapter 7: Requirements for Municipalities Having Shellfish Conservation Programs; outlines the regulation of intertidal mussel harvest by drag or dredge in section 7.70. It states that a municipality with an approved shellfish conservation program may specify intertidal areas to be limited for mussel harvesting by drag.

Definitions:

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

Shellfish Conservation Program: requires a shellfish management plan which consists of a written statement of goals and objectives and a description of the various conservation measures the town intends to employ to reach those goals. For the purposes of this document, it is important to note that conservation measures are not limited to seeding activities.

Shellfish: means shellstock clams including soft-shelled clams, razor clams, and surf clams, quahogs other than mahogany quahogs, and American and European oyster shellstock.

Municipal Responsibilities:

1. Municipalities must actively and vigorously pursue their shellfish conservation program. The municipality must establish the number of licenses to be issued annually, review the status of the resource, enforce municipal ordinances, and submit annual reports to DMR.

This means that if a municipality fails to meet these performance standards the Commissioner may rescind approval of that municipality's shellfish conservation program.

2. Municipalities may request approval from the Commissioner for intertidal areas to be limited to mussel harvest by drag. When requesting an area to be limited to mussel harvest, the municipality must provide an explanation as to why they believe these areas require additional protections.

DMR expects municipalities to include in their request detailed mapping of the specified areas, an explanation regarding the importance of the area(s), and supporting resource assessment documentation. Electronic maps should be developed that include GPS coordinates for the requested

area. Mapping assistance can be requested from the staff of the DMR Nearshore Marine Resources Program.

3. Municipalities shall review the status of the resource affected prior to closing or opening an area to shellfish harvesting.

For the purpose of this guidance document, this means that if an area is specified by the municipality to be limited for mussel harvest by drag (in order to protect the shellfish resource) and a conservation closure is requested, the status of the shellfish resource must be established prior to the area being closed. The DMR Nearshore Marine Resources Program should be consulted for this process to ensure proper evaluation methods are being used.

4. Municipalities shall provide written recommendations to DMR regarding applications for Intertidal Mussel Harvest Permits within 21 days of the receipt of the application.

An applicant who wishes to harvest mussels from an area that is specified in a municipal shellfish conservation program must apply for a permit from DMR. DMR will forward applications to the municipality for comments. In determining whether to issue the requested permit, DMR will consider, but is not bound by, the municipal recommendations. Other DMR considerations include if the status of the managed resource (e.g., soft shelled clams) has changed, if the municipal performance has not met expectations, the abundance of the mussel resource and the likelihood of the requested activity impacting the resource. If competing permits are requested DMR will allocate appropriate access.

5. Municipalities may recommend mussel harvest controls for consideration by the Commissioner when a permit is requested, including but not limited to: gear used, time of harvest, area of harvest, and volume of harvest.

Recommendations regarding the amount of mussels taken should be defined by weight in pounds or bushels and an explanation should accompany why limiting volume supports the shellfish conservation program. Time of harvest recommendations need to be defined in seasons (months), not days or hours, and must be accompanied by an explanation of how this supports the shellfish conservation program. Gear usage recommendations are limited to dragging (not hand harvest, etc.), must be clearly and precisely defined, and must be accompanied by an explanation of how this supports the shellfish conservation program. Comments regarding area of harvest should specify areas where mussel dragging may conflict with managed resources and should be accompanied by maps and GPS points. Any other conditions necessary must be consistent with other marine resources laws and regulations and provide an explanation of how they support the shellfish conservation program.

Permit Applications:

An intertidal mussel harvest permit application can be found on the DMR website:

<https://www.maine.gov/dmr/fisheries/shellfish/nearshore-marine-resources-program/general-shellfish-ordinance-information>

or requested by mail:

Nearshore Marine Resources Program
194 McKown Point Rd
West Boothbay Harbor, ME 04575

or requested by email: DMRPublicHealthDiv@maine.gov

or requested by phone: (207) 633-9500

DMR evaluation of areas proposed for limitations on intertidal mussel harvesting:

The DMR evaluation of areas requested by municipalities for limitations on intertidal mussel harvesting will include a review of the successful implementation of the overall municipal shellfish conservation program. Does the requesting municipality have adequate enforcement, are they actively pursuing conservation and management of their intertidal resources, do they regulate licensing properly, etc.? The specified areas must be part of the town's conservation program. The areas should be clearly established and explained so applicants can make appropriate requests. If approved, the areas will be posted online at the Department's website.