

Department of Marine Resources



Municipal Shellfish Management



A Municipal/State Cooperative Partnership

Revised August 2016

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Introduction

Management of Maine's shellfish resource is a joint responsibility between the State and its municipalities. In 1963, Maine enacted legislation that authorized municipalities to enact shellfish ordinances, subject to the approval of the Commissioner of Marine Resources.

Municipalities that assume the management responsibility do so with the understanding that they must meet certain statutory and regulatory requirements.

The purpose of this manual is to clarify program elements and responsibilities, to assist municipalities interested in establishing a new program as well as helping existing programs achieve and maintain program compliance.

The Laws

1. Maine Statute- Title 12 M.R.S.A Chapter 623 Article 4 §6671

“Municipal Shellfish Conservation Programs”

- authorizes a municipality to adopt a shellfish conservation ordinance
- authorizes DMR to promulgate regulations setting the criteria for shellfish management programs

2. Regulation- Marine Resources Regulations- Chapter 7

“Requirements for Municipalities Having Shellfish Conservation Programs”

- Establishes the criteria for adopting an ordinance
- Is enacted by DMR through the public hearing process

3. Municipal Ordinance- Based on Model Shellfish Conservation Ordinance (see Appendix)

- Establishes rules for conducting a management program
- Is enacted by the municipality through town meeting/council vote

Maine Statute- Title 12 M.R.S.A. Chapter 623 Article 4 §6671

§6671. Municipal shellfish conservation programs

1. Municipal funds. Any municipality may, by vote of its legislative body, raise and appropriate money for the implementation of a shellfish conservation program.

[1977, c. 661, §5 (NEW) .]

1-A. Municipal fines. In accordance with Title 30-A, section 3001, a fine collected pursuant to this section must be paid to the municipality in which the violation occurred.

[2009, c. 24, §1 (NEW) .]

2. Municipal program and ordinance. Any municipality may, by vote of its legislative body, adopt, amend or repeal a shellfish conservation ordinance as provided by this section. A municipality may establish a municipal shellfish management committee to administer a municipal program.

[2001, c. 188, §1 (AMD) .]

3. Shellfish conservation ordinance. The following provisions govern a shellfish conservation ordinance.

A. Within any area of the municipality, a shellfish conservation ordinance may:

- (1) Regulate or prohibit the possession of shellfish;
- (2) Fix the amount of shellfish that may be taken;
- (3) Provide for protection from shellfish predators;
- (4) Authorize the municipal officials to open and close flats under specified conditions; and
- (5) 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. [2007, c. 494, §1 (AMD).]

B. An ordinance must limit the size of soft-shell clams in accordance with article 5. [2001, c. 188, §2 (NEW).]

C. Except as provided in section 6621, subsection 3, paragraph C, a program or ordinance may not allow surveying, sampling or harvesting of shellfish in areas closed by regulation of the commissioner. [2001, c. 188, §2 (NEW).]

[2007, c. 494, §1 (AMD) .]

3-A. Shellfish conservation licensing. A shellfish conservation ordinance may fix the qualifications for a license, including municipal residency, subject to the following provisions.

A. [2001, c. 188, §3 (RP).]

A-1. The following exceptions apply.

(1) An individual is not required to hold a shellfish license issued by the commissioner under section 6601 in order to obtain a municipal commercial license.

(2) A municipality may issue licenses under this section regardless of whether or not the area has been closed by the commissioner.

(3) An individual taking shellfish from a closed area for depuration under a depuration certificate issued by the commissioner is not required to hold a municipal shellfish license. [2001, c. 188, §3 (NEW).]

B. A shellfish conservation ordinance may fix license fees as follows.

(1) If the ordinance sets a fee of \$200 or less for a resident license, the fee for a nonresident license may not exceed twice the resident fee.

(2) If the ordinance sets a fee of more than \$200 for a resident license, the fee for a nonresident license may not exceed 1 1/2 times the resident fee. [1997, c. 589, §2 (AFF); 1997, c. 589, §1 (RPR).]

C. Application methods and procedures for licenses may be determined by the shellfish conservation ordinance subject to the provisions of this section. Notice of the number and the procedure for application must be published in a trade or industry publication or in a newspaper or combination of newspapers with general circulation that the municipal officers consider effective in reaching individuals affected not less than 10 days prior to the period of issuance and must be posted in the municipal offices until the period of issuance concludes. The period of issuance for resident and nonresident licenses must be the same. Subsequent to the period of issuance, the municipality shall make any resident or nonresident licenses not granted during the period available to residents or nonresidents. [2001, c. 188, §3 (AMD).]

D. Except as otherwise provided in this section, a shellfish conservation ordinance may not discriminate between resident license holders and nonresident license holders. [2001, c. 188, §3 (AMD).]

E. A licensing authority shall provide and reserve a minimum number of commercial licenses for nonresidents. The number of nonresident commercial licenses may not be less than 10% of the number of commercial licenses provided for residents. When the number of resident commercial licenses is fewer than 10 but more than 5, at least one nonresident commercial license must be provided. When the number of resident commercial licenses is 5 or fewer, nonresident commercial licenses are not required. [2001, c. 188, §3 (AMD).]

F. When 2 or more municipalities have entered into a regional shellfish management agreement pursuant to subsection 7, the combined total number of commercial licenses for nonresidents provided by those municipalities must be a number not less than 10% of the combined total number of commercial licenses issued for residents. When the combined total number of resident commercial licenses is fewer than 10 but more than 5, at least one nonresident commercial license must be provided. When the combined total number of resident commercial licenses is 5 or fewer, nonresident commercial licenses are not required. [1995, c. 531, §2 (AMD).]

G. [2001, c. 188, §3 (RP).]

G-1. A licensing authority that issues recreational licenses to residents shall also make available to nonresidents recreational licenses. The number of nonresident recreational licenses may not be less than 10% of the number of recreational licenses issued to residents.

For the purposes of this paragraph, "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use. [2001, c. 188, §3 (NEW).]

For purposes of this subsection, "licensing authority" means a municipality or 2 or more municipalities that have entered into a regional shellfish management agreement pursuant to subsection 7.

[2001, c. 188, §3 (AMD) .]

4. Adoption requirements. Shellfish conservation ordinances may be adopted under this section by municipalities or unorganized townships.

A. Prior to adopting an ordinance, a municipality or unorganized township shall raise or appropriate money for a shellfish conservation program. [1999, c. 255, §3 (AMD); 1999, c. 255, §8 (AFF).]

B. An ordinance proposed by a municipality or unorganized territory under this section must be approved in writing by the commissioner prior to its adoption, except that the commissioner may not withhold approval based on the amount of license fees specified in an ordinance.

[1999, c. 255, §4 (AMD); 1999, c. 255, §8 (AFF).]

C. Unorganized townships may adopt ordinances if:

(1) At least 10 inhabitants have petitioned the county commissioners to adopt the ordinances;

(2) The county commissioners of the townships have held a public hearing with at least 7 days' prior notice in one of the affected townships; and

(3) A majority of the inhabitants eligible to vote voting at referendum approve the ordinances.

The county commissioners act as the municipal legislative body within unorganized townships that have elected to adopt ordinances under this section. [2001, c. 188, §4 (RPR).]

[2001, c. 188, §4 (AMD) .]

4-A. State parks. The commissioner shall consult with the Commissioner of Agriculture, Conservation and Forestry in review of any municipal ordinance that affects intertidal areas located within state parks. The commissioner may not approve any ordinance that threatens any important resources or provides insufficient opportunity for recreational shellfish harvesting within state parks.

[1983, c. 418, (NEW); 2011, c. 657, Pt. W, §6 (REV) .]

4-B. Management program approval. The commissioner may adopt rules that set the criteria that municipal shellfish conservation programs and ordinances must meet in order to be approved by the commissioner.

[2001, c. 188, §5 (AMD) .]

5. Period of ordinance. Ordinances or amendments to an ordinance adopted under this section remain in effect until repealed by the municipality or rescinded by the commissioner. A certified copy of the ordinance or amendment to the ordinance must be filed with the commissioner within 20 days of its adoption. If a copy of the ordinance or an amendment to the ordinance is not filed within 20 days, the ordinance reverts to the ordinance previously in effect until the new ordinance or amendment is filed.

[2001, c. 667, Pt. B, §6 (RPR) .]

6. Municipality defined. For the purposes of this section, municipality includes:

A. Village corporations; and [1991, c. 390, §6 (AMD).]

B. The combined towns of Yarmouth and North Yarmouth. [1991, c. 390, §6 (AMD).]

C. [1991, c. 390, §7 (RP).]

[1991, c. 390, §§6, 7 (AMD) .]

7. Joint programs; reciprocal privileges. Municipalities may enter into regional shellfish management agreements with other municipalities and adopt regional shellfish management programs. The agreements, and the programs and ordinances adopted under them, are subject to the same requirements as municipal programs and ordinances. Resident privileges of one municipality in a regional shellfish management agreement may be extended to the residents of other municipalities in the agreement. A regional shellfish management committee comprised of at least one resident from each municipality named in the regional agreement may be established to administer a regional program.

[2001, c. 188, §7 (AMD) .]

8. Local enforcement. The following provisions apply to enforcement.

A. A municipality that enacts an ordinance under this section is responsible for enforcing it. [2001, c. 188, §8 (AMD).]

B. Any municipal shellfish conservation warden appointed by a municipality to enforce the provisions of this article must be certified by the commissioner within one year of the warden's appointment. The commissioner shall establish a program to provide shellfish conservation training in principles of shellfish conservation, management, enforcement and protection and shall establish standards for certification of municipal conservation wardens upon their satisfactory completion of the training program. The commissioner may establish by rule procedures for certification, recertification and revocation of certification. The commissioner may revoke a certificate for failure of the warden to comply with performance standards. [2013, c. 301, §14 (AMD).]

C. A certified municipal shellfish conservation warden shall enforce the shellfish ordinances of the municipality employing the warden and, if the warden is authorized by the municipality and meets the training requirements of Title 25, section 2804-I, the warden may arrest all violators. The warden may serve all process pertaining to the ordinance. The warden also has, within that warden's jurisdiction, the powers of a marine patrol officer provided in section 6025, subsection 4 and the authority to enforce section 6621. All of the powers conferred in this subsection are limited to the enforcement of a municipal shellfish conservation ordinance and section 6621.

At the commissioner's request, a certified municipal shellfish conservation warden may collect samples and otherwise assist the department in the detection of pollutants and contaminants. The commissioner is not required to conduct tests on samples not requested by the commissioner. [2005, c. 171, §1 (AMD).]

[2013, c. 301, §14 (AMD) .]

9. Penalty. [repealed]

[1993, c. 281, §3 (RP) .]

10. Criminal penalty. A person who violates a provision of a municipal ordinance adopted under this section commits a Class D crime punishable by the following fines:

A. For harvesting shellfish from an area closed for conservation purposes:

- (1) For the first offense by a commercial license holder, a fine of not less than \$300;
- (2) For subsequent offenses by a commercial license holder, a fine of not less than \$500 and not more than \$1,500;
- (3) For the first offense by a recreational license holder, a fine of not less than \$100; and
- (4) For subsequent offenses by a recreational license holder, a fine of not less than \$100 and not more than \$500; or [2005, c. 171, §2 (AMD).]

B. For violating any other provision of a municipal ordinance adopted under this section, a fine of not less than \$100 and not more than \$1,500. [2005, c. 171, §2 (AMD).]

The court may not suspend a fine imposed under this subsection or impose a penalty other than the monetary payment of a fine as provided in this subsection. For purposes of this subsection, "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use. A fine for a violation of article 5 must be as provided by section 6681.

[2005, c. 171, §2 (AMD) .]

10-A. Civil penalty. A person who harvests shellfish without a municipal shellfish license or in violation of a license restriction commits a civil violation for which the following fines may be adjudged:

The court may not suspend a fine imposed under this subsection or impose a penalty other than the monetary payment of a fine as provided in this subsection. For the purposes of this

subsection, "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use.

A. For harvesting shellfish without a municipal shellfish license:

(1) For commercial purposes, a fine of not less than \$300 and not more than \$1,000. Possession of more than one peck of clams without a license is prima facie evidence of a violation of this subparagraph; and

(2) For personal use, a fine of not less than \$100 and not more than \$500; and [2013, c. 468, §31 (AMD).]

B. For harvesting shellfish in violation of a license restriction:

(1) By a commercial license holder, a fine of not less than \$300 and not more than \$1,000; and

(2) By a recreational license holder, a fine of not less than \$100 and not more than \$500. [2013, c. 468, §31 (AMD).]

The court may not suspend a fine imposed under this subsection or impose a penalty other than the monetary payment of a fine as provided in this subsection. For the purposes of this subsection, "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use.

[2013, c. 468, §31 (AMD) .]

10-B. Molesting municipal shellfish gear placed in protected areas. A municipality may, as part of a municipal shellfish conservation program, place protective netting, fencing, traps or other gear in the intertidal zone to provide protection from shellfish predators. Any netting, fencing, traps or other gear placed for this purpose must be clearly marked with signs or tags that identify the municipality that placed the gear and indicate the purpose of the gear.

A. A person may not tamper with, molest, disturb, alter, destroy or in any manner handle gear placed by a municipality in accordance with this subsection. [2013, c. 517, §1 (NEW).]

B. A person who violates paragraph A commits a civil violation for which a fine of not less than \$300 and not more than \$1,000 may be adjudged. [2013, c. 517, §1 (NEW).]

[2013, c. 517, §1 (NEW) .]

10-C. Prohibition.

[2013, c. 517, §1 (NEW); MRSA T. 12, §6671, sub-§10-C (RP) .]

11. Certificate as evidence. A certificate of the clerk of the municipality or any other custodian of the records of a municipal shellfish conservation ordinance adopted under this section stating what the records of the municipality show is admissible as evidence in all courts as proof of the municipal records. A certificate stating that the records do not show that a person held a license is prima facie evidence that the person did not hold the license on the date specified in the certificate. A certificate stating that the records show that a shellfish conservation ordinance or portions of an ordinance were in effect on a particular date is prima facie evidence that the ordinance was in effect on the date specified in the certificate. The certified copy is admissible in evidence on the testimony of a municipal shellfish conservation warden that the warden received the certificate after requesting it from the municipality. Further foundation is not necessary for the admission of the certificate.

[1999, c. 255, §7 (NEW); 1999, c. 255, §8 (AFF) .]

12. Intertidal mussel harvesting. With the advice of the municipality, the commissioner may issue a permit to an individual licensed pursuant to section 6746 that authorizes the permit holder to fish for and take mussels from an area designated by the municipality pursuant to subsection 3. The commissioner shall limit the number of permits issued for a designated area to that number the commissioner determines is necessary to achieve the goals of the municipality's 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.

[2007, c. 494, §2 (NEW) .]

SECTION HISTORY

1977, c. 661, §5 (NEW). 1979, c. 608, §§1-3 (AMD). 1983, c. 283, (AMD). 1983, c. 418, (AMD). 1983, c. 689, (AMD). 1983, c. 838, §§2-5 (AMD). 1985, c. 48, §1 (AMD). 1985, c. 52, §2 (AMD). 1985, c. 259, (AMD). 1985, c. 737, §§A28,29 (AMD). 1987, c. 402, §A96 (AMD). 1987, c. 816, §KK13 (AMD). 1987, c. 867, (AMD). 1989, c. 257, §§3-5 (AMD). 1991, c. 29, (AMD). 1991, c. 242, §3 (AMD). 1991, c. 390, §§5-7 (AMD). 1991, c. 784, §6 (AMD). 1991, c. 831, §1 (AMD). 1993, c. 281, §§3,4 (AMD). 1993, c. 456, §1 (AMD). 1995, c. 75, §1 (AMD). 1995, c. 531, §§1-3 (AMD). 1997, c. 247, §§1,2 (AMD). 1997, c. 589, §1 (AMD). 1997, c. 589, §2 (AFF). 1999, c. 255, §§1-7 (AMD). 1999, c. 255, §8 (AFF). 1999, c. 682, §1 (AMD). 2001, c. 101, §1 (AMD). 2001, c. 188, §§1-8 (AMD). 2001, c. 667, §B6 (AMD). 2003, c. 284, §§1,2 (AMD). 2005, c. 171, §§1-3 (AMD). 2007, c. 494, §§1, 2 (AMD). 2009, c. 24, §1 (AMD). 2011, c. 657, Pt. W, §6 (REV). 2013, c. 301, §14 (AMD). 2013, c. 468, §31 (AMD). 2013, c. 517, §1 (AMD).

§6674. Interference with municipal shellfish aquaculture permit

1. Prohibition. A person may not knowingly interfere with the ability of a person who holds a municipal shellfish aquaculture permit to carry out the privileges granted to the permittee under that permit. Except for the permittee or the permittee's designee, a person may not take, disturb or molest any shellfish in the intertidal zone in the area that is included in a municipal shellfish aquaculture permit.

2. Penalty. A person who violates this section commits a civil violation for which a fine of not less than \$500 nor more than \$1,000 may be adjudged.

3. Restitution. In addition to the penalty under subsection 2, if a person violates this section by interfering with the ability of a person who holds a municipal shellfish aquaculture permit to carry out the privileges granted to that permittee under that permit, the court shall:

- A. Order that person to pay to the holder of the municipal shellfish aquaculture permit an amount equal to twice the replacement value of any damaged equipment on the permit site; and
- B. Direct that person to provide proof of payment of restitution under paragraph A to the commissioner.

§6673. Municipal shellfish aquaculture permit

A municipality that has established a shellfish conservation program as provided under section 6671 may, consistent with the rights of property owners, issue a municipal shellfish aquaculture permit to a person for the exclusive use of shellfish in a designated area in the intertidal zone to the extreme low water mark within the municipality for the purpose of shellfish aquaculture.

Municipal authority to issue a municipal shellfish aquaculture permit under this section does not limit in any way the authority of the commissioner to issue leases in the intertidal zone in accordance with sections 6072, 6072-A and 6072-B.

1-A. Application. A municipality shall review an application for a municipal shellfish aquaculture permit on a form supplied by the municipality.

The municipality may charge an application fee that reflects the costs of processing an application. The municipality shall publish a summary of the application in a newspaper of general circulation in the area that would be affected by the permit. A person may provide comments to the municipality on the proposed permit within 30 days of publication of the summary.

Prior to issuing a municipal shellfish aquaculture permit, a municipality shall hold a public hearing if requested in writing by 5 or more persons. The public hearing must be held in accordance with procedures established in ordinances adopted in subsection 3.

2-A. Decision. In evaluating a proposed municipal shellfish aquaculture permit, a municipal officer shall take into consideration the number and density of permits and leases in the area and may issue the permit if the municipal officer finds the proposed project meets the following criteria.

- A. The permit conforms to the municipality's shellfish conservation program.
- B. The permit will not cause the total area under all municipal shellfish aquaculture permits in the municipality to exceed 1/4 of the entire municipal intertidal zone that is open to the taking of shellfish.
- C. Issuing the permit is in the best interests of the municipality.
- D. The permit will not unreasonably interfere with ingress and egress of riparian owners.
- E. The permit will not unreasonably interfere with navigation
- F. The permit will not unreasonably interfere with fishing or other uses of the area. For purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and is subject to a pollution abatement plan that predates the permit application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years.
- G. The permit will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site affected by the permit and surrounding marine and upland areas to support existing ecologically significant flora and fauna.
- H. The applicant has demonstrated that there is an available source of organisms to be cultured for the site affected by the permit.
- I. The permit does not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park or docking facility owned by the

Federal Government, the State Government or a municipal government or conserved lands. For purposes of this paragraph, “conserved lands” means land in which fee ownership has been acquired by the municipal government, State Government or Federal Government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property.

A municipality shall review the Department of Conservation’s list of conserved lands compiled pursuant to section 6072, subsection 7-A, paragraph F prior to issuing a municipal shellfish aquaculture permit.

A municipality shall put its findings on each of the criteria listed in this subsection in writing and make those findings available to the public.

3. Municipal shellfish aquaculture permit. Prior to issuing a municipal shellfish aquaculture permit pursuant to this section, a municipality shall adopt ordinances that establish procedures for consideration of permit applications under the decision criteria in subsection 2-A, including but not limited to provisions for a public hearing process. Additionally, the municipality shall adopt ordinances designed to prevent speculative holding of permits. An ordinance proposed by a municipality under this subsection must be approved in writing by the commissioner prior to its adoption.

When approved, a municipal shellfish aquaculture permit must be forwarded to the commissioner. The municipality may charge a municipal shellfish aquaculture permit fee not to exceed \$100 per acre annually. The municipality may establish conditions and limits on the permit. A municipal shellfish aquaculture permit may be granted for a period of up to 10 years and is renewable upon application by the permittee. The municipality shall monitor and enforce the terms and conditions of a permit on an annual basis and submit

an annual report on permit activities to the department. Such information is considered landings data.

4. Renewals. A municipality shall give public notice for a municipal shellfish aquaculture permit renewal as required under subsection 1-A, and a hearing must be held if it is requested in writing by 5 or more persons. If a public hearing is required, it must be held in accordance with procedures established in an ordinance adopted under subsection 3. A renewal may be granted as long as the permit continues to meet the criteria of subsection 2-A. The findings of the municipality regarding the criteria in subsection 2-A must be in writing and made available to the public.

DEPARTMENT OF MARINE RESOURCES - PROCEDURAL RULES

CHAPTER 7

REQUIREMENTS FOR MUNICIPALITIES HAVING
SHELLFISH CONSERVATION PROGRAMS

TITLE INDEX

- 7.10 Definitions
- 7.20 Shellfish Management Plan
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- 7.40 Municipal Licensing of Shellfish Harvesters
- 7.50 Municipal Shellfish Conservation Activities
- 7.70 Intertidal Mussel Harvesting by Drag or Dredge
- 7.80 Municipal Aquaculture Activities Report

DEPARTMENT OF MARINE RESOURCES

Chapter 7 - Requirements for Municipalities having Shellfish Conservation Programs

7.10 Definitions

In addition to the definitions set forth in 12 M.R.S. §6001, the following definitions shall apply in interpretation of Chapter 7.

1. "Shellfish" means shellstock clams (surf clams, razor clams and soft-shelled clams; 12 M.R.S. §6001(41)), quahogs other than mahogany quahogs, and oyster shellstock (12 M.R.S. §6601(6)).
2. "Municipal Conservation Closures" means an area closed to shellfish harvesting by a municipality or regional program under a municipal ordinance and a municipal management plan, with permission from the Department, separate from the Growing Area classification, for specific reasons, such as, but not limited to, shellfish seeding, flat rotation or winter harvesting.
3. "Shellfish Management Plan" is a written description of the biological measures used to accomplish the management provisions in the municipal shellfish conservation ordinance, including but not limited to an annual review, budget, and objectives for the following year.
4. "Municipal Shellfish Conservation Ordinance" means a shellfish conservation program formally adopted by a municipality in accordance with 12 M.R.S. §6671(2) and (4) and follows the management provisions in accordance with 12 M.R.S. §6671(3).
5. "Municipal Shellfish Transplant Permit" means a permit issued to a municipality or regional program by the Department to possess undersized shellfish from areas classified as approved, conditionally approved, restricted, conditionally restricted or prohibited. The permit allows the municipality or regional program to possess undersized shellfish for the purpose of reseeding shellfish areas. In the absence of a permit, the harvesters and the municipal or regional program are in violation of 12 M.R.S. §6681.
6. "Period of issuance" means any twelve month period designated by the municipality, unless a municipality chooses to limit the number of licenses it issues in which case it shall mean the first 90 days during which a municipality issues shellfish harvest licenses each calendar year.

7.20 Shellfish Management Plan

1. Any municipality that implements a municipal shellfish conservation program as authorized under 12 M.R.S. §6671, must, with the assistance of the Department of Marine Resources (Department), prepare and adopt a shellfish management plan which consists of:
 - A. A written statement of goals and objectives the municipality plans to achieve as a result of its conservation program; and
 - B. A description of the various conservation measures the municipality intends to employ to reach those goals. The measures may include but are not limited to licensing, limiting the number of shellfish harvesters, restricting the time (hours, days or portion of the year) and area where harvesting is permitted, limiting the minimum size of shellfish taken, establishing a minimum size where a state minimum does not exist or establishing a more conservative minimum size, limiting the species or amount of shellfish taken daily by a class of harvester, transplanting or seeding of shellfish, protecting the resource from predators by fencing, trapping or other means.

2. The Shellfish Management Plan must be accepted by the Department prior to the Departments' approval of a Municipal Shellfish Conservation Ordinance.

7.30 Management Responsibilities

Municipalities that have an approved Municipal Shellfish Conservation Ordinance shall meet the requirements under 12 M.R.S. §6671 and the goals, objectives and conservation measures outlined in their Shellfish Management Plan; and they must implement the requirements outlined in this section. The municipality may appoint or elect a shellfish conservation committee to assist the municipality in executing its responsibilities. Municipal responsibilities include:

1. Establishing annually with approval from the Department at least 30 days prior to the period of issuance the number, type and fees of shellfish harvesting licenses to be issued using a Department-approved form.
2. Shellfish Resource Survey Requirement

Municipalities with an approved Shellfish Management Plan may be required to conduct resource surveys on a periodic basis of the commercially productive areas within the municipality classified as approved or conditionally approved, using Department-approved methods. The Department may require the municipality to conduct resource surveys prior to approving changes to their Municipal Shellfish Conservation Ordinance. The Department may also conduct resource surveys in lieu of or in conjunction with the municipalities.

3. Enforcing any municipal shellfish conservation ordinance by the certified Shellfish Warden including but not limited to those involving licensing and closures to shellfish harvest; and
4. Submitting annually, on a Department approved form, by April 1st, a complete and accurate Annual Municipal Shellfish Management Plan Review a report to the Department including the following information: statement of management goals and implementation actions, members of the shellfish committee or staff, shellfish committee meeting schedule, conservation credit information, summary of conservation closures/opening, summary of transplant activities, details on survey data, shellfish management activities undertaken, e.g. spat fall enhancement, predator controls, etc. and related expenses, number of shellfish harvest licenses sold, revenue from license sales and fines, funds raised or appropriated for shellfish management, production records or summaries of municipal wardens' activities for municipally managed areas, and funds requested for the coming fiscal year.

7.35 Revocation of Municipal Shellfish Conservation Ordinance

If a municipality violates or fails to enforce any provision of Chapter 7 or of the approved Municipal Shellfish Conservation Ordinance, or fails to meet Shellfish Management Plan objectives, the Commissioner may revoke approval of the Municipal Shellfish conservation ordinance. Prior to such revocation, the Commissioner shall give written notice to the municipality of the violation or failure, by certified mail, and of the Department's intention to revoke its approval and the basis for the revocation. The municipality has 30 days to respond in writing as to how it may correct the violation or failure or may request a hearing on the matter in accordance with the following paragraph.

The Commissioner shall advise the municipality it has the right to request that an adjudicatory hearing be held before the Department in conformity with 5 M.R.S., Chapter 375 subchapter IV prior to a making a final decision whether to revoke approval. The hearing request must be in writing and must be received by the Department no later than 10 days after receipt by the municipality of the notice of the Commissioner's intent to revoke the approval of that municipality's shellfish conservation ordinance.

The Municipality shall provide sufficient notification to the public of any conservation closure or opening by publishing, advertising and/ or posting in public places, an official municipal closure or opening notice signed by the Shellfish Warden or the Department issued permit, five (5) days prior to the initial closure or opening date. The method of notification must be approved by the Department prior to issuance of the permit.

2. Municipal Shellfish Transplant Permit Requirements

- A. A municipality or regional program with a Municipal Shellfish Conservation Ordinance must have a permit from the Department to possess undersized shellfish. In the absence of a permit, the harvesters and the municipal or regional program are in violation of 12 M.R.S. §6681. Municipalities must apply at least 10 business days prior to the requested date in writing on Department approved forms to the Department for a Shellfish Transplant Permit.
- B. Shellfish taken from Growing Areas classified as restricted, conditionally restricted in the open status or prohibited must be closed by the Department for specified amounts of time. Only seed may be transferred from Growing Areas classified as prohibited. If product larger than seed is proposed to be transplanted by a municipality for relay purposes from areas classified as restricted or conditionally restricted in the open status, the Department will issue a permit for such activities at the Commissioner's discretion based on an assessment of the overall performance of the Municipal Shellfish Conservation Ordinance and their ability to control restricted area relay activities and enforce closed areas.
 - 1. The Municipality must have a Warden with a minimum of 100 hour MCJA training and certification.
 - 2. The warden must be employed by the town for a minimum of 20 hours a week.
- C. Seed purchased from out-of-state hatcheries require an Application for Importation, Introduction and/or Relay of Shellfish Into Maine Coastal Waters pursuant to Chapter 24.10. Municipalities or regional programs must apply at least 30 days prior to the requested event, in writing, to the Department.
- D. Municipalities must apply at least 30 days prior to the requested date, in writing, to the Department for a Shellfish Transplant Permit using a Department approved form.
- E. Once a permit is issued, a municipality or regional program must adhere to the following requirements while transplanting shellfish from Growing Areas classified as restricted, conditionally restricted in the open status, or prohibited areas:
 - (1) The transplanting must take place during daylight hours.
 - (2) The transplanting may only take place on the day(s) designated in the permit unless the municipal or regional program secures written permission from the Department.
 - (3) The transplanting may only take place under the supervision of the municipal shellfish warden, Department staff member or Department authorized relay supervisor (Chapter 21).
 - (4) The transplant supervisor shall have a copy of the permit with them at all times during the activity. Absence of a permit shall be prima facie evidence of a violation of this regulation.
 - (5) The supervisor must keep accurate records on a Department approved form (Activity Log) and a copy of the Activity log must be sent to the Department within 10 days of

the activity. The permit holder must maintain a copy for two years and make it available to the Department upon request.

- (6) The harvest crew must remain in the permitted source area under immediate supervision of the municipal shellfish warden, Department staff member or Department authorized relay supervisor at all times.
- (7) Any harvesting violation shall nullify and void the permit. Any failure to comply with permit conditions shall be grounds for refusal of future permit applications until the Commissioner deems the municipality can meet the permit conditions.
- (8) Once a permit is issued, the permit holder must notify Marine Patrol the morning of the transplant. The information required for Marine Patrol includes, but is not limited to, the following:
 - (a) The name and contact information of the transplant supervisor.
 - (b) The source area and the transplant area
 - (c) The method and route of the transportation of seed to the transplant area.
 - (d) The departure point from the harvest area and the point of arrival for the transplant area.

7.70 Intertidal mussel harvesting by drag or dredge

1. Municipal responsibilities

A municipality with an approved municipal shellfish conservation program may, specify intertidal areas to be limited for mussel harvesting by drag, in accordance with 12 M.R.S. §6671. The municipality's specified intertidal areas and procedures for enforcement shall be submitted to the Commissioner for approval as part of its Municipal Shellfish Conservation Ordinance. Once these specified areas are approved, they will be posted on the Department's website. The municipality shall provide sufficient notification to the public of any area limited for mussel harvesting by drag by publishing, advertising and/or posting in public places, an official municipal notice signed by the shellfish warden five (5) days prior to the initial implementation date. The method of notification must be approved by the Department prior to approval of areas limited for mussel harvesting by drag.

Upon receipt of a request for a recommendation regarding a permit, presented in accordance with Chapter 7.70(2), the municipality shall provide its recommendations to the applicant within 21 days.

2. Intertidal mussel harvesting permits

Prior to issuance of an Intertidal Mussel Harvest permit in an approved, municipally defined area(s), the applicant shall submit their request to, and consult with the municipality, and shall obtain the municipality's recommendation in writing. The permit application, (provided to the applicant by the Department) and municipal recommendation must be provided to the Department by the applicant for permit consideration, in accordance with 12 M.R.S. §6671(3)(A)(5).

The application shall include the harvester's name, address, business phone, email address, fax number, vessel name, mussel harvesting license number, locations selected, start and end dates of harvest activity, targeted quantity of seed mussels and or market size product, date of application, and a copy of the municipality's recommendations.

3. Compliance

Any failure to comply with permit conditions shall be grounds for refusal of future permit applications until the Commissioner deems the applicant can meet the permit conditions.

7.80 Municipal aquaculture activities report

In accordance with 12 M.R.S. §6673(3) the municipality shall submit an annual report, on forms provided by the Department, to the Commissioner on its permitted aquaculture sites.

CHAPTER 7

REQUIREMENTS FOR MUNICIPALITIES HAVING
SHELLFISH CONSERVATION PROGRAMS

INDEX

EFFECTIVE DATE:

April 1, 1986

AMENDED:

August 25, 1998 – Section 10, 30, and 40

May 18, 1999 – Section 40

November 24, 2008 – Section 70 added

October 7, 2014- Sections 10, 20 30, 40, 50, 60 (becomes 35), 70 amended; Section 80 added

Shellfish Management Goals

The first task in establishing a Shellfish Program is to develop a plan that includes a statement of general goals and how those goals will be accomplished.

- Control Access- The adoption of a municipal or regional shellfish ordinance allows for the ability to control or reduce access to the shellfish resources within its limits.
- Maximize individual harvest- Most towns strive for this goal through utilizing and implementing management controls and activities available under a shellfish program that allow those holding a municipal license to earn a living from commercial shellfish harvesting.
- Provide maximum utilization- Some towns are more interested in providing harvesting opportunities to as many residents as possible, usually by limiting harvesting to recreational.
- Maintain a sustainable yield- This goal can be difficult to obtain if recruitment is hindered by environmental factors, predation or if overharvesting is allowed to take place.
- Increase the shellfish resource- a number of towns are attempting management activities to protect from or remove predators, reseeding or transplanting shellfish, enhancing recruitment, or experimenting with techniques and gear to develop more opportunities and improve success of traditional methods.

Shellfish Management – Activities

- *Setting the number and types of licenses* has the greatest impact on the resource; a number of towns rely solely on this activity to manage their resource (known in other fisheries as limited entry)
- *Establishing conservation areas*- This is done for a number of reasons which may include: protecting areas that have been seeded from harvest activity until the seed has reached legal size; rotate flats to ensure certain areas are available to harvesters for

winter digging, and to rotate with other conservation areas to even out effort, particularly for areas prone to overharvesting.

- *Restricting the amount, time, or season of harvest*- Some towns don't limit the amount of shellfish a commercial harvester can take, but some do. Though most programs don't limit a commercial harvest, to achieve their management goals some do choose to limit the amount of shellfish a commercial harvester can take. State law for personal use is no more than one peck of shellstock or 3 bushels of hen or surf clams in one day unless municipal shellfish programs further limit the amount. Time restrictions usually involve prohibiting digging at night or on certain day(s) of the week. Sunday digging is prohibited in some towns. Some towns also have a maximum size limit. Harvest seasons are generally imposed due to water quality considerations
- *Seeding with hatchery stock*- A number of towns have worked with both public and private hatcheries in an effort to augment natural recruitment through seeding.
- *Reseeding from closed or high density areas*- For towns with areas of high density, reseeding or transplanting juvenile (sublegal) shellfish is the preferred method to enhance natural recruitment.
- *Protection from predation with traps or nets*- Fencing used to be common, but has fallen out of favor due to cost and labor intensity. Nets are often used in seeding/reseeding projects, as seed clams are particularly vulnerable.
- *Enhancing spatfall with brushing, roughing, nets, etc.*- Brushing originated downeast, but is not routinely done in most towns. The placement of partial barriers (such as pieces of brush, fences

or nets) on the flats works by slowing currents and forming eddies which encourage spat to settle in the desired areas/location. Experiments have previously and are currently being completed to refine traditional techniques and gear (such as nets and clam or recruitment boxes) that provide information that is important when planning enhancement projects. The results of these projects can vary from one year to the next since the success depends upon presence and abundance of larvae to settle.

Shellfish Management Tools

- *Clam Flat Surveys*- shellfish surveys provide information that can be helpful in making informed management decisions. Surveys estimate the “standing crop” volumes of legal clams at one time, average density and the size distribution of all clams. Since clam populations are dynamic, a survey is a snapshot estimate of the population at the time the survey is completed. There are a few different survey methods; the coffee can survey is one and the clam population survey is another. Both consist of removing, counting and measuring the length of shellfish from small representative sample plots in a flat. Population surveys consist of counting and measuring shellfish taken from a two-square foot plot every 100 feet along a series of transects forming a grid over a flat. Information obtained includes size distribution, average density and standing crop.
- *Production Data Acquisition*- The main source is shellfish dealer reports. Production or landings data is one side of the resource assessment coin, with surveys being the other. Surveys tell you what is in the flats, production data tells you what is coming out.

- *Harvester Questionnaires*- A few towns with recreational only digging use this to obtain information about the resource, as well as digging activity. A town can require commercial harvesters to keep logs of their digging activity in order to be eligible for a license the next year.
- *Committee Meetings*- are where the “business” of shellfish management takes place. The most successful programs have regularly scheduled monthly meetings. Towns which encourage harvester participation in the meetings gain a valuable source of information and feedback.
- *Consultants*- Public and private consultants are available and used by some towns and provide and perform various services from administration to developing and completing experiments. They conduct shellfish surveys and analyze the data, but most municipalities rely on DMR’s area biologists for assistance.
- *Conservation Credits*- In order to accomplish surveys and reseeded, conservation credits are often given to diggers in exchange for assistance with these projects. Some towns also give credits for meeting attendance and other activities.
- *Enforcement*- A municipality that enacts a shellfish ordinance is responsible for enforcing it. Towns must hire a shellfish warden, either in cooperation with a neighboring town or on their own. Finding, funding and maintaining a shellfish warden is often one of the most difficult part of a shellfish ordinance. A municipal shellfish warden must be certified by DMR within one year of application. The DMR provides an established program that provides training; applicants who successfully complete the program achieve certification.

Municipal Administration

1. **Board of Selectman/Council**

- Administers the program-May appoint a committee
- Enforces the ordinance- Appoints a warden(s)
- Conducts license sales- although the procedure is often spelled out in the ordinance, the sale itself is undertaken by the town office staff.
- Determines conservation area status- Recommendations of shellfish committees regarding openings/closings must be approved through the selectman/town council may hold a public hearing. This process may vary from town to town depending upon how the process is spelled out in each town's ordinance.

2. **Shellfish Committee- (where most of the administrative work is done)**

- Establishes license numbers with DMR- DMR's area biologist should be involved with this process. License numbers must be approved by DMR.
- Recommends conservation closings/openings- while the reasons for openings/closures are varied, the shellfish committee discusses proposals and formulates plans.
- Prepares and submits a budget to the municipality- some committees get heavily involved, others simply act in an advisory capacity.
- Reviews and suggests amendments to the ordinance when needed. - Ordinance amendments allow a committee to tailor the ordinance to the town. The ordinances for some towns are so complex they require review by a lawyer. Amendments must be approved by DMR and voted upon by town council or town meeting.
- Submits an annual shellfish management review to the DMR and municipality.

3. **Town clerk-** The town clerk is the official contact person for all legal notices and other correspondence sent to the town by DMR. Documents sent to the town may include notifications of area closures, responses for requests for allocation, transplanting, or conservation closure actions, and forms such as the annual management review. The town clerk is responsible for seeing that the documents get to the proper individuals in a timely manner. The town clerk also conducts shellfish license sales and may assist in the preparation of the Annual Management Review.

4. **Conservation officer or warden-** This is a key position in any successful shellfish management program. Most towns have one warden; some have 2 or 3, and other towns share a warden. Wardens must be certified by DMR within one year of application in order to enforce a town's ordinance.

Duties include:

- Enforcement of the shellfish ordinance
- Issuance of summons for violations
- Preparation of activity reports which are included in the towns annual review process.

How to run a basic meeting-Parliamentary Procedures

Information taken from The Simplified Handbook of Parliamentary Procedure. University of Arkansas, Division of Agriculture Research & Extension. (Link on bottom of page to full document)

This is designed to help experienced and inexperienced leaders and members conduct meetings of high quality and efficiency and give them guidance in organizational structure and functions. Knowledge of parliamentary rules is helpful to participants on every level: members need to be aware of methods of good procedure and leaders need to be knowledgeable in the use of proper techniques.

Good parliamentary procedure ensures justice to everyone, prescribes order, reflects kindness and generosity, provides constructive use of limited time and gives one a sense of self-confidence.

No organization can exist without members. The qualifications for membership, which are determined by the organization, should be clearly stated in its governing rules (e.g ordinance). Some organizations define in their governing documents different classes of membership, not all of which include full participation in the proceedings of the organization; however, the term “member” refers to a person who has full participating rights.

When one joins an organization, one enters into a “contract of membership” with the organization. Should the member feel that change is necessary, it should be brought about by working fairly through the proper channels within the current rules.

Membership carries with it responsibilities as well as privileges. Such a list of generally accepted privileges and responsibilities of membership should include, but should not be limited necessarily to, the following:

A. Privileges

To attend meetings.

To make motions and enter into debate.

To vote.

To nominate when appropriate.

To be a candidate for office when requested.

To insist on the enforcement of the rules of the organization and of parliamentary law based on *Robert’s Rules of Order, Newly Revised*, or other adopted authority.

To review official records of the organization, including the most recent governing document and the minutes of previous meetings.

B. Responsibilities

To promote the object and purposes of the organization.

To comply with and uphold the organization's governing rules.
To attend meetings regularly and punctually.
To give one's undivided attention to the business as well as the program of the meeting.
To abstain from acts or remarks outside the meetings that will in any way interfere with the work of the organization and/or its officers.
To hold office when requested.
To perform conscientiously any duty assigned and accepted in the organization.
Attends meetings regularly and arrives on time.
Speaks up during the meeting, bringing out important points and contributing from one's own experiences.
Learns to be brief, because brevity wins the goodwill of other members. Refrains from being technical or more strict than is absolutely necessary for the good of the meeting.
Participates with good humor; brightens up the meeting and makes way for differing viewpoints.
Faces opposition without taking offense or feeling there was personal criticism where none was intended.
Serves willingly to the best of one's ability, thus gaining experience with each added duty.
Confines oneself to the question before the assembly and avoids personalities.

Every meeting should have structure and an agenda. The basic outline of proceedings are:

1. Call to order
2. Roll Call (only necessary if a quorum is required or attendance is recorded)
3. Reading and approval of previous meeting minutes.
4. Officers reports if needed
5. New business
 - A. Follow a predetermined agenda, stay on task.
 - B. Place times on the agenda to stay on track, set a time limit for each topic.
 - C. The chair will call each agenda item, and keep the meeting in control, and timely.
 - D. Votes should be taken on each item discussed, whether to complete or continue the agenda item. To call for a vote a motion must be made, and seconded, then a vote is held.

To properly make a motion, the following procedures are followed:

1. Member rises and addresses the Chair.
 - a. "Mr. /Madam President or Chairperson."
 - b. Chair recognizes the member.
2. Member: "I move that _____ (states motion)."
3. Second to motion (not necessary to stand).
 - a. "I second the motion." If the motion comes as a recommendation from two or more members, the motion does not need a second.
4. Chair states motion: "It has been moved by (name) and seconded that _____."

5. Discussion: If the motion is debatable, every member has the right to debate; the Chair refrains from debate while presiding. The Chair carefully determines the order in which members are recognized to speak, giving first opportunity to the pro poser of the motion. Care should be given to assure that discussion is related to the question.
6. The Chair says, "If there is no further discussion, the motion is _____ (restate motion)."
7. Vote: The Chair says, "All those in favor of _____ (the motion stated) say 'aye.' Those opposed say 'no.'"
8. Result of the vote is stated by the Chair. "The motion is carried" or "the motion is lost."

When all agenda items are completed, the Chair will call to adjourn the meeting.

More detailed specifics in regards to procedure can be found in the following link:

<https://www.uaex.edu/publications/pdf/MP350.pdf>

How to run a basic meeting

- The Chair controls the meeting in all aspects.
- Run the meeting from a predetermined agenda.
- Members will need to make motions, discuss, and vote on action items.
- The Secretary should record motions, discussion, and votes for accuracy and records.

EXAMPLE OF A MOTION TO REDUCE LISCENSES:

Member 1: "I'd like to make a motion to reduce our licenses from 35 down to 30."

Member 2: "I second that motion"

Chair: ok, lets open up for discussion on why.

Discussion occurs and can include the audience as well as the committee members, all should be recognized before they speak by the chair.

Chair: "let's call the vote. All in favor raise hands. [pause while vote is recorded by secretary] All opposed raise hands. The motion passes 5 in favor 0 opposed."

On to our next item of business

Warden Training Information

In-person training:

- Untrained people have up to 1 (one) year to attend the DMR Warden training in order to become certified. With the pending changes to Chapter 4, New wardens, once approved by DMR will now be able to patrol and enforce an ordinance prior to certification (they are still required to attend the next available certification class).
- Trained and certified wardens must attend the DMR training every 3 (three) years in order to retain their certification.

Online training:

Wardens who haven't completed the Maine Criminal Justice Academy pre-law enforcement training (also known as the 100-hour course) or who aren't certified law enforcement officers **must** complete online training, as well as the in-person training, before they can be certified as a municipal shellfish warden. The online training needs to be completed only once by a warden. Wardens will still attend in-person training every three years for a refresher session.

This online training was developed to give wardens valuable information regarding foundations of law enforcement; laws and legal issues; use of force, arrest and liability; human relations; and vital skills. There is a short quiz at the end of every segment, and you must pass all of the quizzes in order to complete the online training.

Wardens are assigned usernames and passwords in order to get into the online training course.

New Certification for Shellfish Conservation Warden

Return form to:

Department of Marine Resources, Attn: Angel Wilson PO Box 8, West Boothbay Harbor, ME
04575

Telephone: (207) 633-9515 - Fax: (207) 633-9579

Please refer to DMR Regulations Chapter 4 for warden requirements

First Name: _____ Last Name: _____ Middle Initial: _____

Mailing Address: _____ Town: _____ Zip: _____

Phone # 1: _____ Phone # 2: _____ Email Address # 1:

Email Address # 2: _____ Date of Birth: _____

Social Security # (Required): _____

Valid Maine Driver's License? Yes ___ No ___ High School Diploma/Equivalent?:
Yes ___ No ___

Full Time Warden? ___ Part Time Warden? ___ Volunteer? ___

Convicted of violation of marine resource violation within past 6 years? Yes ___ No ___

Convicted of crime? Yes ___ No ___

Law Enforcement Training? Yes ___ No ___

Power of Arrest? Yes ___ No ___ Carry Firearm? Yes ___ No ___

(Please mark specific training(s) below and attach a copy of relevant certificates or additional information):

Maine Criminal Justice Academy pre-service course _____ **Firearms** _____
CPR _____

Small Craft Handling & Safety _____ **Basic First Responder** _____ **Self**
Defense _____

Applications should be received by February 1st in order to receive training in the current year.

- ❖ **Untrained warden has up to one year to attend DMR Warden Training. Wardens with no other enforcement training cannot enforce a town ordinance until they are trained by DMR.**
- ❖ **Trained wardens must attend DMR Warden Training every three years.**

Note: Signature of applicant authorizes DMR to check applicant's background for criminal record. If applicant has the **power of arrest and/or carries a firearm**, he or she must complete the appropriate **MCJA** course prior to DMR certification.

Signature of Applicant

Date

DEPARTMENT OF MARINE RESOURCES

CHAPTER 4

MUNICIPAL SHELLFISH CONSERVATION WARDEN CERTIFICATION

TITLE INDEX

- 4.10 Certification
- 4.20 Minimum Qualifications
- 4.30 Disqualifying Conduct
- 4.40 Recertification
- 4.50 Revocation, Suspension or Refusal to Renew Certification
- 4.60 Performance Standards

DEPARTMENT OF MARINE RESOURCES

Chapter 4 Municipal Shellfish Conservation Warden Certification

4.10 Certification

- A. Municipal Shellfish Conservation Wardens must obtain certification through the Maine Department of Marine Resources (MDMR). Candidates for the position of Municipal Shellfish Conservation Warden must make written application on the approved form to the MDMR for certification. Applications must include a formal written nomination from the appointing municipality. Employment background checks will be conducted by Maine's Marine Patrol on all applicants. Applicants already employed in a certified law enforcement capacity will have backgrounds reviewed for conservation violations only.
- B. Based on a review of the application and employment background investigation for each candidate, the MDMR will approve, conditionally approve, or deny the request for certification. Applicants will be sent written notice of the MDMR decision within thirty days of the review. If applicable, the written notice will include and identify conditions for certification or reasons for denial.
- C. Municipal Shellfish Conservation Wardens who will carry a firearm during the performance of their duties or who will have the power of arrest must provide proof of certification from the Maine Criminal Justice Academy in order to achieve a MDMR certification.
- D. Any applicant approved or conditionally approved to become a Municipal Shellfish Conservation Warden may be granted a temporary certification waiver; however, the candidate must successfully complete the next available MDMR Shellfish Conservation Warden Certification Course. In order to maintain certifications issued under this part, individuals must complete additional training requirements at a minimum of three-year intervals. Certification or recertification waivers may only be granted by the Commissioner of the MDMR.

4.20 Minimum Qualifications

A person must meet the following minimum qualifications for certification as a Municipal Shellfish Conservation Warden:

- A. The applicant must have a high school diploma or the equivalent. This requirement will be waived for municipal wardens who were certified prior to the effective date of this rule (March 19, 2001).
- B. The applicant must have a valid motor vehicle operator's license. If the applicant has an out of state license, a Maine license must be obtained as prescribed under Maine law.
- C. The applicant must be 21 years of age or older.
- D. The applicant must be able to read and write at a level necessary to successfully complete the Department of Marine Resources Municipal Warden Conservation Course.

4.30 Disqualifying Conduct

- A. The applicant must not have been convicted of a violation of any marine resource law or regulation enacted or adopted under Title 12 of the Maine Revised Statutes, within the last six years. A person may make application for consideration to the Commissioner of the Department of Marine Resources or designee for a waiver of this provision.
- B. The applicant must have no convictions for Murder, Class A, Class B, Class C, Class D or Class E crime, unless the act committed was a Class D or E crime and a violation of Title 12 Maine Revised Statutes and was committed prior to the last six years. A person may make application for consideration to the Commissioner of the Department of Marine Resources or their designee for a waiver of this provision.
- C. The applicant must not falsify or misrepresent any information during the application process or background investigation
- D. The applicant must be able to provide reliable courtroom testimony for prosecution purposes.

4.40 Recertification

- A. Should an individual's certification not be renewed or maintained, the person must apply in writing to the MDMR for recertification.
- B. An individual must complete certification training through the MDMR before certification may be reinstated under this section.

4.50 Revocation, Suspension or Refusal to Renew Certification

- A. The Commissioner of the MDMR may revoke or deny certification if one or more of the following conditions exists:
 - (1) An individual fails to meet the performance standards set forth in Chapter 4.60;
 - (2) An individual faces disciplinary action or certification sanctions pursuant to 25 M.R.S §2806-A.
 - (3) An individual violates a Marine Resource's law or regulation;
 - (4) Conditions imposed under a conditional certification have not been satisfied;
 - (5) An individual fails to successfully complete or maintain the required certification training;

(6) An individual does not meet, or no longer meets, the minimum qualifications set forth in Chapter 4.20 or;

(7) An individual has engaged in “disqualifying conduct” established in Chapter 4.30.

B. Any suspension, revocation or refusal to renew a Municipal Shellfish Conservation Warden certificate pursuant to Chapter 4.50 shall require notice and allow opportunity for a hearing in accordance with 5 M.R.S. Chapter 375, subchapter 4.

4.60 Performance Standards

All Municipal Shellfish Conservation Wardens shall:

- A. Enforce the municipality's shellfish conservation ordinance in accordance with the law;
- B. Enforce the two-inch clam law (12 M.R.S. §6681), contaminated and polluted flats (12 M.R.S. §6172 and §6621) and to serve all processes pertaining to the local municipal ordinance.
- C. Adhere to principles of effective law enforcement to include, but not limited to:
 - (1) Proper use of force;
 - (2) Adherence to rules of evidence and legal procedure; and
 - (3) Proper use of arrest and summoning powers.

The State's Roll

1. Natural Resources Trustee

- The shellfish resource belongs to the people of Maine. Public ownership established by the Colonial Ordinances. Although towns have been involved since the early 1900's shellfish management has always been authorized by the state.
- Management of the resource is to benefit the people. The primary goal of management is to provide benefit to those utilizing the resources, the state must also protect and preserve those resources through appropriate conservation measures.
- The law allows DMR to delegate to municipalities. Realistically the State does not have the resources to manage shellfish, therefore, this exception has been made in contrast with management of other marine resources.

2. DMR: Authority and Responsibility

- Promulgates regulations setting program/ordinance criteria
- Review's programs/ordinances for consistency with regulations
- Reviews and approves/denies/rescinds:
 1. Program/ordinances
 2. License allocation requests
 3. Conservation Closings/Openings
 4. Transplant/Relay requests

3. DMR: Administration

A. Municipal Shellfish Program Supervisor

- Makes all approval/denial decisions
- Sets policy and resolves legal issues
- Directs the area biologists

B. Area Biologists- The primary point of contact for the shellfish management program. Together these individuals provide technical assistance for all Municipal Shellfish programs and:

- Consult with municipalities
- Assist with ordinance preparation/amendments- Whether a town is just coming on board or a committee of a well-established program is considering an amendment to their ordinance, the area biologists are often able to make suggestions to expedite the process.
- Provide interpretation of applicable laws- Although they are not lawyers, the area biologists can provide committees with the official interpretation of statutes, regulations, and rules to help them avoid legal problems in administering the programs.
- Conduct survey training and analyze survey data- This service is provided by the area biologist but can be obtained through trained volunteers, shellfish consultants, and the University of Maine Extension Service.

- Assist in license number determination- Consultation with the area biologist is a requirement to establish license numbers; advice is always available.
- Recommend appropriate management tool use (and strategies)- Area biologists transfer their knowledge of what works and what doesn't work among various towns.
- Monitor compliance-
 - A. Review new and amended ordinances
 - B. Review requests for license/closures/transplants for consistency with management goals
 - C. Conduct annual shellfish management review to determine level of conservation activity being undertaken.

4. Municipal Authority

Under State Statute 6671:

- Raise and appropriate conservation program funds
- Adopt, amend or repeal a conservation ordinance
- Regulate and prohibit the possession of shellfish
- Fix the amount of shellfish that may be taken
- Provide enforcement
- Open and close flats under specified conditions
- Fix qualification for a license
- Fix license fees
- Enter reciprocal municipal agreements
- Establish a shellfish management committee

Requirements under DMR Regulation Chapter 7-

- Establish the number of shellfish license
- Enforce shellfish conservation ordinance
- Provide an annual report describing shellfish management activities undertaken

Under Model Ordinance-

- Suspend the license of ordinance violators

License Allocation Request Form

Purpose: Municipalities or regional programs are required annually to submit a license allocation request form to DMR, for the number of shellfish licenses to be available for issuance in the upcoming licensing year. . The purpose of this form is to simplify the request and ensure that pertinent information is provided.

Instructions:

1. Please contact your Area Biologist to review your license allocation request or if you have any questions.
2. This form is provided annually in conjunction with the Annual Management Review packet, and is also always available online as a fillable form. Completed forms can be submitted through email, mail or fax.
<http://www.maine.gov/dmr/msf/forms/index.htm>
3. Fill out all sections that apply.
4. Put a "0" or a dash in any lines that do not apply.
5. Submit the completed form to DMR at least 30 days prior to the date licenses go on sale. This allows for processing by the state and gives the town time to meet the requirement of publishing license information not less than 10 days prior to the date they go on sale

Openings/Closings

Purpose: Prior to opening or closing of an area of a municipality to shellfish harvesting, the municipality needs to review the status of the resource to be affected, secure the recommendation of the area biologist, and receive the approval of DMR. The purpose of this form is to ensure that the municipality submits all of the information necessary to obtain DMR approval for conservation closures and subsequent openings.

Instructions:

1. Fill in all sections that apply completely
2. Submit a form for each "event"
3. Consult your area biologist for help when needed
4. Forms are available online for prefillable option.
<http://www.maine.gov/dmr/msf/forms/index.htm>
5. Submit the completed application to DMR at least 20 business days prior to the requested date. This allows for processing and approval of the application as well as the mandatory 5 days advertising by town clerk.

Transplant/Relay Applications

Purpose: This form provides the information necessary to obtain a permit from DMR to transplant sub-legal size shellfish for the purposes of reseeding to other areas. This permit also allows the harvest of seed clams from closed areas, providing the receiving flats are closed for 6 months. Relay of legal size clams from a restricted area to receiving flats must be closed for at least 60 days.

Instructions:

6. Fill in all sections that apply completely
7. Submit a form for each "event"
8. Consult your area biologist for help when needed
9. Forms are available online for prefillable option.
<http://www.maine.gov/dmr/msf/forms/index.htm>
10. Submit the completed application to DMR at least 10 business days prior to the requested date for transplant and 30 days prior to requested date for relay.
11. You must also submit a Shellfish Transplant Activity Log to the DMR within 10 days of the transplant activity.

Municipal Shellfish Management Review

Purpose: These forms need to be completed in full annually for any towns that have a Municipal Shellfish Ordinance. They are available online in a fillable format.

<http://www.maine.gov/dmr/msf/forms/index.htm>

For assistance in completing forms, please contact your area biologist. (see appendix for directory)

1. All sections must be completed
2. Put a "0" or a dash in areas that do not apply, do not leave spaces empty.
3. Be sure activities outlined are supported by your ordinance.
4. Submit the completed forms to DMR no later than April 1st annually by sending to:

Shellfish Program Coordinator
P.O. Box 8
194 McKown Point Rd
West Boothbay Harbor, ME 04575
Or email to:

Angel.wilson@maine.gov

Region 1 - Pete Thayer	Region 2 - Hannah Annis	Region 3 - Heidi Leighton
Biddeford	Newcastle	Mount Desert
Kittery	Damariscotta	Bar Harbor
York	Bristol	Southwest Harbor
Ogunquit	South Bristol	Swans Island
Wells	Bremen	Gouldsboro
Brunswick	Waldoboro	Steuben
Kennebunkport	Friendship	Milbridge
Arrowsic	Islesboro	Harrington
Scarborough	Searsport	Addison
Cumberland	Stockton Springs	Jonesport
Yarmouth/N Yarmouth	Penobscot	Beals
Chebeague	Brooklin	Jonesboro
Freeport	Deer Isle	Roque Bluffs
Harpswell	Stonington	Machiasport
Georgetown	Blue Hill	East Machias
West Bath		Cutler
Phippsburg	Regional Committee	Whiting
Woolwich	Cushing	Lubec
Wiscasset	St. George	Edmunds/Trescott
Westport	South Thomaston	Pembroke/Perry
	Thomaston	
	Warren	
Regional Committee	Regional Committee	
Boothbay	Franklin	
Boothbay Harbor	Hancock	
Edgecomb	Lamoine	
Southport	Sorrento	
	Sullivan	
	Trenton	
Pete Thayer	Hannah Annis	Heidi Leighton
Phone: (207) 633-9539	Cell: (207) 949-4498	Phone: (207) 434-5922
Cell: (207) 592-9384	Fax: (207) 629-0416	Cell: (207) 350-6995
Fax: (207) 633-9579		Fax: (207) 434-5923
pete.thayer@maine.gov	hannah.annis@maine.gov	heidi.leighton@maine.gov
Denis-Marc Nault, Shellfish Program Supervisor	Angel Wilson-Shellfish Program Coordinator	
Phone: (207) 422-2092	Cell: (207) 592-0512	Phone: 633-9515
Fax: (207) 629-0414	denis-marc.nault@maine.gov	angel.wilson@maine.gov
	Mailing Address	
	Municipal Shellfish Program	
	DMR, P.O. Box 8	
	West Boothbay Harbor, ME 04575-0008	

[NOTE: Items in italics are optional, or in the case of amounts and dates, variable to the extent allowed by law]

SHELLFISH CONSERVATION ORDINANCE

Town of *Myaville*

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 *Myaville*, 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 harvesting is permitted.
- D. Limiting the minimum size of shellfish taken.
- E. Limiting the amount of shellfish taken daily by a harvester.

3. 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 whatever resource your town is managing for. i.e...razor clams, quahogs, soft shelled clams, etc.

D. Municipality: Refers to the Town of *Myaville*, Maine.

E. Period of Issuance: Any twelve month period designated by the municipality, unless a municipality chooses to limit the number of licenses it issues in which case it shall mean the first 90 days during which a municipality issues shellfish licenses each

calendar year. The period of issuance shall be the same for both residents and nonresidents.

F. Personal Use: For consumption or use by oneself, by members of the immediate family or by invited guests.

4. Shellfish Conservation Committee: The Shellfish Conservation Program for the Town of *Myaville* will be administered by the Shellfish Conservation Committee consisting of *seven* members to be *elected annually or appointed by selectmen/council*.

The Committee's responsibilities include:

A. Establishing annually in conjunction with the Department of Marine Resources the number, type and fees of shellfish harvesting licenses to be issued in accordance with DMR Regulations Chapter 7.30(1).

B. Reviewing annually the status of the resource using the results of clam flat, harvester or dealer surveys and other sources of information and preparing in conjunction with and subject to the approval of the department a plan for implementing conservation measures.

C. Submitting to the Board of Selectmen/Council proposals for the expenditures of funds for the purpose of shellfish conservation.

D. Keeping this ordinance under review and making recommendations for its amendments.

E. 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.

F. Implementing conservation closures and openings or recommending conservation closures and openings to the Board of Selectmen/Council in conjunction with the Area Biologists of the Department of Marine Resources.

G. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other committee activities.

H. Recommending and implementing predator control projects.

I. Implementing an intertidal mussel management plan.

5. Licensing: Municipal Shellfish Harvesting 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 license issued by this municipality as provided by this ordinance. A Commercial Harvester must also have a valid State of Maine Commercial Shellfish

License issued by the Department of Marine Resources prior to selling any shellfish. An individual is not required to hold a state commercial license prior to obtaining a town commercial license.

A. Designation, Scope and Qualifications:

- 1) Resident Commercial Shellfish License: The license is available to residents of the municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.
- 2) Nonresident Commercial Shellfish License: The license is available to nonresidents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.
- 3) Residential Recreational Shellfish 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 personal use only.
- 4) Nonresident Recreational Shellfish License: The license is available to any person not a resident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in any one day for personal use only.
- 5) License must be signed: The licensee must sign the license to make it valid. License must be in possession when engaged in harvesting. By signing the license, the harvester acknowledges that they must submit to inspection by the municipal shellfish warden.

(Additional license categories such as Junior/Student Commercial, Junior/Student Recreational, Senior Commercial, and Senior Recreational allowed as long as defined in this section.)

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 the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes. A copy of the notice shall be provided to the Commissioner of Marine Resources.

- 1) 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 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. Fees: Applicants should submit fees in full upon issuance of a license. The Town Clerk shall pay all fees received to the Town Treasurer except for \$1.00 of each license, which will be retained by the clerk as payment for issuing the license. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation and enforcement.

D. License Allocation Procedure:

1) License sales procedures shall be determined by the Shellfish Conservation Committee, approved by the Town Council/Board of Selectmen, and submitted to the Commissioner of Marine Resources for concurrence at least 30 days prior to the licenses going on sale.

2) After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to the first day of the period of issuance, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.

3) Licenses may be returned to the town voluntarily, and reissued to another person at the current fee according to the procedures established in this ordinance.

E. Limited License Sales: The number of licenses issued may be limited and will be issued according to the Municipal License Allocation Request as approved by DMR.

1) The Town Clerk shall issue licenses to residents and nonresidents as allocated for the first 90 days of the period of issuance after which any unsold licenses shall be made available to residents and nonresidents alike on a first-come, first-served basis or by lottery, at the approved fee per available license class.

F. Unlimited License Sales: When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year;

1) The Town Clerk shall issue licenses as allocated. On the first day of license sales, the total number of non-resident commercial licenses shall be issued in accordance with DMR Regulations Chapter 7.4 section 1. Thereafter, non-resident licenses will be issued in accordance with the 10% rule as described in 12 M.R.S.A. §6671(3-E) and DMR Regulations Chapter 7.4, Section 2, Table 1.

2) For each recreational license category, the Town Clerk shall issue one license to a resident and one to a nonresidents; thereafter one nonresident license will be issued for every ten additional resident licenses issued.

G. License Expiration Date: Each license issued under authority of this ordinance expires *June 30th* each year.

H. Reciprocal Harvesting Agreement: Licenses from any other municipality cooperating with this municipality on a reciprocal shellfish management program may harvest shellfish according to the terms of this license.

I. Fee Waivers: Recreational shellfish license fees will be waived for individuals 65 years or older and 12 years or younger.

J. Suspension: Any shellfish licensee having three convictions for a violation of this ordinance within a three year period shall have their shellfish license suspended for a period of thirty (30) days.

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 suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written Request for 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/Town Council 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 of Flats: *The Town Council/Board of Selectmen/Shellfish Conservation Committee*, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon concurrence of the Department of Marine Resources 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 *Town Council/Board of Selectmen/Shellfish Conservation Committee* may call a public hearing, *and shall send a copy of the notice to the Department of Marine Resources*. The decision of the *Town Council/Board of Selectmen/Shellfish Conservation Committee* made after the hearing shall be based on findings of fact. *A copy of the closure/opening notice shall be provided to Commissioner of Marine Resources*. Public notice of municipal conservation closures or openings shall be provided in accordance with DMR Regulations Chapter 7.50(1)(c).

7. Minimum Legal Size of Soft Shell Clams: It is unlawful for any person to possess soft shell clams within the municipality 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 inches if they comprise less than 10% of any lot. The tolerance shall be determined by count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

C. Penalty: Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. Section 6681.

8. Penalty: A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671 (10), (10A).

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. 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 portions of this ordinance.

11. Repeal: Any ordinance regulating the harvesting or conservation of shellfish in the town and any provisions of any other town ordinance, which is inconsistent with this ordinance, is hereby repealed.

Rev. 02/8/16 HA

MUNICIPAL SHELLFISH PROGRAM DEADLINES	
Activity	Deadline
Municipal Shellfish Ordinance or Amendments	Submit certified copy to DMR within 20 days of adoption
Municipal Shellfish Ordinance Amendment Pre-Approval	Submit final copy to DMR within 60 days of town deadlines
Annual Shellfish Management Review	Submit by April 1
Shellfish Warden Certification Training	Provided by DMR annually in the spring - contact DMR for dates
Shellfish Warden Certification Training - New Hires	Complete within 12 months of hiring
Shellfish Warden Recertification	At least every 3 years
License Allocation Application	Submit 30 days prior to period of issuance
License Allocation methods and procedures	Publish 10 days prior to period of issuance
Municipal Conservation Closure/Opening Application	Submit 20 business days prior to requested date
Municipal Conservation Closure/Opening Notification	5 days prior to requested start date
Transplant Permit Application - Seed	Submit 10 business days prior to the requested date
Transplant Permit Application - product larger than seed	Submit 30 days prior to the requested date
Application for Importation - Seed from out-of-state hatchery	Submit 30 days prior to the requested date
Shellfish Transplant Activity Log	Submit within 10 days of transplant activity