

Municipal shellfish management – strawman proposal for possible changes

There are three places municipal management of shellfish is addressed: law Title 12 §6671 and DMR Regulations Chapters 4 and 7

Current Law:

§6671. Municipal shellfish conservation programs

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

A. Within any area of the intertidal zone within 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;
- (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;
- (6) Establish a minimum size limit for possession of shellfish regulated in the ordinance, as long as those size limits are as strict or stricter than any minimum size limit set in this chapter or by rule, except that an ordinance must establish minimum size limits for possession of soft-shell clams that are at least as strict as those limits established in section 6681; and
- (7) Establish a maximum size limit for possession of shellfish regulated in the ordinance, as long as those size limits are as strict or stricter than any maximum size limit set in this chapter or by rule.

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

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

A. A municipality that enacts an ordinance under this section is responsible for enforcing it.

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.

For the purposes of this section, "intertidal zone" means the shores, flats or other land below the high-water mark and above subtidal lands.

Current Regulations:

Chapter 4 - Municipal Shellfish Conservation Warden Certification

4.10 Certification

4.20 Minimum Qualifications

4.40 Recertification

4.50 Revocation, Suspension or Refusal to Renew Certification

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.

Chapter 7 – Requirements for Municipalities Having Shellfish Conservation Programs

7.10 Definitions

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.

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 soft-shell clams, limiting the species or amount of shellfish taken daily by a license class of harvester, transplanting or seeding of shellfish, and 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

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. 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
3. Enforcing the municipal shellfish conservation ordinance by a Department certified Shellfish Warden including but not limited to requirements involving licensing and closures to shellfish harvest;
4. Submitting annually, on a Department approved form, by April 1st, a complete and accurate Municipal Shellfish Management Plan Review, to the Department

7.35 Revocation of Municipal Shellfish Conservation Ordinance

7.40 Municipal Licensing of Shellfish Harvesters

1. The number of shellfish licenses allocated to municipal residents and nonresidents shall be established by the municipality and approved by the Commissioner prior to the period of issuance
2. Towns with unlimited commercial license allocations shall make available and issue if applicable on the first day of license sales, to qualifying non-residents, no less than 10% of the total number of resident licenses issued in the previous year

7.50 Municipal Shellfish Conservation Activities

7.70 Intertidal Mussel Harvesting by Drag or Dredge

7.80 Municipal Aquaculture Activities Report

Municipal program components:

Enforcement

- Training
- Cost
- Available wardens
- Provide “adequate” enforcement

Licensing

- Setting license numbers
- Non-resident licensing
- Grandfathering
- Required conservation time and rollovers
- Latent licenses
- Student and Senior categories

Budget

- Support adequate enforcement
- Provide necessary equipment
- Conservation activities that require compensation
- Resource surveys
- Pollution abatement activities

Participation and leadership

- Harvester participation
- Representation on Shellfish Committees
- Effective Chairs and/or town government
- Town support financially and administratively
- Scientific advising
- Town support from CEOs and LPIs
- Pollution abatement efforts
- Navigating state license/permitting process

Conservation activities

- Common practices
- Effectiveness
- Execution and follow-up

Ordinance

- Shellfish management plan
- Annual review
- Intertidal mussel harvesting

Abatement closures

Possible changes:

Establish minimum standards for municipal shellfish programs

Enforcement

- Require hours of enforcement relative to acres of flats and/or number of harvesters
- Require basic law enforcement training (e.g. 100 hr course)

Licensing

- Set licenses to resource abundance through surveys (annual or otherwise)
- Performance requirements (use it or lose it)
- Residency requirements (cost of living)

Budget

- Minimum annual budget for adequate enforcement and any other required activities

Participation and leadership

- Require shellfish committees
- Require conservation time (paid or license fee offset)

Conservation activities

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Ordinance

- Require new shellfish management plan for all programs
- Licensing changes require resource surveys
- Adding new species; assess abundance and adjust license numbers relative to increased opportunity

Program review process

- Annual report aka Municipal Shellfish Management Review Plan (enhanced from current requirement)
- DMR annual review of program (audit)
- Non-compliance requires an action plan from town
- Ordinance changes are reviewed by municipal ordinance review board

Other issues

Permitting from ACOE, DEP, DMR (BPH and AQ)

Intertidal v. subtidal jurisdiction

Intertidal aquaculture