

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 4 Municipal Shellfish Conservation Warden Certification

CONCISE SUMMARY:

The rule amends the process for Municipal Shellfish Conservation Warden applicants and their Performance Standards. Specifically, it allows Municipal Shellfish Conservation Warden applicants to attend the MDMR Municipal Shellfish Conservation Warden Certification Course prior to receiving a formal nomination from an appointing municipality. It adds enforcement of minimum sizes of all shellfish species included in a municipality’s ordinance into the Performance Standards of Municipal Shellfish Conservation Wardens. The rule makes other minor clarifying changes.

ADOPTED RULE NUMBER:

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

EFFECTIVE DATE:

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

AGENCY CONTACT PERSON:

Deirdre Gilbert

AGENCY NAME:

Department of Marine Resources

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21 State House Station

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Hearing)

Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____ DATE: _____

FUND	AGENCY	S-UNIT	APP	OBJT	AMOUNT
10	13A	1120	10		4946
					regulations

Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta

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. Applicants may attend training, but will not receive certification until they have a formal written nomination from an appointing municipality and have passed an employment background check conducted by Maine Marine Patrol. 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. Those applicants who otherwise meet conditions for certification, but do not currently hold a formal written nomination from an appointing municipality will receive conditional approval, pending Department receipt of the formal written nomination and the results of their background check.
- 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 Municipal 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 Shellfish Conservation Warden Conservation Course.
- E. The applicant must be able to provide reliable courtroom testimony for prosecution purposes.

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.

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 ~~M~~marine ~~R~~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 minimum size shellfish laws and regulations (12 M.R.S. §6681 and DMR Chapters 10 & 14) for all shellfish species included in the municipality's shellfish conservation ordinance, or stricter minimum size(s) if defined in the municipality's shellfish conservation ordinance.~~
- C. Enforce contaminated and polluted flats (12 M.R.S. §6172 and §6621), and serve all processes pertaining to the local municipal ordinance.
- € D. 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 summonsing powers.

Basis Statement:

The rule amends the process for Municipal Shellfish Conservation Warden applicants and their Performance Standards. Specifically, it allows Municipal Shellfish Conservation Warden applicants to attend the MDMR Municipal Shellfish Conservation Warden Certification Course prior to receiving a formal nomination from an appointing municipality. It adds enforcement of minimum sizes of all shellfish species included in a municipality’s ordinance into the Performance Standards of Municipal Shellfish Conservation Wardens. The rule makes other minor clarifying changes.

In consideration of a comment received, the Department added references to the specific statutory section and regulation chapter numbers in section 4.60(B), and added a statement that wardens could enforce stricter minimum sizes if defined in the municipality’s shellfish conservation ordinance.

Summary of Comments:

On January 24, 2024, the rule was posted on DMR’s website. Notice was also published on January 24, 2024 in the five major daily newspapers by the Secretary of State; and electronic messages were sent to individuals who subscribe to DMR’s rulemaking, shellfish and aquaculture notices. A public hearing was held at 4:30 p.m. on February 12, 2024 at the Sorrento-Sullivan Rec Center, 1776 US-1 Sullivan, ME. An in-person and remote hearing was held at 4:00 pm on February 13, 2024, with the in-person hearing at the Marquardt Building, Room 118, 32 Blossom Lane, Augusta, and the remote component held via Microsoft Teams. The comment period closed February 23, 2024.

The 2/12/2024 in-person hearing was attended by the following individuals:

Name	Affiliation
Deirdre Gilbert, Kohl Kanwit, Meredith White	Maine Department of Marine Resources
Kathleen Billings, Raelene Pert	Members of the Public

The 2/13/2024 hybrid hearing was attended by the following individuals, but no comments were received:

Name	Affiliation
Deirdre Gilbert, Kohl Kanwit, Meredith White	Maine Department of Marine Resources
David Taylor, Mike Pinkham	Members of the Public

Public Comments Received

Raelyne Pert, Deer-Isle Stonington and Brooklin Shellfish Warden (Provided in-person on 2/12)

I am suggesting to the Advisory Council that the State change the hen clams (surf clams) from three bushel, maybe change it to a different amount. We adopted it in our ordinance because we had people who were taking 6-7 fish totes of hen clams and I wrote several summonses, 21 summonses, they gave me the wrong names, I was in court for 8 hours and 2 of them I got convictions for, and the other ones they were just anonymous names they gave.

Department Response:

Because Chapter 4 does not address minimum sizes of shellfish, the Department cannot use this particular rule-making to make this change. However, we appreciate the information and will bring this suggestion to the Shellfish Advisory Council for further discussion and may pursue establishing a lower limit in a future legislative or regulatory action.

Kathleen Billings, Town Manager, Town of Stonington (Provided in-person on 2/12)

Under 4.60 Performance Standards for the Municipal Conservation Wardens, I'd like to see under B the language tweaked a little bit to refer back to the State minimums that you have currently for species and also to allow for the additional language that you did put in there. I do understand why you did that but I don't want to see any controversy on local home rule ordinances and over to court potentially being any problems. Under C. you did reflect the MRSA statute, so I feel like under B. it would be appropriate to reflect that.

Department Response:

The Department agrees and we have amended the proposed change to 4.60(B) to include the specific statutory and regulatory references, and clarified that wardens may enforce more restrictive minimum sizes, to address Ms. Billings' comments.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Deirdre Gilbert, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6553; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 4 Municipal Shellfish Conservation Warden Certification

STATUTORY AUTHORITY: 12 MRS 6671

DATE AND PLACE OF PUBLIC HEARING(S): February 12, 2024, 4:30 p.m., in-person at the Sorrento-Sullivan Rec Center, 1776 US-1 Sullivan, ME. February 13, 2024, 4:00 p.m. in-person at the DMR Offices in the Marquardt Building, Room 118, 32 Blossom Lane, Augusta or remotely via Microsoft Teams. Remote access information is posted to DMR's website under "Meetings."

COMMENT DEADLINE: February 23, 2024

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)]

The primary purpose of proposing this rule is to amend the process for Municipal Shellfish Conservation Warden applicants and their Performance Standards. Specifically, it would allow Municipal Shellfish Conservation Warden applicants to attend the MDMR Municipal Shellfish Conservation Warden Certification Course prior to receiving a formal nomination from an appointing municipality. It adds enforcement of minimum sizes of all shellfish species included in a municipality's ordinance into the Performance Standards of Municipal Shellfish Conservation Wardens. The proposed rule makes other minor clarifying changes.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ X ___ NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)] The rule is intended to provide additional flexibility in the certification process of Municipal Shellfish Conservation Wardens and to clarify performance standards of Municipal Shellfish Conservation Wardens.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]:

The development of this rule considered that municipalities may include shellfish species other than softshell clams in their shellfish ordinance, but enforcement of the minimum size for those shellfish were not included in Municipal Shellfish Conservation Warden performance standards. Additionally, this rule change considered feedback that access to the MDMR Municipal Shellfish Conservation Warden Certification Course prior to being appointed by a municipality, would make the process of becoming a Municipal Shellfish Conservation Warden easier, as the Certification Course happens only once a year.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Note: If necessary, additional pages may be used.