

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

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

TYPE OF RULE (*check one*): Routine Technical Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY: The proposed rule amends 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.

Date, time and location of PUBLIC HEARING (*if any*): 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

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

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Hearing facilities: If you require accommodations due to disability, please contact 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS 6671

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

* *Check one of the following two boxes.*

X *The summary provided above is for publication in both the newspaper and website notices.*

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

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~~arine ~~R~~esource'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 for all shellfish species included 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.
- ~~C.~~ 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.

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

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.