

§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.

[PL 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.

[PL 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.

[PL 2001, c. 188, §1 (AMD).]

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. [PL 2019, c. 144, §1 (AMD).]

B. [PL 2019, c. 144, §2 (RP).]

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. [PL 2001, c. 188, §2 (NEW).]

[PL 2019, c. 144, §§1, 2 (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. [PL 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. [PL 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. [PL 1997, c. 589, §1 (RPR); PL 1997, c. 589, §2 (AFF).]

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. [PL 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. [PL 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. [PL 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. [PL 1995, c. 531, §2 (AMD).]

G. [PL 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. [PL 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. [PL 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. [PL 1999, c. 255, §3 (AMD); PL 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. [PL 1999, c. 255, §4 (AMD); PL 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. [PL 2001, c. 188, §4 (RPR).]
[PL 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. [PL 1983, c. 418 (NEW); PL 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.
[PL 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.

[PL 2001, c. 667, Pt. B, §6 (RPR).]

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

- A. Village corporations; and [PL 1991, c. 390, §6 (AMD).]
- B. The combined towns of Yarmouth and North Yarmouth. [PL 1991, c. 390, §6 (AMD).]
- C. [PL 1991, c. 390, §7 (RP).]

[PL 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.

[PL 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. [PL 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. [PL 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. [PL 2005, c. 171, §1 (AMD).]

D. Enforcement by the municipality of any provision adopted by a municipality pursuant to this section may occur only in the municipality in which the shellfish is harvested. [PL 2019, c. 144, §3 (NEW).]

[PL 2019, c. 144, §3 (AMD).]

9. Penalty.

[PL 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 [PL 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. [PL 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.

[PL 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:

- 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 [PL 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. [PL 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.

[PL 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. [PL 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. [PL 2013, c. 517, §1 (NEW).]

[PL 2013, c. 517, §1 (NEW).]

10-C. Prohibition.

[PL 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.

[PL 1999, c. 255, §7 (NEW); PL 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.

[PL 2007, c. 494, §2 (NEW).]

For the purposes of this section, "intertidal zone" means the shores, flats or other land below the high-water mark and above subtidal lands. [PL 2017, c. 350, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 661, §5 (NEW). PL 1979, c. 608, §§1-3 (AMD). PL 1983, c. 283 (AMD). PL 1983, c. 418 (AMD). PL 1983, c. 689 (AMD). PL 1983, c. 838, §§2-5 (AMD). PL 1985, c. 48, §1 (AMD). PL 1985, c. 52, §2 (AMD). PL 1985, c. 259 (AMD). PL 1985, c. 737, §§A28,29 (AMD). PL 1987, c. 402, §A96 (AMD). PL 1987, c. 816, §KK13 (AMD). PL 1987, c. 867 (AMD). PL 1989, c. 257, §§3-5 (AMD). PL 1991, c. 29 (AMD). PL 1991, c. 242, §3 (AMD). PL 1991, c. 390, §§5-7 (AMD). PL 1991, c. 784, §6 (AMD). PL 1991, c. 831, §1 (AMD). PL 1993, c. 281, §§3,4 (AMD). PL 1993, c. 456, §1 (AMD). PL 1995, c. 75, §1 (AMD). PL 1995, c. 531, §§1-3 (AMD). PL 1997, c. 247, §§1,2 (AMD). PL 1997, c. 589, §1 (AMD). PL 1997, c. 589, §2 (AFF). PL 1999, c. 255, §§1-7 (AMD). PL 1999, c. 255, §8 (AFF). PL 1999, c. 682, §1 (AMD). PL 2001, c. 101, §1 (AMD). PL 2001, c. 188, §§1-8 (AMD). PL 2001, c. 667, §B6 (AMD). PL 2003, c. 284, §§1,2 (AMD). PL 2005, c. 171, §§1-3 (AMD). PL 2007, c. 494, §§1, 2 (AMD). PL 2009, c. 24, §1 (AMD). PL 2011, c. 657, Pt. W, §6 (REV). PL 2013, c. 301, §14 (AMD). PL 2013, c. 468, §31 (AMD). PL 2013, c. 517, §1 (AMD). PL 2017, c. 350, §§1, 2 (AMD). PL 2019, c. 144, §§1-3 (AMD).

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