

# Notice of Agency Rule-making Proposal

MAPA-3 revised 2-2016

AGENCY: Department of Marine Resources

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

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

## BRIEF SUMMARY:

This proposed rulemaking is a repeal and replace of Chapter 4. The primary purpose of the repeal and replace is to restructure the chapter, clarify the requirements for Shellfish Conservation Warden positions, and put in place certain requirements for Warden applications that will ensure that Marine Patrol can better utilize Warden testimony in the context of shellfish violations. Specifically, changes include requiring candidates for Municipal Shellfish Conservation Warden positions to complete the MDMR Municipal Shellfish Conservation Warden Training Course, specifying that the background check will be specifically in regards to employment, and that candidates must specifically complete the MDMR Municipal Shellfish Conservation Warden Training Course. In addition, the proposed rule requires that applicants to Warden positions qualify as candidates able to provide courtroom testimony in both civil and criminal courts.

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

COMMENT DEADLINE: 10/7/2016

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

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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 M.R.S. §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](mailto:DMR.rulemaking@maine.gov)

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REPEAL AND REPLACE THE EXISTING CHAPTER 4 WITH THE FOLLOWING

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.
- 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 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 summonsing powers.

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 4

STATUTORY AUTHORITY: 12 M.R.S. §6671

DATE AND PLACE OF PUBLIC HEARING: NA

COMMENT DEADLINE: **10/7/2016**

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

The purpose of this proposal is to clarify the Municipal Shellfish Conservation Warden Certification Chapter.

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)]

This rule is a routine clean up and clarification of a chapter.

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]

This proposed rulemaking is a repeal and replace of Chapter 4. The primary purpose of the repeal and replace is to restructure the chapter, clarify the requirements for Shellfish Conservation Warden positions, and put in place certain requirements for Warden applications that will ensure that Marine Patrol can better utilize Warden testimony in the context of shellfish violations. Specifically, changes include requiring candidates for Municipal Shellfish Conservation Warden positions to complete the MDMR Municipal Shellfish Conservation Warden Training Course, specifying that the background check will be specifically in regards to employment, and that candidates must specifically complete the MDMR Municipal Shellfish Conservation Warden Training Course. In addition, the proposed rule requires that applicants to Warden positions qualify as candidates able to provide courtroom testimony in both civil and criminal courts.

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

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