§6673. Municipal shellfish aquaculture permit

A municipality that has established a shellfish conservation program as provided under section 6671 may, consistent with the rights of property owners, issue a municipal shellfish aquaculture permit to a person for the exclusive use of shellfish in a designated area in the intertidal zone to the extreme low water mark within the municipality for the purpose of shellfish aquaculture. Municipal authority to issue a municipal shellfish aquaculture permit under this section does not limit in any way the authority of the commissioner to issue leases in the intertidal zone in accordance with sections 6072, 6072-A and 6072-B. [PL 2003, c. 660, Pt. A, §21 (AMD).]

1. Municipal procedure.

[PL 2003, c. 660, Pt. A, §21 (RP).]

1-A. Application. A municipality shall review an application for a municipal shellfish aquaculture permit on a form supplied by the municipality. The municipality may charge an application fee that reflects the costs of processing an application. The municipality shall publish a summary of the application in a newspaper of general circulation in the area that would be affected by the permit. A person may provide comments to the municipality on the proposed permit within 30 days of publication of the summary.

Prior to issuing a municipal shellfish aquaculture permit, a municipality shall hold a public hearing if requested in writing by 5 or more persons. The public hearing must be held in accordance with procedures established in ordinances adopted in subsection 3.
[PL 2009, c. 229, §15 (AMD).]

2. Department procedure for review and approval.

[PL 2003, c. 660, Pt. A, §21 (RP).]

2-A. Decision. In evaluating a proposed municipal shellfish aquaculture permit, a municipal officer shall take into consideration the number and density of permits and leases in the area and may issue the permit if the municipal officer finds the proposed project meets the following criteria.

A. The permit conforms to the municipality's shellfish conservation program. [PL 2003, c. 660, Pt. A, §21 (NEW).]

B. The permit will not cause the total area under all municipal shellfish aquaculture permits in the municipality to exceed 1/4 of the entire municipal intertidal zone that is open to the taking of shellfish. [PL 2009, c. 229, §16 (AMD).]

C. Issuing the permit is in the best interests of the municipality. [PL 2003, c. 660, Pt. A, §21 (NEW).]

D. The permit will not unreasonably interfere with ingress and egress of riparian owners. [PL 2003, c. 660, Pt. A, §21 (NEW).]

E. The permit will not unreasonably interfere with navigation. [PL 2003, c. 660, Pt. A, §21 (NEW).]

F. The permit will not unreasonably interfere with fishing or other uses of the area. For purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and is subject to a pollution abatement plan that predates the permit application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years. [PL 2003, c. 660, Pt. A, §21 (NEW).]

G. The permit will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site affected by the permit and surrounding marine and upland areas to support existing ecologically significant flora and fauna. [PL 2003, c. 660, Pt. A, §21 (NEW).]

H. The applicant has demonstrated that there is an available source of organisms to be cultured for the site affected by the permit. [PL 2003, c. 660, Pt. A, §21 (NEW).]

I. The permit does not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park or docking facility owned by the Federal Government, the State Government or a municipal government or conserved lands. For purposes of this paragraph, "conserved lands" means land in which fee ownership has been acquired by the municipal government, State Government or Federal Government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property. [PL 2003, c. 660, Pt. A, §21 (NEW).]

A municipality shall review the Department of Agriculture, Conservation and Forestry's list of conserved lands compiled pursuant to section 6072, subsection 7-A, paragraph F prior to issuing a municipal shellfish aquaculture permit.

A municipality shall put its findings on each of the criteria listed in this subsection in writing and make those findings available to the public.
[PL 2011, c. 655, Pt. II, §5 (AMD); PL 2011, c. 655, Pt. II, §11 (AFF); PL 2011, c. 657, Pt. W, §5 (REV).]

3. Municipal shellfish aquaculture permit. Prior to issuing a municipal shellfish aquaculture permit pursuant to this section, a municipality shall adopt ordinances that establish procedures for consideration of permit applications under the decision criteria in subsection 2-A, including but not limited to provisions for a public hearing process. Additionally, the municipality shall adopt ordinances designed to prevent speculative holding of permits. An ordinance proposed by a municipality under this subsection must be approved in writing by the commissioner prior to its adoption.

When approved, a municipal shellfish aquaculture permit must be forwarded to the commissioner. The municipality may charge a municipal shellfish aquaculture permit fee not to exceed $100 per acre annually. The municipality may establish conditions and limits on the permit. A municipal shellfish aquaculture permit may be granted for a period of up to 10 years and is renewable upon application by the permittee. The municipality shall monitor and enforce the terms and conditions of a permit on an annual basis and submit an annual report on permit activities to the department. Such information is considered landings data.
[PL 2009, c. 229, §17 (AMD).]

4. Renewals. A municipality shall give public notice for a municipal shellfish aquaculture permit renewal as required under subsection 1-A, and a hearing must be held if it is requested in writing by 5 or more persons. If a public hearing is required, it must be held in accordance with procedures established in an ordinance adopted under subsection 3. A renewal may be granted as long as the permit continues to meet the criteria of subsection 2-A. The findings of the municipality regarding the criteria in subsection 2-A must be in writing and made available to the public.
[PL 2003, c. 660, Pt. A, §21 (NEW).]

SECTION HISTORY

PL 1977, c. 661, §5 (NEW). PL 1999, c. 267, §3 (AMD). PL 2003, c. 660, §A21 (AMD). PL 2009, c. 229, §§15-17 (AMD). PL 2011, c. 655, Pt. II, §5 (AMD). PL 2011, c. 655, Pt. II, §11 (AFF). PL 2011, c. 657, Pt. W, §5 (REV).

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