

## CHAPTER 9

### WHARVES AND FISH WEIRS

#### **§1021. Definitions**

The words "fish weir" mentioned in this chapter are defined to be a fixed structure erected and maintained during part of each fishing season in the tidewater, constructed of at least 25 spiling or stakes fastened together by binders, surrounded by brush, lath racks or netting, forming the catch pound into which fish are led or guided by one or more fixed leaders constructed of spiling or stakes not more than 20 feet apart and at least 100 feet long, fastened together by binders surrounded by lath racks, brush or netting and from which catch pound they cannot readily escape.

#### **§1022. License to build or extend; application**

Any person intending to build or extend any wharf, fish weir or trap in tidewaters, within the limits of any city or town, shall apply in writing to the municipal officers of the city or town, stating the location of the weir, the boundaries of the cove in which the weir will be constructed as identified on a map prepared by the Commissioner of Marine Resources, limits and boundaries, as nearly as may be, of the intended erection or extension, and asking license for the intended erection or extension. The applicant must notify all parties that may be directly affected by the proposed construction. Upon receiving an application, the officers shall give at least 3 days' public notice of the application in a newspaper, published in the town, or, if there is no newspaper published in the town, in a newspaper published within the county, and shall designate in the notice a day and time on which they or their designee will meet on or near the premises described, to examine the same and hear all parties interested. If, following such examination and hearing of all parties interested, the officers decide that such erection or extension would not be an obstruction to navigation or injury to the rights of others, and determine to allow the same, they shall issue a license under their hands to the applicant, authorizing the applicant to make such an erection or extension, and to maintain the same within the limits mentioned in such license. The applicant for license to build or extend a fish weir or trap shall first give bond to the town, with sureties, in the sum of \$5,000, conditioned that upon the termination of such license the applicant removes all stakes and brush from the location therein described. The municipal officers shall, within 10 days after the date of hearing, give written notice by mail of their decision to all parties interested. Any person aggrieved by the decision of the municipal officers, in either granting or refusing to grant a license as provided, may appeal to the Superior Court within 10 days after the mailing of such written notice. The court shall set a time and place for hearing and give notice thereof in the same manner as provided for a hearing before the municipal officers. The decision of the court must be communicated to the appellant and to the municipal officers of the town in which the proposed wharf, weir or trap is to be located. This decision is binding on the municipal officers, who shall issue a license, if so directed by the decision of the court, within 3 days after the decision has been communicated to them. If the appeal is sustained by the court in whole or in part, the appellant will have costs against the appellee. If the appeal is not so sustained, the appellee will have costs against the appellant. If any owner to whom a license has been issued or the owner's heirs or assigns fail to remove all stakes and brush within a period of one year after the termination of the license, as provided in section 1023, any person can remove the same without charge against the owner or the owner's heirs or assigns. [PL 2011, c. 559, Pt. A, §36 (AMD).]

In the case of islands not within the jurisdiction of any town all powers of municipal officers to issue licenses to build weirs are conferred upon the owner or owners of such islands. If said owner or owners are unable to agree as to the issuance of a license they shall submit the question of such issuance to the Commissioner of Marine Resources, who shall, after a hearing at which all parties may be represented, decide as to the issuance of such license. [PL 1973, c. 513, §22 (AMD).]

In the case of waters adjacent to unorganized or deorganized territory that is not an island, the Commissioner of Marine Resources shall have the powers of municipal officers to issue licenses under this section. Notwithstanding the provisions of this section governing procedures, the Commissioner of Marine Resources shall review the application and hold a hearing as if this were a lease application under Title 12, section 6072, subsections 5 and 6. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §207 (AMD).]

Any licenses issued under this chapter shall constitute an approval and determination by the issuer thereof that the licensed wharf or weir constructed and operated within the limits imposed by such license does not adversely affect nor impair the interests of the issuer in such area, including navigation and the rights of private citizens in the area. Such license does not confer any right, title or interest in submerged or intertidal lands owned by the State. [PL 1975, c. 287, §2 (NEW).]

#### SECTION HISTORY

PL 1973, c. 513, §22 (AMD). PL 1975, c. 287, §2 (AMD). PL 1979, c. 631, §2 (AMD). PL 1983, c. 731, §4 (AMD). PL 1989, c. 890, §§A40,B206, 207 (AMD). PL 1999, c. 215, §1 (AMD). PL 2011, c. 559, Pt. A, §36 (AMD).

#### §1023. Expiration of license

The license for the building or extension of a fish weir or trap issued under section 1022 or any right or privilege granted by the Legislature for the building or extension of any such fish weir or trap shall terminate and become void unless the weir or trap is built within one year from the date of the license or the granting of that right or privilege and maintained in good faith for the duration of the license. [PL 1985, c. 97, §1 (RPR).]

The weir shall be considered to be maintained in good faith if the following conditions are met: [PL 1985, c. 97, §1 (NEW).]

**1. Annual license fee; bond coverage.** The licensee shall pay an annual license fee and submit proof of the required bond coverage extending at least one year beyond the current license year; [RR 2021, c. 2, Pt. B, §267 (COR).]

**2. Inspection and repair.** The licensee shall inspect and repair all stakes and brush of the weir structure so as to maintain it in condition to receive netting when fishing conditions warrant; and [PL 1985, c. 97, §1 (NEW).]

**3. Report.** The licensee shall complete these actions by July 15th of each year and shall report that completion to the Commissioner of Marine Resources and to the municipality within 7 days of that date on forms provided by the commissioner. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §208 (AMD).]

Satisfaction of these conditions shall be necessary but not sufficient to retain the weir's protected fishing zone as provided by Title 12, section 6525-A, subsections 1 and 5. [PL 1985, c. 97, §1 (NEW).]

The Commissioner of Marine Resources shall, by December 31st each year, report to the municipality the name of the licensed owner and location of each weir and whether the weir was maintained in good faith in that year. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §209 (AMD).]

#### SECTION HISTORY

PL 1983, c. 731, §5 (AMD). PL 1985, c. 97, §1 (RPR). PL 1989, c. 890, §§A40,B208, 209 (AMD). RR 2021, c. 2, Pt. B, §267 (COR).

#### §1024. Waters between 2 towns

In any river or tidewater lying between 2 towns or cities, no such wharf or fish weir described in sections 1022 and 1023 shall be erected without the consent of the municipal officers of both. In no case shall any wharf be extended beyond any wharf lines heretofore legally established.

**§1025. Recording of documents; compensation to officers**

The application provided for in section 1022, with the notice and proceedings thereon and the license granted, must be recorded in the town and a copy provided to the Commissioner of Marine Resources by the applicant. Reasonable compensation must be paid by the applicant to the municipal officers for their services and expenses and to the clerk for recording, and if license is granted, \$5 additional must be paid by the applicant to the town. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §210 (AMD).]

SECTION HISTORY

PL 1983, c. 731, §5 (AMD). PL 1989, c. 890, §§A40,B210 (AMD).

**§1026. Extension of herring weirs and wharves; shore owner's consent**

No fish weir, trap or wharf shall be extended, erected or maintained except in accordance with this chapter. No fish weir, trap or wharf shall be erected or maintained in tidewaters below low-water mark in front of the shore or flats of another without the owner's consent, under a penalty of \$50 for each offense, to be recovered in a civil action by the owner of said shore or flats. This chapter applies to all herring weirs and traps, but does not apply to other weirs or traps, the materials of which are chiefly removed annually, provided such weirs or traps do not obstruct navigation nor interfere with the rights of others. This section shall not affect any wharves so erected or maintained on the 21st day of April, 1901.

**§1027. Exemptions**

Weir fishing for alewives is exempt from the provisions of this chapter. [PL 1985, c. 97, §2 (NEW).]

SECTION HISTORY

PL 1985, c. 97, §2 (NEW).

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