



**TOWN OF KITTERY
PORT AUTHORITY**

**RULES AND REGULATIONS PERTAINING TO THE HARBOR, PORT, AND
CHANNELS WITHIN THE TOWN OF KITTERY, MAINE**

TABLE OF CONTENTS

| | |
|--|----|
| I. DEFINITIONS | 3 |
| II. HARBOR USE REGULATIONS | |
| A. Speed of Vessels, Reckless Operation, and Wake of Vessels | 8 |
| B. Channels | 8 |
| C. Anchorage | 9 |
| D. Buoys other than for Mooring Vessels | 9 |
| E. Public Wharves and Landings | 9 |
| F. Abandoned Boats, Vessels, Wrecks, Etc. | 10 |
| G. Water Skiing, Skin and SCUBA Diving, Aircraft, Sailboards, Jet Skis/Personal Watercraft, and Windsurfing | 11 |
| H. Environmental Protection of the Harbor and Waters of the Town of Kittery | 11 |
| I. Harbor/Water Usage Fees | 11 |
| J. Pier Use Permits | 12 |
| K. Fishing Policy from Town Owned Piers, Floats and Wharves | 13 |
| III. MOORINGS | |
| A. Assignment of Mooring Sites | 13 |
| B. Application to the Mooring Site Waiting List | 14 |
| C. Mooring Site Permit Application Information | 14 |
| D. Annual Renewal of Mooring Site Permits | 15 |
| E. Use of Permitted Mooring Sites and Temporary Mooring Site Use Program | 15 |
| F. Choice of Mooring Site and Resolution of Conflict | 17 |
| G. Adequacy of Moorings | 17 |
| H. Vessels Moored so as to Impede Navigation/Endanger other Vessels | 17 |
| I. Moving or Interfering with Moorings Belonging to Another | 18 |
| J. Transient Courtesy Moorings, Commercial Service, Rental Moorings | 18 |
| K. Moored Floats | 18 |
| L. Outhauls | 18 |
| M. Spar Mooring floats | 18 |
| N. Riparian Rights Mooring Sites | 18 |
| O. Abandoned Mooring Sites | 19 |
| P. Revocation of Mooring Site Permit | 20 |
| Q. Disposal of Mooring Tackle | 20 |

| | |
|---|----|
| IV. PIERS, WHARVES, FLOATS AND OTHER MARINE-RELATED STRUCTURES | |
| A. Authority | 21 |
| B. Permits | 21 |
| C. Application Requirements | 22 |
| D. Application Process | 22 |
| E. Findings of Fact | 24 |
| F. Conditions of Approval | 24 |
| G. Performance Standards | 24 |
| H. Administration and Enforcement | 25 |
| V. HARBORMASTER DUTIES AND AUTHORITY | |
| A. Duties | 26 |
| B. Qualification, Salary, and Appointment | 26 |
| C. Assistants | 26 |
| VI. PENALTY | |
| A. Violations | 27 |
| B. Enforcement by Harbormaster | 27 |
| C. Additional Enforcement Authority for Violations of State Statute | 27 |
| D. Responsibility of Owner | 28 |
| E. Expenses of Moving a Vessel | 28 |
| VII. APPEALS | |
| A. Appeal of Decisions of the Harbormaster | 28 |
| B. Request for Reconsideration of Decisions of the Port Authority | 28 |
| C. Appeal of Decisions of the Port Authority | 29 |
| VIII. FEDERAL REGULATIONS | 29 |
| IX. CITIZEN COMPLAINTS | |
| A. Complaint Procedures | 29 |
| B. Action of the Harbormaster | 29 |
| X. FEES – GENERAL PROVISIONS | 30 |
| XI. SEVERABILITY | 30 |
| XII. EFFECTIVE DATE AND RECORD OF CHANGES | 30 |

2 Appendices

- A. Fee Schedule
- B. Record of Changes Compendium

**TOWN OF KITTERY PORT AUTHORITY RULES AND REGULATIONS
PERTAINING TO THE HARBOR, PORT, AND CHANNELS, WITHIN THE TOWN OF
KITTERY, MAINE**

These Rules and Regulations are promulgated by the Port Authority in accordance with Article IX Section 9.02 of the Town of Kittery Charter; and are to be construed as having the force and effect of law as municipal ordinances in accordance with Title 38 Maine Revised Statutes (MRS), as may be amended from time to time; and, Article IX Section 9.03 of Town of Kittery Charter. These Rules and Regulations apply to watercraft, boating, and the use of waters, within the Town of Kittery (hereinafter the "Town") and are applicable to any construction lying within the jurisdiction of the Port Authority.

I. DEFINITIONS

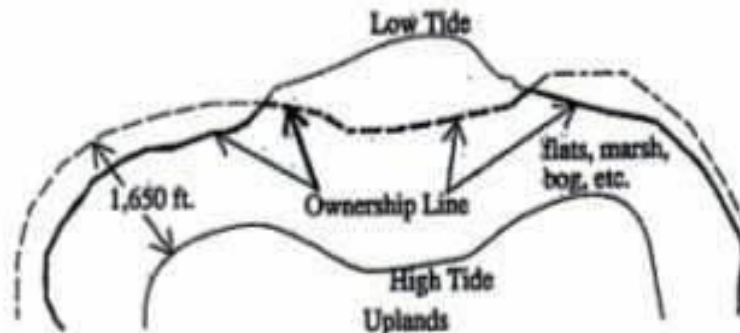
Except where specifically defined in these Rules and Regulations, all words used herein carry their customary dictionary meanings. Words used in the present tense include the future and the plural includes the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the words "shall" or "must" are always mandatory; "occupied" or "used" are considered as though followed by the words "or intended, arranged or designed to be used or occupied"; and, gender-specific words (e.g., she, he, his, hers) include the opposite sex equivalent.

Anchorage Area – An area of the harbor set aside for the temporary anchoring of vessels.

Anchoring – To secure a vessel to the bottom within a body of water by dropping an anchor(s) or other ground tackle which is carried aboard a vessel when underway as regular equipment.

Berth means the place where a vessel lies when at a wharf or pier.

Boundaries (Along Tidal Water) means any body of water that is naturally influenced by the ebb and flow of the tide. Tidal waters include rivers from their mouths to the point upstream where the ebb and flow of the tides is negligible. Title to land abutting and below the normal high-water mark of tidal water is determined by the title deed and application of state law and common law presumptions. The common law presumption is that a conveyance of land bounded by tidal water will convey title to the low tide mark or to 1650 feet (100 rods), whichever is closer to the normal high-water mark (see figure, below). This presumption of tidal water boundary applies equally to all lands along the ocean, bays, and rivers affected by the tides, even though the tidal river water may contain fresh rather than brackish or salt water. The line of low tide may fluctuate because of accretion and reliction. An owner's lands will increase or decrease accordingly. Beyond the low tide or beyond 1650 feet, whichever is closer to high tide, the State has title.



Channels means areas of the harbor kept open for navigation or other purpose by rule or regulation of the Port Authority, the Department of Army or other regulatory or legislative body.

Commercial fishing vessel means a vessel outfitted and utilized for the taking of any marine species for purposes of sale.

Commercial Use means a vessel used for the principal purpose in the pursuit of one's business or trade for the purpose of earning a livelihood. The burden of proof in establishing the commercial use of a vessel is upon the owner.

Dinghy, Tender or Skiff means a vessel 12'6" or less in length and 5'0" or less in beam associated with a specific larger vessel and principally used for transportation from the larger vessel to a landing or other vessel.

Dock means the slip or waterway extending between two (2) piers or projecting wharves or cut into the land for the reception of vessels.

Float means a platform that floats and is anchored, moored or secured at or near the shore, used for landing or other purposes.

Float-In mean when the town-owned floats are put back in the water in the spring.

Float-Out means when the town-owned floats are removed and stored for the winter.

Finger Float means a float extending from the main float of a pier, ramp and float system that creates slips and/or increases the float or pier edge available for docking vessels.

Harbor means the navigable tidal waters within the geographical limits of the Town of Kittery, Maine.

Harbor/Water Usage means a fee assigned to mooring and vessel owners for the maritime facilities and services provided by the Town and the Port Authority.

Harbormaster means an official employed by the Port Authority to oversee the jurisdictional area of the Authority and having the authority, duties and responsibilities conferred by state statute and municipal rules, regulations and ordinances. In the absence, incapacity, or vacancy of the Harbormaster position the Port Authority may designate an acting Harbormaster who has authority, powers, and duties as set forth in these Rules and Regulations.

Industrial Commercial means any enterprise, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust or other form of organization, that is organized for gain or profit, carrying on any business.

Kittery Port Authority means an organization consisting of the six (6) members appointed by the Town Council and one (1) member appointed as a representative of the Planning Board, without compensation, for the purpose and duties contained in the 1961 P&SL, as may be amended, and the Town's Title 16, Land Use and Development Code, with the responsibility of serving the town in the construction, maintenance and addition to town marine infrastructure under the jurisdiction of the Port Authority.

Knot means one nautical mile per hour, or approximately 1.15 statute mile per hour.

Landing means a place for landing or discharging persons or things, as from a vessel.

Marina means a business establishment that has compliant frontage on navigable water and that provides, as its principal use, for hire moorings or docking facilities for vessels and yachts or any pier and float system capable of supplying four (4) or more 15' or greater slip spaces in addition to the main float as of July 5, 2007, but not including float systems and applications in existence before this date. A marina may also provide accessory services such as vessel and related sales, vessel repairs to small craft 19.8 meters (65 feet) or less, indoor storage of vessels and marine equipment, vessel and tackle shops, or marine fuel service facilities.

Mean Low Water Mark means approximation of mean-low water made by observation of low tide during a 0.0 foot tide (as determined by the National Oceanic and Atmospheric Administration).

Mooring means a permanent, adequate means of securing a vessel to the bottom in an anchorage, which is not carried aboard a watercraft when underway as regular equipment.

Mooring, Commercial means a mooring utilized by a person in the pursuit of business or trade.

Mooring, Commercial Service means a mooring utilized by individuals or marinas to service boats for repair on a temporary basis.

Mooring, Private means a mooring utilized by a vessel for private use only.

Mooring, Rental means any mooring offered by individuals or marinas for transient or seasonal rental including moorings controlled by private entities.

Mooring Site means a specific point on the ocean bottom in a mooring area assigned by the Harbormaster to a primary owner for a specific vessel and use. Approval of the physical mooring tackle (hardware) is covered separately and is approved by the Harbormaster for the particular location permitted.

Mooring Site Waiting List means a list or lists of persons, arranged by serial number, requesting a mooring site in the tidal waters of the Town. Persons are selected from such list or lists in accordance with the allocation provisions described in these Rules and Regulations.

Mooring Site Permit means the assignment by the Harbormaster of a mooring site. All such mooring site permits are issued by the Harbormaster upon application by the vessel owner according to these Rules and Regulations.

Mooring, Town Transient means moorings available for overnight rental through the Harbormaster.

Mooring, Non-Municipal Transient / Courtesy means a private mooring provided by commercial business and service organizations, including yacht clubs, for the occasional and limited use of guests.

MRS means Maine Revised Statutes.

Navigable Tidal Waters means all harbors and bays as well as major rivers as far as they can be navigated "continuously" from the sea without obstructions.

Not-for-profit entity means any enterprise, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust or other form of organization carrying on any activity within the state consistent with the stated purposes of such organization and operating on a nonprofit basis.

Normal High-Water Mark means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominately aquatic and predominantly terrestrial land.

Outhaul means an assembly consisting of a submerged pulley and continuous line between a moored vessel and a fixed point on shore for the purpose of boarding a vessel from the shore without the need of a dinghy. Outhauls are customarily used by people with shorefront property for mooring small vessels.

Person means an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, firm or, in the case of a corporation or association, any official thereof, or other legal entity.

Pier means a structure extending into the water from a shore or bank or along a shore or bank which provides for the transfer of cargo or passengers or the berthing for vessels, and includes but is not limited to, wharves, quays and docks.

Pier use permit means an annual pier use permit or a single-use (daily) pier permit

Pier, Commercial means any pier that exceeds six (6) feet in width.

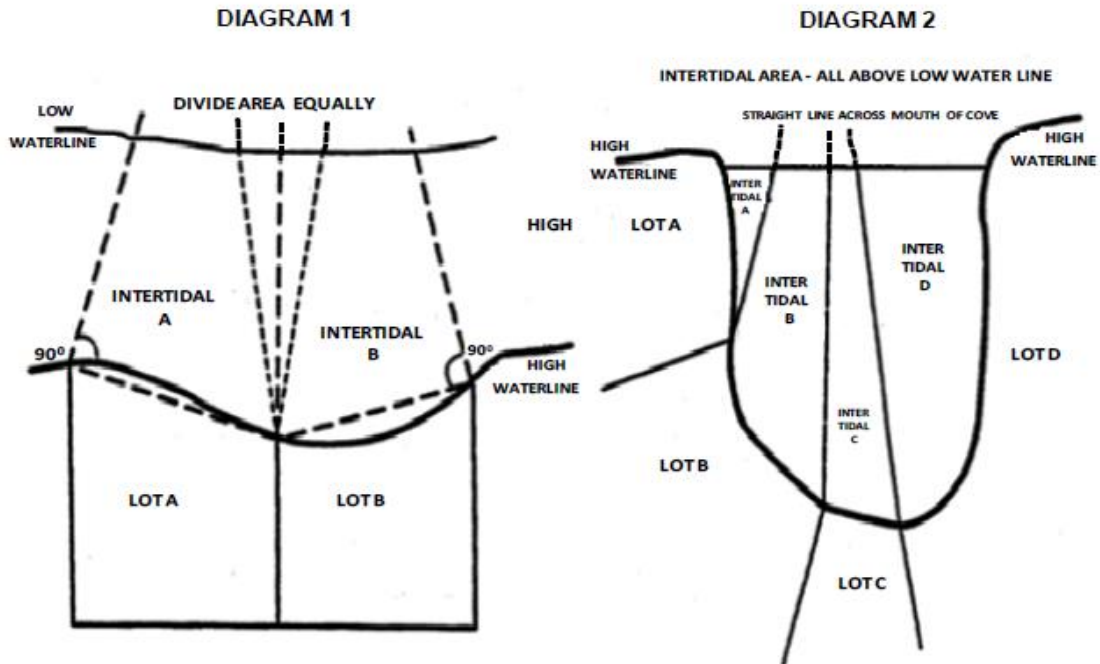
Pier, Residential Development Use, Ramp & Float System means a pier and/or ramp and float system which is used in common by lot owners or residents of a subdivision or residential planned development. The purpose is to provide waterfront access to the owners of lots in a residential development that has the potential for more than one waterfront lot. The object is to minimize the number of piers, ramps and floats resulting from new development and possible elimination of Riparian Moorings.

Primary Owner means the person that owns the majority of a vessel and is the first person listed on the vessel registration card.

Riparian Mooring means a mooring where practicable is issued to individuals that own shorefront rights to a parcel of land that meet the requirement of 38 MRS, §3, Mooring sites.

Riparian water rights (or simply riparian rights) is a system for allocating water among those who possess land along its path pursuant to Title 38 MRS, §3, Mooring sites:

DIAGRAM for DETERMINING OWNERSHIP of INTERTIDAL LAND



Swim Float means a structure that is moored on a temporary basis no earlier than June 1 and no later than October 15 for swimming purposes only, with no watercraft tied to the float for any extended periods of time.

Temporary Mooring Site Permit means a mooring site permit issued or assigned by the Harbormaster on a temporary basis not to exceed one (1) season (May 1st through April 30th) per assignment.

Tidal Waters means areas where there are two Low Waters and two High Waters generally every 24 hours and 50 minutes. The average High Water rises 8.7 ft. from Low Water in the Kittery area.

Title 16 means Kittery Town Code Title 16, Land Use and Development Code.

Town Resident, also referred to as "Municipal resident", means any natural person who owns real property in Kittery or resides in the Town for more than one hundred eighty (180) days in a calendar year.

Town Transient Slip Rental means the float system of docks on Pepperrell Pier available for overnight rental through the Harbormaster.

Vessel means boats of all sizes propelled by sails, machinery or hand; scows, dredges, shellfish cars and watercraft of any kind.

Wharf means a structure of timber, masonry, concrete, earth or other material, built on the shore of a harbor, river, canal, or the like, especially one extending parallel to the shore line, so that vessels may lie close alongside to receive and discharge passengers and cargo.

II. HARBOR USE REGULATIONS:

A. Speed of Vessels, Reckless Operation, and Wake of Vessels

Vessels must be operated in the harbor at a reasonable and prudent speed with due regard to all prevailing circumstances and in such a manner as to not endanger watercraft, persons or property. Vessels must be operated so they do not create a wake that endangers or damages any person, vessels or property, whether anchored or underway, waterfront piers, floats or other property or shorelines, either directly or by effect of the wash or wake created by the watercraft through its speed or otherwise, nor exceed the speed of five (5) m.p.h. in the following areas:

1. Pepperrell Cove including Chauncey Creek:

a. From the entrance to Pepperrell Cove channel (Red Nun Buoy #4) to the Town Pier at Frisbee Wharf including the complete mooring area of Pepperrell Cove

b. From the entrance of Chauncey Creek channel to the upper end of Chauncey Creek.

2. Spruce Creek:

The area from Hicks Rocks Inner Channel below Kittery Point Bridge to ¼ mile north of the Kittery Point Bridge in to Spruce Creek.

3. Back Channel:

From Red Nun Buoy #4 at the Southeasterly end of the back channel, up the river to both the North and Southeast sides of Badger's Island terminating at Western end of Badger's Island.

EXCEPTION: Nothing in these speed or wake regulations makes unlawful any action necessary for (a) navigational safety; (b) observance of the rules of the road, and emergency missions by emergency or public safety watercraft. The burden is upon any person asserting the exception provided by this Section as a defense to a prosecution for violation of any speed or wake regulation.

B. Channels

Channels for the passage of vessels must be maintained in the area under the jurisdictional limits of the Port Authority and kept clear of any and all obstructions.

1. A channel is established from Red Nun Buoy #4 (Fishing Island), one hundred fifty (150) feet wide, to the town wharf at Pepperrell Cove; also, a fifty (50) foot wide deep water channel at the entrance of Chauncey Creek from Red Nun Buoy # 4 to a line from the southern end of Phillip's Island (which is sometimes known as Moore's Island) to the northern end of Gooseberry Island. Chauncey Creek above this line must be maintained as a mooring area with the Harbormaster laying out mooring sites in such a manner as to ensure that the channel is not obstructed. The Harbormaster may require bow and stern moorings, if necessary to insure clear passage in this area.

2. A fifty (50) foot channel is established from Red Nun Buoy #6, at Hick's rocks, Northwest and Westward up the back channel between Green Can #3 and Red Nun Buoy #4; up the river to both the North and Southeast sides of Badger's Island, terminating at the Western end of Badger's Island. The center of the channel being determined by the deepest water in the unmarked portions.

C. Anchorage

1. The Harbormaster may at any time order any vessel at anchor to change position when it is determined that such vessel is so anchored as to impede navigation or to endanger other vessels.
2. Anchoring any vessel or watercraft in Kittery waters is limited to 14 days maximum, or at the discretion of the Harbormaster.
3. Vessels and watercraft anchoring in Kittery waters must not be left unattended for an unreasonable period of time, to be determined at the discretion of the Harbormaster.

D. Buoys other than for Mooring Vessels

No buoy of this type may be placed in channels leading to wharves, nor may such buoys be placed less than three (3) vessel lengths from a mooring for that vessel. The Harbormaster is empowered, in the interest of public safety, to require the removal of buoys.

E. Public Wharves and Landings

1. Obstruction: No person may obstruct by any means whatsoever, including fishing, the free use of piers, docks and other common landing places. The town wharves may be used only for loading and unloading. Vessels may not remain moored to the wharf or float for a period longer than thirty (30) minutes except by permission of the Harbormaster. The Harbormaster shall remove or cause to be removed any unattended vessel obstructing free use of piers, docks or other common landing places after due effort has been made to notify the Master or owner of said vessel of the above violation.
2. Vessels careening, adjacent to, or tied to Public Wharves or Piers have a maximum 24-hour emergency period in that docking condition under the approval of the Harbormaster. Extension of time is at the discretion of the Harbormaster.
3. Public Nuisance: No person may loiter, create a public nuisance or partake of alcoholic beverages on town wharves or landings. Town wharves or piers may be closed by the Police Department when it is warranted by acts of vandalism, disturbance of the peace, or threats to natural resources.
4. Closure of Facilities: Town wharves, piers, floats, and landings may be closed by order of the Port Authority when warranted by acts of vandalism, disturbance of the peace, storms, reasons of public safety, or threats to natural resources. The Harbormaster may act in lieu of the Port Authority in times of impending storms, or threats to public safety or natural resources.
5. Swimming: No person may dive from, swim or skin-dive without permission of the Harbormaster, within thirty (30) feet of Town-owned floats.

6. Tying of dinghies to town floats:

- a. Dinghy painter length required.

All dinghies, skiffs, or tenders tied to town-owned floats must allow at least 10 feet of line between the float and vessel.

- b. Size of dinghies allowed.

No vessel more than twelve feet six inches (12' 6") in length may be tied to a town owned float except for loading and unloading.

c. Damage done by dinghies.

Vessels tied to town owned floats causing damage to adjacent watercraft, whether due to their construction, design, or location are subject to removal by owners on order of the Harbormaster. All dinghies, skiffs or tenders tied to town floats are to be maintained and bailed free of water. The Harbormaster shall segregate dinghies (i.e., aluminum, inflatable, etc.) as required to minimize damage to adjacent watercraft.

d. Marking of dinghies.

A mooring number must be prominently displayed on all dinghies, skiffs or tenders.

e. Removal of dinghies for winter.

Except where permitted by the Harbormaster, all dinghies, skiffs and tenders must be removed from town-owned floats before float-out in October of each year. Any tenders left after this date will be charged a late fee as set forth in Appendix A, to be paid before tying tenders to town piers.

7. Storage of personal property on town piers, floats, and landings: Personal property, such as lobster traps, bait, motor vehicles, cradles, vessels, floats, etc., may not be stored on Town wharves or landings. The Loading Zone, as designated by the Harbormaster, may be used only for lobster traps, fishing gear and items in transit. Lobster traps may be staged on the Main Float of the Town Pier at Frisbee Wharf year-round for purposes of loading and unloading only. Staging is limited to no longer than 24 hours at any given time, unless permission is granted by the Harbormaster for additional time due to weather or extenuating circumstances. Traps must be staged such that vessels may be safely tied up on the faces of the float and access to the vessels and applicable ramp is not impeded.

F. Abandoned Boats, Vessels, Wrecks, Etc.

1. Abandonment Prohibited. No person may cause to be abandoned any watercraft or related equipment or appurtenances on the shores within the waters of Kittery, whether on a mooring or at anchor. Nor may any person abandon or cause to be abandoned any watercraft, vessel, hull, or any raft at any wharves, docks or permanent floats within the waters of Kittery. No person may abandon any watercraft, vessel, or hull upon any shoreline, dock, pier, wharf, float, mooring, or at anchor except with the express consent and approval of the owner of the dock, pier, wharf, float, mooring, shoreline, or in the case of moored or anchored watercraft, the consent and approval of the Harbormaster.

2. Presumption. Any watercraft, vessel, hulk or raft left within the confines of waters of Kittery which has been unattended for a period of seven (7) days without the express consent and approval of the owner of the dock, float, mooring, shoreline, or in the case of moored or anchored watercraft, the consent and approval of the Harbormaster, may be declared abandoned.

3. When, in the opinion of the Harbormaster, a vessel has been abandoned in the harbor, he may take custody and control of such vessel and remove it, store it, or otherwise dispose of it, all at the expense and sole risk of the vessel owner. Notice of such action to the vessel owner must be given in accordance with 25 MRS §3501 by registered mail. If ownership cannot be established, the vessel in question may be impounded until arrangements are made to dispose of said vessel by auction.

4. Penalty. As allowed with 38 MRS §12. Each day the violation is permitted to exist beyond the limits above described is considered a separate offense.

5. Impounding. If an abandoned watercraft is deemed to be a nuisance, a threat to navigation

or a safety hazard, the Harbormaster may impound the watercraft at a site designated for this purpose. Impounding continues until such time as all procedures pursuant to 25 MRS §3501 have been completed or the owner of the watercraft has paid all costs involved with the impounding as well as any fines which have been assessed.

G. Water Skiing, Skin & SCUBA Diving, Aircraft, Sailboards, Jet Skis/Personal Watercraft, and Windsurfing

1. No Water skiing or windsurfing in congested mooring areas, anchorage areas or in speed limited areas governed by the Authority is permitted. Waterski Jumps may be allowed by the Authority on a case by case basis as Temporary moored floats covered in section III below.
2. Operators of jet skis/personal watercraft must observe the same Rules and Regulations applicable to other vessels.
3. Aircraft pilots must observe the same mooring and anchorage rules that apply to vessels and are regulated by applicable state and federal rules, regulations and statutes.

H. Environmental Protection of the Harbor and Waters of the Town

1. Waste and Refuse.

No person may deposit, throw, sweep, pump or otherwise cause to be deposited into the waters of the Town, or into adjacent waters, any sewage waste, gas or oil or bilge water containing same, dirt, stones, gravel, mud, logs, planks, or any other substance tending to obstruct the navigation or pollute the waters of said harbor or waters adjacent thereto.

2. Use of Dumpsters

No trash or refuse may be placed on any town float or pier except in designated containers. During the summer season a courtesy dumpster is provided at Pepperrell Cove only for the use only by fishermen and boaters. No household trash or refuse of any kind not generated on a vessel may be placed in this dumpster. Recyclable items must be properly deposited in the containers provided as specified in Town recycling regulations. Fishermen and boaters must carry out their own trash after the season ends and the dumpster has been removed.

3. Oils and Hazardous Wastes

No oil or other hazardous wastes may be deposited in town waste receptacles or left on Town piers, floats, or landings under any circumstances. Such material must be disposed of properly at the Town's designated disposal site as specified in the appropriate waste disposal regulations.

I. Harbor/Water Usage Fees

1. Harbor/Water Usage

a. The Port Authority has the authority to assess user fees necessary to manage, maintain and operate the harbors, tidal waters and channels within the Town including, but not limited to, Harbor/Water Usage fees, transient vessel fees and administrative and legal fees.

b. Harbor/Water Usage fees are due upon vessel registration, or upon exceeding 14 days in Kittery waterways. Mooring holders are subject to this fee. Failure to remit payment to the Town will result in a fine as set forth in Appendix A.

c. Owners of vessels not on Town-owned moorings who have paid their Harbor/Water Usage Fee will be issued a colored sticker to be affixed to the port bow.

d. KPA mooring and Harbor/Water Usage stickers will be issued at the time of fee payment.

e. Liability for Costs: Vessel owners are liable for all legal and administrative costs incurred in any attempt to collect past due fees or to enforce the provisions of this section.

f. Exemptions

i. Vessels in boat yards for repair are exempt from this fee.

ii. Kayaks, canoes, sailboards, rowboats, skiffs, paddleboards, and single person sailboats are exempt, but are subject to the launch fee schedule set forth in Appendix A.

J. Pier Use Permits.

1. There are four (4) types of pier use permits with fees as set forth in Appendix A.

2. Level and location of pier use allowed type of permit, is defined below:

a. Non-Resident Commercial Fishing Permit- Allows commercial fishing vessels paying the appropriate fee use of the pier, floats and hoist for loading and unloading of product. This permit does not allow for the staging of fishing gear to or from the water. Mooring permit holders are exempt from this fee.

b. Commercial Facility use Permit (non-resident) – Allows commercial vessel owners paying the appropriate fee use of the floats, Piers, and facility for commercial use, which may include loading and unloading of supplies that can be manipulated manually and passengers. Must be able to produce proof of insurance. Permit holder is responsible for any damage to Kittery facilities that may result from use. Limited use of the hoist is allowed at the discretion of the Harbormaster. This permit includes, but is not limited to charters and vessels for hire.

c. Commercial Vessel Haulers Staging Permit – Allows commercial vessel haulers paying the appropriate fee the use of a facility for the staging and launching of vessels.

d. Not- For-Profit Facility Permit - Not-for-profit organizations are exempt from facility use fees if approved by the harbormaster prior to use. This does not include contractors or hired entities working under the not-for-profit organization.

e. The movement of construction equipment, freight, marine construction equipment, and dredging/ oil boom related equipment across the piers, floats and launch ramps for transport to or from other sites is prohibited at all Town owned facilities. (Mooring blocks for use in Kittery waters are exempt.)

f. Staging of fishing gear by non-residents is prohibited. (Mooring permit holders are exempt)

g. Users shall provide any documentation requested by the Harbormaster before a permit is issued.

3. Town Hoist:

a. No launching or landing of vessels using the hoist.

b. Loads must not exceed the posted hoist limit.

c. At the sole discretion of the Harbormaster any use found to be unsafe, may be terminated.

K. Fishing Policy from Town Owned Piers, Floats and Wharves

A valid Saltwater Fishing license is required to fish from Town facilities.

1. Town Pier at Frisbee Wharf:

Fishing is permitted on the Frisbee Pier and float systems. Fishermen are cautioned to stay clear of all vessels and dinghies that are made fast to the float systems. Fishermen are required to keep the facility clean, and a carry-in/carry-out policy is in effect.

2. Pepperrell Pier:

Fishing from the Pepperrell Pier, the ADA gangway, and transient float system, is prohibited. Violation of this rule is subject to a fine as set forth in Appendix A.

3. Traip Launch:

Fishing is permitted at the Traip Launch. Fishermen are cautioned to stay clear of all vessels and dinghies that are made fast to the float systems. Fishermen are required to keep the facility clean, and a carry-in/carry-out policy is in effect.

4. Government Street Wharf:

Fishing is permitted on the Government Street Wharf. Fishermen are cautioned to stay clear of all vessels. Fishermen are required to keep the facility clean, and a carry-in/carry-out policy is in effect.

III. MOORINGS

These Rules and Regulations are promulgated to meet the requirements of Title 38, Maine Revised Statutes (MRS), Waters and Navigation, Chapter 1, Operation of Vessels, as may be amended from time to time.

A. Assignment of Mooring Sites

All mooring sites except as otherwise provided by Title 38 MRS, et. seq. are under the exclusive control of the Harbormaster. When the requests for mooring sites exceed the sites available, mooring sites must be assigned according to the allocation provisions of this section from established mooring site area waiting lists maintained by the Harbormaster. The mooring site areas are designated by the following letter codes:

- IS = Isles of Shoals (Landowner or Lessee only)
- CC = Chauncey Creek including Gerrish Island
- PC = Pepperrell Cove
- FM = Fort McClary to Kittery Point Bridge
- SC = Spruce Creek above the Kittery Point Bridge
- BC = Kittery Point Bridge to Memorial Bridge
- BI = Badgers Island
- PR = Memorial Bridge to Rt. 95 Bridge
- EL = Rt. 95 bridge to Eliot line
- OH = Outhauls

1. Assignment of Mooring Site with No Waiting List

If at the time an individual applies for a mooring site there is no waiting list for that area (except at the Isles of Shoals where the applicant must be a landowner or lessee to be assigned a mooring site) this individual may be assigned a mooring site without regard to allocation provisions of these Rules and Regulations.

2. Assignment of Mooring Sites from the Waiting List

- a. The Harbormaster shall maintain a separate waiting list for each area for both commercial and non-commercial applicants. These lists must be further separated by resident and non-resident and arranged by serial number. The burden of proof in determining Town residency and the principal use of a vessel is upon the applicant.
- b. Persons on the waiting lists may decline an offered mooring site on a one-time basis and retain their relative position on the Mooring Site Waiting List. Subsequent refusals of an offered mooring site will result in the person's name moving to the bottom of the list.
- c. Waiting list applicants who change their status from pleasure to commercial must be assigned to the bottom of the commercial list for area desired.

B. Application to the Mooring Site Waiting List

1. Person(s) may request their name be added to an area mooring site waiting list by filling out a mooring site permit application available at the Town Hall and paying the application fee. Such fee is due on an annual basis. The application must be filled out as follows:
 - a. The application must indicate a choice of mooring site area using the area designation codes in section III.A above.
 - b. The application must be filled out in the name of the primary person to whom the vessel will be registered or documented regardless of whether there is multiple ownership of the vessel.
2. Upon receipt of the completed application the Harbormaster will review the application with regard to space available in the areas requested and place the name on the appropriate area list(s) as discussed in section A above. An applicant's name may be listed only once on an area waiting list except that an individual may be listed on both the commercial and non-commercial list at the same time. The mooring site waiting list is considered a public document under the Freedom of Access Law.
3. Any false or misleading information provided or set forth in the application to the mooring site waiting list constitutes grounds for the Harbormaster to disqualify an applicant from being added to the waiting list for a period of five (5) years.
4. Commercial mooring permit applications must show with sufficient and credible documentation satisfactory to the Harbormaster that the primary source of income for the vessel to be moored is through the vessel's use and operation. Vessels that don't land a product such as ferry boats, water taxis, fishing charters and similar type vessels, must provide proof of insurance sufficient to satisfy the Harbormaster that the vessel is used and operated as a commercial vessel.

C. Mooring Site Permit Application Information

1. Address: Each new and renewal mooring site permit application must contain the most current legal address of the mooring site permit applicant. Should this address change while the applicant maintains mooring privileges, the Harbormaster must be immediately notified in writing of the new address and the Harbormaster shall so note the change on all appropriate records. All notices required to be sent to the mooring site permit holder pursuant to any provisions of these Rules and Regulations must be sent to the address as it appears on the mooring site permit application or as updated following a written notice to the Harbormaster. Proof of mailing to such address by the Port Authority or the Harbormaster satisfies any mailing or notice requirements imposed by these Rules and Regulations.

2. Mooring Tackle: The Port Authority shall presume that the mooring site permit holder is the owner of the mooring tackle located or to be located in the mooring site. In the event that the mooring tackle (hardware) is owned by someone other than the mooring site permit holder the name and address of the mooring tackle owner must be provided to the Harbormaster and updated as required from time to time.

3. Vessel identification: The mooring site permit application must clearly identify the vessel which will be placed on the mooring. The name of the mooring site permit holder recorded on the application and the primary name listed as the vessel owner on the state registration or federal documentation certificate must be the same.

III D. Annual Renewal of Mooring Site Permits

All mooring site permits must be renewed and all fees paid by April 15th of each year and prior to putting any vessel on that mooring.

1. All mooring permits begin on January 1st and expire on December 31st of the calendar year.

2. Annual mooring fees will be based on the vessel listed on the mooring application and on record held by the Harbormaster regardless of whether or not the vessel will be on the mooring or not during the season. If changes in vessel occur in accordance with Section E-f then the new information will be used.

3. Mooring permit holders must present a copy of their registration at the time of renewal each year and be the primary owner of the specified vessel in order to renew their permit.

4. Forfeiture notification letters will be sent on or after May 1st by certified mail by the Harbormaster, or duly appointed agent, to the permit holder's last known address as it appears in the Port Authority records, advising that they may request a hearing before the Port Authority within thirty days of the mailing of said notice, or the revocation is final and the mooring will be reassigned. If an appeal is finally denied, the revocation will take effect from the date of the denial.

5. On May 15th anyone having their permit revoked for non-payment of permit or late fees will be notified by certified mail by the Harbormaster or duly appointed agent at their last known address as it appears in the Port Authority records that they must request a hearing before the Port Authority within thirty (30) days from the mailing of said notice, or the revocation is final and the mooring will be reassigned. Proof of mailing of said notice is conclusive proof that the mailing was sent.

E. Use of Permitted Mooring Sites and Temporary Mooring Site Use Program

1. Use of Permitted Mooring Sites

a. Title 38 MRS §3, Mooring sites, expressly forbids those who are granted a private mooring site assignment from transferring that privilege to another person, unless the mooring site was initially granted as a rental mooring site. This section of state law specifically says assignment of these mooring privileges does not confer any right, title, or interest in submerged or inter-tidal lands owned by the state and further says assignments must not be rented unless the provision for rental was part of the agreement when the mooring was originally assigned.

b. Rental moorings issued before 1968 are considered grandfathered by the Port Authority and the Army Corps of Engineers. The burden of proving through credible and reliable evidence that the mooring was issued as a rental mooring prior to 1968 rests with persons seeking to have the rental mooring grandfathered. All rental mooring permits issued since 1968, in order

to continue as rental moorings, must show proof that the rental mooring was properly documented with the Army Corps of Engineers and the Port Authority.

c. A person who is assigned a private mooring site may not rent, loan, lease, lend, give, bestow, permit, accommodate, allow use of, or give permission to any other person to use the assigned private mooring site (whether or not money or other consideration is exchanged) except as allowed in writing by the Harbormaster on a case by case basis.

d. Mooring sites cannot be transferred between family members except that a mooring site used for commercial fishing purposes may be transferred at the request of, or upon the death of the assignee, only to a member of the assignee's family and only if the mooring site assignment will continue to be used solely for commercial fishing purposes. "Member of the assignee's family" means an assignee's spouse, parent, child or sibling, by birth or by adoption.

e. Only a vessel which is properly registered or documented in the primary name of the mooring site permit holder may be placed on that person's private mooring. The name of the mooring site permit holder as recorded by the Harbormaster and the name listed as the primary vessel owner on the state registration or federal documentation certificate must be the same.

f. Approved mooring site permits or assignments for the size and type of vessel described on the permit are valid from the date of issuance until December 31st. Mooring site assignees may change vessels on their assigned mooring site only with the written permission from the Harbormaster. In general, mooring site permits must be limited to the same approximate size and type of vessel unless, in the judgment of the Harbormaster, a change can be made without adversely affecting the Harbor mooring site plan or adjoining mooring site assignees.

g. The Harbormaster is authorized to seek information from a mooring site permit holder at any time with respect to the use, location, ownership, or any other factual information relating to the permit application that the Harbormaster deems meaningful. Failure to respond to the Harbormasters inquiry is a basis for the Harbormaster to revoke the mooring site permit.

2. Temporary Mooring Site Use Program:

a. To achieve the most efficient and extensive use of the limited mooring assets in Kittery, the Harbormaster shall administer a program to assign moorings not being used by the mooring site permit holders to other individuals on a temporary basis.

b. A mooring site permit holder must place the mooring in the Temporary Mooring program for reassignment for a minimum of one full season; expiring on December 31. The mooring holder will pay a fee as set forth in Appendix A, to maintain the ownership of their mooring. Placement of a mooring site in the Temporary Mooring program must be made prior to April 15.

c. At the time the mooring is placed in the Temporary Mooring program, the mooring permit holder must provide written evidence to the Harbormaster documenting the size and condition of the mooring tackle. Required information includes: the type and weight of mooring block, type and size of chain and pennant, date of last mooring inspection and the name of the inspector, name of the person/firm responsible for annual maintenance, and any additional information as may be required by the Harbormaster.

d. The Harbormaster shall reassign temporary moorings using the various categories of the Mooring Waiting List as the primary method of determining the priority of assignment. However, the Harbormaster shall exercise necessary caution to ensure that such assignment does not compromise the safety of adjacent vessels.

To that end, the Waiting List priority may be waived to place only an appropriate vessel on a mooring in the Temporary Mooring program.

e. During the period that a mooring site is in the Temporary Mooring program, the person to whom the mooring site is assigned is responsible for all fees, inspections, and maintenance of the mooring tackle. Proof of inspection and/or maintenance must be provided to the Harbormaster prior to putting the vessel on the mooring.

f. The Port Authority is authorized hereunder to establish any further rules, conditions, or procedures deemed necessary for the issuance and administration of the Temporary Mooring Program.

F. Choice of Mooring Site and Resolution of Conflict

The Harbormaster shall, consistent with these Rules and Regulations and 38 MRS and with due regard for the safety of other vessels and of navigation, give consideration to the choice of the applicant. However, where mooring site rights of the individuals are claimed to be invaded or pose a danger to property or navigation and protection is sought, the Harbormaster shall assign and indicate to the mooring site permit holder the location which they may occupy for mooring purposes, and shall change the location of those moorings from time to time when crowding or other conditions render the change desirable.

G. Adequacy of Moorings

All mooring tackle set in a mooring site must be of sufficient size to hold the vessel for which it is used. An "Adequate Mooring" under this section must conform to the following requirements:

1. All moorings must be inspected at least every other year. Inspection must be performed only by individuals or organizations authorized by the Harbormaster and written reports of all inspections must be submitted to the Harbor Master office within seven (7) working days after the inspection. The mooring permit holder is responsible for all costs associated with mooring inspections.

2. All mooring tackles must be approved by the Harbormaster with the assigned mooring number permanently affixed thereon. Such number must be at least three (3) inches high and be clearly visible at all times. The Harbormaster may at any time examine any mooring tackle to determine compliance with this section. Except in cases of emergency, the Harbormaster shall notify the owner of the intention to examine the mooring tackle and request the presence of the owner during such examination.

3. Mooring tackle found to be inadequate with regards to the requirements of this section must be corrected within forty-eight hours of being so notified or be removed forthwith. Any cost of examination or removal resulting therefrom is borne by the holder of the mooring site permit. If a vessel is required to be moved for reasons of the safety of other vessels, the owner is responsible for all associated costs.

4. Registered owners listed on mooring site permit are responsible and liable for any damage caused by their vessel whether such owner is aboard the vessel or not.

H. Vessels Moored so as to Impede Navigation or to Endanger Other Vessels

1. No more than one Vessel may occupy a single mooring site without said vessels being occupied. All mooring sites, whether now existing or hereinafter set, must be located in such a way that the vessels will not impede navigation within the harbor, nor endanger other vessels.

2. If the Harbormaster finds that any vessel is moored as to impede navigation or to endanger other vessels, the Harbormaster may direct that the owner of the vessel take such steps, whether by shortening the scope of the mooring lines, or by the use of additional mooring lines,

as will prevent such impeding of navigation or endangering of other vessels; or in the alternative, may order that the mooring be removed from the site or relocated. In requiring the removal of a mooring because of its danger to other moorings, the mooring last set is to be the first removed.

3. Any person so ordered by the Harbormaster, shall remove the same within forty-eight (48) hours after so ordered; provided, however, that if the Harbormaster finds an emergency requiring immediate action to prevent injury to life or damage to property, said mooring or any vessel attached thereto may be caused to be immediately removed and relocated. Any expense involved is to be borne by the owner of the mooring or vessel being removed.

I. Moving or Interfering with Moorings Belonging to Another

Except by direction of the Harbormaster, and with permission of the owner, no person may move or interfere with any mooring or vessel in the navigable tidal waters of the Town. If the Harbormaster deems the situation to be an emergency, action may be taken immediately, notifying the owner of the vessel involved that such action has been taken.

J. Transient Moorings, Commercial Service, and Rental Moorings

1. Municipal

Town Transient Moorings are provided and maintained by the Town for the use of visiting vessels. Such vessels may use these moorings for a period of no longer than fourteen (14) days, or at the discretion of the Harbormaster. A schedule of fees for such usage is set forth in Appendix A.

2. Non-Municipal

Transient Courtesy Mooring Site Assignments are for the use of visiting of guest vessels. Such mooring sites may not be rented and must be clearly recognizable and identifiable with distinguishing color or markings as determined by the Harbormaster. No vessels may use these mooring sites for a period longer than twenty-four (24) hours, except under unusual circumstances and only with the express permission of the Harbormaster.

3. Commercial Service and Rental Moorings

Commercial Service and Rental Mooring sites will be allowed only upon the approval of the Port Authority.

K. Moored Floats

Moored floats are authorized only with expressed permission of the Port Authority and only after receiving an Army Corps of Engineers Permit.

L. Outhauls

All Outhauls must be approved by the Harbormaster. Person(s) applying for an outhaul must show that they have authorized access to the location requested.

M. Spar Mooring Floats

No new spar mooring floats may be installed within the waters of the Town. Existing spar mooring floats may be retained but must be changed seasonally to avoid becoming hazards to navigation.

N. Riparian Rights Mooring Sites

The Port Authority may permit and assign mooring sites to waterfront property owners demonstrating and claiming such right under the requirements of Title 38 MRS §3, Mooring Sites, under the following conditions:

1. Legal interest. The applicant must show legal interest in the property and in the case of joint ownership of property, that the person has legal authority to act for all owners before the application is accepted by the Port Authority.
2. Location. A Riparian mooring site may be located only in waters immediately in front of the intertidal land associated with the property as defined in Title 16, Chapter 4, Figure 1. Once a Riparian Mooring has been assigned to a property, it stays with the property and is not subject to the three-year rule and may not be moved.
3. Use. A Riparian mooring site may be used solely by the owner of the property for personal use. Such mooring site cannot be used by a third party, either temporarily or permanently, except under the Temporary Mooring Site Use Program.
4. Practicality. A Riparian mooring site may be assigned only if the proposed location of said mooring site has been determined by the Port Authority to be practicable and safe and not impede free navigation or infringe on the rights of others.
5. Number of moorings. Only one Riparian mooring site per qualifying waterfront lot may be granted, regardless of the amount of shorefront in excess of the 100 foot minimum requirement and 20,000 sq. ft. minimum lot size, except persons owning shore rights prior to January 1, 1987, are required only to have a 100 foot minimum shore frontage requirement established by state law.
6. Exceptions
 - a. An exception to the mooring site location may be granted by the Port Authority if the waterfront property is adjacent to an established mooring field or area and an additional mooring site would result in an unsafe condition. In such cases, the Port Authority may either reassign existing mooring site locations, or, at its discretion, assign the riparian right mooring site to another location. The simple unsuitability of the property location for mooring a particular type of vessel does not justify this exception.
 - b. For the purpose of these regulations, in the case where a property owners' existing mooring fronts their qualifying waterfront lot, it considered that property owner's riparian mooring site for as long as the person owns the property.
 - c. In the case where a non-qualifying lot has been legally assigned a riparian mooring prior to the adoption of these Regulations, that mooring may continue as a riparian mooring associated with that lot until such time the mooring has either been revoked or abandoned. Should a transfer of ownership of the non-qualifying lot occur, the new owner may continue the use of the riparian mooring subject to the provisions of these Regulations, providing the mooring had not been revoked or abandoned by any previous owner.

O. Abandoned Mooring Sites

A mooring site is deemed to be abandoned and the mooring site permit holders' mooring privileges terminated under the following conditions:

1. Should a current mooring site permit holder fail to renew their mooring site permit within each calendar year from its expiration date (December 31st).
2. Should a newly assigned mooring site permit holder fail to pay all fees to the Town within 60 days of the new assignment.
3. Mooring permit holders whose mooring remains unused for three (3) continuous years must have their mooring site permit revoked.

4. Mooring holders who fail to have their mooring inspected at least every other year by a qualified mooring inspector must have their mooring site permit revoked.

P. Revocation of Mooring Site Permit

1. The Harbormaster has the authority to revoke an individual's mooring site permit for any violation of these rules and regulations. Upon revocation, the Harbormaster shall promptly notify the individual that the mooring site permit has been revoked. Failure to comply subjects the violator to the penalties outlined in Section VI. Mooring site revocation may be appealed to the Port Authority as specified in these regulations.

2. Any mooring holder who has had their mooring privilege revoked due to illegal use will forfeit any fees paid up to the time of revocation and be subject to any fines that may apply as set forth in Appendix A.

Q. Disposal of Mooring Tackle

Upon the abandonment or revocation of a mooring site permit, as provided by these Rules and Regulations, the mooring tackle must be disposed of as follows:

Note: For the purpose of this section the term mooring site permit holder includes the mooring tackle owner if the tackle (hardware) is owned by another person.

1. Notice for Removal. The mooring site permit holder must be notified by the Harbormaster in writing given to the permit holder in hand or mailed to the permit holder at the most recent address on the application of the permit holder. The notice must contain the following information:

a. The provisions of the Rules and Regulations determined to be violated which have resulted in the determination that the mooring site has been abandoned or revoked.

b. A directive to the mooring site permit holder to remove the mooring tackle from the mooring site on or before a specified date not to exceed 30 days from the date the notice is mailed.

c. Notification to the mooring site permit holder that in the event the mooring tackle is not removed from the mooring site on or before the date set forth in the notice for removal, the ownership of the mooring tackle vests in the Town subject only to the owners right to redeem the ownership to the mooring tackle as hereinafter provided.

d. Notification that should ownership of the mooring tackle revert to the Town as provided in above by failure of the mooring site permit holder to remove the same within the time period specified in the notice for removal, the Harbormaster, at the expense of the mooring site permit holder, shall take whatever action is deemed appropriate, including the removal and storage of the mooring tackle pending sale or other disposition by the Harbormaster.

e. Notification that the determination set forth in section (a) above may be appealed provided that the appeal procedure set forth in these Rules and Regulations are strictly followed. Any appeal if timely commenced does not stay any provisions of this section except that no sale of mooring tackle may occur until any appeal is finally determined.

2. Sale of Mooring Tackle by Harbormaster. In the event that ownership of the mooring tackle vests in the Town as a result of failure of the mooring site permit holder to remove the tackle within the time period set forth in section Q.1(b) above, the Harbormaster shall cause written notice to be delivered and marked to the mooring site permit holder at the most recent address on the application stating the date on which the mooring tackle will be sold by the Harbormaster. This notice must be mailed by the Harbormaster to the mooring site permit

holder at least 14 days prior to the date set for the sale.

3. This notice must inform the mooring site permit holder that the mooring tackle may be redeemed prior to the sale by payment in full to the Harbormaster of all expenses and fees outstanding associated with the removal, storage, and notices undertaken by the Harbormaster.

4. Should the mooring tackle not be redeemed as provided herein, the Harbormaster shall proceed to sell the same in a commercially reasonable manner on the date as specified, pursuant to Town Code Title 3, Revenue and Finance, §2.10, Disposal of Property, as follows:

A. All municipally owned property, real or personal, must be disposed of either by:

1. Trade-in on purchase of new equipment. Any item that is offered as a trade-in must also be offered for sale by competitive bid. The higher amount of the two (trade-in allowance or bid) must be accepted;

2. Sealed bids;

3. Auction.

B. This does not apply to disposal of:

1. Items commonly termed refuse, waste or trash;

2. Recycled material emanating from the solid waste facility;

3. Compost or sludge materials developed by treatment of sewage;

4. Interdepartmental transfers approved by the Town Manager;

5. Property whose estimated value is less than one hundred dollars (\$100.00).

C. The above procedure must be followed at all times unless prior approval is obtained from the Town Council.

D. Nothing in this subsection prevents the Port Authority from retaining the mooring tackle without selling the same.

5. Proceeds From Sale of Mooring Tackle. Upon the sale of any mooring tackle as provided above, the net proceeds from the sale after deducting any selling expenses must be paid to the Town. Should the net proceeds from the sale be insufficient to satisfy any outstanding expenses and/or fees associated with location, removal, storage, and sale of the mooring tackle, then the Town has the right to recover any such deficiency in an appropriate civil action against the prior mooring site permit holder.

IV. PIERS WHARVES, FLOATS, AND OTHER MARINE-RELATED STRUCTURES.

A. Authority

The Port Authority is the approving body for all marine-related structures to be built in the Town below the normal high-water mark. The Port Authority is also the approving authority for any integral infrastructure for water-dependent use which falls within one hundred feet above the normal high-water mark. In those cases, the requirements of the Town Code Title 16, Chapter 16.11, Marine-Related Development apply in addition to the requirements of these Rules and Regulations, the Maine Mandatory Shoreland Zoning Act and applicable Federal regulations.

B. Permits

1. No wharf, pier, float, or any other marine-related structure may be erected, moved, or otherwise altered without a Building Permit therefor, issued by the Code Enforcement Officer after plan approval is obtained from the Port Authority, as required by these Rules and Regulations and Title 16, Chapter 16.5.2.5, Permit Threshold and in compliance with all

requirements of the applicable local, State and Federal requirements.

2. A permit for which no substantial work has commenced within one year from date of issue expires. A permit for which work is not substantially complete within two years from date of issue expires. Expired permits may be renewed by the Code Enforcement Officer upon application and payment of a fee, provided that such renewal is sought prior to expiration under these provisions and provided that such renewal meets all relevant rules, regulations, ordinances, statutes and codes in effect on the date that the renewal of the expired permit is requested.

C. Application Requirements

All applications for permits must be filed with the Chairman of the Port Authority or designated agent using the form provided for that purpose.

1. Plans showing the actual dimensions and shape of the lot to be built upon; the exact size and locations and dimensions of the proposed structures or alterations to existing structures;
2. Any other such information as the Port Authority may deem necessary to determine conformance with these Rules and Regulations; Title 16, Chapter 16.11; the Maine Mandatory Shoreland Zoning Act; and applicable Federal regulations.
3. The Port Authority may grant a waiver from the specifications of these regulations provided that the Port Authority finds that due to special circumstances of the specific application the granting of a waiver will not adversely impair the public health, safety and general welfare, the use of public waters, navigation, or harm the environment. All such waivers must be supported by sufficient findings of fact.
4. The application must be accompanied by an application fee as set forth in Appendix A. No application may be deemed complete by the Port Authority until payment of the proper fees.
5. Ten (10) sets of all submissions are required.

D. Application Process

1. Acceptance by the Chairman of the Port Authority.

The Chairman shall make a preliminary determination that the application is complete, or waiver requests are submitted for items not included.

2. Receipt and Scheduling Hearing.

Upon acceptance, the Chairman shall place the application on the Authority's agenda for a Scheduling Hearing and issue a dated receipt to the applicant, which constitutes the official date of submission.

3. Board of Appeals (BOA)/Planning Board Review

Where a project contains significant upland development as an integral part of the application, review by the BOA or Planning Board as appropriate is encouraged prior to Port Authority review as indicated in Chapter 16.11.3, Shorefront Development Plan Review of the Kittery Land Use and Development Code.

4. Scheduling Hearing

a. At the Scheduling Hearing, the Port Authority shall accept or deny the application in accordance with the following:

(1) the applicant has legal standing by virtue of vested interest (right, title, or interest) in all properties under consideration;

(2) the application is complete in accordance with these regulations and Title 16 (if Appropriate), or the Authority accepts and approves any requests for waivers of submission contents.

b. If the Authority accepts the plan, it shall determine if additional information is required prior to Public Hearing, (in which case it may require the applicant to provide such information) and schedule the date for Public Hearing.

c. The Chairman shall arrange a mutually agreeable time for a site walk by the Authority prior to Public Hearing.

5. Public Notice

The Chairman shall cause to be placed a public notice of such hearing at least seven and not more than fourteen days prior to the scheduled hearing date. The notice must set forth the general nature of the requested approval and be posted at the Municipal Offices, and forwarded to the Town Clerks of York and Eliot, in the case of a plan located within five hundred feet of their municipal boundaries, at least ten days prior to the hearing. Placing of public notices is at the expense of the applicant.

6. Abutter Notice

a. The Chairman shall cause to be sent notice of Public Hearing to all shorefront landowners whose shorefront property line abuts the same waterbody and is located within a distance of 150 feet of the applicant's shorefront property line. Notices sent are at the expense of the applicant. Proof of mailing to the address shown in the Town Assessor's property cards satisfies the notice requirement.

b. Notice must also be sent to the Code Enforcement Officer, Town Planner, and where applicable, the BOA, Planning Board, and Conservation Commission, at least seven days prior to the Public Hearing.

c. Failure of notificants to receive said notices does not invalidate any Port Authority action.

7. Public Hearing

a. An accepted application will normally be scheduled for review and public hearing at the next regularly scheduled meeting of the Port Authority, but no earlier than fifteen days nor later than thirty-five days from the date of Port Authority acceptance. With the concurrence of the applicant, this deadline may be modified.

b. The following rules apply to the hearing:

(1) The Chairman or acting Chairman shall serve as the presiding officer.

(2) The Port Authority may receive oral and documentary evidence, but must exclude evidence which it considers irrelevant, immaterial, or unduly repetitious.

(3) The Chairman shall determine the order of presentation by parties represented at the hearing. Each party has the right to proceed without interruption, except that rulings by the Chair prevail.

(4) Any party may be represented by agent or attorney.

(5) Any Town official having an interest in the application may present into evidence a written summary of findings and recommendations.

(6) The Port Authority may continue the hearing to another time and location, including the site of the project, as it deems necessary.

8. Port Authority action

- a. The Port Authority shall act to approve, approve with conditions, disapprove, or continue plans within thirty-five days of plan acceptance unless the applicant agrees in writing to extend the period (not to exceed 120 days).
- b. In the case of an extension such plan must automatically be scheduled for the agenda of the next regularly scheduled meeting after the extended period and action completed whether the applicant has accomplished the purposes for which the continuance was granted or not.
- c. An applicant or interested party may request reconsideration of any decision by the Port Authority as outlined in Section VII of these Rules and Regulations.

9. Expenses

The applicant is responsible for the application fee in Section X in addition to all expenses associated with application process.

E. Findings of Fact

1. Action by the Port Authority must be based on sufficient findings of fact which support compliance with all required standards of these Rules and Regulations, (or grant waivers for those things requested) applicable requirements contained in the Title 16, Chapter 16.11 Marine-Related Development, Development Application and Review (Findings of Fact), of the Maine Mandatory Shoreland Zoning Act (Title 38 MRS §435-439), applicable requirements of the Maine Department of Environmental Protection, and applicable requirements of the US Army Corps of Engineers.
2. If it is mutually agreeable to the Port Authority and the Applicant, the official, approved minutes of the meeting may be accepted as the written findings of fact.

F. Conditions of Approval

An approval by the Port Authority is a form of an agreement between the Town and the applicant, incorporating as elements the application, the findings of fact, and such conditions as the Port Authority may impose upon approval.

G. Performance Standards

1. All applications for permits under this section must comply wholly with the requirements of Title 16, §3.2.17 (Shoreland Overlay Zone), and Title 38 MRS §435-439, and any other applicable federal or state requirements. These requirements apply to all development within 250 feet, horizontal distance, of the normal high-water mark of any river or saltwater body. These requirements also apply to any structure built on, over, or abutting a dock wharf or pier, or any other structure extending beyond the normal high-water mark of a water body or within a coastal wetland shown on the Official Shoreland Zoning Map.
2. The construction of any piers, docks, wharves, and other structures and uses extending over or beyond the normal high-water mark of a water body or within a wetland must comply with all applicable requirements of Title 16.
3. Non-commercial private piers may have a maximum width of 6 feet as measured parallel to the shoreline and be limited to the minimum size necessary to accomplish their purpose. With the exception of temporary ramps and floats, the total length of a ramp, pier and float structure may not extend more than 150 feet beyond the normal high-water mark and piers not extend more than 100 feet beyond the normal high-water mark nor extend below the mean low water mark, whichever is shorter.

The maximum height of the pier deck may not exceed six (6) feet above the normal high-

water mark, and the handrails not exceed 42" without the specific approval of the Port Authority.

a. Commercial piers are limited to the minimum size necessary to accomplish their purpose. They may not extend beyond the mean low water mark except with credible proof by the applicant that the extension is necessary for the water-dependent use of the pier. The maximum height of the pier deck may not exceed six (6) feet above mean high water mark and the handrails not exceed 42", without a showing of necessity and specific approval of the Port Authority. Documentation required for an application for a commercial pier, in addition to all other requirements of these Rules and Regulations, must set forth credible proof of the commercial usage and include at least the following:

- i. Written documentation as to the nature of the commercial enterprise and why the applicant is requesting a pier that doesn't meet the non-commercial private pier standards noted in G3, above;
- ii. Written proof of a valid commercial enterprise, such as commercial fishing license, articles or organization/incorporation for the business;
- iii. Documentation of their ownership in the commercial business or enterprise;
- iv. Any additional documentation required by the Port Authority for determining the commercial use and operation of the commercial pier.

4. Piers, wharves, and pilings must be set back at least 25 feet from property lines and 50 feet from other structures that are fixed in place below the normal high-water mark and not owned or controlled by the applicant unless a letter of permission is granted by abutting or other controlling property owner. If abutting property owners reach a mutual agreement regarding structures which have a lesser setback, which does not interfere with navigation, is practical and is consistent with the intent of these regulations, that setback may be authorized by the Port Authority if the applicant agrees to record any ensuing permit (which will have that agreement as a condition) and the abutters' letters of no objection, with the Registrar of Deeds, or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property in the Town .

H. Administration and Enforcement

1. Once Port Authority approval is granted, an applicant must apply, within one year of the date of approval, to the Code Enforcement Officer for a Building Permit prior to commencement of any work on the site or the approval terminates. When circumstances are such that a plan that has received Port Authority approval is required to be reviewed by another agency (e.g. DEP, Planning Board, BOA), then the one-year time period for obtaining a building permit from the Code Enforcement Officer is stayed while:

(a) the plan is pending before that agency, from time of submission to time of decision inclusive, verified by documentation from that agency and

(b) the decision of such agency is being reviewed by any appellate board or judicial court, from the time an appeal is filed to the time when an appellate board or judicial court renders the last, un-appealed decision necessary to allow the applicant to obtain a building permit from the Code Enforcement Officer, verified by documentation from that appellate board or judicial court.

(c) In all cases, the Port Authority may extend the effective date of its approval for up to one additional year provided the renewal is sought before the initial approval terminates and the permit meets all Port Authority requirements in effect on the date that the request for the renewal is sought.

2. As set forth in Title 16, §5.3.6 of the Kittery Land Use and Development Code, the Code Enforcement Officer is required to approve or deny an application for a Building Permit within fourteen working days of receiving said application.
3. The Code Enforcement Officer shall revoke any Building Permit issued if, after due investigation, it is determined the Permit holder has violated any of the provisions of the Port Authority approval, Title 16, or any applicable code, law, or statute.

V. HARBORMASTER DUTIES AND AUTHORITY

A. Duties

In addition to, and concurrent with the authority authorized by state statute, the Harbormaster shall enforce all provisions of these Rules and Regulations pertaining to harbors and tidal waters under the jurisdiction of the Port Authority and the State of Maine and shall cooperate with other Governmental agencies in enforcing their regulations. Under the supervision of the Port Authority, the Harbormaster shall:

1. Preserve and regulate navigation within the waters defined in these Rules and Regulations.
2. Assign mooring sites, ensuring that the mooring tackle is kept in safe condition, and maintain an accurate plot of the location of all moorings sites in the Town.
3. Direct the removal of vessels, if necessity or emergency requires.
4. Regulate the use of town owned wharves, piers, docks, landings or floats.
5. Inquire into and prosecute all offenses occurring within the Port Authority's jurisdiction.
6. Keep such records as the Port Authority may require.
7. Regulate the use of and ensure that all town equipment and property in the charge of the Port Authority is well maintained and kept in a safe and functioning condition. This property includes but is not limited to wharves, floats, piers, landings, vessels, trailers, electronic equipment, cranes, and other miscellaneous tools and safety gear.
8. Enforce State and Federal marine safety laws and regulations and promote safe boating practices.
9. Perform such other duties as the Port Authority may prescribe.
10. Report violations of these rules and regulations or violations of any permit issued by the Port Authority to the Port Authority or CEO as appropriate.

B. Qualifications Salary and Appointment

The Harbormaster will be qualified by education, training, and experience as determined by the Port Authority. The Harbormaster's salary and expenses are to be set by the Port Authority. The Harbormaster's appointment may be revoked by the Port Authority at any time for cause, after notice and hearing.

The Harbormaster is to be appointed for a minimum term of one (1) year, with qualifications, salary, and expenses determined by the Port Authority.

C. Assistants

From time to time the Port Authority may appoint Assistant Harbormaster(s) on the recommendation of the Harbormaster. Assistants must be trained by the Harbormaster to assist in patrol, mooring site registration, and other such duties as the Harbormaster or Port Authority may prescribe. The Port Authority reserves the right to employ and compensate such assistants if it determines that the assignment is in the best interest of the Town. An assistant's

appointment whether volunteer or compensated may be terminated at any time by the Port Authority.

VI. PENALTY

A. Violations

Whoever violates any of these rules or regulations or refuses or neglects to obey lawful and reasonable orders of a Harbormaster, duly authorized deputy, or other law enforcement officer, given pursuant to these Rules and Regulations or State statute, or obstructs a Harbormaster in the execution of duties, commits a civil violation, which may result in the loss of mooring site privileges in the Town, and pay a fine as set forth in Appendix A.

B. Enforcement by Harbormaster

The Harbormaster, duly authorized Assistant Harbormaster, or any other law enforcement officer authorized to enforce laws within the Town, is authorized to enforce all provisions of these Rules and Regulations as well as all applicable State statutes. The Harbormaster is authorized to take all necessary proceedings to seek the recovery of fines authorized thereunder and all such fines and penalties recovered inure to the Town.

C. Additional Enforcement Authority for Violations of State Statute

In addition to the civil penalties imposed hereunder for violations of these Rules and Regulations, Title 38 MRS, as may be amended from time to time, provides additional sanctions for violations of statutes that may be enforced by the Harbormaster as provided by law. Among these statutes and sanctions are the following:

1. 38 MRS §13, Failure to obey orders of Harbormaster: A person is guilty of failure to obey an order of a Harbormaster if the person intentionally, knowingly or recklessly fails to obey any lawful and reasonable order of a Harbormaster authorized pursuant to this subchapter. Failure to obey such lawful and reasonable order of a Harbormaster is a Class E Crime.
2. 38 MRS §281, Speed restrictions: Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State at a speed greater than is reasonable and proper, having due regard for traffic, proximity to wharves, docks, moorings or shores, and for any other conditions then existing is guilty of a Class E Crime.
3. 38 MRS §282, Endangering persons or property: Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State in a manner which endangers any person or property is guilty of a Class E Crime.
4. 38 MRS §283, Operating Recklessly: Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State recklessly is guilty of a Class E Crime.
5. 38 MRS §284, Operating under influence of drugs and liquor: Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana is guilty of a Class E Crime.

D. Responsibility of Owner

1. The owner(s) of a vessel are held equally responsible together with the operator of said vessel for any administrative violation of these rules and regulations by said operator.
2. The owner(s) of the vessel are not liable for moving violations which are the fault of the operator of the vessel whether or not permission to operate the vessel was granted unless they have contributed to the fault by neglect or knowledge.

E. Expenses of Moving a Vessel

In the event that the Harbormaster removes a vessel as set forth in these rules and regulations, such removal is at the cost and risk of the owner of the vessel. The Harbormaster shall charge \$100 to be paid by the master or owner of the vessel, which charge, together with the cost of the crew for removing that vessel, the Harbormaster may collect by a civil action in the District Court as set forth in Title 38, MRS, § 5, Removal of vessels obstructing anchorage.

VII. APPEALS

A. Appeal of Decisions of the Harbormaster

1. Any person aggrieved by a decision of the Harbormaster under these Rules and Regulations (other than a decision to pursue a violation of these rules and regulations and/or state statute in a court of competent jurisdiction) may appeal such decision to the Port Authority within thirty (30) calendar days from the date said decision is rendered in writing by the Harbormaster.
2. Such appeal must be filed in writing with the Town Clerk setting forth the reasons for the appeal. The filing is considered complete when stamped as received by the Clerk. The Clerk shall deliver the appeal to the Chairman of the Port Authority for the purpose of scheduling a hearing of the appeal.
3. The Port Authority shall hold a hearing within forty-five (45) days of stamped receipt by the Town Clerk of such appeal (Normally the next scheduled meeting). The appealing party must be given notice by the Port Authority by certified mail at least seven (7) days prior to the date set for the hearing.
4. The Port Authority shall hear all relevant evidence presented to it during the course of the hearing by the Harbormaster and appealing party. Either side may present witnesses or evidence in support of their respective positions. The Chairman of the Port Authority shall serve as the presiding officer and determine the admissibility of testimony in evidence. This hearing is held on an informal basis with strict rules of evidence not applying.
5. After hearing, the Port Authority shall decide the appeal with a minimum of five like votes and render a decision which may affirm, reverse or modify the decision under review, or may remand the matter to the Harbormaster for further proceedings in accordance with the terms of these rules and regulations. The decision of the Port Authority, which must be recorded in the minutes of the meeting, must set forth sufficient findings of fact as appropriate. The Chairman shall provide the appellant written notification of the decision of the Port Authority outlining the findings of fact within 10 days of the decision.

B. Request for Reconsideration of Decisions of the Port Authority

1. An applicant requesting reconsideration of a Port Authority decision or other aggrieved person(s) who appear and participate in the hearing before the board may request a rehearing of such decision provided it is made within fifteen (15) calendar days from the date of said decision is rendered and providing the request contains new or substantially expanded information which provides sufficient grounds for reconsideration of the decision.

2. Any such request for reconsideration must be filed in writing with the Town Clerk setting forth the reasons for the request. The filing is considered complete when stamped as received by the Town Clerk. The Clerk shall deliver the request for reconsideration to the Chairman of the Port Authority for the purpose of scheduling a hearing on the request for reconsideration.
3. The Port Authority shall hold a hearing within forty-five (45) days of receipt by the Town Clerk of such request. (Normally the next scheduled meeting). The requesting party must be given notice by the Port Authority by certified mail at least seven (7) days prior to the date set for the hearing.
4. During the hearing either the applicant requesting reconsideration, or other aggrieved person(s) who are in opposition to the decision may present witnesses or evidence in support of their respective positions.
5. After the hearing the Port Authority shall take the request for reconsideration under advisement and must issue a decision agreed to by voting minimum of five like votes which may affirm, reverse or modify the decision under review. Failure to achieve a five-like vote majority will reaffirm the original decision.
6. The decision of the Port Authority must be recorded in the minutes of the meeting and set forth findings of fact as appropriate. The Chairman shall provide the requester written notification of the decision of the Port Authority within ten (10) days of the decision.

C. Appeal of Decisions of the Port Authority

Applicants or other aggrieved parties may appeal the decision of the Port Authority directly to the Superior Court, within forty-five (45) calendar days pursuant to the rules and procedures established for M.R.C.P. 80(B) Appeals.

VIII. FEDERAL REGULATIONS

Nothing herein may be considered as interfering with Federal laws applicable to the coastal waters, tidal waters, tidal rivers and harbors of the state. Where the requirements of these Rules and Regulations are in conflict with other laws or rules, the more restrictive, or that imposing the higher standard, governs.

IX. CITIZEN COMPLAINTS

A. Complaint Procedure

Persons aggrieved by a violation of any regulation contained herein may file a complaint with the Harbormaster giving the following information:

1. Date and time of violation;
2. Vessel causing violation, including description and if possible, name and identifying number;
3. Owner, if known;
4. Operator or master of vessel, if known;
5. Nature of violation;
6. Damage or injuries cause, if any; and
7. Witnesses, including name, address and telephone number

B. Action of the Harbormaster

If the Harbormaster determines, based on the complaint and any other investigation undertaken, that probable cause exists to believe that a violation of any regulation has occurred, the Harbormaster shall either:

1. Issue a written warning to the alleged offender; or
2. Issue a citation and proceed to enforce any violation of these regulations as provided

herein in a court of competent jurisdiction; or

3. Take other such action as authorized by these regulations or other applicable local, state, or federal laws.

X. FEES – GENERAL PROVISIONS

The schedule of fees for such fines, permits, and applications, established by the Port Authority in accordance with Title 38 MRS et. seq. is set forth in Appendix A, Fee Schedule.

(Note: Government and military vessels are exempt from all fees outlined in this section.)

1. Upon receipt of an approved mooring site renewal application from the Harbormaster, it is the responsibility of a mooring site holder to submit the approved permit application to the Town together with all fees due. Payment of all mooring site fees is due before April 15th of each year.

2. All vessels are required to display the Port Authority decal attesting that all appropriate fees have been paid. Failure to display said decal(s) subjects the master or owner to a fine as set forth in Appendix A.

XI. SEVERABILITY

In the event that any section, subsection or any portion of these Regulations is declared by any court of competent jurisdiction to be invalid for any reason, such decision is not deemed affect the validity of any other section, subsection or any other portion of these Regulations; to this end, the provisions of these Regulations are hereby declared to be severable.

XII. EFFECTIVE DATE and RECORD OF CHANGES

These Rules and Regulations are effective 30 days from the date of approval noted in the document header as found in Regular meeting minutes and remain in effect until altered or repealed by the Port Authority. The record compendium of all Port Authority Rules and Regulation changes is shown in Appendix B.

By:

Date:

Chair
Kittery Port Authority

- 2 Appendices
- A. Fee Schedule
- B. Record of Changes Compendium