

## Chapter 12.6 Shellfish

### Amend Chapter 4.8.3 Shellfish Commission as follows:

#### § 4.8.3 Membership.

The Committee consists of seven members and two alternate members appointed by the Town Council for terms of three years. Terms are to be staggered such that no more than three members' terms expire in a given year.

### Amend Chapter 12.6 Shellfish as follows:

#### § 12.6.1 Authority.

The ordinance codified in this chapter is enacted in accordance with 12 M.R.S. § 6671.

#### § 12.6.2 Purpose.

The purpose of this chapter is to establish a shellfish conservation program for the Town which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- A. Licensing;
- B. Limiting the number of shellfish harvesters;
- C. Restricting the time and area where digging is permitted;
- D. Limiting the minimum size of ~~clams~~ shellfish taken; and
- E. Limiting the amount of ~~clams~~ shellfish taken daily by a harvester.

#### § 12.6.3 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

#### LOT

The total number of ~~soft-shell clams~~ shellfish in any bulk pile. Where ~~soft-shell shellfish~~ clams are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.

#### NONRESIDENT

Anyone not qualified as a resident under this chapter.

#### POSSESS

Dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale ~~soft-shell clam~~ shellfish and shellstock.

#### RESIDENT

A person who has been domiciled in ~~this municipality~~ Kittery for at least three months ~~next prior to the time claim of such residence is made~~ as evidenced by a vehicle registration, voter registration, State of Maine Income Tax return, or other documentation acceptable to the Town Clerk.

## SHELLFISH, CLAMS AND INTERTIDAL SHELLFISH RESOURCES

Clams, quahogs, oysters and mussels and includes shellstock and shucked shellfish.

~~Soft shell clams (Mya arenaria).~~

### § 12.6.4 Municipal shellfish digging license required.

It is unlawful for any person to dig or ~~take~~ possess shellfish from the shores and flats of ~~this municipality~~ Kittery without having a current license issued by ~~this municipality~~ the Town as provided by ~~this chapter.~~

### § 12.6.5 Designation, scope and qualifications.

- A. Residential recreational shellfish license. The license is available to residents ~~and real estate taxpayers of this municipality~~ and entitles the holder to dig and take possession of no more than one peck of shellfish in any one day for ~~the use of the holder and family~~ personal use.
- B. Nonresident recreational shellfish license. The license is available to any person not a resident ~~of this municipality~~ and entitles the holder to dig and ~~take~~ possess not more than one peck of shellfish in any one day for ~~the use of the holder and family~~ personal use.
- C. No person may dig and possess shellfish from the shores and flats of Kittery for the purposes of commercial use or commercial sale.

~~C. License must be signed. The licensee must sign the license to make it valid.~~

### § 12.6.6 Application procedure.

A. Any person may apply to the Town Clerk for ~~the licenses~~ a Shellfish Harvesting License as required by this chapter on forms provided by the municipality.

~~A. Contents of application. The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.~~

~~B.~~ B. Misrepresentation. Any person who gives false information on a license application will cause said license to become invalid and void.

### § 12.6.7 Fees.

~~The fees for the licenses are as stated in Appendix A and must accompany in full the application for the respective license. Fees received for shellfish licensing are to be used by the Town for shellfish management, conservation and enforcement~~ The annual license fee is set out in Appendix A.

### § 12.6.8 Limitation of diggers.

~~Clam resources vary in density and size distribution from year to year and over the limited soft clam producing area of the Town. It is essential that the Town carefully husband its shellfish resources. Following the annual review of the Town's clam resources, its size distribution, abundance and report by the Warden, the Shellfish Conservation Committee in consultation with the DMR area biologist will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year~~ The number of licenses issued from year to year will vary depending on the annual review of the Town's shellfish resources, sizes, distribution, and abundance.

- ~~A. Prior to September 30, the Committee is to report its findings and document recommendations for the allocation of recreational licenses to be made available for the following license year to the Commissioner of Marine Resources for concurrence.~~
- ~~B. After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to December 31, the Shellfish Conservation Committee is to notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.~~ A. The Shellfish Conservation Commission, with approval of the Commissioner of Marine Resources, will establish the number of noncommercial licenses to be permitted each year.
- B. The Shellfish Commission will notify the Town Clerk in writing prior to November 1 of the number of licenses to be issued for the ensuing year.
- C. Notice of the number of licenses to be issued and the procedure for application is to be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation ~~which the municipal officers consider effective in reaching persons affected~~, not less than 10 days prior to the period of issuance, and posted in the municipal offices until the period concludes.
- D. Licenses shall be issued annually, on a first-come-first-served basis.
- ~~DE.~~ Licenses may be returned to the Town voluntarily and reissued to another qualifying person applicant at the current fee ~~according to the priorities established in this section.~~

#### § 12.6.9 License expiration date.

Each license issued under authority of this chapter expires at midnight on ~~the 31st of December~~ November 30 next following the date of ~~issue~~ issuance.

#### ~~§ 12.6.10 Reciprocal harvesting privileges.~~

~~Licenses from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of this license.~~

#### ~~§ 12.6.12-10~~ Opening and closing of flats.

A. The ~~municipal officers~~ Town Council, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendation ~~s~~ of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources ~~area biologist~~ that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the ~~municipal officers~~ Town Council may ~~call~~ hold a public hearing on the matter, and shall send a copy of the notice to the Department of Marine Resources. The decision of the ~~municipal officers~~ Town Council to open or close a shellfish harvest area ~~made after the hearing~~ is to be based on findings of fact.

#### § 12.6.11 Harvesting Season

- A. The shellfish harvest season shall be established each year by the Town Council, upon recommendation of the Shellfish Conservation Commission and approval of the Commissioner of Marine Resources. The shellfish harvest season may be amended by the Town Council as deemed recommended or needed.
- B. Shellfish harvesting may only occur on Sundays and on nationally recognized holidays, between sunrise and sunset, during the harvest season.

~~§ 12.6.13-12~~ **Minimum legal size of soft-shell clams.**

A. It is unlawful for any person to possess **soft-shell clams** within the Town which are less than two inches in the longest diameter, ~~except unless~~ as otherwise provided ~~by § 12.6.14 below.~~

~~§ 12.6.14 Tolerance.~~

B. Any person may possess **soft-shell clams** that are less than two inches if they comprise less than 10% of any lot. The tolerance is determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

~~§ 12.6.15 Violations and penalties.~~

~~Whoever violates this chapter may be punished as provided by 12 M.R.S. § 6681.~~

~~§ 12.6.11-13~~ **Revocation and Suspension.**

~~Shellfish licensees having three convictions for a violation of this chapter are to have their shellfish license automatically suspended for a period of 30 days~~

A. The Shellfish Warden, Harbormaster, and Kittery Police Officers are authorized to enforce this chapter.

B. Any person in violation of this chapter may be assessed a penalty of **\$XX** for the first offense, **\$XXX** for the second offense and **\$XXX** for the third and subsequent offenses.

C. Repeat offenders and/or those who fail to pay fines in accordance with this chapter may have their license suspended or revoked. A license that has been revoked more than once will be prohibited from receiving a license for the ensuing year.

D. Any person who violates this chapter may be charged with a Class D crime in accordance with 12 M.R.S. §6671

~~C.— Any licensee whose shellfish license has automatically been suspended pursuant to this section is entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written request for hearing with the Town Clerk within 30 days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee before the Town Council by filing a written request for appeal with the Town Clerk within seven days of the decision of the Shellfish Conservation Committee.~~

§ 12.6.14 Conflict with other laws.

In the event of any conflict in the provisions of this article with the provisions of any present or future statute relating thereto, the most restrictive or that imposing the higher standards governs.

**Amend Appendix A Chapter 12.6 SHELLFISH, Shellfish License Fees as follows:**

Resident recreational	\$15
Residents 70 and over (limited to <b>15</b> licenses)	Free
Residents under 14 years of Age	<u><b>\$XX</b></u>
Nonresident recreational	\$30

