

# TOWN OF KITTERY

## Office of the Town Clerk

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12/4/2023

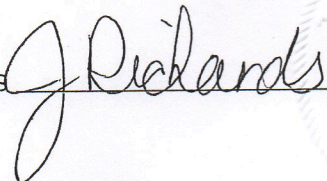
### Shellfish Ordinance Amendment

**INTRODUCED** and read in public session of the Kittery Town Council on the 23rd day of October, 2023.

The Kittery Town Council moved to approve the amendments to the Shellfish Ordinance.

Motion to approve by Councilor Dow and seconded by Councilor Bragg.  
And passed by a vote of 5-0.

**DULY ORDAINED** by the Town Council of Kittery, Maine on the 23<sup>rd</sup> day of October, 2023  
By Chair Judy Spiller.

TRUE ATTESTED COPY: Jillian Richards  Town Clerk

## Chapter 12.6 Shellfish Conservation

### 1. AMEND Chapter 12.6 Shellfish to correct typos and add day licenses 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 shellfish taken; and
- E. Limiting the amount of 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 shellfish in any bulk pile. Where shellfish are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.

#### **NONRESIDENT**

Anyone who does not qualify as a resident under this chapter and is:

- a) a property owner in Kittery; or
- b) is domiciled in Maine for at least three months as evidenced by a vehicle registration, voter registration, State of Maine Income Tax return, or other documentation acceptable to the Town Clerk

#### **POSSESS**

Dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale shellfish and shellstock.

#### **RESIDENT**

A person who has been domiciled in Kittery for at least three months as evidenced by a vehicle registration, voter registration, State of Maine Income Tax return, or other documentation acceptable to the Town Clerk.

29 **SHELLFISH, CLAMS AND INTERTIDAL SHELLFISH RESOURCES**

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

31 **§ 12.6.4 Municipal shellfish digging license required.**

32 It is unlawful for any person to dig or possess shellfish from the shores and flats of Kittery without having a  
33 current license issued by the Town.

34 **§ 12.6.5 Designation, scope and qualifications.**

35 A. Residential recreational shellfish license. The license is available to residents and entitles the holder to  
36 dig and take possession of no more than one peck of shellfish in any one day for personal use.

37 B. Nonresident recreational shellfish license. The license is available to any person not a resident and  
38 entitles the holder to dig and possess not more than one peck of shellfish in any one day for personal  
39 use.

40 C. No person may dig and possess shellfish from the shores and flats of Kittery for the purposes of  
41 commercial use or commercial sale.

42 **§ 12.6.6 Application procedure.**

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

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

47 C. Individuals holding commercial licenses issued by the State of Maine are not entitled to a recreational  
48 license.

49 **§ 12.6.7 Fees.**

50 The annual license fee is set out in Appendix A.

51 **§ 12.6.8 Limitation of diggers.**

52 It is essential that the Town carefully husband its shellfish resources. The number of licenses issued from  
53 year to year will vary depending on the annual review of the Town's shellfish resources, sizes, distribution,  
54 and abundance.

55 A. The Shellfish Conservation Committee, with approval of the Commissioner of Marine Resources, will  
56 establish the number of noncommercial licenses to be permitted each year.

57 B. The Shellfish Committee will notify the Town Clerk in writing prior to November 1 of the number of  
58 licenses to be issued for the ensuing year.

59 C. Notice of the number of licenses to be issued and the procedure for application is to be published in a  
60 trade or industry publication, or in a newspaper or combination of newspapers with general circulation,  
61 not less than 10 days prior to the period of issuance, and posted in the municipal offices until the period  
62 concludes.

63 D. Licenses shall be issued annually, on a first-come-first-served basis. A wait list may be established if all  
64 licenses are issued. The wait list will only be valid for the season it is established.

65 E. Licenses may be returned to the Town voluntarily and reissued to another qualifying applicant at the  
66 current fee.

67 **§ 12.6.9 License expiration date.**

68 Each license issued under authority of this chapter expires at midnight on November 30 following the date of  
69 issuance, except single day licenses. Single day licenses expire at sunset on the date for which they are  
70 issued.

71 **§ 12.6.10 Opening and closing of flats.**

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

79 **§ 12.6.11 Harvesting Season**

80 A. The shellfish harvest season shall be established, prior to November 1 each year by the Town Council,  
81 upon recommendation of the Shellfish Conservation Committee and approval of the Commissioner of  
82 Marine Resources. The shellfish harvest season may be amended by the Town Council as deemed  
83 recommended or needed.

84 B. The season dates, number of licenses, and information on how to obtain a license will be advertised prior  
85 to each season in accordance with 12 M.R.S. §6671.

86 C. The shellfish harvest season may be amended through a conservation closure by the Town Council, with  
87 approval of the Commissioner of Marine Resources, as deemed recommended or needed.

88 D. Shellfish harvesting may only occur on Sundays and on nationally recognized holidays, between sunrise  
89 and sunset, during the harvest season.

90 **§ 12.6.12 Minimum legal size of soft-shell clams.**

91 A. It is unlawful for any person to possess soft-shell clams within the Town which are less than two inches  
92 in the longest diameter, unless as otherwise provided.

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

97 **§ 12.6.13 Violation, Revocation and Suspension.**

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

99 chapter, to include the issuance of civil violations.

100 B. Any person in violation of this chapter, excluding a violation of §16.6.13.C may be assessed a penalty of  
101 \$100 for the first offense, \$150 for the second offense and \$200 for the third and subsequent offenses.

102 C. Any person found taking shellfish from an area not opened by the Town Council for harvesting, or when  
103 harvesting is not permitted, may be assessed a penalty of \$500, and may result in the revocation of the  
104 individual's shellfish license.

105 D. Repeat offenders and/or those who fail to pay fines within 30 days in accordance with this chapter may  
106 have their license suspended or revoked. A license that has been suspended or revoked more than once  
107 may be prohibited from receiving a license in the ensuing year.

108 E. Any person who violates this chapter may be charged with a Class D crime in accordance with 12 M.R.S.  
109 §6671.

110 **§ 12.6.14 Conflict with other laws.**

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

113 **2. AMEND Appendix A Chapter 12.6 SHELLFISH, Shellfish License Fees as follows:**

114 Resident recreational	\$15
115 Residents 70 and over	\$0
116 Residents under 14 years of age	\$0
117 Nonresident recreational	\$30
118 Nonresident 70 and over	\$0
119 Nonresident under 14 years of age	\$0
120 Single Day License	\$15