

**12.5.2 Beach Closure.**

The Town Manager is authorized to close the beaches to bathing when quality testing determines the water to be unhealthy for humans. The enforcement and penalty portion of this chapter does not apply to this section.

**12.5.3 Enforcement and Penalty.**

This chapter is enforced by the police department. Any person who violates any provision of this chapter commits a civil violation for which a penalty of not more than one hundred dollars (\$100.00) may be adjudged. All penalties recovered accrue to the benefit of the town. (

**Chapter 12.6 SHELLFISH**

**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 insure 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 taken; and
- E. Limiting the amount of clams taken daily by a harvester.

**12.6.3 Definitions.**

As used in this chapter:

**Nonresident** means anyone not qualified as a resident under this chapter.

**Resident** means a person who has been domiciled in this municipality for at least three months next prior to the time claim of such residence is made.

**Shellfish, Clams and Intertidal Shellfish Resources** mean soft shell clams (*Mya arenaria*).

**12.6.4 Municipal Shellfish Digging License Required.**

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

**12.6.4.1 Designation, Scope and Qualifications.**

A TRUE COPY

ATTEST:   
Town Clerk

- 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 no more than one peck of shellfish in any one day for the use of the holder and family.
- 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 not more than one peck of shellfish in any one day for the use of the holder and family.
- C. License must be signed. The licensee must sign the license to make it valid.

**12.6.4.2 Application Procedure.**

Any person may apply to the Town Clerk for the licenses required by this chapter on forms provided by the municipality.

- 1. 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.
- 2. Misrepresentation. Any person who gives false information on a license application will cause said license to become invalid and void.

**12.6.4.3 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.

**12.6.4.4 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.

- 1. Prior to September 30th 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.
- 2. After receiving approval of proposed license allocations from the commissioner of marine resources and prior to December 31st, the shellfish conservation committee is to notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.
- 3. 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 ten (10) days prior to the period of issuance and posted in the municipal offices until the period concludes.
- 4. Licenses may be returned to the town voluntarily, and reissued to another person at the current fee according to the priorities established in this section.

**12.6.4.5 License Expiration Date.**

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

**12.6.4.6 Reciprocal Harvesting Privileges.**

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

**12.6.4.7 Suspension.**

Shellfish licenseses having three convictions for a violation of this chapter iare to have thier shellfish license automatically suspended for a period of thirty (30) days.

1. A licensee whose shellfish license has been suspended pursuant to this chapter may reapply for a license only after the suspension period has expired.
2. The suspension is to be effective from the date of mailing of a notice of suspension by the Town Clerk to the licensee.
3. 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 thirty (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.

**12.6.5 Opening and Closing of Flats.**

The municipal officers, upon the approval of the commissioner of marine resources, may open and close areas for shellfish harvest. Upon recommendations 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 may call a public hearing, and shall send a copy of the notice to the department of marine resources. The decision of the municipal officers made after the hearing is to be based on findings of fact.

**12.6.6 Minimum Legal Size of Soft Shell Clams.**

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 as provided by Section 12.6.6.2.

**12.6.6.1 Definitions.**

**Lot** means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.

**Possess** means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell claim shellstock.

**12.6.6.2 Tolerance.**

Any person may possess soft shell clams that are less than two inches if they comprise less than ten (10) percent 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.

**12.6.6.3 Penalty.**

Whoever violates any provision of this section is to be punished as provided by 12 M.R.S., §6681.

**Chapter 12.7 TOWN FARM**

**12.7.1 Title.**

The ordinance codified in this chapter is called "Town Farm."

**12.7.2 Purpose.**

It is the purpose of this chapter to preserve the natural character and beauty of the forest at the site of the former town farm. It is also the intent that John R. Haley's gift to the people be used for the good of all in his honor, as his will's intent to do good for the people is evident. Let it be known that henceforth and forever the people of Kittery set aside this parcel of land as an area to enjoy nature, to be preserved for future generations for the common good.