

HARBOR MANAGEMENT

A Legal Guide for Harbormasters
and Coastal Officials

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FOREWORD

This handbook is a revised version of the Guide for Harbor Management, Bulletin 648 (University of Maine Cooperative Extension Service), written by William Prosser. Changes in the law governing harbormasters' responsibilities have necessitated updating the original guide, which has become a valued reference among Maine's harbormasters.

The University of Maine Cooperative Extension Service provides educational and organizational assistance to harbormasters. The Maine Harbor Masters Association, organized in 1986 with Extension's help, provides an opportunity for harbormasters to discuss common concerns and exchange ideas. No longer do harbormasters in some 143 coastal, island and tidal communities need to be isolated. *Harbor Management: A Legal Guide for Harbormasters and Coastal Officials* is designed to be a ready reference for newly appointed or experienced harbormasters.

Notes to the reader:

This guide describes the laws governing harbor management in effect at the time of its publication. Like Maine weather, the law is subject to frequent change. Prior to relying on the law as written in the guide, one should ensure that it has not been amended or repealed. The help of an attorney may be desirable. Readers unfamiliar with the shorthand by which laws are cited may find the following explanations helpful:

"M.R.S.A." stands for Maine Revised Statutes Annotated. This is the multi-volume series of books in which laws passed by the Legislature are compiled. The M.R.S.A. is divided into a number of "titles," groupings of laws which deal with a particular subject area, which are usually printed in one volume. Title 38, which concerns various natural resources, contains most of the laws defining harbormasters' duties.

"Section" or "§" refers to a particular subpart of a legislative act or statute. A "title" is made up of a number of acts. For example, 38 M.R.S.A. § 1 refers to the first section of title 38 of the M.R.S.A.

Federal laws are similarly organized. A law librarian can help you locate any of the laws or regulations discussed in this guide.

Throughout this guide, excerpts from Maine statutes appear in *bold italics*.^{*} Municipal ordinances are indented and *italicized*. The inclusion of local ordinances is intended to facilitate understanding of when and how local rules may flesh out the legal framework established by state law. The ordinances that appear in the guide may have been amended since publication, so links to various towns' on-line ordinances are included in the appendix.

This Guide is also published on the website of the Center for Law & Innovation at the University of Maine School of Law, www.lawandinnovation.org. Where references cited in this document are available on the Internet, they are often accompanied by a hyperlink which online readers of the Guide can use to get ready access to documents and materials.

Special thanks to Heather Sanborn, a student at the University of Maine School of Law, whose research and editing contributed significantly to the 2006 edition of the Guide.

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version that has not been officially certified by the Secretary of State. Refer to the published volumes of the Maine Revised Statutes Annotated and supplements for certified text.

INTRODUCTION

The Harbormaster

The harbormaster holds an ancient and honorable title. It savors of tarry rigging, tall spars, and commerce carried out across vast seas.

But even in today's small coastal village of today, and perhaps especially in those of Maine where the mix of vessels is diverse, each holder of this title plays a distinct and essential role. Theirs is the job of maintaining an orderly haven where the work boat, the summer passenger carrier, the small pleasure craft, the occasional large yacht and, in some harbors, large oil tankers and other commercial vessels, coexist in harmony and safety. They must make their harbors work.

In the end, every statute, every legal opinion and every casual discussion that has to do with harbor management focuses on harbormasters. For no matter who makes the regulations, it is they who must apply and enforce them as best they can.

These days, harbormasters in all reasonably busy waters find themselves under increasing pressure. When we think harbormaster, we think of mooring assignments, and certainly that is one primary function of the office. It is also one of the most difficult, with the demand for mooring spaces heavy and growing while the number of vessels any non-expandable harbor can accommodate is rigidly fixed.

But that is by no means harbormasters' only responsibility. Their lines of duty intersect a web of federal and state laws. Economic developments complicate their role, and the work of some harbormasters involves the rights of shorefront condominium owners and the moored gear of aquaculturists, along with the traditional marine traffic. They are law enforcement officers who must deal with theft and vandalism; they must keep peace between fishermen and pleasure boaters; they have certain responsibilities in regard to oil spills and waste discharge. To visiting cruisers, the harbormaster is usually the only town official with whom they will have any dealings. Harbormasters must, of course, know boats; but they must also know how to deal with people.

The demands of the job are great, and they are inescapable. Harbormasters are focal points of harbor management for good reason: all the lines of delegated authority converge on them, and the lines of responsibility are correspondingly extended under their control.

This handbook seeks to clarify the sources of this authority, its extent and its limits, and to use examples and the voices of experience to consider how harbormasters and their town governments can best work together to find effective solutions to the problems of harbor management.

OVERVIEW OF HARBOR REGULATION

The regulation of a harbor is a three-way intersection where federal, state and municipal authorities meet, with a priority of powers in that order. From the early years of the 17th century when the first Acts to regulate marine commerce were promulgated on our East Coast, the primacy of the largest governing unit, the Colony, was recognized. Just so today: the federal government has ultimate authority; next comes the state, and then the municipality.

This is not to imply conflict; the need for special cooperation in this area has a long history. What has evolved is a benign accommodation that benefits the individual interests of each of these three levels of government.

The fundamental federal concern is to keep waters open to commerce. To that end, the U.S. Coast Guard maintains a system of navigational aids. But, in the local harbor, its interest stops at the entrance unless its presence is required for aid in rescue operations, the enforcement of federal statute or, upon request, assistance in backing up local authorities.

Similarly, the U.S. Army Corps of Engineers focuses its attention on navigability. The Corps is frequently called upon to provide such services in local harbors as the dredging of channels or the construction of breakwaters, but once it has done its work its supervisory authority is limited to seeing that such channels are kept clear and its structures are adequately maintained.¹

The Corps of Engineers also has jurisdiction over many projects located on intertidal or submerged land. In general, a developer must obtain a permit from the Corps to alter or place structures on these wetlands. Moorings, however, are covered by a "general permit." The general permit provides that private, non-commercial, non-rental, single boat moorings authorized by the local harbormaster do not require an individual federal permit. Rental moorings are not included under the general permit. As a result, marina operators and others who plan to lease moorings must obtain a permit from the Corps.

Next in line of jurisdiction is the state. In Maine, this level of regulatory power is exercised under those sections of Maine Revised Statutes Annotated (M.R.S.A.) that deal with marine matters on waterways under its control. Of particular interest, insofar as municipal harbors are concerned, are certain provisions of Title 38.

The State's interest in intertidal and submerged lands arises from outright ownership of certain lands and fiduciary trust obligations for others. In Maine, the inner boundary of state ownership is the mean low water mark, unless the State owns the adjacent shorelands. Maine common law, derived from the Massachusetts Colonial Ordinance of 1641-47, allows private individuals to own submersible lands that lie between the mean high and mean low tide lines. The public, however, has certain rights of use in this intertidal area, including rights of fishing and navigation, and in certain cases, recreational use of the beach.

The outer boundary of state ownership, three nautical miles from shore, has been set by federal law. The Submerged Lands Act of 1953 ceded all federal ownership rights in this area to the states. Note, however, that the dominant federal interest in promoting navigation and commerce, the so-called navigation servitude, applies in this area. The federal government has a broad range of regulatory authority over these state-owned lands.

Two state agencies, the Department of Environmental Protection (DEP) and the Bureau of Public Lands (BPL), are most active in regulating harbor activities. DEP has regulatory authority over environmental issues, but does not regulate the placement of moorings. The BPL has the authority to lease state-owned submerged lands for erection of permanent structures and other activities, such as construction of wharves and marinas, dredging and filling. Those who wish to do any of these things or otherwise alter state submerged lands must obtain a lease of those lands through the BPL. This includes the construction of new municipal piers, as well as private docks. Vessel moorings do not require such a lease.

Title 38 contains the legal basis for the appointment of harbormasters, and empowers local regulatory management of harbors. Other Maine laws assign duties and responsibilities on state waterways to the Bureau of Marine Patrol of the Department of Marine Resources. Formerly known as the Coastal Waters Service, Marine Patrol is largely concerned with enforcement of conservation statutes, but there are considerable areas of mutual assistance between its members and local harbormasters.

Because moorings are for the most part exempt from state and federal permitting procedures, most of the actual management responsibility devolves on local governments and their harbor masters. The state, however, has enacted legislative policies to guide local harbor management decisions. The Coastal Management Policies Act³³ states that towns (and other governmental entities) “shall conduct their activities affecting the coastal area consistent with the following policies to: (1) Port and harbor development. Promote the maintenance, development, and revitalization of the State’s ports and harbors for *fishing, transportation and recreation.*” The Coastal Advisory Committee fleshed out this general directive with more specific recommendations:

Rationale

Maine’s ports and harbors are a limited and irreplaceable State resource uniquely capable of supporting fishing, waterborne transportation, water-based recreation, and other uses dependent on a shoreside location. Less than 10% of Maine’s 3,500 miles of coastal shorelines is physically suitable to function as a port or harbor area. These areas are experiencing unprecedented pressure from a variety of development activities. Government agencies have a responsibility to assure that new or expanded activities in these areas will be compatible with, and will not degrade their current and future use as a port and harbor area.

Objectives

1. Maintain, develop, and revitalize port and harbor areas.
2. Encourage activities that increase the potential of port and harbor areas to serve water dependent uses, and discourage those that decrease it.

Implementation Procedures

1. Government agencies will actively support infra-structure and services required for water-dependent uses.
2. Government agencies’ decisions will not degrade the ability of port and harbor areas to accommodate present or future water-dependent uses.
3. Government agencies will require the provision of public access to the water in the design or rehabilitation of port and harbor areas, where it can be safely accommodated.
4. Government agencies funding port infrastructure will give priority consideration to significant commercial ports.

In general, the State has directed Maine towns to promote development of water dependent uses of the waterfront in ways compatible with other policy objectives, such as enhancement of environmental quality, included in the guidelines.

The interplay between state and local authority in harbor regulation has been controversial. The Maine Legislature’s amendments to Title 38 to clarify the existence and scope of towns’ authority are discussed in detail below.

THE FUNCTION OF THE LOCAL ORDINANCE

The local role in harbor management has been the subject of considerable controversy and confusion in recent years. The Maine Legislature amended Title 38 several times during this period to clarify the distribution of harbor management authority among the State, its municipalities, and Maine’s harbor masters. Responding to a legal decision by a Maine Superior Court, the Legislature in 1986 enacted a law confirming towns’ prerogative to regulate the

assignment of moorings and other harbor management matters. That prerogative remains a legal right of Maine municipalities today.

This section traces the lineage of municipal harbor management authority from its roots in the “home rule” power through its most recent declaration and clarification by Maine’s Legislature. Hopefully, a firm grasp of their legal rights and duties in the harbor management area will assist towns and harbormasters in recognizing opportunities for action to address local problems not specifically dealt with in statutes. Enactment of ordinances that clarify and supplement broad legislative directives can be a powerful and creative tool for effective, locally-oriented harbor management and planning.

Home Rule

Maine’s Constitution, as amended in 1971, grants a Maine municipality the authority to adopt regulations on virtually anything occurring within its jurisdiction.⁴ This authority is commonly referred to as “home rule.”

The home rule authority is not really *carte blanche*, however. Over the years, Maine courts have developed a concise rule delimiting the scope of this local power. Under the home rule authority, a town may assume only those regulatory powers that the State could expressly delegate to it. In other words, local ordinances and regulations cannot conflict with applicable federal or state statutes or regulations. Where either or both of these superior arms of government have acted to regulate an activity, a town is preempted from enforcing conflicting local laws. This rule doesn’t pertain, for example, where the State or the federal government has expressly delegated authority to local governments to enact more stringent standards, as is the case with a number of environmental laws.

Accordingly, towns cannot lawfully enforce ordinances that conflict with relevant provisions of the principal statutes governing harbor management, Titles 38, 17-A, and 12 of the M.R.S.A. Examples of what towns can and cannot do, under state law will be discussed in the following sections. These examples will be drawn from harbor management ordinances employed by various Maine towns.

The *South Freeport Marine* Case

For many years, the subject of mooring space in many Maine harbors was not a heated topic. However, growth in Maine’s coastal areas has made the allocation of mooring privileges in ever-crowded harbors an increasingly difficult, complex, and controversial undertaking.

Prior to 1986, the statute detailing the harbormaster’s duties did not specify whether towns could enact ordinances which assert control over matters of moorings and mooring privileges or whether they could vest that authority in a board or commission, instead of in the harbormaster solely. In *South Freeport Marine, Inc. v. The Town of Freeport*,⁵ Superior Court Judge Silsby held that the legislature had entrusted the power and responsibility for assignment of moorings and mooring privileges to harbormasters alone. The court ruled that towns were preempted from enacting ordinances transferring this function to a local board or commission and creating appeals from the decisions of the harbormaster.

The *Freeport* decision was significant for two main reasons. It denied towns the authority to review various harbor management decisions of the harbormaster and called all municipal harbor management ordinances into question. The decision generated considerable uncertainty about what harbor activities a town could regulate and how it could regulate them.

The court’s decision was subsequently undone by the Maine Legislature through amendments to Title 38, which, along with the legislative policies underlying them, are discussed in the following subsection.

Legislative Clarification of the Local Role in Harbor Management

The Maine Legislature acted promptly to negate the effect of Judge Silsby's decision. The Legislature enacted 38 M.R.S.A. § 7, which has been modified in subsequent legislative sessions, and now reads:

38 M.R.S.A. § 7. Relation to other laws

Nothing in this subchapter may be construed to be a limitation on the authority of municipalities to enact ordinances to regulate the assignment or placement of moorings and other activities in their harbors. These ordinances may include, but are not limited to: A process for assigning mooring privileges and determining the location of moorings; a waiting list for the assignment of mooring privileges; a fee schedule; construction standards for moorings; time limits on the mooring of vessels; a process for appeals from decisions of the harbor master; provisions that recognize that mooring privileges in lawful existence on the effective date of an ordinance may be preserved or continued after adoption of that ordinance, the location and use to be determined by the harbor master or other appropriate local authority; and provisions that establish a harbor commission or committee to administer the ordinance or ordinances and oversee the duties of the harbor master. Regulations adopted by the municipal officers under section 2 remain in effect unless the municipality's legislative body enacts an ordinance pertaining to the same matter pursuant to the Constitution of Maine, Article VIII, Part 2, and Title 30-A, section 3001.

In short, the legislature made it clear that local ordinances were not preempted by Title 38. Towns, pursuant to their home rule power, could, if they chose, enact regulations to supplement statutory provisions on harbor management. Moreover, the legislature specified that the list of topics towns may regulate was not exclusive. Towns can regulate other harbor activities as well. The limitation on this local authority is that of the home rule authority. As mentioned above, local regulations cannot contradict the letter or intent of state or federal law. Municipal ordinances are supplementary. They can usefully be employed to clarify ambiguities in the law and to adapt broad standards to local conditions.

The Department of Conservation's Harbormaster Authority Study

In addition to addressing the immediate problem posed by the South Freeport case, L.D. 2313 commissioned Maine's Department of Conservation (DOC) to look at the statewide and local harbor management issues and make recommendations for legislative solutions. As directed, DOC consulted with a number of organizations listed in the study order. The study was completed in June of 1987.⁶

The study's recommendations, many of which were later enacted as law, and some of which were flatly rejected, indicate which harbor management issues have been aired and aid in understanding the intentions of the legislature. The major recommendations of the study are briefly noted below.

The DOC study found that local government "is best suited to determine management needs, regulate the wise use of harbor resources and enforce appropriate ordinances." But while the study rejected development of state guidelines for harbor management, it did recommend that where certain aspects of harbor management can be standardized, legislation should address those issues. This is the basic direction the legislature has chosen in subsequent amendments to Title 38.

The major recommendation of the study was, however, flatly rejected by the legislature. The DOC took the position that state submerged land should be open to all on an equal opportunity

basis. Thus, the study recommended that mooring priority should *not* be given on the basis of residency. This position is shared with the Army Corps of Engineers. As we shall see, the legislature ignored this recommendation and has mandated consideration of residency in the allocation of moorings.

Subsequent amendments to Title 38 reflect the legislature's at least partial adoption of several other study recommendations, including: a standard definition of municipal residency for mooring purposes; clarification that a grant of mooring privileges does not convey any property interest in submerged lands; a minimum term for Maine's harbormasters; and empowering harbormasters to appoint several deputies.

One of the study's recommendations not initially adopted surfaced again when the legislature next tinkered with the statute. The study concluded that the growth and development along many of Maine's "great ponds," such as Sebago and Moosehead lakes, merited consideration of authority in local towns to appoint harbormasters. Section 3 of 38 M.R.S.A. now includes "great ponds" within its scope.

The Legal Authority of Municipal Harbor Ordinances

Municipal harbor ordinances are law. Compliance with them is obligatory.

38 M.R.S.A. § 1 subjects Maine harbormasters to:

all the duties and liabilities of that office as prescribed by state law, municipal ordinances and regulations adopted by the municipal officers, municipal harbor commissioners, municipal port authorities or other such bodies empowered to regulate municipal harbors.

In other words, the harbormaster must enforce not only the rules contained in state statutes but locally adopted ones, too. Harbor users, in turn, must comply with all these rules. Section 12 of 38 M.R.S.A. provides that any violation of the state law contained in the harbormaster subchapter or violation of any local harbor ordinance is a civil violation (as opposed to a criminal offense) subject to civil penalties, except that failure to obey a lawful order of a harbormaster is a Class E crime.

38 M.R.S.A. §13. Failure to obey orders of harbormasters.

1. Offense defined. 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 order of a harbormaster authorized pursuant to this subchapter.

2. Penalty. Failure to obey an order of a harbormaster is a Class E crime.

Because they are rules of law, local harbor management ordinances should be adopted following public discussion and should reflect community desires and goals. In some instances, town officials—the selectmen alone, or they and the members of a harbor committee or port authority if they wish to avail themselves of such a group—may have the authority to adopt an ordinance without resort to town meeting.

In practice, however, the broader the exposure to citizen reaction the better the resulting ordinance has proved to be. Discussion by a larger group of interested persons brings to light considerations and ramifications that may never have occurred to any of the members of the smaller group, no matter how good their intentions.

For this reason, among others, some municipal authorities have submitted proposed harbor ordinances to their town meetings for vote. Others have preferred to limit this exposure to a public hearing, and certainly this degree of publicity will attract the interested and presumably the informed.

One other consideration is that the wider the participation, the wider the acceptance once the ordinance is in effect. It is, after all, “everybody’s harbor”—and if everybody has had an opportunity to share in its shaping, the ordinance, too, will be everybody’s.

THE LEGAL FRAMEWORK: M.R.S.A. TITLE 38

The purpose of this section is to guide the reader through the provisions in Maine law governing the harbor management rights and duties of municipalities and their harbormasters. The focus is on the harbormaster sections of Title 38 M.R.S.A., although relevant provisions of other statutes, principally those found in Titles 12 (having to do with conservation) and 17 (having to do with crimes), are also addressed.

The following structure has been adopted in an effort to make this guide one of practical value to those charged with enforcing Maine law. Each pertinent statutory section is quoted in full, followed by a brief explanation and analysis. Examples of municipal ordinances drawn from sources within and outside of Maine are presented to illustrate how the law can be effectively shaped to suit local conditions. Statutes (i.e. laws passed by the legislature) are in *bold italics*, while ordinances are indented and *italicized*.

38 M.R.S.A. § 1. Appointment; compensation

The municipal officers of a town, on request by any person desiring mooring privileges or regulation of mooring privileges for boats or vessels, shall appoint a harbor master for a term of not less than one year, who shall be subject to all of the duties and liabilities of that office as prescribed by state law, municipal ordinances and regulations adopted by the municipal officers, municipal harbor commissioners, municipal port authorities or other such bodies empowered to regulate municipal harbors. The municipal officers may establish the harbor master’s compensation and, for cause by them declared in writing, after due notice to the officer and hearing, if requested, remove the harbor master and appoint another one.

The municipal officers may prohibit a harbor master from making arrest or carrying a weapon. Any law enforcement officer vested with the authority to carry a weapon and make arrests has the authority to enforce this subchapter.

Under this section, towns are required to appoint a harbormaster if any person who desires mooring privileges himself or wishes moorings to be regulated makes the request. The statute specifies that the harbormaster’s term of office shall not be less than one year. Prior to 1988, the law called for one-year terms for Maine’s harbormasters. This change reflects a recommendation of the Bureau of Public Lands, in its study of harbormasters’ authority prepared for the legislature. The BPL noted that one year is not enough time to come to grips with the complexities of the job. Towns should seriously consider longer term appointments, which would allow harbormasters the time and job security necessary to develop familiarity with the job’s demands and rapport with harbor users.

The statute leaves towns with full discretion on the matter of harbormasters’ pay. Salaries for this position vary widely. The job has become increasingly demanding in recent years. To the extent municipal budgets allow, town officials should consider compensation that recognizes the mounting work load.

A town that wishes to fire its harbormaster may do so “for cause,” e.g., neglect of responsibilities, provided the harbormaster is given notice and an opportunity for a hearing. These procedural requirements are those mandated in the case of a governmental employee by constitutional “due process” standards.

Section 1 of 38 M.R.S.A. now clearly states the laws that harbormasters must enforce. The law makes it clear that a town can limit the law enforcement role of its harbormaster by denying him authority to make arrests or carry a weapon. To carry a gun and have the power to arrest, a harbormaster must also complete a two week training course at the Maine Criminal Justice Academy. The Maine Harbor Masters’ Association⁷ can be contacted for more information on training requirements. The section emphasizes the legislature’s intent to permit municipal regulation of harbors. Harbormasters’ authority and liabilities are those established by municipal regulations and ordinances (whether promulgated by a town council, port authority, harbor commission, or similar entity) as well as state laws. **Camden’s harbor ordinance** illustrates local expression of this rule.

The Harbor Master, annually appointed by the Board of Selectmen, shall have, in addition to the duties and responsibilities of his office as prescribed by law, the authority to enforce the rules and regulations of the Town of Camden as described herein, excepting, however, those projects identified herein as requiring approval by the Board of Selectmen. The duties of the Harbor Master prescribed by law include, but are not limited to, the authority to enforce the Statutes of the State of Maine relating to the operation of vessels in the Harbor and relating to the conducting of navigation in the Harbor.

Towns should take care in drafting, with the help of their current harbormaster, a detailed and accurate description of their harbormaster’s duties. A precise job description can help sidestep misunderstandings with the local harbor commission and will be a great help to the harbormaster, too. The Town of Bar Harbor has spelled out its harbormaster’s responsibilities and relationship to the harbor committee in this comprehensive manner.⁸

38 M.R.S.A. § 2. Rules for channel lines; enforcement

The municipal officers of all maritime towns and plantations, other bodies empowered to regulate municipal harbors and the county commissioners in the case of maritime unorganized townships may make rules and regulations, with suitable provision for enforcement, to keep open convenient channels for the passage of vessels in the harbors and waterways of the towns or townships for which they act, and may establish the boundary lines of those channels and assign suitable portions of their harbors and other coastal and tidal waters within their jurisdiction for anchorages.

In the event fishing gear is within the boundary lines of a channel in violation of local rules, the harbor master may issue a warning of navigational interference and may commence court action to order removal of that gear.

Such rules and regulations as may be made by those municipal officers, other bodies empowered to regulate harbors or county commissioners shall be enforced and carried out by the harbor master of that town or unorganized township, or any other law enforcement officer of the State or any political subdivision of the State.

The harbor master may appoint deputies who, under his direction, shall enforce and carry out the rules and regulations of this section.

This section deals with the harbor master's role as a law enforcement official who, together with members of state or municipal police forces or other enforcement agents such as coastal wardens, is charged with enforcing state and local harbor rules. The harbor master is authorized to appoint one or more deputies to assist in enforcement. Note, however, that towns can choose how much law enforcement authority to vest in their harbor master.⁹

Earlier versions of this Title 38 provision *required* establishment of channels for vessel passage, the boundary lines for such channels, and assignment of harbor areas for anchorages. These actions are now plainly left to municipalities' discretion. However, establishment of designated channels and anchorages is important to public safety and smooth operation of increasingly crowded harbors. Towns could, for example, more easily prevent extension of docks into navigation channels where those channels had been officially designated. Maine's towns would be wise to address these matters in the planning process. The most recent amendment to this section made it plain that any local governmental body suitably empowered by ordinance or regulation may make these harbor management decisions.

The following excerpt from the **Kittery Port Authority's harbor ordinance** illustrates use of this municipal power:

B. Channels: Channels for the passage of boats shall be maintained in the area under the jurisdictional limits of the Port Authority and shall be clear of any and all obstructions.

1. A channel is established from Nun Buoy Number 4 (Fishing Island), one hundred fifty (150) feet wide, to the town wharf at Kittery Point; also a fifty (50) foot wide deep water channel at the entrance of Chauncey Creek from Nun Buoy No. 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 shall be maintained as a mooring area with the Harbor Master laying out mooring sites in such a manner as to insure that the channel shall not be obstructed. The Harbor Master 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.

Towns may find it useful to describe in their ordinances the harbor boundaries under which their rules apply. The following excerpt from the **Town of Bar Harbor's ordinance** provides an example:

Article 1, Channel Boundaries and Anchorage Areas section 10-101 Establishment of Boundaries and Areas

Pursuant to the authority granted by Title 38, Section 2, M.R.S.A., 1964, as amended, the Town Council of the Town of Bar Harbor hereby establishes the following boundaries, wherein these regulations shall apply to activities occurring within or directly affecting the area to the fullest extent permitted by law:

Beginning at the northwestern point of Bar Island and running along the low water mark of Bar Island southeasterly and easterly to the southeasterly point of Bar Island; thence from the southeasterly point of Bar Island easterly to the southern tip of Sheep

Porcupine Island; thence from the southern tip of Sheep Porcupine Island southeasterly to the western tip of Bald Porcupine Island; thence running along the low water mark of Bald Porcupine Island; thence southeasterly to the high water line at Dorr Point on Mount Desert Island; thence westerly and northerly to Israel Point in Mount Desert Narrows; thence following the high water line on Mount Desert Island from Old House Cove southerly and westerly to crystal Cove in Western Bay on Mount Desert Island; thence northwesterly seaward to the Bar Harbor Town lines or 2000 yards, whichever is lesser; thence easterly and southerly to the point of beginning. The area includes Compass Cove, Cromwell Harbor, Bar Harbor, Canoe Point, Hulls Cove, Lookout Point, Sand Point, Salisbury Cove, Emery Cove, Leland Point, Hadley Point, Thomas Island, Clark Cove, Northeast Cove, Indian Point, Long Cove, Green Island, Black Island, Crystal Cove, and all the waters within these boundaries.

All that part of the waters of the Town of Bar Harbor encompassed by the above described boundary lines, is hereby assigned for anchorage except designated channels.

Title 38, Section 2 now addresses the potential conflict between the placement of fishing gear and creation of channel lines. If the harbormaster determines that fishing gear lays within a designated channel lane he or she “may” issue a warning to the owners and “may” commence an action to compel removal of the gear. The statute does not specify if the warning must precede initiation of court action. Nevertheless, in all cases that would be the wiser course. Also, the statute does not require the harbormaster to act to remove wrongly placed fishing gear. This act is discretionary with the harbormaster. Towns may wish to supplement this power by regulation or ordinance to clarify instances when the harbormaster must act and the type of action to be taken. The inclusion of this provision in the statute underscores the need for harbor planning, which takes the operational needs of all harbor users into consideration. Channels established without regard to fishing people’s practices and needs, for example, could lead to controversy and expense for all concerned.

38 M.R.S.A. § 3. Mooring sites

In all harbors wherein channel lines have been established by the municipal officers, as provided in section 2, and in all other coastal and tidal waters, harbors and great ponds where mooring rights of individuals are claimed to be invaded and protection is sought of the harbor master, the harbor master shall assign and indicate only to the masters or owners of boats and vessels the location that they may occupy for mooring purposes and shall change the location of those moorings from time to time when the crowded condition of that harbor or great pond, the need to conform to section 7-A or other conditions render the change desirable.

Unless permitted by an ordinance adopted under section 3-A, mooring assignments may not be transferred. Assignments may not be rented unless the provision for rental was part of the agreement when the mooring was assigned.

Assignment of these mooring privileges does not confer any right, title or interest in submerged or intertidal lands owned by the State. To the extent that there is any inconsistency between this subchapter and any law which establishes or otherwise provides for a port authority, board of harbor commissioners or similar authority for any coastal waters of the State, that inconsistency shall be resolved in favor of this subchapter.

Whenever practicable, the harbor master shall assign mooring privileges in those waters where individuals own the shore rights to a parcel of land, are masters or owners of a boat or vessel and are complainants, and shall locate suitable mooring privileges therefore for boats and vessels, temporarily or permanently, as the case may be, fronting their land, if so request-

ed, but not to encroach upon the natural channel or channels established by municipal officers; provided that not more than one mooring may be assigned to any shore-front parcel of land under this privilege. Notwithstanding section 11, persons who, prior to January 1, 1987, owned shore rights of at least 100 feet of frontage regardless of the size of the lot shall have mooring privileges assigned according to this section. The limitation of one mooring assigned under this privilege shall not prevent the owner of a shorefront parcel from receiving additional mooring assignments under the allocation system for all other residents.

A harbor master may refuse to assign mooring privileges to any vessel or boat owner or master who has not paid any fee, charge for services, forfeiture or penalty levied pursuant to this subchapter.

Municipalities may not charge mooring fees for and do not have jurisdiction over the siting or specifications of structural moorings used to secure aquaculture equipment within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A, or 6072-B.

Municipalities have jurisdiction over boat and vessel moorings within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A or 6072-B. A municipality may not charge a mooring fee for a boat or vessel within the boundaries of a lease that is inconsistent with that municipality's other mooring fees for commercial vessels.

Two noteworthy cases add some clarification and definition to 38 M.R.S.A. § 3. In 1991, the Maine Law Court ruled that a shorefront property owner was not entitled to locate a mooring that would front his property where the owner failed to illustrate that the desired mooring site was safe and practicable. Edwards v. Town of York, 597 A.2d 412 (Me. 1991). And in 1996, the Court ruled that the statute allows a harbormaster to relocate moorings rather than to remove a mooring altogether. Horn v. Town of Boothbay, 672 A.2d. 1105 (Me. 1996).

The assignment and regulation of moorings has been a topic of considerable debate and controversy in recent years. In response, the legislature has substantially amended relevant provisions of Title 38.

This section spells out harbormasters' authority over mooring assignments, a power which is inherent in section 1 of Title 38. Note, however, that the assignment of moorings may no longer be left to a harbormaster's discretion. If a town has promulgated ordinances that create a harbor commission or similar entity that enacts rules for the assignment of moorings, the harbormaster must implement those rules.

This section also contains a legislatively mandated priority towns must honor in assigning mooring privileges. A shoreside property owner is ordinarily entitled to *one* mooring fronting owned land on the basis of this priority so long as its location does not interfere with a channel or navigability. This right is not an absolute one but will be recognized "whenever practicable." The location of channels or other management decisions may disallow it. A shoreside owner may receive mooring assignments under other provisions of the law, too. This statutory preference is based on the concept of "littoral rights," a common law notion that shorefront owners have a property interest in access to the water in front of their property. Although much limited by a host of environmental and other regulations, as well as the existence of public rights in the intertidal and submerged lands and the waters above them, this common law principle persists.

Two other conditions must also be met by a littoral owner seeking a mooring under this section. First, one must own shore rights to a parcel of waterfront land. The statute does not expressly address the issue of multiple ownership, where, for example, a condominium association actually owns the waterfront land. A fair reading, however, would entitle the association to a single mooring based on this statutory preference rather recognize the ownership claims of individual condominium dwellers. Section 11 of 38 M.R.S.A. defines a parcel of land

as either a town's minimum building lot size or 20,00 square feet, whichever is larger. In any case, the parcel must include 100 feet of shoreline frontage.

Second, one must "own" a boat to lay claim to this privilege. There is nothing in the statute which specifies the type of ownership interest one must prove. The need to define the meaning of boat ownership has become clear in at least one of Maine's harbors where the following factual scenario is becoming increasingly common: Mr. A has rights to a mooring but has recently sold his boat. Mr. B wants to rent Mr. A's mooring. Section 3 of 38 M.R.S.A. expressly forbids transfer of a mooring assignment to another, unless the provisions of section 3-A are satisfied, and rentals are only allowed if sanctioned when the mooring was initially assigned. To avoid this ban on transfer of rights or rental, Mr. B can sell Mr. A part of his boat—say, a one percent interest (a rental fee in disguise). Mr. A now "owns" a boat and may assert his right to retain his mooring, regardless of the fact he may in fact never set foot on board. Towns may wish to close this loophole, which, if widely used, could prevent those on the waiting list from ever receiving a mooring, through municipal definition of boat "ownership." Requiring proof of ownership of a controlling interest in a vessel or registration in one's name for tax purposes or the demonstrable right of exclusive use are possible bases for definition.

The harbormaster's right to refuse to grant a mooring to anyone who fails to pay fines or fees is an important tool for enforcing harbor regulations.

A number of municipalities have enacted ordinances and regulations containing additional guidelines and priorities. Those towns who do not assign moorings on the basis of the minimum priority system established by Title 38, Section 3 for shorefront property owners will have to amend their ordinances.

At this point, the reader may wish to turn to the discussion of 38 M.R.S.A. section 7-A, *infra*, which discusses the limited preference for non-residents established by the legislature and the extent to which towns must adjust previously established priorities to conform to this new law.

Some towns have enacted rules that specify the type of mooring to be used. An example, from the port of Portland's harbor rules, is contained in Appendix D.

In other communities, such as **Eastport**, the rule on moorings is more general and much is left to the harbormaster's discretion:

All existing moorings and all moorings to be set in the future shall be of sufficient size to hold the vessel for which they are to be used. All moorings shall be approved by the Harbor Master. Boat and/or mooring owners may be liable for any damage caused by faulty, inadequate, or improperly placed moorings.

Recently, the Bureau of Parks and Lands has established rules for the location and appearance of mooring buoys as part of its Maine State Aids to Navigation System:

MOORING BUOYS: To avoid mistaking mooring buoys for aids to navigation or regulatory markers, they shall be colored white with a single BLUE horizontal band clearly visible above the water line. No mooring may be installed so that it or the object moored thereto extends beyond the water safety zone (200 feet from any shore) or one-third the distance to the opposite shore, whichever is less.

These rules carry the force of law and should be incorporated into local regulations.

In order to effectively manage a mooring field, the harbormaster should be required to maintain a register of assignments that includes the location of each mooring, boat name, owner's name, type of mooring and boat registration numbers.

The most efficient method of keeping such a record is graphic: a harbor chart, on which each mooring is indicated by an assigned number which is related to the written record. This method is not only helpful to the harbormaster, it benefits the owner as well. Should a boat drag, or go ashore, or suffer any other mishap, the harbormaster can immediately identify and inform the owner, who presumably will want to be on hand to assist in any remedial action.

Charts for this purpose can be made by blowing up segments of the government charts now issued by NOAA (previously a function of the U.S. Coast and Geodetic Survey). For harbors where the U.S. Army Corps of Engineers has executed projects, the Corps maintains a file of detailed charts, both with and without soundings, and copies can be obtained by request.¹⁰

Section 3 of 38 M.R.S.A. expressly forbids those who are granted a mooring assignment from renting or otherwise transferring that right to another, unless the mooring was initially granted as a rental mooring. As noted above, a Corps of Engineers permit is required for a rental mooring. A simple way to aid enforcement of this rule is to require that all mooring assignments be used solely for the boat listed in the mooring application. In the interest of fairness, the ordinance should include exceptions to this rule to accommodate, for example, those who obtain a new boat or wish to let a visitor use their mooring for a short time. **The Town of Freeport's coastal waters ordinance** provides a good model on this point:

Leasing. All mooring assignments (with the exception of Marina Rental Moorings) shall be used exclusively for the personal use of the applicant solely for the boat listed in the application. No leasing, subleasing, or assignment of moorings or mooring numbers shall be allowed.

Recent amendments clarify that a grant of the privilege to set a mooring does not carry with it any property rights to state-owned submerged lands occupied by the mooring. This provision should bar claims that the state has in any way conveyed away public trust lands or that by revoking mooring privileges it has unconstitutionally taken a property right without compensation.

Language added in 2003 limits the authority of municipalities to regulate the location of aquaculture facilities. It provides that municipalities have no jurisdiction over the siting of these facilities and may not charge mooring fees for them. Moorings for boats used in connection with the aquaculture facility *do* fall under municipal authority, but towns may not try to keep these vessels out by charging exorbitant fees for these moorings.

38 M.R.S.A. § 3-A. Mooring transfer permitted by ordinance

A municipality may adopt an ordinance that allows the transfer of a mooring assignment used for commercial fishing purposes. The ordinance may permit a mooring assignment to be

transferred only at the request or death of the assignee, only to a member of the assignee's family and only if the mooring assignment will continue to be used for commercial fishing purposes. For the purposes of this section, "member of the assignee's family" means an assignee's parent, child or sibling, by birth or by adoption, including a relation of the half blood, or an assignee's spouse.

Section 3 makes clear that a mooring assignment cannot be transferred as part of the private sale of a boat or of the mooring tackle itself. Municipalities that have a waiting list may not permit private transfers of mooring assignments for recreational vessels. However, under section 3-A, municipalities *may* adopt an ordinance allowing commercial fishermen to transfer their mooring assignments to members of their immediate families. The transferred mooring assignments must continue to be used for commercial fishing.

38 M.R.S.A. § 4. Neglecting to remove or replace moorings

In case of the neglect or refusal of the master or owner of any boat or vessel to remove his mooring or to replace it by one of different character, when so directed by the harbor master, that harbor master shall cause the entire mooring to be removed or the buoy removed and the chain dropped to the bottom or shall make such change in the character of the mooring as required, and collect from the master or owner of that boat or vessel the sum of \$100 for either of those services rendered and the necessary expenses. Before removing a mooring or a buoy, a harbor master shall notify the master or owner, if ownership can be determined, by mail at his last known address of the action desired of him, the fact that the mooring will be removed and the fine. If the matter is not settled to his satisfaction within 2 weeks, the harbor master may take the action provided for in this section.

Harbormasters should note that owners are given a two-week grace period during which to remove a mooring or buoy. No action should be taken until the requisite notice is given and this time has elapsed. Towns may wish to define by ordinance the types of expenses billable to one whose mooring or vessel must be removed.

The City of Portland's harbor ordinance provides a good example.

In the case of the neglect or refusal of the owner of any mooring to comply with these regulations, or the order of the Harbor Master to remove his mooring or replace it with one of a different character, the Harbor Master may remove or cause to be removed any such mooring, or remove or cause to be removed the buoy, and drop the chain to the bottom. Any such removal and storage shall be at the expense and risk of the owner of the mooring, PROVIDED that before removing a mooring or buoy, the Harbor Master shall notify the mooring owner, if ownership can be determined, by mail, at the owner's last known address, of the violation or action desired of him, the fact that the mooring or buoy will be removed, and of the fine, if any. If the matter is not settled to his satisfaction within two weeks, the Harbor Master may take the action provided for in this section

38 M.R.S.A. § 5. Removal of vessels obstructing anchorage

A harbor master, upon receiving complaint from the master, owner or agent of any vessel, shall cause any other vessel or vessels obstructing the free movement or safe anchorage of that vessel to remove to a position to be designated by the harbor masters and shall cause, without any complaint being made to the harbor master, any vessels anchoring within the channel

lines as established by the municipal authorities, as provided in section 2, to remove to such anchorage as the harbor master may designate.

If that vessel has no crew on board or if the master or other person in charge neglects or refuses to move such vessel as directed by the harbor master, the harbor master may put a suitable crew on board and move that vessel to a suitable berth at a wharf or anchorage at the cost and risk of the owners of the vessel and shall charge \$100, to be paid by the master or owner of that vessel, which charge, together with the cost of the crew for removing that vessel, the harbor master may collect by civil action.

Recent amendments to this section clarify that it is the harbormaster, rather than the vessel operator or master, who determines the position to which a vessel must relocate if it is obstructing another vessel or anchored within channel lines. Note that although harbormasters must receive a complaint to compel a vessel to move out of another's way, they "shall," on their own initiative, disallow vessels from anchoring within channel lines. **Kittery's ordinance** allows for a 48-hour grace period.

Any person so ordered by the Harbor Master acting under this paragraph, shall remove the same within 48 hours after ordered; provided, however, that if the Harbor Master shall find an emergency requiring immediate action to prevent injury to life or damage to property, he may cause said mooring or any vessel attached thereto to be removed and relocated. Any expense involved shall be borne by the owner of the mooring or vessel being removed.

Additional civil or criminal penalties may also be imposed on those who fail to obey a lawful order of the harbormaster. Criminal penalties are set forth in section 13; civil penalties are in section 12. A discussion of each provision is included below.

38 M.R.S.A. § 6. Power to arrest for assault

Harbor masters, whose authority is not restricted as described in section 1, may arrest and deliver to the police authorities on shore any person committing an assault upon them or another person acting under their authority.

This is the only grant to harbormasters of power to arrest contained in Title 38. Provisions in Titles 12 and 17-A, discussed below, extend this law enforcement authority. Note that harbormasters whose arrest authority has been restricted *do not* have authority under this part of the law to place persons under arrest.

38 M.R.S.A. § 7. Relation to other laws

Nothing in this subchapter may be construed to be a limitation on the authority of municipalities to enact ordinances to regulate the assignment or placement of moorings and other activities in their harbors. These ordinances may include, but are not limited to: A process for assigning mooring privileges and determining the location of moorings; a waiting list for the assignment of mooring privileges; a fee schedule; construction standards for moorings; time limits on the mooring of vessels; a process for appeals from decisions of the harbor master; provisions that recognize that mooring privileges in lawful existence on the effective date of an ordinance may be preserved or continued after adoption of that ordinance, the location and use to be determined by the harbor master or other appropriate local authority; and provisions which establish a harbor commission or committee to administer the ordinance or ordinances and oversee the duties of the harbor master. Regulations adopted by

the municipal officers under section 2 shall remain in effect unless the municipality's legislative body enacts an ordinance pertaining to the same matter pursuant to the Constitution of Maine, Article VIII, Part 2, and Title 30-A, section 3001.

This section clearly expresses the legislature's intention to allow local governments a broad range of authority in managing harbor usages. The section specifies a number of matters, including assignment of mooring privileges and establishment of a harbor commission to oversee the duties of the harbor master, which towns may wish to address in ordinances. The list is not exclusive. Towns may enforce ordinances on topics other than those mentioned in the statute.

Nonetheless, there are limits on towns' authority to manage their harbors. The basis of towns' authority in this context is the home rule power, discussed earlier. In exercising this power, towns cannot disregard express statutory provisions. For example, a town ordinance cannot sanction the transfer of a mooring assignment along with the sale of a boat because 38 M.R.S.A. section 3 expressly bans such a transfer. Likewise, a town cannot refuse to grant shorefront owners the preference in obtaining a mooring provided for in 38 M.R.S.A. section 3.

Another area in which towns' regulatory discretion has been curtailed by the legislature involves the assignment of moorings to non-residents and the establishment of a waiting list for moorings.

38 M.R.S.A. § 7-A. Waiting lists; nonresident moorings

1. Waiting lists. If a municipality receives more applications for mooring privileges on state-owned lands that are controlled by its rules or ordinances than there are mooring spaces, the municipality shall assign spaces as they become available from a waiting list or lists according to its rules or ordinances, except as provided in this section. Waiting lists in effect at the time that this section becomes law may continue in effect, but persons shall be selected from those lists in accordance with the allocation provisions of this section. If at the time a person applies for a mooring there is no waiting list, this person may be assigned a mooring without regard to the allocation provisions of this section.

2. Allocation to nonresidents. If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is noncommercial and less than 10% of the moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is commercial and less than 10% of the assigned moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If both nonresident noncommercial and nonresident commercial assignments are below 10% and there are both types of applicants on the waiting list, the available space shall be assigned to an applicant in the category that is the farthest below 10%. The burden of proof in determining residence and the principal use of a vessel shall be upon the applicant.

Each year, persons with mooring assignments shall report to the harbor master their anticipated residency status for the next year and whether they anticipate the principal use of their boats to be commercial or noncommercial. The harbor master shall update the percentage of mooring holders in each category from this data.

It is not a requirement of this section that a person lose a current mooring assignment to meet the objectives of this section.

Shorefront property owners shall be assigned mooring privileges as established in section 3.

If the mooring fee charged to nonresidents exceeds \$20 a year, the fee charged shall be reasonable in relation to the costs involved in providing that mooring and shall not exceed 5 times the amount charged to residents.

This subsection shall be construed broadly in order to accomplish the distribution of moorings to nonresidents as specified in this section.

This section mandates the assignment of mooring spaces from a waiting list in communities where the mooring site applications exceed the number of available sites. Although individual towns may decide the procedures for establishing and assigning moorings from the waiting list, this section requires that in some harbors a limited priority for non-residents be established. Note that this rule of priority does not apply in communities where there is no waiting list.

Simply stated the rule is as follows: If non-residents who use their vessels for non-commercial purposes have less than 10 percent of the existing moorings, the next available one goes to the first such person on the waiting list. Likewise, if non-resident, commercial users have less than 10 percent of the mooring sites, the first such person on the waiting list receives the next available mooring. If both categories of users have less than 10 percent, the category with the fewer moorings is entitled to preference. As noted above, this rule applies regardless of the fact that there may be others on the waiting list ahead of the non-resident.

This new rule complicates the task of assigning moorings. In order for the rule to operate smoothly, towns may wish to define a number of terms by ordinance. The legislature has defined “municipal resident” as any person who occupies a dwelling in the municipality for more than 180 days in a calendar year. Note that applicants bear the burden of proving their residency status and their vessel’s principal use. The statute expressly provides that towns may *expand* this definition to give others residency status. The definition of resident is the key to the priority established by section 7-A. By expanding the definition of “residency” in this context, for example, towns can narrow the category of those entitled to this statutory preference.

Section 7-A requires that persons with mooring assignments inform the harbormaster of their anticipated residency status for the coming year and the intended use, commercial or non-commercial, for their vessels. This requirement may ease the task of keeping track of fluctuations in these categories. As a further aid to their harbormasters, towns may wish to require by ordinance that all wait-listed applicants provide similar information.

Towns are left with wide discretion in establishing a schedule of fees charged for moorings. Section 7-A establishes two limits on this discretion in regard to non-residents: non-resident fees over \$20 must be “reasonably related” to municipal costs in providing the mooring and cannot be more than five times the fee charged residents. These limits stem from constitutional due process requirements and proscriptions against discrimination based on residency.

Provided that the statutory preferences are respected, towns may also establish their own priorities for mooring assignment. Towns may wish to use their authority to promote development of waterfront uses, such as commercial fishing, favored by the community. Mooring assignment can be a tool for implementing goals identified in the harbor planning process. The following **hypothetical ordinance**, based on the Town of Freeport’s harbor ordinance, takes into account the legislatively imposed non-resident priority and promotes commercial fishing. Towns may wish to establish other priorities as community needs direct.

Mooring Assignment; Waiting List

(A) Except as provided in subsection B, mooring privileges shall be granted on application to the Harbor Commission, on a first come, first served basis. The Harbor Commission may, however, deny a mooring permit for any reasons specified in [the section on applications, e.g., failure to pay assessed fees, transfer of mooring assignment,

sale of vessel, incomplete application, etc.]. The total number of moorings assigned shall not exceed the number specified in the Harbor Management Plan.

(B) When the number of applications exceeds the number of available mooring spaces, the Harbor Commission shall assign mooring spaces as they become available from a waiting list, pursuant to the requirements of subsection C.

(C)(1) The Harbor Master shall maintain a waiting list of all applicants who were not assigned a mooring that year and post that list in the Town Hall. The list shall be in four sections: (i) littoral owners; (ii) resident, full-time commercial fishermen; (iii) resident; and (iv) non-resident. [Note: these terms must be defined elsewhere in the harbor ordinance.] The Harbor Master shall determine the appropriate category based on information provided in the application. Applications shall be dated on receipt at the Town Office and, except as provided in subsection (C)(2), shall be considered for vacant moorings from each section in the chronological order received in accordance with the following priorities:

a. Littoral Owners shall receive their first mooring as a matter of right. They shall be given the first vacancy available. No fee is required of them. The assignment shall be in the same name or names and quality of title as the littoral land is held.

b. Full Time Commercial Fisherman: Resident commercial boat owners shall receive the next available vacancy after littoral owners. All efforts shall be made to move them within the commercial zone as soon as possible.

c. Resident.

d. Non-resident.

e. Applications concerning second or subsequent moorings of any type held by one person, entity or household shall be directed to the Coastal Waters Commission, which shall consider each application and assign a position on the waiting list.

(C)(2) If less than 10 percent of the currently assigned moorings are held by non-residents using the moorings for noncommercial purposes, or if less than 10 percent of the currently assigned moorings are held by non-residents using the mooring for commercial purposes, the next available mooring shall be assigned to the first applicant on the waiting list meeting that description. If both user categories, non-resident/noncommercial and non-resident/commercial, are allocated less than 10 percent of the moorings, the next available mooring shall be assigned to the first person on the waiting list in the category with fewer moorings. This subsection shall govern mooring assignments until each user category described in this subsection has 10 percent of the allocated moorings. If there is no applicant on the waiting list within the categories described in this subsection, the next available mooring shall be assigned according to the priorities described in subsection (C)(1).

38 M.R.S.A. § 8. Waiting list

Whenever there are more applicants for a mooring assignment than there are mooring spaces available, the harbor master or other town official shall create a waiting list. The town officials shall work out a reasonable procedure for persons to add their names to this list. The procedure shall be posted in a public place. The list shall be considered a public document under the freedom of access law.

This section specifies that when applications¹¹ for moorings exceed the number of available moorings, a town must establish a waiting list. The following **harbor ordinance from the Town of Freeport** illustrates a reasonable method for adding names to the waiting list.

Waiting List. The Harbormaster shall maintain one chronological waiting list with complete application information of all applicants who have applied for but not received a mooring assignment. Persons desiring a place on the waiting list may apply at any time by making out a mooring application form and filing it with the Harbormaster. The list shall be in eight sections, each section in chronological order as to when the application was received with recreational applications being limited to natural persons: (1) Resident Fisherman; (2) Resident/Recreational; (3) Resident Commercial Marine Enterprise; (4) Non-Resident Fisherman; (5) Non-Resident Commercial Marine Enterprise; (6) Non-Resident Recreational; (7) Resident Subsequent; (8) Non-Resident Subsequent. A copy of this waiting list, composed of all information required in Article 5 Section 3 of this Ordinance shall be posted in the Town Office and shall be provided to all members of the Coastal Waters Commission, and made available for any Commercial Marine Enterprise or any others who request a copy.

38 M.R.S.A. § 9. Abandonment of watercraft

No person may bring into or maintain in the harbor any derelict watercraft, watercraft for salvage, or abandon any watercraft in the harbor without a permit from the harbor master or, if there is no harbor master, the appropriate municipal official. Whoever does so without permit is guilty of a Class E crime. Watercraft which are to be salvaged by firms licensed by the State to do salvage work shall be excluded from this section. The municipal board or commission entrusted with harbor management shall be the sole determiner as to what constitutes a watercraft that is derelict and what constitutes a watercraft that is abandoned.

Note that this section calls on the local harbor commission or a similar entity to define “derelict” and “abandoned” watercraft by ordinance or regulation. Towns can use this provision to protect both the public safety and the scenic quality of the harbor.

While the statute gives the municipal board or commission entrusted with harbor management the sole discretion to determine what constitutes a derelict or abandoned watercraft, municipalities must consider other statutes in determining what action can be taken with regard to that vessel. The 1991 Abandoned Watercraft Act (12 M.R.S.A. § 591, et seq.) establishes a program to be administered by the Bureau of Public Lands, subject to available funding, to remove abandoned watercraft from coastal waters if those abandoned watercraft have been reported to it by municipalities in a timely manner.

The state program defines abandoned watercraft for purposes of that program as “any watercraft that is inoperative and neglected, submerged or partially submerged or that has been left by the owner in coastal waters without intention of removal.” It includes motors, electronic and mechanical equipment and other machinery customarily used in the operation of the watercraft. “Watercraft” is further defined as “any type of vessel, boat, barge, float or craft 20 or more feet in length that is used or capable of use as a means of transportation on water,” including seaplanes. An abandoned watercraft is subject to removal under this program if it is in the water and no permit has been issued by the municipality under Title 38, section 9 or if it is on land, the landowner has not granted permission to the vessel owner to abandon it on that property, and the landowner grants permission to the state to enter on the property to remove the vessel.

The program only applies to:

- 1) watercraft abandoned after July 1, 1993 if the municipal board or commission entrusted with harbor management has given notice to the Director of the Bureau of Public Lands within 120 days of abandonment; or

- 2) watercraft abandoned after October 9, 1966 (less than 25 years prior to the effective date) if notice has been given to the director before January 1, 1994.

This program does not apply to watercraft abandoned prior to October 9, 1966.

Once the municipality has given the state appropriate notice, the Bureau of Public Lands will attempt to notify the owner to verify that it is abandoned. If the owner cannot be found or fails to respond within time limits, the state may remove the watercraft, sell it, apply any proceeds to costs and liens, and keep any excess for the Submerged Lands Fund. If proceeds do not cover removal costs, it may bring a civil action against the owner for costs of removal plus an additional 50% penalty. Or the state may authorize a third party to remove it, sell it, pay 5% of the proceeds to the Submerged Lands Fund and keep the balance

Municipalities that do not give appropriate notice to trigger inclusion in the Bureau of Submerged Lands abandoned watercraft program or that are faced with abandoned watercraft less than 20 feet in length must comply with due process requirements of reasonable notice and with the general abandoned property statutes. The following examples from Portland and Scarborough and any elaboration on them should be reviewed by the town attorney to make sure that they comply with these constitutional and statutory requirements.

The **Port of Portland's regulations** offer helpful definitions of "derelict" and "abandoned" vessels:

(a) Derelict Vessel - A derelict vessel is a vessel which has one or more of the following characteristics:

(i) The vessel is required to be registered with any federal or state governmental agency, but is not so registered;

(ii) The vessel's owner, operator or custodian cannot be located nor identified;

(iii) The vessel is a motor-powered vessel which does not have a working engine;

(iv) The vessel does not have operable and effective bilge pumps;

(v) The vessel has not been in operation for 60 or more consecutive days; or

(vi) The vessel is sinking and its owner cannot be contacted within a period of 24 hours from the time it is observed sinking.

(b) Abandoned Vessel - An abandoned vessel is one which is the subject either of an unauthorized berthing complaint or complaint for unauthorized mooring at a public or private pier or mooring whose owner cannot be contacted within a period of 24 hours from the time of the complaint.

The Town of Scarborough entrusts this determination to its harbormaster.

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. Reasonable notice of such disposal shall be publicly given. The vessel owner may appeal the action of the Harbormaster under this Section 3 as provided in Article X of this Ordinance.

38 M.R.S.A. § 10. Harbor master liability

In addition to the immunities from liability and the limitations and defenses provided under the Maine Tort Claims Act, Title 14, sections 8103, 8111 and 8112, a harbor master who, in the performance of statutory duties as set forth in sections 4 and 5, causes any damage to property or any injury to a person shall not be liable for damage or injury, unless the damage or injury is a direct result of the gross negligence, gross recklessness or bad faith intentional misconduct of the harbor master.

In performing duties, a harbormaster may be called upon to take actions causing harm to persons or property. Liability for any such actions, i.e., the responsibility to compensate those harmed monetarily or otherwise, is the topic of this section.

Because harbormasters are public employees, they enjoy a limited immunity from suit under the Maine Tort Claims Act (MTCA). The MTCA is a complex law, discussion of which exceeds the scope and purposes of this guide. Generally speaking, harbormasters are liable for negligent conduct of duties within the scope of their employment, such as crashing into a sailboat while on patrol. On the other hand, harbormasters enjoy absolute immunity for certain official actions, such as the refusal to grant a mooring permit.

38 M.R.S.A. § 11. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

- 1. Municipal resident. “Municipal resident” means any person who occupies a dwelling within the municipality for more than 180 days in a calendar year. A municipality may by ordinance include other persons in the definition of resident.*
- 2. Parcel of land. “Parcel of land” means the larger of the minimal buildable lot size in the municipality or 20,000 square feet and, in either case, including 100 feet of shoreline frontage.*

As mentioned at several points above, towns may wish to adopt their own definitions to supplement these legislative ones and fine tune them to local circumstances. A definition section should be included in every town’s harbor ordinance. Clear ordinance definitions can avoid confusion and controversy. For example, the legislative definitions leave room for adjustment. Towns may “include other persons in the definition of resident,” i.e. allow 90 day residents to be residents. (Making the residency period longer than 180 days, on the other hand, would *exclude* people from residency and is plainly prohibited.) Towns can affect the number of those who can lay claim to littoral rights by increasing the minimal buildable lot size: as a result, fewer sites would be “parcels of land” for the purposes of 38 M.R.S.A. Section 3.

38 M.R.S.A. § 12. Violation of subchapter

Except as provided in section 13, a violation of this subchapter or any harbor ordinance may be prosecuted and relief, fees and penalties granted and assessed pursuant to the provisions of Title 30-A, section 4452.

This section outlines the civil enforcement authority.

38 M.R.S.A. § 13. Failure to obey orders of harbormasters

- 1. Offense defined. 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 order of a harbormaster authorized pursuant to this subchapter.*
- 2. Penalty. Failure to obey an order of a harbormaster is a Class E crime.*

The consequences of violating a harbormaster's orders, such as an order to remove a vessel from an established channel, can be serious. Conviction of a Class E crime can carry with it a six-month jail term and a \$500 fine. Harbormasters accorded full law enforcement authority must be given training in criminal justice procedures. As discussed below, the town, town attorney, local district attorney, and harbormaster should work out a procedure for prosecution of civil and criminal actions initiated by the harbormaster's issuance of citations.

Title 38, subchapter VII: Operating Restrictions

Sections 281 through 284 deal with specific matters of great concern to any responsible person who wishes to make use of harbor facilities in peace and safety, as well as to municipal authorities and the harbormaster. Section 285 adds a decided sting of enforcement.

Title 38 § 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, shall be guilty of a Class E Crime.

The Class E designation sets the fine at a maximum of \$500 and imprisonment to a maximum of six months, and allows the imposition of both penalties.

Title 38 § 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 shall be guilty of a Class E crime.

Title 38 § 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 shall be guilty of a Class E crime.

Title 38 § 284. Operation under influence of drugs or liquor

Whoever operates any watercraft, vessel, water skis, surf-board, 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, shall be guilty of a Class E crime.

Title 38 § 285. Enforcement of operating restrictions

Every law enforcement officer in this State, including harbor masters and their deputies, shall have the authority to enforce this subchapter, and in the exercise hereof shall have the authority to stop and board any such watercraft, vessel or motorboat found in violation of said subchapter. It shall be unlawful for the operator of any such watercraft, vessel or motorboat to fail to stop upon hail from any such officer, and a violation of the same shall be punished as provided in section 282.

Without exception, every municipality that has a set of harbor regulations includes bans that parallel the operating restrictions of Subchapter VII. Operating to endanger, operating recklessly, and operating under the influence of drugs or liquor are violations easy to detect and identify. A certain amount of ambiguity creeps in when it comes to excessive speed within the harbor. Of those towns that apply an actual speed limit, five is the magic number—sometimes applied in knots, sometimes in statute miles per hour. The difference, of course, is minimal, not to say imperceptible. For that matter, without the aid of radar, who can be sure that a boat is traveling at six knots rather than five? In any case, most harbors which impose such a limit post it at the harbor entrance.

Some harbormasters or their harbor committees choose to prohibit creation of a wake, which is the real source of danger in most cases. A posted “NO WAKE” sign is unmistakable, and any craft that leaves a widening trail of bobbing and tossing boats astern is obviously in violation. However, a violation of the “no wake” rule is not easy to prove in court. As a practical matter, there must be a complainant aggrieved by the disturbance caused by the wake.

A graduated reduction in speed limit is often employed by towns with an exceptionally long entrance, or both an inner and an outer harbor. In such cases, the outer reaches are usually placed under a ten-knot limit. As one harbormaster says, “Who wants to make a boat spend a whole hour getting in?”

At any rate, the strictures of Subchapter VII carry very real teeth with the Class E crime designation. And with the backup provided in Titles 12 and 17-A, the bite of Title 38 is significantly sharpened.

M.R.S.A. Titles 12 and 17-A: Extended Powers of Enforcement

The extended law enforcement duties provided for in Titles 12 and 17-A, and the warrantless arrest authority discussed below, apply only to those harbormasters whose law enforcement authority has not been restricted (i.e., have power to arrest and carry gun) and who have received the required law enforcement training.

12 M.R.S.A. §10403. Enforcement of watercraft laws

Any municipal, county or state law enforcement officer or any harbor master appointed pursuant to section 13072 or Title 38, section 1 has the authority to enforce, in the respective jurisdictions, the watercraft laws in chapter 935 and the rules related to those laws.

Section 13072 provides for the appointment of harbormasters on inland waterways. The inland harbormasters are given the same powers of enforcement and the same one-year minimum term as coastal harbormasters. The watercraft laws in chapter 935, completely revised in 2003, combine safety regulations, licensing and permitting requirements, and conservation regulations within the same statutory scheme. These state laws are primarily intended to ensure uniformity, so that vessel owners would not find themselves legal in one harbor and illegal in the next. A secondary purpose was to put the responsibility for enforcement on the Department of Conservation and the Bureau of Marine Patrol, and thus lessen the burdens of other authorities.

Harbormasters cannot be made directly responsible for inspecting all the vessels that enter local waters for compliance with federal regulations, for example. They are, however, expected to report such violations as happen to come to their attention.

The provisions of chapter 935 of Title 12 apply to both inland and coastal waters. They are helpfully summarized in a pamphlet published by the Department of Inland Fisheries and Wildlife. this pamphlet is available on-line at <http://www.maine.gov/ifw/rv/boatinglaws.htm>. The sections of chapter 935 that coastal harbormasters are likely to need to enforce are reproduced below. They fall into two categories: operating restrictions and accident reporting.

12 M.R.S.A. § 13068-A: Operating Watercraft; Prohibitions

2. Unlawfully permitting operation by another. A person may not permit operation of a watercraft in violation of this subsection.

A. A person violates this subsection if that person owns a watercraft and negligently permits another person to operate that watercraft in violation of this chapter.

(1) A person who violates this paragraph commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this paragraph after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

B. A person violates this subsection if that person is the parent or guardian responsible for the care of a minor under 18 years of age and the minor operates a personal watercraft in violation of this chapter.

(1) A person who violates this paragraph commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this paragraph after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

3. Operating motorboat other than personal watercraft while underage. A person under 12 years of age may not operate a motorboat propelled by machinery of more than 10 horsepower unless under the immediate supervision of a person located in the motorboat who is at least 16 years of age.

This subsection does not apply to operating a personal watercraft.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

4. Operating watercraft without proper safety equipment. Except as provided in paragraph B, a person may not operate a watercraft without proper safety equipment as described in paragraph A.

A. A person operates a watercraft without proper safety equipment if the person operates a watercraft and:

(1) Fails to comply with the same requirements pertaining to lights, life-saving devices, fire extinguishers and other safety equipment as required by federal laws and regulations on federal navigable waters, as promulgated under the Federal Boat Safety Act of 1971, Public Law 92-75, as amended;

(2) Fails to comply with requirements pertaining to additional equipment not in conflict with federal navigation laws, which the commissioner may prescribe if there is a demonstrated need; [...]

C. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

5. Operating watercraft to endanger. A person may not operate any of the following so as to endanger any person or property:

A. Watercraft;

B. Water ski; or

C. Surfboard or similar device.

A person who violates this subsection commits a Class E crime.

6. Reckless operation of watercraft. A person may not operate any of the following in such a way as to recklessly create a substantial risk of serious bodily injury to another person:

A. Watercraft;

B. Water ski; or

C. Surfboard or similar device.

A person who violates this subsection commits a Class D crime.

7. Operating watercraft at greater than reasonable and prudent speed. A person:

A. May not operate a watercraft except at a reasonable and prudent speed for existing conditions; and

B. Shall regulate the speed of a watercraft so as to avoid danger, injury or unnecessary inconvenience in any manner to other watercraft and their occupants, whether anchored or under way; waterfront piers; floats or other property or shorelines, either directly or by the effect of the wash or wave created by the watercraft through its speed, or otherwise.

A person who violates this subsection commits a Class E crime.

8. Imprudent operation of watercraft. A person may not, while operating a watercraft on the inland or coastal waters of the State, engage in prolonged circling, informal racing, wake jumping or other types of continued and repeated activities that harass another person.

A. This subsection may be enforced by any law enforcement officer or a person may bring a private nuisance action for a violation of this subsection pursuant to Title 17, section 2802.

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

9. Operating watercraft to molest wild animals or wild birds. A person may not operate a watercraft so as to pursue, molest, harass, drive or herd any wild animal or wild bird, except as may be permitted during the open season on that animal.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

10. Operating motorboat that exceeds noise limits. The following provisions govern noise limits.

A. A person may not operate a motorboat in such a manner as to exceed:

(1) A noise level of 90 decibels when subjected to a stationary sound level test with and without cutouts engaged and as prescribed by the commissioner; or

(2) A noise level of 75 decibels when subjected to an operational test measured with and without cutouts engaged and as prescribed by the commissioner.

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$300 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

C. This subsection does not apply to motorboats that are operating in a regatta or race approved by the commissioner under section 13061.

11. Operating motorboat without muffler. A person may not operate a motorboat that is not equipped at all times with an effective and suitable muffling device on its engine or engines to effectively deaden or muffle the noise of the exhaust, except that motorboats that are operating in a regatta or race approved by the commissioner under section 13061 may use cutouts for these motorboats while on trial runs or competing in speed events, for a period not to exceed 48 hours immediately preceding or following such an authorized event.

A. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

12. Tampering with motorboat muffler system. A person may not modify a motorboat muffler system in any way that results in an increase in the decibels of sound emitted by that motorboat.

A. A person who violates this subsection commits a civil violation for which a fine not to exceed \$100 may be adjudged.

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

13. Headway speed only. The following provisions govern speeds in certain zones.

A. A person may not operate a watercraft at a speed greater than headway speed while within the water safety zone or within a marina or an approved anchorage in coastal or inland waters except:

(1) While actively fishing; or

(2) While picking up or dropping off one or more persons on water skis in the water safety zone if a reasonably direct course is taken through the water safety zone between the point that the skiers are picked up or dropped off and the outer boundary of the water safety zone.

B. For the purposes of this subsection, "headway speed" means the minimum speed necessary to maintain steerage and control of the watercraft while the watercraft is moving.

C. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

14. Operating motorboat in bathing areas. The following provisions apply to operating a motorboat in a bathing area.

A. A person may not:

(1) Operate a motorboat within a bathing area marked or buoyed for bathing; [...]

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

In addition to enforcing these operating restrictions, harbormasters also play a critical role in accident reporting. Accidents involving death or personal injury *must* be reported to the nearest law enforcement officer, which will often be the local harbormaster:

12 M.R.S.A. §13069-A. Watercraft accidents involving personal injury or death

The following provisions govern accidents involving watercraft that result in personal injury or death of a person.

1. Law enforcement officer notification. The operator of a watercraft involved in an accident that results in personal injury or death of a person or results in the disappearance of a person indicating death or injury shall immediately report the accident, by the quickest means of communication, to the available law enforcement officer nearest to the place where the accident occurred.

A. The owner of a watercraft who knows that that watercraft was involved in an accident as described in this subsection shall report the accident as provided in this subsection if the operator of the watercraft is unknown.

2. Provide information to injured party. The operator or a person acting on behalf of the operator of a watercraft involved in an accident shall provide to an injured person or the operator or an occupant of any other watercraft involved in the accident:

A. The operator's name and address; and

B. The registration number of the operator's watercraft.

3. Render assistance. The operator of a watercraft involved in an accident shall render reasonable assistance to an injured person.

4. Penalties. A person who violates this section commits a Class E crime.

5. Aggravated punishment category. Notwithstanding subsection 4, a person who intentionally, knowingly or recklessly fails to comply with this section when the accident resulted in serious bodily injury, as defined in Title 17-A, section 2, subsection 23, or death, commits a Class C crime.

12 M.R.S.A. §13069-B. Watercraft accidents involving property damage

The following provisions govern accidents involving watercraft that result in property damage only.

1. Provide information. The operator of a watercraft involved in a collision or accident that results in property damage estimated to be in an amount of \$1,000 or more shall provide the owner or operator of that property:

A. The operator's name and address; and

B. The registration number of the operator's watercraft.

2. Render assistance. The operator of a watercraft involved in an accident shall render reasonable assistance to all persons involved in the accident as far as the operator can without serious damage to the operator's watercraft or serious risk to crew or passengers.

3. Violation. A person who violates this section commits a Class E crime.

§13069-C. Watercraft accident reports

A person shall report a watercraft accident to the commissioner in accordance with this section.

1. Injury to person. An operator or owner of a watercraft involved in a collision, accident or other casualty while using the watercraft that results in the death of a person, a person's losing consciousness or receiving medical treatment, a person's becoming disabled for more than 24 hours or the disappearance of a person from a watercraft under circumstances indicating death or injury shall file a written report on forms provided by the commissioner containing the information as required by the commissioner within 24 hours of the occurrence.

2. Damage to watercraft. Accidents involving only damage to watercraft or other property to the estimated amount of \$1,000 or more must be reported within 72 hours on forms provided by the commissioner.

3. Penalties. The following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

B. A person who violates this section after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

The form for reporting accidents involving only property damage is included here in Appendix H.

Those harbormasters who have full law enforcement authority under 38 M.R.S.A. § 1 have the power to arrest individuals under certain circumstances.

Title 17-A § 15. Warrantless arrest

1. Except as otherwise specifically provided, a law enforcement officer may arrest without a warrant:

...

B. Any person who has committed or is committing in the officer's presence any Class D or Class E crime.

2. For the purposes of subsection 1, paragraph B, criminal conduct has been committed or is being committed in the presence of a law enforcement officer when one or more of the officer's senses afford that officer personal knowledge of facts that are sufficient to warrant a prudent and cautious law enforcement officer's belief that a Class D or Class E crime is being or has just been committed and that the person arrested has committed or is committing that Class D or Class E crime. An arrest made pursuant to subsection 1, paragraph B must be made at the time of the commission of the criminal conduct, or some part thereof, or within a reasonable time thereafter or upon fresh pursuit.

So, not only may harbormasters hail, stop, and board any vessels in violation of the restrictions under 38 M.R.S.A. §§ 281-284 and 12 M.R.S.A. § 13068-A, harbormasters with law enforcement power may also arrest and hold the operators.

The harbormaster is responsible for enforcing both state laws, violation of which is a Class E crime, and local ordinances, violation of which constitutes a civil offense. Different legal procedures apply to these two types of infractions. For example, violation of a boating law, such as operating a boat without a certificate number, a Class E crime, requires service of a summons

on the violator, the person who was operating the boat. This type of service is not necessary in the case of a civil violation, such as tarrying too long at the town landing, in which case the notice of violation/summons can be mailed.¹³

The harbormaster should meet with the local police chief, selectmen, district attorney and/or town attorney to determine the procedures for handling both types of boating violations. Lawyers can draft forms for the tickets and necessary summonses.

FUNCTION OF THE HARBOR COMMITTEE

The harbor committee can be extremely useful in formulating a workable harbor management ordinance, one which addresses and incorporates community needs and wishes. The local harbor committee will also play a central role in harbor management planning, discussed in the following section. In many communities, however, the harbor committee is a creature of the harbor ordinance rather than its creator.

Typically, the harbor committee is made up of unpaid residents of the community appointed by the selectmen. In choosing the appointees, the intent of the selectmen is to assemble a volunteer body of men and women who are motivated by a disinterested concern—disinterested in the sense that no member has any axe to grind, and concerned with the successful present operation of the harbor and an appropriate pattern of future change.

They tend to be the most knowledgeable “boat people” in the community, and in theory, at least, it is their understanding of the importance of having a good working harbor that makes them willing to serve without pay. They serve as advisors to the selectmen, and the inclusion of the harbormaster among their number provides a direct link to municipal authority.

Different towns entrust different responsibilities to their harbor commissions. As discussed above, the legislature has stressed that towns can delegate a wide range of authority to a harbor commission. The **Town of Freeport’s Coastal Waters Commission**, for example, has a number of duties. **Freeport’s ordinance** discusses the Commission’s composition and the procedures by which it operates.

Article III—Coastal Waters Commission

*1. **Establishing Policy:** The Freeport Coastal Waters Commission exists for the general purpose of studying and evaluating public usage of and access to coastal waters, to advise the Town Council on policy matters and proposed regulations concerning the Town's coastal waters, supervise the enforcement of these rules and regulations through the Harbormaster, oversee the maintenance and care of Town owned waterfront facilities through the Harbormaster, and in conjunction with State and Federal authorities. The Coastal Waters Commission sits as a board of appeals to hear an appeal from any person aggrieved by any decision, act or failure to act of the Harbormaster. The Commission shall regularly inform the Town Council, Planning Board, and such other boards, committees, commissions, or officials of the Town of its activities, as is appropriate.*

*2. **Organization:***

(a) The Coastal Waters Commission shall consist of seven (7) members appointed by the Town Council. Each Commissioner shall be a resident of the Town of Freeport and shall serve without compensation.

(b) Neither a municipal officer nor his/her spouse may be a member of the Commission.

(c) Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.

(d) Commissioners may be removed by the Town Council for cause, after notice and hearing. The Chairman of the Commission shall notify the Town Council Chairman of the forfeiture of office by a Commissioner(s).

(e) The term of office of a member shall be three (3) years, except the initial appointments which shall be as follows: three (3) members for two (2) year terms; and two (2) members for one (1) year term.

(f) The Commission shall annually elect a chairman, vice chairman and secretary from its membership and may create and fill such other offices as it may determine. Officers shall serve one (1) year term and shall be eligible for re-election.

3. Procedure:

(a) The Chairman shall call meetings of the commission as required. The Chairman shall also call meetings of the Commission when requested to do so by a majority of the members or by municipal officers. A quorum of the Commission necessary to conduct an official Commission Meeting shall consist of at least four (4) members. The Chairman shall preside at all meetings of the Commission and shall be official spokesman of the Commission.

(b) The Secretary shall maintain a permanent record of all Commission meetings and all correspondence of the Commission. The secretary shall be responsible for maintaining those records which are required as a part of the various proceedings which may be brought before the Commission. All records to be maintained or prepared by the Secretary are deemed public and shall be filed in the Municipal Clerk's office and may be inspected at reasonable times.

(c) The Commission may provide by rule, which shall be recorded by the Secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the Chairman upon good cause shown.

(d) The Commission may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) The transcript of testimony, if any, and exhibits together with all papers and requests filed in the proceeding, shall become part of the record and shall include a statement of findings and conclusions, as well as the reasons and/or basis thereof, upon all the material issues of fact, law or discretion presented in the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the Planning Board, agency or office and the municipal officers within seven (7) days of their decision.

(f) An appeal may be taken from any act or decision of the Coastal Waters Commission by procedure as outlined in Article XI of this Ordinance.

*4. **Jurisdiction:** The Coastal Waters Commission shall hear any appeal by any person affected directly or indirectly from any decision, order, rule, act or failure to act of the Harbormaster. In deciding any appeal, the Commission shall hear and approve, approve with modifications or conditions, or disapprove the decision, order, rule, act or failure to act of the Harbormaster, from which the appeal is made.*

Towns concerned with the procedures by which their harbor commissions or similar agencies conduct business can profitably consult the regulations of the city of Portland's Board of Harbor Commissioners (www.portlandharbor.org) for additional ideas.

Towns should take care that the duties of their harbormasters and those of the harbor commissions are clearly defined. Without this definition of roles, conflict may arise when the commission and harbormaster disagree on policy or its implementation. Ideally, theirs should be a mutually supportive relationship. Properly functioning, the harbor committee can fulfill an invaluable planning and policy role.

COMPREHENSIVE HARBOR MANAGEMENT PLANNING

Many Maine communities have experienced a greatly increased demand for waterfront land over the last two decades. New uses, such as luxury housing, retail shops, that do not require a waterfront location are seeking to locate on the shore. In addition, recreational boating and its support services are proliferating in many harbors. The pressure for non-water dependent and recreational uses will likely continue throughout coastal Maine in the years ahead.

Maine has responded to these pressures in a number of ways:

- adopting and revising municipal zoning bylaws;
- implementing a new exemption to property valuation for tax purposes for certain water-dependent uses;
- adopting comprehensive harbor management plans;
- acquiring conservation easements; and/or
- initiating bay management planning in certain areas.

The Maine Coastal Program offers several handbooks useful in preparing comprehensive harbor management plans.¹⁵ The Comprehensive Planning and Land Use Regulation Act¹⁶ recommends municipalities address ten statewide goals, one of which involves protection of marine resource industries, ports and harbors from incompatible development and promotion of access to the shore for commercial fishermen and the public.¹⁷ A comprehensive harbor management planning process includes assessment of whether existing controls are adequate to discourage or prohibit establishment of new businesses or housing along the shore, which would displace or preclude traditional water dependent businesses. The plan could recommend regulatory controls and a review process designed to protect and promote water dependent uses.

The Department of Marine Resources is also currently undertaking a study on "Bay Management" as required by state law. LD 1857, passed by the 121st Legislature, directs Maine's Land and Water Resources Council to undertake a 2-year study, due January 15, 2007, "to explore and document potential new and innovative concepts for the management of Maine's embayments."

HARBORHOUSEKEEPING

Establishing channels and anchorages, curbing the dangerous operator, overseeing the effectiveness of moorings: achieving these goals, along with all the other duties and responsibilities laid down in M.R.S.A., will certainly go far to ensure a safer and more smoothly functioning harbor.

Yet, their successful accomplishment still leaves some problems unsolved. These may seem small, but at best they tend to become irritants, and at worst they can threaten the peace and sometimes even the safety of the harbor. Effective solutions to these problems can make the difference between a good harbor and a fine harbor that is a pleasure to use.

One potential source of friction is the misuse of town floats attached to pier or shore. Some towns provide that boats should be tied up to town floats only while loading or unloading. Other towns, such as **Yarmouth**, set an express time limit for tie-ups to a town facility:

Article V. Public Facilities

B. Dockage Time: No person shall tie up vessels or boats of any description to public facilities more than thirty minutes except with special permission granted by the Harbor Master. Towns set various limits for time allowed alongside public facilities. Often the limit is 30 to 60 minutes. Invariably, there is a provision that the period may be extended with the permission of the harbormaster. Some municipalities impose fines of \$25 or \$50 for overextending a stay without such permission.

Litter can also be an issue on the waterfront and in the harbor. The **Town of Yarmouth** has aimed to address this problem with the ordinance provision below, a provision echoed in one form or another in other towns' ordinances:

Article V. Public Facilities:

F. Dumping Prohibited: No person or persons shall deposit, dump or cast away or cause to be deposited, dumped or cast away into the waters of Yarmouth Harbor or where a mooring plan has been established or upon the public lands adjacent thereto any bait, fish offal, garbage, waste or rubbish.

Article VI of the Yarmouth ordinance designates such violations as misdemeanors, and sets a fine of not more than \$100 a day for each day a violation continues. State law also prohibits littering and makes both the person littering and the operator of the watercraft liable for the littering:

17 M.R.S.A. § 2263-A Littering

1. Prohibited acts. A person may not throw, drop, deposit, discard, dump or otherwise dispose of litter in any manner or amount:

...

B. In freshwater lake, river, stream, tidal or coastal water or on ice over the water. When any litter is thrown or discarded from a watercraft, a person is in violation of this section if that person is:

(1) The operator of the watercraft, unless it is a watercraft being used for the carriage of passengers for hire; or

(2) The person actually disposing of the litter.

This paragraph does not prohibit persons who fish, lobster or otherwise harvest from the water from returning to the water harvested products, bait and similar materials that naturally originate in the water.

Quite a few towns specifically prohibit the discharge of oil into their harbors. Discharge of oil is, in any case, prohibited by the federal Clean Water Act (33 U.S.C. § 1321), and any gross discharge or spill should be immediately reported to the Coast Guard.

Discharge of waste from marine toilets can contribute significantly to degradation of water quality in waters with limited tidal flow and crowded marina settings. Maine law specifically bans any discharge of sewage, septic fluids, garbage or other pollutants from watercraft on inland waters. In coastal waters, some progress is being made toward limiting discharge and providing pump-out facilities.

38 M.R.S.A. § 423-B Watercraft sanitary waste pump-out facilities at marinas

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Marina" means a facility that provides supplies or services and has the capacity to provide any combination of slip space or mooring for 18 or more vessels that exceed 24 feet in length.

B. "Pump-out facility" means a facility that pumps or receives sanitary wastes out of marine sanitation devices that are specifically designed to receive, retain and discharge sanitary wastes and that are installed on board watercraft. "Pump-out facility" includes a stationary pump-out station, a portable marine toilet dump station and a mobile pump-out vessel.

2. Pump-out facilities required. A marina serving coastal waters shall provide a pump-out facility or provide through a written contractual agreement approved by the commissioner a facility to remove sanitary waste from the holding tanks of watercraft.

3. Exception. A marina is not required to meet the requirements in subsection 2 until a grant for the construction or renovation of a pump-out facility or the initial cost of a contractual agreement is offered to that marina pursuant to subsection 4.

4. Cost share. Subject to the availability of funds, the commissioner shall award grants using a combination of federal and state funds for the costs of constructing, renovating, operating and maintaining pump-out facilities and providing facilities through contractual agreements according to the following schedule:

A. The commissioner shall pay 90% of these costs incurred by municipal marinas; and

B. The commissioner shall pay up to 75% of these costs incurred by marinas other than municipal marinas.

When awarding grants, the commissioner shall give priority to a pump-out facility over a contractual agreement and shall give priority to a pump-out facility that the Commissioner of Marine Resources certifies is likely to result in the opening of a shellfish harvesting area that is closed under Title 12, section 6172.

This pump-out grant program is administered by the state, but funded through a federal grant authorized by the Clean Vessel Act. The effort is aimed at making pump-out facilities easily accessible and affordable. This will encourage boaters to use their on-board holding tanks rather than discharging waste directly overboard.

Once a reasonable number of pump-out facilities are in place, the federal Environmental Protection Agency has further plans to designate certain areas of the Maine coast as No-Discharge Areas (NDAs). Vessels are prohibited from discharging treated or untreated sewage within an NDA. The discharge of graywater from sinks, showers and on-board laundries is still permitted in an NDA, provided that the sewage and graywater systems on-board are separate. Casco Bay is expected to be designated as an NDA prior to the start of the 2006 boating season.

AFTERWORD

From a review of this brief introduction to the problems and opportunities presented by harbor management, four elements appear to be essential to the successful regulation of a municipal harbor:

An ordinance which gives legal validity to the rules of harbor usage which local officials would like to see enforced;

A harbor committee, made up of interested and knowledgeable citizens who will contribute time and close attention;

A harbormaster familiar with the area, its people and its waters, who is skilled in the arts of boating and mooring seamanship and who can be trusted to enforce regulations with even-handed justice and understanding; and,

A supportive board of selectmen who will stand behind the harbormaster so long as the holder of that office measures up to its demands.

This combination has proved its effectiveness over the years by helping to develop harbors that are credits to their communities and sources of pleasure and security to both residents and visitors.

APPENDICES

Appendix A: Harbor Improvement and the U.S. Army Corps of Engineers

A special Act of Congress is required for major harbor renovation and improvement projects. However, Section 107 of the Rivers and Harbors Act of 1960, as amended, permits the Corps to develop and construct "small navigation projects" without congressional action. These harbor improvement projects are often predominately federally funded.

The purpose of this section is to explain the basic criteria the Corps looks at when reviewing an application for improvement of a local harbor, how an application is made, and local responsibilities for funding, maintaining, and managing federally improved harbors. Towns which wish to seek Corps assistance and/or funding should contact: U.S. Army Corps of

Engineers, Planning Division/NED, Coastal Development Branch, 424 Trapelo Rd., Waltham, MA 02254-9149; telephone: 617-647-8528 .

In order for a town's application for a small navigation project to be approved, it must satisfy the requirements of Section 107 (33 U.S.C. § 577) and the Corps own regulations. The key criteria are outlined here. First, the proposal cannot be part of a project already authorized by Congress. (This requirement does not bar development, modification or renovation of an already completed authorized project to the full extent specified and permitted by the previous authorization.) Second, the proposal must undergo a detailed investigation by the Corps which clearly shows its (a) engineering feasibility, (b) economic justification, and (c) environmental, social, and aesthetic suitability. Third, each project must be complete unto itself, *i.e.* the project must not obligate the federal government to future work, except maintenance, to insure the project's success. And fourth, the federal cost cannot exceed four million dollars, including all project related costs for investigation, engineering, design, construction and operation.

The Corps is limited in the types of projects it may undertake under Section 107 to provision of general navigation facilities, which include a safe entrance channel, protected by jetties or breakwaters if need be; a protected anchorage basin; protected turning basin; a major access channel leading to an anchorage basin or a local berthing area; and maintenance dredging for these areas.

Municipalities that receive federal funding for a small navigation project must agree to a number of local cooperation requirements. The local or state government must bear a portion of the cost of the project; the local share depends in part on the depth of the dredge necessary. Shoreside and harbor amenities, such as parking areas, access roads, docks, landings, piers, slips, moorings and launching ramps, are local responsibilities. Towns must ensure that there will be a public landing or wharf available.

Federal involvement and funding is most often conditioned on the requirement that the federally improved waters be open and available to all on equal terms. Thus, there is a legal question whether this regulation is compatible with the provisions of title 38, discussed above, which allow discrimination based on residency in allocating mooring privileges. In other words, an applicant denied permission on the basis of Maine law's residency restriction to set a mooring in a harbor improved with federal money may have grounds for a law suit. More to the point, the Corps could insist on a local commitment to non-discriminatory mooring allocation before releasing any Section 107 funds. This would place Maine municipalities in a difficult position: compliance with state law could preclude receipt of funding needed for harbor improvement. This is a complex issue which municipalities must discuss in detail with Maine lawmakers and the Corps.

Appendix B: Information Sources

The following agencies have proved to be most helpful in supplying legal and procedural information on the subject of harbors. When they do not have the necessary information requested, they will tell you who does.

Maine Coastal Program

Maine State Planning Office

38 State House Station

Augusta, ME 04333

(207) 287-1486

www.maine.gov/spo/mcp/index.php

Recreational Safety Division

Maine Department of Inland Fisheries & Wildlife

41 State House Station
Augusta, ME 04333
(207) 287-5220
www.maine.gov/ifw/rv/boatinglaws.htm

Bureau of Marine Patrol

Maine Department of Marine Resources
21 State House Station
Augusta, ME 04333
(207) 624-6571
www.maine.gov/dmr/bmp/homepage.html

Navigational Aids Program

**Maine Department of Conservation
State Bureau of Parks and Lands**

1009 Brunswick Road
Richmond, ME 04357
(207) 582-5771
www.state.me.us/doc/parks/programs/boating

Law and Legislative Reference Library

43 State House Station
Augusta, ME 04330
(207) 289-1600
www.state.me.us/legis/lawlib/homepage.htm

Maine Harbormasters' Association

John Dalton, President
271 Falmouth Road
Falmouth, ME 04105
maineharbormasters.org

Maine Municipal Association

Legal Department (serves member municipalities)
60 Community Dr.
Augusta, ME 04330
(207) 623-8428
www.memun.org

Marine Extension Team

University of Maine Cooperative Extension Service

5715 Coburn Hall
Orono, ME 04473
(207) 581-1422
www.umext.maine.edu/topics/marine.htm

U.S. Coast Guard Sector Northern New England

259 High Street
South Portland, ME 04106
(207) 767-0320 www.uscg.mil/d1/sectornne

U.S. Coast Guard Sector Field Office Southwest Harbor
P.O. Box 5000
Southwest Harbor, ME 04679
(207) 244-5517
www.uscg.mil/d1/units/gruswh

Maine Project Office
New England District
U.S. Army Corps of Engineers
675 Western Avenue #3
Manchester, ME 04351
(207) 623-8367
www.nae.usace.army.mil

**Appendix C: Harbor Master Job Description:
Town of Bar Harbor**

GENERAL RESPONSIBILITY:

Primary responsibility is limited to the harbor, channels, contiguous public lands and Town structures. Duties and powers are deferred by the following referenced rules and regulations:

- a) 38 M.R.S.A. Section 1 as amended,*
- b) Chapter 10 (Port and Harbor), Municipal Ordinance, Bar Harbor*
- c) Rules of the Road, International and Inland U.S. Coast Guard -CG-169*
- d) FCC Rules, Part 83*
- e) Maine Marine Resources Laws contained in Statutes (Title 12, 32, 17, 10 and 38)*
- f) Personnel Rules of the Town of Bar Harbor*

RESPONSIBLE TO:

The Harbormaster is a Department Head under the supervision of the Town Manager and shall be appointed annually on July 1.

SPECIFIC JOB RESPONSIBILITIES:

The following are duties customarily required of the Harbormaster:

- 1. Allocates and regulates mooring spaces in the harbor. Assigns mooring numbers, collects any fees, maintains mooring records and technical specifications. Administers the annual registration of moorings.*
- 2. Assists mooring applicants in defining ground tackle requirements to ensure minimum specifications are maintained, depending on location, boat size and configurations.*
- 3. Supervise the placement of each mooring, and periodically verify its condition and position, to ensure the safety of vessel, adequacy of swing room and best use of available space. When required he shall order any deficiencies corrected.*
- 4. Establishes and maintains anchorage areas and transient channels.*
- 5. Maintains private aids to navigation in accordance with U.S. Coast Guard regulations.*
- 6. Keep the harbor and channels free of obstructions and insure the proper use of the rules of the road.*
- 7. Seasonally monitor VHF Channel 16 radio frequency during working hours and maintain communications with harbor traffic as necessary.*
- 8. Patrol the harbor to ensure compliance with the State Boating and other Marine Resources Laws. Assist other law enforcement agencies in their duties.*

9. *Maintain current local marine charts, coast pilot, tide calendar and post local notice to mariners*
10. *Be alert to any pollution in the harbor, investigate and report to the Maine Department of Environmental Protection and the U.S. Coast Guard, as required. Monitor cleanup and assist within the capabilities of the Department.*
11. *Control the use of the public pier, boats, moorings, launching ramps and collect fees as established in reference "b" above.*
12. *Maintain visiting vessel schedules and coordinate anchorages, assist pilots, crew and passengers to ensure the highest degree of safety practical.*
13. *Make harbor checks for overdue or missing vessels as requested by other agencies and assist in rescues or other emergencies within the capabilities of the department including, but not limited to, maintenance of an emergency harbor plan and keeping available equipment in a high state of readiness.*
14. *Assist vessels during first port of entry from a foreign port in obtaining U.S. Customs clearance.*
15. *Monitor the condition of the pier, floats, moorings, utilities and structures for proper and safe operation and repair or coordinate repairs as necessary,*
16. *Provide essential and customary courtesy services to the local and visiting public as the position is one of high visibility and may be the only contact between the public and local officials.*
17. *Participate in harbor planning and coordinate approved projects. Act as a non-voting member of the Harbor Committee.*
18. *Coordinate the seasonal placement/removal of floats and moorings with the Department of Public Works.*
19. *Control the use of public lands for winter storage of marine equipment.*
20. *Administer the department budget and maintain appropriate records, logs and files as required.*
21. *Supervise and direct the activities of subordinates when assigned.*
22. *Perform other duties as assigned by the Town Manager.*
23. *Maintain liaison with Federal, State, local, public and private agencies and organizations as they pertain to marine activities.*

KNOWLEDGE:

1. *Marine commercial and recreational industry.*
2. *Maritime law and navigational science.*
3. *Marlinespike seamanship.*
4. *Small boat nomenclature.*
5. *Ground tackle and appendages as they relate to moorings, floats and navigational aids.*
6. *Marine construction sufficient to recognize need or deterioration of existing plant and oversee new construction or repairs.*

SKILLS:

1. *Small boat handling and navigation.*
2. *Pier, float and mooring repairs and/or supervision of repairs.*
3. *Oral and written communications.*
4. *Administrative and organizational procedures.*

ABILITIES:

1. *Establish and maintain long-and short-range planning.*
2. *Maintain good relations with the general public, fellow employees and other agencies.*

MINIMUM QUALIFICATIONS:

High school diploma or equivalent.

Five (5) years experience in a marine-oriented industry, public or private.

Class III Maine state driver's license.

Experience afloat in an ocean-going vessel with duties pertaining to deck, navigation and operational specialties.

Law enforcement experience or training.

Any equivalent combination of experience or training.

I have received a copy of this job description on: (Date)

Signature: _____

Appendix D: Mooring Specifications for Portland Harbor

See www.portlandharbor.org for up-to-date regulations.

Mooring Gear and Equipment Regulations

- No mooring gear or equipment shall be placed in Portland Harbor waters without first being inspected by the Harbormaster or authorized mooring company to ensure the adequacy of such gear.
- Only authorized mooring companies may service and/or do mooring work in Portland Harbor waters. A permit must first be obtained from the Harbormaster.
- It is the mooring owner's responsibility to ensure that the mooring number and blue stripe be permanently affixed to mooring.
- All mooring gear shall be inspected and/or serviced by the owner, certified diver, or mooring service company at least once bi-annually to determine the condition of gear and to ensure compliance with minimum standards set forth by the Harbormaster.
- All mooring owners or mooring service companies shall notify the Harbormaster's office in writing of all inspections and service completed to mooring gear.
- All mooring floats shall be kept clean to ensure they remain at least six (6) inches above the surface of the water at all times.
- It shall be the permit holder's responsibility to ensure mooring gear is maintained and in serviceable condition at all times.
- The Harbormaster may order that moorings be serviced if found to be overgrown with marine growth and considered a hazard to navigation.
- Moorings not serviced within ten (10) days of notification will be removed.

The Board of Harbor Commissioners recommends a 2.5 to 1 ratio for permanent moorings with the following minimum specifications:

Mushroom, Granite Block, or Pyramid (of ample size/weight) - see chart below

Heavy Chain	1.5 times maximum water depth
Light chain or Nylon line (not floating line)	1.0 times maximum water depth
Pennant waterline	2.5 times the distance from chock to

Buoy (white poly ball preferred)

Must have assigned number and blue band painted 3" (or larger) on buoy

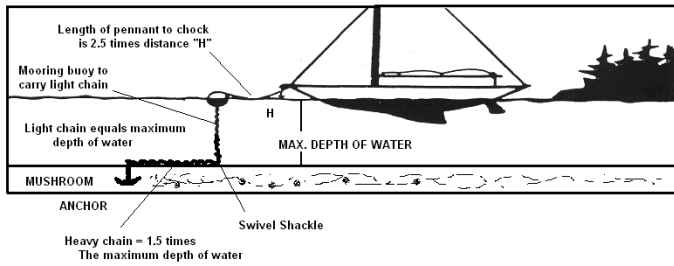
Total scope = Heavy chain + light chain + Pennant

Example: 25 ft. cruiser;
 20 ft. maximum water depth;
 Distance from chock to waterline = 3 ft.
 Requires: 1.5 x 20 = 30 ft. of heavy chain
 1.0 x 20 = 20 ft. of light chain or
 equivalent nylon line
 2.5 x 3 = 7.5 ft. pennant

The following chart contains the minimum requirements for seasonal moorings in sheltered waters. Vessels moored year-round and/or in open areas should upgrade 1-3 steps.

Boat Length	Boat Weight	Mushroom Weight	Block Weight	Chain Size (Bottom)	Chain Size (Top)
22'	1,500 lbs	75 lbs	300 lbs	1/2"	3/8"
26'	5,000 lbs	150 lbs	500 lbs	3/8"	3/8"
30'	8,000 lbs	200 lbs	1,000 lbs	5/8"	3/8"
35'	12,000 lbs	250 lbs	2,000 lbs	3/4"	1/2"
40'		500 lbs	3,000 lbs	3/4"	1/2"
50'+ over	Reviewed on an individual basis				

For the safety of his/her boat and that of adjacent boats, mooring permit holders are responsible for having their mooring set and making any required adjustments or repairs.



Responsibility

- It shall be the ultimate responsibility of the mooring permit holder to ensure the safe and serviceable condition of all mooring equipment and to ensure compliance with all minimum standards set forth by the Harbormaster.
- It shall be the responsibility of the permit holder to notify the Harbormaster department when a permit is no longer desired and when any information on the permit has changed.

***As of September 19, 2000 all new mooring buoys must be white with a blue horizontal band clearly visible above the waterline, and the mooring number must be painted above the blue line. All mooring buoys that are replaced due to loss or damage must comply with these new requirements. The upgrade of all moorings to these standards will comply with new state law adopted September 1, 1999 and federal law adopted July 1, 2000.

Appendix E: Mooring Permit Application

<p>Board of Harbor Commissioners Harbor of Portland (207) 772-8121 – office (207) 772-2367 – fax</p>	<p>2006 MOORING PERMIT APPLICATION (Please BLOCK PRINT or TYPE)</p>	<p>Harbor Master 2 Portland Fish Pier Suite 102 Portland, Maine 04101</p>
<p>Owner's Last Name _____ Date of Application _____ New _____ Renewal _____</p>		<p>Mooring # _____</p>
<p>Mooring Information CIRCLE USE: Personal Commercial Other _____ Specific Location of Mooring _____ Date present mooring put down _____ Date last inspected _____ By Whom _____</p>		
<p>Boat Information Boat Reg/Doc # _____ Boat Name _____ Make _____ Type _____ Color (hull/trim) _____ Length _____ Draft _____ Propulsion _____</p>		
<p>Owner Information (Proof of residence must be shown) (P.O. Box NOT acceptable) Name _____ Home Tel. # _____ Bus. Tel. # _____ Email Address _____ Summer Address _____ Summer Tel. # _____ Winter Address (if different) _____</p>		
<p>Name and Telephone number of local person in Portland Harbor area to secure boat in an emergency</p>		
<p>1. This permit is non-transferable and is for the use of the above-named boat only, except on a temporary basis, at the discretion of the Harbor Master. It is illegal to rent a mooring without a federal permit. 2. Location of NEW moorings will be assigned by the Harbor Master or Deputy. The location is subject to change at any time, at the discretion of the Harbor Master or Deputy, as conditions dictate. 3. Holder of permit is responsible for heather mooring and making adjustments, as required, for the safety of the boat and adjacent boats. 4. Mooring number must be painted on mooring buoys in at least 2" letters of a contrasting color to hull. 5. The valid mooring registration sticker must be affixed to the boat, on the port side, following the state registration sticker. 6. If any boat on a mooring is taking on water, drift, or in danger, the Harbor Master may authorize a private contractor to pump out or tow the boat at the owner's expense. The owner must pay the contractor within 30 days or he/she will lose all mooring privileges. 7. No watercraft will be permitted on a mooring between November 1st and March 31st inclusive. Any watercraft may be removed from the water after November 1st, at the owner's expense, unless prior arrangements exist with the Harbor Master for active use of this mooring. 8. Moorings must pass inspection every two years, by an inspector authorized by the Harbor Master, or permit will not be renewed. A current list of authorized mooring inspection may be obtained by contacting our office. Inspection certificate must be submitted before mooring is used. Inspection is due the year _____. 9. Renewal form and fee must be received before March 15, 2006, or the fee will be doubled. Moorings must be in assigned location by June 15, 2006, or their location will be reassigned according to waiting list priority. Moorings not registered at that time will be considered abandoned, out of use or removed, and their location reassigned unless prior arrangements have been made with the Harbor Master. Abandoned moorings may be sold for the cost of removal and storage.</p>		
<p>By signing this application, I agree to the above-listed Harbor Commission rules and requirements.</p>		
<p>Signed _____ Date _____ This permit application approved by the Board of Harbor Commissioners (10-15-06).</p>		
<p>OFFICE USE ONLY Approved by _____ Date _____ Mooring Permit expires December 31, 2006 Fee: \$65.00 residents of Portland/South Portland (\$115.00 late fee) \$125.00 non-residents (\$225.00 late fee) Cash: Check/Money Order (Make check payable to Board of Harbor Commissioners)</p>		
<p>ALL APPLICATIONS MUST BE FILLED OUT COMPLETELY OR THEY WILL BE RETURNED. www.portlandharbor.org</p>		

Form

From: <http://www.portlandharbor.org/mooringappmaster.html>

Appendix F: Summons and Civil Violation Forms

The following is the general form for a District Court criminal summons, which must be used and served on the violator when the charge is commission of a Class A, B, C, D or E crime.

A civil violation complaint and citation should be used when commission of a civil violation is alleged (violation of local ordinances). The following is an example of a form that has been used in the past. The harbor master and town attorney should prepare a specific form for use in their municipality.

Appendix G: Model Harbor Management Ordinance

STATE OF MAINE

_____, SS. DISTRICT COURT SITTING AT _____
 CRIMINAL ACTION DOCKET NO. _____

MAINE DISTRICT COURT _____ DOCKET NO. _____
 STATE OF MAINE/MUNICIPALITY OF _____

v.

NAME _____ Last First Middle
 MAILING ADDRESS _____ Street
 CITY/TOWN _____

BIRTH DATE:	MO.	DAY	YR		
DATE OF VIOLATION	MO.	DAY	YR.	TIME	A. M. P. M.
LOCATION OF VIOLATION	PLACE		CITY/TOWN		

TITLE _____ SECTION/ORDINANCE _____
 VIOLATION: _____

The undersigned states that he/she has (just and reasonable grounds) (probable cause) to believe and does believe, that the person named above committed the violation herein set forth.

YOU ARE HEREBY DIRECTED TO APPEAR BEFORE THE MAINE DISTRICT COURT AT

Street Address _____ Town/City _____
 Date _____ Time _____ A. M.
P. M.

Dept. _____ Date _____ Issuing Officer/Clerk Signature _____

IF ISSUED BY CLERK: _____ Complainant's Name and Title _____

Received by: _____
 Signature _____ Date _____
 Defendant

Signing this citation does not constitute an admission.

ATTY. FOR DEFENDANT _____
 ATTY. FOR PROSECUTION _____
 DISPOSITION: _____ DATE _____
 PENALTY AMT. _____ PAID: Yes No

CIVIL VIOLATION COMPLAINT AND CITATION
 COURT

DCCR-2

The following harbor management ordinance from Scarborough, Maine, is included as a "model." Towns should not, however, assume that they would be wise to adopt Scarborough's ordinance as a whole. The Scarborough ordinance reflects the unique problems, politics, and resources of the town of Scarborough. Each town's harbor management ordinance should be similarly geared to its individual circumstances.

Despite these caveats, the Scarborough model should be helpful in providing ideas on ways to regulate a number of activities. Also, Scarborough's ordinance is the product of a comprehensive harbor planning process. As such, it reflects one community's effort at balancing the interests of a number of potentially conflicting marine uses. Harbor management planning, coordinated with waterfront land use decisions, will be a key to the successful or ineffectual utilization of Maine's coastal resources in the years to come.

COASTAL WATERS AND HARBOR ORDINANCE FOR THE TOWN OF SCARBOROUGH,

MAINE
ADOPTED APRIL 20, 1994
Amended September 6, 1995
Amended May 7, 2003

Article I
General Provisions
Section 1. Purpose and Authority.

This ordinance is to establish regulations for marine activities within the harbors, waterways and tidal waters of the Town of Scarborough, Maine in order to ensure safety to persons and property, to promote availability and use of a valuable public resource, and to create a fair and efficient framework for the administration of that resource. This ordinance shall be subordinate

to existing Federal and State Laws governing the same matters and is not intended to preempt other valid laws.

This Ordinance is enacted pursuant to the authority granted by Subchapter I of Chapter 1 of Title 38 of the Maine Revised Statutes, by 30-A M.R.S.A. §3001 and by Article VIII, Part 2, Section 1 of the Maine Constitution.

Section 2. Harbor Limits.

“Harbors and waterways” shall include the entire navigable portion of the Spurwink River, Libby River, Nonesuch River, Scarborough River, and Dunstan River located within the Town of Scarborough.

“Tidal waters” shall include all waters which ebb and flow between high tide and mean low water within the harbors and waterways of the Town of Scarborough.

For the purpose of this ordinance, high tide shall be considered as an elevation of 8.8 feet above mean low water. This is based upon the mean tidal range of 8.8 feet as established by the U.S. Corps of Army Engineers. The high tide limit shall be any point along the shore at an elevation of 8.8 feet above mean low water.

For the purpose of this ordinance, “Harbor” shall include waterways.

Section 3. Channels.

The entrance channel shall be determined and marked annually by the United States Coast Guard and/or the Harbormaster. The approximate location of the channel is as follows: 200 feet wide beginning at the entrance buoy (Can #1) and shall extend to a point between the jetty and Ferry Rock where it narrows to 100 feet and then continues to the anchorage of the Public Landing. The entire channel extends some 2400 feet from the entrance buoy to the anchorage. Other channels may be established by the Corps of Engineers and/or the Town of Scarborough from time to time.

Section 4. Anchorage.

The anchorage shall include all harbors and waterways, as defined in Section 2, located outside channels as defined in Section 3. The approximate location of the anchorage is as follows: an irregularly shaped polygon of approximately 14 1/2 acres located at the terminus of the entrance channel off the public landing. Other anchorages may be established by the Corps of Engineers and/or the Town of Scarborough from time to time.

Section 5. Other areas.

The Town of Scarborough may from time to time include other tidal areas under this ordinance as necessary to promote and regulate this public resource.

Section 6. Harbormaster.

The Harbormaster shall be appointed annually by the Town Manager for a term of twelve months commencing on January 3, 1994. Certain duties and responsibilities of this office are prescribed by Title 38, M.R.S.A. The Harbormaster has the additional duty to administer and enforce the provisions of this ordinance with the authority granted by law and through his appointment as harbor master.

An Assistant Harbormaster may be appointed annually by the Town Manager for the same term as the Harbormaster.

The compensation for the Harbormaster and the Assistant Harbormaster shall be established by the Town Council.

In addition to the duties prescribed under Title 38 M.R.S.A., the Harbormaster and the Assistant Harbormaster shall be the overseers of the Town's waterfront facilities such as moorings, floats, docks, ramps and channels. They shall make recommendations to the Town Council for maintenance and improvements to all town-owned waterfront facilities. They shall have full authority to enforce all harbor regulations affecting the waterfront to the fullest extent permitted by law.

Section 7. Invalidity Provisions.

If any provisions of this ordinance are held invalid or inoperative, the remainder shall continue in full force and effect as though such invalid or inoperative provisions had not been made.

Article II

Definitions

1. Anchorage: Shall mean an area of the harbor set aside for permanent moorings or for the temporary anchoring of boats and vessels. See Article I, Section 4.

2. Auxiliary: Shall mean any vessel having both sails and either an inboard or outboard motor and which may be propelled by its sails or its motor, or both.

3. Basin: Shall mean a naturally or artificially enclosed or nearly enclosed body of water where small craft may lie.

4. Beach: Shall mean a public or private beach area bordering the waters of Scarborough harbor.

5. Boat: Shall mean any floating objects or vessel designed for self-propelled navigation on the water.

6. Commercial Vessel: Shall mean any vessel used or engaged for any type of commercial venture, including but not limited to fishing or the carrying of cargo and/or passengers for hire.

7. Distress: Shall mean a state of disability or a present or obviously imminent danger which is unduly prolonged could endanger life or property.

8. Emergency: Shall mean a state of imminent or proximate danger to life or property in which time is of the essence.

9. Float: Shall mean any floating structure normally used as a point of transfer for passengers and goods and/or for mooring purposes.

10. Headway Speed: Shall mean the minimum speed necessary to maintain steerage and control of the watercraft while the watercraft is moving.

11. Mooring: Shall mean any appliance used by a craft for anchoring purposes and which appliance is not carried aboard such craft when underway as regular equipment.

12. Non-resident: Shall mean any person who is not a resident.

13. Resident: Shall mean a person who has been domiciled in the Town of Scarborough for at least three months prior to the time his or her claim of residence is made.

14. Riparian Owner: Shall mean an owner of a parcel of land located in the Town of Scarborough which borders upon the harbor as described in Article I, Section 2.

15. Shore: Shall mean that part of the land in immediate contact with a board of water, including the area between the high and low water lines.

16. Shall and May: “Shall” is mandatory, “May” is permissive.

17. State: Shall mean the State of Maine.

18. Stray Vessel: Shall mean (1) an abandoned vessel; (2) a vessel the owner of which is unknown; or (3) a vessel underway without a competent person in command.

19. To Anchor: Shall mean to secure a vessel to the bottom within a body of water by dropping an anchor or anchors or other ground tackle.

20. Underway: Shall mean the condition of a vessel not at anchor; without moorings; and not made fast to the shore nor aground.

21. Waterway, (fairway): Shall mean any water area providing access from one place to another, principally a water area providing a regular route for water traffic.

Article III

General Boating and Traffic Control Regulations

Section 1. Traffic Control Authority.

The Harbormaster shall have the authority to control water-borne traffic in any portion of the waters of a harbor or maritime facility under his jurisdiction by use of authorized State regulatory markers, signal, orders or directions any time preceding, during and after any race, regatta, parade or other special event held in any portion of the waters of a harbor or maritime facility or at any time when the Harbormaster deems it necessary in the interest of safety of persons and vessels or other property, and it shall be unlawful for any person to willfully fail or refuse to comply with any authorized State regulatory marker utilized by the Harbormaster, or with any signal, orders or direction of the Harbormaster.

Section 2. Basic Speed Law.

The operation of any vessel within the Anchorage Area in excess of headway speed, shall constitute a violation of this Ordinance; however, the Harbormaster may grant special written permission to exceed headway speed in connection with water sports and regattas in specific areas designated by the Harbormaster.

Article IV

General Regulations

Section 1. Liability.

(a) Boat Owner: Any person using the facilities within the limits of a harbor or maritime facility shall assume all risk of damage or loss to his property and the Town of Scarborough assumes no risk on account of fire, theft, Act of God, or damages of any kind to vessels within the harbor or maritime facility.

(b) Marine Facility Owner and/or Operator: It shall be the responsibility of the owner, licensee, lessee, or operator of any marina, anchorage, repair yard, or other marine facility, located

within the harbor, waterway or other maritime facility, to maintain the physical improvements under his jurisdiction in a safe, clean, and visually attractive condition at all times, to provide adequate security and fire prevention measures and appropriate fire fighting equipment as may be directed by the Town Manager. Failure to initiate activity within 30 days of receipt of written notice from the Town Manager to correct unsafe or otherwise unsatisfactory conditions and to pursue same to completion to the satisfaction of the Town Manager shall be a violation of this section.

Section 2. Launching and Recovery of Vessels.

(a) None other than the driver may occupy a motor vehicle while it is present upon the area known as a launching ramp located within the Town of Scarborough. It is recommended [2/22/94] all motor vehicles using said ramp should securely block at least one wheel of the said motor vehicle while it is standing upon said ramp.

(b) No person shall use a boat launching facility owned or operated by the Town of Scarborough without first obtaining an annual boat launching permit or a one-day boat launching permit from the Town. Annual permits shall be valid from April 1st of the year of issuance until March 31st of the following year, and one-day permits shall be valid for the calendar day specified on the permit. Fees for the boat launching permits shall be as specified in the Schedule of License, Permit and Application Fees established by the Town Council. [amended 05/07/03]

Section 3. Permits, Suspensions or Revocations.

(a) Mooring permits granted under Article V of this Ordinance shall be valid from April 1 of the year of issuance to March 31 of the following year. Other permits granted by the Harbormaster shall be valid for the period of time specified on the permit. The fees shall be as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council.

(b) If the Harbormaster finds that a holder of a permit under this Ordinance has violated any of the provisions of this ordinance, the Harbormaster may suspend or revoke the permit. The Harbormaster shall notify the permit holder of the suspension or revocation in writing. The suspension or revocation shall take effect as soon as the Harbormaster (1) delivers the notice in person to the permit holder, (2) posts a copy of the notice on the permit holder's vessel or (3) mails a copy of the notice to the permit holder at the most recent address which the permit holder has provided to the Harbormaster. The permit holder may appeal a suspension or revocation under this paragraph as provided in Article X of this Ordinance.

(c) If the Harbormaster finds that a mooring has not been used for at least thirty days between April 1 and October 1 of the year in which the permit was issued or if the Harbormaster finds

that the holder of the permit no longer owns the vessel specified in the mooring permit application, the Harbormaster shall give notice to the permit holder of the Harbormaster's intent to revoke the permit. Notice shall be given and shall take effect as specified in paragraph (b) above. Unless, within fifteen days of the effective date of such notice, the permit holder demonstrates extenuating circumstances to the Harbormaster, the Harbormaster shall revoke the permit using the procedure set forth in paragraph (b) above. "Extenuating circumstances" means circumstances which make it impossible or impractical to have a boat in the water during the boating season, such as, but not limited to loss or destruction of the vessel, mechanical breakdowns or unexpected repairs, and death or serious illness of the permit holder. Decisions of the Harbormaster under this paragraph (c) may be appealed as provided in Article X of this Ordinance.

(d) A person whose permit is revoked under paragraph (b) or (c) above shall be treated as a new applicant for purposes of placement on any waiting list in the next permit year.

Section 4. Damage to Harbor or Other Property.

It shall be unlawful to willfully or carelessly destroy, damage, disturb or interfere with any public or private property in the Harbor area.

Section 5. Tampering with or Boarding Vessels without Permission.

It shall be a violation of this Ordinance for any person willfully to board, break in, enter, damage, move or tamper with any vessel or part thereof, located within the harbor unless authorized by the rightful owner of such vessel.

Section 6. Obstruction of Facilities.

It shall be a violation of this Ordinance for any person willfully to prevent any other person from the use and enjoyment of the harbor facilities.

Section 7. Signs, Erection and Maintenance.

The Town of Scarborough may place and maintain, or cause to be placed and maintained, either on land or water, such signs, notices, signal buoys or control devices as the Harbormaster deems necessary to carry out the provisions of this Ordinance, or to secure public safety and the orderly and efficient use of the harbor or maritime facility.

Section 8. Securing Permission for Debarkations.

It shall be a violation of this Ordinance to disembark passengers or discharge cargo from a commercial vessel onto any public or privately owned float, pier or wharf within the harbor, without the consent of the owner thereof or of the Harbormaster, as the case may be, except at piers and wharfs expressly designed for such purposes.

Section 9. Protected Swimming Areas.

It shall be a violation of this Ordinance to operate or navigate any vessel within a designated swimming area. The Town of Scarborough may identify swimming areas by signs, buoys, or other means.

Section 10. Shellfish Areas.

Shellfish regulations are contained in the Town of Scarborough's Shellfish Conservation Ordinance.

Article V

Regulations Concerning Anchoring, Mooring and Security of Vessels

Section 1a. Placement of Private Moorings.

It shall be a violation of this Ordinance to place any mooring in the harbor without a permit from the Harbormaster issued in accordance with 38 M.R.S.A. Sections 3, 7-A and 8. A person whose application for a mooring permit is denied may appeal as provided in Article X of this Ordinance. There shall be no appeal from the issuance of a permit.

Section 1b. Minimum Mooring Requirements.

All moorings shall conform to the following specifications.

Size of Boat	Up to 16'	from 16' up to 25'	from 25' up to 30'	from 30' up to 36'	36' and above
Weight of Block	150# (open boat)	500#	750#	1000#	1500# minimum
Size of Chain Shackle	½"	½"	½"	¾"	¾" to match minimum
Size of Nylon Pennant	½"	½"	½"	¾"	¾"
Length of Mooring maximum	25'	25'	30'	35'	35'

The Harbormaster may permit variations from these specifications, if in his or her judgment, the proposed mooring has holding power equivalent to that which would be provided by a mooring meeting

these specifications. Marker Buoys to show at all tides. All chains to be at least one foot above high water mark.

All moorings to be inspected every two years - no later than July 1st. The Harbormaster shall maintain a plot plan of the anchorage area indicating locations of moorings, size of boats, and areas to be used as waterways. A copy of this map will be kept on file at the Town Office.

Subletting of Mooring Space: The owner of any vessel having mooring space shall not sublet said mooring or mooring space to another user or boat owner; however another boat owner may use

the mooring, provided the original owner pays the fee or fees and has requested permission from the Harbormaster to moor such vessel.

Section 2. Obstructing Channels.

It shall be a violation of the ordinance to knowingly or willfully obstruct the free use of any channel or waterway within the harbor or to fail to report to the Harbormaster any collision between vessels or other accident or incident causing damage to persons or property.

Section 3. Abandoned Vessels.

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. Reasonable notice of such disposal shall be publicly given. The vessel owner may appeal the action of the Harbormaster under this Section 3 as provided in Article X of this Ordinance.

Section 4. Vessels Making Fast.

No person shall make fast or secure a vessel to any mooring already occupied by another vessel, or to a vessel already moored except a rowboat, dinghy or yacht tender regularly used by such a larger vessel. If tied within a slip, such rowboat, dinghy, or tender shall not extend into the fairway beyond the larger vessel if such larger vessel is also occupying the slip, or otherwise beyond the slip itself.

Section 5. Secure Berthing and Anchoring of Vessels.

The owner of any vessel moored or anchored within Scarborough Harbor or maritime facility shall be responsible for causing such vessel to be tied and secured or anchored with proper care and equipment and in such manner as may be required to prevent breakaway and resulting damage, and shall thereafter provide for periodic inspection maintenance, replacement and adjustment of anchor, mooring or tie lines at reasonable intervals.

Section 6. Unseaworthy Vessels Prohibited in Harbor.

A person shall not moor or permit to be moored in any harbor a vessel of any kind whatsoever which is unseaworthy or in a badly deteriorated condition or which is likely to sink or to damage docks, wharves, floats or other vessels or which may become a menace to navigation, except in cases of emergency.

Section 7. Correcting an Unsafe Berthing.

If any vessel shall be found in the judgment of the Harbormaster to be anchored or moored within any harbor or maritime facility in an unsafe or dangerous manner, or in such a way as to create a hazard to other vessels or to persons or property, the Harbormaster shall order and direct necessary measures to eliminate such unsafe or dangerous condition. Primary responsibility for compliance with such orders and directions shall rest with the owner of the improperly anchored or moored vessel or his authorized agent; in the absence of such owner or agent, said responsibility shall rest with the authorized operator of the facility at which the vessel is anchored or moored. In an emergency situation and in absence of any such responsible person, the Harbormaster shall forthwith board such vessel and cause the improper situation to be corrected, and the owner of the vessel shall be liable for any costs incurred by the Town of Scarborough in effecting such correction. The responsible person under this Section 7 may appeal the action of the Harbormaster as provided in Article X of this Ordinance.

Section 8. Removal and Custody of Illegally Berthed or Abandoned Vessels.

In any unattended vessel shall be found to be anchored or moored illegally within a harbor or maritime facility, or if the Harbormaster has reasonable grounds to believe that a vessel has been abandoned within a Scarborough Harbor or maritime facility, the Harbormaster may assume custody of such vessel and cause it to be removed and held or placed in storage. The Town of Scarborough or its officials shall not be held liable for any damage to such vessel or liable to its owners before or after assuming custody. Vessels so taken into custody shall be released to the owner by the Town Manager only after satisfactory proof of ownership has been presented and full reimbursement made to the Town for all costs incident to recovery, movement and storage. The vessel owner may appeal the action of the Harbormaster under this Section 8 as provided in Article X of this Ordinance.

Section 9. Obstruction of Fairways, Channels, Launch Ramps or Berthing Spaces, and Removal of Sunken Vessels.

(a) It shall be unlawful to tie up or anchor a vessel in Scarborough Harbor or maritime facility in such a manner as to obstruct the fairways, launch ramps or channels or to prevent or carelessly sink or allow to be sunk any vessel in any channel, fairway, berthing space; or to float loose timbers, debris, logs or piles in any channel, fairway, or berthing space in such a manner as to impede navigation or cause damage to vessels therein. Wrecked or sunken vessels within a harbor are subject to the published rules and regulations of the United States Coast Guard and any applicable State law, rules or regulations.

(b) Whenever the navigation of any waters within a Scarborough Harbor or maritime facility, including anchorages and berths therein, shall be obstructed or endangered by any sunken vessel or other obstruction or danger has existed for a period of more than ten (10) days, the vessel or obstruction shall be subject to removal, sale or other disposition. The owner or owners of such vessel or other property causing said obstruction or danger shall be liable to the Town of Scarborough for all costs incident to said removal and disposition, and the Town of Scarborough, its employees, agents, and officers, shall not be liable for damages of any nature whatsoever arising out of or in any way connected with removal, sale or disposition of such vessel or other property. The vessel or property owner may appeal the action of the Harbormaster under this Section 9(b) as provided in Article X of this Ordinance.

Article VI

Regulations Concerning Commercial Activity

Section 1. Vessels for Hire - Passenger Information.

The owners, master or person in charge of or operating any vessel using Scarborough Harbor or maritime facility shall be required to furnish to the Harbormaster information regarding the number of passengers carried. Failure to provide such information to the Harbormaster on demand shall be a violation of this article.

Article VII

Sanitation Regulations

Section 1. Discharge of Refuse.

It shall be a violation of this Ordinance to discharge or permit the discharge into the waters of the harbor of any refuse or waste matter, petroleum or petroleum matter, paint, varnish or any other foreign matter, including dead animals, fish and bait.

Section 2. Responsibility for Sanitation of Facilities.

The owner, lessee, agent, manager or person in charge of a facility or water area adjacent to or within Scarborough Harbor shall at all times maintain the premises under his charge in a clean, sanitary condition, free from malodorous materials and accumulations of garbage, refuse, debris and other waste materials. Should the Harbormaster find that any facility or water area is not so maintained, he shall in writing notify said owner, lessee, agent, manager or other person in charge of said facility or area to immediately commence and diligently prosecute to completion of the necessary correction of the unsanitary condition to the satisfaction of the Harbormaster. Failure to do so with reasonable dispatch shall be a violation of this Article, and the Harbormaster may then cause condition to be

corrected and the cost of such correction shall be charged to said owner, lessee, agent, manager or person in charge.

The owner, lessee, agent, manager or person in charge may appeal actions of the Harbormaster under this Section 2 as provided in Article X of this Ordinance.

Article VIII

Safety and Maintenance

Section 1. Welding and Burning.

Except at specially designated areas, open fires are prohibited within the harbor, except for stoves or fireplaces permanently installed on board and below decks on vessels or hibachis or barbecues [sic] used for cooking and/or heating purposes. Major repairs to vessels requiring welding or other open flame devices may be performed only upon special authorization by the Harbormaster and within the time period stipulated in such authorization. In the case of extreme emergencies notification is waived.

Section 2. Flammable and Combustible Liquids and/or Materials.

Within a Scarborough Harbor or Maritime facility no person shall sell, offer for sale, or deliver in bulk any class of flammable liquid or combustible material, nor dispense any flammable or combustible liquids into the fuel tanks of a vessel except when in compliance with all requirements of the N.F.P.A. Fire Code and any other laws or regulations applicable thereto.

Section 3. Obstruction to Docks and Walkways.

Obstructing docks and walkways within the harbor by mooring lines, water-hoses, electrical cables, boarding ladders, permanently fixed stairs or any other materials is strictly prohibited. Dinghies may not be left on the launch ramp, floats and piers, but may be stored only in areas designated for that purpose.

Section 4. Motor Vehicles.

Motor vehicles are not to be left unattended on launch ramps. All motor vehicles are to be parked only in designated areas and motor vehicle operators are to comply with all parking regulations as posted by the Town of Scarborough.

Section 5. Defective or Dangerous Conditions.

Whenever any buildings, structures or floating facilities within or adjacent to Scarborough Harbor or a maritime facility either on land or water are found to be defective or damaged so as to be unsafe or dangerous to persons or property, it shall be the duty of the owner, agent, lessee, operator or person in charge thereof to immediately post a proper notice and/or fence or barricade and at night to adequately light such unsafe area or areas, and such unsafe area or areas shall be kept posted and lighted and/or fenced or barricaded until the necessary repairs are made. In the event and owner, agent, lessee, operator or person in charge fails or neglects to repair or to put up fences or other barriers to prevent persons from using or going upon the unsafe area or areas, the Harbormaster may then take such measures as he may deem necessary for the protection of the public and charge the cost of same to such owner, lessee, agent, person or persons having charge of the buildings, structures, or floating facilities that are defective or dangerous. The owner, lessee, agent, operator or person in charge may appeal actions of the Harbormaster under this Section 5 as provided in Article X of this Ordinance.

Section 6. Time, Fees and Permit Requirements for Use of a Town Mooring.

(a) Permission may be granted by the Harbormaster for a private vessel to use a Town pier temporarily without charge for up to 8 hours. Private vessels moored at Town facilities for a period in excess of 8 hours shall pay mooring fees as hereinafter provided, or as posted.

(b) Visiting Vessels - Transients: A vessel will be considered transient if the vessel remains for not more than 7 days.

(c) Publicly owned or publicly operated wharves and floats within the Town of Scarborough shall be under the direction and control of the Town Council.

(d) Except with special permission from the Harbormaster no person shall tie a boat to said floats or wharves for more than 15 minutes on front of same and 1 hour on ends thereof.

(e) No person shall store his traps, bait, fishing gear, boats or waste materials on the float at Pine Point at any time. Traps, gear, etc., may be loaded and unloaded only.

(f) No person shall store any traps, bait, fishing gear, boats or waste material on float No. 2 for more than 24 hours for loading and unloading purposes throughout the year.

(g) The Town Council may make any and all other reasonable rules for the proper maintenance and use of any floats or wharves, which rule or regulation shall be in writing and shall be posted on the wharf and filed in the office of the Town Clerk.

(h) Rules and Regulations pertaining to all piers, floats and wharves controlled by said Town of Scarborough shall be posted in a conspicuous place on or adjacent to said piers, floats and wharves.

Article IX

Enforcement

This Ordinance may be enforced by the Harbormaster, assistant Harbormaster or any law enforcement officer vested with the authority to carry a weapon and make arrests. Violations shall be prosecuted as provided in 38 M.R.S.A. §12 (which incorporates enforcement mechanism of 30-A M.R.S.A. §4452) and, where applicable, 38 M.R.S.A. §13.

STATE OF MAINE	
SNOWMOBILE, ATV, WATERCRAFT ACCIDENT REPORT FORM	
<p>The Department of Inland Fisheries and Wildlife is responsible for documenting all reportable Snowmobile, ATV, and Watercraft accidents which have at least one of the following:</p>	
<p>1. \$1,000.00 or more which includes all property damage. This report must be filed within 72 hours of a property damage only accident and can only be used to report a property damage accident. Property damage accidents resulting in less than \$1,000.00 which includes all property damage do not need to be reported.</p>	
<p>2. Personal injury or death. Any accident that causes a death or injuries that require the services of a physician have to be reported by the quickest means to a law enforcement officer and investigated by a law enforcement officer. This 72 hour form can <u>not</u> be used for reporting this type of accident</p>	
<p>MAIL TO: Department of Inland Fisheries and Wildlife WITHIN 72 HOURS FOLLOWING ACCIDENT</p> <p>Recreational Safety Division 284 State Street 41 State House Station Augusta, Maine 04333-0041</p>	
TIME	<p>Date of Accident: _____ Day of Week _____ Hour _____ AM <input type="checkbox"/> PM <input type="checkbox"/></p>
PLACE	<p>Place Where Accident Occurred _____ County _____ City/Town _____</p> <p>Location Where Accident Occurred _____ Give name of road, body of water, trail name or ITS number</p> <p>At Trail Intersection With _____ Road, another trail _____</p>
Vehicle # 1	
<p>Driver's Name Last, First, Middle _____</p> <p>DOB MO. DAY YEAR <input type="checkbox"/> Male <input type="checkbox"/> Female _____ Phone Number _____</p> <p><input type="checkbox"/> Check if new address Current Address, Number and Street _____</p> <p>City/Town _____ State _____ Zip _____</p> <p>Year _____ Make _____</p> <p>Serial Number _____</p> <p>Describe Damage to Vehicle _____</p> <p>Estimated Cost to Repair _____</p>	<p style="text-align: center;">Vehicle # 2</p> <p>Driver's Name Last, First, Middle _____</p> <p>D.O.B MO. DAY YEAR <input type="checkbox"/> Male <input type="checkbox"/> Female _____ Phone Number _____</p> <p><input type="checkbox"/> Check if new address Current Address, Number and Street _____</p> <p>City/Town _____ State _____ Zip _____</p> <p>Year _____ Make _____</p> <p>Serial Number _____</p> <p>Describe Damage to vehicle _____</p> <p>Estimated Cost to Repair _____</p>
<p>Total Number of Vehicles Involved: _____ If more than two vehicles were involved, describe the additional vehicles on separate report forms and attach to this report.</p>	
<p>As a result of this accident, was anyone summonsed to court? <input type="checkbox"/> Yes <input type="checkbox"/> No Arrested? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Name of Court _____</p> <p>Charge(s) _____</p> <p>Did a Law Enforcement Officer investigate at the scene of the accident? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Name of Investigating Officer _____ Department: _____ <small>(Please Print) (IFW, State Police, Sheriff, Local Police, etc)</small></p> <p>Was a policy of liability insurance covering the vehicle you were driving in effect at the time of the accident? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNSURE</p>	
FOR OFFICE USE ONLY	
<p>Date Received: _____</p>	

(If more than 3 fatalities and/or injuries, attach additional form(s).)

DECEASED					
NAME	ADDRESS	DATE OF BIRTH	WAS VICTIM <input type="checkbox"/> Swimmer <input type="checkbox"/> Non Swimmer	DEATH CAUSED BY <input type="checkbox"/> Drowning <input type="checkbox"/> Other DISAPPEARANCE <input type="checkbox"/>	WAS PFD WORN <input type="checkbox"/> Yes <input type="checkbox"/> No What Type
NAME	ADDRESS	DATE OF BIRTH	WAS VICTIM <input type="checkbox"/> Swimmer <input type="checkbox"/> Non Swimmer	DEATH CAUSED BY <input type="checkbox"/> Drowning <input type="checkbox"/> Other DISAPPEARANCE <input type="checkbox"/>	WAS PFD WORN <input type="checkbox"/> Yes <input type="checkbox"/> No What Type
NAME	ADDRESS	DATE OF BIRTH	WAS VICTIM <input type="checkbox"/> Swimmer <input type="checkbox"/> Non Swimmer	DEATH CAUSED BY <input type="checkbox"/> Drowning <input type="checkbox"/> Other DISAPPEARANCE <input type="checkbox"/>	WAS PFD WORN <input type="checkbox"/> Yes <input type="checkbox"/> No What Type
INJURED					
NAME	ADDRESS	DATE OF BIRTH	NATURE OF INJURY	MEDICAL TREATMENT <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAME	ADDRESS	DATE OF BIRTH	NATURE OF INJURY	MEDICAL TREATMENT <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAME	ADDRESS	DATE OF BIRTH	NATURE OF INJURY	MEDICAL TREATMENT <input type="checkbox"/> Yes <input type="checkbox"/> No	
ACCIDENT DESCRIPTION					
DESCRIBE WHAT HAPPENED (Sequence of events. Include Failure of Equipment. If diagram is needed attach separately. Continue on additional sheets if necessary. Include any information regarding the involvement of alcohol and/or drugs in causing or contributing to the accident. Include any descriptive information about the use of PFD's.)					
VESSEL NO. 2 <i>(If more than 2 vessels, attach additional form(s).)</i>					
NAME OF OPERATOR	ADDRESS	BOAT NUMBER			
TELEPHONE NUMBER	BOAT NAME				
NAME OF OWNER	ADDRESS				
WITNESSES					
NAME	ADDRESS	TELEPHONE NUMBER			
NAME	ADDRESS	TELEPHONE NUMBER			
NAME	ADDRESS	TELEPHONE NUMBER			
PERSON COMPLETING REPORT					
SIGNATURE	ADDRESS	DATE SUBMITTED			
QUALIFICATION (Check One) <input type="checkbox"/> Operator <input type="checkbox"/> Owner <input type="checkbox"/> Investigator <input type="checkbox"/> Other	TELEPHONE				
<i>(Do Not Use) — FOR REPORTING AUTHORITY REVIEW (Use agency date stamp)</i>					
Causes based on (check one) <input type="checkbox"/> This report <input type="checkbox"/> Investigation and this report <input type="checkbox"/> Investigation <input type="checkbox"/> Could not be determined	Name of Reviewing Office		Date Received		
Primary Cause of Accident					
Secondary Cause of Accident	Reviewed by				

Appendix I: Procedure to be Followed Upon Suspicion of Infectious Disease

Any harbormaster who suspects that a crew member or passenger aboard a vessel in the waters under local jurisdiction has contracted an infectious disease is required by M.R.S.A. Title 22 to so report to the Bureau of Public Health, Department of Human Resources. This can be done by making a report to the municipal health officer, or, if this is not possible, by a telephone call to the nearest office of the Department of Human Resources.

Harbormasters cannot declare a state of quarantine. If a vessel is placed under quarantine by a qualified official, it then becomes the responsibility of the harbormaster to see that it is moored or anchored in the most secluded safe area in the harbor, downwind from the populated section of the town, in terms of generally prevailing wind patterns, during the time it remains under quarantine.

Appendix J: A Reference Guide to Maine Municipalities Employing Harbormasters

Because no Maine or federal agency maintains an official roster of Maine's harbormasters, this list of towns, cities and plantations which have appointed or hired holders of this post must be assumed to be incomplete. The list below has been compiled by drawing on best available sources, both official and unofficial.

It is presented here as an aid to officers whose municipalities are considering or are in process of establishing harbor management plans, or are revising existing plans. From this list, representatives of local governments can select those which appear to operate under harbor conditions similar to their own, and by consulting with them benefit from prior practical experience in harbor management in their respective areas.

ADDISON
BATH
BELFAST
BIDDEFORD
BIDDEFORD POOL
BOOTHBAY HARBOR
BREMEN
BRUNSWICK
BUCKSPORT
CAMDEN
CAPE ELIZABETH
CASTINE
CUSHING
CUTLER
DAMARISCOTTA
EASTPORT*
EDGECOMB
ELIOT
ELLSWORTH
FALMOUTH
FREEPORT
FRIENDSHIP
GOULDSBORO
ISLESBORO
KENNEBUNK
KITTERY*
LINCOLNVILLE
MATINICUS ISLAND
MONHEGAN

MT. DESERT
NORTH HAVEN
NORTHPORT
OWLS HEAD
PEMAQUID HARBOR
PORTLAND*
ROCKLAND
ROCKPORT
ROUND POND
SACO
SCARBOROUGH
SEARSPORT
SEDGWICK
SORRENTO
SOUTH BRISTOL
SOUTH THOMASTON
SOUTH PORTLAND
SOUTHPORT
SOUTHWEST HARBOR
ST. GEORGE
STOCKTON SPRINGS
THOMASTON
TREMONT
VINALHAVEN
WALDOBORO
WELLS
WESTPORT
WISCASSET
YARMOUTH
YORK

On-line Sources for Local Harbor Ordinances:

Several Maine communities have posted their local harbor ordinances on-line. A selection of website containing these ordinances is provided below:

Bar Harbor

www.e-codes.generalcode.com

Eastport

http://www.eastportme.com/Public_Documents/EastportME_WebDocs/harborord

Freeport

<http://www.freeportmaine.com/codes/allordinances.html>

Rockport

<http://town.rockport.me.us/ordinancesPolicies/ordinances.cfm>

Portland

<http://www.portlandharbor.org/rulesmaster.html>

Saco

www.e-codes.generalcode.com

Scarborough

http://www.scarborough.me.us/townhall/manager/ord/harbor_rules/Harbor_Rules.pdf

Wells

www.e-codes.generalcode.com

ENDNOTES

¹ See Appendix A, which discusses the Corps's "small navigation projects" program.

³³ 38 M.R.S.A. § 1801.

⁴ See Maine Constitution, art. 8 pt. 2, § 1, as implemented by 30-A M.R.S.A. ch. 111.

⁵ No. CV-85-1001, Cumberland County Superior Court, decided February 27, 1986.

⁶ See Harbor Master Authority Study: Proposal by the Department of Conservation, June 4, 1987, commissioned by L.D. 2313, 112th Legislature, 2d session.

⁷ See Appendix B.

⁸ See Appendix C.

⁹ See 38 M.R.S.A. Section 1 and discussion on page 15.

¹⁰ See Appendix B.

¹¹ See Appendix E for sample mooring application.

¹³ See Appendix F for sample summons and notice of civil violation.

¹⁵ See "Coastal Management Techniques, A Handbook for Local Officials," (October 1988); "Harbor and Waterfront Planning Handbook, A Handbook for Coastal Communities," (October 1989) and "Mooring Plan Handbook," (October 1989), all by Maine Coastal Program, Department of Economic and Community Development. See also <http://www.maine.gov/spo.mcp> for an excellent overview of the regulations relating to coastal management, including what happens adjacent to, rather than in, the water.

¹⁶ 30-A M.R.S.A. 4312 et seq.

¹⁷ This goal is more thoroughly developed in Maine's Coastal Policies (38 M.R.S.A. 1801). See "Coastal Management Techniques, A Handbook for Local Officials," for a listing of the policies.

* The harbors of Eastport, Kittery, and Portland are operated under "Port Authority" status. Authorization for creation of a Port Authority is granted by passage of a bill in the state legislature, and its approval requires sufficient justification of need (such as volume and complexity of traffic in each individual case).