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U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
AUGUSTA, MAINE

HARBOR MASTER AUTHORITY STUDY

Proposal by the
DEPARTMENT OF CONSERVATION
Bureau of Public Lands

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I. EXECUTIVE SUMMARY

In accordance with L.D. 2313, "AN ACT to Clarify the Authority of Harbor Masters" enacted by the 112th Legislature, this study examines the local and statewide issues raised by L.D. 2313 and makes recommendations including supporting legislation.

As directed in the above Act, the Department of Conservation, Bureau of Public Lands consulted with the organizations listed in the study order by holding two group and several individual meetings during the summer of 1986. In addition organizations have had the opportunity to review and comment on the following report.

Increasing development pressure along Maine's coast has created a need to review how limited harbor resources are allocated. This study addresses the priority system by which mooring privileges are assigned, and recommends existing priority systems be replaced by a system based on user groups regardless of municipal residency. This change will create equal opportunity for all residents of Maine in regard to mooring privileges on State-owned submerged land. Regardless of these growing demands on the resource, it is the recommendation of this study that local government is best suited to determine management needs, regulate the wise use of harbor resources and enforce appropriate ordinances. To this end, supporting legislation is proposed to reinstate such authority, as established in L.D. 2313 but scheduled for repeal on April 1, 1987.

In addition to these two major recommendations this study considers standardizing harbor management guidelines, differential fee systems, harbor master qualification and training requirements along with numerous housekeeping measures to modernize existing statutory language. Supporting legislation is presented on these issues.

II. INTRODUCTION

The coastline of Maine is experiencing rapid growth and development pressure. This development coupled with a general increase in recreational interest and boating has resulted in demands which exceed the availability of coastal resources in many locations. As a result of this increased pressure, mooring privileges within harbors have become a valuable limited resource.

Since 1954 municipalities have had the authority to regulate certain aspects of harbor management, including the appointment of a harbor master who is responsible for assigning mooring privileges. For years this system has been effective in assigning mooring privileges. In part, this success is directly related to the fact that the level of demand was within the availability of the resource, simply put -- there was enough to go around. This situation has changed in recent years and as waiting lists grow, allocation systems, authority and rights have been questioned.

Evidence of this growing pressure, the limited availability of the resource, and review of existing allocation system was recently demonstrated in Freeport. As a result of a marina's

dissatisfaction with the harbor master's decision on mooring assignments, the issue of rights and authority were considered in Superior Court. The judge's decision in this case left both the State and municipalities with serious concerns about the authority conveyed to municipalities by existing statutes (Title 38, Chapter 1, subchapter 1 - Harbor Master's). The opinion prepared by Justice Silsby in this case removed from the town any right to review decisions of the harbor master. Of greater significance, the opinion seriously questioned town authority to adopt a harbor ordinance. The degree of limitation on the town to adopt some type of harbor ordinance is dependent on how the opinion is interpreted. Even a conservative reading seriously undermines those issues which could be addressed in a harbor ordinance.

In response to the uncertainty created by the court case, the 112th Legislature passed emergency legislation, L.D. 2313 "An Act to Clarify the Authority of Harbor Masters". This legislation clarified municipal authority to regulate moorings as well as adopt the ordinances necessary to effectively carry out this responsibility. In addition the Legislature directed the Department of Conservation to conduct a study concerning all issues raised by the bill. This legislation contains a repeal provision, Section 4, stating "All sections of this Act shall be repealed on April 1, 1987" (see Appendix A). It is therefore imperative that replacement legislation be in place by April 1, 1987 to avoid chaos for the upcoming boating season.

Within the Department of Conservation, the Bureau of Public Lands has management responsibility for the State-owned submerged lands involved in harbor management and moorings. During the summer the Bureau held two meetings with those organizations named in the study order which were interested in participating. Numerous field visits and individual meetings were also conducted.

This report is submitted in accordance with L.D. 2313. All issues raised by participants are discussed and appropriate legislative recommendations are made.

III. ISSUES AND RECOMMENDATIONS

Identification of the issues raised by L.D. 2313 was undertaken in July 1986. Of the twelve organizations listed in the study order, the following ten chose to participate:

1. Department of Environmental Protection
2. Department of Marine Resources
3. Maine Municipal Association
4. Maine Harbor Masters Association
5. U.S. Army Corps of Engineers
6. U.S. Coast Guard
7. Maine Marine Industries Association
8. Maine Resources Advisory Council
9. Department of Attorney General
10. Private boating interest.

In addition to the above, Representative James Mitchell of Freeport and Herb Hartman, Director of Parks and Recreation were invited to attend meetings. Thornton Ring of Ring's Marine

Service represented private boating interests. Participants and the organization which they represent are listed in Appendix B.

As a result of the first group meeting a list of major issues and concerns was compiled for further consideration.

These issues are listed below:

1. Land ownership
2. Management Responsibility
3. Harbor Management Guidelines
4. Priority systems - mooring privileges
5. Differential fee systems
6. Conveyance of limited rights
7. Rental moorings
8. Harbor Masters
9. Other issues
 - A. Harbor boundaries - establishment
 - B. Moorings of convenience
 - C. Lake (freshwater) Authority

Following the first group meeting, individual meetings were held with most participants to further discuss each issue. A second group meeting was then held to continue discussion on the relevant issues and resolve differing opinions where possible. As a result of these various meetings, The Bureau presents the following information and its recommendation on each of the major issues raised.

1. Land Ownership. The submerged land involved in harbor management is owned and held in trust by the State of Maine. The inner ownership boundary of the coastal and tidal lands in Maine

is governed by provisions of the Colonial Ordinance 1641-7 of The Colony of Massachusetts Bay. This ordinance established the sovereign's ownership of the seashore starting at the low water mark or 100 rods (1650 feet) from mean high tide, whichever is less. The outer boundary of State-owned submerged lands is established by federal legislation, the Submerged Lands Act of 1953, which quit claimed to the State submerged lands within three geographical miles of the coastline. State rights in this land are subject to dominant federal navigational rights, and the U.S. Army Corps of Engineers expresses concerns with regard to these navigational rights as they relate to priority systems for assigning mooring privileges. These concerns will be discussed in the appropriate section (Priority Systems - Mooring Privileges).

2. Management Responsibility. Numerous governmental agencies, at the federal, State and local level, are involved in decisions regarding the use of submerged lands. On the federal level the U.S. Army Corps of Engineers issues permits for certain projects located in either the intertidal or submerged lands. Moorings are covered under a general blanket permit and therefore do not require Army Corps approval on an individual basis. Rental moorings are not covered under the general permit and therefore do require a Corps permit. At the State level the Department of Environmental Protection has responsibility in regard to environmental concerns and considers moorings for vessels less than 65 feet in length exempt from the Wetland Alteration Permit process.

The Bureau of Public Lands has primary management responsibility on submerged lands for the State. The authority to lease submerged land for permanent structures is established in Title 12 ss 558-A "Submerged Lands Act" (see Appendix C). Under this authority the Bureau may lease the "right to dredge, fill or erect permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures on submerged and intertidal land owned by the State." "Permanent" means occupying submerged land owned by the State during 7 or more months during any one calendar year. In consideration of the DEP exempt status and municipal involvement and authority, the Bureau through rule-making has established the same exempt classification as DEP, for vessels less than 65 feet in length. This exempt status at the State and federal level places the actual management responsibilities for assigning mooring privileges at the local or municipal level. Municipal authority to carry out this responsibility is established in Title 38, Chap. 1, sub-Chap. 1 "Harbor Masters" (Appendix D) and more recently in L.D. 2313 "AN ACT to Clarify the Authority of Harbor Masters". The Act to Clarify amends section 1 of Title 38, Chapter 1. Under the original statute municipalities have the authority to establish channel boundary lines, assign portions of their harbors for anchorage and appoint harbor masters who shall assign mooring privileges. As amended, section 1 clarifies the relationship between the municipality and the harbor master, stating that the harbor master "shall be subject to all duties and liabilities of that office as prescribed by State law,

regulations adopted by the municipal officers and municipal ordinances." In addition the amendment establishes municipal authority to "prohibit a harbor master from making arrest or carrying a weapon."

Section 2 of The Act to Clarify became a new subsection of Title 38. This section, entitled Relation to Other Laws, further articulates the authority of municipalities to adopt harbor ordinances, going into considerable detail specifying the broad range of issues that may be addressed in such an ordinance with care taken not to limit issues that may be addressed. The second major portion of the section creates a provision requiring a municipal ordinance which addresses the assignment of mooring privileges to provide and reserve a minimum number of moorings for non-residents not less than 10% of the number provided for residents.

Sections 3 and 4 of The Act to Clarify establish the study order and repeal provisions respectively.

Recommendation: Local government is best suited to determine management needs, regulate the wise use of harbor resources and enforce appropriate ordinances. It is both the position of the Department and the consensus of the study group that municipalities should continue to have management authority for general harbor management including the allocation of mooring privileges. This will require legislation to replace sections 1 and 2 of The Act to Clarify as they will be repealed in April, 1987. Proposed modifications to the assignment priority system established in section 2 of The Act to Clarify will be addressed

in the upcoming section of this report (Priority System - Mooring Privileges).

3. Harbor Management Guidelines. Currently there are no State Harbor Management Guidelines other than applicable section of Title 38 "Harbor Masters". The lack of such standard State guidelines creates some concern on the part of harbor masters and others that the boating public cannot be assured of consistent rules and regulations of any particular harbor.

At the State level, the current efforts by the State Planning Office to develop Coastal Policy Guidelines will establish State guidelines and priorities for some aspects of harbor management. At the local level many municipalities have independently developed harbor ordinances to establish rules.

The need for State Harbor Management Guidelines was discussed and there is some support among group members for their development. Such guidelines would attempt to create standard harbor rules and regulations where possible, allowing boaters the benefit of knowing what to expect and how to operate in Maine harbors. In addition such guidelines would lay the ground work and provide guidance for the development of municipal harbor ordinances.

While this concept seems reasonable, there are problems. Any such State Guidelines would have to maintain a large degree of flexibility to accommodate actual local needs. This need for flexibility would limit the degree to which guidelines could be specific.

The establishment of such State guidelines would necessitate the creation of a review process by which municipal ordinances are reviewed and approved as meeting the State guidelines. Much concern was expressed by the Harbor Masters Association and Maine Municipal Association in regard to the value of such an effort and they question whether the potential improvements would be far out weighed by an additional layer of paperwork and bureaucracy.

Recommendation: Where it is possible to standardize certain aspects of harbor management on a Statewide basis, such issues should be addressed through legislation. A primary example would be the establishment of a standard priority system for assigning mooring privileges. On other issues where a large degree of flexibility is required, organizations such as MMA, MHA, State Planning Office, University of Maine Extension Service and the Bureau of Public Lands should work together to develop informational material. This type of material would be available to municipalities to aid in their efforts in dealing with harbor management issues but would not establish mandatory standards requiring compliance. As an example, an informational pamphlet on how to develop effective harbor ordinances would be useful to many communities.

4. Priority Systems - Mooring Privileges. Existing statutes establish certain priorities when mooring privileges are being assigned by harbor masters. Title 38, Chapter 3 establishes the priority of "individuals who own the shore rights or have an interest in the same" and directs the harbor master to "locate suitable mooring privileges therefor for boat and

vessels..., fronting their land..." The Act to Clarify the Authority of Harbor Masters further establishes priorities in section 2 by stating "A municipal ordinance which addresses the assignment of mooring privileges must provide and reserve a minimum number of moorings for nonresidents which shall be a member not less than 10% of the number provided for residents".

Most municipalities operate under a system which establishes a priority for municipal residents above non-municipal residents. An example of such a system is presented below.

1. Resident shorefront owner requests for location immediately adjacent to frontage.
2. Resident commercial vessel owners.
3. Resident pleasure vessel owners.
4. Resident commercial operators with rental moorings.
5. Resident vessel owners with multiple locations.
6. Non-resident commercial vessel owners.
7. Non-resident pleasure vessel owners.

This system would have to be modified to meet the criteria established in the Act to Clarify.

It is the Department's position that the State resource involved, submerged land, should be available to all State residents on an equal opportunity basis. Existing priority systems which discriminate against non-municipal residents should be eliminated and replaced by a user group system establishing a priority for commercial vessels over pleasure boats. Upland owners should continue to have the privilege of a site adjacent to their shore property. The rights of individuals "who own the

shore rights or have an interest in the same" should be clarified. More specifically, are these rights transferable when one individual leases to another and what rights do individuals have in a joint ownership situation such as condominiums. A priority system based on user groups will allow the fisherman who resides in a community other than a coastal town, to have an equal opportunity to moor his vessel in a harbor close by.

Existing priority systems have worked well in the past because there were enough mooring sites to go around and, therefore, even if the non-resident fisherman was in the sixth priority category he still was assigned a mooring site. This is no longer the case as the number of requests for mooring privileges has started to surpass the availability.

Maine Municipal Association is not particularly supportive of the elimination of residential priority systems, being replaced by a user group approach. It is not difficult to understand this reluctance. Municipalities shoulder the burden of managing the harbor and pay for the expenses involved. However, there are methods to evenly distribute these costs among residents and non-residents which will be discussed in the following section "Differential Fee Systems".

On the other side of this issue is the U.S. Army Corps of Engineers. Army Corps of Engineers has similar concerns about priority systems which discriminate on the basis of residency as does the Department. Except, here, the concern is broadened to include all citizens of the United States, where the Department is primarily concerned with Maine citizens. In harbors where

Federal projects have been carried out in the past, municipal systems which establish priority based on residency, may violate equal opportunity terms of the agreement under which the project took place. Outside of federal project areas, the Corps' authority is tied to their responsibility to provide equal opportunity in the areas of navigation and commerce. Open to interpretation is the question of whether the availability of a mooring site is an integral part of one's ability to navigate. The Corps maintains that this is the case and that a system which discriminates against non-residents interferes with the rights of all to navigate.

The implications of a system that does not entirely meet Army Corps concerns should be considered. Eligibility for future federal projects may be sacrificed or the Corps could discontinue the general blanket permit and require a permit for each individual mooring thereby gaining control over who receives mooring privileges.

Recommendation: It is the Bureau's recommendation that mooring privileges should be assigned regardless of municipal residency and therefore priority systems which discriminate against non-municipal residents should not be allowed on State-owned property. Such systems should be replaced with user group systems which give priority to commercial vessels, and to those who have to be located on the water to make their living. Shore property owners should continue to have the privilege of a mooring site adjacent to their property.

In acknowledgment of the long standing nature of existing mooring assignments, and in an effort to create an orderly transition from the assignment system based on municipal residency to a new system based on user groups, existing assignments should continue and the new system should apply to vacated or new mooring sites only.

A standard definition of "commercial" vessels should be established legislatively.

5. Differential Fee System. Under a priority system for assigning mooring privileges based on user groups rather than municipal residency, there exists the possibility that a greater percentage of available moorings will be assigned to individuals who are not municipal residents and therefore do not contribute to the tax revenues of the community. Concern has been expressed that the costs of maintaining and running the harbor are paid by the municipality from this tax revenue and that individuals who do not contribute to these funds should not receive the benefits provided by these funds. An effective solution to this problem is the implementation of a differential fee system whereby non-residents are charged a fair amount comparable to the amount allocated from resident tax payments used for maintaining the harbor. In this manner non-residents pay their fair share of the costs incurred by the municipality and have an equal opportunity to be assigned mooring privileges.

The definition of municipal resident and State resident will have to be established. Resident status should probably be directly related to property ownership resulting in tax payments

rather than voting registration since an individual might own property and pay taxes in the municipality while maintaining a year-round residence and voting in another state.

Care should be taken when explaining the justification for the differential rates. The charge cannot be a payment in lieu of taxes but can be accepted on the basis that the resident will pay a lower rate in recognition of the previous payments made, part of which is used to support the management of the harbor.

Recommendation: A standard definition for municipal residency should be developed using property ownership or an interest in the same as a basis. Municipalities should be made aware of their authority to establish a differential fee system if the costs of managing the harbor are covered by tax revenues. It should not be necessary to establish this authority legislatively.

6. Conveyance of Limited Rights. As previously discussed, management responsibility and authority for the lands involved include federal, State and local government agencies. In an effort to clarify the authority of municipalities, consideration was given to the concept of the State conveying limited rights for locating moorings, in the form of a long-term lease to the town. A conveyance of this type would eliminate any remaining doubt concerning municipal authority for the area involved. It would also establish legal standing for moorings to occupy the area in relation to other future projects requiring use of the same area. Under their current status, a mooring could be displaced by another use if the proposed use received the

necessary regulatory permits and a lease from the Bureau of Public Lands.

While there appears to be some advantages to such a conveyance there are also drawbacks. This concept, as with standard harbor guidelines, would necessitate additional paperwork for municipalities as well as review and approval responsibilities for BPL. More importantly, such a conveyance would limit the Bureau's options when considering future projects; in essence the area would be dedicated for the purpose of moorings for the term of the conveyance. It is unlikely that future uses of submerged lands will displace significant numbers of moorings and their status as an existing use will be considered in any such decision. It does, however, seem prudent to maintain the option of being able to consider future projects.

Recommendation: Municipal authority should be clearly established through legislation making the conveyance of limited rights unnecessary. It is in the State's best interest to avoid this type of conveyance thereby maintaining its role to consider future projects located within mooring areas. To this end appropriate legislative language should be developed to clarify the Bureau's authority to consider future projects located within existing mooring areas.

7. Rental Moorings. Moorings that are maintained by an individual or business and made available to others on a rental basis for an amount in excess of the mooring permit fee are considered rental moorings. This type of mooring is not covered by the general blanket permit and the Army Corps, therefore, requires individual permits for such rental moorings.

On one hand there is the feeling that the State should receive a portion of the revenue generated from rental moorings, which are located on State property. On the other hand marina and boatyard operators claim that their rental charge is for the cost of owning and maintaining the tackle involved and is not a charge for occupying the site.

If the mooring permit has been issued to an individual who then chooses to pay another to own and maintain the tackle involved, additional fees seem inappropriate. If, however, numerous mooring sites have been assigned to one individual or business who then makes the sites available for rent, an additional fee for this privilege may be warranted.

Recommendations: If rental moorings are to be charged a fee above that paid by an individual, the fee should be retained by the municipality since they, rather than the State, incur the cost of managing the program.

8. Harbor Masters. Currently there are no qualification standards for harbor masters. This situation is of concern to both the Harbor Masters Association and private boating interest groups. In the past the duties and responsibilities of the harbor master may have allowed an individual with little pertinent experience to effectively handle the responsibilities of the position. As the job of harbor management has become more complex and demanding, the skills required have changed. To effectively carry out the duties and responsibilities assigned today, harbor masters need basic skills in many areas. Individuals appointed to the harbor master position should have

the basic skill required to carry out the duties of the position. Concurrent with the need for qualification standards is the need to establish training requirements.

Efforts are currently being made in both of these areas by the newly organized Maine Harbor Masters Association. This organization is the logical place for these issues to be dealt with and the State should await the outcome of these efforts before considering additional action in this regard.

There are a number of other issues which do require some attention by the State. As established in Title 38, the term of the position is currently one year. With increased responsibility, qualification standards and training requirements this should be increased to a two-year term to create a certain amount of stability and job security. Municipalities should obviously continue to have the ability to dismiss an individual for just cause. The Watercraft Excise Tax Study Committee has requested that the authority to enforce the excise tax law be specified in the Harbor Master statutes. It appears that harbor masters already have this authority under Title 12, Section 7056 "Other Law Enforcement Officers" and it is more a matter of the municipality making this a priority for the harbor master than the position lacking the authority to carry out the enforcement of the Excise Tax Law.

Subsection 5 of Title 38 "Removal of Vessels Obstructing Anchorage" establishes a charge of two dollars plus the cost of crew for removing a vessel which is obstructing anchorage. This fee appears to be the original rate established in 1954 and all study group members agree that it should be updated.

Currently section 2 "Rules for channel lines; enforcement" limits the harbor master to appointing one deputy. This limitation serves no known purpose and the actual area to be regulated by many harbor masters necessitates the appointment of more than one deputy.

Recommendation: Harbor master qualification standards and training requirements should be developed and enforced. The State should await the independent efforts being made by the Harbor Masters Association before considering any State action. The appointment for this position should be increased in section 1 "Appointment; compensation" to a two-year term. Changes should be made to section 5 to enable the harbor master to recover at least actual expenses incurred when removing vessels obstructing anchorage. Harbor masters should have the authority to appoint more than one deputy where necessary and therefore appropriate changes to section 2 should be made.

9. Other Issues. Many other issues have been raised through the course of this study. A number of these issues deserve consideration and are therefore presented under this miscellaneous category.

A. Harbor Boundaries. The question has been raised as to how municipalities have established the harbor boundaries within which the harbor master has authority.

Should all coastal waters within the town be covered under the authority of the harbor master? If not, who regulates mooring privileges outside of the harbor boundaries?

Recommendation: The Legislature should consider enabling towns to extend the Harbor Masters' authority to all waters within the jurisdiction of the Town. This would eliminate any confusion as to authority as well as remove the temptation for locating mooring outside the harbor boundaries in unregulated waters.

B. Moorings of Convenience. In some cases mooring privileges have been assigned for sites which are not used as the primary location for mooring the vessel. These moorings are used on an occasional basis when the individual wishes to visit the area and would prefer not to anchor. This situation, however, severely restricts the opportunity of others to visit the area on a first-come, first-serve basis as the individual with the mooring permit has established rights to occupy the site.

Recommendation: It is the State's position that moorings as described above should not be allowed to occupy the area to the exclusion of others for the sole purpose of convenience and that municipalities should respect this position and deny such requests.

C. Lake (freshwater) Authority. Included in State-owned submerged lands are the bottoms of great ponds, which in their natural state are greater than 10 acres in size. Increased shorefront development and recreational use of many lakes in Maine, but especially popular, large ones, such as Sebago and Moosehead, is similar to that being experienced along the coast. Problems associated with the authority to place moorings and conflicts arising from their placement are more common each year,

with no adequate system to address the problem.. The Bureau of Parks and Recreation has certain authority in this situation, however their responsibilities are limited to safety and navigational aids.

Mooring on Great Ponds, where anchoring devices are left in place for more than 7 months of the year, require a Great Pond Permit from the Department of Environmental Protection. Title 38 refers to "all maritime towns and plantations" in section 2 and it is generally agreed upon that inland municipalities are not given authority under this statute.

Recommendation: Strong consideration should be given to including these inland communities in the authority established under Title 38 to allow these communities to regulate mooring privileges within their local jurisdiction.

V. CONCLUSIONS

Development pressure along Maine's coast has increased dramatically over the last five years and all indications are that this trend will continue. As demands to use coastal resources grow, methods for allocating such limited natural resources must be reviewed and where necessary changed to effectively deal with increasing pressures. There is no question that Maine's coast is under increasing pressure and changes are necessary if the unique coastal resource involved is to be used wisely to the maximum benefit of all.

Harbors, in particular, are a focal point of development activity pressure to provide many different user groups with resource opportunities whether they be commercial or

recreational. The establishment of a mooring privilege assignment system based on user groups will assure commercial users a priority over pleasure vessels when competing for use of this limited resource. In addition, the system proposed in this report will provide equal opportunity within user groups for all residents of Maine.

While the land involved is State owned, it is clear that municipalities are more greatly affected by how this resource is managed. For this reason as well as the need for effective year round on site management, the authority to manage harbors and assign mooring privileges should continue to reside at the local government level.

The Bureau of Public Lands will continue to have management responsibility for all other permanent uses of submerged land. Future demands on this resource as a whole may necessitate a major effort to inventory the resource and allocate certain areas for specific uses. If and when this becomes necessary, the Bureau will work with municipalities and others involved to determine the appropriate areas to be reserved for mooring and anchorage.

As the demands on harbor resources build, management becomes more complex. This in turn results in increased duties and responsibilities for harbor masters. Appropriate qualifications and adequate training will be necessary for harbor masters to effectively carry out the responsibility of the position.

Legislation will be necessary to affect many of the recommendations made in this report. Such legislation is

presented in the following section. However, legislation will not provide all the answers. Cooperative efforts by all the organizations involved can provide much of the information and guidance called for as Maine responds to the management needs and pressures of the future.

V. PROPOSED LEGISLATION

AN ACT to Establish the Authority of Harbor Masters

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it is desirable that coastal municipalities regulate activity in their harbors and provide an orderly means by which moorings are assigned and located; and

Whereas, many coastal municipalities have enacted ordinances regulating activity in their harbors and providing for an orderly means by which moorings are assigned and located; and

Whereas, Public Law 1986, Chapter 692 - "AN ACT to Clarify the Authority of Harbor Masters" will be repealed on April 1, 1987.

Whereas, an immediate clarification of the authority of municipalities to enact these ordinances is necessary prior to the approaching boating season; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 M.R.S.A. sec. 1 is amended as follows:

Sec. 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 ~~annually~~ appoint a harbor master for a term of 2 years, who shall be subject to all the duties and liabilities of that office as prescribed by state law, regulations adopted by the municipal officers and municipal ordinances. In case of the failure or refusal of the harbor master to perform these duties, he commits a civil violation for which a forfeiture of \$25 shall be adjudged, for the benefit of the town, for each intentional neglect or refusal to attend the duties. The municipal officers may establish his compensation and may, for cause by them declared in writing, after due notice to the officer and hearing, if requested, remove him and appoint another in his stead.

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 shall have the authority to enforce the provisions of this subchapter.

Sec. 2. 38 M.R.S.A. sec. 2 is amended as follows:

Sec. 2. Rules for channel lines; enforcement

The municipal officers of all maritime towns and plantations shall make rules and regulations, with suitable provision for enforcement, for the keeping open of convenient channels for the passage of vessels in the harbors and waterways of the towns for which they act, and shall establish the boundary lines of such

channels and assign suitable portions of their harbors for anchorages.

Such rules and regulations as may be made by such municipal officers shall be enforced and carried out by the harbor master of said town, who may appoint ~~a deputy~~ deputies, to act in case of his absence or disability, his ~~deputy~~ deputies, if any, or any other law enforcement officer of the State or any political subdivision thereof.

Sec. 3. 38 M.R.S.A. sec. 3 is amended as follows:

Sec. 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 harbors where mooring rights of individuals are claimed to be invaded and protection is sought of the harbor master, he shall assign and indicate to the master or owner of boats and vessels the location which they may occupy with or for mooring purposes, the kind of mooring to be used and shall change the location of said moorings from time to time when the crowded condition of such harbor or other conditions render such change desirable. Wherever practicable, ~~He~~ shall assign mooring privileges in such waters in all cases where individuals who own the shore rights or have an interest in the same are complainants, and shall locate suitable mooring privileges therefor for boats and vessels, temporarily or permanently as the case may be, fronting their land, if so requested, but not thereby to encroach upon the natural channel or channels

established by municipal officers; provided that not more than one mooring may be assigned to any shorefront parcel of land under this privilege. The municipal officers shall fix the compensation of the harbor master for such services rendered.

Sec. 4. 38 M.R.S.A. sec. 4 is amended as follows:

Sec. 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, said harbor master shall cause said mooring to be removed or shall make such change in the character thereof as required, and shall collect from the master or owner of such boat or vessel the sum of ~~\$2~~ \$10 for either of such services rendered and the necessary expenses.

Sec. 5. 38 M.R.S.A. sec. 5 is amended as follows:

Sec. 5. Removal of vessels obstructing anchorage

A harbor master shall, upon complaint to him by the master, owner or agent of any vessel, cause any other vessel or vessels obstructing the free movement or safe anchorage of such vessel to remove to a position to be designated by him, any vessels anchoring within the channel lines as established by the municipal authorities as provided in section 2 to remove to such anchorage as he may designate. Whoever neglects or refuses to obey the orders of the harbor master shall be guilty of a Class E crime.

If such 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, then and in that case such harbor master may put a suitable crew on board and move such vessel to a suitable berth at a wharf or anchorage at the cost and risk of the owners thereof, and shall charge ~~\$2~~ \$10, to be paid by the master or owner of such vessel, which charge together with the cost of the crew for removing such vessel the harbor master may collect by civil action.

Sec. 6. 38 M.R.S.A. sec. 7 is amended as follows:

Sec. 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 need not be 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; and provisions which establish a harbor commission or committee to administer the ordinance 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, section 1917.

A municipal ordinance which addresses the assignment of mooring privileges must assign such privileges regardless of municipal residency giving priority to commercial vessels. Notwithstanding the above, shorefront property owners shall be assigned mooring privileges as established in section 3.

Notwithstanding the provisions of this section, all existing mooring privileges in effect on the effective date of this section are declared valid and may be continued subject to the regulation of the municipality. Such privileges are not transferable.

Assignment of such 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 Act and any Act which establishes or otherwise provides for a Port Authority, Board of Harbor Commissioners or similar authority for any coastal waters of the State, such inconsistency shall be resolved in favor of the provisions of this Act.

~~provide and reserve a minimum number of moorings for nonresidents which shall be a number not less than 10% of the number provided for residents. When the number of resident moorings is less than 10, but more than 5, at least one nonresident mooring shall be provided. When the number of resident moorings is 5 or less, nonresident moorings need not be required. The period of issuance for resident and nonresident moorings shall be the same. Subsequent to that period, the municipality shall make any resident or nonresident moorings not granted during the issuance period available to residents or nonresidents.~~

~~All existing municipal ordinances dealing with the subjects of this section currently in effect and operation on the effective date of this section are declared to be valid and shall continue in effect until rescinded, amended or changed according to municipal ordinance.~~

Sec. 7. 38 M.R.S.A. sec. 8 is enacted to read:

Sec. 8. Definitions

Commercial vessels. A vessel, the primary use of which allows the owner to engage in commerce.

Municipal resident. An individual who lives in a given municipality, as distinguished from a visitor or transient; or an individual who owns property in and pays property taxes to the municipality.

Sec. 8. Public Law 1986, Chap. 692, sec. 4 is repealed as of the effective date of this Act.

Emergency Clause. In view of the emergency cited in the Preamble, this Act shall take effect when approved.

VI. APPENDICES

Appendix A....	AN ACT to Clarify the Authority of Harbor Masters
Appendix B.....	Harbor Masters Advisory Board
Appendix C.....	Submerged Lands Act
Appendix D.....	38 M.R.S.A., subch. 1, Harbor Masters

APPROVED

APR 15 '86

BY GOVERNOR

CHAPTER

692

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SIX

S.P. 926 - L.D. 2313

AN ACT to Clarify the Authority of Harbor
Masters.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it is desirable that coastal municipalities regulate activity in their harbors and provide an orderly means by which moorings are assigned and located; and

Whereas, many coastal municipalities have enacted ordinances regulating activity in their harbors and providing for an orderly means by which moorings are assigned and located; and

Whereas, a recent Superior Court decision has cast doubt on the authority of municipalities to enact such ordinances; and

Whereas, an immediate clarification of the authority of municipalities to enact these ordinances is necessary prior to the approaching boating season; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as

follows:

Sec. 1. 38 MRSA §1, as amended by PL 1985, c. 531, §2, is repealed and the following enacted in its place:

§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 annually appoint a harbor master who shall be subject to all the duties and liabilities of that office as prescribed by state law, regulations adopted by the municipal officers and municipal ordinances. In case of the failure or refusal of the harbor master to perform these duties, he commits a civil violation for which a forfeiture of \$25 shall be adjudged, for the benefit of the town, for each intentional neglect or refusal to attend the duties. The municipal officers may establish his compensation and may, for cause by them declared in writing, after due notice to the officer and hearing, if requested, remove him and appoint another in his stead.

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 shall have the authority to enforce the provisions of this subchapter.

Sec. 2. 38 MRSA §7 is enacted to read:

§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 need not be 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; and provisions which establish a harbor com-

mission or committee to administer the ordinance 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, section 1917.

A municipal ordinance which addresses the assignment of mooring privileges must provide and reserve a minimum number of moorings for nonresidents which shall be a number not less than 10% of the number provided for residents. When the number of resident moorings is less than 10, but more than 5, at least one nonresident mooring shall be provided. When the number of resident moorings is 5 or less, nonresident moorings need not be required. The period of issuance for resident and nonresident moorings shall be the same. Subsequent to that period, the municipality shall make any resident or nonresident moorings not granted during the issuance period available to residents or nonresidents.

All existing municipal ordinances dealing with the subjects of this section currently in effect and operation on the effective date of this section are declared to be valid and shall continue in effect until rescinded, amended or changed according to municipal ordinance.

Sec. 3. Study order. The Department of Conservation shall conduct a study concerning all local and statewide issues raised by this bill. The department shall consult with and seek the advice of the following organizations or parties:

1. The Department of Inland Fisheries and Wildlife;
2. The Department of Environmental Protection;
3. The Department of Marine Resources;
4. The Maine Municipal Association;
5. The Maine Harbor Master Association;

6. The United States Army Corp. of Engineers;
7. The Environmental Protection Agency;
8. The United States Coast Guard;
9. The Maine Marine Industries Association;
10. The Marine Resources Advisory Council;
11. Private boating interests, both resident and nonresident; and
12. The Department of the Attorney General.

The study shall cover all major points of view expressed by those organizations or parties and how they were reconciled in reaching the study's conclusions. Agencies disagreeing with the recommended legislation shall be invited by the Department of Conservation to submit minority reports and legislation. The study with supporting legislation shall be reported to the Legislature by January 1, 1987.

Sec. 4. Repeal. All sections of this Act shall be repealed on April 1, 1987.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

In House of Representatives, 1986

Read twice and passed to be enacted.

..... Speaker

In Senate, 1986

Read twice and passed to be enacted.

..... President

Approved 1986

..... Governor

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DEPARTMENT OF CONSERVATION
BUREAU OF PUBLIC LANDS

SUBMERGED LANDS ACT

Title 12 M.R.S.A., Subsection 558-A. Submerged and intertidal lands owned by the State.

1. Definitions. As used in this section, unless the context otherwise indicates, the following words have the following meanings.

A. "Occupying" refers to the total area of the structure or alteration itself to the extent that the area within its boundaries is directly upon or over the state-owned lands.

B. "Permanent" means occupying submerged and intertidal lands owned by the State during 7 or more months during any one calendar year.

2. Leases. The director may lease, for a term of years not exceeding 30 and with conditions he deems reasonable, the right to dredge, fill or erect permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures on submerged and intertidal land owned by the State.

A. For fill, permanent causeways, bridges, marinas, wharves, docks, pilings, moorings or other permanent structures:

(1) The director shall charge the lessee a base rent that practically approximates the fair market rental value of the land;

(2) The director may adjust the base rent, decreasing it for desirable uses or increasing it for undesirable ones. In determining the desirability of uses, the director shall consider the extent to which the use does not impair the future use of the submerged or intertidal land for fishing, fowling or navigation, needs to be located on the submerged land, and exploits natural renewable resources of the water;

(3) The director may revalue rents every 5 years. For leases entered into before and after July 1, 1984, rents shall not exceed \$.04 per square foot increased by 10% cumulatively for each year that has elapsed since July 1, 1984, further adjusted by the cumulative increase in the United States Consumer Price Index. Notwithstanding this limit, if an appraisal of

the value of the land under a new or existing lease is performed, the director may charge a rent based on subparagraphs (1) and (2); and

(4) The director may also lease, for a period of not more than 5 years, a buffer zone of not

more than 30 feet in width around a permanent structure located on submerged or intertidal land, provided the lease is necessary to preserve the integrity and safety of the structure and the Commissioner of Marine Resources consents to that lease.

B. For dredging, impounded areas and underwater cables and pipelines, the director shall develop such terms and conditions as he deems reasonable.

C. The director shall charge an administrative fee of \$25.00 for each lease in addition to any rent.

D. The director may establish a reasonable minimum rent to which any lease is subject, but it shall not exceed \$75.00 per year.

3. Easements. The director may grant, upon such terms and conditions as he deems reasonable, but without valuable consideration, except for a one-time administrative fee of \$15, assignable easements for a term of years not exceeding 30 for the use of submerged and intertidal lands for the purposes permitted in subsection 2, provided that that use:

A. Is for the exclusive benefit of the abutting upland owner for charitable purposes as defined in the United States Internal Revenue Code, Section 501, (c)(3):

B. Occupies a total of not more than 500 square feet of state-owned land for any lawful purpose:

C. Occupies a total of not more than 2,000 square feet of state-owned land for the exclusive purpose of landing or processing shellfish, finfish or other natural products of the sea or for other activities directly related to the purpose of landing or processing shellfish, finfish or natural sea products, including fueling, loading or selling these products; or

D. Is for harbor improvement by the Federal Government.

4. Adjustment of terms. The director may adjust from time to time, consistent with the provision of this section, conditions applicable to any leasehold or easement entered into under this section in any parcel of state-owned submerged or intertidal land. Rent shall not be charged for leases entered into prior to July 1 1984, if the actual use of the leased land is eligible for an easement under subsection 3.

5. Review of uses. The director shall review from time to time, in the case of easements, the purposes for which the land conveyed has actually been used, and in the event any such purpose is found to be inconsistent with the criteria set forth in subsection 3 for eligibility for an easement, the easement shall terminate and the director may enter into a leasehold agreement with the holder of the easement in accordance with subsection 2.

6. Constructive Easements. In the event the director fails to take final action on an application for an easement for a project eligible for such easement under subsection 3 within 30 days after receipt of the application, an easement for a term of 30 years on the state-owned land directly underlying the project shall be deemed to have been granted. The owners of all structures actually upon submerged and intertidal lands on October 1, 1975, shall be deemed to have been granted such an easement.

7. Consultation. The director shall consult with the Commissioner of Conservation, Commissioner of Marine Resources, Commissioner of Inland Fisheries and Wildlife and such other agencies or organizations as he deems appropriate in developing and implementing terms, conditions and consideration for conveyances under this section. Notwithstanding section 551, the director may determine to make proprietary conveyances under this section solely on the basis of the issuance of environmental or regulatory permits by other appropriate state agencies.

8. Rules. The director shall promulgate whatever rules are necessary and appropriate to administer this section.

Subsection 559. Filled-in submerged lands

1. Legislative intent; purpose. The Legislature finds that the ownership of certain areas along Maine's coast and great ponds is uncertain because portions of the submerged and intertidal lands have been filled in so as now not to be subject to tidal action or below water. These lands were filled prior to the enactment of Public Law 1975, chapter 287, the Submerged Lands Act, as recodified by Public Law 1979, chapter 545. It appears that prior to the enactment of the Submerged Lands Act, and to some degree afterwards, these filled-in portions of the

submerged or intertidal lands have been sold, leased, taxed and otherwise treated in good faith by municipalities and private citizens as if they were owned in fee by private parties. Due to the lack of readily available documentation of the natural low and high watermarks in most areas along the coast and great ponds, the process of setting the boundaries between submerged or intertidal lands and the upland would consume enormous time and expense for the State and the private parties.

The Legislature recognizes that the submerged lands are owned by the State for the benefit of the public. These lands are impressed with a public trust. This ownership and public trust is derived from the Massachusetts Colonial Ordinance of 1641-1647. As a result of this, submerged land is not, like ordinary private land, held in fee simple absolute but is impressed with the public trust which gives the public's representatives an interest and responsibility in its development.

The Legislature finds that those portions of the submerged and intertidal lands which have been filled in prior to October 1, 1975, the date the Submerged Lands Act was effective, are substantially valueless for trust uses and such lands can be disposed of without impairment of the public trust in what remains. The public benefit will be promoted by clarifying the status of real estate titles to such filled lands, thereby permitting full use and development.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Filled land" means portions of the submerged and intertidal lands which have been rendered by the acts of man to be no longer subject to tidal action or below the natural low watermark on October 1, 1975.

B. "Intertidal land" means all land affected by the tides between natural high watermark and either 100 rods seaward therefrom or the natural low watermark, whichever is closer to the natural high watermark.

C. "Person" means individuals, partnerships, corporations and other private legal entities, but does not include the State and its political or governmental subdivisions or the Federal Government.

D. "Submerged land" means all land affected by the tides seaward of the natural low watermark or 100 rods

from the natural high watermark, whichever is closer to natural high watermark and all land below natural low watermark under great ponds.

3. Declaration of clear title. Titles to properties and lands that once were or may have been submerged or intertidal lands subject to the State's ownership in public trust that were filled on October 1, 1975, are declared and released to the owners of any such filled lands by the State free of any claimed ownership in public trust to the extent the areas of these properties and lands were not submerged or intertidal lands on that date.

4. Confirmation. Any person claiming an interest in such land may seek confirmation from the Bureau of Public Lands that particular land is filled land and receive a declaration that may be filed in the appropriate registry of deeds. Such confirmation shall not be construed to create any rights of ownership in any person per se, but shall be declaratory of the status of the land as to whether it had been filled on October 1, 1975. The application for confirmation shall be filed on a form prescribed by the Bureau of Public Lands which shall contain the following information:

- A. Name and address of applicant;
- B. An accurate legal description of the filled land; proof that the land was filled on October 1, 1975 and sufficient details, such as a survey by a registered land surveyor, to locate the filled land on a map of general acceptability;
- C. The area of acreage of the filled land;
- D. The date acquired;
- E. Evidence that written notice of the application for confirmation has been sent to any other owners of record; and
- F. Other information necessary for the purposes of this section.

A filing fee of \$50 shall accompany each application to cover administrative costs, which moneys shall be deposited in and disbursed in accordance with section 557 to accomplish the purposes of this section.

5. Filing. The following provisions apply to filing.

- A. The application may be filed with the Bureau of Public Lands at any time.

B. If the applicant demonstrates that the land is filled land as defined in subsection 2, paragraph A, the Director of the Bureau of Public Lands shall issue a declaration to the effect. The director shall respond to the application within 30 days of the date the application is received by the director.

6. Termination of leases. Any leases entered into by the Director of the Bureau of Public Lands pursuant to section 558 for filled land, as defined in subsection 2, paragraph A, are terminated. Lessees shall not be reimbursed for rental paid under such leases.

7. Operation of this section; retroactive date. This section shall not create a cause of action on behalf of any person against the State for damages or otherwise arising out of state ownership of lands prior to the effective date of this section. A declaration of confirmation by the Bureau of Public Lands pursuant to subsection 4 shall not constitute a decision by the State as to which claimant, if any, may have title, and the State, its officers, agents and employees shall not be liable to any person by reason of having made or having refused to make such a declaration. Failure to apply for or receive confirmation or a declaration under subsection 4 shall not affect any rights granted or released by this section. This section shall not be construed to affect the rules of law otherwise in force relating to accretion or reliction of filled or other lands along the great ponds or the coast, nor to either convey or release rights or interest acquired by the State in filled lands by gift, purchase or the power of eminent domain or to affect any obligations, rights or liabilities created by the operation of sections 4701 to 4709 as later replaced by Title 38, sections 471 to 478 or by permits issued under those sections. This section shall be retroactive to October 1, 1975.

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CHAPTER 1

OPERATION OF VESSELS

Subch.	Sec.
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SUBCHAPTER I

HARBOR MASTERS

- Sec.
1. Appointment; compensation.
 2. Rules for channel lines; enforcement.
 3. Mooring sites.
 4. Neglecting to remove or replace moorings.
 5. Removal of vessels obstructing anchorage.
 6. Power to arrest for assault.

Cross References

Watercraft registration and safety, see title 12, § 2061 et seq.

Law Review Commentaries

Public Rights in Maine Waters.
17 Maine L.Rev. 161 (1965).

§ 1. Appointment; compensation

Selectmen of towns, on request by any person desiring mooring privileges or regulation of mooring privileges for boats or vessels, shall annually appoint a harbor master who shall be subject to all the duties and liabilities of that office as prescribed by law, and in case of the failure or refusal of the harbor master to perform these duties, he commits a civil violation for which a forfeiture of \$25 shall be adjudged, for the benefit of the town, for each intentional neglect or refusal to attend the same. The selectmen may establish his compensation and may for cause by them declared in writing, after due notice to such

officer and hearing thereon, if requested, remove him and appoint another in his stead.

R.S.1954, c. 98, § 1; 1977, c. 696, § 330, eff. March 31, 1978.

Historical Note

The 1977 amendment repealed and replaced the section, which in effect substituted "that", "the" and "these" respectively for three occurrences of "said" and substituted "commits a civil violation for which a forfeiture of \$25 shall be adjudged" for "shall be subject to a fine of \$25".

Cross References

Port wardens, election and duties, see § 41 et seq. of this title.

Library References

Navigable Waters §14(2).

C.J.S. Navigable Waters § 17.

Notes of Decisions

Compensation 2 Public officer 1

1. Public officer

Where the office of harbor master was created by this section and by an ordinance of the City of Portland, passed under the act providing for the election of a harbor master, to receive such compensation as its city council should establish, such harbor master was a public officer, and not a mere employee of the city. *Goud v. City of Portland* (1902) 96 Me. 125, 51 A. 820.

2. Compensation

Where, in an action by a harbor master for compensation, the evidence showed that, prior to his election as such, the city council passed

an order that there should be no separate salary attached to the office, but that compensation should be included in the amount paid for the maintenance of a fire boat, and that the harbor master was captain of such fire boat, and received compensation as such, and that he was aware of such ordinance when he accepted the office of harbor master, he was not entitled to recover for his services from the city. *Goud v. City of Portland* (1902) 96 Me. 125, 51 A. 820.

Where an ordinance provided for the election of a harbor master, and for such compensation as the city council may determine, such harbor master was a public officer, and could not recover against the city on an implied promise to pay what his services were reasonably worth. *Id.*

§ 2. Rules for channel lines; enforcement

The municipal officers of all maritime towns and plantations shall make rules and regulations, with suitable provision for enforcement, for the keeping open of convenient channels for the passage of vessels in the harbors and waterways of the towns for which they act, and shall establish the boundary lines of such channels and assign suitable portions of their harbors for anchorages.

Such rules and regulations as may be made by such municipal officers shall be enforced and carried out by the harbor master of said town, who may appoint a deputy, to act in case of his

38 § 2

WATERS AND NAVIGATION

Title 38

absence or disability, his deputy, if any, or any other law enforcement officer of the State or any political subdivision thereof.

R.S.1954, c. 98, § 2; 1961, c. 395, § 36; 1965, c. 242.

Historical Note

The 1965 amendment inserted "with suitable provision for enforcement" in the first paragraph and added "his deputy, if any, or any other law enforcement officer of the State or any political subdivision thereof" to the second paragraph.

Cross References

Establishment of harbor lines by Secretary of the Army, see 33 U.S.C.A. § 404.
Offshore waters and submerged land, see title 1, § 2.

Library References

Navigable Waters ⇐2.

C.J.S. Navigable Waters § 10 et seq.

§ 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 harbors where mooring rights of individuals are claimed to be invaded and protection is sought of the harbor master, he shall assign and indicate to the master or owner of boats and vessels the location which they may occupy with or for mooring purposes, the kind of mooring to be used and shall change the location of said moorings from time to time when the crowded condition of such harbor or other conditions render such change desirable. He shall assign mooring privileges in such waters in all cases where individuals who own the shore rights or have an interest in the same are complainants, and shall locate suitable mooring privileges therefor for boats and vessels, temporarily or permanently as the case may be, fronting their land, if so requested, but not thereby to encroach upon the natural channel or channels established by municipal officers. The municipal officers shall fix the compensation of the harbor master for such services rendered.

R.S.1954, c. 98, § 3; 1961, c. 395, § 37.

Cross References

Anchorage grounds and harbor regulations generally, see 33 U.S.C.A. § 471 et seq.

Mooring watercraft to buoys or beacons, see title 17, § 2497.

Library References

Navigable Waters ⇐14(1).

C.J.S. Navigable Waters § 16.

§ 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, said harbor master shall cause said mooring to be removed or shall make such change in the character thereof as required, and shall collect from the master or owner of such boat or vessel the sum of \$2 for either of such services rendered and the necessary expenses.

R.S.1954, c. 98, § 4.

Library References

Shipping ⇨71.

C.J.S. Shipping §§ 70, 71.

§ 5. Removal of vessels obstructing anchorage

A harbor master shall, upon complaint to him by the master, owner or agent of any vessel, cause any other vessel or vessels obstructing the free movement or safe anchorage of such vessel to remove to a position to be designated by him, and to cause, without any complaint being made to him, any vessels anchoring within the channel lines as established by the municipal authorities as provided in section 2 to remove to such anchorage as he may designate. Whoever neglects or refuses to obey the orders of the harbor master shall be guilty of a Class E crime.

If such 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, then and in that case such harbor master may put a suitable crew on board and move such vessel to a suitable berth at a wharf or anchorage at the cost and risk of the owners thereof, and shall charge \$2, to be paid by the master or owner of such vessel, which charge together with the cost of the crew for removing such vessel the harbor master may collect by civil action.

R.S.1954, c. 98, § 5; 1961, c. 317, § 294; 1977, c. 696, § 331, eff. March 31, 1978.

Historical Note

The 1977 amendment repealed and replaced the second sentence, which formerly read: "Whoever neglects or refuses to obey the orders of such harbor master shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$50 or by imprisonment for not more than 60 days, or by both."

Library References

Wharves ⇨12.


C.J.S. Wharves § 7.

§ 6. Power to arrest for assault

Harbor masters may arrest and deliver to the police authorities on shore any person committing an assault upon them or another person acting under their authority.

R.S.1954, c. 98, § 6.

Library References

Arrest 64.

C.J.S. Arrest §§ 12 to 15.

SUBCHAPTER II**PORT WARDENS**

Sec.

- 41. Election; qualifications; term; removal; vacancies; records.
- 42. Duties; vessels arriving.
- 43. —distressed vessels.
- 44. —wrecked or damaged vessels.
- 45. Fees.
- 46. Jurisdiction; impersonation; penalty.

§ 41. Election; qualifications; term; removal; vacancies; records

Port wardens shall be elected in any city or town situated on navigable waters upon the petition of 10 or more citizens engaged in commercial pursuits therein.

If in such city or town there is a board of trade duly incorporated, said board shall annually elect the port warden. Otherwise the municipal officers thereof shall annually elect him.

Port wardens shall be men of commercial or nautical experience and shall hold office one year from each election and until others are qualified in their stead, except when removed for cause or when elected to serve out an unexpired term. They shall be sworn faithfully to perform their duties.

Said boards of trade, by their managers, or said municipal officers shall forthwith on complaint of any person aggrieved, after hearing, remove for cause any port warden by them elected, and all vacancies shall be filled by said authorities.

Port wardens shall make a record of their doings and keep the same in their office for inspection at any time, free of charge, by any person interested therein.

R.S.1954, c. 99, § 7.

Cross References

Harbor masters, appointment and duties, see § 1 et seq. of this title.