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Summary of Regulatory Revisions Related to Designated Port Areas 310 CMR 9.00

The Office of Coastal Zone Management (CZM) and the Department of Environmental Protection (MassDEP) have revised the following regulations: 310 CMR 9.00, Waterways; 301 CMR 23.00, Review and Approval of Municipal Harbor Plans; and 301 CMR 25.00, Designation of Port Areas. The purpose of these revisions is to increase the flexibility provided to municipalities and businesses in selected areas within Designated Port Areas (DPAs). Summaries, forms and revised regulations for 301 CMR 23.00 and 301 CMR 25.00 are being submitted separately by CZM. This summary details the revisions for Designated Port Areas for 310 CMR 9.00 which are implemented by MassDEP.

310 CMR 9.00 protects and promotes the public's interest in filled and flowed tidelands, Great Ponds, and non-tidal rivers and streams in accordance with the Public Trust Doctrine. MassDEP's licensing authority under M.G.L. c. 91, and its regulations at 310 CMR 9.00 permit uses, fill, and structures in these jurisdictional areas. 310 CMR 9.00 includes, among other things, regulations protecting traditional water-dependent industrial uses in DPA's including, but not limited to, commercial fishing, commercial passenger vessel operation, boat repair and maintenance, and other commercial shipping activities from displacement by nonwater-dependent commercial, residential, and recreational uses.

The revisions to 310 CMR 9.00 will work in concert with the revisions to the MHP regulations at 301 CMR 23.00 and the DPA regulations at 301 CMR 25.00. DPAs are a distinct jurisdictional subset of regulated tidelands in the Commonwealth, and the changes to 310 CMR 9.00 will allow an expanded set of compatible industrial and commercial uses that reflect new and emerging technology in water-dependent industrial commerce. The changes also allow for alternative beneficial revenue sources to port operations, which will protect the long term vibrancy of these areas. The revisions to the Waterways regulations:

- clarify the definition of a Boatyard;
- broaden the definition of Supporting DPA Uses;
- strengthen the definition of Temporary Uses;
- add allowable water-dependent industrial uses;

- add clarification to allowed Accessory Uses to a water-dependent industrial use;
- add more specificity to Categorical Restrictions for parking and supporting uses on pile-supported structures over flowed tidelands within a DPA;
- permit maintenance of existing previously authorized recreational boating facilities within a DPA;
- permit recreational berths authorized in connection with a Boatyard; and
- provide for more flexibility in the standards for Boatyards in a DPA.

The revisions strengthen the Designated Port Area and Municipal Harbor Planning programs. This is accomplished by providing CZM greater flexibility to review, and potentially alter, the boundary of portions of DPAs that are clearly not necessary to ensure the strength and viability of the DPAs. Removal of areas inappropriately included in DPAs helps eliminate municipal and business concerns regarding unnecessary limitations caused by DPAs. Through its Waterways Regulations MassDEP will continue to conduct the licensing of actual uses and structures within the areas of DPAs within their jurisdiction. Additional flexibility in the licensing standards allows for additional types of businesses in these areas. For areas removed from DPAs, licensing will likely become easier for both MassDEP and the property owner. Broadening the ability of MHPs to target specific areas to allow supporting uses over filled tidelands and limited size recreational boating facilities demonstrates the Commonwealth's desire to continue to work closely with municipalities and businesses to increase the long-term strength and sustainability of marine industrial businesses in DPAs.

CZM and MassDEP established a stakeholder advisory group in 2010 to begin discussing potential regulatory revisions to these regulations. This stakeholder advisory group was reconvened in 2014, and reviewed draft language of potential regulatory revisions. The advisory group met on three occasions to discuss the revisions, and reached general consensus that the revisions would clarify and improve the existing regulations, and provide greater flexibility to municipalities in managing their DPAs. The advisory group included representation from all the major DPAs in the Commonwealth (including Boston, New Bedford, Salem, and Gloucester), as well as selected businesses and NGOs. The formal comments that were received on the revisions were generally of a positive nature and include a balance of proponents wishing for even greater flexibility and those expressing a hesitation to provide more flexibility within DPAs.

Only two revisions were made to the public comment draft regulations to create this final revised version. One change clarifies that support services for accessory uses to water dependent industrial uses are permissible outside of normal working hours that the water dependent industrial use and related accessory uses are open for business. (310 CMR 9.12(3)(b)). The second change at 310 CMR 9.32(1)(b)7 clarifies that recreational berths may be permitted in a DPA if an Approved DPA Master Plan so allows.