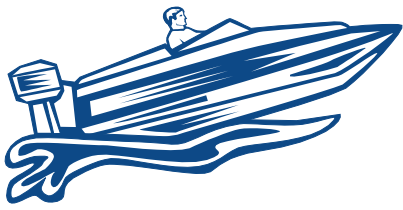




# **Chapter Six: Major Regulatory Programs**

**6.1 Regulatory Overview**

**6.2 Statutes and Regulations**



# Major Regulatory Programs

The many statutes, regulations, permits, and legal requirements that apply to marinas are referred to throughout this guide. This chapter discusses how these regulatory programs work together to protect coastal resources and water quality and outlines the specific requirements for your business. It is intended to give you the basics so you can work with your environmental consultant and state and federal regulators to ensure that your facility complies with the law.

This chapter is organized into two sections. Section 6.1 provides the overall regulatory framework, and is divided into four categories of marina activity: siting, construction or expansion, maintenance, and operations. For each of these categories, an overview of the types of regulatory issues that face marinas is provided, along with a brief summary of the major regulatory programs. The names of the various regulations and permits are shown in bold, followed by a number in parentheses, which corresponds to the description of the regulatory program in Section 6.2.

Section 6.2 provides technical descriptions of each of the statutes and regulations referenced in the first section, including regulatory citations, jurisdictions, summaries, and contact information.

It is unlikely that marina owners will want to actually obtain all the applicable permits themselves. The environmental consultant that is or has designed your marina will generally obtain the permits as part of the package of services that you purchase from them. The information in this chapter will help you to work effectively with your environmental consultants to ensure your facility's on-going compliance with the regulations.

## 6.1 Regulatory Overview

Before delving into the details of the regulations in Section 6.2, the discussion below provides an overview of the regulatory programs that apply to marina siting, construction or expansion, maintenance, and operations.

### Siting

When siting a marina, you think, of course, of the best place to attract a customer base, to protect your investment, and so on. Because of their potential impact on critical resources, however, certain sites have greater requirements, making construction difficult or impossible to permit. There are several regulatory programs that apply to marina siting.

The state's Department of Environmental Management (DEM) administers the **Areas of Critical Environmental Concern (ACEC) (1)** program. ACECs are complexes of natural resources that have been judged to be of state-wide significance, and therefore any project proposed in an ACEC is subject to a heightened regulatory review. New docks and piers and improvement dredging are particularly difficult to permit in ACECs.

The state had a **Coastal Wetland Restriction (2)** program under which many activities in wetlands were curtailed. These restrictions were recorded with the property deed at the County's Registry of Deeds. Though the program is no longer active, there are still some recorded restrictions in effect, so it's best to check.

Construction on a **flood plain (3)** may make it necessary for you to get flood insurance in order to obtain your construction financing and to protect your investment. Use of state funds to construct infrastructure, such as roads, and construction of coastal engineering structures is prohibited on **barrier beaches (4)**. Locating your facility near a barrier beach may invoke some of these prohibitions, affect both the marina's design and possibly limit the availability of state-funded services to your facility.

The presence of state or federally listed threatened and **endangered species (5,6)** at or near a proposed marina site will make obtaining the necessary environmental permits difficult or impossible. The state's Natural Heritage Program staff can help to identify any mapped habitat for endangered species.

Marina proponents should also consider the presence of archeological artifacts, historic structures, shellfish, and federally designated essential fish habitat, any one of which can increase the difficulty of obtaining permits. The state's Board of **Underwater Archeological Resources (7)**, the **Massachusetts Historical Commission (8)**, the **Massachusetts Division of Marine Fisheries (DMF) (9)**, and the **National Marine Fisheries Service (NMFS) (10)** respectively can provide additional information about the presence of these resources. The state's **Ocean Sanctuaries Act (11)**, administered by the DEM, also places some limits on siting new marinas.

In urbanized ports, recreational marinas are not permitted in **Designated Port Areas (DPAs) (12)**. Some cities and towns have chosen to develop state-approved **Municipal Harbor Plans (13)**. These plans may include siting and design criteria for marinas, or may have prohibitions against in-water construction or mooring placement.

### **Construction or Expansion**

A number of permits must be obtained before a marina construction or expansion project can begin. These permits are listed below in the order in which they are issued by the permitting agency.

A proposal to construct a marina of 50 or more slips or to expand a marina by 50 slips must undergo review under the **Massachusetts Environmental Policy Act (MEPA) (14)**, and must file an Environmental Notification Form (ENF). This review gives state permitting agencies and the public an opportunity to comment on a proposal while it is still in the planning stages so that environmental concerns and permitting problems can be brought to the applicant's attention and remedied before significant investment is made into a specific proposal that will not work. If significant environmental problems are identified at the ENF stage, an Environmental Impact Report (EIR) may be required.

During or right after the MEPA review, a Notice of Intent (NOI) should be filed with the town or city's Conservation Commission, which administers the **Massachusetts Wetlands Protection Act (15)**. Land under the water, coastal banks, dunes, and land subject to coastal storm flowage are all considered wetlands under the Act, and any construction on a wetland must meet its performance standards. The Conservation Commission will issue an Order of Conditions, which specifies construction methods and operational constraints that will avoid or minimize and mitigate damage to wetland areas.

If your construction project requires dredging more than 100 cubic yards of material, you must obtain a **401 Water Quality Certification (16)** from the Department of Environmental Protection (DEP), which indicates that dredging will not adversely affect water quality. Conditions of the Certification may include requirements to use silt curtains, “environmental buckets” for certain sediment types, dewatering methodologies, and time-of-year restrictions to protect fish spawning.

To place structures in the water and on adjacent land, and to allow dredging to take place, a **Chapter 91 license (17)** must be obtained. The Chapter 91 or Waterways Program regulates activities on filled and flowed tidelands of the Commonwealth. An engineer will have to prepare stamped drawings of the marina layout, which will eventually be filed at the Registry of Deeds along with the deed to your marina property. Because tidelands are “public trust” lands, that is, they are owned in common by the citizens of the state, public benefits must be offered in exchange for private use of this land. The license itself will include conditions that ensure that public benefits, such as public walkways, are constructed.

If you are proposing to have a fuel dock at your facility, you must obtain the necessary permits from the **State Fire Marshall (18)**. Considerations will include storage, handling, and engineering of the facility.

The **Massachusetts Office of Coastal Zone Management (CZM) (19)** conducts a final review of coastal projects, known as federal consistency review. Any project that requires a federal permit must be consistent with state coastal policies, as administered by CZM. CZM has worked with both the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) to develop general permits for projects of minimal environmental impact. If your project is eligible for one of these general permits, it does not generally have to undergo a separate CZM federal consistency review.

Required federal permits may include the Army Corps of Engineers **Section 10/404 and 103 permits (20,21,22)**. Section 10 of the Rivers and Harbors Act governs placement of structures in navigable waters. Issues such as location of federal navigation channels, access of adjacent users to their waterfront, and safe navigation are considered. Section 404 of the federal Clean Water Act ensures that any fill placed in the waters of the U.S. (wetlands are also considered waters of the U.S.) will not harm the quality of the water or the plants and animals in it. Federal resource agencies will consider impacts to wetlands, eelgrass, shellfish, sediment transport, and water quality

when placing conditions on this permit. A Section 103 permit is required if you are proposing to dispose of dredged material in the ocean. Again the issues of concern are water quality and the impact of sediment on animal and plant life. All of these permits have been wrapped into the **Massachusetts Programmatic General Permit (PGP) (23)** and, for projects of little or no environmental impact, the permitting process is minimal.

If your project will alter five or more acres of land, the U.S. Environmental Protection Agency's (EPA) **Storm Water Construction General Permit (24)** applies. [New rules, recently promulgated by the EPA, known as Stormwater Phase II, have decreased the applicable threshold from five acres to one acre, however, the new program will not go into effect until late 2002.] Like the PGP, this general permit contains a number of construction provisions and the application is simply a one-page notification to the EPA.

The state and federal regulatory agencies have made a significant effort in recent years to develop permits that have similar review thresholds and resource definitions. This effort has resulted in a more streamlined review process. For example, federal agencies now usually require minimal review of impacts that have already been conditioned and mitigated by the state permitting process.

### **Marina Maintenance**

Both your **Order of Conditions (25)** and your **Chapter 91 license (26)** probably have conditions that either require or allow certain kinds maintenance.

The Order may include restrictions on dragging dinghys or equipment across salt marsh. It probably requires that you perform regular maintenance on any stormwater control structures that you have on your property. Regular maintenance of shoreline erosion control structures (bulkheads, revetments, etc.) may also be included in the Order. The town's conservation officer may want to visit the marina to ensure that these conditions have been carried out.

A Chapter 91 license is usually issued so that a property owner can construct and maintain the project as originally proposed. This means that you can replace structures such as bulkheads and piers in the original footprint without getting a new license. If you are proposing to expand this type of structure, you may need a new license.

Dredging is also permitted under the Chapter 91 license. Maintenance of your existing dredged footprint may be allowed for five to ten years under a single permit. Improvement dredging will require a new Chapter 91 license.

### **Operations**

The services offered by marinas may generate a variety of pollutants that are regulated by state and federal law. The idea behind the permits that you will need to operate your facility, and the regulations governing them, is to minimize the impacts of these pollutants on the marine environment. Permits may be required for stormwater, sewage, hazardous wastes, air quality and boat operations.

## Stormwater

One of the biggest sources of pollutants from the on-going operations of a marina is stormwater runoff from your facility into the surrounding waters. Stormwater can pick up contaminants from marine paints, solvents, and fuels that are toxic to marine plants and animals. EPA has developed the **Storm Water Multi-Sector General Permit (27)** to regulate industrial runoff. The permit is a general permit. By submitting a one page Notice of Intent to the EPA and developing and following a stormwater management plan for your facility, EPA considers your facility permitted. If you follow the applicable Best Management Practices described in Chapter 4 of this document, you will already have all the tools that you will need to develop and comply with your stormwater management plan. An outline of the requirements for a stormwater management plan is included in Appendix E.

## Sewage

Under the federal Clean Water Act, recreational and commercial vessels are required to have some on-board means of controlling the discharge of raw sewage. Options include a bucket, Porta-Potties, and Coast Guard-approved **Marine Sanitation Devices (MSDs) (28)**. Buckets and Porta-Potties must be emptied ashore. MSDs either treat the wastes before discharge or hold them in a tank until the tank can be pumped out. Requirements vary, depending on the size and use of the boat, and are enforced by the Coast Guard.

The Clean Water Act also has a process for designating “**No Discharge Areas (NDAs) (29)**” in which, as the name implies, no boat sewage discharges are allowed into marine waters. No sewage from any of the MSDs mentioned above can be released in a No Discharge Area. As of this writing, NDAs in Massachusetts include Nantucket Harbor, Wellfleet Harbor, Waquoit Bay in Mashpee, Stage Harbor in Chatham, coastal waters of Harwich, Falmouth Harbor, and all of Buzzards Bay. In addition, all marine waters of Rhode Island are in an NDA.

Marina owners should know about the **Clean Vessel Act (30)** program, funded by the federal government and administered by the state’s Division of Marine Fisheries (DMF). Under this program, funding is available for the purchase of pumpout facilities to serve vessels with holding tanks. Both public agencies, such as a town’s harbor-master, and private marina owners are eligible for funding.

## Hazardous Wastes

Marina operations may generate **hazardous wastes (31,32)**, such as waste oil, solvents and paints. Marina owners are responsible for proper storage and disposal of these hazardous materials. Different materials require different storage containers. Licensed haulers or an industrial supply company can provide the appropriate containers. Disposal must be by a licensed hauler. Marinas do not require a permit to dispose of this material (the hauler has the permits), but you are required to identify the wastes that are to be transported so that the hauler can file proper freight manifests with DEP.

It is also important that marina operators and their customers know that tin-based **anti-fouling paints (33)** have been banned because of the toxic effects of tin on marine life. It is also illegal to dispose of **plastics (34)** anywhere in the waters of the United States, which extends out to 200 miles offshore.

### **Air Quality**

Marinas are not likely to use the volumes of paints and solvents that would subject them to the requirements of the **federal or state Clean Air Acts (35)**. These substances, however, damage marine life if they get into the water. It would be a good practice to require that any of your do-it-yourself customers use water-based paints, if available, and that they use practices, such as drip clothes, to prevent spills into the water.

**Boat exhausts (36)** also fall under the jurisdiction of Massachusetts air quality regulations. Any noticeable black engine soot is a violation of the state's regulations. Though you are not responsible for your customer's engine maintenance, encouraging them to keep their engines well-tuned would help them comply with clean air requirements.

### **Boat Operations**

Again, marina owners are not directly responsible for customers boating practices. However, reminding boaters of their legal obligations (e.g., not operating while drinking, speeding, operating near public swimming areas, etc.) and respect and courtesy for others helps everyone. **Boating safety (37)** laws are the jurisdiction of the Massachusetts Environmental Police.

## **6.2 Statutes and Regulations**

This section contains technical descriptions of the statutes and regulations. For each statute or program, the following information is provided: statutory and regulatory citations, the area or activities under jurisdiction, a brief description of the intent of the statute or program, and a list of phone and Web contacts for further information.

### **List of Acronyms and Symbols Used in the Statutes and Regulations**

M.G.L.	Massachusetts General Laws
CMR	Code of Massachusetts Regulations
c.	chapter
§	Section
§§	Sections
CFR	Code of Federal Regulations
U.S.C.	United States Code
<i>et seq.</i>	and subsequent sections



## 1. Areas of Critical Environmental Concern

**Authorities:** M.G.L. c. 21A, § 2(7): Areas of Critical Environmental Concern; 301 CMR 12.00: Areas of Critical Environmental Concern

**Jurisdiction:** Designated coastal and inland Areas of Critical Environmental Concern

**Regulatory Summary:** The purpose of the ACEC Program is to preserve, restore, and enhance environmental resources and resource areas of statewide significance. To accomplish this purpose, the Program 1) identifies and designates critical resources and resource areas; 2) increases the level of resource protection in designated ACECs; and 3) engages municipalities, state agencies, non-governmental organizations, and individuals in planning and carrying out resource management planning in ACECs. Generally, proposed ACECs are nominated by municipalities and citizen organizations. Once designated by the Massachusetts Secretary of Environmental Affairs, resource protection is enhanced by the elimination of MEPA thresholds for projects proposed in ACECs, thus ensuring a closer regulatory scrutiny by state agencies. Certain activities, such as improvement dredging and new pier construction, are prohibited until the specific activity is incorporated into a Resource Management Plan approved by participating municipalities and the Secretary of Environmental Affairs.

**Web Site:** [www.state.ma.us/dem/programs/acec](http://www.state.ma.us/dem/programs/acec)

**Contact:** DEM ACEC Coordinator (617) 626-1394 or (413) 586-8706  
CZM Coastal ACEC Stewardship Coordinator: (508) 767-2882

## 2. Coastal Wetlands Restriction Act

**Authorities:** M.G.L. c. 130, § 105: Protection of Coastal Wetlands; 310 CMR 12.00: Adopting Coastal Wetlands Orders.

**Jurisdiction:** Coastal wetlands for which Orders imposing restrictions have been adopted in the Commonwealth of Massachusetts

**Regulatory Summary:** The purpose of the Coastal Wetlands Restriction Act is to preserve the public health, safety and welfare, private property, wildlife and marine fisheries by the adoption, after suitable public comment, of Orders imposing restrictions on coastal wetlands. Regulated activities in restricted wetlands include dredging, filling, removing, and otherwise altering or polluting these resources. Coastal wetlands restriction orders are recorded at the Registry or Deeds. While this program is not currently active, a number of Orders have been recorded and are still in effect.

**Web Site:** no web site

**Contact:** DEP Wetlands restrictions (617) 292-5695



### 3. Executive Order 149:

#### Federal Emergency Management Agency and Floodplain Use

**Authority:** Executive Order No. 149

**Jurisdiction:** Floodplains in the Commonwealth of Massachusetts

**Regulatory Summary:** Designates DEM's Water Resources Commission as the state coordinating agency to implement the National Flood Insurance Program (NFIP). Requires all state agencies, to the extent possible, to avoid construction, provision of loans or grants, conveying, or permitting projects in floodplains. Provides for Massachusetts participation in the NFIP.

**Web Site:** [www.state.ma.us/dem/programs/mitigate/index.htm](http://www.state.ma.us/dem/programs/mitigate/index.htm)

**Contact:** DEM's NFIP Manager, (617) 626-1406

### 4. Executive Order 181: Barrier Beaches

**Authority:** Executive Order 181

**Jurisdiction:** Barrier Beaches in the Commonwealth of Massachusetts

**Regulatory Summary:** Protects the state's barrier beach system, orders state and federal funding to be used to acquire barrier beaches and to relocate willing sellers; prohibits use of state and federal funding of growth and development in hazard prone areas; requires the preparation of barrier beach management plans for state-owned beaches; prohibits development in velocity zones or on primary dunes; limits the use of coastal engineering structures on barrier beaches; and encourages use of appropriate dredged material for nourishment of barrier beaches.

**Web Sites:** [www.state.ma.us/czm](http://www.state.ma.us/czm)  
[www.state.ma.us/dem/programs/mitigate/hazguide.pdf](http://www.state.ma.us/dem/programs/mitigate/hazguide.pdf)

**Contact:** CZM Coastal Geologist (617) 626-1228

### 5. Massachusetts Endangered Species Act

**Authorities:** M.G.L. c. 131A: Massachusetts Endangered Species Act; 321 CMR 8:00: List of Endangered and Threatened Species; 321 CMR 10:00: Massachusetts Endangered Species Regulations

**Jurisdiction:** Plants and animals in Massachusetts that are endangered, threatened, or species of concern, and their habitats

**Regulatory Summary:** The states Endangered Species Act provides for listing of endangered or threatened species or species of concern, and of their habitat. The Act prohibits the taking, possession, transport, export, processing, sale or purchase of such listed species and other species listed under the federal Endangered Species Act. The Act prohibits any alteration of significant habitat of any protected species that may reduce the viability of the habitat. Priority Habitat maps for listed species can be viewed in the Natural Heritage Atlas.

**Web Site:** [www.state.ma.us/dfwele/dfw/nhesp/heritage.htm](http://www.state.ma.us/dfwele/dfw/nhesp/heritage.htm)

**Contact:** Massachusetts Natural Heritage and Endangered Species Program  
(508) 792-7270, x200

## 6. Federal Endangered Species Act

**Authorities:** 16 U.S.C. § 1531 *et seq.*: Endangered Species Act of 1973; 50 CFR 17.00: Endangered Species and Threatened Wildlife and Plants

**Jurisdiction:** Plants and wildlife of the United States that are endangered or threatened, and their habitats

**Regulatory Summary:** The federal Endangered Species Act conserves the ecosystems on which endangered and threatened species depend. Species are protected under the Act as either endangered or threatened. Endangered means a species is in danger of extinction throughout all or a significant portion of its range. Threatened means a species is likely to become endangered within the foreseeable future. The law is jointly administered by the National Marine Fisheries Service, which is responsible for marine species, and the U.S. Fish and Wildlife Service, which is responsible for terrestrial and freshwater species.

**Web sites:** [www.endangered.fws.gov/](http://www.endangered.fws.gov/)  
[www.nero.nmfs.gov/](http://www.nero.nmfs.gov/)

**Contact:** U.S. Fish and Wildlife Service Regional Office (413) 253-8615;  
National Marine Fisheries Service (978) 281-9102

## 7. Underwater Archeological Resources

**Authorities:** M.G.L. c. 6, §§ 179 & 180: Board of Underwater Archeological Resources; 312 CMR 2.00: Massachusetts Underwater Archeological Resources

**Jurisdiction:** Underwater archeological resources within the coastal and inland waters of Massachusetts

**Regulatory Summary:** The Board is responsible for managing underwater historical and archeological resources. It does so by encouraging discovery, reporting, protection and preservation of resources such as abandoned properties, artifacts, treasure trove, and sunken ships that have remained unclaimed for 100 years or more, or which are valued at \$5,000 or more. Anyone wishing to excavate an underwater archeological site must obtain a permit from the Board. The exact location of archeological sites is not made public, in order to protect the resources from unauthorized excavation. Proponents of projects in jurisdictional waters must contact the Board to find out if the proposed activity will disturb underwater archeological resources.

**Web Site:** [www.state.ma.us/czm/buar.htm](http://www.state.ma.us/czm/buar.htm)

**Contact:** Board of Underwater Archeology (617) 626-1141

## 8. Massachusetts Historical Commission (MHC)

**Authorities:** M.G.L. c. 9, §§ 26-27D: Massachusetts Historic Commission; M.G.L. c. 40C: Historic District Act; 950 CMR 71.00: Protection of Properties Included on the State Register of Historic Places

**Jurisdiction:** Properties on or eligible for listing on the National Register of Historic Places

**Regulatory Summary:** The National Historic Preservation Act is administered in this state by the Massachusetts Historic Commission (MHC). The Commission inventories historic properties and places in Massachusetts; promotes historic preservation in a variety of ways; and implements state and federal preservation laws. The primary regulatory vehicle is Section 106 of the federal Act, which requires federal agencies to “take into account” the effects of federal projects on properties listed or eligible for listing on the National Register. The Section 106 consultation process is a negotiation designed to resolve conflicts between proposed uses and historic places. It does not guarantee the preservation of the property, but rather guards against inadvertent destruction of historic resources. A similar process protects properties included on the State Register of Historic Places, however, under state law, project proponents have a responsibility to avoid, minimize and mitigate any adverse impacts to historic resources. In addition to federal and state preservation programs, many communities have established local historic districts and local preservation by-laws.

**Web Site:** [www.state.ma.us/sec/mhc](http://www.state.ma.us/sec/mhc)

**Contact:** Massachusetts Historical Commission (617) 727-8470

## 9. Massachusetts Division of Marine Fisheries (DMF)

**Authorities:** M.G.L. c. 21, § 5, and c. 130, §§ 1-104: Marine Fisheries; 322 CMR 2.00 *et seq.*: Marine Fisheries Regulations

**Jurisdiction:** Commercial and sport finfisheries and shellfisheries within the Massachusetts territorial sea and in Nantucket Sound

**Regulatory Summary:** The Division of Marine Fisheries (DMF) licenses and oversees finfisheries and shellfisheries in Massachusetts waters, both for resident species and those that spend a portion of their lifecycle in the state’s tidal waters. Responsibilities include 1) administration of marine fisheries laws; 2) assessment and enhancement of the biological integrity of marine fish and fisheries important to the Commonwealth; and cooperation with state, federal and international agencies to accomplish these goals. Regulatory activities are conducted in coordination with the National Marine Fisheries Service.

**Web Site:** [www.state.ma.us/dfwele/dmf](http://www.state.ma.us/dfwele/dmf)

**Contact:** Division of Marine Fisheries (617) 626-1520

## 10. National Marine Fisheries Service (NMFS)

**Authorities:** 16 U.S.C. §1801 *et seq.*: Magnuson-Stevens Fishery Conservation and Management Act; 50 CFR 600.00: Essential Fish Habitat

**Jurisdiction:** Habitat of marine, estuarine, and anadromous finfish, mollusks, and crustaceans

**Regulatory Summary:** The 1996 amendments to the Magnuson Stevens Act strengthened the ability of NMFS and the Fisheries Councils to protect essential fish habitat (EFH), including the waters and substrates necessary for fish to spawn, breed, feed, or grow to maturity. Habitat for managed species must be identified and adverse effects to EFH minimized. NMFS and other federal agencies must coordinate with each other on efforts to preserve and enhance EFH. EFH has been identified for 59 species in New England.

**Web Site:** [www.nero.nmfs.gov](http://www.nero.nmfs.gov)

**Contact:** National Marine Fisheries Service, Habitat Conservation Division  
(978) 881-9102

## 11. Ocean Sanctuaries Act

**Authorities:** M.G.L. c. 132A, §§ 12A-16F, 18: Ocean Sanctuaries Act; 302 CMR 5.00: Ocean Sanctuaries

**Jurisdiction:** There are five Ocean Sanctuaries in Massachusetts waters including the Cape Cod, Cape Cod Bay, Cape and Islands, North Shore, and South Essex Ocean Sanctuaries. These include most state waters with the major exception of an area east of Boston Harbor. The landward boundary of the sanctuaries is the mean low water mark and the seaward boundary is the limit of state waters, generally three miles offshore. The boundaries are statutory and are described at M.G.L. c. 132A, § 13. Jurisdiction is limited to the seabed in designated sanctuaries.

**Regulatory Summary:** The Ocean Sanctuaries Act prohibits activities that may significantly alter or endanger the ecology or appearance of the ocean, seabed, or subsoil of sanctuaries or the Cape Cod National Seashore. To accomplish this goal the Act prohibits 1) building structures on or under the seabed; 2) construction or operation of offshore or floating electrical generating stations, and drilling or removal of sand, gravel, other minerals, gases, or oils; 3) dumping or discharge of commercial, municipal, domestic or industrial wastes; 4) commercial advertising; and 5) incineration of solid waste or refuse on vessels within sanctuary boundaries. These prohibitions may be waived if a finding of “public necessity and convenience” can be made for the proposed project or activity. Under the Ocean Sanctuaries Act, DEM does not issue any licenses or permits but acts through the regulatory process of other agencies, particularly the Chapter 91 Waterways Program.

**Web Site:** [www.state.ma.us/dem/programs.htm](http://www.state.ma.us/dem/programs.htm)

**Contact:** DEM Ocean Sanctuaries Coordinator (617) 626-1371

## 12. Designated Port Areas (DPAs)

**Authorities:** M.G.L. c. 91: Public Waterfront Act; 301 CMR 25.00: Designation of Port Areas; 310 CMR 9.00: Waterways Regulations

**Jurisdiction:** State-designated areas of concentrated maritime industrial activities

**Regulatory Summary:** Under the provisions of Chapter 91, the state may designate areas in developed ports for the purposes of promoting and protecting marine industrial activities and certain supporting uses. Recreational marinas are not allowed in designated DPAs. DPAs have been set aside in Gloucester Inner Harbor, Beverly Harbor, Salem Harbor, Lynn, Mystic River, East Boston, Chelsea Creek, South Boston, Weymouth Fore River, New Bedford-Fairhaven, and Mount Hope Bay.

**Web Sites:** [www.state.ma.us/czm/phpp2.htm](http://www.state.ma.us/czm/phpp2.htm)  
[www.state.ma.us/dep/brp/ww/rpwwhome.htm](http://www.state.ma.us/dep/brp/ww/rpwwhome.htm)

**Contacts:** CZM Tidelands Coordinator (508) 767-2882;  
CZM Regional Coordinators (617) 626-1200;  
DEP Waterways Program (617) 292-5695

## 13. Municipal Harbor Plans

**Authorities:** M.G.L. c. 91: Public Waterfront Act; 301 CMR 23.00: Municipal Harbor Plans, 310 CMR 9.00: Waterways Regulations

**Jurisdiction:** Filled and flowed tidelands of the Commonwealth

**Regulatory Summary:** Municipal harbor plans establish a community's objectives, standards, and policies for guiding public and private utilization of land and water within Chapter 91 jurisdiction. Plans provide for an implementation program, which specifies the legal and institutional arrangements, financial strategies, and other measures to be taken to achieve the objectives of the harbor plan. Harbor plans may establish siting and design criteria for marinas within a harbor, and they can also designate certain parts of a harbor as off-limits to in-water construction and mooring placement. Plans are developed under CZM regulations and implemented under Chapter 91 regulations.

**Web Sites:** [www.state.ma.us/czm/phpp2.htm](http://www.state.ma.us/czm/phpp2.htm)  
[www.state.ma.us/dep/brp/ww/rpwwhome.htm](http://www.state.ma.us/dep/brp/ww/rpwwhome.htm)

**Contacts:** CZM Regional Coordinators (617) 626-1200; DEP Waterways Program (617) 292-5695

#### 14. Massachusetts Environmental Policy Act (MEPA)

**Authorities:** M.G.L. c. 30, §§ 61-62H: Massachusetts Environmental Policy Act; 301 CMR 11.00: MEPA Regulations

**Jurisdiction:** Projects requiring a state environmental license or permit, or funding

**Regulatory Summary:** MEPA provides opportunities for public review of the potential environmental impacts of projects for which state agency action is required. MEPA also helps state agencies satisfy their obligation to avoid damage to the environment, or if damage to the environment cannot be avoided, to minimize and mitigate the damage to the maximum extent practicable. State agency action includes activities that are undertaken, permitted, and/or funded by agencies of the Commonwealth, and the transfer of lands owned or controlled by the Commonwealth. Major categories of project impacts subject to review include land; rare species; wetlands, waterways, and tidelands; water; wastewater; transportation; energy; air; solid and hazardous waste; historical and archeological resources; and state-designated Areas of Critical Environmental Concern.

The intent of the MEPA review is to inform project proponents and state agencies of potential adverse environmental impacts while a proposal is still in the planning stage. The proponent, through the preparation of one or more review documents, identifies required agency actions and describes the means by which the proposal complies with applicable regulatory standards and requirements. All relevant state agencies are required to identify any aspects of the proposal that require additional description or analysis prior to completion of the agency action, most commonly the issuance of an environmental permit.

**Web Site:** [www.state.ma.us/mepa](http://www.state.ma.us/mepa)

**Contact:** MEPA Office, (617) 626-1020

#### 15. Wetlands Protection Act (WPA)

**Authorities:** M.G.L. c. 131, § 40: Massachusetts Wetlands Protection Act; 310 CMR 10.00: Wetlands Regulations

**Jurisdiction:** Any wetland, including 1) any bank, freshwater wetland, coastal wetland, beach, dune, tidal flat, marsh or swamp bordering on the ocean, or any estuary, creek, river, stream, pond, lake, or certified vernal pool; 2) land under any of the water bodies listed; 3) land subject to tidal action, coastal storm flowage or flooding; and 4) riverfront areas in the Commonwealth of Massachusetts. In addition, a 100-foot buffer zone around any resource listed in 1) is subject to jurisdiction.

**Regulatory Summary:** The purpose of the Massachusetts Wetlands Protection Act is to protect wetland resources and to ensure that the beneficial functions of these resources are maintained. The resources identified are protected because they fulfill the public interest to 1) protect public and private water supply, 2) protect fisheries, 3) protect groundwater supply, 4) provide flood control, 5) protect land containing

shellfish, 6) prevent storm damage, 7) protect wildlife habitat, and 8) prevent pollution. These interests are protected by a “no net loss of wetlands” policy. Projects that affect wetlands are required to avoid impacts where possible, minimize unavoidable impacts, and mitigate for unavoidable impacts. Performance standards define the levels of environmental impacts that cannot be exceeded. The WPA is administered by local Conservation Commissions that issue Orders of Conditions. Appeals and variances are administered by the DEP Wetlands Program.

**Web Site:** [www.state.ma.us/dep/brp/ww/rpwwhome.htm](http://www.state.ma.us/dep/brp/ww/rpwwhome.htm)

**Contact:** DEP Wetlands Program (617) 292-5695

## 16. 401 Water Quality Certification

**Authorities:** 33 U.S.C. 1341 *et seq.*, § 401: Federal Water Pollution Control Act; 314 CMR 4.00: Surface Water Quality Standards, 314 CMR 9.00: 401 Water Quality Certification

**Jurisdiction:** Dredge and/or fill projects in waters and wetlands subject to state and federal jurisdiction, if a federal permit is required for the project

**Regulatory Summary:** The 401 review ensures that proposed dredge and/or fill projects that may result in the discharge of pollutants comply with Massachusetts Surface Water Quality Standards, the Wetlands Protection Act, and otherwise avoids or minimizes individual and cumulative impacts to Massachusetts waters and wetlands. As the authority to administer the 401 Water Quality Certification is derived from the Federal Water Pollution Control Act, only projects that require a federal permit are subject to 401 review.

**Web Site:** [www.state.ma.us/dep/brp/ww/rpwwhome.htm](http://www.state.ma.us/dep/brp/ww/rpwwhome.htm)

**Contact:** DEP Water Quality Certification Program (617) 292-5695

## 17. Public Waterfront Act (Chapter 91)

**Authorities:** M.G.L. c. 91: Public Waterfront Act; 310 CMR 9.00: Waterways Regulations

**Jurisdiction:** Dredging, placement of structures, change in use of existing structures, placement of fill, and alteration of existing structures in any of the following coastal areas:

Flowed tidelands — projects in, on, over, or under tidal areas between the mean high water (MHW) line and the limit of state territorial waters (generally three miles from shore);

Filled tidelands outside Designated Port Areas (DPAs) — projects up to the first public way or 250 feet from MHW, whichever extends further inland;

Filled tidelands inside DPAs — projects between the present and historic MHW (i.e. all filled areas inside DPAs).



For seasonal structures (moorings, seasonal docks, etc.), an annual Section 10A permit may be obtained from the local harbormaster in lieu of a Chapter 91 license.

**Regulatory Summary:** Chapter 91 is the Massachusetts public trust statute and, as such, protects the public's rights to fish, fowl, and navigate below the current or historic high water line, as well as in great ponds and navigable rivers and streams in Massachusetts, the so-called public trust lands. Waterways regulations promote the preservation of tidelands for water-dependent uses that require direct access to the water. In addition, the regulations seek to ensure that areas in jurisdiction are maintained for public use and enjoyment when privately developed.

Projects are reviewed to ensure that they 1) do not unreasonably interfere with navigation, 2) are structurally sound, 3) provide a proper public purpose, 4) do not interfere with public rights of adjacent property owners, 5) will not adversely affect natural resources, and 6) preserve DPAs for maritime industrial use.

**Web Site:** [www.state.ma.us/dep/brp/ww/rpwwhome.htm](http://www.state.ma.us/dep/brp/ww/rpwwhome.htm)

**Contact:** DEP Waterways Program (617) 292-5695

## 18. State Fire Marshall — Massachusetts Fire Code

**Authorities:** M.G.L. c. 148, §§ 9, 10, 38E, 38H: Fire Prevention; 527 CMR 15: Flammable Liquids in Harbors and Other Waters of the Commonwealth

**Jurisdiction:** Fire safety in the Commonwealth of Massachusetts

**Regulatory Summary:** The State Fire Marshall is responsible for coordination of fire policy and service. The Massachusetts Fire Code establishes requirements for fuel storage and delivery, including Underground Storage Tanks, and management of other flammable materials. Permits are issued through the State Fire Marshall's Office for the handling and transport of hazardous materials, including fuels. The regulations apply to volumes of less than 250,000 gallons, which includes all small and medium fuel transport and distribution facilities.

**Web Site:** [www.state.ma.us/dfs/sfmo/sfmohome.htm](http://www.state.ma.us/dfs/sfmo/sfmohome.htm)

**Contact:** State Fire Marshall (978) 567-3300; Licensing and Permits (978) 567-3700

## 19. Coastal Zone Management (CZM)

**Authorities:** 16 U.S.C. 1451 *et seq.*: Coastal Zone Management Act of 1972, as amended, 15 CFR 930; M.G.L. c. 21A, §§ 2, 4: Massachusetts Coastal Zone Management Act, 301 CMR 20.00: Coastal Zone Management Program, 301 CMR 21.00: Federal Consistency Review Procedures

**Jurisdiction:** Any project undertaken by a federal agency, requiring a federal permit, outer continental shelf activities, or receiving federal funding that is in or may affect the land or water resources or uses of the Massachusetts coastal zone. The Massachusetts coastal zone is the area bounded by the seaward limit of the state's territorial

sea (generally three miles from shore) to 100 feet landward of specified major roads, railroads or other visible right-of-way (generally the first major transportation corridor inland of the shoreline). Projects outside this area but which may affect it are also subject to jurisdiction.

**Regulatory Summary:** The federal consistency review of CZM ensures that any federal activities in or affecting Massachusetts coastal resources is consistent with state coastal policies. These policies, the so-called enforceable program policies, are based on existing Massachusetts statutes and regulations and offer policy guidance on management of water quality, marine habitat, protected areas, coastal hazards, port and harbor infrastructure, public access, energy, ocean resources, and growth management. The project-specific federal activity cannot take place until CZM concurs that the project is consistent with state coastal policies.

**Web Site:** [www.state.ma.us/czm/fcr.htm](http://www.state.ma.us/czm/fcr.htm)

**Contact:** CZM Project Review Coordinator (617) 626-1219

## 20. Rivers and Harbors Act of 1899 (Section 10)

**Authorities:** 33 U.S.C. §§ 401-413: Rivers and Harbors Act of 1899; 33 CFR 323: Permits for Structures or Work Affecting Navigable Waters of the United States

*\*see #23 below for further information*

## 21. Clean Water Act (Section 404)

**Authorities:** 33 U.S.C. §1251 *et seq.*: Federal Water Pollution Control Act; 33 CFR 322: Permits for Discharges of Dredged or Fill Material into the Waters of the United States

*\*see #23 below for further information*

## 22. Marine Protection, Research and Sanctuaries Act, (Section 103)

**Authorities:** 33 U.S.C. §1401 *et seq.*: Marine Protection, Research and Sanctuaries Act; 33 CFR 324: Permits for Ocean Dumping of Dredged Material

*\*see #23 below for further information*

## 23. Massachusetts Programmatic General Permit

**Authorities:** 33 CFR 320-330: U.S. Army Corps of Engineers Regulations

**Jurisdiction:** Construction or placement of structures, dredging, and dredged material disposal in the waters of the United States

## The PGP

In Massachusetts, the U.S. Army Corps of Engineers, New England District, administers the Rivers and Harbors Act of 1899 (Section 10), the Clean Water Act (Section 404) and the Marine Protection, Research and Sanctuaries Act (Section 103) under a single review process known as the Programmatic General Permit (PGP). One permit application which addresses all the applicable regulated activities of these three laws is submitted to the Corps for review under the PGP. See #23 for more information on the PGP.

**Regulatory Summary:** A Section 10 permit is required for all work, including structures, seaward of the mean high water line in navigable waters of the United States, defined as waters subject to the ebb and flow of the tide, as well as a few of the major rivers used to transport interstate or foreign commerce. A Section 404 permit is required for activities which involve the discharge of dredged or fill material into waters of the United States, including not only navigable waters, but also coastal waters, inland rivers, lakes, streams, and wetlands. A Section 103 permit is required to transport dredged material for the purpose of disposal in the ocean.

The U.S. Army Corps of Engineers, New England District has issued a Programmatic General Permit (PGP) for work in Massachusetts. The PGP provides for three levels of regulatory review:

**Category I:** Activities of minimal environmental impact that do not require Corps regulatory review and are classified as non-reporting. While no written notification to the Corps is required for these “minor” projects, they must comply with the conditions contained in the PGP.

**Category II:** Activities likely to be of minimal environmental impact but that have the potential to have adverse effects. A project-specific review and authorization from the Corps in writing are required. Copies of the Massachusetts Chapter 91 application and plans, or the Water Quality Certification application and plans, are usually sufficient for Category II review.

**Category III:** Activities that have potential to cause adverse environmental impacts. These projects must get an Individual Corps license, and therefore require project-specific review, are available for public review and comment, and may require preparation of an Environmental Impact Statement.

*The following is a summary of the activities and thresholds applicable for each category of the PGP.*

#### **ACTIVITY: FILL IN NAVIGABLE WATERS**

**Category I:** No authorization for new fill or previously unauthorized fill.

**Category II:** Up to 1 acre of fill in a waterway; up to one acre of temporary fill in a salt marsh.

**Category III:** Greater than 1 acre of fill in a waterway; or greater than 1 acre of temporary fill in a salt marsh.

#### **ACTIVITY: DREDGING**

**Category I:** Maintenance dredging less than 1,000 c.y. with upland disposal.

**Category II:** Maintenance dredging greater than 1,000 c.y., new dredging up to 25,000 c.y.

**Category III:** Any maintenance dredging affecting a special aquatic site, or new dredging greater than 25,000 c.y.

## **ACTIVITY: PILE-SUPPORTED STRUCTURES AND FLOATS**

**Category I:** Private, bottom anchored floats up to 400 s.f. in size; Private, pile-supported piers for navigational access to the waterway up to 400 s.f. in size with attached floats up to 200 s.f. (total).

**Category II:** Private piers and floats that do not meet the terms of Category I. Expansions to existing boating facilities.

**Category III:** Any structure, pier or float that extends, or with docked or moored vessels that extends within horizontal limits of a Corps Federal Navigational Project. Structures, including piers and floats with a new or previously unauthorized boating facility.

*The complete PGP is available from the web site below.*

**Web Site:** [www.nae.usace.army.mil/reg/index.htm](http://www.nae.usace.army.mil/reg/index.htm)

**Contact:** U.S. Army Corps of Engineers, New England District, Regulatory Branch, (978) 318-8338 and (800) 362-4367

## **24. NPDES Stormwater Construction General Permit**

**Authorities:** 33 U.S.C. §1251 *et seq.*: Federal Water Pollution Control Act; 40 CFR 122: EPA Administered Permit Programs: National Pollution Discharge Elimination System

**Jurisdiction:** Discharges to the navigable waters of the United States

**Regulatory Summary:** Under the National Pollutant Discharge Elimination System (NPDES) of the Clean Water Act, construction projects that propose the alteration of more than five acres of land must obtain coverage under the NPDES Stormwater Construction General Permit. [New rules, recently promulgated by the EPA, known as Stormwater Phase II, have decreased the applicable threshold from five acres to one acre, however, the new program will not go into effect until late 2002.] The project proponent must submit a one-page registration form known as a Notice of Intent to the U.S. EPA and must develop and implement a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP details construction activities, erosion control measures, and inspection schedules to be implemented during construction to ensure that the construction activities do not have an adverse impact on wetlands and waterways. An outline of the requirements for a SWPPP is included in Appendix E.

**Web Site:** [www.epa.gov/owm/sw/construction](http://www.epa.gov/owm/sw/construction)

**Contact:** U.S. EPA Region I, NPDES Coordinator (617) 918-1615

**25. Order of Conditions** *see #15 above*

**26. Chapter 91 license** *see #17 above*

## Please Note

If your marina discharges pressure wash water, bilge and ballast water, sanitary wastes, or vessel cooling water, then you must obtain an individual NPDES permit.

### 27. NPDES Storm Water Multi-Sector General Permit

**Authorities:** 33 U.S.C. §1251 *et seq.*: Federal Water Pollution Control Act; 40 CFR 122: EPA Administered Permit Programs: National Pollution Discharge Elimination System

**Jurisdiction:** Stormwater discharges to the navigable waters of the United States. For marinas, stormwater includes water exposed to boat maintenance and/or equipment cleaning activities, including blasting and painting, materials storage areas, engine maintenance and repair areas, material handling areas, and dry-dock activities.

**Regulatory Summary:** The Clean Water Act regulates, among other things, the discharge of point and nonpoint pollution sources from industrial and municipal facilities, and from construction activities. Marinas are identified as waterfront facilities under Sector Q of the NPDES regulations, and have a standard industrial classification (SIC) code 44. Each regulated sector must comply with the general requirements of the NPDES Program as well as industry-specific requirements. Marina operators must complete and submit a one-page application form known as a Notice of Intent to the EPA, and develop and implement a SWPPP. The components of a SWPPP appropriate for industrial facilities are included in Appendix E.

Marinas are required to conduct benchmark monitoring for aluminum, iron, lead, and zinc. These monitoring requirements can be waived under the Alternative Certification of “Not Present or No Exposure” if the facility can show and certify that BMPs are in-place that prevent the subject materials from being exposed to stormwater.

**Web Site:** [www.epa.gov/owm/sw/industry/msgp](http://www.epa.gov/owm/sw/industry/msgp)

**Contact:** U.S. Environmental Protection Agency, NPDES Permit Coordinator (617) 918-1615

### 28. Marine Sanitation Devices (MSDs)

**Authorities:** 33 U.S.C. §1251 *et seq.*: Federal Water Pollution Control Act, 33 U.S.C. §1322: Marine Sanitation Devices; 33 CFR 159: Marine Sanitation Devices, 40 CFR 140: Marine Sanitation Device Standards

**Jurisdiction:** Boat sewage discharges to the navigable waters of the United States

**Regulatory Summary:** The Clean Water Act regulates the discharge of raw sewage from vessels in U.S. territorial waters (within three miles of shore), the Great Lakes, and navigable rivers. Enforcement is the responsibility of the U.S. Coast Guard.

Recreational boats are not required to be equipped with a toilet, however, if a boat has an installed toilet, it must be a Coast Guard approved marine sanitation device (MSD) and must be kept in proper working condition. Boats 65 feet in length or less may install a Type I, Type II (both are treat and release systems), or Type III (holding tank) MSD. Vessels over 65 feet in length must install a Type II or Type III MSD.

Portable toilets or “porta-potties” are not considered installed toilets and are not subject to the MSD regulations. However, porta-potties are subject to regulations that prohibit the disposal of raw sewage with the three-mile limit.

**Web Sites:** [www.epa.gov/region01/eco/nodiscrg](http://www.epa.gov/region01/eco/nodiscrg)  
[www.uscg.mil/](http://www.uscg.mil/)

**Contacts:** U.S. Environmental Protection Agency, (617) 918-1538

US Coast Guard Marine Safety Offices:

Boston (Cape Cod Canal to NH border), (617) 223-3000;

Providence (RI border to Cape Cod Canal; including Cape & Islands),  
(401) 435-2300 or (800) 644-0217

CZM NDA Coordinator (617) 626-1233

### 29. No Discharge Areas (NDAs)

**Authorities:** 33 U.S.C. §1251 *et seq.*: Federal Water Pollution Control Act

**Jurisdiction:** State/federal designated No Discharge Areas

**Regulatory Summary:** The Clean Water Act also allows states to designate particular bodies of water as No Discharge Areas (NDAs) with US Environmental Protection Agency (EPA) approval. In an NDA, discharge of both treated and untreated sewage of any sort, including boat sewage, is banned. In NDAs the use of Type I and Type II MSDs is prohibited and they must be secured to prevent discharge. Prevention of discharge may be accomplished by closing the seacock and padlocking it, using a non-releasable wire tie, removing the seacock handle (with seacock closed), or by locking the door of the head with a padlock or door handle key. Boats cruising through designated No Discharge Areas must discharge boat waste to a boat pumpout facility.

**Web Sites:** [www.state.ma.us/czm/nda.htm](http://www.state.ma.us/czm/nda.htm)

Map of Massachusetts NDAs can be found at [www.epa.gov/region01/eco/nodiscrg](http://www.epa.gov/region01/eco/nodiscrg)

**Contact:** CZM NDA Coordinator (617) 626-1233; US EPA No Discharge Area Coordinator (617) 918-1538

### 30. Clean Vessel Act (CVA)

**Authorities:** 33 U.S.C. §§ 1322 *et seq.*: Clean Vessel Act; 33 CFR 159: Marine Sanitation Devices, 40 CFR 140: Marine Sanitation Device Standard

**Jurisdiction:** Local governments and businesses are eligible for grant funds

**Regulatory Summary:** The Clean Vessel Act is a federal grant program that funds viable alternatives to the overboard disposal of recreational boat sewage. The CVA is administered by the U.S. Fish and Wildlife Service and authorized from the Sport

Fish Restoration Account for use by the states. Federal funds may be used to fund up to 75 percent of approved projects, with the remaining funds provided by the states or grant recipients. Grants are available for the construction, renovation, operation, and maintenance of boat pumpout and portable toilet waste reception facilities (called dump stations), and pumpout boats at both public and private marinas.

**Web Site:** [www.state.ma.us/dfwele/com/comcvahm.htm](http://www.state.ma.us/dfwele/com/comcvahm.htm)

A list of pumpout locations in Massachusetts is provided in Appendix D and can be viewed at [www.state.ma.us/czm/potoc.htm](http://www.state.ma.us/czm/potoc.htm)

**Contact:** Massachusetts CVA Coordinator (617) 626-1531  
Pumpout Stations 1-(800) ASK-FISH

### **31. Resource Conservation and Recovery Act (RCRA)**

**Authorities:** 42 U.S.C. §§ 6901 *et seq.*: Resource Conservation and Recovery Act; 40 CFR 265: Solid Waste; M.G.L. c. 21C, §§ 4, 6 and M.G.L. c. 21E: Hazardous Waste Management Act; 31 CMR 30.000: Hazardous Waste Regulations

**Jurisdiction:** Handling, transporting, and disposing of hazardous waste in Massachusetts

**Regulatory Summary:** DEP administers RCRA and more stringent state hazardous material handling requirements through the Massachusetts Hazardous Waste Regulations. Massachusetts regulates the collection, transportation, separation, recovery, and disposal of solid and hazardous waste. Hazardous wastes are defined as wastes that are ignitable, corrosive, reactive, and/or toxic. Common hazardous wastes that might be found in a marina include waste oil, solvents and thinners, and toxic or flammable paint wastes. Regulatory requirements for shipping and storage differ, depending on the amount and type of hazardous material generated.

All generators of hazardous waste are responsible for its proper disposal. RCRA requires a national “cradle to grave” tracking system for hazardous waste. In Massachusetts, every shipment of hazardous waste by a large or small quantity generator must be transported by a licensed hauler and sent to a licensed treatment, storage, or disposal facility, or a permitted recycling facility, and must be accompanied by a Uniform Hazardous Waste Manifest. A list of requirements for storage, handling, and shipping is included in DEP’s publication: *A Summary of Requirements for Small Quantity Generators of Hazardous Waste*.

**Web Site:** [www.state.ma.us/dep/bwp/](http://www.state.ma.us/dep/bwp/)

Publication can be found at [www.state.ma.us/dep/bwp/dhm/files/sqgsum.pdf](http://www.state.ma.us/dep/bwp/dhm/files/sqgsum.pdf)

**Contact:** DEP Bureau of Waste Prevention (617) 292-5898



### 32. Discharge of Oil - Clean Water Act

**Authorities:** 33 U.S.C. §§ 1321 *et seq.*: Oil Pollution Prevention; 40 CFR 112: Oil Pollution Prevention

**Jurisdiction:** Any activity that releases petroleum products into marine waters

**Regulatory Summary:** The Clean Water Act prohibits the discharge of oil or oily waste into or upon the navigable waters of the United States or the waters of the contiguous zone (out to 24 nautical miles) if the discharge causes a film or sheen on, or discoloration of, the surface of the water, or causes a sludge or emulsion beneath the surface of the water. Violators are subject to a penalty of up to \$27,500 per spill. Discharge of soaps or emulsifiers to dissipate oil without the permission of the US Coast Guard is also prohibited.

The US Coastal Guard must be notified any time a spill produces a sheen on the water. The caller should report the location, source, size, color, substance, and time of spill. Failure to report a spill may result in criminal penalties. Call the National Response Center at (800) 424-8802.

**Web Site:** [www.epa.gov/oilspill](http://www.epa.gov/oilspill)

**Contacts:** US Coast Guard Marine Safety Offices:  
Boston (Cape Cod Canal to NH border), (617) 223-3000;  
Providence (RI border to Cape Cod Canal; including Cape & Islands),  
(401) 435-2300 or (800) 644-0217

To report an oil spill call the National Response Center at (800) 424-8802

### 33. Organotin Antifoulant Paint Control Act

**Authorities:** 33 U.S.C. §§ 2401 *et seq.*: Organotin Antifoulant Paint Control Act of 1988; 15 U.S.C. §§ 2601 *et seq.*: Toxic Substances Control Act

**Jurisdiction:** Manufacture and use of tin-based antifoulant paints used on boat hulls

**Regulatory Summary:** The use of tributyltin (TBT) antifoulant paints on vessels that are 25 meters or less in length, unless the vessel hull is aluminum, is forbidden. For allowed uses, application of organotin paints is restricted to professionally licensed applicators. In addition, EPA is required to certify that each antifouling paint containing organotin does not release more than 4.0 micrograms of tin per square centimeter per day.

**Web Site:** Organotin Environmental Program Association, <http://ortepa.org/>

**Contact:** U.S. EPA-Region I, (888) 372-7341

### 34. Marine Plastic Pollution Research and Control Act (MPPRCA)

**Authorities:** 33 U.S.C. §§ 1901 *et seq.*: Marine Plastic Pollution Research and Control Act; 33 CFR 151 *et seq.*: Vessels Carrying Oil, 46 FCR 2 *et seq.*: Vessel Inspections

**Jurisdiction:** Discharge of plastics and other trash at sea

**Regulatory Summary:** MPPRCA implements the international pollution prevention treaty known as MARPOL. Countries that are signatories to MARPOL agree to enact and enforce laws to prohibit the discharge of plastic and trash in territorial waters within 200 miles of shore. Under MPPRCA, it is illegal to discharge plastics anywhere in U.S. territorial waters. Within lakes, rivers, bays, sounds, and three nautical miles from shore, it is also illegal to discharge paper, rags, glass, metal, crockery, dunnage (lining and packing material, nets, lines, etc.), and food. Between three and 12 nautical miles from shore, it is illegal to dump any garbage that is greater than one inch in size. Between 12 and 25 nautical miles from shore, it is illegal to discharge dunnage. All vessels greater than 26 feet must display a placard outlining the garbage dumping restrictions (many marinas and ship stores sell these placards to boaters). All vessels greater than 40 feet must also have a written waste management plan on board.

This law also requires that all ports and terminals, including public and private marinas, boatyards, yacht clubs, and town docks, must have adequate and convenient “reception facilities” for their regular customers. These boating facilities must have sufficient trash receptacles to receive all trash generated by their customers and visitors.

**Web Site:** [www.cgaux.org](http://www.cgaux.org)  
[www.cmc-ocean.org/mdio/marpol.php3](http://www.cmc-ocean.org/mdio/marpol.php3)

**Contacts:** US Coast Guard Marine Safety Offices:  
Boston (Cape Cod Canal to NH border), (617) 223-3000;  
Providence (RI border to Cape Cod Canal; including Cape & Islands),  
(401) 435-2300 or (800) 644-0217

### 35. Control of Volatile Organic Compounds (VOCs) — Clean Air Act

**Authorities:** 42 U.S.C. §§ 7401 *et seq.*: Clean Air Act; M.G.L. 111, §§ 142A-142J: Massachusetts Clean Air Act; 310 CMR 7.00: Air Pollution Control

**Jurisdiction:** Use of paints and solvents that contain VOCs

**Regulatory Summary:** The Massachusetts Air Program has been developed in conformance with the Federal Clean Air Act and its amendments. Among the priority pollutants that it regulates are VOCs, which are chemicals with carbon molecules that readily evaporate and form ozone. The primary materials used by marinas that contain VOCs are paints and solvents. VOCs can also cause water pollution when they are washed into local waters before evaporating. Marinas and boatyards that release more than 2,000 pounds/year of VOCs are required to use a spray booth designed in accordance with state regulations. Marinas and boatyards must utilize either electrostatic spraying or high volume/low pressure (HVLP) paint application.

Cleanup of spray guns must be completed inside using a totally enclosed gun washer system and cleanup liquids must be recirculated and disposed of or recycled to minimize evaporation to the atmosphere. Preparation and cleanup materials must contain a VOC content of 1.67 pounds per gallon or less.

**Web Site:** [www.state.ma.us/dep/bwp/](http://www.state.ma.us/dep/bwp/)

**Contact:** DEP Air Quality Program (617) 292-5609

### 36. Boat Engine Emissions — Massachusetts Clean Air Act

**Authorities:** M.G.L. 111, §§ 142A-142J: Massachusetts Clean Air Act; 310 CMR 7.00: Air Pollution Control

**Jurisdiction:** Boat engine operation

**Regulatory Summary:** Any boat owner whose vessel is emitting a noticeable black smoke from its exhaust is in violation of the Massachusetts Clean Air Act. All boat owners should make sure that their engines are well tuned, operating properly, and that appropriate air filter and other exhaust control measures are regularly maintained.

**Web Site:** [www.state.ma.us/dep/bwp/](http://www.state.ma.us/dep/bwp/)

**Contacts:** DEP Air Quality Program (617) 292-5609

### 37. Massachusetts Boat Operations Restrictions

**Authorities:** M.G.L. c. 90B: Motorboats and Other Vessels; 323 CMR 2.00: Motorboats and Boating, 323 CMR 4.00: Personal Water Craft

**Jurisdiction:** Boat operations in Massachusetts waters

**Regulatory Summary:** Massachusetts boating laws regulate boat operations including speeding, negligent operation, safety training, equipment, and registration/titling. These requirements are intended to promote the public safety by encouraging voluntary compliance through accident prevention measures and by deterring and penalizing non-compliance through enforcement. The Massachusetts Environmental Police is the primary boating regulatory agency with state and local police and harbor masters also having enforcement jurisdiction.

**Web Site:** [www.state.ma.us/dfwele/dle/](http://www.state.ma.us/dfwele/dle/)

**Contacts:** Massachusetts Environmental Police: (617) 626-1650;  
Massachusetts Environmental Police Boat and RV Safety Bureau: (617) 727-8760

## For More Info

For the text of the statutes and regulations cited, visit:

**Federal statutes:**

[www4.law.cornell.edu/uscode](http://www4.law.cornell.edu/uscode)

**Federal regulations:**

[www.access.gpo.gov/nara/cfr](http://www.access.gpo.gov/nara/cfr)

**Massachusetts statutes:**

[www.state.ma.us/legis/laws/mgl](http://www.state.ma.us/legis/laws/mgl)

**Massachusetts regulations:**

[www.lawlib.state.ma.us/cm.html](http://www.lawlib.state.ma.us/cm.html)