

DECISION ON THE CITY OF GLOUCESTER'S
REQUEST FOR APPROVAL
OF THE
GLOUCESTER MUNICIPAL HARBOR PLAN RENEWAL
AND
DESIGNATED PORT AREA MASTER PLAN
PURSUANT TO 301 CMR 23.00

December 11, 2009
Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
Ian A. Bowles, Secretary

I. INTRODUCTION

Today, as Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), I am approving a renewal to the City of Gloucester's Municipal Harbor Plan ("Plan") dated July 2009. The original Plan was approved by the Secretary on July 6, 1999. This Decision on the renewal to the original 1999 Plan presents a synopsis of the Plan's content and my determinations on how the renewal Plan complies with the standards for approval set forth in the Review and Approval of Municipal Harbor Plan regulations at 301 CMR 23.00 et seq.

Pursuant to the review procedures contained therein, the Plan renewal, along with a separate document addressing compliance with the plan approval statement ("Compliance Statement"), was submitted in August 2009. Following a review for completeness, a notice of public hearing and 30-day opportunity to comment was published in the *Environmental Monitor* dated August 26, 2009. Oral testimony was accepted during a public hearing held in the City of Gloucester on September 1, 2009, and 13 written comment letters were received prior to the close of the public comment period on September 25, 2009. In addition, the review process—led on my behalf by the Massachusetts Office of Coastal Zone Management (CZM)—included formal consultation between CZM, the Waterways Program of the Massachusetts Department of Environmental Protection (DEP), the City of Gloucester ("City"), and the Urban Harbors Institute (as consultants for the City). The Plan review followed the administrative procedures set forth at 301 CMR 23.04 and in accordance with the standards in 301 CMR 23.05. In reaching my approval decision, I have carefully considered the oral and written testimony submitted by the public during these respective comment periods.

As shown in Figure 1, the Harbor Planning Area encompasses the entirety of the Gloucester Inner Harbor and adjacent landside areas extending from the Rocky Neck peninsula to the Fort neighborhood, and including the shoreline of the western side of the outer harbor to Stage Fort Park. On the landside, the area is bounded by Main Street, East Main Street, Rocky Neck Avenue, Commercial Street, and Stacy Boulevard. The main focus of this plan renewal is on the inner harbor properties that lie within the Designated Port Area (DPA) as depicted in Figure 2.

Because of their distinct land use characteristics, the Plan divides the DPA into three parts for the purposes of discussion and analysis (Figure 2). The Harbor Cove area is the traditional center of the fishing port from Fort Point to Harbor Loop and includes portions of the City's downtown. The Industrial Port is characterized by large parcels and buildings dedicated almost

exclusively to marine industrial uses along the western side of the harbor from Harbor Loop to the head of the harbor and includes the State Fish Pier. East Gloucester—which extends from the State Fish Pier to Smith Cove and includes the Gloucester Marine Railway on Rocky Neck—is characterized by a more diverse mix of commercial, residential, water-dependent and marine industrial uses, with roadway conditions that somewhat constrain access for large industrial vehicles.

The 1999 Gloucester Harbor Plan was primarily focused on infrastructure improvements for both maritime and visitor-oriented industries along the waterfront as a means of recharging the harbor economy. The 2009 renewal continues to support traditional port improvements while also seeking to provide expanded opportunities for redevelopment within the Harbor Planning Area. The 2009 Plan identifies a number of key strategies to maintain support for the important commercial fishing industry in the city, and also encourages improved opportunity for economic development on the harbor. These strategies aim to streamline regulatory review, stimulate investment, and improve economic conditions along the waterfront.

Figure 1. Gloucester Harbor Planning Area

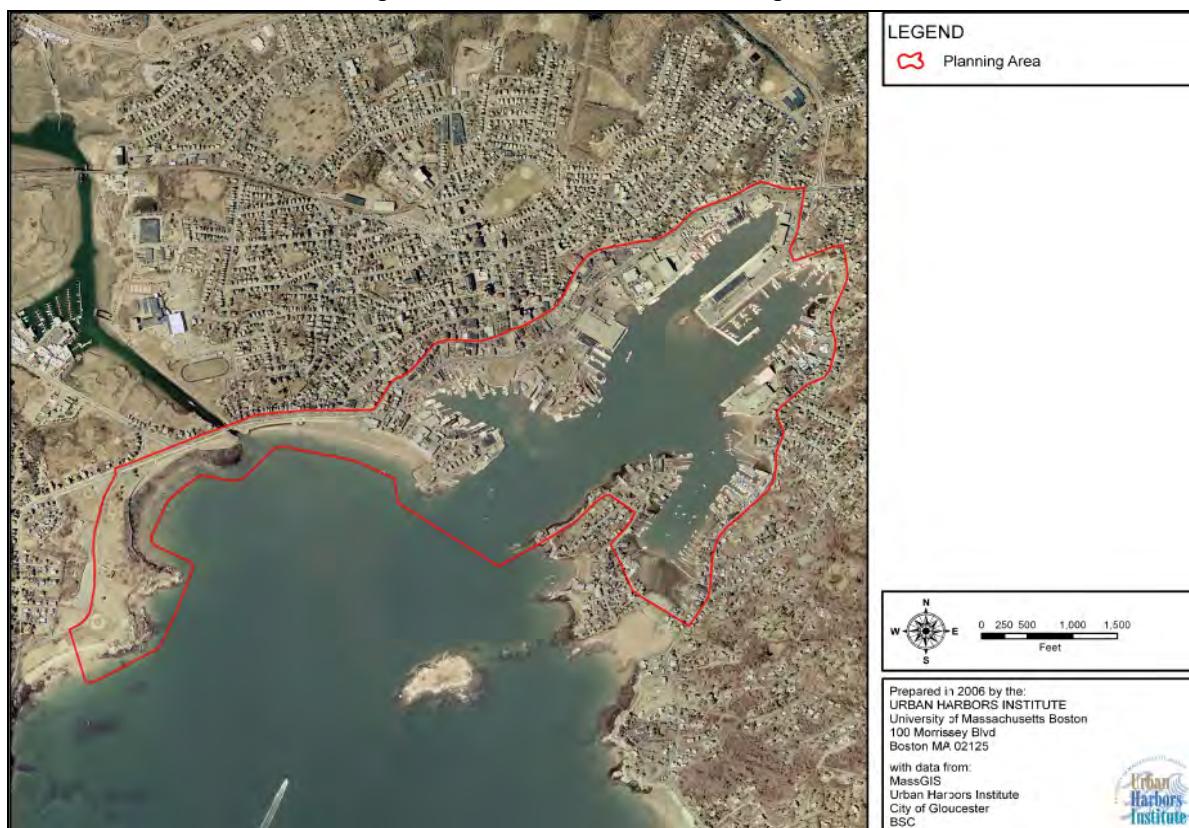
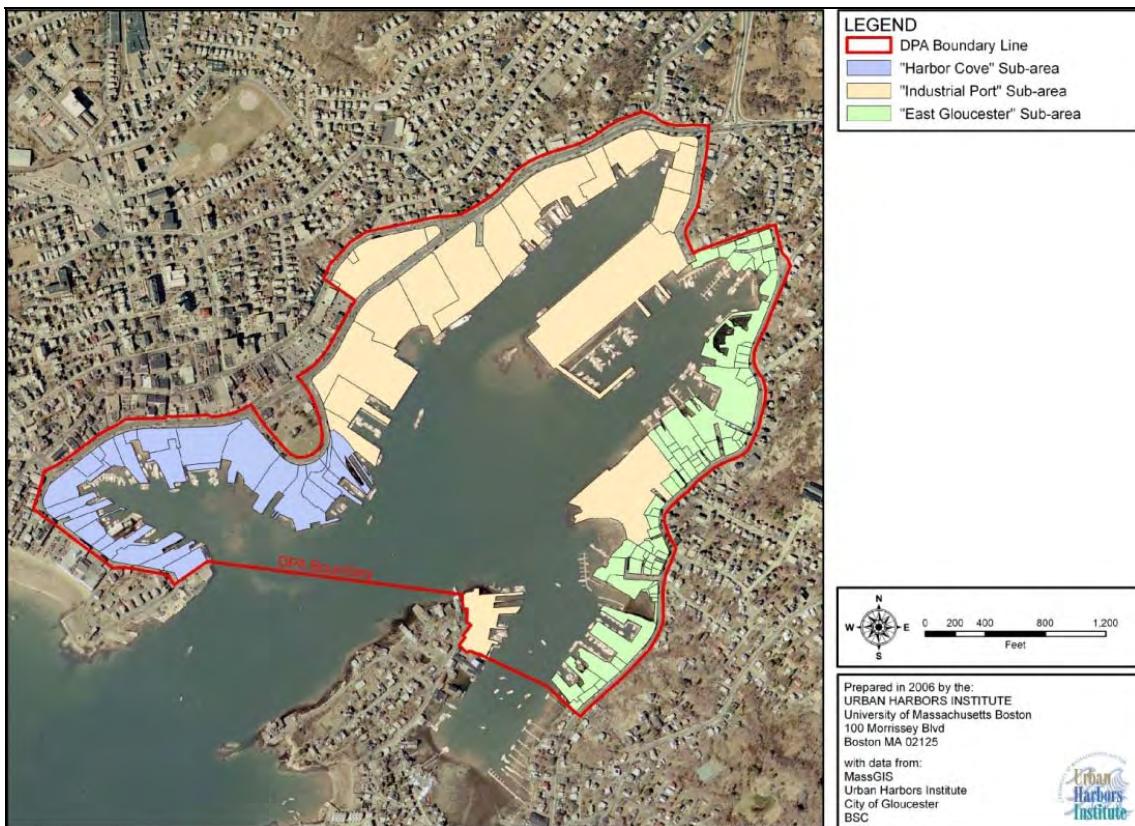


Figure 2. Gloucester DPA and Planning Sub-Areas



The 2009 Plan renewal for Gloucester Harbor reflects a significant effort on the part of the City staff and the many members of the public who participated in the process of plan development. I would like to applaud the City, the members of the Gloucester Harbor Plan Implementation Committee, waterfront property owners, stakeholders throughout the community, and the Gloucester Community Development staff for their time and effort toward development of this Plan. I am aware that over the past four years, a significant amount of public input—including numerous planning meetings, several City Council hearings, and a series of targeted neighborhood-based listening posts—was encouraged and incorporated into the final document. Derived from this extensive public contribution, the following three key strategies were identified as the core focus of the 2009 Gloucester Harbor Plan (and DPA Master Plan):

1. Support commercial fishing both directly, and by seeking to attract and expand the kind of businesses and industries that might build upon the existing marine assets and knowledge base of the community. Such commerce might include research, off-shore energy support services, or training in the maritime trades. This is an effort to diversify on the waterfront in ways that build upon and strengthen the fishing community.
2. Provide greater flexibility for supporting commercial uses on waterfront property so that waterfront properties have more mixed-use investment options.

3. Promote public access along the waterfront in ways that do not interfere with industrial uses so as to create a more appealing environment for investment and to ensure the active use of the water's edge around the harbor.

At the public hearing and in written comments, while thoughtful perspective and concerns were raised in regards to such issues as support for the regional commercial fishing port, dockage for commercial fishing vessels, the need for greater economic diversification, and for limits to recreational boating, there was broad support for the Plan's strategies. In response to the oral and written testimony received during the public comment period and discussion during the formal consultation period, the City made a number of modifications to the Plan. In my approval today, I find that the final 2009 Plan—in concert with the conditions established in this decision—serve to promote and protect the core marine and water-dependent industrial composition of the DPA, while providing for the local goals of enhanced support of the commercial fishing hub and allowances for flexibility in supporting DPA uses. On balance, I am confident that it will function as a clear and effective framework for achieving the City's goals in harmony with state policy governing stewardship of tidelands, including those located within a DPA.

II. PLAN CONTENT

The Municipal Harbor Planning Regulations (301 CMR 23.00 et seq.) establish a voluntary process under which cities and towns may develop and submit Municipal Harbor Plans to the EEA Secretary for approval. These plans serve to promote and implement a community's planning vision for their waterfront and to inform and guide state agency decisions necessary to implement such a vision. Specifically, approved Municipal Harbor Plans provide licensing guidance to DEP in making decisions pursuant to MGL Chapter 91 (c. 91) and the Waterways Regulations (310 CMR 9.00 et seq.). Approved harbor plans may establish alternative numerical and dimensional requirements (i.e., substitute provisions) to the requirements specified by the Waterways Regulations, as well as specify provisions that amplify any of the discretionary requirements of these regulations.

The 2009 Plan lays out the city's vision and comprehensive strategy for maintaining and strengthening the traditional fishing industry and infrastructure in Gloucester Harbor, while encouraging and expanding additional compatible marine industries and supporting uses. The Plan acknowledges the value of the 1999 Municipal Harbor Plan, but recognizes that changes in economy, the fishing industry, and the condition of the harbor's waterfront infrastructure warrant

additional strategies to address these concerns. Current conditions of land use in the harbor planning area are described for each of the three planning sub-areas, existing navigation and waterfront uses and challenges are described, and the current regulatory environment is discussed. The renewal lays out nine major issues for the harbor, and a series of recommendations and strategies to address them. These issue areas include: Growing the Maritime Economy, the Role of Supporting Commercial Use and Public Access, Recreational Boating, the Visitor-Based Economy, Infrastructure Investment and Transportation Links, the Permitting Process, Commercial Berthing, Fresh Fish Processing, and Port Security. Finally, the Plan includes a Designated Port Area Master Plan and an approach to assure successful implementation of the Plan's key recommendations and strategies. Strategies laid out in the 2009 Plan generally aim to streamline regulatory review, stimulate investment, and improve economic conditions along the waterfront.

A central theme of the 2009 Plan is the support of commercial fishing both directly and by seeking to attract and expand businesses and industries that will build upon existing marine assets and knowledge-base within the community. The Plan envisions diversified commerce opportunities such as marine-associated research, off-shore energy support services, and training in the marine trades as uses that would be compatible with, build upon, and even strengthen the commercial fishing community. Key strategies to promote and protect existing and future investment in commercial fishing include: regulatory changes to assure investment in improved waterfront marine industrial infrastructure, fostering maintenance or creation of commercial berthing wherever practicable, and enhancing protection from displacement for commercial fishing vessels. The plan recommends the promotion of local processing and retail sales of fish landed in Gloucester, and identifies key dredging projects that should remain priorities for assuring adequate navigation in Gloucester Harbor.

The 2009 Plan recognizes that new revenues will be needed to achieve the goals of infrastructure improvement and waterfront activation detailed in the Plan. To address this, the Plan takes advantage of the opportunity to provide, through the harbor planning process, greater flexibility for locating supporting commercial uses on waterfront property, such that waterfront properties with the greatest challenges have more mixed-use investment options. Through thoughtful and careful planning and analysis, the Plan lays out a means by which the city can allow more flexibility where it is most needed, while protecting water-dependent industrial uses within the DPA. Further, the Plan creates a means by which properties with particular challenges may work

within the regulatory framework to achieve necessary flexibility while protecting the marine industrial waterfront. Changes that will benefit the downtown and other areas of the city are promoted in this way by fostering a closer link between the waterfront and the commercial business district.

Another key topic in the Plan is to improve, wherever possible, activation of the water's edge and public access in recognition of the harbor's importance to the visitor-based economy and public enjoyment in Gloucester, with an understanding that public safety and port security are important issues to be addressed. In addition to recommendations for expanded water-dependent marine industrial uses such as ferry services, expanded cruise ship opportunities and water shuttles, the Plan calls for promoting public access along the waterfront where appropriate and in ways that do not interfere with industrial uses. This reinvigorated access would create a more appealing environment for investment and would foster more active use of the water's edge around the harbor. Strategies to achieve this include proposed measures (including both c.91 and local zoning) to provide waterfront access whenever practicable, as well as taking advantage of marine industrial locations that are occupied only seasonally for such use.

Strengthening of the visitor-based economy in Gloucester is cited as an important goal in the Plan. Creation of a network of maritime related sites open to the public, as well as specific opportunities for public observation of maritime industry in action, are presented as means to bolster the working harbor by providing a window to the working port. The Plan identifies Rocky Neck as a key destination for visitors and recommends consideration of a water shuttle to link the artist community on Rocky Neck to the downtown area.

The Plan also proposes a local policy to improve access and facilities for transient recreational boating and for public boating access to the waterfront and lays out some recommendations to achieve this goal. Within the context of this concept, it is important to note that current c.91 regulations contain strict prohibitions on the licensing of new recreational boating facilities (marinas) within DPAs. This Decision cannot and does not supersede these regulations, and, as such, it contains no approval findings for such facilities. The Plan does recommend further investigation of the feasibility of using temporary, bottom-anchored floats for rafts for recreational boat berthing as authorized by local 10A harbormaster permits on an annual basis. It also

recommends the consideration of locations outside the DPA that could service the downtown need for access by transient boaters.

In continued support and promotion of port and harbor planning, the Plan recommends continuing the current structure by which the City's administrative resources, provided through the Community Development Department and its Harbor Coordinator position, serve as the primary liaison to waterfront property owners. The Plan also calls for the creation of a Port and Harbor Committee to serve in an advisory capacity to the Community Development Department and to monitor and promote implementation of the 2009 Plan.

Finally, the 2009 Plan includes a Designated Port Area Master Plan that sets out a strategy to preserve and enhance the capacity of the DPA to accommodate water-dependent industry and prevent displacement of these activities by other nonwater-dependent uses. The DPA Master Plan proposes detailed implementation measures to ensure that an extensive area is reserved for water-dependent industrial uses, recommends specific uses be categorized as supporting uses in the DPA, puts forward limits on commercial uses to prevent incompatibility with marine industry, and identifies the city's strategy to guide the ongoing promotion of water-dependent industrial use within the DPA.

III. STANDARDS FOR APPROVAL

The Plan renewal contains the City's planning vision and other specifics to guide use and development of the harbor planning area. It should be noted, however, that while these elements are important to the Plan as a whole, my approval today is bounded by the authority and standards as contained in Review and Approval of Municipal Harbor Plans rules at 301 CMR 23.00 et seq. and is applicable only to those discretionary elements of the c.91 Waterways regulations that are specifically noted in this Decision. This Decision does not supersede separate regulatory review requirements for any activity.

A. Consistency with CZM Program Policies and Management Principles

The federally-approved CZM Program Plan establishes 20 enforceable program policies and 9 management principles which convey the formal coastal program policy of the Commonwealth. The policies and management principles applicable to the 2009 Plan are briefly summarized here:

- Water Quality Policy #1: Ensure that point-source discharges in or affecting the coastal zone are consistent with federally approved state effluent limitations and water quality standards.
- Water Quality Policy #2: Ensure that non-point pollution controls promote the attainment of state surface water quality standards in the coastal zone.
- Habitat Policy #1: Protect coastal resource areas including salt marshes, shellfish beds, dunes, beaches, barrier beaches, salt ponds, eelgrass beds, and fresh water wetlands for their important role as natural habitats.
- Protected Areas Policy #3: Ensure that proposed developments in or near designated or registered historic districts or sites respect the preservation intent of the designation and that potential adverse effects are minimized.
- Ports Policy #1: Ensure that dredging and disposal of dredged material minimize adverse effects on water quality, physical processes, marine productivity and public health.
- Ports Policy #2: Obtain the widest possible public benefit from channel dredging, ensuring that designated ports and developed harbors are given highest priority in the allocation of federal and state dredging funds. Ensure that this dredging is consistent with marine environment policies.
- Ports Policy #3: Preserve and enhance the capacity of Designated Port Areas (DPAs) to accommodate water-dependent industrial uses, and prevent the exclusion of such uses from tidelands and any other DPA lands over which a state agency exerts control by virtue of ownership, regulatory authority, or other legal jurisdiction.
- Ports Management Principle #1: Encourage, through technical and financial assistance, expansion of water-dependent uses in designated ports and developed harbors, re-development of urban waterfronts, and expansion of visual access.

The aforementioned policies are relevant to the major issues identified in the renewal: waterfront revitalization; commercial fishing; maritime commerce and industry; public access; infrastructure investment and transportation links, and fresh fish processing. The Plan presents evidence of its accord with these policies and management principles, and, as required by 301 CMR 23.05(1), CZM has affirmed its consistency. Of particular note in this renewal is that the Plan continues to view protection and promotion of the DPA and water-dependent industry as central to the working waterfront, even as it explores possibilities to expand compatible commercial and industrial uses to support this industry and the economic vitality of the port overall.

B. Consistency with Tidelands Policy Objectives

As required by 301 CMR 23.05(2), I also must find that the Plan renewal is consistent with state tidelands policy objectives and associated regulatory principles set forth in the state Waterways Regulations of DEP (310 CMR 9.00 et seq.). As promulgated, the Waterways Regulations provide a uniform statewide framework for regulating tidelands projects. Municipal Harbor Plans present communities with the opportunity to integrate their local planning goals into state c.91 licensing decisions by proposing modifications to the c.91 regulatory standards through either: 1) the amplification of the discretionary requirements of the Waterways Regulations; or 2) the adoption of provisions that—if approved—are intended to substitute for the minimum use limitations or numerical standards of 310 CMR 9.00 et seq. The approved substitution provisions of Municipal Harbor Plans, in effect, allow DEP to waive specific c.91 use limitations and numerical standards affecting projects in tidelands, in favor of the modified provisions specified in an approved Municipal Harbor Plan.

The Plan sections relating to 301 CMR 23.05(2) have been effectively summarized in the Regulatory Environment section of the Plan and the accompanying Compliance Statement. The Plan proposes guidance that will have a direct bearing on DEP licensing decisions within the Harbor planning Area. Included in this proposed guidance are:

- A provision for a substitution of certain specific minimum numerical standards in the regulations;
- Several provisions that amplify certain discretionary requirements of the Waterways Regulations; and
- A suite of provisions that together comprise a Master Plan for the lands and waters within the Gloucester Harbor DPA.

These provisions are subject to particular approval criteria under 301 CMR 23.05(2)(b) through 301 CMR 23.05(2)(e). The analysis of the proposed provisions is explained below.

Evaluation of Proposed Substitute Provisions

The general framework for evaluating all proposed substitution provisions to the c.91 Waterways requirements is established in the Municipal Harbor Plan Regulations at 301 CMR 23.05(2)(c) and 301 CMR 23.05(2)(d). In effect, the regulations set forth a two-part analysis that must be applied individually to each proposed substitution in order to ensure that the intent of the Waterways requirements with respect to public rights in tidelands is preserved.

Applying part one of the analysis, in accordance with 301 CMR 23.05(2)(c), there can be no waiver of a Waterways requirement unless the Secretary determines that the requested alternative requirements or limitations ensure that certain conditions, specifically applicable to each minimum use limitation or numerical standard, have been met. Part two of the analysis, as specified in 301 CMR 23.05(2)(d), requires that the municipality demonstrate that a proposed substitution provision will promote, with comparable or greater effectiveness, the appropriate state tidelands policy objective.

A municipality may propose alternative use limitations or numerical standards that are less restrictive than the Waterways requirements as applied in individual cases, provided that the plan includes other requirements that—considering the balance of effects on an area-wide basis—will mitigate, compensate for, or otherwise offset adverse effects on water-related public interests.

For substitute provisions relative to the minimum use and numerical standards of 310 CMR 9.51(3)(a) through CMR 9.51(3)(e), any proposal must ensure that nonwater-dependent uses do not unreasonably diminish the capacity of tidelands to accommodate water-dependent uses. Similarly, substitute provisions for nonwater-dependent projects on Commonwealth Tidelands must promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes, as provided in 310 CMR 9.53.

Water Dependent Use Zone

To approve any substitution provision to 310 CMR 9.51(3)(c), I must first determine that the Plan specifies alternative distances and other requirements that ensure new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent use and public access associated therewith as appropriate for Gloucester Harbor. Second, within the context of its Plan, the City must demonstrate that the substitution provision will, *with comparable or greater effectiveness*, meet this objective. My determination relative to whether or not this provision promotes this tideland policy with comparable or greater effectiveness is conducted in accordance with the MHP regulatory guidance is discussed below. A summary of the proposed substitute provision for the 2009 Plan is provided below in Table 1.

Establishment and maintenance of an adequate and functional Water Dependent Use Zone (WDUZ) is critical to assuring necessary waterfront access for water-dependent industrial uses within the DPA, and essential to sustaining these uses. Within the DPA, the Plan endorses the application of the WDUZ requirement at 310 CMR 9.51(3)(c) for the majority of parcels within the DPA. The Plan notes however, that in a few cases strict adherence to the stipulated dimensional requirements of the WDUZ may result in an oddly configured WDUZ and inefficient siting of uses. In these cases, the configuration of the WDUZ as directed by the Waterways standards may be less effective in providing use of the water's edge for water-dependent industrial use than another configuration allowed with flexibility to the existing standards. To address this concern, the Plan proposes a substitution to the WDUZ requirement at 310 CMR 9.51(3)(c) only for those parcels where (1) it can be demonstrated that the application of the c.91 standard would result in inefficient siting of uses without minor modification, and (2) a modified reconfiguration would achieve greater effectiveness in the use of the water's edge for water-dependent industrial use. For these limited properties, the City proposes a minimum width of 25 feet for the WDUZ along the ends of piers and 10 feet minimum along the sides of piers, as long as there is no net loss of WDUZ area on the site. The Plan further clarifies that application of this provision would be applied only upon a clear showing that application of the prescribed dimensions results in a diminished effectiveness of the WDUZ due to unusual configuration of the site itself and not the preferred characteristics in a development proposal.

While the Plan includes parameters to appropriately limit the application of this substitution to only those parcels where such application would provide improved effectiveness in the use of the water's edge for water-dependent industrial use and lays out clear alternative setback distances and appropriate maintenance of the net area of WDUZ, as a condition of my approval, projects proposed for modification of the WDUZ under this provision shall be subject to the review and approval of DEP, prior to the issuance of a Chapter 91 license.

As a result of my review, and with the conditions articulated at the end of this Decision, I believe that the proposed substitute provision has been clearly articulated and has been sufficiently offset by limitations to a modified WDUZ that achieve greater effectiveness of water-dependent use and ensure no net loss of WDUZ, so that the proposed substitute provision promotes the state's tidelands policy objective for guaranteeing that sufficient space along the water's edge will be devoted exclusively to water-dependent industrial use as appropriate for Gloucester Harbor.

Table 1. Summary of Substitute Provisions for Gloucester Harbor Plan

Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measures
310 CMR 9.51(3)(c): Establishment of a Water Dependent Use Zone	<p>“...along portions of a project shoreline other than edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet...” and</p> <p>“...along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet” and</p> <p>“...along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet.”</p>	<p>For project sites that meet the eligibility standard, the required WDUZ dimensions may be modified as long as a minimum width of 25 feet is maintained along the project shore line and the ends of piers and wharfs and a minimum of 10 feet along the sides of piers and wharves, and as long as the modification results in no net loss of WDUZ area.</p>	<p>Substitution provision can only be applied to those project sites where it is shown that application of the Ch. 91 standard would result in an inefficient siting of uses in the WDUZ, and where the resultant reconfiguration achieves greater effectiveness in the use of the water’s edge for water-dependent industrial use.</p> <p>The reconfigured zone must be adjacent to the waterfront and result in an increase in WDUZ immediately adjacent to the water.</p> <p>In no case will a reconfigured WDUZ that results in an area separated from the waterfront or in a net loss of WDUZ be allowed.</p>

Evaluation of Proposed Amplification Provisions

The Review and Approval of Municipal Harbor Plans regulations at 301 CMR 23.05(2)(b) require a finding that any provision that amplifies a discretionary requirement of the Waterways regulations will complement the effect of the regulatory principle(s) underlying that requirement. Upon such a finding, DEP is committed to “adhere to the greatest reasonable extent” to the applicable guidance specified in such provisions, pursuant to 310 CMR 9.34(2)(b)(2). The renewal Plan contains five provisions that will have significance to the Chapter 91 licensing process as amplifications, pursuant to 301 CMR 23.05(2)(b). My determination of the relationship of these proposed local amplification provisions to c.91 standards in accordance with the MHP regulatory guidance is discussed below. A summary of the proposed amplification provisions for the 2009 Plan is provided below in Table 2.

Standards to Protect Water-Dependent Uses [9.36(4)(b)]

The c.91 standard at 310 CMR 9.36(4)(b) states that “...the project shall include arrangements determined to be reasonable by the Department for the water-dependent use to be continued at its existing facility, or at a facility at an alternative location having physical attributes,

including proximity to the water, and associated business conditions which equal or surpass those of the original facility as may be identified in a municipal harbor plan...”. In the first proposed amplification provision, the Plan specifies that proposed projects with new uses will not displace existing commercial fishing vessel berthing in Gloucester Harbor without providing reasonably equivalent berthing space on site or at a suitable alternative site not already used by commercial fishing vessels.

The Plan recognizes that commercial berthing space on the harbor is limited, specifically for commercial fishing vessels, and seeks to protect these valuable spaces wherever possible. The proposed amplification will specifically protect commercial fishing vessels from displacement from an existing berth without the assurance of reasonable accommodation at a comparable and suitable alternative site, and assures that no commercial fishing vessel will be displaced at the alternative site. As a major stated goal of the 2009 Plan is to improve and protect commercial fishing fleet berthing, I find that this proposal will achieve this local goal while complementing the underlying principle of the c.91 regulatory standard, and I approve this amplification subject to the conditions provided at the end of this Decision.

An additional provision that was presented as an amplification to this standard in the Plan’s compliance document which states that “[the] use will not, by virtue of its location, scale, duration, operation, or other aspects, pre-empt or interfere with existing or future development of water-dependent uses of the project site or surrounding property” is currently covered by the definition of Supporting DPA Use at 310 CMR 9.02 and does not need to be approved as an amplification in this decision.

Standards to Protect Water-Dependent Uses [9.36(5)(b)4]

The standard at 310 CMR 9.36(5)(b)4 states that “...in the case of supporting DPA use, conditions governing the nature and extent of operational or economic support must be established to ensure that such support will be effectively provided to water-dependent-industrial uses.”

The Plan clearly articulates the importance of improving the water-dependent marine industrial infrastructure on the waterfront. Particularly, the Plan specifies certain marine-industrial uses that are critical to preserving Gloucester Harbor as a full-service regional “hub” port for the commercial fishing industry, and recognizes that maintenance of these hub uses (i.e., uses directly

related to commercial fishing) is of utmost importance to the viability of the commercial fishing industry in Gloucester. However, the Plan acknowledges that in some cases, there may be no “hub” marine industrial use on a site or a clear opportunity to directly support such improvements on a given project site. In the second proposed amplification provision, the Plan builds on the current c.91 requirement—where, in the absence of a water-dependent-industrial use on site, DEP identifies financial or other means (e.g., capital waterfront improvements) of direct support for the DPA—by providing specific guidance to DEP in their application of this standard. Specifically, the Plan offers a tiered approach to assure that supporting use funds provided under the above cited c.91 standard will be applied with due consideration for priority water-dependent marine industrial infrastructure. These tiers are set up as follows:

1. For properties with a water-dependent industrial hub port use (i.e., uses directly related to commercial fishing), economic support from the supporting use to the hub use will be presumed.
2. If no water-dependent industrial use exists or is proposed on the site, an investment in on-site waterfront infrastructure (e.g., piers, wharves, or dredging) to improve capacity for water-dependent industrial use will be required. Whenever feasible, maintenance of existing berthing and creation of new berthing for commercial vessels should be required.
3. If, and only if, none of the above can be achieved adequately, a contribution to the Gloucester Port Maintenance and Improvement Fund will be required as mitigation. This fund shall be used only for investment in water-dependent industrial infrastructure within the DPA.

I find that the proposed amplification complements the underlying principle of the regulatory provision within the local goals and context, and I approve the amplification as described above and subject to conditions below.

Utilization of Shoreline for Water-Dependent Purposes [9.52(1)(a)]

The standard at 310 CMR 9.52(1)(a) states that, for nonwater-dependent projects, “...when there is a water-dependent use zone, the project shall include one or more facilities that generate water-dependent activity of a kind and to a degree appropriate for the site given the nature of the project, conditions of the adjacent water body and other relevant circumstances. Activation of the waterfront is one of the central themes in the 2009 Plan. The three amplifications proposed for this standard seek to improve public access to the working harbor without interfering with the water-dependent industrial uses that make up the waterfront.

The first amplification to the c.91 standard above proposes to incorporate public access as the open space requirement for nonwater-dependent supporting DPA use projects wherever possible, but only when it can be sited in a manner that is compatible with and not interfere with the water-dependent industrial uses and activities on the site. In this way, the City is able to encourage incorporation of public access into projects and move forward its goal of improved access to the harbor, while assuring that the access is appropriate for the site and use in question. Successful public access in the DPA requires assurance that any such facilities will be designed and sited such that it does not interfere with the primary water-dependent industrial uses of a working waterfront. As this amplification acknowledges this need for balance, I am satisfied that this proposal effectively compliments the regulatory principle of this provision.

The second proposed amplification to the utilization of shoreline for water-dependent purposes standard requires areas of waterfront that are used only seasonally for water-dependent industrial activity be activated for temporary public access. In this way, the Plan allows flexibility in use to meet the City's public access goal, while still promoting the primary use of the waterfront for water-dependent industrial use. Again, because the provision maintains the water-dependent industrial character and use of these areas, while supporting considered shoreline use through public access, I find the proposal complements the underlying regulatory principle of the standard.

The last requested amplification provision requires that proposed project shall not be approved unless it includes a provision to allow access to water-borne vessels. This provision is intended to improve access to vessel berthing and activate the waterfront to the greatest extent possible. As the Plan clearly articulates the need for additional berthing and access to water-borne vessels as an important municipal priority, I find that the proposed amplification adequately complements the effect of this regulatory principle.

Evaluation of DPA Master Plan

Because the Plan is intended to serve, in part, as a Master Plan for the DPA, the approval criteria at 301 CMR 23.05(2)(e) requires a finding that the Plan preserves and enhances the capacity of the DPA to accommodate water-dependent industrial use and prevents substantial exclusion of such use by any other use eligible for licensing in the DPA pursuant to 310 CMR 9.32. Specifically, the Plan must ensure that extensive amounts of the total DPA area are reserved for water-dependent

Table 2. Summary of Amplifications

Regulatory Provision	Chapter 91 Standard	Proposed Amplification
9.36(4)(b) Standards to Protect Water-Dependent Uses (displacement)	<p>“...the project shall include arrangements determined to be reasonable by the Department for the water-dependent use to be continued at its existing facility, or at a facility at an alternative location having physical attributes, including proximity to the water, and associated business conditions which equal or surpass those of the original facility and as may be identified in a municipal harbor plan...”</p>	<p>No project will displace existing commercial fishing vessel berthing in Gloucester Harbor without providing reasonably equivalent berthing space on site or at a suitable alternative site not already used by commercial fishing vessels.</p>
9.36(5)(b)(4) Standards to Protect Water-Dependent Uses (operational or economic support)	<p>“...in the case of supporting DPA use, conditions governing the nature and extent of operational or economic support must be established to ensure that such support will be effectively provided to water-dependent-industrial uses...”</p>	<p>For properties with a water-dependent industrial hub port use, economic support from the supporting use to the hub use will be presumed.</p> <p>If no water-dependent industrial use exists or is proposed on the site, an investment in on-site waterfront infrastructure (piers, wharves, dredging) to improve capacity for water-dependent industrial use will be required. Whenever feasible, maintenance of existing berthing and creation of new berthing for commercial vessels should be required.</p> <p>If, and only if, none of the above can be achieved adequately, a contribution to the Gloucester Port Maintenance and Improvement Fund will be required as mitigation. This fund shall be used only for investment in water-dependent industrial infrastructure (piers, wharves, dredging) within the DPA.</p>
9.52(1)(a) Utilization of Shoreline for Water Dependent Purposes	<p>When there is a water-dependent use zone, “the project shall include ... one or more facilities that generate water-dependent activity of a kind and to a degree appropriate for the site given the nature of the project, conditions of the adjacent water body and other relevant circumstances...”</p>	<p>To the extent practicable for a site, public access facilities shall be integrated into a project to activate the waterfront as part of the open space required with a non water-dependent supporting DPA use but must be sited to be compatible with and not interfere with water-dependent industrial uses and activities.</p> <p>Open areas used to support working waterfront activities seasonally during the year shall accommodate temporary public access when possible.</p> <p>Within the water-dependent use zone no use shall be licensed unless it provides access to water-borne vessels wherever possible.</p>

industrial uses and that commercial uses will not, as a general rule, occupy more than 25% of the DPA land area. The Plan must also set forth reasonable limits on commercial uses that would significantly discourage present or future water-dependent industrial uses and ensure that commercial uses mix compatibly and will not alter the predominantly maritime industrial character of the DPA. The Plan should also identify industrial and commercial uses allowable under local zoning that will qualify as a supporting DPA use, and identify a strategy for the ongoing promotion of water-dependent industrial use.

The DPA Master Plan section of Gloucester's Municipal Harbor Plan describes both its vision of the Inner Harbor as a working waterfront and its perception of the challenges afforded by a broad DPA area. The Plan contains extensive analysis documenting the existing and potential water-dependent industrial and commercial uses in the entire DPA. To address this approvability standard for the DPA, the 2009 Plan proposes an approach that—when compared to the allowed use and development status under the 1999 Plan—decreases the overall percentage of potential commercial uses within the DPA while promoting greater use flexibility for those properties with the greatest challenges for redevelopment in the planning area. The City's proposal is to use revised municipal zoning and special permit standards in concert with specific guidance to DEP for licensing in tidelands to allow up to 50% of the ground area for commercial uses on all parcels within the DPA. Such proposed changes would closely align the allowed uses for the “Marine Industrial” category in the municipal zoning ordinance with c.91 regulation’s supporting DPA uses (i.e., industrial or commercial uses that provide direct economic or operational support to water-dependent industry in the DPA).

In terms of limiting commercial uses that would significantly discourage present or future water-dependent industrial uses, the City’s proposal, as weighed against the current municipal zoning and c.91 licensing regime, reduces the current potential commercial/supporting uses by 17% in the Industrial Port sub-area and by 22% in East Gloucester sub-area, while increasing commercial/supporting uses by 17% in the Harbor Cove sub-area. Overall, the Plan results in a decrease of commercial use from the current allowed potential of 33.7% to 30.5% (a decrease of 4.39 acres).

The DPA Master Plan prevents commitments of space or facilities that would significantly discourage present or future water-dependent industrial activity, especially on waterfront sites, both through amplifications of state waterways provisions as discussed above, and through proposed revisions to local zoning language that will require special conditions through site plan review to address this standard. The proposed requirements serve to avoid displacement of existing uses, prevent interference of water-dependent industrial uses, assure project compatibility with the working waterfront, and assure preservation of water-dependent uses on adjacent parcels.

The 2009 Plan includes a recommendation to amend the City's Use Regulations Schedule to identify any industrial and commercial uses to be allowable for licensing by DEP as Supporting DPA Uses. As required by the Review and Approval of Municipal Harbor Plans regulations at 301 CMR 23.05(2)(e)(3), these are included as Table 5-3 in the Plan. Although this table includes all uses for the Marine Industrial district, only those identified as a permitted use, or being subject to conditions (superscript numbers 1-4) are proposed to be eligible as DPA supporting uses for the purposes of the DPA Master Plan. Noting that all supporting DPA uses allowable for licensing must comply with the provisions of both the local zoning ordinance and the definition at 310 CMR 9.02, I find the information identifying the allowable industrial and commercial uses to be licensed as Supporting DPA Uses for the Gloucester DPA adequate.

Finally, the DPA Master Plan includes a strategy to guide the on-going promotion of water-dependent industrial use. The strategy includes recommendations for capital and operational improvements to be provided by projects involving DPA supporting uses, including specific recommendations that such improvements or use of funds be directed toward commercial berthing, dredging and improvement of water-dependent industrial infrastructure (wharves, piers) only. Further, the Plan includes recommendations to pursue options for a publicly owned or managed dock for the commercial fleet, expanding cruise ship opportunities, and consider development of domestic and international ferry services. New marine-industrial technologies, such as producing new products from fish processing, are also recommended options, as appropriate. Other recommendations to improve navigation include opportunities to dredge the inner harbor and provide a possible Inner Harbor Water Shuttle. Locally, the management and implementation of the goals of the DPA Master Plan will be handled through a consolidation of port industry and economic development expertise within the City's Community Development Office. These elements

together, will serve as a functional and effective strategy to guide the ongoing promotion of water-dependent industrial use for the Gloucester Harbor DPA.

Based on the information provided in the Plan as discussed above and subject to the conditions at the end of this Decision, I find that the DPA Master Plan components of the Plan are consistent with the requirements of 301 CMR 23.05(2)(e).

C. Relationship to State Agency Plans

The only state-owned property in Gloucester Harbor is the Jodrey State Fish Pier, which is owned by the Department of Conservation and Recreation and managed by MassDevelopment. The 2009 Plan contains two recommendations that are in line with the State's ongoing efforts to revitalize and diversify uses in order on the Pier to expand the harbor's capabilities and support the fishing industry in Gloucester. These recommendations include a plan to dredge the north face of the pier to provide for better vessel access, and a recommendation to allow some marine industrial businesses to utilize existing truck parking on the State Fish Pier so to minimize the number of trucks parking along downtown streets. The City has indicated that it has worked with MassDevelopment in the preparation of the Harbor Plan, and in the absence of any contrary indication I find that no incompatibility exists with agency plans for continued operation.

D. Implementation Strategy

Pursuant to 301 CMR 23.05(4), the Plan must include enforceable implementation commitments to ensure that, among other things, all measures will be taken in a timely and coordinated manner to offset the effect of any plan requirement less restrictive than that contained in 310 CMR 9.00. The provisions of this Plan will be implemented through proposed amendments to the Gloucester Zoning Ordinance and special permit standards. These local rule revisions will permit a more flexible application of limitations on supporting DPA uses, while ensuring that an extensive amount of the total DPA land area in close proximity to the water will be reserved for water-dependent industrial use and that commercial uses and any accessory uses thereto would be limited in the DPA (maximum potential to occupy no more than 30.5% of the DPA land area covered by the Plan). Further, the amended zoning provisions will assure that permitted uses are consistent with the approved substitute provision, offsetting measures and amplifications described in the plan. The Plan further provides additional direction in the application and issuance of Chapter 91 licenses for sites in the planning area. Accordingly, I find that this approval standard is

met subject to the condition detailed below which requires local enactment of the implementation commitments.

IV. EFFECTIVE DATE AND TERM OF APPROVAL

This Decision shall take effect immediately upon issuance on December 15, 2009. As requested by the City, the Decision shall expire two (2) years from this effective date unless a renewal request is filed prior to that date in accordance with the procedural provisions of 301 CMR 23.06 (recognizing that the term of approval is now two years). No later than six months prior to such expiration date, in addition to a notice to the City required under 301 CMR 23.06(2)(b), the City shall notify the Secretary in writing of its intent to request a renewal and shall submit therewith a review of implementation experience relative to the promotion of state tidelands policy objectives.

V. STATEMENT OF APPROVAL

Based on the planning information and public comment submitted to me pursuant to 301 CMR 23.04 and evaluated herein pursuant to the standards set forth in 301 CMR 23.05, I hereby approve the 2009 Plan renewal as the Municipal Harbor Plan for the City of Gloucester, subject to the following conditions:

1. DEP shall not license any project seeking substitution of water-dependent industrial use and supporting DPA use standards until the local implementation commitments laid out in the 2009 Plan (amendments to the Gloucester Zoning Ordinance and special permit standards) have been enacted through the City's established governance process. The Plan shall be updated to reflect the final local code and standards accepted.
2. DEP shall apply a substitute reconfigured Water Dependent Use Zone (WDUZ) as described above only when a clear showing has been made that the application of the c.91 standard would result in an inefficient siting of uses in the WDUZ and where the resultant reconfiguration achieves greater effectiveness in the use of the water's edge for water-dependent industrial use. For reconfiguration of any WDUZ the following conditions shall apply:
 - a. The reconfiguration shall result in no net loss of WDUZ area;
 - b. The reconfigured WDUZ shall be adjacent to the water and must adhere to the following minimum dimensions: 25 feet width maintained along the project shore

line and the ends of piers and wharfs, and 10 feet width along the sides of piers and wharves; and

- c. The reconfigured WDUZ shall not result in an area of WDUZ separated from the water.

3. DEP shall not license a project use in the WDUZ zone unless access to water-borne vessels is provided, wherever possible.

4. DEP shall not license any project which will displace any commercial fishing vessel berthing in Gloucester Harbor without reasonable accommodation to provide equivalent berthing space on site or at a suitable alternative site not already used by commercial fishing vessels.

5. During licensing of projects with supporting DPA uses, DEP should establish the extent of operational or economic support provided to water-dependent industrial uses by supporting DPA uses, as follows:

- a. For properties with a water-dependent industrial hub port use (i.e., uses directly related to commercial fishing), economic support from the supporting use to the hub use will be presumed.
- b. If no water-dependent industrial use exists or is proposed on the site, an investment in on-site waterfront infrastructure (piers, wharves, dredging) to improve capacity for water-dependent industrial use will be required. Whenever feasible, maintenance of existing berthing and creation of new berthing for commercial vessels should be required.
- c. If, and only if, none of the above can be achieved adequately, a contribution to the Gloucester Port Maintenance and Improvement Fund will be required as mitigation. This fund shall be used only for investment in water-dependent industrial infrastructure (piers, wharves, dredging) within the DPA.

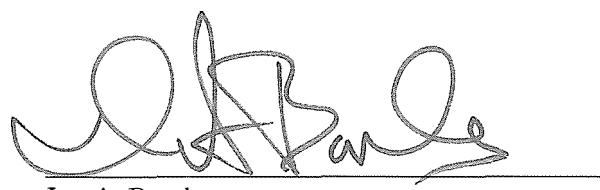
In the limited circumstances where a contribution to the Fund is required, DEP will determine the amount of the contribution and will require payment as a condition of licensing, consistent with current practice. The City will be responsible for creating and administering the Fund. Expenditures from the Fund are restricted to investment in water-dependent infrastructure within the DPA (such as, but not limited to: repairs or construction of piers and wharves or for support for marine industrial dredging) and will be made in accordance with a priorities plan to be prepared and maintained by a Port and Harbor Committee to be appointed by the mayor. The City shall submit to DEP an annual report detailing the Fund expenditures and balances.

6. DEP shall, to the extent practicable for a site, integrate public access facilities into a project to activate the waterfront as part of the open space required with a nonwater-dependent supporting DPA use, so long as it is sited to be compatible with and not interfere with water-dependent industrial uses and activities.
7. DEP shall allow open areas used to support working waterfront activities seasonally during the year to accommodate temporary public access when possible.
8. The City shall prepare a final, approved Gloucester Harbor Plan (“Approved Plan”) to include:
 - a. The Plan dated July 2009 as amended during the consultation period and by City enactment of local zoning and any special permit code;
 - b. The Statement of Compliance as amended during the consultation period; and
 - c. This Approval Decision.

Copies of the final, approved plan shall be provided to CZM and DEP’s Waterways Program, kept on file at the City Clerk and Community Development Offices, and made available to the public through the city’s website and copies at the library. For waterways licensing purposes, the Approved Plan shall not be construed to include any of the following:

1. Except as described above, any subsequent addition, deletion, or other revision to the submitted plan dated July 2009, except as may be authorized in writing by the Secretary as a modification unrelated to the approval standards of 301 CMR 23.05 or as a plan amendment in accordance with 301 CMR 23.06(1); and
2. Any provision which, as applied to the project-specific circumstances of an individual license application, is determined by DEP to be inconsistent with the waterways regulations at 310 CMR 9.00 or with any qualification, limitation, or condition stated in this Approval Decision.

In a letter from the Waterways Program Chief dated December 10, 2009, DEP has expressed support for approval of the renewal Plan and stated that the Plan will become operational for waterways licensing for all applications upon the effective date of Plan approval and in accordance with the conditions above. Subsequent to Plan approval, a determination of conformance with the Plan will be required for all proposed projects in accordance with 310 CMR 9.34(2).



Ian A. Bowles
Secretary of Energy and Environmental Affairs

12/11/09

Date