

Boundary Review of the Gloucester Inner Harbor Designated Port Area, Gloucester MA

**Executive Office of Energy and Environmental Affairs
Office of Coastal Zone Management**

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I. INTRODUCTION

In 1972, Congress passed the Coastal Zone Management Act (CZMA), which establishes a national policy to “preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation’s coastal zone for this and succeeding generations” and to “encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone...” [16 U.S.C. 1452, Sec. 303(1) and (2)]. In the CZMA, Congress made declarations of national policy elements and encouraged states to develop management programs enforceable under state law to address these interests.

The Commonwealth established the Massachusetts Office of Coastal Zone Management (CZM) and developed its coastal zone management program, which was approved by the National Oceanic and Atmospheric Administration in 1978. The program plan, as amended, contains the coastal policies and underlying state statutory and regulatory authorities, which articulate Massachusetts’ priorities for protection and management of its coastal resources. CZM’s policies address coastal hazards, energy, growth management, habitat, ocean resources, ports and harbors, protected areas, public access, and water quality.

One of the interests established by the Congress in the CZMA is the promotion of economic uses of coastal resources, including the “priority consideration being given to coastal-dependent uses” and processes for the siting and preservation of port, transportation, and other commercial and industrial development “in or adjacent to areas where such development already exists.” The Designated Port Area (DPA) policy was established in 1978 within the Massachusetts Coastal Zone Management Plan after extensive consultation with state agencies, elected officials, municipal planners, non-government organizations, and representatives from the business community, local citizens, and others. The two central principles of the DPA policy are to (1) promote water-dependent industries as an important sector of the state’s economy and (2) prevent the loss of areas that have certain key characteristics that make them particularly well suited to water dependent industrial uses. The premise for this strategy is that it is sound public policy to maximize use of areas currently suited for water dependent industrial uses and avoid the conversion of these areas to incompatible residential, commercial, and recreational uses, so that future marine industrial uses will not have to develop new areas for such use. The impact and expense of developing new marine industrial locations— including dredging, bulk-heading, building docks, development of transportation, power, and water infrastructure—are very high in terms of both economic and environmental costs, and such proposals are frequently met with extensive public and political opposition.

Under the Designation of Port Areas regulations at 301 CMR 25.00, CZM is responsible for mapping, interpreting, and periodic review of DPA boundaries. The purpose of the DPA boundary review process is to determine whether a DPA boundary should remain as it is currently established

or whether it should be modified to more appropriately protect and promote the goals of DPA policy. DPA boundaries are reviewed in accordance with the procedures set forth in the Designation of Port Area regulations at 301 CMR 25.00.

II. THE DPA PROGRAM

DPA's are geographic areas of particular state, regional, and national significance with respect to the promotion of commercial fishing, shipping, and other vessel-related activities associated with water-borne commerce, and of manufacturing, processing, and production activities reliant upon marine transportation or the withdrawal or discharge of large volumes of water. These water dependent industrial uses vary in scale and intensity but share similar needs for infrastructure with three essential components: (1) a waterway and associated waterfront that has been developed for some form of commercial navigation or other direct utilization of the water; (2) backland space that is conducive in both physical configuration and use character to the siting of industrial facilities and operations; and (3) land-based transportation and public utility services appropriate for general industrial purposes.

This combination of industrial attributes is found in a very limited and diminishing portion of the coastal zone, and particularly few areas are of sufficient contiguous extent to invite concentrations of related businesses and/or large-scale facilities. Because economic, environmental, and social factors now virtually preclude further development of such an intensive nature, these marine industrial coastal areas are protected to assure that the long term needs of these water-dependent industries are accommodated. Therefore state policy seeks to prevent these areas from becoming irretrievably committed to, or otherwise significantly impaired by, non-industrial or non-water dependent types of development which could be sited elsewhere. Accordingly, within DPA's, state policy encourages water dependent industrial use and, on tidelands subject to the jurisdiction of laws and regulations, limits or prohibits other uses except for compatible public access and certain industrial, commercial, and transportation activities that can occur on an interim basis without significant detriment to the capacity of DPA's to accommodate water dependent industrial use in the future.

III. GLOUCESTER DPA AND BOUNDARY REVIEW PROCESS

Coincident with the initial development of the Commonwealth's DPA policy, the physical boundary for the Gloucester Inner Harbor DPA was established in 1978 (Figure 1). After the establishment of the physical boundaries of the state DPA's, the legal framework was further developed through a succession of regulatory measures. In 1979, the Department of Environmental Protection (DEP) incorporated DPA rules into its Waterways regulations under M.G.L. Chapter 91, with provisions to protect water dependent industrial uses only on the water-side areas of DPA's. In 1984, the legislature expanded the Chapter 91 licensing authority to include filled tidelands, and DPA

jurisdiction was extended to include upland areas. In 1994, the Designation of Port Area regulations at 301 CMR 25.00 were promulgated to set forth the procedure for establishing and modifying DPA boundaries.

Since the Gloucester DPA boundary was originally established in 1978, and the subsequent underlying regulatory framework was sequentially developed, there has not been a comprehensive boundary review, using the designation standards found at 301 CMR 25.04, to determine if the current DPA boundary should remain as currently established or whether it should be modified.

In March of 2013, at the request of the Gloucester Harbor Plan Committee, the Mayor of Gloucester requested that CZM initiate a review of the entire boundary of the Gloucester Inner Harbor DPA. CZM accepted the request in April 2013, and a notice of review was published in the *Environmental Monitor* on May 8, 2013 and in the *Gloucester Daily Times* on May 3, 2013. A public meeting was held on May 20, 2013 in Gloucester and the formal public comment period closed on June 7, 2013.

Notice of this draft boundary review report, a public hearing, and a thirty-day public comment period was included in the February 5, 2014 *Environmental Monitor*. A final decision will be issued pursuant to 301 CMR 25.03(4) and (5) within 60 days of the close of the public comment period.

To inform the boundary review process, CZM reviewed comments submitted, attended Harbor Plan Committee meetings, met with property owners, city officials, DEP staff, and interested citizens. CZM also conducted intensive review of available plans, permits, and licenses applicable to the DPA review. Throughout the course of the review, CZM received formal and informal comment from DPA property owners, the public, elected representatives, and City and state agencies. CZM considered all comment, regardless of when it was received, in the context of the policy and regulatory framework that guides this review. Many commenters provided substantive information regarding history, uses, constraints, impacts, and other features of the existing DPA which was particularly useful in the assessment. CZM would like to extend our appreciation for all those who provided written and informal comments, documentation, or otherwise participated in the boundary review process.

IV. PLANNING UNITS FOR BOUNDARY REVIEW

The boundaries of DPAs are established by CZM in accordance with criteria governing the suitability of contiguous lands and waters to accommodate water dependent industrial use, as appropriate to the harbor in question. The Designation of Port Area regulations at 301 CMR 25.00 define water dependent industrial use to mean any use found to be such in accordance with the Chapter 91 Waterways regulations at 310 CMR 9.12(2)(b).

As a general rule, CZM applies DPA boundary review criteria within the context of groups of parcels that form coherent planning units, rather than to individual project sites or other properties under common ownership or control. DPA-related attributes vary across different parcels, such that the combined characteristics of associated parcels in the same general vicinity are not reflected accurately in the characteristics of any single property. For this reason, it is important that geographic areas proposed to be included in (or removed from) a DPA be sized and configured in a manner that allows consideration of all relevant factors affecting *overall suitability* to accommodate water dependent industrial use. In this review, CZM defined seven planning units within the existing Gloucester Harbor DPA, forming coherent areas with groups of parcels that are delineated by shared physical, geographical, and land use characteristics, as described and detailed below and shown in Figure 2.

Because physical and functional characteristics are such that water dependent industrial and non-water dependent industrial uses are frequently inter-mixed or co-occur, in the determination of whether an area was to be classified as water dependent industrial, CZM considered the primary use of a planning unit to be that use to which a majority of that area is dedicated. The Chapter 91 Waterways regulations affirm this principle, recognizing that water dependent industrial uses are permitted to include licensable accessory and supporting commercial uses that co-occur and are compatible with water dependent industrial uses. Accessory uses include parking facilities, access and interior roadways, administrative offices and marine-oriented retail facilities. Supporting uses are industrial or commercial use that provide direct economic or operational support for the water-dependent industrial use in the DPA and must be compatible with activities characteristic of a working waterfront and its backlands.

Harbor Cove

The Harbor Cove planning unit comprises fifteen-and-a-half acres and includes the entire DPA land area that encompasses Harbor Cove, from Cape Pond Ice on Commercial Street to the U.S. Coast Guard station on Harbor Loop. The Harbor Cove area is locationally and functionally distinct in that its geography is distinguished as a cove between the Fort Square neck on the southwest side of the harbor entrance and the small peninsula at Harbor Loop that protrudes into the harbor. The planning unit area is central to the Gloucester fishing fleet's ice, fueling, and processing facilities. Most of the land area here is in water dependent industrial use. There are some minor areas of non-water dependent uses, such as retail, office and restaurants, but the substantial portion (73%) of the land area is devoted to water dependent industrial uses, and the majority of the waterfront is used to provide berthing and services to commercial vessels, primarily the city's fishing fleet.

The City of Gloucester Harbor Plan and Designated Port Area Master Plan (2009) describes Harbor Cove as “the traditional heart of the fishing industry” (p15). The area provides significant and essential docking space for fishing vessels, and many of the fleet's core support services are located here, including Cape Pond Ice and Felicia Oil fueling services. The City's key public commercial vessel facilities are located within the Harbor Cove area, including both the St. Peter's Landing and

the waterfront at 65 Rogers Street. These facilities are licensed to provide berthing as well as parking, lay down, and storage space for gear. Important processing facilities, including Ocean Crest, Neptune's Harvest fertilizer, Intershell, Mortillaro Lobster, Fishermen's Wharf, and Aran Fisheries are all located in the Harbor Cove review area. Many of these uses have invested significant resources to improve operations and/or waterfront facilities. Coast Guard Station Gloucester is located at the edge of Harbor Cove on Harbor Loop, and provides essential port safety and support for the harbor and the region.

There are non-water dependent uses in Harbor Cove, but these constitute only a minor overall use of this planning unit. Restaurants such as the Brew Pub, Lat 43, and the Gloucester House, while non-water dependent uses, are licensed to accommodate the primary water dependent industrial uses on the waterfront, and many have made recent improvements to these areas. The Brew Pub is required by license to preserve space for water dependent industrial uses, while also providing financial support to the Gloucester Port Maintenance fund, as required by the City of Gloucester Harbor Plan and Designated Port Area Master Plan. Lat 43 and the Coughlin office building are licensed to provide access to the waterfront for vehicles to support water dependent industrial waterfront uses. In addition to the Gloucester House Restaurant, the Seven Seas Wharf also hosts excursion vessels such as the schooner Thomas E. Lannon, Seven Seas Whale Watch, and Wejack Fishing Charters. The Building Center is a non-conforming, non-water dependent industrial commercial use that continues to function in this capacity as it did before the establishment of the Gloucester Inner Harbor DPA.

The city-owned parcel at 65 Rogers Street is currently licensed as public parking as a temporary use for a term of five years, while the city's Planning and Development Office works with the Gulf of Maine Research Institute to assess the viability of a multi-tenant facility designed for water dependent industrial uses for the site. This parcel is directly landward of a city-owned waterfront parcel that functions as one of the city's key berthing areas.

North Channel

The North Channel planning unit extends along the length of the North Channel and runs from the Harbormaster building on Harbor Loop to Gordon Thomas Park at the head of the North Channel. This 27- acre area is one of the most substantially industrial sections of Gloucester's DPA, both on the land and along the developed shoreline. This area includes the harbormaster offices; Maritime Gloucester's marine railway; Americold's two key cold storage facilities; several fish processing facilities, including Gorton's of Gloucester, Zeus Packing, and Steve Connolly Seafood, Inc.; the Cape Ann Seafood Exchange; and large commercial boat repair facilities at Rose's Marine. While there are some vacant buildings in this area that have supported water dependent industrial uses in the recent past, these areas remain viable for these uses. The Cruiseport cruise terminal site receives and accommodates both cruise ships and freight, with the ability to accommodate ships up to 500 feet drawing up to 20 feet. The city's large-scale wind turbines were landed at the site's docking facilities in early 2013. In addition to these primary water dependent industrial uses on the

waterfront, Gorton's maintains a large parking area and office facilities accessory to its primary water dependent industrial fish processing use between Rogers and Main Streets. While this area is zoned Central Business, these functions are integral to this water dependent industrial use. With its entirely developed shoreline, over 89% of the land area in the North Channel review area is primarily devoted to and licensed for water dependent industrial uses. The few, minor areas of non-water dependent industrial use in this planning unit support, but are largely incidental to, the predominantly water dependent industrial nature of this area. Approximately 10% of the North Channel review area is occupied by the National Grid substation, Halibut Point restaurant, Solomon Jacob and Gordon Thomas Parks, and Flannigan's service station.

State Fish Pier

The State Fish Pier planning unit is located at the head of the harbor and includes the entire Jodrey State Fish Pier and the area along the North Channel on Parker Street. This 10-acre area is focused specifically on landing and processing of fish and the support of commercial fishing vessels. The Jodrey State Fish Pier, maintained by Mass Development, is 100% dedicated to commercial fishing needs. Facilities here include berthing for the commercial fleet, Coast Guard and Massachusetts Environmental Police vessels, and large herring vessels, as well as a fish processing plant, a cold storage facility and an office building that supports Mass Development, Massachusetts Environmental Police, and CZM regional offices. Most of the land area on Parker Street is also primarily dedicated to water dependent industrial uses, including processing facilities for National Fish and Seafood, as well as office space and parking accessory to these. A mixed use facility supports Three Lantern Marine and Fishing, which supplies fishing gear, as well as a yoga studio and charter vessels. Over 94% of the State Fish Pier review area is substantially dedicated to water dependent industrial uses.

East Gloucester

The 13-acre East Gloucester planning unit extends from the State Fish Pier around Cripple Cove and the east side of the harbor to the peninsula of the Americold cold storage facility. This area includes portions of and directly adjoins a dense residential neighborhood, with more than half of the area in residential use. Further, a significant portion of the land area within the DPA in this planning unit is outside of jurisdictional tidelands. The waterfront is primarily dominated by recreational boating facilities (marinas). There are boat yard functions associated with the marinas here (primarily storage) but these uses occupy less than 20% of the East Gloucester planning unit, and are functionally incidental to the substantially residential and recreational character of the area. Cripple Cove is dominated by a mix of commercial uses, residential areas, and recreational marinas such as Lighthouse, Enos, and Yankee Marine. Benjamin Smith playground and Cripple Cove public landing are also located here. The public landing is licensed as a public recreational boating facility in perpetuity. The waterfront at East Gloucester Marine is developed with wharves, piers and floats that are licensed for use as recreational boating facilities, and Brown's Yacht Yard is licensed for both recreational boating (marina) and boatyard uses. Interspersed throughout the area are single and multi-family residences, apartments, and condos. The predominant use character of the East

Gloucester planning unit is a non-water dependent industrial mix of residential, commercial, and recreational uses.

Cold Storage East Gloucester

The Cold Storage East Gloucester planning unit is comprised of the four-and-a-half-acre peninsula that includes the extensive cold storage facility property in East Gloucester (Americold). This property is currently used by multiple fish processing companies in the Gloucester DPA for both storage and processing of fish. The City considers this facility to be very important to the continued functioning of these water dependent industrial facilities. The waterfront is currently underutilized, but Americold is currently investing in maintenance and improvements of the facility. This review area is functionally distinct from the surrounding areas primarily because of its substantially industrial character and large scale, both on land and on the developed waterfront. One hundred percent of the Cold Storage East Gloucester planning unit is currently in water dependent industrial use.

Smith Cove

The Smith Cove planning unit includes the nine-acre area from the Cold Storage East peninsula to the limit of the DPA on East Main Street in Smith Cove, and is largely residential, with commercial, recreational and residential mixed uses occupying the waterfront. The waterfront in this area is generally developed with wharves, piers and floats which primarily accommodate smaller, mostly recreational vessels. The North Shore Arts Association hosts a licensed recreational boating facility, and Beacon Marine functions as a mixed-use recreational, residential and retail facility. There is limited commercial dockage here, primarily at the Santapaola wharf, and other mixed waterfront uses including boat storage and some boat repair, but these are incidental to the predominantly residential, recreational and commercial uses in the area. Uses along East Main Street are single family residential as well as mixed residential and commercial, with the section from Americold to Pirates Lane, including a dentist, a laundromat, a restaurant, and a retail store, zoned by the city as Neighborhood Business. Approximately ninety-five percent of the Smith Cove planning unit is primarily dedicated to a mix of residential, commercial, and recreational uses.

Rocky Neck

The Rocky Neck planning unit is the area of Rocky Neck within the DPA and includes the Gloucester Marine Railways, which is the oldest continuously operating marine railway in the country. This area is primarily engaged in repair and maintenance of larger vessels in dry-dock, and accommodates the largest of fishing vessels, tugboats, ferries, excursion vessels, and schooners in addition to smaller vessels. The developed shoreline includes two marine railways and an 85-ton travel lift, and also provides services and berthing for commercial vessels. This planning unit fully functions as water dependent industrial use and is distinct from adjacent areas based on the scale of the industrial operations on site.

V. ELIGIBILITY REVIEW

Certain areas within the DPA are not eligible for review pursuant to the criteria at 301 CMR 25.03(2)(a) through (d). Based on our review, CZM determined that no portion of the Gloucester Inner Harbor DPA has been the subject of a designation decision under 301 CMR 25.03(5) in the last five years. Therefore, all areas of the DPA are eligible for review based on the criteria at 301 CMR 25.03(2)(a).

Gloucester's DPA is an extraordinary mix of both water dependent industrial uses and uses that are not considered water-dependent industrial. Much of Gloucester's DPA consists of some mixture of these uses as either primary, supporting, and/or accessory uses, with very few examples where one exists to the exclusion of the other. Therefore, in applying 301 CMR 25.03(2)(b), CZM considered the primary use within a given area to be the use to which a majority of the planning unit is dedicated.

No portion of the Gloucester Inner Harbor DPA was recommended for exclusion from this review by the City Council or any other municipal body with authority to enact zoning. Therefore, all areas of the DPA are eligible for review based on the criteria at 301 CMR 25.03(2)(c).

Any area within a DPA that is entirely bounded by existing DPA lands or waters is not eligible for review pursuant to 301 CMR 25.03(2)(d). This criterion is intended to avoid conflict that could result from incompatible uses being developed in the middle of an otherwise substantially water dependent industrial use area. This scenario could arise if a portion of the DPA that is otherwise completely surrounded by DPA lands is de-designated. However, as the current review is of the entire DPA boundary, no such isolated area is under review, and this scenario is avoided. Therefore, this criterion is not implicated in this DPA boundary review.

As described in greater detail above, the Harbor Cove, North Channel, State Fish Pier, Cold Storage East Gloucester, and Rocky Neck planning units are classified as areas with primarily water dependent industrial uses. Therefore, these areas do not meet all of the criteria for eligibility for review pursuant to 301 CMR 25.03(2) and are not further analyzed for substantial conformance with the criteria governing suitability to accommodate water dependent industrial use. The boundary of the Gloucester Inner Harbor DPA will not change in these areas.

The East Gloucester and Smith Cove review areas do not exhibit a primarily water dependent industrial use character and are the subject for further analysis for inclusion in the Gloucester DPA below.

VI. DESIGNATION REVIEW CRITERIA AND ANALYSIS

The DPA regulations direct that an area of land or water reviewed under 301 CMR 25.00 shall be included or remain in a DPA *if and only if* CZM finds that the area is in substantial conformance with each of the criteria governing suitability to accommodate water dependent industrial use.

East Gloucester

Pursuant to 301 CMR 25.04(2)(a), any area to remain in the DPA under this boundary review must include, or be contiguous with other DPA lands that include, a shoreline that has been substantially developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a DPA water area. The shoreline in the East Gloucester planning unit consists entirely of filled tidelands, with seawalls, bulkheads and riprap providing stability for these areas. Most of the shoreline has been developed further with piers and floats that establish a connection between the land area and the water. Based on this, CZM concludes that the East Gloucester planning unit meets this criterion.

The second key criterion for determining suitability of a land area for water dependent industrial use, pursuant to 301 CMR 25.04(2)(b) is that the land must lie in reasonable proximity to an established road or rail link that leads to a major trunk or arterial route; and be served by water and sewer facilities that are capable of serving general industrial use. The East Gloucester planning unit is primarily served by East Main Street, which is a main public road that links East Gloucester to Route 127A and Route 128, which is the main roadway into and out of the city. East Main Street is generally a narrow road flanked by residential and commercial properties in this area, although large trucks serving area businesses and the Americold cold storage facility routinely use it. While this road is not ideally suited for large commercial vehicles, CZM believes that the road does currently meet the criteria of an established road link leading to a major route. The area is also served by both city water and sewer services. Therefore, CZM concludes that the East Gloucester planning unit meets the criteria for road access and infrastructure necessary to support water dependent industrial uses.

To accommodate water dependent industrial use, the land area must also exhibit a topography that is generally conducive to industrial use, or be reasonably capable of becoming so. As discussed above, the entire shoreline and slightly less than half of the overall land area of the East Gloucester planning unit consists of filled tidelands. These areas are primarily very low-lying and flat, and while areas outside of jurisdiction are generally somewhat higher in elevation, the area exhibits a relatively gentle slope from East Main Street toward the harbor, with areas closest to the harbor being relatively flat and consistent in elevation. Based on this, CZM concludes that the topography of the East Gloucester planning unit is generally conducive to industrial use, and therefore meets the criteria of 301 CMR 25.04(2)(c).

Finally, to remain within the DPA boundary, the land area must also exhibit a use character that is predominately industrial, or reasonably capable of becoming so because it does not contain a dense concentration of non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use; or residential, commercial, recreational or other uses that would unavoidably be destabilized if commingled with industrial activity.

CZM's review determined that the waterfront in the East Gloucester planning unit is primarily dominated by recreational boating facilities (marinas), including at least three that are currently licensed as such long-term. Cripple Cove is dominated by a mix of commercial uses, residential areas, and recreational marinas such as Lighthouse, Enos and Yankee Marine. The Cripple Cove public landing, associated with the public playground, is licensed as a public recreational boating facility in perpetuity. Unlike the majority of the DPA, which is zoned by the city as Marine Industrial, the playground, landing, parking and residential properties along East Main Street near Cripple Cove are zoned Neighborhood Business. The waterfront at East Gloucester Marine is developed with wharves, piers and floats that are licensed for use as recreational boating facilities and Brown's Yacht Yard is licensed for both boat yard and recreational boating (marina) uses. The boat yard functions here are incidental and are largely associated with the marinas, and consist of typical marina-related uses such as storage and boat repair. Interspersed throughout the area are single and multi-family residences, apartments, and condos. Though one lobster distribution company is located here, in total, water dependent industrial uses occupy less than 20% of the East Gloucester planning unit, and are functionally secondary to the predominantly residential, commercial, and recreational character of the area.

The East Gloucester planning unit is dominated by residential and non-industrial buildings that in most cases existed in this area before the establishment of the DPA, and have not been removed or converted to industrial use to date. CZM presumes that the predominant uses here, including residential and commercial recreational boating facilities, small public boating facilities, and public recreational areas, are largely incompatible with activities characteristic of a water dependent industry, because of the inherent functional conflicts and destabilization that may arise. Therefore, CZM finds that this area does not meet the criteria for inclusion in a DPA boundary as required by 301 CMR 25.04(2)(d).

Smith Cove

As stated previously, pursuant to 301 CMR 25.04(2)(a), an area to remain in the DPA under this boundary review must include, or be contiguous with other DPA lands that include, a shoreline that has been substantially developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a DPA water area. While the land area between the Americold facility and Pirates Lane in the Smith Cove planning unit is occupied by residences and small commercial business lots with no access to the waterfront, the shoreline itself in the Smith Cove planning unit consists entirely of filled or altered tidelands, with seawalls, bulkheads and riprap providing stability for these areas. The entire shoreline from Beacon Marine south has been developed further with

piers, wharves, and floats that provide a functional connection to the water. Accordingly, CZM concludes that a substantial portion the Smith Cove planning unit includes, or is contiguous with other DPA lands that include a shoreline that is developed adequately to establish a functional connection with the DPA waters such that water dependent industrial use could be supported in this area.

The second key criterion for determining suitability of a land area for water dependent industrial use, pursuant to 301 CMR 25.04(2)(b) is that the land must lie in reasonable proximity to an established road or rail link that leads to a major trunk or arterial route; and be served by water and sewer facilities that are capable of serving general industrial use. As is the case with the East Gloucester planning unit, the Smith Cove planning unit is primarily served by East Main Street, a main public road that links East Gloucester to Route 127A and Route 128, which is the main roadway into and out of the city. East Main Street is generally a narrow road flanked by residential and commercial properties in this area, although large trucks serving area businesses routinely use it. Again, while this road is not ideally suited for large commercial vehicles, CZM believes that the road does currently meet the criteria of an established road link leading to a major route. The area is also served by both city water and sewer services. Therefore, CZM concludes that the Smith Cove planning unit meets the criteria for road access and infrastructure necessary to support water dependent industrial uses.

To accommodate water dependent industrial use, the land area must also exhibit a topography that is generally conducive to industrial use, or be reasonably capable of becoming so. The area between the Americold cold storage facility and Pirates Lane consists of upland that is entirely developed as a residential and commercial neighborhood. However, as discussed above, the entire shoreline in the Smith Cove planning unit is either filled or altered tidelands that provide a generally stable and flat topography. Like the East Gloucester planning unit, this area exhibits a relatively gentle slope from East Main Street toward the harbor, with areas closest to the harbor being relatively flat and consistent in elevation. Based on this, CZM concludes that the topography of the Smith Cove planning unit is generally conducive to industrial use, and therefore meets the criteria of 301 CMR 25.04(2)(c).

Finally, to remain within the DPA boundary, the Smith Cove land area must also exhibit a use character that is predominately industrial, or reasonably capable of becoming so because it does not contain a dense concentration of non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use; or residential, commercial, recreational or other uses that would unavoidably be destabilized if commingled with industrial activity.

As stated above, a significant portion of the Smith Cove planning unit consists of a primarily residential and small commercial business mixed-use neighborhood. In fact, half of the uses in this area are entirely residential, with mixed commercial and residential uses occupying most of the commercial areas as well. Commercial uses include a restaurant, a laundromat, a marine supply store, an art association, and a small licensed recreational boating facility (marina). Parking for these uses,

particularly the residences, art association, and Reeds Wharf facility on Pirates Lane constitutes a significant portion of the land in the Smith Cove area.

The wharves and piers on the south end of the Smith Cove planning unit are substantially dedicated to mixed residential, commercial, and recreational uses. Beacon Marine is primarily a mix of marina and residential uses, with apartments, a marine store and office, haul out and storage of recreational boats consistent with marina operations, and a fueling dock. With the exception of the Santapaola Wharf, the developed waterfront here primarily serves recreational boating uses. Well over ninety percent of the Smith Cove planning unit is primarily dedicated to a mix of residential, commercial, and recreational uses.

CZM finds that the Smith Cove planning unit is dominated by residential and non-industrial buildings that have not been removed or converted to industrial use since their construction. CZM presumes that the predominant uses here, including primarily residential and commercial mixed use recreational marinas, are largely incompatible with activities characteristic of water dependent industry, because of the inherent functional conflicts and destabilization that may arise. Therefore, CZM finds that this area does not meet the criteria for inclusion in a DPA boundary as required by 301 CMR 25.04(2)(d).

DPA Water Areas

For this DPA boundary review, CZM completed the above analysis of land areas before applying the criteria for 301 CMR 25.03(2) or 15.04(1), in order to better understand how the water area in Gloucester's Inner Harbor is currently used with regard to water dependent industrial uses and compatibility within the DPA.

Accordingly, those water areas that are contiguous with land areas that have been determined by this DPA boundary review to be ineligible for further review under 25.03(2) above have been excluded from further review as well, as it is presumed that these water areas provide and support the necessary functional connection to the primarily water dependent industrial uses in those land areas. These areas include all channels and any water area lying between these channels and the land areas determined above to be ineligible for review. Because the South Channel and the federal channel in Smith Cove continue to serve the State Fish Pier, Cold Storage East Gloucester, and Rocky Neck planning units, these channels are also not eligible for further analysis for this DPA boundary review.

During the comment period for this review, the City of Gloucester requested that CZM review the boundary of the federal channel adjacent to 33 Fort Square to determine if it might be possible to move the DPA boundary further seaward in this location, as the Gloucester harbormaster believes that the federal channel may be wider than necessary in this location to support the DPA uses in Harbor Cove, and may therefore be unnecessarily restricting other viable waterside uses in this location. CZM notes that the designation standards at 301 CMR 25.04(1)(b) require that, at a

minimum, the DPA shall include all channels, including sloped sides necessary to create actual depth, that meet designation standards. While this precludes CZM from changing the boundary of the DPA in this location as part of this DPA boundary review, should the U.S. Army Corp of Engineers agree that such a change to the extent and configuration of the channel in this area is warranted, CZM will presume that such a change will continue to appropriately serve the needs of the DPA in Harbor Cove, and may adjust the location of the DPA boundary in this location to reflect the new channel boundaries at that time.

The water areas adjacent to East Gloucester and Smith Cove have been further analyzed for substantial conformance with the criteria pursuant to 301 CMR 25.04(1) below. These areas include the water sheet between the South Channel and the East Gloucester waterfront, as well as the water sheet between the Smith Cove federal channel and the Smith Cove area waterfront.

Both the East Gloucester and Smith Cove water areas are contiguous with DPA waters that include a navigable entrance channel with a design depth of 20 feet, as the Gloucester Harbor Federal entrance channel design depth is 20 feet. However, while both planning units, as detailed in the above land area analysis, have a shoreline that is substantially developed with piers, wharves, bulkheads or other structures, these do not establish a functional connection with a land area meeting the criteria set forth in 301 CMR 25.04(2), because these land areas do not have a use character that is predominantly industrial. Therefore, the water areas adjacent to the East Gloucester and Smith Cove planning units, between the land areas and the federal channels, are not in substantial conformance with the first criteria governing suitability to accommodate water dependent industrial in Gloucester Harbor.

The second set of criteria in determining suitability of a water area to accommodate water dependent industrial use concern the configuration, size and location of the water area. These criteria direct that all water areas serving as access channels to land or water areas meeting the designation standards, and any water area lying between these access channels and any water or land area meeting the standards, must be included in any DPA boundary. Because the East Gloucester and Smith Cove planning units do not meet the review criteria standards for inclusion in the DPA, the water areas adjacent to them do not meet these criteria.

VII. CONCLUSIONS AND RECOMMENDATIONS

The DPA regulations direct that an area of land or water reviewed under 301 CMR 25.00 shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with the all of the criteria governing suitability to accommodate water dependent industrial use, as appropriate to the harbor in question.

While CZM's analysis of the land and water areas in the East Gloucester and Smith Cove planning units indicates that these areas are in substantial conformance with most of the physical suitability

criteria in 301 CMR 25.04, these land areas do not exhibit a use character that is predominantly industrial, or reasonably capable of becoming so because they do not contain a dense concentration of non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use. To the contrary, this review found that the East Gloucester and Smith Cove planning units are not in substantial conformance with the use character suitability criteria, because they contain a dense mix of non-industrial buildings, including residential, commercial, and recreational uses. The use character is substantially residential, with small commercial businesses and mixed residential and commercial uses as well. The waterfront primarily serves recreational boating needs, and while there are mixed residential, commercial, recreational, and industrial uses here, the industrial activities are dwarfed by the extent of residential, commercial, and recreational uses. As many of these “non-conforming” uses predate the establishment of the DPA, have been in effect in many cases for decades, and are in some cases specifically authorized in long-term licenses, these areas cannot be found to be in substantial conformance with the review criteria at 301CMR 25.04.

Accordingly, CZM finds that the East Gloucester and Smith Cove planning units, as well as the water areas associated with these, shall be removed from the boundary of the Gloucester Inner Harbor DPA. Pursuant to this review, the revised Gloucester Harbor DPA boundary is shown on the attached map, Figure 3.

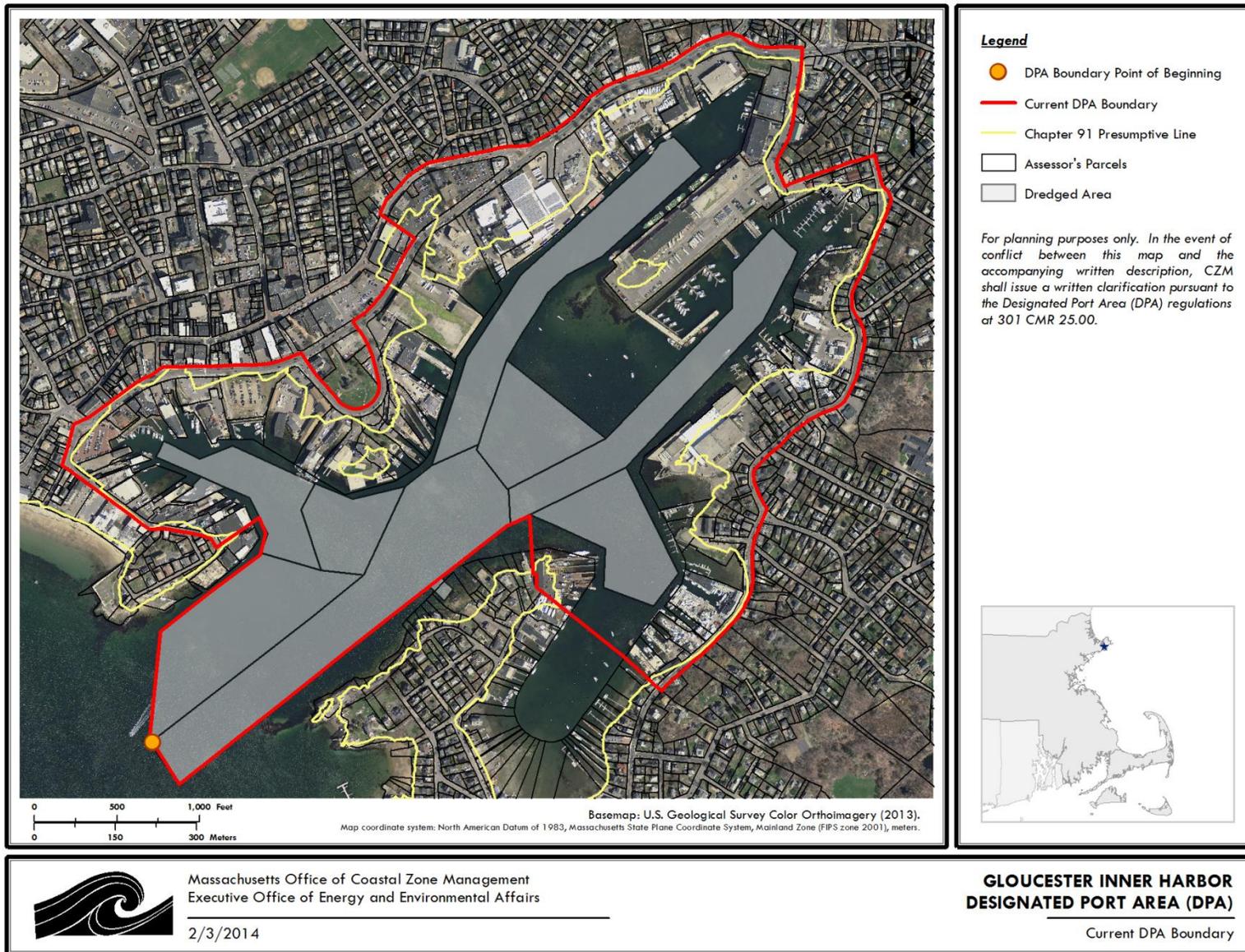


Figure 1. Current Gloucester Inner Harbor DPA boundary map

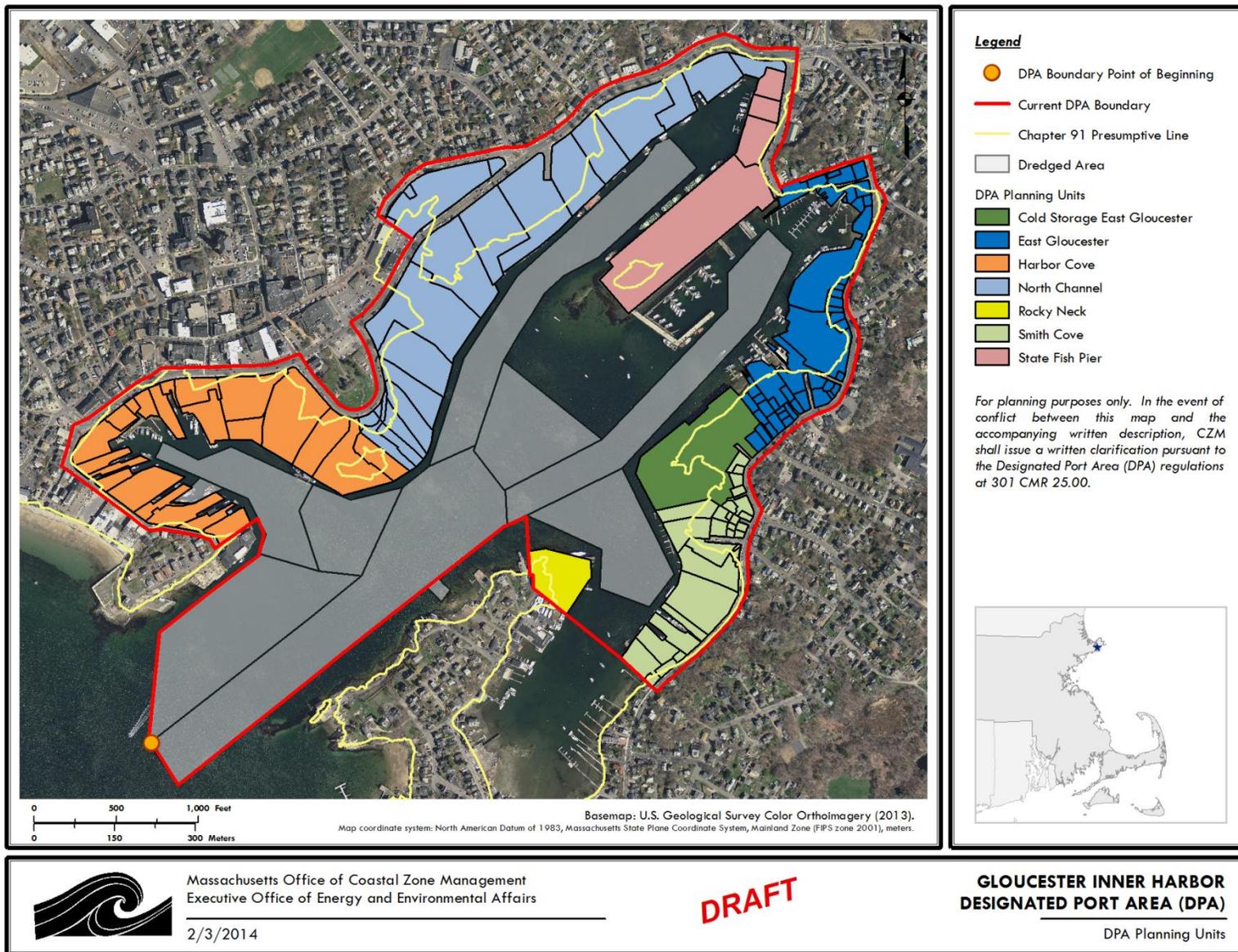


Figure 2. Planning units within the Gloucester Inner Harbor DPA boundary review

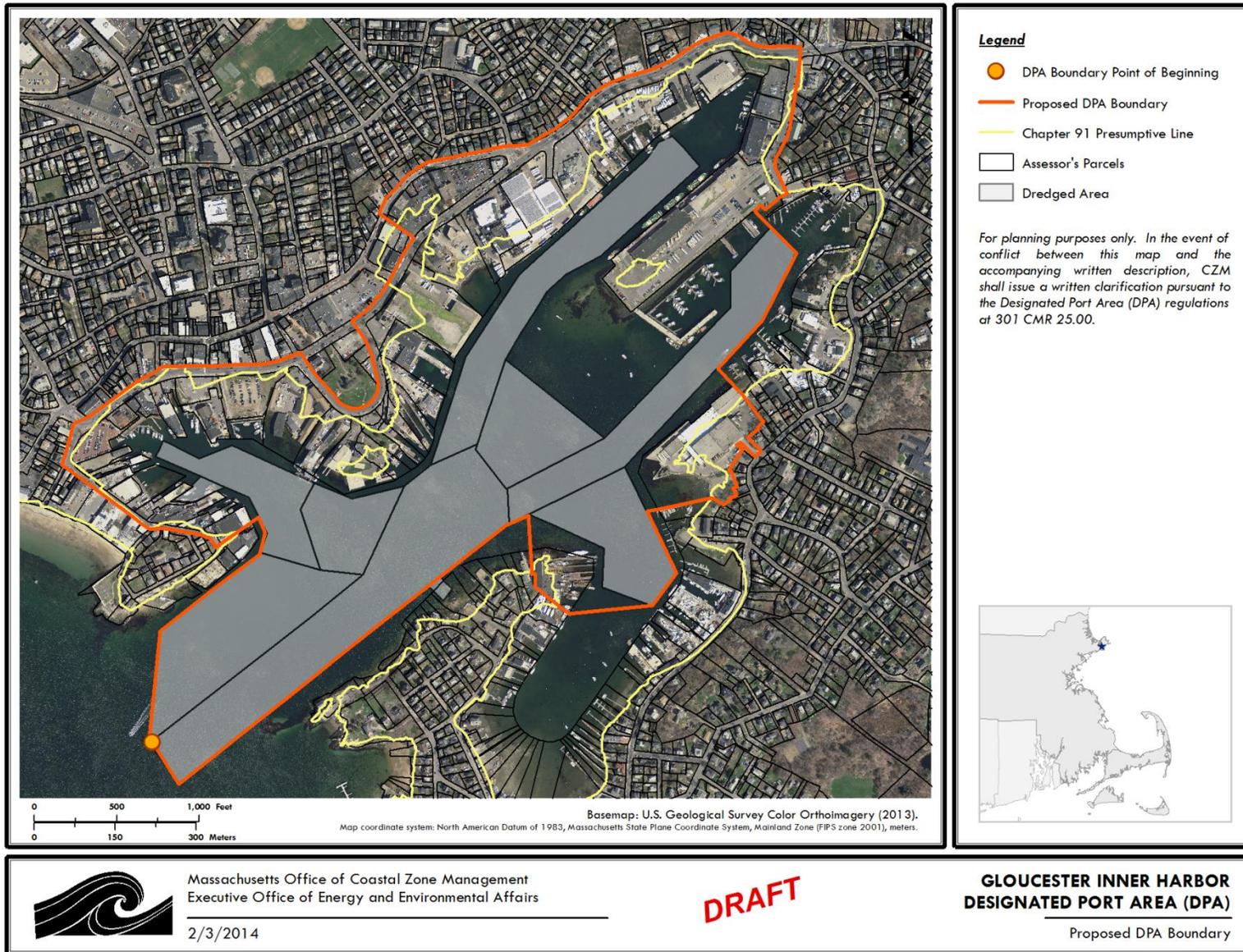


Figure 3. Revised Gloucester Inner Harbor DPA boundary map