MODIFICATIONS TO CHAPTER 91

This section provides the modifications (substitutions, amplifications, and off-sets) to Chapter 91. Chapter 91 governs the use of Commonwealth tidelands and protects the public’s right to access those tidelands.
Chapter 91 refers to Chapter 91 of the Massachusetts General Laws, also known as The Waterways Act. The Department of Environmental Protection and the Executive Office of Energy and Environmental Affairs promulgate regulations to help implement this Act (310 CMR 9.00 and 301 CMR 23.00 and 25.00, respectively).
BOUNDARY CAVEATS

The boundary of Chapter 91 jurisdiction consists of flowed and filled tidelands, Great Ponds, and non-tidal rivers and streams. The blue line in the two illustrative maps above is the imputed Chapter 91 jurisdiction line based upon several lines downloaded from MassGIS in 2018. The line is not continuous and is used only for the discussion in the Municipal Harbor Plan. An estimated mean historic low water (MHLW) line is not available from MassGIS. A property owner who wishes to develop their property should contact a lawyer who specializes in Chapter 91 jurisdiction.

The calculations of boundaries of the Water-dependent Use Zone (WDZ) and the Facilities of Public Accommodation Zone are based upon the MassGIS data and the calculations required by Chapter 91. Again, these zones should be used for the discussion in this Municipal Harbor Plan and not for development purposes.

CHAPTER 91 AND WATER-DEPENDENT USES

Chapter 91 requires the preservation of land within Chapter 91 jurisdiction (between the blue line and the water’s edge) for water-dependent uses. This WDZ sets aside land for uses that require direct access to the water that might otherwise be crowded out by competing land uses that might value proximity to the water for nonwater-dependent reasons, such as the view.

The area of the WDZ is a function of the weighted average of the distance between the landward lot line and the present high water mark; it can be no less than 25 feet from the shoreline. Chapter 91 requires a pedestrian access network of no less than 10 feet in width within the WDZ. This may be modified by a municipal harbor plan. Only a few of the properties within the Harbor will be required by Chapter 91 to comply with this regulation.
CHAPTER 91, THE ENVIRONMENT, AND INFRASTRUCTURE

Chapter 91 also protects the public interest in the waterways by regulating the safety of the Harbor in terms of both the natural and the built environment. 310 CMR 9.33 provides environmental protection standards for waterways. 310 CMR 9.37 identifies certain standards for the construction of licensed structures and fill; 310 CMR 9.39 regulates marinas, boat yards, and boat ramps; and 310 CMR 9.40 provides standards for dredging and the disposal of dredged material.

Under a state-approved Municipal Harbor Plan, the timeline for the approval of a Chapter 91 license is different from that of an area without an approved Municipal Harbor Plan. Property-owners within Chapter 91 jurisdiction should be aware of their responsibilities to obtain a license or permit for certain activities and comply with these Chapter 91 requirements.

CHAPTER 91 AND DEVELOPMENT

As shown above, relatively little land is within the Chapter 91 jurisdiction. Facilities of Public Accommodation are required within 100 feet of a project shoreline on filled tidelands or on any pile-supported structures of flowed tidelands. In terms of the requirements for public access and the restrictions Chapter 91 places on that development, only a few parcels within the Harbor Area will need to comply.

The primary parcels affected are the Cohasset Harbor Inn, Olde Salt House, and Atlantica sites, all of which also changed ownership in 2018, and two Town-owned properties: the site of the John Smith marker and Government Island.
Modifications to Chapter 91 are allowable under 301 CMR 23.05 Standards for Municipal Harbor Plan Approval for the numerical standards found in 310 CMR 9.51(3)(a) through (e) and 9.52(1)(b)1. The illustrative map above identifies the three areas within the WB Zone of the Town of Cohasset’s Zoning Ordinance. Of the land not in the WB but within the Harbor, the majority of the land is owned by the Town of Cohasset. Other property owners include the Cohasset Yacht Club (zoned Residence C) and Cohasset Harbor Marina, LLC (zoned Light Industry). The land uses on these parcels are water-dependent uses. The remainder of the land is within private ownership and is zoned for residential use. The parcels include The Oaks (two parcels), a small adjacent parcel on Margin Street, a larger parcel on Howard Gleason Road between The Oaks and the Cohasset Yacht Club, and the Bellarmine House on Bryant Point (all zoned Residence C); and the houses on Parker Avenue (zoned Residence A).

The focus on modifications to Chapter 91 is therefore on those parcels in the WB zone as those are the most likely to be redeveloped for a commercial or mixed-use (including residential) project. The modifications would apply to all parcels within the boundary of this Municipal Harbor Plan, although the only other parcel likely to be developed for a commercial or mixed-use project would be the Cohasset Harbor Marina, LLC in the Light Industry Zone.

During the planning process for this Municipal Harbor Plan, the Town began considering a modification to the WB Zone. The paragraph of the proposed language that is related to the requirements of this Municipal Harbor Plan is provided in the call-out box to the right. Specific proposed modifications are listed in Table X: Table of Modifications to Chapter 91 Standards.

To understand the implications of the standards in those sections and the potential impact of changes to the base requirements, a table of the estimated areas of the relevant zones are shown in the table below.
### Draft Article XX Special Permits in Waterfront Business (WB) District

§ 300-XX.1. Performance standards.

**B. In the WB District, the special permit granting authority may allow dwelling units on ground floors of buildings only where:**

1. The building includes a place of public accommodation on the ground floor; and
2. The area measured in square feet dedicated to residential use is less than \( X \) % of the footprint of the ground floor; and
3. The residential use is consistent with the requirements of a state-approved Municipal Harbor Plan, when such plan is in effect; and
4. The applicant has provided open space, including a walkway, that is accessible to the public, and that connects to a harbor-wide walkway and to a public right-of-way; and
5. The applicant has provided a view corridor at least \( X \) feet (\( X’ \)) wide that allows visual access across the parcel or parcels to Cohasset Harbor from a public right-of-way; and
6. Where the applicant demonstrates, and the special permit granting authority specifically finds, that first floor residential uses will not have an adverse impact on the continuity of any place of public accommodation located adjacent to a public right-of-way.

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<table>
<thead>
<tr>
<th>ESTIMATED AREA OF</th>
<th>IN SQUARE FEET</th>
</tr>
</thead>
<tbody>
<tr>
<td>THE COHASSET HARBOR INN</td>
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<td>Parcel(s)</td>
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<td>THE ATLANTICA AND THE OLDE SALT HOUSE</td>
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<tr>
<td>In Zone for Facilities of Public Accommodation</td>
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<tr>
<td>COHASSET LOBSTER POUND AND MILL RIVER MARINE BOATYARD</td>
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<tr>
<td>COHASSET HARBOR MARINA</td>
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</tr>
<tr>
<td>Parcel(s)</td>
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<td>Data Not Available. Property Owner will need to complete due diligence before redeveloping</td>
</tr>
<tr>
<td>In Water-Dependent Use Zone</td>
<td></td>
</tr>
<tr>
<td>In Zone for Facilities of Public Accommodation</td>
<td></td>
</tr>
</tbody>
</table>

*This calculation includes buildings on piers, potentially above Commonwealth tidelands. Additional due diligence is required.*
### Table X: Modifications to Chapter 91 Standards

<table>
<thead>
<tr>
<th>Chapter 91 Standard</th>
<th>Substitution</th>
<th>Offset</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.51 Conservation of Capacity for Water-Dependent Use</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### (3)(a)
New pile-supported structures for nonwater-dependent use shall not extend beyond the footprint of existing, previously authorized pile-supported structures or pile fields, except where no further seaward projection occurs and the area of open water lost due to such extension is replaced, on at least a 1:1 square foot basis, through the removal of existing, previously authorized fill or pile-supported structures or pile fields elsewhere on the project site.

#### (3)(b)
Facilities of Public Accommodation, but not nonwater-dependent Facilities of Private Tenancy, shall be located on any pile-supported structures on flowed tidelands and at the ground level of any filled tidelands within 100 feet of a project shoreline. The Department may allow any portion of the equivalent area of a Facility of Public Accommodation to be relocated within the building footprint, or in other buildings owned, controlled or proposed for development by the applicant within the Development Site if the Department determines the alternative location would more effectively promote public use and enjoyment of the project site.

#### (3)(c)
New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows:

1. Along portions of a project shoreline other than the 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

2. 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

3. 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.

Incomplete: Discuss with Harbor Committee; Add research on Commonwealth vs. Private Tidelands
### CHAPTER 91 STANDARD

| (3)(d) | at least one square foot of the project site at ground level, exclusive of areas lying seaward of a project shoreline, shall be reserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site; in the event this requirement cannot be met by a project involving only the renovation or reuse of existing buildings, ground level open space shall be provided to the maximum reasonable extent |

| (3)(e) | new or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark |

### 9.52 UTILIZATION OF SHORELINE FOR WATER-DEPENDENT PURPOSES

| (1)(b)1 | Walkways and related facilities along the entire length of the water-dependent use zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width |

| (2)(b) | The amount of exterior open spaces for active or passive public recreation shall be at least equal to the square footage of all Commonwealth tidelands on the project site landward of a project shoreline and not within the footprint of buildings, less any space deemed necessary to accommodate other water-dependent uses |

### 310 CMR 9.53 ACTIVATION OF COMMONWEALTH TIDELANDS FOR PUBLIC USE

| (2)(c) | Such interior space devoted to facilities of public accommodation shall be at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy |
IMPLEMENTATION PLAN

Implementation is critical to the future success of the Harbor. The Harbormaster and the Harbor Committee, both appointed by the Board of Selectmen, have primary responsibilities for implementation, but the Town’s elected officials and departments and the many Harbor organizations will have responsibilities over the life of this Plan.

The recommended actions to implement the goals of this Harbor Plan build upon the recommendations of previous reports and studies and the community’s goals. They are the result of the research and analyses of current economic and physical conditions, as well as feedback from the community members and businesses who participated in public meetings, public events, and interviews.
Implementation actions are divided into phases that allow for some immediate actions while setting the stage for longer-term projects that may require several short- to mid-term steps to achieve. Given the complexity of the Harbor, the Town will most likely seek partnerships with the nonprofits, businesses, and property owners to achieve the goals outlined in this Plan.
GOAL 1: SUPPORT THE COHASSET COMMERCIAL FISHING FLEET

• **RECOMMENDATION 1.1** Segregate commercial fleet activity to Government Island and recreational activity to the Cove area.

• **RECOMMENDATION 1.2** Repair Government Island landing.

• **RECOMMENDATION 1.3** Add and extend docking facilities to allow 3-4 boats to operate at a time.

• **RECOMMENDATION 1.4** Install lift/conveyor for equipment/bait/catch.

• **RECOMMENDATION 1.5** Add a facility for careening boats next to the pier where sand used to be.

• **RECOMMENDATION 1.6** Improve water and power to the docks.

• **RECOMMENDATION 1.7** Add refrigerated bait storage.

• **RECOMMENDATION 1.8** Assess fuel capability.

• **RECOMMENDATION 1.9** Address safety of small craft/swimmers in channel.

GOAL 2: SUPPORT PUBLIC USE OF AND ACCESS TO THE HARBOR

• **RECOMMENDATION 2.1** Use the Captain’s Walk as the basis for a Harbor-wide connected public walkway along the water’s edge from The Oaks to Government Island and incorporate consistent wayfinding and interpretive signage for historical, cultural, and environmental resources throughout the Harbor.

• **RECOMMENDATION 2.2** Support additional off-street parking at Government Island and Margin Street.

• **RECOMMENDATION 2.3** Conduct an in-depth mooring analysis of the Harbor. *Estimated cost $60,000.*

• **RECOMMENDATION 2.4** Increase recreational draws by establishing Ecotours, kayak rental, etc.

• **RECOMMENDATION 2.5** Improve dinghy access.

• **RECOMMENDATION 2.6** Add boat slips in Bailey Creek.
GOAL 3: IDENTIFY AND PLAN FOR APPROPRIATE IMPROVEMENTS TO LANDSIDE AND WATERSIDE INFRASTRUCTURE

- **RECOMMENDATION 3.1** Conduct an in-depth investigation of seawall condition and design analysis for improvements. *Estimated cost $75,000.*

- **RECOMMENDATION 3.2** Work with public and private entities to repair and improve seawalls.

- **RECOMMENDATION 3.3** Study the resiliency of the Harbor in the context of sea level rise and storm surge.

- **RECOMMENDATION 3.4** Improve and enhance the breakwater.

- **RECOMMENDATION 3.5** Consider alternative mooring technology for improved/increased moorings.

- **RECOMMENDATION 3.6** Consider improved docking in Cove for recreational use.

- **RECOMMENDATION 3.7** Conduct a feasibility study and concept design for a mixed-use facility. *Estimated cost $40,000.*

GOAL 4: SUPPORT PUBLIC USE OF THE HARBOR, INCLUDING SUPPORT FOR THOSE TOWN AND CIVIC ORGANIZATIONS THAT ENABLE SUCH USE

- **RECOMMENDATION 4.1** Continue to engage Town and civic organizations to understand and implement their interests in the Harbor.

- **RECOMMENDATION 4.2** Coordinate a website with Town departments, boards, and committees and nonprofits to coordinate events, plans, and activities in the Harbor.

- **RECOMMENDATION 4.3** Create a 501(c)(3) to fund and coordinate improvements and activities in the Harbor.
GOAL 5: IMPROVE THE GEOGRAPHIC RELATIONSHIP BETWEEN THE VILLAGE AND THE HARBOR

- **RECOMMENDATION 5.1** Consider redesign of Elm Street and improvements to sidewalk on Border Street to enhance walking/biking access to Village and Harbor; include a change in street furniture, lighting, and other design elements as Elm Street enters the Harbor area.

- **RECOMMENDATION 5.2** Provide retail, restaurant, or other active uses in the Harbor to encourage activity from Village to Harbor.

- **RECOMMENDATION 5.3** Work with Cohasset Harbor Inn property owners to enhance access to and view of Harbor.

- **RECOMMENDATION 5.4** Install wayfinding and informational signage.

- **RECOMMENDATION 5.5** Establish gateway areas and install appropriate signage, landscape treatment, and other elements.

GOAL 6: IDENTIFY AND IMPROVE COMMERCIAL LANDSIDE AND WATERSIDE COMMERCIAL ACTIVITY

- **RECOMMENDATION 6.1** Work with private ownership to enhance economic activity of landside enterprises. Consider joint marketing effort between Village businesses and Harbor businesses: “Spend a day in Cohasset”; tie recreational activities to eating/shopping.

- **RECOMMENDATION 6.2** Work with commercial fishermen and shell fishermen to enhance economic activity of waterside enterprises. Consider joint marketing with local businesses: catch of the day at local restaurants; establishing a “Caught in Cohasset” program.

- **RECOMMENDATION 6.3** Consider the appropriate location for and viability of an aquaculture program.

- **RECOMMENDATION 6.4** Update the zoning regulations within the Harbor area to be consistent with the goals of this Plan and the requirements of Chapter 91.
GOAL 7: INTEGRATE AND IMPROVE HARBOR MANAGEMENT AND USES

- **RECOMMENDATION 7.1** Consider regulatory or other incentive for resilient development within the Harbor area.

- **RECOMMENDATION 7.2** Identify “Best Practices” for Harbor Governance considering the multi-jurisdictional nature of the Harbor.

- **RECOMMENDATION 7.3** Consider a standing “Waterways or Harbor Commission” to oversee all waterside and landside activities.

- **RECOMMENDATION 7.4** Analyze role of and organizational structure of public safety in the Harbor.

- **RECOMMENDATION 7.5** Work with the Town of Scituate on joint issues such as Bassing Beach, stormwater management, and joint infrastructure.

GOAL 8: IDENTIFY AND ADDRESS IMPROVEMENTS TO ECOSYSTEM AND ENVIRONMENTAL ISSUES

- **RECOMMENDATION 8.1** Create an education program around stormwater, including the proper disposal of dog waste, the need to mitigate stormwater onsite, the impact of runoff from lawn fertilizers into the Harbor, and the impact on run-off from failing septic systems.

- **RECOMMENDATION 8.2** Review existing studies and/or conduct new studies to determine current status of the Harbor ecosystem.

- **RECOMMENDATION 8.3** Identify environmental issues that need addressing and recommend remediation.

- **RECOMMENDATION 8.4** Coordinate with infrastructure improvements and modifications to enhance ecosystem and environment.
GOAL 9: PROVIDE RECOMMENDATIONS FOR A RECURRING DREDGING PLAN (AREAS/FREQUENCY/DREDGE TYPE/POTENTIAL FUNDING SOURCES)

- **RECOMMENDATION 9.1** Conduct updated hydrographic surveys and dredge analysis. *Estimated cost* $25,000.

- **RECOMMENDATION 9.2** Identify long term dredging needs for channel and Harbor.

- **RECOMMENDATION 9.3** Investigate coordinating dredging efforts, including equipment, with other harbors.
CONSISTENCY

The Massachusetts Executive Office of Energy and Environmental Affairs promulgated 301 CMR 23.00. These are the regulations for the preparation, review, and approval of municipal harbor plans.

Paragraph 301 CMR 23.05(1) requires that the Municipal Harbor Plan be consistent with applicable CZM policies.

Paragraph 301 CMR 23.05(2) requires that the Municipal Harbor Plan be consistent with state tidelands policy objectives and associated regulatory principles.

This section identifies the relevant CZM policies and state tidelands objectives and regulations and describes this Plan’s consistency with those principles.
The Massachusetts Office of Coastal Zone Management is responsible for the overall coastal program in the Commonwealth. The enabling legislation for CZM is the federal Coastal Zone Management Act. Their most recent Policy Guide is dated October 2011.
CONSISTENCY WITH CZM POLICIES

In accordance with 301 CMR 23, this Plan is consistent with CZM policies, as described below.

Complete for final goals and actions after public comment.

COASTAL HAZARDS

- POLICY #1 x
- POLICY #2 x
- POLICY #3 x
- POLICY #4 x
ENERGY

• POLICY #1 x
• POLICY #2 x

GROWTH MANAGEMENT

• POLICY #1 x
• POLICY #2 x
• POLICY #3 x
•
HABITAT

Complete for final goals and actions after public comment.

OCEAN RESOURCES

- POLICY #1 x
- POLICY #2 x
- POLICY #3 x

•
PORTS AND HARBORS

- POLICY #1
- POLICY #2
- POLICY #3
- POLICY #4
- POLICY #5

PROTECTED AREAS

- POLICY #1
- POLICY #2
- POLICY #3
PUBLIC ACCESS

Complete for final goals and actions after public comment.

WATER QUALITY

• **POLICY #1** Ensure that point-source discharges and withdrawals in or affecting the coastal zone do not compromise water quality standards and protect designated uses and other interests.

• **POLICY #2** Ensure the implementation of nonpoint source pollution controls to promote the attainment of water quality standards and protect designated uses and other interests.

• **POLICY #3** x
CONSISTENCY WITH STATE TIDELANDS POLICY OBJECTIVES

In accordance with 301 CMR 23.05(2)(a), this Plan is consistent with state tidelands policy objectives and associated regulatory principles, as described below.

1. to ensure that development of all tidelands complies with other applicable environmental regulatory programs of the Commonwealth as provided in 310 CMR 9.33: Environmental Protection Standards, and is especially protective of aquatic resources within coastal Areas of Critical Environmental Concern, as provided in 310 CMR 9.32(1)(e): Areas of Critical Environmental Concern (ACECs);

2. to ensure that dredging and disposal of dredged material is conducted in a manner that avoids unnecessary disturbance of submerged lands and otherwise avoids or minimizes adverse effects on water quality, physical processes, marine productivity, and public health, as provided in 310 CMR 9.39: Standards for Marinas/Boatyards/Boat Ramps;

3. to ensure that nonwater-dependent use projects do not unreasonably diminish the capacity of any tidelands to accommodate water-dependent use, as provided in 310 CMR 9.35: Standards to Preserve Water-related Public Rights;

4. to ensure that all licensed fill and structures are structurally sound and otherwise designed and built in a manner consistent with public health and safety and with responsible environmental engineering practice, especially in coastal high hazard zones and other areas subject to flooding or sea-level rise, as provided in 310 CMR 9.37: Engineering and Construction Standards;

5. to ensure patronage of public recreational boating facilities by the general public and to prevent undue privatization in the patronage of private recreational boating facilities, as provided in 310 CMR 9.38: Use Standards for Recreational Boating Facilities; and to ensure that fair and equitable methods are employed in the assignment of moorings to the general public by harbormasters, as provided in 310 CMR 9.07: Activities Subject to Annual Permit;

6. to ensure that marinas, boatyards, and boat-launching ramps are developed in a manner that is consistent with sound engineering and design principles, and include such pumproot facilities and other mitigation measures as are appropriate to avoid or minimize adverse impacts on water quality, physical processes, marine productivity, and public health, as provided in 310 CMR 9.39: Standards for Marinas/Boatyards/Boat Ramps;

7. to ensure that dredging and disposal of dredged material is conducted in a manner that avoids unnecessary disturbance of submerged lands and otherwise avoids or minimizes adverse effects on water quality, physical processes, marine productivity, and public health, as provided in 310 CMR 9.39: Standards for Marinas/Boatyards/Boat Ramps;

8. to ensure that nonwater-dependent use projects do not unreasonably diminish the capacity of any tidelands to accommodate water-dependent use, as provided in 310 CMR 9.51: Conservation of Capacity for Water-dependent Use;

9. to ensure that nonwater-dependent use projects on any tidelands devote a reasonable portion of such lands to water-dependent use, including public access in the exercise of public rights in said lands, as provided in 310 CMR 9.52: Utilization of Shoreline for Water-dependent Purposes; and

10. to ensure that nonwater-dependent use projects on Commonwealth tidelands, except in DPAs, promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and that 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: Utilization of Shoreline for Water-dependent Purposes.
310 CMR 9.33 ENVIRONMENTAL PROTECTION STANDARDS AND 310 CMR 9.32(1)(E) AREAS OF CRITICAL ENVIRONMENTAL CONCERN (ACECS)

Any development proposed based on this Plan will be reviewed in light of, and required to meet, all state and local environmental standards, ensuring compliance with applicable regulatory programs of the Commonwealth. Programs may include the Massachusetts Environmental Policy Act (MEPA), the Massachusetts Wetlands Protection Act, the Massachusetts Clean Water Act, and the Massachusetts Historical Commission Act.

There are no coastal Areas of Critical Environmental Concerns (ACECs) in the Cohasset Municipal Harbor Plan Planning Area.
Complete for final goals and actions after public comment.

310 CMR 9.37 ENGINEERING AND CONSTRUCTION STANDARDS
310 CMR 9.38 USE STANDARDS FOR RECREATIONAL BOATING FACILITIES AND 9.07 ACTIVITIES SUBJECT TO ANNUAL PERMIT

310 CMR 9.39 STANDARDS FOR MARINAS/BOATYARDS/BOAT RAMPS
Complete for final goals and actions after public comment.

310 CMR 9.51 CONSERVATION OF CAPACITY FOR WATER-DEPENDENT USE
310 CMR 9.52 UTILIZATION OF SHORELINE FOR WATER-DEPENDENT PURPOSES

310 CMR 9.53 UTILIZATION OF SHORELINE FOR WATER-DEPENDENT PURPOSES