

MASSACHUSETTS
MARINE TRADES
ASSOCIATION



Industry growth through Collaboration, Communication and Education

February 22, 2022

VIA EMAIL (DEP.Waterways@mass.gov)

MassDEP
Waterways Program
c/o Daniel Padien, Director
One Winter Street
Boston, MA 02108

Re: Ch. 91 “Resiliency” Regulatory Changes – Exemption for “Water-Dependent” Uses

Dear Director Padien:

On behalf of the Massachusetts Marine Trades Association (“MMTA”), we are writing at your invitation to submit comments regarding conceptual proposed “resiliency” changes to the Chapter 91/Waterways Regulations. Thank you for asking.

Established in 1964, MMTA is the statewide, non-profit, representative body for over 1,000 marine trades businesses in the Commonwealth. MMTA’s priorities include expanding workforce training and development for the marine trades industry, enhancing public access to the waterways, stemming the loss of revenues to neighboring states with more favorable tax policies, relieving the dredging and permitting timelines and expenses, and increasing boating opportunities for the public.

Our membership wholeheartedly supports MassDEP making efforts to adapt the Chapter 91 Waterways Regulations to facilitate our own adaptation to climate change. We trust you understand the statue of Chapter 91 prioritizes protection and enhancement of water-dependent uses in waterways and at the water’s edge specifically because we have no other place to go. Our members are very good at understanding the natural world around them and designing and operating safely. We adapt. We have to. We also need your help staving off unnecessary prohibitions on our membership working in the only workspace they have, in and around the water.

MMTA thanks you for alerting us of MassDEP’s recent “Stakeholder Discussion” meeting on these changes, and submit the following comments based on our review of the meeting documents and our General Counsel’s attendance at the meeting. MMTA supports the

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underlining mission of these regulatory changes in addressing climate change resiliency in the comments. Climate change is a threat to all, and we know all too well the particular vulnerability faced by coastal landowners, both residents and business alike.

We appreciate MassDEP's confirmation that the prohibition against new structures in V-Zones and LSCSF will have an exemption for docks and piers. However, we believe the exemption must go further. There must also be an exemption for structures associated with "water-dependent" uses. Such an exemption would be consistent with the intent of M.G.L. Ch. 91 and would avoid the problem of water-dependent businesses not being able to undertake new construction on their properties, including adaptive construction or for uses to pay for adaptation and resiliency.

Our member businesses are tied to coastal areas; they are marinas and boatyards whose financial livelihood relies on access to the water. It would be devastating for a regulation to only allow water-dependent businesses to build new piers and docks for customer boats, and prohibit them from building 'supporting' structures to service and store these boats. For example, what if a marina has an increased capacity of vessels, and needs to build a new storage building to store those boats in the winter months? Why should this type of use be prohibited under the Ch. 91 Regulations, when it is undoubtedly a "water-dependent" use and would be defined to meet engineering standards to make it safe, insurable, and environmentally sound? These requirements are already in place and our members have direct need an incentive to meet these requirements, so no prohibition is appropriate or necessary.

Regarding the remainder of proposed regulatory changes discussed during the Stakeholder meeting, we submit the following comments:

1. Engineering & Construction Standards – Section 9.37

MMTA requests that the regulations provide an identifiable, published standard for design criteria. Meaning that for projected sea level rise, the regulations reference where an applicant would find the exact projection to design for. The expectation would be that the referenced standard might itself to be modified over time, but the regulations would specify what standard applies at the design/permit application time. Some fixed certainty is needed without the risk of constant change throughout the permitting time or even throughout the license term. If necessary, a license can always specify that upgrades to a facility may be required over the term of the license in order to assure public safety. Because maintenance is already required in all Chapter 91 licenses, this is not a stretch to require.

2. Building Height Provisions – Section 9.51
We are in support of this proposed change.

3. Expiration and Renewal – Section 9.25

We of course support this change, but we urge MassDEP to not take on the stance of 'no renewal' for those licenses which require adaptation to sea level rise. Prohibitions are not adaptive, they are regressive. They may 'feel good' for some proponents but they do not

help the environment in any significant way compared to smart, adaptive technology and engineering.

MMTA notes that MassDEP already has flexibility for interpreting Ch. 91 Licenses' "required maintenance" clause to require necessary modifications if the license holder is not making safety modifications on their own. Most likely in such cases it is the absence of funds to make changes, not the absence of ability.

4. Simplified Licenses – Section 9.10
We are in support of this proposed change.

5. Extended Term Licenses – Section 9.15

We support this change but simultaneously request that MassDEP uses this chance to do the fair thing and extend water-dependent use license terms to exceed those of non-water dependent uses.

Our members have at least the same financing considerations as non-water dependent uses do and, by statute, the dominant right to be at the water's edge. MMTA emphatically requests that MassDEP extend Ch. 91 License terms beyond 30 years and weave in projected sea level rise considerations per above using the "maintenance" clause.

We also note that it would be nice to have all the private infrastructure paid for and licensed at the water's edge to be eligible for the kind of public funding or low-cost loans available elsewhere. We at the water's edge are doing a lot of the work for inland protection, yet we get only regulation and not financial support. Only the non-water dependent uses get the financial support in the form of extreme height and density generating income in the very same space, and we wish we could be doing the same with our water-dependent uses.

6. Minor Project Modification/Facilitate Building System Relocation – Section 9.22

MMTA supports this proposed change but also requests that any DEP approvals of minor modifications be binding in nature. If minor modifications are not binding, all license holders are in jeopardy. Moreover, without making minor modifications binding, it is grossly unfair to those who rely on minor modifications: from the license's users, to financing entities, to subsequent property owners.

7. Definitions (Coastal High Hazard) – Section 9.02

MMTA supports consistency in regulatory definitions among all DEP regulations, and therefore support changing the term "High Coastal Hazard" with "Velocity Zone" for consistency with the Wetlands Regulations. That is, if this term is not made synonymous with 'prohibition on doing anything.' There are tremendous differences geographically in Velocity zones, some of which are quiescent and some of which are extremely

vulnerable. It is not appropriate to do a flat prohibition especially when engineering and design standards are plenty sophisticated and safe.

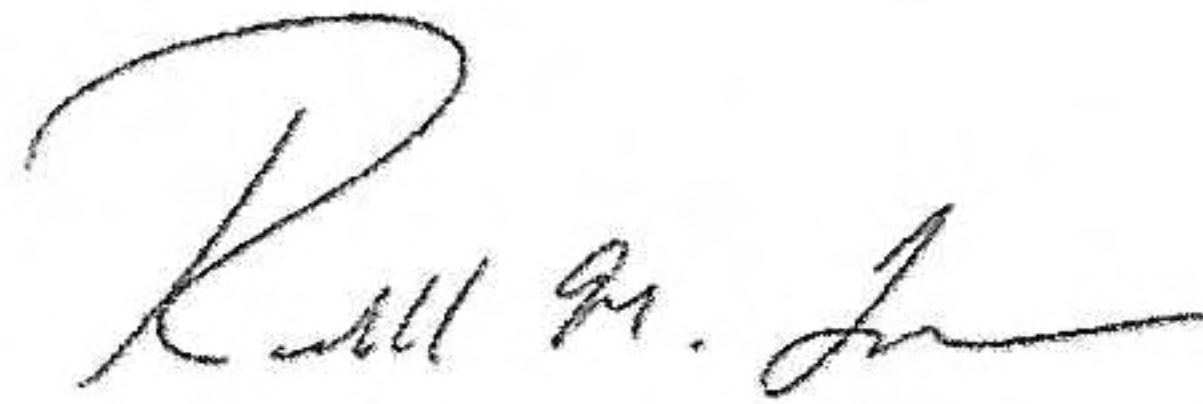
In conclusion, MMTA requests that the proposed changes to the Waterways Regulations provide flexibility for current water-dependent licenses in terms of modifications and maintenance for those structures, and that the proposed changes include an exemption for “water-dependent” structures from any prohibition related to Velocity Zones and Land Subject to Coastal Storm Flowage.

Please feel welcome to contact either MMTA’s Government Relations and Legal Counsel, Jamy Madeja at 617-227-8410 or jmadeja@buchananassociates.com, or MMTA’s Executive Director, Randall Lyons at randall@boatma.com. We thank you for your thoughtful consideration of these comments.

Respectfully,



Gregory R. Egan
President



Randall M. Lyons
Executive Director

THE MASSACHUSETTS MARINE TRADES ASSOCIATION

Massachusetts Boating and Yacht Clubs Association, Inc.

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2022



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March 20, 2022

MassDEP
Waterways Program
c/o Stephanie Moura, Assistant Commissioner
One Winter Street
Boston, MA 02108

Re: Ch. 91 "Resiliency" Regulatory Changes – Exemption for Water-Dependent Uses

Dear Commissioner Moura,

The Massachusetts Boating and Yacht Clubs Association, Inc. (MBYCA) was formed in 1919 and incorporated in 1931 with a mission to promote safety and protect the recreational boater's rights and access to the water. We are comprised of 75 member yacht clubs, encompassing Massachusetts Bay and Cape Cod and meet monthly to inform members of new Federal and State regulations such as Mass DEP's conceptual changes to the Waterways Regulations. We actively participate in the monthly Port Operators Group (POG) meetings and serve on the board of the Massachusetts Bay Harbor Safety Committee (MBHSC) and are members of the Boston Area Maritime Security Committee (BAMSC).

A 2010 Massachusetts Recreational Boating Survey by the Massachusetts Ocean Partnership revealed the economic contribution of this activity to the Massachusetts economy to be in the excess of \$800 million. Study partners included, among others, the Office of Coastal Zone Management, the Urban Harbors Institute, Massachusetts Marine Trades Association, Massachusetts Boating and Yacht Clubs Association, Inc. and the Massachusetts Harbormasters Association.

MBYCA strongly supports MassDEP efforts to update Chapter 91 Waterways Regulations to address climate change which will impact all recreational and commercial maritime communities.

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We further understand and appreciate that the proposed prohibition against new structures in the "V-Zones" and LSCSF will not apply to docks and piers. Unfortunately, they are only the "façade" of any yacht club, marina, or repair facility. Boats must be hauled, moved, stored and maintained on land during much of the year which requires many structures in addition to docks and piers. Many of these facilities will require new structures to mitigate the effects of the "rising tide".

MBYCA requests that any changes to the Waterways Regulations allow an exemption for "water-dependent" structures from any prohibition related to Velocity Zones and Land Subject to Coastal Storm Flowage.

Thank you for your consideration.

Respectfully,

*P.C. Neal Caten
Commodore
Massachusetts Boating and Yacht Clubs Association, Inc.*

NC:cc