



Chapter 91, The Massachusetts Public Waterfront Act

This guide explains the purpose and function of the Massachusetts Public Waterfront Act. This law is also known as "Chapter 91."

TABLE OF CONTENTS

- [Chapter 91: An Overview and Summary](#) (P-chapter-91-an-overview-and-summary)
- [Geographical Jurisdiction](#) (P-geographical-jurisdiction)
- [Activities Requiring Authorization](#) (P-activities-requiring-authorization)
- [Activities Not Requiring Authorization](#) (P-activities-not-requiring-authorization)
- [Types of Authorization](#) (P-types-of-authorization)
- [Determinations and How They Work](#) (P-determinations-and-how-they-work)
- [Navigating the Process](#) (P-navigating-the-process)

Chapter 91: An Overview and Summary

The Commonwealth's primary tool for protection and promotion of public use of its tidelands and other waterways is Massachusetts General Law Chapter 91, the waterways licensing program. The Commonwealth formally established the program in 1866, but the philosophy behind Chapter 91 dates back to the earliest days of the Massachusetts Bay Colony, most notably in the Colonial Ordinances of 1641-1647.

The Colonial Ordinances codified the "public trust doctrine," a legal principle that dates back nearly 2000 years, which holds that the air, the sea and the shore belong not to any one person, but rather to the public at large.

The oldest program of its kind in the nation, Chapter 91 regulates activities on both coastal and inland waterways, including construction, dredging and filling in tidelands, great ponds and certain rivers and streams.

Through Chapter 91, the Commonwealth seeks to preserve and protect the rights of the public, and to guarantee that private uses of tidelands and waterways serve a proper public purpose. While other agencies, including the Department of Environmental Management, Massachusetts Coastal Zone Management and the Division of Fisheries and Wildlife, play a role in preserving public rights in public trust lands, the Waterways Regulation Program, the section of MassDEP that oversees Chapter 91, is the primary division charged with implementing the "public trust doctrine." Specifically, the MassDEP Waterways Regulation Program:

- Preserves pedestrian access along the water's edge for fishing, fowling and navigation and, in return for permission to develop non-water dependent projects on Commonwealth tidelands, provides facilities to enhance public use and enjoyment of the water;
- Seeks to protect and extend public strolling rights, as well as public navigation rights.
- Protects and promotes tidelands as a workplace for commercial fishing, shipping, passenger transportation, boat building and repair, marinas and other activities for which proximity to the water is either essential or highly advantageous.
- Protects Areas of Critical Environmental Concern, ocean sanctuaries and other ecologically sensitive areas from unnecessary encroachment by fill and structures.
- Protects the rights of waterfront property owners to approach their property from the water.
- Encourages the development of city and town harbor plans to dovetail local waterfront land use interests with the Commonwealth's statewide concerns.
- Assures removal or repair of unsafe or hazardous structures.

More than ever, the presence of a program like Chapter 91 is vital, especially because many of the fastest growing regions of the state, such as the North Shore, South Shore and Cape Cod and the Islands, are coastal areas. In these coastal areas, Chapter 91 regulations serve to protect traditional maritime industries, such as fishing and shipping, from displacement by commercial or residential development.

Additional Resources

- **Filled Tidelands** - The limit on filled tidelands is: A.) Outside Designated Port Areas, the first public way or 250 feet from mean high water, whichever is farther landward and B.) Inside Designated Port Areas, the historic MHW shoreline (i.e., all filled areas).
- **Great Ponds** - Any project located in, on, over or under the water of a great pond. A great pond is defined as any pond or lake that contained more than 10 acres in its natural state. Ponds or lakes presently larger than 10 acres are presumed to be great ponds, unless the applicant provides unequivocal evidence to the contrary. Ponds 10 or more acres in their natural state, but which are now smaller, are still considered great ponds.
[List of Great Ponds in Massachusetts \(media:1583426\)](#)
- **Non-Tidal Rivers and Streams** - Projects located in, on, over, or under any non-tidal, navigable river or stream on which public funds have been expended either upstream or downstream within the river basin, except for any portions not normally navigable during any season by any vessel. Additionally, the Connecticut River, the Merrimack River and portions of the Westfield River are within jurisdiction.

Activities Requiring Authorization

There are five basic types of activities subject to Chapter 91 authorization. These include both new and existing unauthorized activities, and are as follows:

- **Structures** - Placement or construction of any structure, regardless of size, whether permanent or seasonal. Examples of typical structures include, but are not limited to: piers, wharves, dams, seawalls, weirs, booms, breakwaters, bulkheads, ripraps, revetments, jetties, piles, lines, groins, roads, culverts, bridges, buildings, parking lots, cables, pipes, conduits, tunnels, wires, floats, etc.
- **Filling** - Placement of any unconsolidated materials that is confined or expected to remain in place in a waterway, except for material placed by natural processes. Such placement includes material placed for the purposes of shoreline protection, beach nourishment, or subaqueous disposal of dredged spoils.
- **Dredging** - Removal of materials, including but not limited to rocks, bottom sediments, debris, sand, refuse, plant or animal matter, in any excavating, clearing, deepening, widening, or lengthening of any waters in the Commonwealth. The Department must also know the location where the removed material will be disposed.
- **Change in Use** - Any use of the authorized premises or structures for a purpose unrelated to the authorized use, whether express or implied. An example of such a change in use would be the conversion of a commercial fishing establishment to an office building.
- **Structural Alteration** - Any change in the dimensions of a structure or fill from the specifications contained in the existing authorization.
- **Demolition/Removal of Structures** - Approval is required for removal of any unauthorized structure or fill that was previously not authorized or for which there is not a current and valid grant or license.

Activities Not Requiring Authorization

Placements of structures or fill in non-tidal rivers and streams that do not reduce the space available for navigation do not require Chapter 91 authorization, in accordance with 310 CMR 9.05(3)(g). However, even though the following activities do not require Chapter 91 licensing, applicants must notify the Department of their intent to perform such projects before undertaking them. The Department will in turn provide written notification as to whether or not a Chapter 91 License authorization is required. Examples of these exemptions include:

- Overhead cables, wires or conduits constructed and maintained in accordance with the National Electrical Safety Code;
- Fish ladders, fishways and other devices that allow or assist fish to pass a dam or other obstruction in the waterway;
- Pipelines, cables, conduits, sewers and aqueducts entirely embedded in the soil beneath such river or stream; and
- Bulkheads, revetments, headwalls, storm drainage outfalls and similar structures that do not extend into such river or stream, except as may be necessary for bank stabilization.

Types of Authorization

The four types of Chapter 91 licenses are:

- **MassDEP Waterways License** - All activities subject to the jurisdiction of Chapter 91 require a standard Waterways license unless they are eligible for one of the other three authorizations listed below.
- **MassDEP Waterways Permit** - Activities not involving work on structures or fill may apply for a MassDEP Waterways Permit. These activities include beach nourishment, dredging, disposal involving subaqueous placement or unconsolidated materials, burning of rubbish or other material upon the water, and lowering the water level of any great pond except for purposes described in 310 CMR 9.15(2)(e).
- **License or Permit Amendment** - Applicants may apply to amend a valid waterways license or permit, issued pursuant to the 1999 regulations, for the following reasons:
 - To renew a license or permit term in accordance with the provisions of 310 CMR 9.25(2);
 - To delineate a reconfiguration zone within a marina in accordance with 310 CMR 9.39(1)(b); and
 - To authorize a structural alteration or change in use that is not exempt pursuant to 310 CMR 9.05(3).
- **Harbormaster Annual Permit** - Pursuant to Section 10A of Chapter 91 statutes and 310 CMR 9.07 of the Waterways Regulation, the placement on a temporary basis of moorings, floats, rafts held by bottom anchor and associated ramps may be authorized by an annual permit from the local Harbormaster. No other Chapter 91 authorization is required for so long as the Harbormaster permit remains valid. This provision only applies to bottom-anchored moorings, floats or rafts. No piles may be placed without proper Chapter 91 authorization from the Department of Environmental Protection's Waterways Regulation Program.

generally those areas landward of mean low water, which are owned by private parties. In Commonwealth tidelands, which generally are areas seaward of mean low water and which are owned by the Commonwealth, the public retains all rights. The amount of public benefits an applicant must provide varies depending on whether the project in question is situated on Private tidelands or Commonwealth tidelands. In addition to the preservation of fishing, fowling and navigation, examples of other public benefits obtained through the Chapter 91 licensing process include:

- Strolling rights in intertidal areas
- Pedestrian and waterfront walkways
- Dinghy docks
- Public boat landings
- Public Restrooms
- Public Meeting Rooms
- Transient dockage
- Public water transportation facilities and services
- Creation of parkland
- Boat ramps
- Piers and floats for public recreational boarding facilities
- Fishing piers
- Public sailing programs
- Interpretive Display
- Interior Facilities of Public Accommodation in private buildings, such as restaurants, museums and retail stores

Navigating the Process

The following is a general description of the Chapter 91 application process. See Chapter 91 Forms (linked below) for application forms. Please contact the Waterways Regulation Program for more specific procedural requirements.

Licensing Procedures for Water-Dependent Use and Nonwater-Dependent Use Projects:

Pre-Application Meeting - Prior to filing an application, the project proponent is welcome to meet with MassDEP Waterways Regulation Program staff to review the project in relation to the nonwater-dependent use project requirements specified in sections 9.51-9.55 of the current Chapter 91 Waterways Regulations.

ENF Filing - Prior to filing an application for a Chapter 91 license for a nonwater-dependent use project, the proponent must file an Environmental Notification Form (ENF) with the Massachusetts Environmental Policy Act (MEPA) Unit. If the project exceeds the MEPA thresholds set forth in 301 CMR 11, a copy of the ENF Certificate must be included with the Chapter 91 application. Additionally, if an EIR (Environmental Impact Report) is required, certification of said report must be obtained before MassDEP may publish public notice of a Chapter 91 application.

Chapter 91 Application Filed - Upon receipt of a license application, the Waterways Regulation Program performs a preliminary review to determine its accuracy and completeness. All applications must be completed in conformance with the directions contained in the Permit Application Package, available upon request. If an application is not complete, the applicant or his/her representative will be contacted or the application will be returned in its entirety. If an application is determined to be complete, a file number will be assigned.

Determining Water Dependency - Once an application is assigned to a reviewer, the Waterways Regulation Program will classify the project as either water-dependent or nonwater-dependent. In general, nonwater-dependent projects are those that do not require direct access to or location in tidal or inland waters, and therefore could be located away from said waters.

Public Notice - Following determination of water-dependency, the Waterways Regulation Program sends a notice of license or permit application to the applicant or his/her representative for publication and distribution to property abutters and to certain municipal, state, and federal officials or agencies. At that time, the Waterways Regulation Program will also request any other information necessary for completion of the application. The applicant is required, at his/her own expense, to publish the notice in one or more newspapers that have general circulation in the area affected by the project. Publication of the notice begins a 30 day public comment period (15 calendar days for permit applications) during which the Waterways Regulation Program will accept written comment from any person.

Public Hearing - In the case of nonwater-dependent projects, the Department will hold a public hearing within the city or town where the project is located. The applicant is generally expected to provide the following information at the hearing: project description, location of the project, location of the historic mean high and low water marks on the site, description of existing waterways authorization that may exist for the site, and an explanation of how the project meets the nonwater-dependent requirements specified in sections 9.51-9.55 of the Chapter 91 Waterways Regulations.

Written Determination - For nonwater-dependent projects and for water-dependent projects MassDEP intends to deny, the Department will issue a written determination of its intent to issue or deny a license, including the reasons for such a decision after review of the information provided at the public hearing. (Water-dependent projects do not require preparation of a written determination, but rather proceed directly to license issuance if no adverse public comment is received, or to a draft license if adverse comment is received.) If the Department has decided to issue a license, the written determination will also include the conditions under which the Department would license the project. In order to license a project in tidelands, the Department must make three findings.

These findings, specified in Chapter 91, Section 18 are: that the structures or fill serve a proper public purpose; that the purpose provides greater public benefit than public detriment to the rights of the public in tidelands; and that the determination is consistent with the policies of the Massachusetts Coastal Zone Management (MCZM) Program.

Recording of License - The license and accompanying plan must be recorded at the Registry of Deeds, within the chain of title of the affected property, within 60 days of issuance. The licensee must notify the Waterways Regulation Program upon recording the license, identifying the Registry of Deeds, date of recording and book and page number. The license document must be recorded prior to the commencement of work. Failure to record the license within 60 days of license issuance renders the license void.

Certificate of Compliance - Within 60 days of completion of any licensed project, the Licensee must request in writing that the Department issues a certificate of compliance. The request must be accompanied by a certification by a registered professional engineer that the project was completed according to the plans, specifications and conditions of the license. The Department may conduct a site inspection at any time to determine compliance prior or subsequent to issuing a certificate of compliance. Failure to request a certificate of compliance may result in revocation of the subject license. Note: A certificate of compliance is not required for any license issued for existing structures and activities (unless modifications to those structures are required).

Key Actions

[Chapter 91 Forms | MassDEP](#)
([/topics/chapter-91-forms](#))

KEY ORGANIZATIONS

[MassDEP Waterways Program](#)

Related Guides

[Waterways Permitting - Frequently Asked Questions](#)

[Waterways File Review & Research](#)



[All Topics](#) ([/topics/massachusetts-topics](#))

[Site Policies](#) ([/massgov-site-policies](#))

[Public Records Requests](#) ([/topics/public-records-requests](#))

© 2024 Commonwealth of Massachusetts.

Mass.gov® is a registered service mark of the Commonwealth of Massachusetts. [Mass.gov Privacy Policy](#) ([/privacy-policy](#))