

EXISTING BYLAW WITH PROPOSED REVISIONS
FOR DISCUSSION PURPOSES ONLY

TOWN OF CHATHAM WATERWAYS BYLAW

CHAPTER 265

§ 265-1 Application and regulations.

A. This chapter applies to all persons, vessels, objects or structures on or using the waters of the Town of Chatham, including all salt and fresh water ponds.

B. The Harbormaster is authorized to prescribe regulations to carry out this chapter.

C. Before prescribing any regulation under this chapter the Harbormaster shall present said regulations to the Waterways Advisory Committee, which shall hold a public hearing on the proposed regulations. ~~[Amended 5-12-2008 ATM by Art. 34]~~

D. Failure of the Harbormaster to prescribe regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.

§ 265-2 Definitions. ~~[Amended 5-14-2001 ATM by Art. 32]~~

The following words, for the purposes of this chapter of these bylaws, shall, unless another meaning is clearly apparent for the way in which the word is used, have the following meanings:

AGGRIEVED PERSON - Any person or entity whose mooring permit has been revoked or not renewed; any person who leases a mooring from a recreational boating facility and whose lease is cancelled or not renewed; any person or entity whose name appears on a Town or private waiting list and who was passed over when a mooring became available. ~~[Added 5-12-2008 ATM by Art. 34]~~

COMMERCIAL FISHING ~~CLASSIFICATION~~ - Any ~~mooring permit holder or~~ person or entity ~~meeting the following criteria in sub-section (A) or (B) below: on the waiting lists who, in the opinion of the Harbormaster, is engaged in fin or shellfishing as his/her or its principal occupation (i.e., deriving no less than 75% of their income from fishing related activities).~~ ~~[Added 5-12-2008 ATM by Art. 34]~~

A):

- (1) Seventy-five (75) days of documented fish landings (fish landing slips) annually;
- (2) License issued by the Commonwealth of Massachusetts, Department of Marine Fisheries to shellfish or fin fish;
- (3) Vessel must be documented or commercially registered in Massachusetts;
- (4) Current and valid Chatham Mooring Permit;
- (5) Must be exempt from State fuel tax; and
- (6) Must be a resident of the Commonwealth of Massachusetts or a property tax payer on property in the Commonwealth of Massachusetts.

OR

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(B): Hold a current and valid Chatham Commercial Shellfish Permit and documented seventy-five (75) days of shellfish landings annually.

DILIGENT SUPERVISION - Means that the supervising adult shall be sufficiently close to the supervised person so as to visually oversee the operation of the personal watercraft.

HEADWAY SPEED - Means the slowest speed at which all vessels and personal watercraft may be operated and maintain steerage way. To be considered operating at headway speed under this chapter, the operator shall be either kneeling or sitting.

MOORING ADVISORY BOARD – Shall consist of the Waterways Advisory Committee along with a designated member of the Select Board.

PERSONAL WATERCRAFT - Means a vessel propelled by a water-jet pump or other machinery as its primary source of propulsion that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than being operated in the conventional manner by a person sitting or standing inside the vessel.

RECREATIONAL BOATING FACILITY - All marinas, boatyards and yacht clubs who have been assigned multiple moorings by the Town for use by their patrons, customers or members. ~~[Added 5-12-2008 ATM by Art. 34]~~

VESSEL - Means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on the water.

WATERSKIING - Means the towing or manipulating of a surfboard or other similar device behind any vessel.

The definitions found in G.L. Chapter 91, § 1 and G.L. Chapter 90B, § 1 are hereby incorporated by reference. If any definition above conflicts with G.L. Chapter 91, § 1 and/or G.L. Chapter 90B, § 1, the above definition shall control.

§ 265-3 - Speed limit and No Wake; posted areas and safety zone.

A. Speed limit and No Wake.

(1) Vessels shall not exceed five miles per hour and shall make No Wake, in posted areas.

(2) Vessels shall make No Wake within 150 feet of: bathers, divers, piers, docks, floats, small vessels propelled by means other than machinery, vessels not underway, or the shore.

B. The following areas are posted “No Wake” annually from 15 June to 15 September:

(1) Stage Harbor, Oyster River, Mitchell River, and the Mill Ponds from Stage Harbor Buoy 4 to the head of the Little Mill Pond, and to the entrance of the Oyster Pond.

(2) Aunt Lydia's Cove, from the entrance of the Fish Pier channel to the northerly end of the dredged mooring basin.

(3) Ryder's Cove, Frost Fish Creek and Crow's Pond, from the entrance to Ryder's Cove to the head of Ryder's Cove and Frost Fish Creek, and in the Crow's Pond entrance channel.

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(4) Taylor's Pond and Mill Creek, from the entrance of Mill Creek to the head of Taylor's Pond.

C. The number and location of five mph and/or No Wake areas may be changed at the discretion of the Harbormaster providing that such action is approved by the ~~Select Board~~Board of Selectmen at a public meeting and that a two-week period of public comment is allowed for.

D. In addition to any other provisions of this section, a safety zone is established in Stage Harbor from Stage Harbor Buoy 7 to Stage Harbor Buoy 10, effective annually from 15 June to 15 September. In the safety zone there shall be no swimming, anchoring, water skiing or scuba diving in the channel. Sailboarders, kiteboarders and other similar watersport craft may use this area to transit between Stage Harbor and Nantucket Sound in accordance with § 265-8.

~~[Amended 5-11-2015 ATM by Art. 35]~~

§ 265-4 Town floats; tie-up time limit.

A. Without the express permission of the Harbormaster, an assistant Harbormaster, or the Wharfinger no vessel may remain tied up to Town-owned floats for longer than 15 minutes.

B. At all floats where this section applies the Harbormaster shall post a sign indicating that there is a tie-up time limit.

§ 265-5 Freshwater ponds.

In order to protect the purity of the water and prevent the deterioration of the freshwater ponds, no one shall operate or permit to be operated any vessel powered by any internal combustion engine on any freshwater pond in the Town of Chatham except under the direction of a law enforcement officer, fire or rescue officer, or other authorized official for the purpose of aiding in rescue, other emergency, or for a specified public need with the permission of the ~~Select Boardmen~~.

§ 265-6 - Waterskiing.

A. Waterskiing is prohibited in the posted areas listed in § 265-3B, in marked channels, and within 150 feet of bathers, divers, piers, docks, floats, other boats or the shore.

B. Waterskiing is permitted in other areas subject to the provisions of Massachusetts General Laws, Chapter 90B.

§ 265-7 - Operation of personal watercraft. ~~[Amended 5-14-2001 ATM by Art. 32]~~

A. The purpose and scope of this section is to protect safety by establishing rules of conduct governing the operation of personal watercraft, by promoting voluntary compliance with the rules and, when necessary, by deterring, through fines and penalties, noncompliance with the rules. The Town of Chatham intends to improve, through this chapter, the safe and appropriate use of personal watercraft. The following shall apply in addition to the requirements of G.L. Chapter 91 and G.L. Chapter 90B and their implementing regulations.

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~~B. No person shall operate a personal watercraft except in a safe and prudent manner, having due regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances, so as not to endanger the life, limb or property of any persons.~~

BC. No person shall operate a personal watercraft if such person is:

- (1) Under the age of 16; or
- (2) Sixteen or 17 years of age without first having received a safety certificate evidencing satisfactory completion of a training course in safe operation conducted by the United States Power Squadron, the Massachusetts Environmental Police, the Division of Law Enforcement or such other entity approved in writing by the Director of the Division of Law Enforcement.

~~D. All persons on board a personal watercraft shall wear, at all times, a Coast Guard approved personal flotation device (PFD), Type I, II or III.~~

~~E. No person shall tow a water skier or a person in any other manner from a personal watercraft.~~

~~F. No person shall operate a personal watercraft between the hours of sunset and sunrise, as determined by the chart set forth at 323 CMR 2.00, Appendix I (state regulations), or when vision is unduly restricted by weather.~~

CG. No person shall operate a personal watercraft in a negligent manner. The following are examples of negligent operation:

- (1) Unreasonable jumping or attempting to jump the wake of another vessel.
- (2) Following within 150 feet of a water skier.
- (3) Weaving through congested vessel traffic.
- (4) Speeding in restricted areas.
- (5) Crossing unreasonably close to another vessel.
- (6) Operating a personal watercraft in such a manner that it endangers the life, limb or property of any person.

DH. Except as otherwise provided in this chapter, no person shall operate a personal watercraft:

~~(1) Within 150 feet of shore except at headway speed.~~

~~(2) Within 150 feet of a public bathing area.~~

~~(3) Between 150 feet and 300 feet of a public bathing area except at headway speed.~~

~~(4) Within 150 feet of a swimmer in the water.~~

(15) Within the boundaries of the Cape Cod National Seashore as set forth in Public Law 87-126, 7 August 1961, as most recently surveyed by the U.S. Department of Interior, and on the tidal waters of Pleasant Bay and Chatham Harbor contiguous to the Cape Cod National Seashore to a line running westerly from the southernmost boundary of the Cape Cod

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National Seashore at the southerly tip of Nauset (South) Beach, west to Monomoy Island, including but not limited to Muddy Creek (Monomoy River), Crows Pond, Bassing Harbor, Ryder's Cove, Aunt Lydia's Cove, and any adjoining river, inlet, cove, pond, embayment or harbor.

(26) On the tidal waters of Nantucket Sound southerly of the Stage Harbor Channel (as most recently dredged by the U.S. Army Corps of Engineers) to the "SH buoy" (LLN 138555 in position 41° 39.15'N/070° 00.0'W), then easterly of a line drawn from the "SH buoy" along 70° 00'W south to 41° 36'N, then northerly of a line drawn from 41° 36'N/70° east to Monomoy Island.

~~I. Every person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch shall attach said lanyard to his person, clothing or personal flotation device as is appropriate for the specific craft.~~

~~EJ.~~ A personal watercraft may be operated in the areas described in Subsection H above for search and rescue, or other emergency uses, provided it is under the direction of a duly authorized federal, state or local law enforcement or emergency response agency.

§ 265-8 Sailboards, kiteboards and similar watersport craft. ~~{Amended 5-11-2015 ATM by Art. 36}~~

A. The use of sailboards, kiteboards and other similar watersport craft is prohibited in marked navigational channels, guarded swimming areas, and within 150 feet of bathers, divers, piers, docks, and moored/anchored vessels. Sailboarders, kiteboarders and other similar watersport craft are allowed to operate within the area of outer Stage Harbor as defined in § 265-20C.

B. If sailboarders, kiteboarders or other similar watersport craft must cross a marked channel to gain access to another area, they shall do so as nearly practicable at right angles to the vessel traffic flow.

§ 265-9 - Use of aids to navigation.

A. No authorized aid to navigation in the harbors and waterways of the Town shall be used as starting, finishing or turning mark for any formal or informal race, regatta or other competition.

B. This prohibition does not include aids to navigation in the waters of the Town in Nantucket Sound seaward of Stage Harbor Entrance Buoys 1 and 2.

§ 265-10 - Pollution.

The discharge or disposal of petroleum products, dead fish or shellfish, fish frames, garbage, waste, rubbish or debris on the waters, shores or beaches is prohibited.

§ 265-11 - Abandonment and removal of vessels.

A. No vessel, mooring or other object shall be abandoned, sunk or placed where it may constitute a hazard to navigation as determined by the Harbormaster.

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B. Any vessel, mooring or object constituting a hazard to navigation, and any vessel or object improperly secured, swamped, sunk, washed ashore or found in a restricted area, may be removed or relocated at the direction of the Harbormaster or an Assistant Harbormaster if corrective action is not taken after 72 hours' notice to the owner, or if the owner is unknown, after notice has been posted for the same period at the Town office or on or near such vessel, mooring or object.

C. The expense of such removal or relocation, storage, and liability incurred therefor shall be the responsibility of the owner.

D. Nothing in the above subsections shall restrict earlier action by the Harbormaster or an Assistant Harbormaster, with or without notifying the owner if, in his judgment, such action is necessary to protect life or property.

§ 265-12 - Divers and vessel operations near divers.

A. In addition to the requirement found in G.L. Chapter 90B and its implementing regulations, unless for special purposes permission is granted in writing by the Harbormaster to otherwise protect divers, any person or persons skin diving or scuba diving shall adhere to the following requirements:

(1) Display a diver's flag consisting of a red field with a white diagonal stripe, of a size not less than 12 by 15 inches.

(2) Display a flag on a vessel or surface float or similar device holding such flag upright at a minimum distance of three feet above the surface of the water.

(3) Stay within 100 feet of the aforesaid float or vessel or tow the float and flag with the diver while the diver is submerged and surface thereunder.

(4) Vessels restricted in their ability to maneuver because divers are attached to the vessel shall, in addition to the above, display the dayshape required by the Navigation Rules.

B. A vessel operating within sight of a diver's flag or the dayshape required in the subsections above shall proceed with caution, and within a radius of 100 feet of such flag or dayshape shall proceed at a speed not to exceed three miles per hour.

§ 265-13 - Moorings.

A. The Harbormaster or an Assistant Harbormaster shall assign the location, and approve the type and adequacy of every mooring in the waters of the Town of Chatham.

B. The mooring permit holder shall comply with all reasonable requests of the Harbormaster or an Assistant Harbormaster and all mooring and mooring permit regulations and shall ensure that: [Amended 5-12-2008-ATM by Art. 34]

(1) Each mooring owned by a permit holder shall meet the requirements of the Harbormaster's Waterways Regulations. ~~"Regulations for Mooring, Mooring Permits and Anchoring."~~

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(2) Each mooring is maintained in good and serviceable condition on the assigned location for the mooring.

(3) All mooring buoys, markers, mooring spars, lobster cars, vessels, or similar objects attached to a mooring are clearly visible at all times, and properly and clearly identified as prescribed by regulations adopted under this chapter.

~~(4) Mooring spars shall be painted, and at any state of the tide be at an angle of not less than 45° with an exposed length of not less than 18 inches.~~

C. The owner of a mooring may sell or transfer the ownership of mooring tackle owned by ~~them~~.

D. The assigned location of the mooring shall not be transferred to anyone else without the approval of the Harbormaster or an Assistant Harbormaster.

E. The Harbormaster may designate a mooring field in which specified types of mooring systems and/or tackle may be required. Such plan must be reviewed by the Waterways Advisory Committee, Shellfish Advisory Committee, Aunt Lydia's Cove Committee and South Coastal Harbor Plan and approval by the Select Board after a public hearing.

§ 265-14 - Mooring permits. ~~[Amended 5-12-2008 ATM by Art. 34]~~

A. Before placing in the water or using any mooring, the owner of a mooring tackle shall obtain from the Harbormaster or an Assistant Harbormaster a mooring permit.

~~B. The permit application shall require information as to the type and size of the mooring tackle, a description of the vessel or object to be moored, and the location of the mooring.~~

~~C. Proof of ownership of the mooring tackle may be required before a mooring permit is issued.~~

~~B.D. The Harbormaster shall adopt regulations regarding the period of time that a mooring permit is valid, procedures for renewal and the issuance of new permits. Such regulations shall track the provisions of MGL c. 91, § 10A.~~

~~C.E. A mooring permit may be revoked by the Harbormaster at any time for failure to comply with the requirements of this chapter, or regulations prescribed by the Harbormaster regarding moorings or mooring permits.~~

~~D.F. When a mooring permit is revoked or expires, the permit holder/owner shall, within 30 days, unless otherwise authorized by the Harbormaster, surrender the mooring permit and remove or dispose of the mooring.~~

E.G. When a permit holder/owner of a mooring no longer owns the vessel described in the mooring permit or another approved vessel, the permit holder may retain the mooring location for a period not to exceed two (2) years from the date of disposition, transfer, or sale of the vessel described on the permit, discontinues the use of a mooring for the vessel described in the mooring permit, the permit holder/owner may retain the mooring location for a period of not to exceed two years, and the mooring may be used by another vessel as prescribed in § 265-18. If

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after two years the permit holder/owner does not own a vessel requiring a mooring, the Harbormaster shall reassign the mooring ~~permit~~location.

- (1) A mooring permit holder must notify the Harbormasters Office in writing of the disposition date of the vessel described on the permit prior to the end of the permit renewal period (permit year).
- (2) In a waiting list area, when a permit holder no longer owns the vessel described in the mooring permit or discontinues use of a mooring, as determined by the Harbormaster after a permit review, the permit holder may retain the mooring location for a period not to exceed two (2) years, and the mooring may be used by another vessel as prescribed in §1017.
- (3) If, after two (2) years the permit holder does not own a vessel requiring the mooring or has not continued to use the mooring as described above, the permit holder shall forfeit the mooring and remove their mooring tackle within 30 days. The Harbormaster may reassign the mooring location.

~~FH.~~ The Select Board of ~~Selectmen~~, in consultation with the Waterways Advisory Committee, shall set the fees for mooring permits.

~~GI.~~ The Harbormaster shall annually, by May 1st update and publish a list of active mooring permits including the permit number and mooring category on the Town website. ~~by category the number and general mooring location of all moorings as follows:~~

- ~~(1) Town controlled and unassigned;~~
- ~~(2) Commercial fishing vessels;~~
- ~~(3) Recreational private;~~
- ~~(4) Boatyards and marinas; and~~
- ~~(5) Clubs, nonprofits, sailing schools.~~

~~The Harbormaster shall endeavor to maintain the percentages mix of the above categories as they existed on April 1, 2008 (percentage mix and date may be changed under § 265-14.1F). In the event a mooring assigned to a commercial fishing vessel is converted by the mooring permit holder to a recreational private status, the Harbormaster shall assign the next available, suitable mooring to a commercial fishing vessel applicant.~~

~~Mooring permits may be transferred to members of the immediate family of the permit holder in accordance with the Harbormaster's Mooring Regulations.~~

~~HK.~~ Mooring permits are temporary permits as defined in MGL c. 91. The permits are not property rights and as such are only transferable in strict conformity with this bylaw.

I. Other than Army Corps of Engineers permitted moorings, no person shall rent or lease a mooring permit or mooring location.

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§ 265-154.1 - Recreational boating facilities. ~~[Added 5-12-2008 ATM by Art. 34]~~

A. Mooring permits issued to recreational boating facilities may, consistent with the provisions of this bylaw and the rules and regulations of the Harbormaster, be assigned or leased to customers, patrons, and/or members of such facilities, and may be used by such facilities for service or repair of vessels.

~~B. Each recreational boating facility shall subscribe to and be bound by the Chatham Commercial/Rental Mooring Fair and Equitable Mooring Assignment Policy (the "Policy"), adopted by the Harbormaster, and approved by the Board of Selectmen, dated, 2008, a copy of which is on file in the office of the Town Clerk.~~

~~(1) Dated copies of the policies shall be available at the office of the Harbormaster and Town Clerk and shall be conspicuously posted at each recreational boating facility.~~

~~(2) The policy may only be amended by the Harbormaster with approval of the Board of Selectmen after an advertised public hearing, notice of which has been sent in writing to all recreational boating facilities and the Waterways Advisory Committee at least 10 days before the hearing. The notice shall set forth the time and place of the hearing and include a copy of the proposed amendment. Prior to acting on the amendment the Harbormaster and the Board of Selectmen shall seek the recommendation of the Waterways Advisory Committee.~~

BC. No recreational boating facility shall fail to renew or revoke a mooring rental/assignment without having complied with the applicable provisions of state and local regulations~~the policy~~. Copies of the notice shall be sent to the Harbormaster ~~simultaneously~~contemporaneous with the notice to the lessee/assignee. Any person aggrieved by such non-renewal or revocation shall be entitled to pursue the appeal process ~~outlined in this bylaw without fear of reprisal or retribution~~.

D. Failure of the recreational boating facility to conform to the requirements of this bylaw and to the specific requirements below may result in the non-renewal of some or all of its mooring permits.

(1) Recreational boating facilities shall provide safe and adequate access for their customers which include parking, bathrooms, dinghy storage or launch services, boat repair, boat maintenance and boat storage on or off property or both. Adequate bathrooms shall not include porta-johns, except on a temporary basis. Adequate parking is considered the amount of parking available as of January 1, 2020.

(2) Each Recreational boating facility that offers the sale of gasoline as of January 1, 2019 shall continue to offer gasoline to their customers and the public.

(3) Recreational Boating Facilities shall annually provide the Office of the Harbormaster the current waiting list with names and contact information and list of new and returning permit holders by March 1st.

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E. Upon the sale or transfer of the recreational boating facility to a new owner, the mooring permits assigned to that recreational boating facility may be transferred to the successor owner, provided that:

(1) The facility continues to operate so as to meet the requirements of §265.15(D)(1),(2) and (3) at substantially the level of service as previously and as a recreational boating facility; and

(2) The Harbormaster approves such transfer, which approval shall be based upon the facility's compliance with this Bylaw and specific requirements of §265.15(D)(1),(2) and (3) not be unreasonably withheld.

Sale or transfer shall include any sale or transfer of more than 51% of the stock of ~~the any~~ corporate recreational boating facility.

F. The sale or transfer to any person or entity that ceases or fails to operate as set forth in this section will cause the mooring permits to be revoked or not reissued and such permits may be reassigned by the Harbormaster exempt from the requirements of § 265-14I. The reassignment of these moorings may create a new percentage mix between the categories and thus establish a new benchmark date for § 265-14I.

G. The Harbormaster, at his discretion, may issue "service moorings" to boat/repair commercial facilities not qualified under "recreational boating facilities" as required by them to facilitate their normal operations. Permits to be issued at the Harbormaster's discretion out of the percentage used in § 265-14I(1), (2) or (4).

H. Recreational boating facilities shall cooperate with the Harbormaster to maximize mooring use during storm events.

§ 265-165 - Waiting lists for mooring location assignment. ~~[Amended 5-12-2008 ATM by Art. 34]~~

A. In areas that have reached maximum mooring saturation, the Harbormaster shall, in order to equitably assign mooring locations, establish waiting lists and procedures for the administration of such waiting lists.

B. Recreational boating facilities shall likewise establish waiting lists and procedures similar to the Harbormaster's for assignment of vacant moorings under their control for those willing to pay the rental fee for such moorings. In the event such facility has no one on its waiting list and no one is interested in renting its available moorings, it shall be offered to the owner of a suitable vessel who is listed first on the applicable Harbormaster Waiting List and is willing to enter into the mooring rental assignment agreement then offered by the recreational boating facility. Recreational boating facilities shall be required to submit to the Harbormaster the information set forth in Subsections E and F of this section.

C. In the establishment of the written waiting list procedures, the Harbormaster or recreational boating facilities shall comply with the provisions of 310 CMR 9.07(2)(a). The fair and equitable assignment from a waiting list shall at a minimum include:

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- (1) Date of application;
- (2) Physical characteristics of vessels, e.g., size and type;
- (3) Purpose of vessel use, e.g. commercial vs. recreational or public vs. private; and
- (4) In the case of a recreational boating facility, renewal of a mooring rental assignment or issuance of a mooring rental assignment to individual patrons, members or customers of the facility.

D. A ~~digital map of mooring locations,~~ a list of all mooring wait lists and assignment lists shall be kept at the Harbormaster's office and posted on the Town website. These lists will have the date an individual first appeared on the wait list. The assignment list will have the date the mooring was assigned to that individual. When the Harbormaster makes any changes either by issuing new moorings or removing moorings then that change will be reflected on the respective list within 15 days of said change. The Harbormaster's office shall maintain these records as public documents in paper and electronic form and shall keep these records for public review indefinitely or until otherwise instructed by the ~~Board of Select~~ Boardmen/Town Manager.

E. The ~~Harbormaster shall publish the mooring wait lists on the Town website~~Town Clerk's office will be responsible for archiving the records. The Harbormaster's office will provide it with updated lists every six months. Records shall be available for the public to review upon request. All records submitted to the Town Clerk's office by the Harbormaster's office shall be kept indefinitely or until otherwise instructed by the Board of Selectmen/Town Manager.

F. When a new mooring is established and assigned or added to the, ~~a copy of the assignment letter is to be sent to the Waterways Advisory Committee and the Board of Selectmen/Town Manager within 15 days of said assignment. Should the Harbormaster elect to assign additional moorings to its~~Harbormaster's own inventory of available town moorings, ~~the notification shall be posted at the Town Clerk's office and on the official Town website~~procedure of this section shall be followed.

G. All new assignments of the moorings shall be taken from the first suitable vessel on the waiting list. If the vessel selected for a mooring is not the next ~~suitable vessel~~ in line on the wait list then the Harbormaster shall provide by electronic mail a written reason for such a selection to the ~~Board of Select~~ Boardmen/Town Manager, the Waterways Advisory Committee, and to all individuals on the waiting list who have been passed over within 15 days of such an assignment.

§ 265-176 - Moving, relocating, removal and inspection of moorings.

A. Moorings shall not be moved from an approved location without the prior approval of the Harbormaster or an Assistant Harbormaster.

~~B. If for any reason the approved location of a mooring is not adequate for the vessel, it shall be the responsibility of the permit holder/owner to move the mooring, within 10 days, to a new location approved by the Harbormaster or an Assistant Harbormaster.~~

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~~C. In the event that a mooring is moved from its approved location by storm, ice or other cause, it shall be the responsibility of the permit holder/owner of the mooring to, at the earliest possible opportunity, but in no case later than 14 days from the date of the dislocation of the mooring is or could be discovered, relocate the mooring to the location originally approved, or to another location approved by the Harbormaster or an Assistant Harbormaster.~~

B. Lost moorings. In the event that a mooring is lost it shall be the responsibility of the permit holder/owner to, at the earliest possible opportunity, locate, mark and properly identify said lost mooring. If, during a period not to exceed six months, the permit holder/owner fails to locate, mark and properly identify a lost mooring, the permit holder/owner may request permission from the Harbormaster to install a new mooring and tackle at their approved location.

~~C~~D. The Harbormaster or an Assistant Harbormaster may, at any time, inspect any mooring and may remove or cause to be removed any mooring that fails to meet mooring regulations or specifications.

~~D~~E. The Harbormaster or an Assistant Harbormaster may relocate, remove or cause to be removed or relocated any mooring whenever, in their~~his~~ judgment, the safety of other vessels or the maximum use of the area requires such action.

~~E~~F. All moorings shall pass an inspection by a qualified person before being placed in service; ~~and further inspected, and pass such inspection, at intervals of not more than every two years thereafter. A qualified person is an individual who has received written approval to inspect moorings from the Harbormaster or an Assistant Harbormaster. Moorings may continue to be self-inspected by the individual mooring permit holder in accordance with the Harbormaster's mooring inspection regulations as from time to time amended. [Amended 5-12-2008 ATM by Art. 34]~~

~~F~~G. Any expense of such inspection, removal or relocation and any liability incurred therefor shall be the responsibility of the permit holder/owner of said mooring.

~~§ 265-17 - Lost moorings.~~

~~A. In the event that a mooring is lost it shall be the responsibility of the permit holder/owner to, at the earliest possible opportunity, locate, mark and properly identify said lost mooring.~~

~~B. If, during a period not to exceed six months, the permit holder/owner fails to locate, mark and properly identify a lost mooring, he may request permission from the Harbormaster to install a new mooring and tackle at his approved location. [Amended 5-12-2008 ATM by Art. 34]~~

~~§ 265-18 - Moorings used by persons other than permit holder.~~

At times when a mooring is not being used by the mooring permit holder/owner, ~~or when a mooring permit holder/owner has discontinued the use of a mooring (see § 265-14G),~~ the mooring may be used by another vessel, provided prior approval is obtained from both the permit holder/owner of the mooring and the Harbormaster or an Assistant Harbormaster, subject to the following provisions:

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A. When a mooring is used by a vessel owned and operated by an individual who is not the permit holder/owner of the mooring, it shall be the responsibility of the owner/operator of said vessel to maintain the mooring and leave it in the same condition as when first used by ~~themhim~~.

B. If during the period of use by another vessel the mooring is lost, dislocated or damaged, the owner/operator of the vessel using the mooring shall be liable to the permit holder/owner of the mooring for a sum of money sufficient to recover, restore, renew or relocate the mooring to the approved location, and to the condition it was first used by ~~themhim~~.

~~C. In crowded areas, where there are established waiting lists for mooring location assignment, moorings shall be temporarily assigned to an individual on the waiting list.~~

§ 265-19 - Sale of moorings at auction.

The Harbormaster shall have the authority to sell at public auction on behalf of the Town any mooring ~~and associated equipment~~ removed under the authority of ~~this Bylaw §§ 265-16 and 265-17 of this chapter~~ if the mooring has not been identified and claimed by its owner within six months of its removal. ~~[1]~~

~~[1] Editor's Note: Original § 35039, Mooring specifications, which immediately followed this section, was deleted 5-11-1998 ATM by Art. 14.~~

§ 265-20 - Anchoring and mooring in Stage Harbor.

A. Vessels shall not anchor in Stage Harbor in the inner harbor, east of Stage Harbor Buoy 10 or in the area on the north side of the dredged channel, west of Stage Harbor Buoys 11 and 13. ~~[Amended 5-11-2015 ATM by Art. 37]~~

B. Vessels may use the anchorage, in Stage Harbor, on a temporary basis, in the area on the southeast side of the dredged channel, using the Town moorings within the following positions: 41°39'33.7"N 069°58'39.9"W, 41°39'24.1"N 069°58'32.7"W, 41°39'26.5"N 069°58'32.1"W, and 41°39'35.5"N 069°58'37.6"W. ~~[Amended 5-11-2015 ATM by Art. 37; 5-8-2017 ATM by Art. 39]~~

C. No moorings shall be placed south of the following positions: in outer Stage Harbor south/southeast from position 41°39'35.50"N 69°58'37.60"W and a line drawn northeast to position 41°39'50.50"N 69°58'17.10"W continuing northeast to position 41°39'53.6"N 069°58'07.4"W and east to the tip of Stage Island at position 41°39'53.2"N 69°57'58.0"W. ~~[Amended 5-8-2017 ATM by Art. 39]~~

(1) Moorings may be placed along the southeast side of the navigation channel between positions 41°39'43.51"N 069°58'26.91"W, 41°39'50.50"N 69°58'17.10"W continuing northeast to position 41°39'53.6"N 069°58'07.4"W and east to the tip of Stage Island at position 41°39'53.2"N 69°57'58.0"W for the use by displaced commercial fishing vessels permitted in Aunt Lydia's Cove or Chatham Harbor due to shoaling in the area north of the Lighthouse and south of Minister's Point. Moorings may be only be placed in the area southeast of the federal navigation channel described above upon recommendation of the

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Harbormaster and notification to the Board of Selectmen after a public hearing held by the Waterways Advisory Committee in accordance with § 265-1B and C.

§ 265-21 - Operation and responsibility.

A. Vessel and personal watercraft operators are responsible for their wake at all times and shall not operate a vessel in a reckless or negligent manner so as to endanger the life, safety, or property of any person.

B. No person shall operate any vessel in a manner that violates Massachusetts General Laws, Chapter 90B, or any regulations adopted thereunder, or any other state or federal law that may apply.

C. Nothing in these regulations shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to comply with this chapter or the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

~~**§ 265-22 Jurisdiction.**~~

~~Nothing contained in this chapter shall be held or construed to supersede or conflict with or interfere with or limit jurisdiction of the United States Government with respect to the enforcement of the navigation, shipping, anchorage or other associated federal laws, or regulations, or any laws or regulations of the Commonwealth of Massachusetts.~~

§ 265-223 – Statutory Appeals and Local Review. [Added 5-12-2008-ATM by Art. 34]

A. Statutory appeals. Any individual or entity aggrieved by a decision of the Harbormaster shall have the right to pursue and appeal to the Division of Waterways as more fully set forth in MGL c. 91, § 10A, and 310 CMR 9.07(5)~~(a). If an aggrieved person elects to utilize the local appeals process, any decision by the Harbormaster shall not become final until seven days following the decision of the Mooring Appeals Board at which time the thirty day appeal period in MGL c. 91, § 10A, will commence to run. The decision to utilize the local appeals process shall not constitute a waiver of the statutory appeal process.~~

B. Local Reviewappeals.

(1) A person or entity aggrieved by a decision of the Harbormaster or a Recreational Boating Facility pursuant to G.L. c. 91 § 10A, 310 CMR 9.07(5)(a), this Bylaw and/or any regulations pursuant to this Bylaw may file a petition with the Mooring Advisory Board for a recommendation within 7 days of the Harbormaster’s decision. Upon the filing of a petition, the Mooring Advisory Board Select Board shall render a recommendation in writing within 21 days~~The Board of Selectmen shall hear and rule upon all appeals initiated under this bylaw.~~

(2) Failure to abide by timeframes for renewal of waitlist or moorings is not grounds for Local Review~~The Board of Selectmen is authorized to hear and decide appeals initiated by any aggrieved person as defined in this mooring bylaw. The appeal shall be filed with the~~

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~~Town Clerk and the Harbormaster within 10 days of the action of either the Harbormaster or a recreational boating facility from which the aggrievement arises. The Board of Selectmen shall hold a hearing within 21 days of the filing of the appeal and shall render its decision and file the same with the Town Clerk and Harbormaster within 21 days of the conclusion of its hearing.~~

~~(3) Any party to the local appeals process aggrieved by the decision of the Board of Selectmen may appeal pursuant to MGL c. 91, § 10A, or 310 CMR 9.07(5)(a), providing they qualify for such appeal. All other appeals of the Board of Selectmen shall be to the Superior Court of Barnstable County by way of certiorari.~~

~~(4) Any further appeal to the Division of Waterways shall include the decision of the Board of Selectmen which shall have prima facie evidence of its correctness.~~

~~(5) The filing of a local appeal under this bylaw shall stay the enforcement of the action or actions appealed from until such time as the appeal is finally adjudicated or resolved and until the Board of Selectmen has rendered its decision.~~

~~(36) In rendering its recommendation~~ruling upon appeals, the Mooring Advisory Board~~Board of Selectmen shall determine~~if the Harbormaster's decision :

(a) is arbitrary, capricious, or an abuse of discretion;

(b) conflicts with an overriding state, regional, or federal public interest;

(c) fails to meet any requirement contained in 310 CMR 9.07;

(d) was based on plans or other documentation submitted with the application which contained substantially inaccurate or incomplete depictions of the structure and its surroundings; or

(e) allows floats, rafts, or small structures which significantly interfere with public rights to use waterways for fishing, fowling, and navigation or for other lawful purposes. The Department shall issue its decision within 30 days of the close of the period for comments described in 310 CMR 9.07(5)(c).

~~(a) Whether there has been compliance with the provisions of this bylaw, the regulations of the Harbormaster, and, if applicable, the policy referenced in § 265-14.1 as the same may be amended from time to time.~~

~~(b) Whether the action or decision of the Harbormaster or the recreational boating facility was arbitrary or capricious.~~

§ 265-232 - Jurisdiction.

Nothing contained in this chapter shall be held or construed to supersede or conflict with or interfere with or limit jurisdiction of the United States Government with respect to the enforcement of the navigation, shipping, anchorage or other associated federal laws, or regulations, or any laws or regulations of the Commonwealth of Massachusetts.

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§ 265-24 - Severability.

If any section, paragraph or part of this Bylaw is for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force.

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