

TOWN OF MOUNT DESERT MARINE MANAGEMENT ORDINANCE

This ordinance, as enacted at the June 3, 2002 Special Town Meeting, repeals the Harbor Management Ordinance as amended through March 8, 2000.

Ratified at the March 3, 2003 Annual Town Meeting

Amended March 3, 2003 Annual Town Meeting

Amended March 6, 2007 Annual Town Meeting

ARTICLE I - PREAMBLE

1.1 AUTHORITY

This ordinance is adopted under this authority granted in Titles 12, 17, 30 and 38 MRSA, as amended.

1.2 SHORT TITLE

This ordinance shall be known as and may be cited as the "Marine Management Ordinance for the Town of Mount Desert".

1.3 PURPOSES

The purpose of this ordinance is to provide for the just and orderly operation and regulation of marine activities on and within all tidal waters of the Town of Mount Desert, Maine in order to insure safety to persons and property, to promote availability and use of a valuable public resource, and to create a fair and efficient framework for the administration of that resource.

1.4 JURISDICTION

The provisions of this ordinance shall govern all marine activities on and within all tidal waters of the Town of Mount Desert.

1.5 RULES OF CONSTRUCTION

Captions and headings within this ordinance are an integral part of the ordinances and are intended to be utilized in determining the meaning and applicability of the sections they identify.

ARTICLE II TIDAL WATERS, HARBOR LIMITS AND CHANNEL LIMITS

2.1 PURPOSE

The purpose of this article is to define the boundaries, tidal waters, harbors, and the channels within these harbors of the Town of Mount Desert.

2.2 NORTHEAST HARBOR: HARBOR LIMITS

For the purpose of this ordinance the harbor limits shall be: The Southeast sector of the harbor limit as defined by a line starting Latitude 44 17 266N, Longitude 068 16 774 W, (Burden dock), extending on a magnetic bearing of 053 degrees to Latitude 44 17 450 N, Longitude 068 16 592 W until it intersects the opposite shore; and in the other sectors of this harbor the limits are the mean high water except in the Southwest Sector where the harbor includes the concrete piers, the bulkheads, launching ramp and the immediately adjacent Town owned land, buildings and appurtenances.

2.3 SEAL HARBOR: HARBOR LIMITS

For the purpose of this ordinance, the harbor limits shall be defined as a line from Latitude 44 17 383 N Longitude 068 14 505 W (the Southernmost tip of Thrum cap) on a magnetic bearing of 111 degrees to Latitude 44 17 277N, Longitude 068 14 111 W (East Point) and shall extend in a northerly direction as defined by mean high water, including the town owned pier and launching ramp.

2.4 SOMESVILLE: HARBOR LIMITS

For the purposes of this ordinance the harbor limits shall be defined by a line from Latitude 44 21 279 N Longitude 068 19 383 W (the southern most tip of Bar Island) on a magnetic bearing of 281 degrees to Latitude 44 21 269 N Longitude 068 19 502 W, and shall extend in a northerly direction as defined by mean high water.

2.5 BARTLETT'S LANDING: HARBOR LIMITS

For the purposes of this ordinance the harbor limits shall be defined by a line starting at Latitude 44 21 22N Longitude 068 24 35 W to Latitude 44 20 53 N Longitude 068 25 07 W (Ledges Point) to Latitude 44 19 56 N, Longitude 068 25 25 W (the northernmost point of Johns Island) to Latitude 44 19 40 N Longitude 068 24 31 W, to include all waters in an easterly direction as defined by mean high water, to include all town owned property, including the launching ramp.

2.6 MOORING AREAS OUTSIDE OF HARBORS

Mooring areas outside of Harbors may be designated by regulation.

ARTICLE III HARBOR MASTER AND MARINE MANAGEMENT COMMITTEE

3.1 HARBOR MASTER

3.1.2 DEPUTY HARBOR MASTER

3.1.3 APPOINTMENT

The Harbor Master shall be recommended by the Marine Management Committee, nominated by the Town Manager and shall be appointed by the Board of Selectmen.

The Deputy Harbor Master shall be hired in accordance with Town policy of hiring non-department head personnel.

3.1.4 DUTIES AND RESPONSIBILITIES

Certain duties, responsibilities, and authority of this office are prescribed by Titles 12, 17, and 38, MRSA, by the Town of Mount Desert's *Personnel Policy*, and by this ordinance. The Harbor Master shall administer and enforce the provisions of this ordinance with the authority granted by law, and through his appointment as a Constable of the Town of Mount Desert; and the provisions of all rules, regulations, ordinances and other laws, which are lawfully promulgated that are within his responsibility.

The duties of the Harbor Master and Deputy Harbor Master shall include, but are not limited to the following:

- A) Promote order in the harbor and assure safety and use of the harbor for the general public.
- B) Regulate placement of moorings according to the approved mooring plan for each harbor and this ordinance.
- C) Provide copies of all rules, regulations, ordinances and other laws which pertain to the harbors, their use, and to vessels within the Town of Mount Desert, and to make copies available to those persons using the harbors.
- D) Inspect moorings, docks, floats, piers, and wharves, from time to time, as his judgment may dictate, in the waters of the Town of Mount Desert, give notice to the owner of such structures that have fallen into a state of disrepair or which may create a dangerous condition or may interfere with safe passage.
- E) The Harbor Master shall be overseer of the Town's waterfront facilities to include but not be limited to, moorings, floats, docks, ramps, channels, breakwaters, and adjacent municipal property, excluding parking lots.

3.2 MARINE MANAGEMENT COMMITTEE

3.2.1 APPOINTMENT

The Marine Management Committee shall consist of not less than five voting members nominated by the Town Manager and confirmed by the Board of Selectmen. Members shall be appointed for two-year terms, and may be reappointed. Marine Management Committee members shall be residents of the Town of Mount Desert and shall represent diverse interests in the harbor. (i.e. commercial boat owners, recreational boat owners, abutting land and business owners, members of Town Boards, and Committees, etc.) Town employees who are not residents may serve as non-voting members of the Committee, if their position provides special skills and knowledge beneficial to the Committee.

3.2.2 DUTIES AND RESPONSIBILITIES

The duties and responsibilities of the Marine Management Committee shall be to oversee the Town waters and harbors and report to the Board of Selectmen as follows:

- A) To advise as to the custody, care and management of the Town waters and harbors and their facilities.
- B) To recommend policy for Town waters and harbors.
- C) To recommend rules and regulations for Town waters and use of the harbors.
- D) To make recommendations on the construction of piers, wharves, breakwaters, marine railways, or bulkheads within the **tidal** waters of the Town.
- E) To propose fees and operational budgets.
- F) To develop short and long range Marine management plans.
- G) To review the qualifications and make recommendations to the Town Manager of persons seeking employment as Harbor Master.

3.2.3 MEETINGS

The chairman, vice chairman or the Harbor Master, may call meetings of the committee. There shall be a minimum of two meetings per year.

3.2.4 QUORUM

A majority of the members appointed to the Committee shall constitute a quorum.

3.2.5 VOTE

The committee decisions will be made by vote of a majority of the members present and voting.

3.2.6 CHAIRMAN, VICE CHAIRMAN AND SECRETARY

A Chairman and Vice Chairman of the Marine Management Committee shall be elected by the membership. A Secretary shall be elected and shall keep a record of all proceedings and provide them to the Board of Selectmen in a timely manner.

ARTICLE IV - GENERAL PROVISIONS

4.1 PURPOSE

The purpose of this article is to set forth provisions for the safe and orderly operation of the Tidal waters and harbors, to ensure safety to persons and property, and to minimize conflicts between various users.

4.2 BOAT OWNER OR OPERATOR

Any person using the facilities or moorings within the limits covered by this ordinance shall assume all risk of damage or loss to his person or property. The Town of Mount Desert assumes no risk of liability on account of fire, theft, Act of God, or damage of any kind to vessels within the above stated geographic limits.

4.3 OPERATION OF VESSELS

4.3.1 SPEED OF VESSELS

It shall be unlawful for any person to operate any boat or vessel in the harbors of the Town of Mount Desert in such a manner as to cause a wash, or a wake of waves that disturb or damage any wharf, float, anchored or moored boat, or at a speed that endangers any person or property or is contrary to the provisions of Title 38 Section 281, MRSA as amended. In no event shall a vessel exceed a speed of five (5) miles per hour in this area.

4.3.2 RECKLESS OPERATION

No person shall operate any vessel in a reckless or negligent manner or while under the influence of intoxicants or drugs so as to endanger the life, limb or property of any person, or contrary to the provisions of Title 38, Section 283, MRSA, as amended.

4.3.3 INFECTED VESSELS

Whenever a vessel arrives in the Town of Mount Desert Harbors having on board any person afflicted with a contagious disease or suspected of being afflicted with such disease, the master, commander, or pilot thereof, and the Health Officer of the Town of Mount Desert shall comply with the provisions of Title 22, MRSA, as amended.

4.3.4 ABANDONMENT

No person shall abandon any boat, vessel, hulk, cradle, raft, or any other possible obstruction within the geographic limits covered by this ordinance. Any property, as herein above described, which shall have been left unattended for a period of sixty days, shall be deemed to have been abandoned. The Harbor Master may order the owner to remove the same within fifteen days. In default of removal or in the event the Harbor Master is unable to identify the owner or master of the vessel after reasonable efforts, the Harbor Master may undertake its removal or destruction at the cost of the owner. Any violation of the above shall be deemed a misdemeanor and upon conviction shall be punished by a fine of not more than \$200.00.

4.4 OBSTRUCTION OF CHANNELS, LAUNCH RAMPS, OR BERTHING SPACES, AND REMOVAL OF VESSELS.

It shall be unlawful to tie up or anchor a vessel in violation of the mooring provision of Article VI in such a manner as to obstruct mooring areas, launch ramps or channels, or to permit or carelessly sink or allow to be sunk any vessel in any channel, mooring area, or berthing space, which shall impede navigation or cause damage to vessels therein. The Harbor Master may order any such vessel to move. If the Harbor Master receives a complaint from an owner, master, or operator of any vessel, that another vessel or vessels is/are obstructing free movement or safe anchorage, he shall investigate the situation and order such other vessel to move to an appropriate location, if necessary.

If the Harbor Master should observe a condition in which one vessel is obstructing the free movement or safe anchorage of any other vessel, he may order the other vessel to move. If any vessel is anchored within the channel limits established by the Town of Mount Desert the Harbor Master shall order the vessel to move. If space is available the Harbor Master may designate the location to which the obstructing vessel may proceed to anchor.

Whoever neglects or refuses to obey the orders of such Harbor Master shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than \$200.00. If a vessel described in this section has no crew on board or if the owner, master, or person in charge neglects or refuses to move such vessel, as directed by the Harbor Master, or if the Harbor Master is unable to locate the owner or master or person in charge after reasonable efforts, then the Harbor Master may take steps to remove said vessel, in accordance with the provisions of Title 38, MRSA Section 5. The Town of Mount Desert or its officials shall not be held liable for any damage to such vessel nor liable to its owners before or after assuming custody. Vessels so taken into custody shall be released to the owner by the Town Manager only after satisfactory proof of ownership has been presented, full reimbursement made to the Town for all costs incident to recovery, movement and storage; and a signed release of all claims is executed by the vessel owner or duly authorized representative.

4.5 CORRECTION OF AN UNSAFE BERTHING

If any vessel shall be found, in the judgment of the Harbor Master, to be anchored or moored in an unsafe or dangerous manner, or in such a way as to create a hazard to other vessels or to persons or property, the Harbor Master may order such vessel to move and direct or undertake necessary measures to eliminate such unsafe, unauthorized, or dangerous condition. Primary responsibility for compliance with such orders and directions shall rest with the owner of the improperly anchored or moored vessel or his authorized agent; in the absence of such owner or agent, said responsibility shall rest with the mooring owner or the authorized operator of the facility at which the vessel is anchored or moored. In an urgent situation, and in the absence of any such responsible person, the Harbor Master may board any vessel and cause the improper situation to be corrected, and the owner of the vessel shall be liable for any costs incurred by the Town of Mount Desert in effecting such correction. The Town or its officials shall not be held liable for any damage to such vessel or property that occurs during or as a result of being boarded pursuant to this section.

4.6 UNSEAWORTHY VESSELS PROHIBITED IN THE HARBOR

A person shall not moor or permit to be moored, in any harbor, a vessel of any kind whatsoever which is un-seaworthy or is in a badly deteriorated condition or which is likely to sink or to damage docks, wharves, floats or other vessels or which may become a menace to navigation, except with the express written permission of the Harbor Master.

4.7 TAMPERING WITH OR BOARDING VESSELS WITHOUT PERMISSION

It shall be a violation of this ordinance, for any person willfully to board, break in, enter, damage, move, or tamper with any vessel, or part thereof, located within the Town, unless authorized by the rightful owner of such vessel, or as provided for in this ordinance or permitted under federal admiralty law.

4.8 NOISE

It shall constitute a nuisance to cause a noise in an unreasonably loud manner so as to disturb neighboring vessels and/or their occupants.

4.9 SHELLING OF SHELLFISH

Shelling of shellfish is prohibited within the harbors unless the shells are removed from the harbor area and disposed of in a legal and proper manner.

4.10 FISHING

Fishing in a reckless manner and the use of harpoons or spears from any boat, wharf, float or pier within the harbors is prohibited.

4.11 WATER-SKIING

No person shall water ski within the harbors of the Town.

4.12 DISPOSAL OF WASTE AND REFUSE

Unless specifically permitted pursuant to state or federal law, no person shall deposit or dispose of any refuse, trash, waste, petroleum distillate, or hazardous substance or material in the waters of the town.

4.13 COMPLIANCE WITH HARBOR MASTER'S ORDERS

No person shall refuse to obey any lawful order of the Harbor Master with reference to the operation, navigation, movement, relocation or disposal of any vessel owned or occupied by said person within the tidal waters of the Town of Mount Desert.

4.14 INTERFERENCE WITH THE HARBOR MASTER

No person shall assault, intimidate or in any manner willfully obstruct, intimidate or hinder the Harbor Master (or any Deputy) in the lawful performance of his/her duties.

4.15 COMPLIANCE WITH MAINE BOATING LAWS

All vessels operating within the Town waters will comply with 12 MSRA.

4.16 COMPLIANCE WITH CGM1672-2D

All vessels operating within Town waters shall comply with CGM1672-2D (Navigational Rules).

ARTICLE V

WHARVES, DOCKS, PIERS, FLOATS, LOBSTER CARS AND RAMPS

5.1 PURPOSE

The purpose of this article is to set forth provisions for the safe and orderly operation of wharves, docks, piers, floats, lobster cars and ramps in order to ensure safety to persons and property and minimize conflicts between harbor users.

5.2 REMOVAL OF DEBRIS

No person shall throw, drop, discard, deposit or dispose of any personal property or litter on property owned by the Town, including but not limited to docks, piers, floats and ramps. The Harbor Master is authorized to remove personal property or litter in violation of this ordinance. The following civil penalties may be assessed for violations of this ordinance provision:

- A) The violator may be ordered to remove the personal property or litter or to pay the cost of removing the personal property or litter by the Town;
- B) For the first violation, the minimum penalty is \$20 per day and the maximum penalty is \$50 per day,

5.2 REMOVAL OF DEBRIS (continued)

- C) For the second violation by the same person within any consecutive (twelve-month) period, the minimum penalty is \$50 per day and the maximum penalty is \$100 per day,
- D) For any additional violations by the same person within any consecutive (twelve-month) period, the minimum penalty is \$100 per day and the maximum penalty is \$200 per day.

For the purposes of this ordinance provision, the following terms have the following meanings:

“Personal Property” means all tangible goods and chattels wheresoever they are, and all vessels, at home or abroad.

“Litter” means all waste materials including, but not limited to, bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, rubbish, offal, fishing gear, automobiles or parts of automobiles, packages or containers.

5.3 CONCESSIONS

Concessions of all kinds, including watercraft, operated on a commercial basis shall be allowed at any Town owned dock, pier, float or boat ramp while doing business only with the express permission of the Board of Selectmen.

5.4 BOAT CRADLES

All boat cradles shall be removed from general harbor areas and parking lots when not in actual use. Boat cradles shall not be left or caused to be left on any town owned ramp, dock, pier, or harbor parking lot or any town owned facilities without the express permission of the Harbor Master.

5.5 SIGNS

Private signs shall not be displayed on any town owned area without the express permission of the Board of Selectmen.

5.6 REPAIR WORK

Permission of the Harbor Master shall be required for any repair work on boats at any Town owned float, dock or pier before such work is started.

5.7 RAMPS

The grounding out of boats on Town ramps is prohibited except with the express permission of the Harbor Master.

5.8 BLOCKAGE OF TOWN RAMPS

No person shall place or cause to be placed any float or boat, trailers, other vehicles or gear in such a way as to block access to the ramp for use by others.

5.9 CONDITION OF DOCKS, PIERS, WHARVES, FLOATS AND LOBSTER CARS

Any dock, pier, wharf, float, lobster car or other such structure which is within the Town of Mount Desert and which has fallen into a state of disrepair or which remains in a dangerous condition, or interferes with the keeping open of convenient channels for the passage of vessels in said harbor and or suitable portions of said harbor for anchorage, shall be deemed a nuisance. The Harbor Master shall give the owner of the dock, pier, wharf or lobster car or other structure written notice of the condition. The notice shall order the owner to abate the nuisance within a reasonable period of time, which shall be specified in the notice. In the event that the Harbor Master cannot give notice to the owner it shall be given to the occupant.

If the said owner or occupant refuses to comply with the terms of said order, he/she shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than \$20.00 nor more than \$200.00 or by imprisonment for not less than 10 days nor more than 60 days or by both; and in addition thereto or in lieu of said punishment or any part thereof, the court may order the nuisance abated or removed at the expense of said owner or occupant.

5.10 CONSUMPTION OF ALCOHOLIC BEVERAGES

No person shall consume alcoholic beverages within publicly accessible areas of any Town pier, dock or float or any vessel tied to such areas. The Harbor Master shall post signs designating the publicly accessible areas where consumption of alcoholic beverages shall be prohibited.

ARTICLE VI - MOORINGS

6.1 PURPOSE

The purpose of this article is to set forth the provisions for the safe and orderly placement, use, type and administration of all moorings and mooring spaces within the tidal waters of the Town of Mount Desert, to ensure safety to persons and property of harbor users.

6.2 RESPONSIBLE AUTHORITY

The Harbormaster shall have authority over all moorings and mooring locations in accordance with the provisions of this ordinance, the laws of the State of Maine (38 MRSA) and applicable federal regulations.

6.3 PLACEMENT OF MOORINGS

No person shall place a mooring or mooring buoy in the tidal waters designated in Article II except with the express permission and written approval of the Harbor Master or his Deputy. The Harbor Master shall specify the minimum size, type and scope of the mooring and the maximum size and type of boat moored thereon, whether initial placement or relocation of mooring. Only approved mooring inspectors, or the Harbor Master, are authorized to place moorings. The owner of the mooring shall ensure that each mooring is in safe condition and proper location, and meets the requirements of this ordinance prior to its placement. The Harbor Master or his Deputy may inspect the condition and location of each mooring prior to or after its placement. Moorings shall conform to the approved minimum mooring specifications as per Harbor Regulations and mooring plan.

6.4 MOORING APPLICATION PROCEDURE

Any vessel owner desiring mooring space for a new mooring, when space may be available, shall submit an application to the Harbor Master on a form provided for the purpose. Upon receipt of an application, the Harbor Master may approve the application, put the applicant on a waiting list, deny the application, request the applicant submit additional information, or refer the application to other Town boards or commissions for comment and information. Additional documentation requested may relate to any matter bearing on the promotion of order in the harbor and the safety and use of the harbor for the general public. The Harbor Master may deny any application the approval of which he determines would detract from the order in the harbor, or which would jeopardize the safety and use of the harbor of the general public. The Harbor Master's decision on any application shall be made within thirty days of receipt of the application or additional information.

6.5 MOORING REGISTRATION AND PERMIT

All moorings shall be registered annually, prior to March 1st, with the Harbor Master, and a permit obtained from the Harbor Master. All moorings not registered by April 15th each year shall be removed by the owner, and the mooring privilege shall be revoked. When the owner of an unregistered or unsafe mooring cannot be located, identified or refuses to remove his/her mooring, or replace it with one of a different character, when so directed by the Harbor Master, the Harbor Master shall cause the entire mooring to be removed or the ball removed and the chain dropped to the bottom or shall make such change in the character of the mooring as required, and collect from the master or owner (of that boat or vessel) the sum of \$100 for either of those services rendered and the necessary expenses.

Before removing a mooring or a buoy, the Harbor Master shall notify the master or owner, if owner can be determined, by registered mail at his/her last known address, of the action desired, the fact that the mooring will be removed and the fine. If the matter is not settled to the Harbor Master satisfaction within two (2) weeks, the Harbor Master may take the action provided for in this section.

6.5 Mooring Registration and Permit (continued):

All Moorings shall be assigned a number within a series that indicates the maximum size vessel that may use the mooring. The number shall be prominently displayed on the mooring in contrasting shades, at two inches minimum height. The Harbor Master shall assign the number and it shall be the owner's responsibility to apply and maintain the number.

6.5.1 FLOATS AND LOBSTER CARS

All floats, commercial, and private, and lobster cars must be registered with the Harbor Master's office and shall have a mooring on each end that meets the minimum mooring specification in the Harbor Regulations, be assigned a number and display the same. When necessary all floats and lobster cars will be permitted by the United States Army Corps of Engineers and have a copy of that permit on file in the Harbor Master's office.

6.5.2 HOUSE BOATS

Houseboats shall only be permitted to moor or anchor in areas where the Harbor Master determines their presence will not detract from the scenic, recreational, or environmental character of the local. Additionally, vessels constructed or converted for use as houseboats shall be considered residential dwellings for purposes of complying with applicable provisions of the Town's zoning, building, and comprehensive codes.

6.6 MOORING PRIORITY HARBORS

Moorings in the harbors of the Town of Mount Desert shall be allocated according to the following guidelines:

- a. Existing mooring owner renewing the permit provided such owner shall presently own a boat or reasonably expects to own such within the existing registration period
- b. Town owned transient (rental) moorings. (Number to be determined by the Selectmen.)
- c. Shore front property owners, in front of their property immediately adjacent to frontage [if they own at-least 100 feet of shore front property and the mooring fits into the mooring plan]
- d. Existing mooring owner changing series
- e. Resident commercial fishermen
- f. Resident commercial operators
- g. Resident pleasure
- h. Nonresident
- i. Application for more than one mooring
- j. Houseboats

In all events, mooring priorities shall be consistent with allocations required under State and Federal law.

6.6.1 MOORING PRIORITY OUTSIDE OF HARBORS

Moorings outside of the harbors of the Town of Mount Desert shall be allocated according to the following guidelines:

- a. Existing mooring owner renewing the permit provided such owner shall presently own a boat or reasonably expects to own such within the existing registration period.
- b. Shore front property owners, in front of their property immediately adjacent to frontage if they own at-least 100 feet of shore front property and the mooring fits into the mooring plan.
- c. Existing mooring owner changing series
- d. Resident commercial fishermen
- e. Resident commercial operators
- f. Resident pleasure
- g. Nonresident
- h. Applications for more than one mooring
- i. Houseboats

In all events, mooring priorities shall be consistent with allocations required under State and Federal law.

6.7 WAITLIST

The Harbor Master shall maintain a list of all applicants who have not been assigned a mooring space for that year but want to remain eligible for future mooring space. To remain on the wait list, applicants must up-date their request in writing annually prior to 1 April and pay an annual application fee (fee schedules are set annually by the Selectmen). If an applicant refuses a mooring when offered one he may either choose to be dropped from the list or go to the bottom of the list. The wait list will be available for viewing at the Harbor Master's office during normal working hours.

6.8 REGISTRATION TRANSFERABLE

Mooring registrations are transferable, pursuant to 38 M. R. S. A. §3 and 3-A in that a commercial fishing mooring may be transferred to a family member as defined in 38 M.R.S.A. §3-A, provided that the mooring assignment will continue to be used for commercial fishing purposes.

6.9 MOORING RENTAL

6.9.1 RENTAL OF PRIVATE NON-COMMERCIAL MOORINGS

Privately owned moorings, except those in Northeast Harbor, may be rented directly by their owners. The moorings shall conform, in all aspects, to the Town's specifications for moorings. Additionally they shall have a permit from the US Army Corps of Engineers, with a copy on file with the Harbor Master's office. In Northeast Harbor, all mooring rentals except Clifton Dock (already ACOE Permitted) shall be administered by the Harbor Master's office.

6.9.2 RENTAL OF COMMERCIALY OWNED MOORINGS

Commercially owned moorings, except those in Northeast Harbor, may be rented directly by their owners. The moorings shall conform, in all aspects, to the Town's specifications for moorings. Additionally they shall have a permit from the US Army Corps of Engineers, with a copy on file with the Harbor Master's office. In Northeast Harbor, all mooring rental, except Clifton Dock (already ACOE permitted) shall be administered by the Harbor Master's office.

6.9.3 ONE BOAT - ONE MOORING RULE

As of September 30, 1998, all harbors in the Town of Mount Desert had been declared full. With grandfathered exceptions explained below; there shall be no more than one mooring allowed per each owned bona fide boat.

Persons or organizations engaged in commercial business, may continue to register moorings (commercial), for which they do not own boats, provided that: in the judgment of the Harbor Master and Harbor Committee, the number of mooring(s) is reasonable; and that there is adequate space.

6.9.3 ONE BOAT - ONE MOORING RULE (continued):

Any one who has more moorings than permitted and has been renting them to the same individuals for five (5) or more years, may sell them to the individuals that have been renting the moorings. If the individuals do not buy the mooring(s), the mooring spaces must go to the next person(s) on the waitlist for that harbor. It shall be the responsibility of the Renters to produce evidence of five or more years of rental, by means of canceled checks, dated receipts, contracts with mooring owner or other proofs. (Pre 9 March 1993)

Non-commercial mooring owners who presently own moorings in more than one harbor within the Town of Mt. Desert, but do not own a bona fide boat for each mooring in each harbor, will be allowed to continue to register and maintain no more than one mooring per boat. The only case where more than one mooring per boat is permitted is if the moorings were owned prior to 3/9/93, in which case an owner may have one mooring in two different harbors for one boat and would not be entitled to any other mooring for the boat specified.

6.9.4 USE OF PRIVATE MOORINGS

No person shall use the mooring of another without expressed permission of the owner and the Harbor Master must be informed. The Harbor Master may use or rent a mooring with the owner's permission.

6.10 APPLICATION PROCEDURE FOR MORE THAN ONE MOORING

Application for more than one mooring per boat shall be considered by the Harbor Master and the Marine Management Committee as the need may arise and as space may be available.

6.11 TOWN OWNED RENTAL MOORINGS

In Northeast Harbor, the Town shall own, operate and maintain two (2) classes of rental moorings. Class 1, consisting of at least 80% of available Town owned rental moorings, shall be classified as transient and shall not be occupied by the same boat for more than seven (7) successive nights unless the period is extended by the Harbor Master. Class 2, consisting of not more than 20% of the available Town owned rental moorings, may be rented for an extended period of time.

6.12 FEES

The Board of Selectmen with the recommendation of the Harbor Master and Marine Management Committee shall annually set applicable mooring fees. The Harbor Master may refuse to approve a mooring application, revoke a mooring approval, or refuse to allow the use of any moorings in the harbor or elsewhere in the Town for any person who has failed to pay applicable mooring fees.

6.13 MINIMUM MOORING SPECIFICATIONS

100 series	Less than 20 feet
200	20 but Less than 30 feet
300	30 but Less than 40 feet
400	40 but Less than 50 feet
500	50 but Less than 60 feet
600	60 feet and over

(as approved by Harbor Master)

The minimum specifications for all moorings in all harbors shall be specified in the Harbor Regulations.

The specifications for all moorings outside of the harbors but within the waters of the Town shall meet the minimum gear requirements of the harbors. In view of the fact that the locations outside the harbors are less protected than locations inside the harbor, the Harbor Master may require heavier gear and more scope to be safe.

6.14 INSPECTION OF MOORINGS

6.14.1 Each mooring must be inspected, by an approved inspector at least every three years, or more frequently at the Harbor Master's discretion, for its conformity with the minimum mooring standards currently in effect for the Town. Moorings not meeting the current mooring standards shall be brought into compliance immediately or before the mooring may be used again. All expenses for inspection or correction of defects or removal of the mooring shall be the responsibility of the mooring owner. Any mooring owner not in compliance with this section shall lose the privilege of having that mooring.

6.14.2 The Harbor Master, in consultation with the Marine Management Committee, shall develop and maintain a list of independent contractors possessing the knowledge, experience and equipment necessary to conduct a full, thorough and complete examination of moorings. Revision of the list shall be at the discretion of the Harbor Master after consulting with the Marine Management Committee. The list shall be maintained in the office of the Harbor Master and shall be available for inspection during regular business hours. Only those persons who are on the list shall conduct mooring inspection and repair.

6.14.3 The mooring owner or the inspector, in his behalf, shall furnish a complete report in writing, signed by the inspector, attesting to the date of the inspection, the name of the owner, the name of the inspector, the identity of the mooring and a statement of its condition. Any and all defects shall be noted and the date by which repairs or renovations will be effected.

6.14.4 The Harbor Master may inspect any mooring, its appurtenances, gear and tackle at any time. However, no more than one such random inspection of the same mooring may be made within a 90-day period, unless the initial inspection under Section (6.14.1) revealed a condition requiring correction or repair.

6.14.5 An organization or business, one of whose purposes is the rental of moorings which, in the ordinary course of its business inspects moorings and maintains records relating thereto, may submit such records in lieu of a physical inspection; provided that the records show that the person having supervisory authority over the moorings is on the list of those approved for inspection of moorings; and provided further that the Harbor Master shall have the authority of random inspection of any such mooring.

6.15 CHANGE OF LOCATION

All moorings shall be subject to change in location, at the owner's expense, when it is deemed by the Harbor Master to be in the best interests of the Town, the safety of the harbor or waterway, or required to comply with the provisions of this ordinance.

6.16 DESIGNATION OF MOORING SPACES

The Harbor Master shall designate mooring spaces and shall maintain a mooring and traffic plan of the anchorage areas indicating location of moorings and size of boats. A copy of the Mooring Plan will be kept in the Harbor Master's office. The Harbor Master shall annually assign the location for each mooring with the guidance of the Mooring Plan (as approved by the Marine Management Committee) and ensure the mooring location is in accordance with the Mooring Plan. The owner at the direction of Harbor Master shall move all moorings not located in the correct location. Upon failure of the mooring owner to comply with these provisions, the Harbor Master shall move or remove the improperly located moorings. The cost of moving or removal shall be borne by the owner of the mooring(s). If the mooring owner does not pay, the mooring gear may be sold by the Town after one (1) year.

6.17 CHANGE OF USE (Commercial or Private)

The Harbor Master shall be promptly notified of a proposed change of use (from private to commercial or commercial to private) of a mooring. Such change in use may only be instituted upon approval of such change by the Harbor Master. Use of a mooring is nontransferable except with the express written approval of the Harbor Master.

6.18 FULL HARBORS

Most Harbors within the Town of Mount Desert have been declared full harbors. Non-commercial mooring owners in a full harbor who do not have a bona fide boat for each registerable mooring, must write a letter of intent, stating that they ***honestly*** expect to own a boat within one registration year, in order to maintain a mooring permit. If a boat is not purchased and registered within that stated time, their mooring privileges will be revoked for the mooring(s) without a bona fide boat, and they will not be permitted to apply for a new mooring until such time as they actually own a boat. The exception would be to allow mooring owners that have sold their boat, to charter a boat, appropriate size for the mooring, for use of the mooring, for a period of 2 months during the registration period. The charter agreement must be provided to the Harbor Master prior to the mooring registration deadline. If the Harbor Master deems appropriate and the charter is valid the mooring may be maintained for that mooring registration period.

6.19 REVOCATION

The Harbor Master may revoke the mooring approval of any person who fails to promptly correct any violation of the mooring plan or this Article 6, after notice from the Harbor Master, or who refuses to obey any lawful order of the Harbor Master with reference to moorings. If notice is sent by mail, the notice is effective three business days after mailing.

ARTICLE VII - REGULATIONS

7.1 PURPOSE

Each of the Harbors, within the Town of Mount Desert is unique and requires individual treatment for its most efficient and satisfactory operation. Accordingly, within the intent and scope of this ordinance rules and regulations may be promulgated, as hereinafter set forth, by the Harbor Master or Deputy Harbor Master in each of the Harbors upon the approval by the Board of Selectmen.

7.2 PROCEDURE FOR REGULATIONS

The Harbor Master or Deputy Harbor Master, in consultation with the Marine Management Committee, and upon the approval by the Board of Selectmen, shall promulgate rules and regulations governing the use of docks, piers, slips, floats, moorings and marine activity within the harbor limits and the tidal waters of the Town.

7.3 VIOLATIONS

Violations of the Harbor Regulations shall be considered a violation of this ordinance and carry such penalty as may be provided for therein. A violation of a rule or regulation not specifically covered in the ordinance shall carry a penalty of a fine of not more than one hundred dollars (\$100.00).

7.4 DISPLAY OF REGULATIONS

Harbor rules and regulations shall be displayed in an appropriate location readily visible to the public.

ARTICLE VIII - LEGAL STATUS PROVISIONS

8.1 ADMINISTRATION

8.1.1 ENFORCEMENT

It shall be the duty of the Harbor Master, or his designees, to enforce the provisions of this ordinance. If the Harbor Master, or his designees, shall find that any provision of this ordinance, or any rule or regulation promulgated pursuant to its authority, is being violated, he shall notify the person responsible for such violation, either verbally or in writing, indicating the nature of the violation and ordering the necessary action to correct it. If in writing, notice is sufficient three business days after mailing to the person's last known address. A copy of written notices shall be maintained as a permanent record.

8.1.2 FINES

Except as otherwise specified in this ordinance, persons who violate any provision of this ordinance after receiving notice of such violation shall be subject to a fine of not less than \$20.00 nor more than \$100.00 for each violation. Each day such a violation is continued is a separate offense. All fines shall be payable to the Town of Mount Desert. (Payment within 30 days of date of issue or all harbor privileges will be revoked)

8.1.3 LEGAL ACTIONS

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Board of Selectmen, upon notice from the Harbor Master, or his Deputy, may initiate legal proceedings, which may include seeking injunctions, imposing fines or any other action deemed necessary to enforce the provisions of this ordinance in the name of the Municipality. In any such action in which the Municipality prevails, it shall be awarded attorney's fees, court costs and any other relief to which it may be entitled.

8.2 APPEALS

8.2.1 Any and all persons aggrieved directly or indirectly by a decision, order, rule or act, or the failure to act of the Harbor Master may appeal said decision, order, rule, act, or failure to act. Such appeal must be in writing, directed to the Marine Management Committee, and filed within 10 days of said decision, order, rule, act, or the failure to act. The appeal must state with specificity, the decision, order, rule, act, or failure to act, and state the reasons for appeal. The Marine Management Committee, upon hearing the appeal, may affirm, modify or set aside the decision, order, rule, act, or failure to act, only if such is not supported by any facts, or is clearly contrary to the intent and specific provisions of this ordinance. Any and all persons aggrieved directly or indirectly by a decision, order, rule or act, or failure to act of the Marine Management Committee may appeal said decision, order, rule, act or failure to act. Such appeal must be in writing, directed to the Board of Selectmen, and filed within ten days. The Board of Selectmen, upon hearing the appeal, may affirm, modify or set aside the decision, order, rule, act, or failure to act, only if such is not supported by any facts, or is clearly contrary to the intent and specific provisions of this ordinance.

8.2.2 An appeal from the decision of the Board of Selectmen may be taken by the aggrieved party or parties to Maine Superior Court, in accordance with Maine Rules of Civil Procedure 80B.

8.3 SEPARABILITY

Should any section or part of a section or any provision of this ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of this ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

8.4 CONFLICT WITH OTHER LAWS

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the provision imposing the greater restriction shall control.

8.5 REPEAL OF PRIOR ORDINANCES

All prior Harbor Ordinances are repealed.

8.6 AMENDMENT

Any amendment to this ordinance shall be adopted by the legislative body.

8.7 EFFECTIVE DATE

This ordinance shall become effective upon adoption by the legislative body and shall remain in effect until amended or repealed by the legislative body.

8.8 PERIOD OF THE ORDINANCE

This ordinance shall remain in effect for a period of fifteen (15) years from the effective date.

ARTICLE IX - DEFINITIONS

9.1 CONSTRUCTION OF LANGUAGE

In the interpretation and enforcement of this ordinance, all words other than those specifically defined in the ordinance, shall have the meaning implied by their context in the ordinance or their ordinarily accepted meaning. In the case of any difference of meaning or implication, between the text of this ordinance and any map illustration or table, the text shall control.

9.2 DEFINITIONS

In this ordinance the following terms shall have the following meanings:

ANCHORAGE - An area of the harbor set aside for permanent moorings or for the temporary anchoring of boats and vessels.

AUXILLARY - A vessel having sails and either an inboard or outboard motor and which may be propelled by its sails or by its motor, or both.

BERTH - A place where a boat lies when at anchor or at a wharf.

BOAT - A vessel for transport by water, constructed to provide buoyancy by excluding water and shaped to give stability and permit propulsion.

BONA FIDE BOAT - A vessel of appropriate size for the mooring assigned.

BREAKWATER - A permanent solid structure of rock, stone, or combinations thereof, extending from the shoreline into the waters, for the principal purposes of breaking and reducing the force of waves.

BULKHEAD - A permanent solid structure or wall built along the shore to retain and protect the upland from wave action and sea erosion.

CHANNEL - Areas of the harbor kept open for navigation or other purposes, by rule or regulation of the Town of Mount Desert, the Department of the Army Corps of Engineers, or other regulatory or Legislative body.

COMMERCIAL FISHERMAN - One whose vessel is commercially registered and makes his/her primary livelihood from harvesting from the ocean.

COMMERCIAL MOORING - Any mooring used to hold boats or floats awaiting service from a marine related business or used on a permanent basis to hold boats or floats belonging to a marine related business provided such boats or floats are actively used for specific activities related to their business.

COMMERCIAL VESSEL - Any vessel used or engaged for any type of commercial venture, including but not limited to fishing or the carrying of cargo and/or passengers for hire, push-boats, tugs and barges.

DEPUTY HARBOR MASTER - An official appointed by the Board of Selectmen and employed by the Town of Mount Desert to enforce the provisions of this ordinance and certain duties and responsibilities as prescribed by Title 38, MRSA and the Harbor Master.

DINGHY - A dinghy shall mean any powered (with 20 hp or less) or un-powered punt, skiff, tender or the like fourteen feet in length or less.

DOCK - The slip or waterway extending between two piers or projecting wharves or cut into the land for the reception of vessels.

FLOAT - A floating structure which is anchored, moored or secured at or near the shore, used for landing, transfer of passengers or goods, or other purpose.

“FULL HARBOR” - Is one so declared by the Board of Selectmen on the report of the Harbor Master and the Marine Management Committee, that the harbor and/or facilities will not support any additional moorings, and that a waiting list must therefore be established.

HARBOR - An area or areas as defined in Article II

HARBOR MASTER - An official appointed by the Board of Selectmen and employed by the Town of Mount Desert, to enforce the provisions of this ordinance and certain duties and responsibilities as prescribed by Title 38, MRSA.

HOUSE BOATS – Any vessel intended primarily or substantially to be anchored or moored in one or a small number of locations for overnight or longer accommodations, rather than navigation.

IMMEDIATE FAMILY MEMBER - Parent, child, or sibling, by birth or adoption, including a relation of half blood, or spouse.

LANDING - A place for landing or discharging persons or things from a vessel.

LOSS OF HARBOR PRIVILEGES - Use of all harbor facilities in the Town of Mount Desert to include, public floats, maintenance floats, dinghy floats, marina, rental moorings, use of commercial floats and removed from all waiting lists.

MARINA - A dock or basin providing dockage for small vessels.

MOORING - An appliance, used by a vessel, for anchoring purposes, providing a permanent, adequate means of securing a vessel to the bottom in an anchorage, and which cannot be carried aboard such vessel, when such vessel is underway, as regular equipment.

PIER - A platform type structure contiguous with the shoreline and built there from over the water, supported by piles and used for the berthing, loading and unloading of vessels.

RESIDENT - Any person who owns property in the Town of Mount Desert, or any person who rents property with their boat registered in town and the excise tax paid in town.

SEAWORTHY VESSEL - A vessel in a fit state for travel or movement without extraordinary efforts or assistance provided to affect such travel or movement.

STRAY VESSEL - An abandoned vessel, a vessel the owner of which is unknown, or a vessel underway without a competent person in command.

TO ANCHOR - To secure a vessel to the bottom within a designated area by dropping an anchor or anchors or other ground tackle.

VESSEL - Vessel shall include boats of all sizes propelled by said machinery or hand, scows, dredges, shellfish cars, and craft of any kind.

WHARF - A structure of timber, masonry, cement, earth or other material, built along the shore of a harbor extending from the shoreline, so that vessels may lie close alongside to receive and discharge passengers and cargo.

Adopted and effective this 4th day of March, 2003

Attest: A True Copy

Kimberly P. Walker
Town Clerk