



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

Regulatory Division
CENAE-R-51

November 14, 2012

Austin Donaghy, Harbormaster
Town of Cushing
39 Cross Road
Cushing, Maine 04563

Dear Mr. Donaghy:

Thank you for providing me with a copy of the current Cushing harbor ordinance for review and comment. I apologize for taking so long to respond. We've completed our review of the document and offer you the following comments and recommendations.

Your ordinance is a vast improvement over the 2003 version I reviewed previously. Our updated comments are based on our experience in harbors throughout Maine and New England. For the most part you are under no obligation to respond to or adopt them. They are intended to offer you guidance as you continue to refine your ordinance and effectively manage your harbor.

1. Section 6.1. Is it really the town's intent to allow up to five rental/service moorings per shore access? This seems somewhat shortsighted. Does the town really wish to 'give up' that much of its waters to commercial operators? Perhaps I'm reading this section incorrectly? Perhaps another way to approach this would be to define a set of requirements that a commercial operator would have to meet in order to apply for rental/service moorings and then allow your review process to actually determine whether they're allowed the moorings or not? The requirements could include things like shore access, launch/haul capability, storage room, parking, etc so that the town landing isn't overburdened.

2. Section 6.2. The ordinance indicates that a Corps permit is required for any rental or service mooring. We appreciate you noting this in your ordinance. You may also wish to note that a Corps permit is also required for any permanent or temporary mooring floats to include 'work floats' or 'fishermen floats'.

3. Section 6.5. This section indicates that moorings are not transferable yet under state law, some actually are (commercial fishermen moorings). You may want to take another look at 38 MRSA, Section 3-A and simply copy this language.

4. Same section. The ordinance indicates that mooring permits are issued for a period of five years. While there is nothing wrong with this and it presumably saves on paperwork and administrative costs, it's still rather unique compared to most towns in Maine. Most town's require an annual renewal of a mooring permit, recognizing that a lot can change in a year – boat size, numbers of boats, harbor management goals, etc.

5. Section 6.6. Does the town charge for being on the waiting list? Some towns in Maine recognize that this is a way to weed out folks that are less than serious about wanting a mooring and have greatly reduced the size of their waiting list. The fee is generally fairly minimal. If you do not have a waiting list or it is not too long, perhaps this isn't an issue for Cushing. Keep in mind that a waiting list, once established should be constantly updated and also made available to anyone who wants to know where they're listed.

6. Section 6.8. The ordinance contains no minimum standards for tackle. Some towns leave the size of the moorings and tackle up to owner discretion. This can be a dangerous policy. The town may wish to at least establish minimum standards for mooring type (e.g. granite or concrete blocks, etc.) and tackle (e.g. size & scope). Without at least minimum standards, a town can't really control what goes into their harbor or establish a mooring plan effectively. But to Cushing's credit, you are at least requiring an annual inspection of the tackle. This is good but I note that there's no requirement to furnish proof of inspection to the harbormaster. How is this otherwise enforced?

7. Section 6.9. The US Coast Guard posted new recommendations in 2001 concerning the color of mooring balls. Cushing may or may not wish to include this in the harbor ordinance. An alternative would be to state that all moorings must also comply with USCG regulations.

8. Same section. This same section indicates that floats must be marked with radar reflective tape. This is good but might you also want to require float owners to identify their float with their name in case it comes loose or is abandoned and needs to be recovered? A name plate or routing/burning the name into the frame have been required by some towns.

9. General.

a. Fees. Many towns neglect to consider the fee structure for moorings, floats, slip space, dinghies, or boat launches. What happens to the fees? The Corps generally recommends that they go into a harbor management fund for use in harbor related activities (harbormaster's fees, municipal dredging, public dock maintenance, etc.) rather than into the general fund where you'll have to compete with new ball fields or a new fire truck.

b. Transient boaters. Does the town have a policy for general anchoring areas? What about someone who simply wants to drop anchor for the evening? Where do they go; who do they contact? If this is not an issue yet for the town, it is recommended that they become proactive and anticipate this use by adopting a policy.

c. Harbor Plan. Is there an actual harbor plan that accurately plots moorings, channels, fairways, anchorages, etc. on it? Without such a plan it is very difficult for the harbormaster to effectively do his job. Some towns have had their waters flown at peak boating season in order to establish a baseline map.

d. Harbormaster Training. Towns may wish to state in the ordinance that the harbormaster is authorized and in fact encouraged/required, to attend the annual harbormaster training by the Maine Harbormasters' Association.

e. Lobster Gear. Does the town have any position on lobster fishing in the harbor(s) and channel(s)? There have been cases in the past where the uncontrolled concentration and distribution of lobster buoys and traps have adversely affected navigation. Some towns mistakenly believe they have no authority to address this issue. Rockport's ordinance is a good example of sound planning on this issue.

f. House Boats and Floating Businesses. Does the town have any position on house boats or floating businesses? In the case of house boats, people may live aboard for extended periods of time and the vessel doesn't move. Some operators have gone as far as to attach a motor to such a structure in order to have it qualify as a "vessel". The Town of St. George and the communities around Portland have wrestled with this issue in the past. Boothbay Harbor's ordinance is a good example of sound planning on this issue.

g. Public Access. Public/municipal access to town waters is a growing concern throughout the state. While this is not necessarily an ordinance issue, it should be a regular agenda item at harbor committee meetings and the annual town meeting. All opportunities should be pursued for developing and/or retaining public access including easements, purchase, land donations, grants, state/local partnerships, cooperative agreements with fishermen, etc. Public access is under regular threat from competing boating interests, private property owners, and ever increasing waterfront property values.

h. Education. In the past, Falmouth, Bristol, and other towns have printed a short list of their rules & regulations on an informational 3-fold flyer. Although clearly not complete compared to the full ordinance, the basic idea of a flyer/handout is sound. It would provide towns with something short and to the point that could be handed out to boaters at the landing or to anyone stopping by the town office.

i. Special & General Anchorages. Coastal towns should be aware of an issue that is broadly being discussed throughout the State. Most coastal communities do not have US Coast Guard designated special or general anchorages. As such, the rules of the road dictate that vessels on a mooring must have visual and audio signals at night and during poor visibility. Vessels moored within a US Coast Guard designated anchorage are exempt from this requirement. Obviously this is not being enforced by the US Coast Guard but none-the-less, the rules apply. Falmouth had an incident where a boater was returning from Portland and hit a moored boat that was located outside their designated anchorage. Liability issues were tossed back and forth by the various parties and their insurance companies. Falmouth coordinated with the Coast Guard to expand its anchorage to encompass its entire mooring field. Rockland, Camden, Yarmouth, and Harpswell have had similar discussions. Towns may wish to consider formally designating an anchorage area to protect its boaters from liability. For information, please contact John Mauro with the Coast Guard, at 617-223-8355.

j. Local Aids to Navigation. Some towns install buoys or other markers to designate local channels, fairways, or anchorages. There is some reference to local channels in the ordinance. This is an excellent idea but please note that local channel markers and other local aids to navigation must be approved by the Coast Guard. There is an application form available for “private aids to navigation” that must be filled out. I don’t think the process is very burdensome. For more information, contact your nearest Coast Guard station or Mr. John Mauro at 617-223-8355.

k. Marinas. Many towns define marinas but do little to specifically regulate them. Marinas and boatyards can have direct impacts on navigation, mooring fields, and the environment. They can also have indirect impacts include parking, traffic, lighting and noise pollution, and other neighborhood effects. The Maine DEP has published a set of best management guidelines for marina operation that may prove useful.

Thank you for the opportunity to comment on your ordinance. If you have any questions concerning this matter, please contact me at 207-623-8367 at our Manchester, Maine Project Office. I’m also available to meet at a future harbor committee meeting if that would be of assistance.

Sincerely,

A handwritten signature in black ink that reads "Jay L. Clement". The script is cursive and fluid.

Jay L. Clement
Senior Project Manager
Maine Project Office

Copies Furnished:
Alton Grover - Chairman, Board of Selectmen
John Mauro - USCG