

CITIZENS' GUIDES TO OCEAN AND COASTAL LAW

Evolving Responsibilities of Maine's Harbor Masters



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Heightened Use, New Laws Affect Role of Harbor Masters

The role of the harbor master is evolving. Part of the change has been caused by the expanding use of the harbors. Increasingly, many different types of uses such as commercial fishing boats, small pleasure boats, wind surfers, tour boats, aquaculturist net pens, swimmers, larger commercial vessels, and shoreside developments are all trying to make use of the same harbor. The harbor masters must try to keep order, promote safety, and achieve some balance between conflicting uses in a non-expandable harbor. Relatively recent changes in Maine laws have also altered the traditional role of the harbor master. One law clarifies that municipalities may play a major policy-making role in harbor management. The other law changes the method of prosecuting violations of harbor laws and ordinances. This

pamphlet summarizes the changes in the law and identifies sources for additional information.

Position of Harbor Master Created by State Statute

The position of harbor master is created by a state statute called the Harbor Masters Act (or *the Act*).¹ That statute contains general provisions enabling the harbor master to make rules and regulations concerning channel lines and anchorage areas, mooring sites and assignments, types of moorings, removal of vessels obstructing movement or anchorage, and waiting lists. The Act provides for the municipal officers of a town to appoint a harbor master if requested to do so by any person desiring mooring privileges or desiring the regulation of mooring privileges.

Harbor Master's Authority Determined by the Municipality

Within the broad outlines of the Act, the extent of the harbor master's authority can be established by the town. For example, the Act allows the town to decide whether the harbor master should be able to make arrests for assault on the harbor master or carry a weapon.² The municipality also establishes the length of the term (which shall be for not less than one year), determines the amount and pays the compensation for the harbor master, and may terminate the harbor master's employment "for cause" as long as it gives the harbor master appropriate notice and an opportunity for a hearing.

As a result of a 1986 amendment to the Act, it is now clear that a municipality may further define the role and responsibility of the harbor master by adopting local harbor regulations and ordinances. Prior to 1986, some individuals asserted that harbor masters had the sole authority to assign moorings, determine mooring privileges, and take other actions authorized by the Act. A 1986 Superior Court decision supported this position and held that the State had preempted local regulations (i.e., precluded towns from adopting ordinances and regulations) in this area.³ But later that same year, the Maine legislature enacted a new provision as part of the Harbor Masters Act to clarify that **a municipality may enact provisions to supplement statutory provisions on harbor management and that the harbor master has the responsibility to enforce municipal ordinances and regulations.**

As a result of this amendment, the harbor master is still empowered to assign moorings, determine mooring privileges, and otherwise regulate the harbor as long as these actions are not in conflict with applicable federal, state, or municipal statutes, ordinances, or regulations. However, if the town chooses to enact ordinances to regulate the assignment or placement of moorings or to regulate other activities in their harbors, the harbor master is required to enforce those ordinances.⁴ This applies equally to municipal ordinances and regulations adopted by the

municipal officers, municipal harbor commissioners, municipal port authorities, or other such bodies empowered to regulate the municipal harbor.

The 1986 amendment includes the following **non-exclusive** list of topics that are subject to regulation by the town:

- the process for assigning mooring privileges and determining the location of moorings;
- the waiting list for the assignment of mooring privileges;
- the fee schedule;
- construction standards for moorings;
- time limits on the mooring of vessels;
- the process for appeals from decisions of the harbor master; and
- provisions which establish a harbor commission or committee to administer the ordinance or ordinances and oversee the duties of the harbor master.⁵

When a town opts to take the initiative to plan for and manage the harbor, it can assume a leadership role in making the necessary policy decisions. These are subject only to the home rule restriction that local regulations cannot contradict the letter or intent of state or federal law. The town can then rely on the harbor master to enforce the municipal implementing ordinances.

Revised Enforcement Powers of the Harbor Master

Maine law used to provide that failure to obey any lawful order of a harbor master made pursuant to state law or local ordinance was a Class E crime.⁶ A violation could be prosecuted through the criminal courts and a guilty individual could be sentenced to up to six months in jail and fined up to \$500.

As of February 28, 1989, the Act was amended to shift from criminal offenses to civil violations, and to expand the range of remedies available to the

town. Now, a violation of state laws pertaining to harbors or a violation of a local harbor ordinance or municipal regulation adopted pursuant to the Harbor Masters Act is a **civil violation** (rather than a criminal offense), subject to **civil penalties of \$100 to \$2,500**. The court may impose penalties of **up to \$25,000** if the same party has been convicted of a violation of the same law or ordinance within a two-year period.⁷ In addition, a violator may be ordered to **correct or abate the violations and pay the town's attorney's fees, expert witness fees, and costs**. Any fines assessed are to be paid to the town.

The 1989 amendment to the Act also gives harbor masters fairly broad enforcement powers. A harbor master may enter upon any property at reasonable hours or enter any building with the consent of the owner, occupant, or agent to inspect the property or building for compliance with harbor laws and ordinances without being liable for trespass. The harbor master may issue summons to people believed to be in violation of a harbor law or ordinance. If specifically authorized by the town, the harbor master may represent the town in District Court in prosecuting violations of harbor laws or ordinances.

These 1989 changes give the harbor master the same powers as are given to municipal code enforcement officers, local plumbing or building inspectors, or similar local officials charged with enforcing a particular set of local ordinances or regulations. The new civil framework and enforcement provisions make the process of prosecution easier for the town, make convictions more likely since they will be measured by civil rather than criminal standards, and allow the courts more discretion to tailor a remedy to mitigate the impacts of the violation.

Typical Job Responsibilities

There may be variations on who the harbor master reports to, depending on the harbor management entities established for the town. For example, in Bar Harbor, the harbor master is a department head under the supervision of the town manager. In

Portland and South Portland, the harbor master is appointed by and reports to the Board of Harbor Commissioners for the Harbor of Portland, created by special law in 1982. In either case, the harbor master is responsible for enforcing the harbor rules and regulations of the municipally-authorized harbor management entity (the selectmen, a special harbor committee, a board of commissioners, etc.) and applicable state harbor and marine resources laws.

Typical duties of the harbor master include the following:

- Allocate and regulate mooring spaces in the harbor by issuing permits, assigning locations, collecting fees, and maintaining records and waiting lists;
- Supervise the placement of moorings, monitor for continuing safety and best use of space, and order any deficiencies corrected;
- Establish and maintain anchorage areas and transient channels and keep them free from obstructions;
- Maintain private aids to navigation in accordance with U.S. Coast Guard regulations;
- Patrol the harbor to ensure compliance with state boating and marine resources laws and with local harbor ordinances such as use, speed, and wake rules;
- Assist visiting vessels with anchorage; maintain and give out navigation, safety, and other port information; and direct public to proper agency for problems outside of the harbor master's responsibility or jurisdiction;
- Control the use of public landings, moorings, launching ramps, and beaches as directed by local ordinances, in coordination with other municipal law enforcement agencies;
- Monitor for emergencies and spills, and, if available and requested, assist other agencies in cleanup, rescue, or emergency response; and

- Maintain liaison with Federal, State, and other agencies involved in marine activities (e.g. U.S. Coast Guard, Maine Department of Marine Resources, Maine Department of Environmental Protection); refer appropriate complaints/observations/enforcement concerns to them; and as requested and able, assist other law enforcement agencies in their duties.

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For Further Information

For detailed information on the specific powers of harbor masters and comprehensive harbor management planning, *see Harbor Management: A Legal Guide for Harbor Masters and Coastal Officials*, prepared by T. Burrowes, Marine Law Institute, University of Maine School of Law, for University of Maine Cooperative Extension, February, 1989.

See also, "Model Municipal Harbor Management Plan," State of Connecticut Department of Environmental Protection, Office of Planning and Coordination/Coastal Management (April, 1985).

Endnotes

1. 38 M.R.S.A. § 1, et seq.
2. 38 M.R.S.A. § 1. If a town decides a harbor master should have the authority to carry a gun and make arrests, the harbor master must complete a two-week training course at the Maine Criminal Justice Academy.
3. *South Freeport Marine, Inc., v. Town of Freeport*, CV-85-1001, Cumberland County Superior Court, February 27, 1986.
4. 38 M.R.S.A. § 7.
5. *Id.*
6. 38 M.R.S.A. § 12.
7. 38 M.R.S.A. § 12 (1989) and 30-A M.R.S.A. § 4452.

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