

# Cutler Harbor Ordinance

Title: The title of this ordinance shall be the Cutler Harbor Ordinance.

Authority: Authority for this ordinance is provided under 38 M.R.S.A. Section 7.

Purpose: The purpose of this ordinance is to regulate marine activities within the tidal waters of Cutler; to ensure vessel and maritime property safety; promote availability and use of valuable public resources; and to create a fair and efficient framework for the administration of these waters.

Effective Date: The effective date of this ordinance shall be upon its adoption by the registered voters of the Town at a duly called Town Meeting.

Repeal of Previous Regulations: This ordinance repeals and replaces any other ordinances, rules or regulations inconsistent herewith.

Validity and Severability: Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section of the ordinance.

## **SECTION 1 MOORINGS AND ANCHORAGE AREAS**

The following mooring and anchorage areas are established and designated as areas A, B, C, D, E and F.

Area A: This area shall be as shown on the official Harbor Plan.

Area B: This area shall be as shown on the official Harbor Plan.

Area C: This area shall be as shown on the official Harbor Plan.

Area D: This area shall be as shown on the official Harbor Plan.

Area E: This area shall be as shown on the official Harbor Plan.

Area F: All other tidal waters outside of designated areas A, B, C, D and E as shown on the official Harbor Plan

All mooring area boundary lines are established at mean low water. Mooring areas as described above are shown on the official Harbor Plan, which is a part of this ordinance.

Vessel Moorings: Vessel moorings may be located in mooring areas A, B, C, D and F upon the approval of the Harbor Master. The mooring of anything other than a vessel on a vessel mooring is prohibited.

Anchorage Area: There shall be no anchoring of vessels in Areas A, B, C and D as shown on the official Harbor Plan. Anchorage is permitted in Areas E and F as shown on the official Harbor Plan on a seasonal basis for no more than three (3) consecutive days and at the vessel operator's discretion. The Harbor Master may order any vessel to change position when, in the Harbor Master's sole and exclusive judgment, an anchored vessel obstructs the free movement or safe anchorage of that vessel, impedes navigation in the area or endangers other vessels.

Lobster Car/Float Moorings: No lobster cars, free floating docks or floats shall be permanently moored in mooring area A or B. Lobster cars may be temporarily moored in area A or B only upon prior approval of the Harbor Master. The mooring of anything other than a lobster car, dock, float or other structure approved by the Harbor Master on a lobster car/float mooring is prohibited. The mooring of a vessel on a lobster car/float mooring is prohibited.

## **SECTION 2 MOORING SPECIFICATIONS**

All moorings shall be approved by the Harbor Master.

All moorings shall consist of a granite block, stone or concrete anchor of sufficient weight to hold the vessel for which they are to be used. Hand-mixed concrete blocks, old engine blocks and other miscellaneous weighted objects are not acceptable as mooring anchors. Boat and/or mooring owners may be liable for any damage caused by faulty, inadequate, or improperly placed moorings.

All moorings shall be numbered as assigned by the Harbor Master. The numbers shall be of adequate size to read easily. They shall be placed on a floatable and visible trawl balloon or mooring buoy attached to the mooring anchor. As of November 28, 2005, metal balls shall not be used as trawl balloons; provided, however, that any metal balls lawfully existing as of November 28, 2005 may continue to be used as trawl balloons but only until such time as the trawl balloons need replacement or substantial repair, at which time they shall be replaced by non-metallic trawl balloon or mooring buoys.

All moorings shall have a steel staple no less than 1 1/4" diameter attached to mooring anchor.

Mooring chain shall be no less than 1/2" in diameter. Chain shall be of sufficient length to extend from mooring anchor on the bottom to the trawl balloon or mooring buoy at the water surface, and in such a way that trawl balloon or mooring buoy shall be floating at the surface at all heights of tide, with no more than 4' of excess length of chain. No shackles shall be used to connect the mooring chain to the mooring staple.

Mooring pennant length shall be based on the length of the vessel as follows:

Vessel Length Maximum Pennant Length

Up to 34' Up to length of vessel

35' – 42' Length of vessel less 10%

Over 42' Length of vessel less 20%

Pole moorings: Pole moorings are not permitted.

## **SECTION 3: HARBOR ADMINISTRATION**

### **A. Administering Bodies and Agents**

Harbor Committee: The Board of Selectmen shall annually appoint a Harbor Committee consisting of residents, none of whom shall be a Harbor Master. The Harbor Committee shall consist of seven (7) voting members. The Harbor Committee shall meet on a monthly basis or as otherwise required to monitor the custody and management of Town-owned waterfront facilities, to annually set the compensation of the Harbor Master, to oversee and plan the general operation of the harbors and tidal waters of the Town, to advise the Harbor Master in the implementation of the provisions of this ordinance, to annually submit a budget request to the Board of Selectmen and to administer the budget as approved, to make recommendations to the Board of Selectmen for the enhancement of harbor facilities for the long range benefit of users and the Town, to make recommendations to the Board of Selectmen for the revision and updating of this ordinance, and to advise the Board of Selectmen on harbor related issues. Should any Harbor Committee voting member's position become vacant, a replacement shall be appointed by the Board of Selectmen to serve out the remainder of the term of the member being replaced.

Harbor Master: There shall be three (3) Harbor Masters (collectively "the Harbor Master") appointed annually by the Board of Selectmen. Certain duties and responsibilities of this office are prescribed by 38 M.R.S.A. § 1 et seq., as may be amended from time to time. The Harbor Master has the additional duty to administer and enforce the provisions of this ordinance with the authority granted by law and through his/her appointment as Harbor Master. Pursuant to 38 M.R.S.A. § 1-A(1), all newly appointed or newly re-appointed Harbor Masters shall complete a basic harbor masters training course by attending the next available annual training program offered by the Maine Harbormasters Association, unless that person has previously completed such a course. All incumbent Harbor Masters shall attend the training program once every five (5) years for continuing education and training. The Town may, pursuant to 38 M.R.S.A. § 1-A(2), reimburse the Harbor Masters for the costs of attending the training programs as required under this provision.

### **B. Mooring Administration**

Any mooring shall require an approved mooring permit from the Harbor Master before such mooring can be set. Mooring permit application forms shall be available at the Town Office. It shall be unlawful to establish or maintain an unpermitted mooring.

Initial Application: With an initial mooring application, an applicant may indicate a range of vessel size, provided that when s/he receives a space assignment, s/he must utilize it for a vessel of the size and type indicated on the mooring permit by the beginning of the second season after receipt of the mooring space assignment, and in no case shall ever utilize it for a vessel of greater length and draft than approved for the mooring space assignment without prior written approval from the Harbor Master.

**Renewal:** Mooring permits shall be renewed annually. Permits shall be declared by April 1st of each year and shall be valid from April 1st of the year of issuance until March 31st of the following year. If any mooring in the harbor is unpermitted after April 1st, the Town Clerk shall notify the owner and request that the mooring permit holder reapply for a mooring permit within fifteen (15) days of the date of the notice. Failure to comply with the annual renewal procedure for any reason, including, but not limited to non-deliverability of the Town Clerk's notice, shall constitute an abandonment of the mooring assignment, and the Harbor Master may remove the mooring at the expense of the mooring owner plus a fee of \$100 to be paid to the Town.

**Fees:** A non-refundable \$10 annual application fee will be charged for all mooring permit applications. The application fee is due at the time of permit application. The annual permit fee for residents is \$10; the application fee shall serve as the permit fee for residents if a resident mooring permit is granted. The annual permit fee for non-residents is \$50; the application fee shall be credited toward the permit fee for non-residents if a non-resident mooring permit is granted. The non-resident permit fee is due at the time of issuance of the permit.

**Mooring Maintenance and Inspection:** Mooring chains shall be replaced in accordance with the following schedule, based on chain diameter: ½ inch chain, every 3 years; 5/8 inch chain, every 5 years; and ¾ inch chain or larger, every 7 years. It shall be the responsibility of the mooring owner to report chain replacement to the Town Office so that records may be updated.

It shall be the responsibility of the mooring owner to have his/her mooring staple visually inspected at the same time as the mooring chain is replaced. Inspections shall be done by a diver approved by the Harbor Master or by hauling the mooring for visual inspection by the Harbor Master. The diameter shall be determined using a mooring staple caliber gage provided by the Harbor Master. Upon inspection, the condition of the staple shall be reported to the Harbor Master and kept on file at the Town Office. If any mooring staple is determined to be less than 1 ¼ inch in diameter, it shall be replaced by the mooring owner prior to the continued use of the mooring.

**Prohibition on Transfer of Mooring Assignment:** The sale, lease, rental, transfer or assignment of a mooring assignment is prohibited in all mooring areas in Cutler unless it is a transfer of a mooring assignment used for commercial fishing purposes. A mooring assignment used for commercial fishing purposes may only be transferred as follows: (i) at the request or death of the assignee; (ii) to a member of the assignee's family; and (iii) if the mooring assignment will continue to be used for commercial fishing purposes. For the purposes of this section, "member of the assignee's family" means an assignee's parent, child or sibling, by birth or by adoption, including a relation of the half blood, or an assignee's spouse. The Harbor Master shall be notified of transfers for commercial fishing purposes within thirty (30) days of the transfer. The use of a mooring assignment by anyone other than the mooring permit holder is prohibited in all mooring areas in Cutler except as provided herein for "Temporary Mooring Permits."

**Temporary Mooring Permits:** When, in the sole discretion of the Harbor Master, it is determined that extenuating circumstances exist so as to necessitate the temporary use of another's mooring assignment, permission may be granted by the Harbor Master for the use of another's mooring assignment temporarily, for a period not to exceed two (2) weeks, provided that a temporary mooring permit is first obtained from the Harbor Master. A mooring permit holder shall not charge another for any temporary use of that mooring allowed under this ordinance. A temporary mooring permit shall not be issued more than two (2) consecutive times for the same vessel and/or lobster car/float and shall not be issued to any person, vessel or lobster car/float more than two (2) times in one year, with the one year time period measured from April 1st of the year of issuance to March 31st of the following year.

The application fee shall serve as the permit fee if a temporary mooring permit is granted. Temporary mooring permit application forms shall be available at the Town Office. Temporary mooring permits shall not be counted for purposes of the allocation system set forth in 38 M.R.S.A. § 7-A, as may be amended from time to time.

**Law Enforcement Mooring Permits:** A mooring permit may be issued to any federal, State or local law enforcement agency authorized by law to enforce marine resources laws, to maintain public order, to prosecute offenders and/or to make arrests for crimes; provided, however, that except as provided below regarding the statutory allocation system, all provisions of this ordinance shall be complied with by such law enforcement agency and provided further that any such approved mooring permit shall be used solely by such law enforcement agency for such law enforcement purposes. Law enforcement mooring permits shall not be counted for purposes of the allocation system set forth in 38 M.R.S.A. § 7-A, as may be amended from time to time.

**Lobster Car/Float Mooring Permits:** A mooring permit may be issued for a lobster car, dock, float or other structure approved in advance by the Harbor Master provided that the applicant is (a) the current owner of the shore rights to a "parcel of land" as that term is defined in 38 M.R.S.A. ss11(2) , as may be amended from time to time, and demonstrates the practical necessity for a lobster car/float mooring; or (b) the current holder of a valid Town of Cutler vessel mooring permit; or (c) the current owner of a commercial wharf in the Town of Cutler or holder of a valid written lease for a term of at least one year in a commercial wharf in the Town of Cutler. Any structure approved by the Harbor Master on a lobster car/float mooring shall be limited in size to 600 square feet. Lobster car/float mooring permits shall not be counted for purposes of the allocation system set forth in 38 M.R.S.A. ss7-A, as may be amended from time to time.

**Mooring Assignments:** Except as provided below, mooring assignments shall be granted on a first come, first served basis. When the number of mooring permit applications exceeds the number of available mooring spaces in a Congested Area, the Harbor Master shall maintain a waiting list of all applicants in that area who have not been assigned a mooring permit therein and post it in the Town Office. As space in Congested Areas of the waters of Cutler becomes available, assignments of mooring locations shall be made from the waiting list in accordance with the terms of 38 M.R.S.A. § 7A(2), as may be amended from time to time, on the basis of the date of the applicant's request and according to the following priorities:

- a. Shorefront Owner with request for initial location adjacent to the owner's shore frontage;
- b. Resident Commercial Fisherman;
- c. All Others Requesting an Assignment.

When space in a Congested Area becomes available, as between applicants within a priority category, the Harbor Master shall use the Vessel Radius Formula, in conjunction with a review of existing mooring conditions in the Congested Area, to determine if there is space available within the Congested Area to accommodate the vessel of the applicant who is next on the waiting list within that priority category. The Harbor Master shall notify the applicant with the highest priority within a priority category of the size of vessel that will fit within the space available, and the applicant shall have ten (10) days after such notice to accept the assignment for a vessel that will fit within the space available. Failure of an applicant to respond to the Harbor Master's notice within the prescribed time period shall constitute a rejection of the assignment. If the assignment is rejected, the Harbor Master shall repeat this process as necessary for applicants who are next on the waiting list within that priority category and then as necessary for applicants who are on the waiting list for the next highest priority category.

Change of Mooring Assignment: Mooring permit holders may change vessels on the assigned mooring only with the prior written approval of the Harbor Master. In general, mooring permit holders will be limited to the same approximate size and type of vessel permitted for the specific mooring assignment unless, in the sole and exclusive judgment of the Harbor Master, a change can be made without adversely affecting existing mooring and navigational conditions and adjoining mooring permit holders.

Mooring Balloon Numbering System: All mooring owners shall label their mooring balloons with the numbers provided by the Harbor Master at the time of permit approval. Existing mooring owners shall obtain numbers for their moorings from the Harbor Master and label their mooring balloons within 60 days of the enactment of this provision. The numbering system is as follows:

- Area A: 100s
- Area B: 200s
- Area C: 300s
- Area D: 400s
- Area E: 500s

#### **SECTION 4: NO OBSTRUCTION ZONES**

In order to provide safe access to and from all commercial wharves and the Sand Beach/Boat Landing area, "No Obstruction Zones" are hereby established for those areas.

Commercial Wharves: The no obstruction zones shall be an area extending out 150' from the outermost stationary point of the wharf structure; provided, however, that with prior application to and approval of the Harbor Master, a commercial wharf owner may be authorized to locate one mooring within the no obstruction zone to be used for emergency purposes only.

Sand Beach/Town Boat Ramp: the no obstruction zone shall be an area extending out 150' from the mean low water mark.

Moorings, buoys, floats or any other objects fixed to bottom shall not be allowed in the no obstruction zones.

#### **SECTION 5 TOWN OF CUTLER BOAT RAMP**

The loading or unloading of bulk bait is prohibited on the Town of Cutler Boat Ramp. Bulk bait is defined as more than three (3) bushels of bait. The bulk refueling (either diesel, gasoline or otherwise) of boats, outboard motors or auxiliary motors is prohibited on the Boat Ramp. Bulk refueling is defined as more than ten (10) gallons of fuel.

The sandy beach adjacent to the Boat Ramp shall remain clear of all gear, trash, and debris at all times. The Town may remove altogether and/or relocate to the rocky beach any gear that has been left on the sandy beach for three (3) or more days.

## **SECTION 6 ENFORCEMENT**

The Cutler Harbor Ordinance shall be enforced by the Cutler Harbor Master in accordance with the Maine Harbor Master Law (Title 38 M.R.S.A. Sections 1-13 and 281-285). Except as provided in 38 M.R.S.A. § 13, as may be amended from time to time, violations of any provision of this ordinance shall constitute a civil violation. Each day that a violation continues shall be considered a separate offense. Any person who helps, assists or facilitates in the violation of this ordinance shall be subject to prosecution for the same violations and penalties as the person he or she assisted.

## **SECTION 7 APPEALS**

Any person aggrieved by any decision of the Harbor Master as it relates to the administration of this ordinance may appeal such decision to the Board of Selectmen. Unless by the Harbor Master's authority the decision is revoked, such decision shall remain in full force and be forthwith complied with by the person during the pendency of any appeal. Such appeals shall be made in writing to the Board of Selectmen within seven (7) days of the decision from which the appeal is taken. The appeal must state with specificity the decision from which the appeal is taken and the reasons for the appeal. The appellant shall pay a non-refundable filing and notification fee in such amount(s) as the Board of Selectmen may from time to time establish by Board of Selectmen order, which shall be paid at the time the appeal is filed.

In deciding any appeal, the Board of Selectmen shall conduct a hearing and affirm, modify or reverse the decision of the Harbor Master or may remand the matter to the Harbor Master for further proceedings consistent with this ordinance. The Board of Selectmen shall inform the person in writing of its decision and the reasons thereof. Written notice of the decision of the Board of Selectmen shall be sent to the appellant, the Harbor Master and the Harbor Committee within ten (10) days of the decision. Any decision of the Board of Selectmen under this section may be appealed to Superior Court within thirty (30) days of the decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

## **SECTION 8 DEFINITIONS**

**Anchor** - To secure a vessel to the bottom within a body of water by dropping an anchor(s) or other ground tackle that is carried aboard a vessel when underway as regular equipment.

**Commercial Fisherman** - A person engaged in generating income through the use of a commercial fishing vessel.

**Commercial Fishing Vessel** - Any vessel used primarily to generate income through fishing.

**Congested Area** - A mooring area determined by the Harbor Master, in his/her sole and exclusive judgment, to have reached capacity. In making such a determination, the Harbor Master shall consider the following: size of the mooring area as shown on the official Harbor Plan; number of approved mooring permits for the mooring area; size and associated radius of vessels in the mooring area, as calculated using the Vessel Radius Formula herein; and type of vessels in the mooring area.

Marine Related Business - A business establishment that must have direct access to navigable water in order to function, such as marinas, water-borne transportation facilities, and finfish and shellfish processing facilities, but excluding commercial fishing vessels.

Mooring - An anchoring device not carried aboard a vessel as regular equipment.

Resident - A person who occupies a dwelling within the Town of Cutler for more than 180 days in a calendar year.

Shorefront Owner - The owner of a parcel of land, as that term is defined in 38 M.R.S.A. § 11(2), as may be amended from time to time, that borders on Cutler waters.

Vessel - Boats of all sizes powered by sail, machinery or by hand; scows; dredges and craft of any kind.

Vessel Radius Formula - The radius of vessel at mean low water calculated using the following mathematical formula:

**Radius =  $r_1+r_2+LOB$ , where**

**$r_1$  = radius of mooring chain =  $\sqrt{[(\text{mooring chain})^2 - (\text{Mean Low Water Depth})^2]}$**

**$r_2$  = radius of pennant =  $\sqrt{[(\text{Pennant Length})^2 - (\text{Height of bow from water surface})^2]}$**

**LOB = Length of Boat**

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