

*Adopted 3/24/01
Patricia R. Cross
Town Clerk*

**TOWN OF ELIOT
HARBOR ORDINANCE**

Effective Date:

This Ordinance shall take effect upon the date of its adoption by the Eliot Town Meeting.

Replacement of Existing Ordinance:

This Ordinance, upon its adoption, shall repeal and replace the Town of Eliot Harbor Ordinance, adopted November 5, 1996.

Replacement of Prior Ordinance:

The Town of Eliot Ordinance Regulating the Harbor and Waterway of Eliot of June 29, 1970 was repealed and replaced by the Town of Eliot Harbor Ordinance of November 5, 1996.

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I. PURPOSE AND AUTHORITY

1. This Ordinance is to establish regulations for marine activities within the harbors, waterways and tidal waters of the Town of Eliot, Maine in order to promote safety to persons and property, to promote availability and use of valuable public resources, and to create a fair and efficient framework for the administration of those resources. This Ordinance shall be subordinate to existing Federal and State Laws governing the same matters and is not intended to preempt other valid laws.
2. This Ordinance is enacted pursuant to Subchapter I of chapter 1 of Title 38 of the Maine Revised Statutes, Chapter 141 of Title 30-A of the Maine Revised Statutes and Article VIII, Part 2, Section 1 of the Constitution of the State of Maine.
3. Whenever the requirements of this or any other Ordinance, code, or statute conflict, or in the event of a conflict or inconsistency between provisions of this ordinance, the more restrictive requirements shall apply.

II. DEFINITIONS

1. Aquaculture - The growing, propagation, or holding for enhancement, of aquatic plant or animal species during all or part of their life cycle for either commercial purposes or for supplementing wild stocks.
2. Berth - The place where a vessel lies when at a wharf, pier or float.
3. Boat Launching Facility - Facility designed primarily for the launching and landing of vessels, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.
4. Channels - Areas of the harbor kept open for navigation or other purposes by rule or regulation of the Eliot Harbor Ordinance, Board of Selectmen, Corps of Army Engineers, or other regulatory or legislative body.
5. Commercial Vessel - Watercraft used for business. The burden of proof in establishing the commercial use of a vessel shall be the responsibility of the vessel owner.
6. Float - A platform that floats and is anchored, moored or secured at or near the shore and whose primary purpose is to provide direct shore access. Floats are regulated under the Eliot Shoreland Zoning Ordinance.
7. Harbor - The harbor shall include all navigable tidal waters within the geographical limits of the Town of Eliot, Maine.
8. Harbor Master - An officer employed by the Town having the authority, duties, and responsibilities conferred by State Statutes and Municipal Regulations and Ordinances.
9. He, Him, His - Refers to one individual, male or female.

- 15.
10. Minor Deviation - A deviation from the strict application of this Ordinance that does not impair the intent, function of purpose of the Ordinance as a whole.
 11. Mooring - A semi-permanent means of securing a vessel or moored float. A mooring includes all associated parts.
 - a. Mooring, Private - A mooring utilized by a vessel for private, noncommercial use only.
 - b. Mooring, Public - A mooring owned or leased by the Town of Eliot as a transient or courtesy mooring for public use.
 - c. Mooring, Commercial - A mooring used for business or trade.
 - d. Mooring, Rental - Any commercial mooring offered For rent. Rental moorings must be approved by the Army Corps of Engineers.
 12. Mooring Buoy - A floating buoy generally located between the mooring chain or line and the pennant.
 13. Moored Float - A platform, not attached to or associated with a pier or wharf, that floats and is moored, or otherwise secured to the bottom .
 14. Mooring Permit - A permit assigned by the Harbor Master for a mooring site. All such mooring permits shall be issued by the Harbor Master.
 15. Mooring Site- A location in the water assigned by the Harbor Master for a vessel or moored float.
 16. Municipal Resident - Any person who occupies a dwelling within the municipality for more than 180 days in a calendar year.
 17. Parcel of Land - The minimal buildable lot size required by the Eliot Zoning Ordinance for the district in which the land is located.
 18. Pennant- line attached to a mooring float or ball, and intended to be secured to the bow of a vessel.
 19. Piers- Structures extending over or beyond the mean high water line.
 20. Restricted Mooring Areas - Designated areas which shall have restrictions on location or on type or method of mooring construction in order to protect water quality for sensitive shellfish beds, or protect shellfish plantings or beds.
 21. Shall and May - "Shall" is mandatory, "May" is permissive.
 22. Vessel - Any type of watercraft, boat, barge, or craft used or capable of being used as a means of transportation.

23. Vessel, Abandoned: A vessel shall be considered "abandoned" if for a period of at least six (6) continuous months, any of the following circumstances exist:
- a. The owner of the vessel refuses after notification to pay any applicable excise tax.
 - b. The owner of the vessel refuses to comply after notification with any lawfully-issued order of the Harbor Master.
 - c. The owner of the vessel refuses to respond to any lawful request for information submitted to him by the Harbor Master.
24. Vessel, Derelict: A vessel shall be considered "derelict" if any as the following circumstances exist:
- a. The vessel is not fastened to either a mooring or anchor.
 - b. The vessel lacks any license or registration, and the owner refuses to submit such information to the Harbor Master.
 - c. The vessel is submerged to a level substantially above its normal water line, and remains so for a period of at least fourteen (14) consecutive days without reasonable explanation.
 - d. The vessel is damaged to such an extent that it cannot be moved under its own power, and the owner refuses to remove it.
25. Vessel Owner - An individual, or any corporation, partnership, or other legal entity, having a 25% or greater ownership interest in and/or a right (as distinguished from temporary revocable permission) to use or control a vessel, whether or not such right or interest is registered or documented. Where this ordinance places an obligation, duty or liability on the owner of a vessel, a person in possession or control of such vessel is presumed to be the owner unless such person can demonstrate that he or she is not an owner and can identify the owner or owners of the vessel. Where this Ordinance makes ownership a prerequisite or condition to the exercise of some right or privilege, the person claiming such right or privilege must demonstrate ownership by a document, currently dated, showing the names of all the owners of interests, the percentage of interest owned by each, and the date each interest was obtained; must be signed by all named owners and filed with the Harbor Master.
26. Wharf - A structure built on the shore of a harbor, river, channel, or the like, including but not limited to one extending parallel to the shoreline so that vessels may lie close alongside to receive and discharge passengers and/or cargo.
27. Waiting List - A chronological list or lists of applicants requesting a mooring site in the tidal waters of the Town of Eliot. Persons shall be selected from such lists in accordance with the allocation provisions described in this ordinance.

III. PIERS

Provision for piers, wharves, ramps, and floats are covered under the Shoreland Zoning Ordinance of the Town of Eliot and are subject to Planning Board approval. Structures which can be accessed from land without the need of a vessel are regulated under the Shoreland Zoning Ordinance and enforced by the Code Enforcement Officer.

IV. GENERAL MOORING ADMINISTRATION

1. **Control of Moorings:** All mooring sites are under the exclusive control of the Harbor Master and must be assigned annually from established lists maintained by the Harbor Master.
2. **Town Mooring Master Plan:** The Harbor Master shall maintain a written record of the basic information on each mooring including assigned location, identifying number, vessel description, size, date last inspected, owner and other data deemed useful, including a chart of the waters of the Town, showing current mooring locations, assignments, and their numbers.
3. **Limited Mooring Areas:** In addition to the traditional considerations such as safety, clearance between moored vessels, restriction to navigation, and all other considerations bearing on these issues, the Harbor Master shall consider protection of natural resources such as marine habitat, historical sites, nesting sites, and public access while assigning mooring spaces. The Harbor Master may designate areas as Restricted Mooring Areas. These areas shall be for the purpose of protecting water quality for sensitive shellfish growing areas, or to protect shellfish plantings or beds. In such areas all new mooring shall be located more than 100 yards away from other moorings; the moorings shall be mushroom style and removed seasonally; and shall be limited to one mooring per riparian owner.
4. **Responsibility of the Mooring Holder:** The vessel owner is responsible at all times for damage caused by his vessel.

V. MOORING ASSIGNMENT PROCEDURE

1. **Reassignment Procedure:** Any mooring site which was permitted by the Harbor Master in the previous year and was used by the assignee in accordance with this Ordinance may be granted reassignment. Reassignment at the same site may be granted for the same vessel assigned to the mooring as in the previous year. Reassignment for a different vessel may be granted with the approval of the Harbor Master. All moorings shall be renewed by June 1 of each year.
2. **New Assignment Procedure:** New mooring sites shall be assigned by the Harbor Master on a first-come basis except as required by 38 MRSA Section 3 dealing with waterfront property rights. In the Section 3 case where an applicant has reasonable access and the requested location is available and practical in the judgment of the Harbor Master, the Harbor Master shall grant the assignment. In the case where the applicant requests a mooring in a congested mooring field and no space is currently available, the applicant may be placed on a waiting list for an available mooring space.

3. Order of Precedence: When a mooring site becomes available in an area which has a waiting list, the Harbor Master may offer the site, where practical, to the first applicant on the waiting list in accordance with 38 MRSA Section 7-A and the following order of precedence:

- a. A resident who is actively pursuing water dependant commercial enterprise,
- b. Private resident,
- c. A nonresident who is actively pursuing water dependant commercial enterprise,
- d. Private nonresident.

4. Private Moorings:

- a. Section 3, MRSA 38 expressly forbids those who are granted a mooring site assignment from transferring that privilege to another,
- b. Private mooring sites shall not be rented unless the provision for rental was part of the agreement when the mooring was assigned. All rental mooring sites must be approved by the Corps of Engineers and shall comply with all Land Use Ordinances and regulations,
- c. The assignment of a private mooring does not confer any right, title, or interest in submerged or intertidal lands owned by the State,
- d. A person assigned a private mooring may not loan, lease, rent, lend, give, bestow, allow the use of their private mooring except as defined in section VIII of this Ordinance which defines "Temporary Use of Private Moorings",
- e. For the purposes of this Ordinance, the assigned permit holder is assumed to be the vessel owner,
- f. Moored floats are under the control of the Army Corps of Engineers.

5. Changing Vessels Assigned to Moorings: Mooring space assignees may change vessels on their assigned mooring only with the permission of the Harbor Master. In general they will be limited to the same approximate size and type of vessel unless, in the judgment of the Harbor Master, a change can be made without adversely affecting the Harbor mooring plan or adjoining mooring space assignees.

6. Refusal of Mooring Assignment: Persons on a waiting list may refuse an offered mooring space or temporarily accept an alternative and retain their relative position on the waiting list. Persons refusing an offered mooring site must notify the Harbormaster in writing in order to retain their position on the waiting list.

7. Time Limit for Use of Assigned Mooring: A newly assigned mooring must be installed within 30 days of approval unless specifically extended on a case basis by the Harbor Master. Failure to comply with this provision will result in forfeiture of the mooring site and reassignment of the applicant's name to the end of the waiting list from which they were selected.

8. Transfer of Mooring Assignment used for Commercial Fishing: Mooring assignments may not be transferred, except that a mooring assignment used for commercial fishing purposes may be transferred at the request or death of the assignee, only to a member of the assignee's family and only if the mooring assignment will continue to be used for commercial fishing purposes.

"Member of the assignee's family" means an assignee's spouse, parent, child or sibling, by birth or by adoption, including a relation of the half blood.

9. Application Requirement: The Harbor Master will not accept an application for a private mooring site without a description of the boat intended to be moored.

VI. WAITING LISTS

1. Administration of Waiting Lists: Applicants on the waiting list shall be arranged by the Harbor Master in chronological order based on the date of application. Applicants may be listed on the waiting list once according to their usage. For example, an applicant may request a mooring for commercial use and also request a mooring for a private vessel use. An applicant's name cannot be listed more than once for a particular use on either waiting list but may reapply for another mooring space once he has been assigned an initial mooring.

2. Public Inspection of List: The waiting lists shall be available for inspection by the public at the Town Hall.

3. Procedures for Waiting Lists: The procedures for waiting lists will be posted at the Town Hall.

4. Annual Renewal of Position on Waiting List: Mooring site applicants on waiting lists shall reapply annually with the Harbor Master no later than June 1st or shall forfeit their position.

VII. MOORING PERMITTING PROCESS

Mooring permit application forms will be prepared and issued by the Harbor Master in a manner to allow for orderly registration of moorings, maintenance of adequate records, and assurance of proper payment of fees and fines. Procedures will be posted at the Town Hall.

VIII. MOORING USAGE REGULATIONS

1. Variable Boat Assignments: In general, all private, commercial, and seasonal rental mooring sites are assigned to a specific vessel. In the case of commercial boat service, commercial marina (transient), rental (transient), and public moorings, the Harbor Master may grant variable boat assignments if in his opinion it poses no risk to safety and navigation. Moorings with variable boat assignments may have size and type limits placed on them by the Harbor Master.

2. Provision of Mooring Hardware: An approved mooring site assignee shall have the duty to provide for, and maintain his own hardware or moored float, and its associated hardware.

3. Unused Mooring Sites: Mooring sites unused for one calendar year shall be reviewed by the Harbor Master and may be revoked or reassigned. Burden of proving usage shall be on the mooring assignee.

4. Removal of Mooring: Upon termination of the assignment of any mooring space to an assignee duly authorized by the Harbor Master, the mooring must be removed within 30 days unless a new assignee has assumed the ownership of the mooring and hardware. Any cost for removal of the mooring shall be the responsibility of the terminated assignee.

5. Emergency Removal of Mooring Hardware by Harbor Master: The Harbor Master may in emergency situations require immediate removal of mooring hardware. If the owner is unable or unwilling to comply, the Harbor Master may have the mooring hardware removed at the owner's expense. Where necessary, the Town may collect such fees in a civil action in District Court as provided for in Title 38 M.R.S.A. Section 5.

6. Removal of a Vessel by the Harbor Master: In the case where the Harbor Master determines that an unsafe mooring condition exists, or any vessel is in danger, he may direct the immediate removal of such vessel. If the owner cannot be reached, or is unable or unwilling to comply with the immediate removal directive, the Harbor Master may remove the boat himself, or cause the boat to be removed to a safe mooring or berth. In the event that the Harbor Master is required to cause a vessel to be removed, such removal shall be at the cost and risk to the owner of the vessel. A fee of \$100 shall be paid to the Town by the owner of the vessel, plus all costs of a crew for moving the vessel to a safe mooring or berth and any other costs such as berth rental, hauling, etc. Where necessary, the Town may collect such fees in a civil action in District Court as provided for in Title 38 M.R.S.A. Section 5.

7. Moorings that Impede Navigation or Endanger Vessels: All moorings shall be located so that the vessels secured there upon will not impede navigation or endanger other vessels. If the Harbor Master finds any vessel not so located, he may require that the owner of the mooring or vessel take such steps as will prevent such impeding of navigation or endangerment to other vessels. The Harbor Master may order that the mooring or the vessel attached thereto be removed or relocated. In requiring removal or relocation under this provision, the mooring last assigned shall be the first ordered to be removed or relocated. Any persons so ordered by the Harbor Master acting under this provision, shall remove or relocate the same within 30 days after being so ordered, or within such shorter period of time as the Harbor Master may designate in order to protect public safety. All expense incurred shall be borne by the mooring owner.

8. Short Term Use of Private Moorings: Mooring permit holders may allow short term usage not to exceed 14 consecutive days of their mooring space with notification to the Harbor Master.

9. Temporary Mooring Assignments: In cases where the mooring owner has notified the Harbor Master that an existing mooring will not be used by the holder during all or part of a mooring season the Harbor Master has the option of temporarily assigning this mooring to another individual. If this option is exercised, the Harbor Master must first offer these moorings to individuals on the waiting list who have indicated that they are interested in a temporary assignment, and then to others on a first come, first serve basis. Acceptance of a temporary mooring assignment will not alter that person's position on the waiting list. Temporary mooring assignments may be made only when all of the following conditions are met:

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a. A current mooring permit holder has provided written notice to the Harbor Master that his mooring will be unused for all or part of a season and he is willing to have the mooring temporarily re-assigned.

b. The current mooring permit holder will remain responsible for all mooring fees until the Harbor Master has identified an individual willing to accept a temporary assignment and responsibility for the site being offered.

c. The temporary assignee must show proof of current inspection of the mooring (see IX.4., below) to the Harbor Master as well as pay the Town of Eliot the annual fee for the mooring. Moorings where annual fees have been paid do not require additional fees.

d. The temporary mooring assignment will expire on the first day of June of the following year or an earlier date consistent with the original agreement between the mooring site holder and temporary assignee. Additionally, if the same mooring site is available for temporary use after June 1, it may be extended if approved by the Harbor Master.

e. The temporary assignee will be subject to the same rules and regulations and assume the obligations and liabilities of the permanent mooring site holder.

10. Use of Public Moorings: Use of a public mooring as a transient or courtesy mooring is directed solely by the Harbor Master, since vessels of various lengths and types may be temporarily assigned.

11. Abandoned Moorings: The Harbor master shall attempt to determine the ownership of a mooring by using all reasonable means. If the Harbor Master is unable to determine the ownership of the mooring, it shall be deemed abandoned and the site may be reassigned.

12. Abandoned or Derelict Vessels: Should the Harbor Master determine that a vessel is abandoned or derelict, the owner of such vessel shall be advised by registered mail, return receipt requested. If the vessel owner cannot be found or fails to respond and remedy the condition within thirty (30) days of the notification, the owner shall pay all expenses incurred by the Town in connection with the matter including, but not limited to, all expenses of removing or securing the vessel. The Harbor Master shall exercise due diligence in removing the vessel, but neither the Harbor Master nor the Town shall be held liable for any actions associated with the removal subsequent to the notification and waiting period.

IX. MOORING ADEQUACY

1. General Mooring Requirements: All moorings shall be of sufficient size and weight, with chain and rope(line) in sound condition to hold the vessel for which it is used. An "adequate mooring" under this Ordinance shall be determined by the Harbor Master.

2. Mooring Design: Unless an exception is specifically approved by the Harbor Master, all moorings shall consist of a block, anchor, or other permanently submerged object or attachment connected to a mooring buoy with a length of chain or a combination of chain and line, and from that point to the attachment point of the vessel by a pennant. The sizes of the block, chain,

pennant, and float shall be as jointly agreed upon by the Harbor Master and owner and as suited to the vessel and site.

3. Mooring Buoys: All new or replacement mooring buoys shall be white in color with a horizontal blue stripe around its center. All buoys shall have the registration number clearly marked on top in three (3) inch, or larger, letters. All mooring buoys shall be of sufficient size to remain afloat under all tide conditions when not attached to the vessel. "Spar", or "log" mooring buoys are specifically prohibited.

4. Mooring Inspection Requirements: Moorings shall be inspected every two years, or as directed by the Harbor Master. Inspection must include cleaning and visual inspection of chain, line, and hardware from mooring block to surface. At the time of registration the owner shall show evidence of mooring inspection. Moorings found to be inadequate with respect to the requirements of this Ordinance shall be corrected within 30 days of the inspection or shall be removed. If the mooring owner fails to remove the mooring the Harbor Master is authorized to have it removed at the owner's expense.

5. Mooring Pennant Length: The maximum length of the mooring pennant shall be limited to 2.5 times the height between the water level and the attachment point to the vessel.

X. FEES

1. Mooring fees will be assessed as follows:

- a. Residents, Non-commercial: Minimum twenty dollars (\$20) plus one dollar per foot (\$1/ foot) for every foot over twenty feet (20 feet).
- b. Residents, Commercial: Forty dollars (\$40).
- c. Non-residents (Commercial or Non-commercial): Minimum one hundred dollars (\$100) plus five dollars per foot (\$5/ foot) for every foot over twenty feet (20 feet). The total fee for nonresident commercial shall not exceed two hundred dollars (\$200).

2. Monies raised in fees by this ordinance will be applied to the implementation of this ordinance.

3. Fees are payable to the Eliot Town Clerk in a time and manner specified by the Board of Selectmen.

4. A late fee of twenty-five dollars (\$25) shall be assessed for registration after June 1.

XI. HARBOR USE REGULATION

1. Speed and Wake: Upon all tidal waters within the Town of Eliot, it shall be unlawful to operate a vessel at a speed that is not safe and prudent including, but not limited to, damaging any wharf, float, or anchored or moored vessel, or endangering any person or property, or

impairing any other vessel's ability to maneuver or proceed safely. Vessels shall not exceed the speed of five (5) m.p.h. within 200 feet of the following areas:

- a. Designated Marinas,
- b. Areas where marine harvesting is in progress,
- c. Piscataqua River Boat Launching Ramp (Dead Duck Inn - Boat Basin)

2. Water Skiing, Windsurfing, Jet Skiing, and Aquaplaning: These activities shall be governed by the appropriate rules and regulations of the State.

3. Skin and SCUBA Diving: Skin and scuba divers shall be governed by the appropriate rules and regulations of the State.

4. Aircraft: Aircraft shall be governed by the appropriate rules and regulations of the Maine Aeronautics Commission, excepting that they shall observe the same mooring and anchorage rules and regulations that apply to vessels.

5. Aquaculture: Aquaculture shall be governed by the appropriate rules and regulations of the Department of Marine Resources.

6. Actions of the Harbor Master: If the Harbor Master determines, based on a complaint or any other investigation he may undertake, that probable cause exists to believe that a violation of any regulation has occurred, he shall either (1) issue a verbal or written warning to the alleged offender or (2) issue a citation and proceed to enforce any violation of these regulations as provided within M.R.S.A 38.

XII. ENVIRONMENTAL CONTROLS

1. No person or vessel shall cause to be deposited into the waters or shoreline of Eliot any refuse or human waste matter, fuel, oil, paint, petroleum by-products or any other foreign matter, including dead animals, fish, or bilge water containing same.
2. No dirt, stone, planks, trees, limbs, leaves or ashes from these substances or any other substance that would tend to obstruct navigation of harbor or shoreline shall be put into shoreland waters.
3. Boat Operators shall be mindful of their wake to prevent erosion of shoreline, the disturbance of nesting of birds or any other wildlife or plants.

XIII. HARBOR COMMITTEE (Deleted)

XIV. AMENDMENT PROCEDURE (Deleted)

XV. WAIVERS

Waivers for minor deviations: A waiver for a minor deviation from the non-monetary requirements of this Ordinance may be granted by the Harbor Master. Before such waiver can be granted, a request for the waiver must be submitted to the Harbor Master in writing and contain the name and address of the person seeking the waiver, the Section of the Ordinance sought to be waived, supply a description of the proposed minor deviation, and give the unique conditions or circumstances which are offered to support and justify the issuance of the waiver. All requests for waivers shall be acted upon by the Harbor Master within fourteen (14) days of receipt. The appeals Provision of Section XVI of this ordinance must be followed and no waiver from these provisions may be granted. Notwithstanding this Section, neither the Harbor Master nor the Board of Selectmen may grant a waiver from the time limit for filing an appeal under Section XVI(1)(b) below. The decision of the Harbor Master to grant or deny a waiver request under this Section is final and cannot be appealed under Section XVI of this Ordinance.

XVI. APPEALS

1. Appeal procedures: Any person aggrieved by a decision of the Harbor Master involving the interpretation and/or application of the provisions of this Ordinance may appeal that decision directly to the Board of Selectmen by following the appeal procedure set forth below:

- a. All appeals must be made on appropriate appeal application forms provided by the Harbor Master. The appeal shall set forth the date and nature of the decision appealed and a concise statement of the basis for the appeal together with any other relevant information as required on the appeal application form.
- b. Appeals must be filed within 30 days of the date of the written decision of the Harbor Master. An appeal is commenced by filing an application form with the Town Clerk who shall deliver a copies to the Selectmen and Harbor Master within five (5) days. At the time of filing the appeal with the Town Clerk, the appellant shall pay the costs for public notice as determined by the Town Clerk.
- c. No later than fourteen days (14) after the Town Clerk has delivered copies of the appeal to the Selectmen under subparagraph (b) above, the Selectmen shall set a date for a hearing on the appeal and shall give written notification to the appealing party and the Harbor Master of the date, time and place of the hearing. The Selectmen shall also cause public notice of the hearing date to be published by the Town Clerk in at least one local newspaper at least seven (7) working days prior to the scheduled hearing.
- d. The hearing before the Board of Selectmen shall be informal and the strict rules of evidence shall not apply. Both parties to the appeal shall be given an opportunity to present whatever testimony appears relevant to the issues appealed. The Chairman shall serve as the presiding officer and shall make all decisions regarding the relevancy and admissibility of testimony. The appealing party shall have the right to examine and cross-examine any individual testifying. The Board may make any inquiries of witnesses as it deems necessary and helpful to a proper resolution of the appeal. The appealing party

shall bear the burden of proving that the decision of the Harbor Master being appealed was illegal, arbitrary or unsupported by the provisions of this Ordinance. Members of the public shall be given an opportunity to present testimony that directly bears on the issues raised by the appeal. The Selectmen shall have the right to adopt additional rules of procedure to facilitate the appeal hearing process.

e. After the conclusion of the public hearing, the Board of Selectmen shall decide the appeal at the same or a subsequent meeting. The Board may affirm, reverse or modify the decision of the Harbor Master or may remand the matter to the Harbor Master for further action. The decision of the Harbor Master may be reversed, modified, or remanded only by the affirmative vote of a majority of the entire Board; otherwise, the appeal is denied and the decision of the Harbor Master is deemed affirmed. Within ten (10) days after its vote on the appeal, the Board of Selectmen shall prepare a written decision containing a statement of facts and conclusions sufficient to show the rationale for the decision and shall mail a copy of that decision to the appealing party at the address set forth in the application form with a copy to the Harbor Master. The decision of the Board of Selectmen may be appealed to the York County Superior Court as provided in Rule 80 (B) of the Maine Rules of Civil Procedure.

XVII. VIOLATIONS AND ENFORCEMENT

1. Enforcement by Harbor Master: The Harbor Master, his duly authorized deputy or any other law enforcement officer authorized to enforce laws within the Town of Eliot shall be authorized to enforce all provisions of this Ordinance and any Rules and Regulations adopted hereunder as well as all applicable State statutes. The Town is authorized to take all necessary proceedings to seek the recovery of fines authorized hereunder and all such fines and penalties recovered shall accrue to the Town of Eliot.

2. Violations: Whoever violates any provision of this Ordinance or any Rules and Regulations hereunder or in any way obstructs the Harbor Master in the execution of his duties as required by this Ordinance or State statute, commits a civil violation and shall be subject to the penalties, fines, fees, costs and other remedies provided by 30-A M.R.S.A. Section 4452.. Each day any violation continues after notification by the Harbor Master shall be deemed a separate offense. In addition to any fines imposed for violation of this Ordinance or any Rules or Regulations adopted hereunder, the Harbor Master shall have the right to revoke mooring privileges for anyone found by the Harbor Master to have violated the terms of this Ordinance.

3. Additional Enforcement Authority for Violations of State Statute: In addition to the civil penalties imposed hereunder for violations of this Ordinance, Title 38 of the Maine Revised Statutes Annotated as amended, provides additional sanctions for violations of statutes which may be enforced by the Harbor Master as provided by law. Among these statutes and sanctions are the following:

a. 38 M.R.S.A. § 13 **Failure to obey orders of Harbor Master:** A person is guilty of failure to obey an order of a Harbor Master if the person intentionally, knowingly or recklessly fails to obey any lawful order of a Harbor Master authorized pursuant to this subchapter. Failure to obey an order of a Harbor Master is a Class E Crime.

- b. 38 M.R.S.A. § 281 **Speed restrictions:** Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State at a speed greater than is reasonable and proper, without due regard for traffic, proximity to wharves, docks, moorings or shores, and for any other conditions then existing shall be guilty of a Class E Crime.
- c. 38 M.R.S.A. § 282 **Endangering persons or property:** Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State in a manner which endangers any person or property shall be guilty of a Class E Crime.
- d. 38 M.R.S.A. § 283 **Operating recklessly:** Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however, propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State recklessly shall be guilty of a Class E Crime.
- e. 38 M.R.S.A. § 284 **Operation under influence of drugs and liquor:** Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however, propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana, shall be guilty of a Class E Crime.
- f. 38 M.R.S.A. § 285 **Enforcement of operating restrictions:** Every law enforcement officer in this State, including harbor masters and their deputies, shall have the authority to enforce this subchapter, and in the exercise thereof shall have the authority to stop and board any such watercraft, vessel or motorboat found in violation of said subchapter. It shall be unlawful for the operator of any such watercraft, vessel or motorboat to fail to stop upon hail from any such officer, and a violation of the same shall be punished as provided in section 282.

XVIII. PUBLIC COMPLAINT PROCEDURE

Complaint by members of the public: Any person aggrieved by a violation of this Ordinance or any Rules and Regulations adopted hereunder may file a written complaint with the Harbor Master within thirty (30) days from the date that the events occurred giving rise to such complaint. All such complaints shall include the following information: (a) date and time of alleged violation, (b) boat causing the violation, including description and, if possible, name and identifying number, (c) the owner of the boat causing the violation, if known, (d) the operator or master of the vessel, if known, (e) nature of the violation, (f) damage of injuries caused, if any, and (g) witnesses, including names, addresses and telephone numbers.

If the Harbor Master determines, based on the written complaint and any investigation he may undertake, that he has probable cause to believe that a violation of this Ordinance or Rules and Regulations adopted hereunder or State statute has occurred, he may either (1) issue a verbal or written warning to the alleged violator, or (2) issue a citation and proceed to enforce

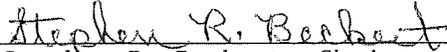
any violation of this Ordinance or State statute in the manner provided in this Ordinance or State statute or (3) refer the matter to other law enforcement personnel for further appropriate action.

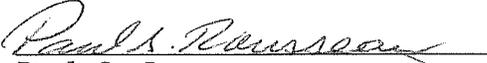
IXX. SEVERABILITY

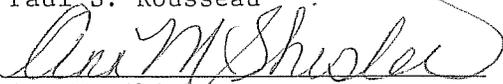
In the event that any section, subsection or any portion of this Ordinance shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of this Ordinance; to this end, the provisions of this Ordinance are hereby declared to be severable.

TO: Patricia R. Cress, Town Clerk
Town of Eliot
Eliot, Maine 03903

We, the undersigned, being the Municipal Officers of the Town of Eliot, pursuant to 30-A MRSA Section 3002, hereby certify the foregoing ordinance entitled "Town of Eliot Harbor Ordinance" as being the ordinance to be voted on at the Annual Town Meeting on March 24, 2001.


Stephen R. Beckert, Chairman


Paul S. Rousseau


Ann M. Shisler


Roland R. Fernald


John R. Grove
Selectmen, Town of Eliot