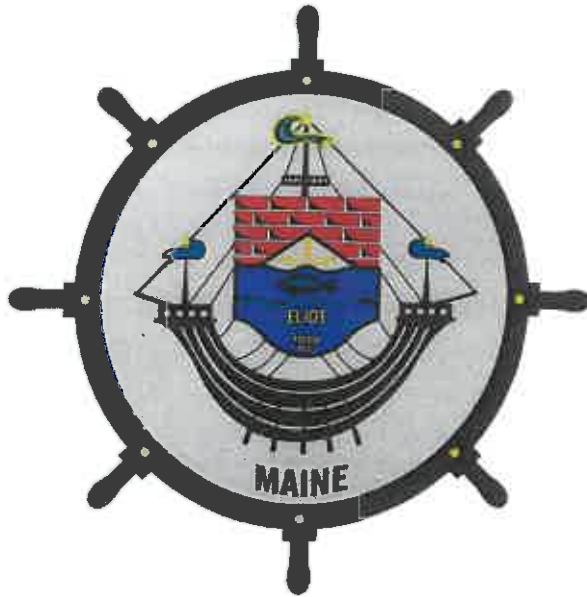


**Harbor Ordinance  
Town of Eliot, Maine**



**Date of Enactment: June 13, 2017**

**Repeals & Replaces the Prior Ordinance  
Adopted March 24, 2001**

***ENACTMENT BE THE LEGISLATIVE BODY***

Date of the vote to enact/amend this Ordinance: June 13, 2017.

Per the Charter of the Town of Eliot, Article 2(11) this Ordinance

shall become effective on June 13, 2017

(date)

Certified by the Town Clerk: [Signature]

On the 14<sup>th</sup> day of June, 2017.

**TOWN OF ELIOT  
HARBOR ORDINANCE  
JOINT HARBOR COMMISSION / SELECT BOARD VERSION  
April 27, 2017**

**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 March 24, 2001.

**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The Town of Eliot Ordinance Regulating the Harbor and Waterway of Eliot of June 29, 1970 was repealed and replaced by the Town of Eliot Harbor Ordinance of November 5, 1996, which was replaced by the updated Harbor Ordinance March 24, 2001.

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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.
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.

## II. DEFINITIONS

1. Assignee – A Person or person representing a commercial entity or civic organization to whom a Mooring Permit has been issued. A single name must be identified as the responsible assignee to whom the Mooring Permit has been issued.
2. Aquaculture - The growing, propagation, or holding for enhancement, of aquatic plant or animal species during all or part of their life cycle either for commercial purposes or for supplementing wild stocks.
3. Berth - The place where a vessel lies when at a wharf, pier, or float.
4. Boat – Shall mean any floating objects or vessel designed for self-propelled navigation on the water.
5. 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.
6. Channels - Areas of the harbor kept open for navigation or other purposes by rule or regulation of the Eliot Harbor Ordinance, Board of Selectmen, U.S. Army Corps of Engineers, or other regulatory or legislative body.
7. Commercial Mooring – Used for a marine-related business or commercial fishing purposes.
8. Commercial Vessel - Watercraft used for a marine-related business or commercial fishing purposes. The burden of proof in establishing the commercial use of a vessel shall be the responsibility of the vessel owner.
9. Float - A structure that floats and is anchored, moored or secured at the shore and whose primary purpose is to provide direct shore access. These structures are regulated under the Eliot Shoreland Zoning Ordinance.
10. Harbor - The harbor shall include all navigable tidal waters within the geographical limits of the Town of Eliot, Maine.

11. Harbor Master - An officer employed by the Town having the authority, duties, and responsibilities conferred by State Statutes and Municipal Regulations and Ordinances.
12. He, Him, His - Refers to one person, male or female.
13. Length Overall – The entire length of a vessel measured from the foremost point of the bow to the aftermost point of the stern, apertures included.
14. Minor Deviation - A deviation from the strict application of this Ordinance that does not impair the intent, function or purpose of the Ordinance as a whole.
15. Mooring - A semi-permanent means of securing a vessel or moored float. A mooring includes all associated parts. There are five categories of moorings in Eliot’s waters. They consist of private, commercial-rental, commercial – fishing, commercial marine-related business (includes boatyard moorings), and public mooring(s).
16. Mooring Buoy - A floating buoy generally located between the mooring chain or line and the pennant.
17. 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.
18. Mooring Permit - A permit assigned by the Harbor Master for a mooring site. All such mooring permits shall be issued by the Harbor Master.
19. Mooring Permit Holder – Person to whom a Mooring Permit has been issued or assigned.
20. Mooring Site- A location in the water assigned by the Harbor Master for a vessel or moored float.
21. Municipal Resident - Any person who occupies a dwelling within the Town of Eliot for more than 180 days in a calendar year.
22. Parcel of Land - A lot in accord with the Eliot Zoning Ordinance or a non-conforming lot with or without a structure.
23. Pennant- line attached to a mooring float or ball, and intended to be secured to the bow of a vessel.
24. Person – This term shall include the singular and commercial entity to whom a mooring permit has been issued.
25. Personal Watercraft – Any motorized watercraft that is less than thirteen (13) feet in hull length as manufactured, is capable of exceeding a speed of twenty (20) miles per hour and has the capacity to carry not more than the operator and one other person while in operation. The term includes,

but is not limited to, a jet ski, wet bike, surf jet, miniature speedboat and hovercraft. Personal watercraft also includes motorized watercraft whose operation is controlled by a water skier.

26. Private Moorings – A mooring used for mooring a pleasure craft or a personally-owned commercial vessel.

27. Piers - Structures from shore extending out over or beyond the mean high water line.

28. Right-of-Way – Not considered to be riparian by definition, therefore are not entitled to a riparian mooring.

29. Riparian Owner- A person who owns a waterfront parcel of land with at least 100' of water frontage.

30. 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.

31. Shall and May - “Shall” is mandatory, “May” is permissive.

32. Tackle (Mooring) – Typically consist of an anchor which may be a granite block or mushroom-type, with an attached chain to a mooring buoy.

33. Vessel - Any type of watercraft, boat, barge, or craft used or capable of being used as a means of transportation.

34. 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.

35. 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 three (3) 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.

36. Vessel Owner - An individual, or any corporation, partnership, or other legal entity, having a 25% or greater ownership interest to use or control a vessel. 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.

37. Watercraft – Any type of vessel, boat or craft used or capable of being used as a means of transportation on water other than a seaplane.

38. 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.

39. Waiting List - A chronological list or lists of applicants requesting a mooring site in the tidal waters of the Town of Eliot. Individuals shall be selected from such lists in accordance with the allocation provisions described in this ordinance.

### III. PIERS

Provision for piers, wharves, ramps, and attached floats are covered under the Shoreland Zoning Ordinance of the Town of Eliot and are subject to Planning Board approval. Structures that 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. Reasonable Use:** In recognition of the limited mooring space in the waters of Eliot, and high demand for said moorings, the Town of Eliot will reassign moorings and will make under-utilized moorings available for re-assignment.

**2. Control of Moorings:** All moorings within the Town of Eliot will be permitted or renewed annually by the Harbor Master(s) in accordance with this ordinance.

**3. Town Mooring Master Plan:** The Harbor Master shall maintain a record of 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, both assigned and unassigned, and their numbers. Restricted mooring areas will be designated on the master plan.

**4. 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 moorings shall be located more than 100 yards away from other moorings; the moorings shall be mushroom style or other environmentally sensitive system and removed seasonally; and shall be limited to one mooring per riparian owner.

**5. Compilation of Moorings:** The Harbor Master shall maintain a current list of moorings that indicates types (commercial, non-commercial), and so designating each mooring as either resident or non-resident owned.

## **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. All moorings shall be renewed by May 1 of each year, unless otherwise approved by the Harbor Master in writing. Mooring holders who have not renewed as of June 1 shall, within 5 days, be notified by first-class mail that their moorings shall be forfeited if not renewed by June 15.

**2. Mooring Assignment Application:** Each application shall contain the following information:

- a. The individual's name;
- b. Home address;
- c. Telephone number;
- d. State or federal vessel registration number, where applicable\*
- e. Type of primary vessel, such as power or sail; inboard, outboard, where applicable;\*
- f. Overall length of vessel and draft, where applicable\*
- g. Date of mooring inspection;
- h. Signature of applicant;
- i. Proof of payment of boat registration fees, when required\*

\* Marine-related commercial business moorings are exempt. All other mooring uses must comply with all requirements on the application.



**3. Assignment Procedure for New Moorings:** 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 Section 3 cases, 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 where no mooring space is currently available, the applicant shall be placed on a waiting list as an applicant for an available mooring space.

**4. Order of Precedence:** When a mooring site becomes available, the Harbor Master shall offer the site in accordance with 38 MRSA Section 7-A and per Section VI, Paragraph 1, of this Ordinance.

**5. Transfer of Moorings:**

- a. 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.
- b. Moorings shall not be rented unless the provision for rental was part of the agreement when the mooring was assigned. All rental moorings must be approved by the Corps of Engineers and shall comply with all Eliot Land Use Ordinances and regulations. A copy of the document that confirms approval by the U.S. Army Corps of Engineers must be supplied to the Harbor Master with the mooring application.
- c. A person assigned a private mooring may not loan, lease, rent, lend, give, bestow, allow the use of their mooring except as defined in section VIII of this Ordinance which defines "Temporary Use of Moorings."

**6. 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.

**7. Refusal of Mooring Assignment:** Persons on a waiting list may refuse an offered mooring space 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.

**8. Time Limit for Installation of Assigned Mooring:** A newly assigned mooring must be installed within 60 days of approval unless specifically extended on a case by 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.

**9. Payment of Excise Tax:** Issuance of a mooring permit may be denied if excise taxes for the primary vessel(s) using the mooring permit holder's mooring have not been paid in accordance with 36 MRS § 1501-1506.

## 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. The list shall be maintained in accordance with 38 M.R.S.A. 7-A and shall differentiate among the following categories:

- a. Riparian
- b. Residents, Commercial
- c. Residents, Non-Commercial
- d. Non-residents, Commercial
- e. Non-residents, Non-commercial

Applicants may be listed on the waiting list only once per category of usage.

**2. Annual Renewal of Position on Waiting List:** Mooring site applicants on waiting lists shall reapply annually with the Harbor Master no later than May 1st or shall forfeit their position. Waiting lists shall be updated annually following June 1<sup>st</sup> and thereafter as changes occur.

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

## 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. The Harbor Master will require such forms or other documentation as are necessary to support the mooring application.

## VIII. MOORING USAGE REGULATIONS

**1. Provision of Mooring Tackle:** An approved mooring site assignee shall have the responsibility to provide and maintain their own mooring tackle. The Town accepts no responsibility or liability whatsoever with regard to the condition and functionality of an individual's mooring tackle.

**2. Unmaintained Moorings:** Moorings unmaintained according to this ordinance shall be reviewed by the Harbor Master and may be revoked or reassigned. Burden of proof shall be on the mooring assignee.

**3. Unused Moorings:** If the Harbor Master finds that a non-commercial mooring has not been used between April 1 and October 1 of the year in which the permit was issued, or if the Harbor Master finds that the holder of the permit no longer owns the vessel specified in the mooring permit application, the Harbor Master shall give notice to the permit holder of the Harbor Master's intent to revoke the permit. Notice shall be given and shall take effect as specified in this Ordinance. Unless, within fifteen days of the effective date of such notice, the permit holder demonstrates extenuating circumstances to the Harbor Master. The Harbor Master shall revoke the permit using the procedure set forth in this Chapter. "Extenuating circumstances" means circumstances which make it impossible or impractical to have a boat in the water during the boating season, such as, but not limited to, loss or destruction of the vessel, mechanical breakdowns or unexpected repairs, or death or serious illness of the permit holder. Decisions of the Harbor Master under this paragraph may be appealed as provided in this Ordinance.

**4. Removal of Mooring:** Upon termination of the assignment of any mooring 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 tackle. Any cost for removal of the mooring shall be the responsibility of the terminated assignee.

**5. Removal of Mooring Tackle by Harbor Master:** In case of the neglect or refusal of the primary owner of any boat or vessel to remove his mooring or to replace it by one of different character, when so directed by the Harbor Master, that Harbor Master shall cause the entire mooring to be removed or the buoy 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 vessel's owner (by certified mail, return receipt requested), at his last known address, of the action desired of him, and the fact that the mooring will be removed and of pending fines, if the matter is not settled to the Harbor Master's satisfaction within fifteen (15) days, the Harbor Master may take the action provided for in this section.

**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 and the owner shall be responsible for all costs related to the moving of 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 costs in a civil action in District Court as provided for in Title 38 M.R.S.A. Subchapter 1.

**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. The Harbor Master will assign moorings so that vessels do not impede navigation or endanger other

vessels. If an existing mooring does not conform to the above the Harbor Master will take corrective action(s). 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 Mooring Sites by Others:** Mooring permit holders may allow short term usage of their mooring space, not to exceed 14 continuous days and with notification to and approval by 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:

- 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.
- c. The current mooring permit holder must show proof of current inspection of the mooring to the Harbor Master as well as pay the Town of Eliot the annual fee for the mooring.
- 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 holder and temporary assignee.
- e. The temporary assignee will be subject to the same rules and regulations and assume the obligations and liabilities of the permanent mooring holder. Additionally the temporary assignee shall pay for the use of the mooring as though they were the mooring permit holder.

**10. Use of Public Moorings:** Use of a public mooring as a transient or courtesy mooring is directed solely by the Harbor Master.

**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 First Class Mail. If the vessel owner cannot be found or fails to respond and remedy the condition within ten (10) 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.

**2. Mooring Design:** All moorings shall consist of a block, anchor, or other permanently submerged object and attached to the vessel by a pennant. The sizes of the block, chain, pennant, and float shall be determined by the owner. Moorings found to be inadequate with respect to the requirements of this Ordinance shall be corrected by the mooring permit holder.

**3. Mooring Buoys:** All new or replacement mooring buoys shall be white in color with a horizontal blue stripe at the waterline around its center. All buoys shall have the mooring 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. All buoys must remain clearly visible at all times and must display its mooring numbers in all tidal conditions.

**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 tackle from mooring block to surface. At the time of registration the owner shall show evidence of mooring inspection.

**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. All fees are established by the Eliot Select Board. Fees may not be adjusted more than one time in a three year period. The Select Board shall adjust fees no later than November of any year in which a fee change is contemplated. Fees shall be established for the following categories:

- a. Residents, non-commercial.
- b. Residents, commercial
- c. Non-residents, non-commercial
- d. Non-residents, commercial
- e. Marine-Related Business Moorings
- f. Waiting List fee

g. Late Fee(s)

2. Fees are payable to the Town of Eliot via the Eliot Town Clerk's office at the time of mooring issuance or renewal. A late fee shall be assessed for registration after May 1st.

## **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. The vessel operator is responsible to ensure for no damage occurs from the wake. Operations of vessels shall be governed by the rules and regulations of the State. Particular attention should be paid in 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)
- d. Marine construction

**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. Paddleboats, kayaks, canoes -** These activities shall be governed by the appropriate rules and regulations of the State.

**5. 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.

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

**7. 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 38 M.R.S.A Subchapter 1.

## **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 are responsible for their wake and shall ensure their wake does not erode shoreline or disturb nesting birds or any other wildlife or plants\*.

\*Each of the above are governed by State and / or Federal law.

### **XIII. 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 Town Clerk 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. Appeals are governed by Section XIV of this ordinance and no waiver from these provisions may be granted. Notwithstanding this Section, neither the Harbor Master nor the Select Board may grant a waiver from the time limit for filing an appeal under Section XIV below.

### **XIV. APPEALS**

Any decision of the Harbormaster may be appealed to the Town Manager. An appeal must be submitted in writing to the Town Manager no later than thirty (30) days after the action or decision appealed from. Upon receipt of a written appeal, the Town Manger shall promptly schedule an appeal hearing, giving notice to the applicant and to the Harbor Master of the date, time and place of the hearing. The appellant and the Harbor Master each shall have an opportunity to be heard and to present written and oral evidence. After the hearing the Town Manager shall promptly issue a written decision.

The decision of the Town Manager may be appealed to the Eliot Select Board within thirty (30) days of notification of the Town Manager's decision. The Select Board shall hold a public hearing prior to making a decision on an appeal, notice of which shall be made by posting at the Town Hall and by certified mail to the appellant and the Harbor Master.

The Harbor Master, or a designated deputy, shall attend all hearings, and shall present to the Select Board all plans, photographs or other material deemed appropriate for an understanding of the appeal. The Appellant may present oral and written evidence. Questions may be asked through the Chair. The Board may affirm, modify or deny the action of the Harbor Master, or may remand the matter to the Harbor Master for further proceedings by majority vote of those present and voting. Decisions of the Board shall be in writing and contain a statement of findings and conclusions, as well as the reasons or basis therefore. A copy of the decision shall be sent to the appellant.

All appeals must be made on appropriate appeal application forms provided by the Town. 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.

## **XV. 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 and 38 M.R.S.A. Section 1 et seq. 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 or 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.

## **XVI. 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) watercraft causing the violation, including description and, if possible, name and identifying number, (c) the owner of the watercraft 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.

**XVII. 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.

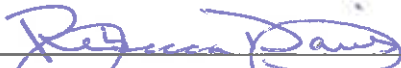

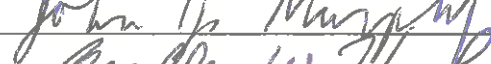
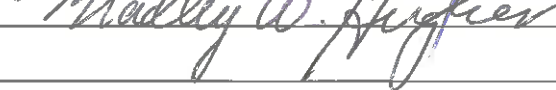
**Municipal Officers' Certification of Official Text of a Proposed Ordinance [30-A M.R.S.A. § 3002(2)]**

To the Town Clerk of the Town of Eliot, Maine:

We hereby certify to you that the document to which we have affixed this certificate is a true copy of the official text of an ordinance entitled "Town of Eliot Harbor Ordinance", which is to be presented to the voters for their consideration on June 13, 2017.

Pursuant to 30-A M.R.S.A. § 3002(2), you will retain this copy of the complete text of the ordinance as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the town meeting/polling places on the day of the vote.

Dated: April 27, 2017

Select Board  
Town of Eliot, Maine