DECISION ON THE CITY OF GLOUCESTER'S REQUEST FOR APPROVAL OF THE GLOUCESTER MUNICIPAL HARBOR PLAN RENEWAL AND DESIGNATED PORT AREA MASTER PLAN PURSUANT TO 301 CMR 23.00

December 19, 2014

Commonwealth of Massachusetts

Executive Office of Energy and Environmental Affairs

Maeve Vallely Bartlett, Secretary

I. INTRODUCTION

Today, as Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), I am approving a renewal to the City of Gloucester's Municipal Harbor Plan ("Plan") dated August 2014. The original Plan was approved by the Secretary on July 6, 1999, and the last update was approved on December 11, 2009. This Decision on the renewal to the 2014 Plan presents a synopsis of the Plan's content, together with my determinations on how the renewal Plan complies with the standards for approval set forth in the Review and Approval of Municipal Harbor Plan regulations at 301 CMR 23.00 et seq.

Pursuant to the review procedures contained therein, the Plan renewal was submitted in August 2014. Following a review for completeness, CZM published a notice of public hearing and 30-day opportunity to comment in the *Environmental Monitor* dated September 10, 2014. Oral testimony was accepted during a public hearing held in the City of Gloucester on September 22, 2014, and 36 written comment letters and one petition signed by 157 people were received prior to the close of the public comment period on October 10, 2014. In addition, the review process led on my behalf by the Massachusetts Office of Coastal Zone Management (CZM), included consultation between CZM, the Waterways Program of the Massachusetts Department of Environmental Protection (MassDEP), and the City of Gloucester ("City"). The Plan review followed the administrative procedures set forth at 301 CMR 23.04 and in accordance with the standards in 301 CMR 23.05. In reaching my approval decision, I have taken into account the oral and written testimony submitted by the public, as well as supplemental information submitted by the City during the consultation session and noticed in the November 5, 2014 *Environmental Monitor*.

As shown in Figure 1 and unchanged since the 2009 Plan, the Harbor Planning Area encompasses the entirety of the Gloucester Inner Harbor and adjacent landside areas extending from the Rocky Neck peninsula to the Fort neighborhood, and including the shoreline of the western side of the outer harbor to Stage Fort Park. On the landside, the area is bounded by Main Street, East Main Street, Rocky Neck Avenue, Commercial Street, and Stacy Boulevard. The main focus of this plan renewal continues to be primarily the inner harbor properties that lie within the Designated Port Area (DPA) as depicted in Figure 2 on page 2.

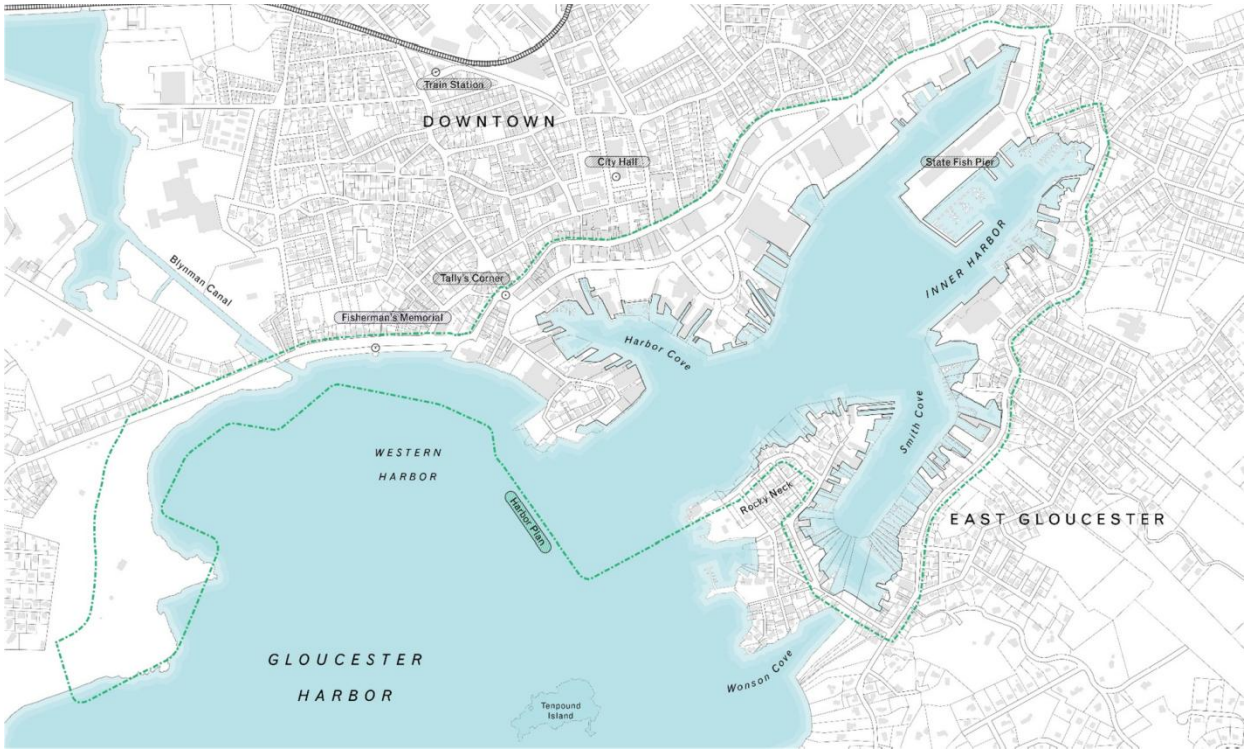

Figure 1. Gloucester Harbor Planning Area

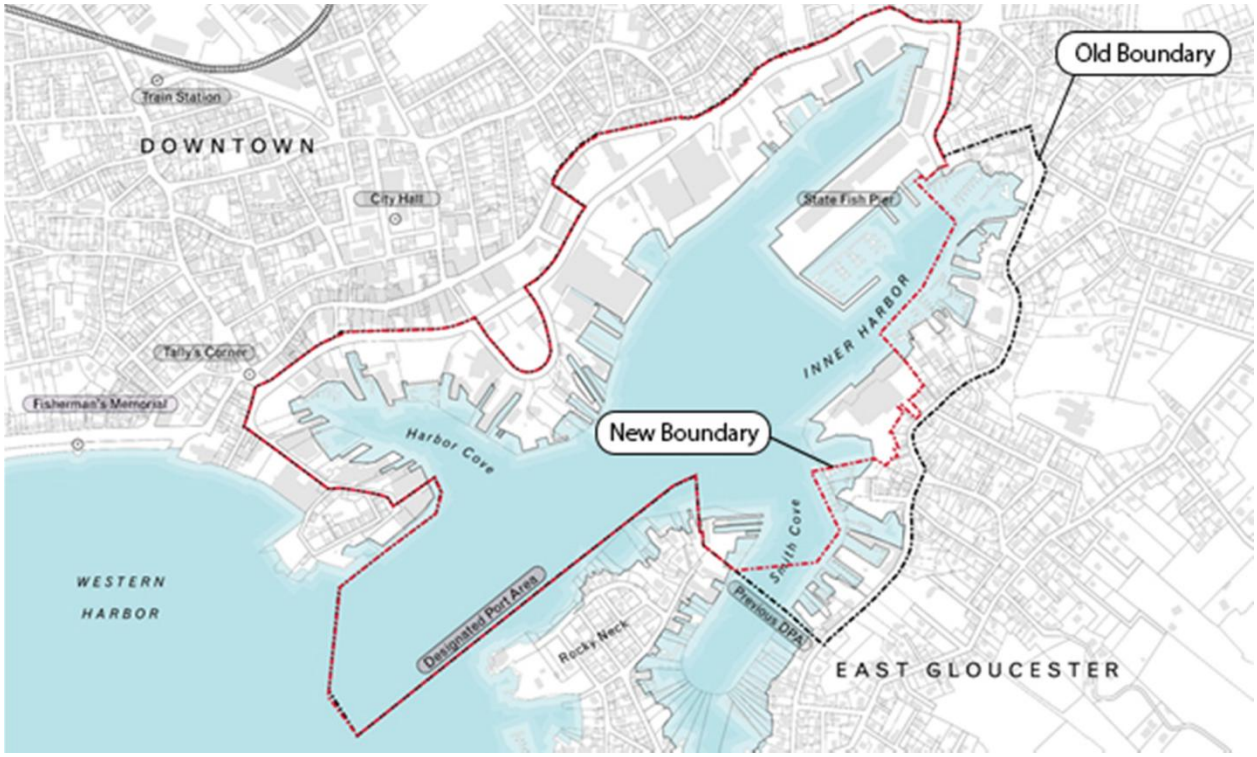

Figure 2. Gloucester DPA

The Plan incorporates the changes to the DPA boundary as determined by the CZM boundary review decision issued on April 23, 2014, and describes the harbor planning area in terms of the distinct planning units identified in that document. These include the Harbor Cove, North Channel, State Fish Pier, Cold Storage East Gloucester, and Rocky Neck planning areas, which remain in the DPA, and the East Gloucester, Smith Cove, and Boulevard/Stage Fort Park areas outside the DPA. The Harbor Cove area remains the traditional center of the fishing port from Fort Point to Harbor Loop and includes portions of the City's downtown. The North Channel/State Fish Pier is characterized by large parcels and buildings dedicated almost exclusively to marine industrial uses along the western side of the harbor from Harbor Loop to the head of the harbor, including the State Fish Pier. Most of East Gloucester and Smith Cove, with the exceptions of the wholly water-dependent industrial uses on the Cold Storage and Gloucester Marine Railways areas, is characterized by a more diverse mix of commercial, residential, and water-dependent uses.

The 2009 plan supported traditional port improvements while also seeking to provide expanded opportunities for redevelopment within the Harbor Planning Area, and identified a number of key strategies to maintain support for the important commercial fishing industry in the city while encouraging improved opportunity for economic development on the harbor. These strategies aimed to streamline regulatory review, stimulate investment, and improve economic conditions along the waterfront. The 2014 renewal continues the City's core commitment to the fishing industry and essential hub services, presents a detailed economic opportunity analysis of emerging marine industries, identifies potential for growth in a number of these industries, and develops a regulatory framework to allow expansion of these uses while protecting the traditional working waterfront in Gloucester.

The 2014 Plan renewal for Gloucester Harbor reflects a nearly two-year planning effort on the part of the City staff, Gloucester Harbor Plan Committee, and the public who participated in the development of the plan. Several key strategies that were identified as the core focus of the 2009 Gloucester Harbor Plan (and DPA Master Plan) continue in the 2014 amendment:

1. Support commercial fishing both directly, and by seeking to attract and expand the kind of businesses and industries that might build upon the existing marine assets and knowledge base of the community. Additionally, the 2014 Plan identifies additional opportunities for emerging water-dependent industries that may strengthen this effort to

diversify on the waterfront in ways that build upon and strengthen the fishing community.

2. Continue to provide flexibility for supporting commercial uses on waterfront property so that waterfront properties have more mixed-use investment options, while protecting the core water-dependent industrial nature of the port.
3. Promote public access along the waterfront in ways that do not interfere with industrial uses so as to create a more appealing environment for investment and to ensure the active use of the water's edge around the harbor.
4. Promote change that will benefit the downtown and other areas of the city.
5. Provide infrastructure and navigation improvements.
6. Enhance and focus the administrative resources of the city to support and strengthen the viability of the port.

The 2014 Plan seeks to continue one substitution and three amplifications that were previously approved in the 2009 Plan. In addition, the 2014 Plan seeks to add an additional amplification and modify the 2009 DPA Master Plan component governing flexibility for diversified uses within the DPA while ensuring an appropriate area in close proximity to the water is reserved for water-dependent industrial (WDI) use.

At the public hearing and in written comments, while support for the Plan was expressed by City officials, members of the Harbor Plan Committee, and others, thoughtful perspective and concerns were raised, particularly in regards to essential considerations such as protection of water-dependent industrial infrastructure and zoning considerations to prevent use conflicts with water-dependent industry. At the request of CZM in response to the oral and written testimony received during the public comment period and discussion during the formal consultation period, the City submitted a supplemental document to better clarify the provisions of the Plan.

In that document, the city affirmed that it is committed to the protection of the DPA, and that the proposed changes to the Marine Industrial (MI) zoning ordinance are intended to avoid interference or conflicts with WDI uses, and to ensure the DPA Master Plan preserves and enhances the capacity of the DPA to accommodate WDI uses. The zoning changes proposed will further restrict uses in the MI, and will not include any introduction of new uses. The City further clarified that hotel and residential uses have been and will continue to be excluded under MI zoning in the DPA, and that the Plan does not include any provisions to expand or allow recreational boating marinas or the proliferation of hotels or shopping centers in the DPA.

In my approval today, I find that the final 2014 Plan—in concert with the conditions established in this decision—serve to promote and protect the core marine and water-dependent industrial composition of the DPA, while providing for the local goals of enhanced support of the

commercial fishing industry, expansion of water-dependent industry, and continued allowances for flexibility in supporting DPA uses. On balance, I am confident that it will function as a clear and effective framework for achieving the City's goals in harmony with state policy governing stewardship of tidelands, including those located within a DPA.

II. PLAN CONTENT

The Municipal Harbor Planning Regulations (301 CMR 23.00 et seq.) establish a voluntary process under which cities and towns may develop and submit Municipal Harbor Plans to the EEA Secretary for approval. These plans serve to promote and implement a community's planning vision for their waterfront and to inform and guide state agency decisions necessary to implement such a vision. Specifically, approved Municipal Harbor Plans provide licensing guidance to MassDEP in making decisions pursuant to MGL Chapter 91 (c. 91) and the Waterways Regulations (310 CMR 9.00 et seq.). Approved harbor plans may establish alternative numerical and dimensional requirements (i.e., substitute provisions) to the requirements specified by the Waterways Regulations, as well as specify provisions that amplify any of the discretionary requirements of these regulations.

While the 2014 Plan expresses continued support for the traditional fishing industry and infrastructure in Gloucester Harbor, the primary focus of the Plan is economic development of the port. The Plan quantifies the economic base of the port, identifies the city's best opportunities for expansion of traditional and emerging marine industries, and identifies a regulatory framework that may better support the development of these industries. As part of this framework, the Plan reevaluates the 2009 mechanisms for providing flexibility for supporting DPA uses in light of the modified DPA area resulting from CZM's April 23, 2014 DPA Boundary Review decision. The proposed DPA supporting use mechanisms in the 2014 Plan focus on reserving more area within filled and flowed tidelands within state Chapter 91 jurisdiction for water-dependent industrial (WDI) use, and slightly decreases the overall allowance for DPA supporting uses over the entire DPA land area, as compared to the existing mechanism under the 2009 Plan. Proposed local zoning would maintain most changes made pursuant to the 2009 Plan approval, which strengthened the local Marine Industrial (MI) zoning within the DPA by requiring more detailed project review and limiting the types of uses allowed in this zone. The 2014 Plan further strengthens existing zoning in the city's MI zone, by further restricting MI uses to assure that no conflicts with water-dependent

industrial use will occur within or outside of Chapter 91 jurisdiction. This approach better protects the DPA areas closest to the waterfront for WDI use, while still providing appropriate flexibility to accommodate compatible supporting uses within the DPA as a whole.

The 2014 Plan revises the 2009 approach to planning area land use descriptions, such that the conditions of land use in the harbor planning area are described for each of the planning sub-areas utilizing language directly from the final CZM DPA boundary review decision, "*Boundary Review of the Gloucester Inner Harbor Designated Port Area (April 24, 2014).*" A discussion of existing navigation and waterway uses includes harbor access, vessel berthing and moorings, navigation and dredging, the city's maritime economy, and the commercial lobster industry, and presents opportunities and challenges for each. The current regulatory environment as it relates to land use is also presented.

A major component of the 2014 Plan is the economic and opportunity analysis of the port economy. Here, the Plan quantifies the port's economic base, identifies traditional and emerging maritime industries, and evaluates which of these offers Gloucester the best opportunities to expand and strengthen the port economy. Five major industrial sectors are identified in the Plan, including marine technology (including vessels), marine research, marine resources and renewables, fisheries and seafood, and coastal tourism. In addition, the Plan identifies a series of priority actions that the City should take to facilitate development of these industries and begin to diversify and strengthen the harbor economy.

The 2014 Plan also includes a Designated Port Area Master Plan that sets out a strategy to preserve and enhance the capacity of the DPA to accommodate water-dependent industry, expand the definition of water-dependent industrial uses, and prevent substantial displacement of these activities by other non-water-dependent uses. The DPA Master Plan proposes a regulatory framework and detailed implementation measures to ensure that extensive areas are reserved for water-dependent industrial uses, and puts forward limits on commercial uses to prevent incompatibility with marine industry while continuing to provide flexibility in the density and location of allowable DPA supporting uses.

A continued theme of the 2014 Plan is the support of commercial fishing both directly and by seeking to attract and expand businesses and industries that will build upon, strengthen and expand existing marine assets and knowledge-base within the community. Several key strategies to promote and protect existing and future investment in commercial fishing which were approved with the 2009 Plan are proposed for continuation in the 2014 Plan, including: regulatory changes to assure investment in improved waterfront marine industrial infrastructure; fostering maintenance or creation of commercial berthing wherever practicable; and enhancing protection from displacement for commercial fishing vessels. In addition, the 2014 Plan includes a provision to expand the definition of water-dependent industrial use to include a wider array of potential new marine-based industries, particularly marine science and technology uses, in order to promote marine industrial diversification in the port.

The 2009 Plan took advantage of the harbor planning process to provide greater flexibility for local supporting commercial uses on waterfront property in order to provide additional revenues that would support infrastructure improvement and waterfront activation. The 2009 approach allowed a modest increase in the overall amount of supporting uses allowed in the DPA, while providing more mixed-use investment options for those waterfront properties with the greatest challenges for development. While the city wanted to continue that flexibility with the 2014 Plan, the DPA boundary was modified since the approval of the 2009 Plan, requiring additional analysis to assure that overall water-dependent industrial uses in the DPA would not be adversely affected if the 2009 approach was to continue under this amendment. In its analysis, the City determined that continuing the 2009 approach under the modified DPA boundary would not adequately protect WDI uses and infrastructure nearest to the waterfront, as the implementation strategy would allow an inordinate amount of supporting use within filled and flowed tidelands. The new strategy proposed under this plan maintains significant flexibility for supporting commercial uses, but requires that a minimum area of filled and flowed tidelands within Chapter 91 jurisdiction is reserved for WDI use. This approach balances continued flexibility for diversified uses within the DPA with better protection of the areas closest to the waterfront for WDI use. Further, the Plan creates a means by which properties with particular challenges may work within the regulatory framework to achieve necessary flexibility in water-dependent use zone setbacks while protecting the marine industrial waterfront. These changes benefit the downtown and other areas of the city by fostering a

closer link between the waterfront and the commercial business district, without diminishing the integrity of the water-dependent industrial core.

The 2014 Plan continues to support the effort to improve, wherever possible, activation of the water's edge and public access in recognition of the harbor's importance to the visitor based economy and public enjoyment in Gloucester, with an understanding that public safety and port security are important issues to be addressed. The Plan calls for promoting public access along the waterfront where appropriate and in ways that do not interfere with industrial uses. This reinvigorated access would create a more appealing environment for investment and would foster more active use of the water's edge around the harbor. Strategies to achieve this include maintaining 2009 Plan measures (including both c.91 and local zoning) to provide waterfront access whenever practicable, as well as taking advantage of marine industrial locations that are occupied only seasonally for such use.

In continued support and promotion of port and harbor planning, the Plan recommends continuation of the City's administrative resources through the Community Development Department and its Harbor Coordinator position to serve as the primary liaison to waterfront property owners. The Plan also calls for the creation of a Port and Harbor Committee to serve in an advisory capacity to the Community Development Department and to monitor and promote implementation of the 2014 Plan.

A. Consistency with CZM Program Policies and Management Principles

The federally-approved CZM Program Plan establishes 20 enforceable program policies and 8 management principles which convey the formal coastal program policy of the Commonwealth. The policies and management principles applicable to the 2014 Plan are briefly summarized here:

- Water Quality Policy #1: Ensure those point-source discharges in or affecting the coastal zone are consistent with federally approved state effluent limitations and water quality standards.

- Water Quality Policy #2: Ensure that non-point pollution controls promote the attainment of state surface water quality standards in the coastal zone.

- Habitat Policy #1: Protect coastal, estuarine, and marine habitats—including salt marshes, shellfish beds, submerged aquatic vegetation, dunes, beaches, barrier beaches,

banks, salt ponds, eelgrass beds, tidal flats, rocky shores, bays, sounds, and other ocean habitats—and coastal freshwater streams, ponds, and wetlands to preserve critical wildlife habitat and other important functions and services including nutrient and sediment attenuation, wave and storm damage protection, and landform movement and processes.

- Protected Areas Policy #3: Ensure that proposed developments in or near designated or registered historic places respect the preservation intent of the designation and that potential adverse effects are minimized.

- Ports and Harbors Policy #1: Ensure that dredging and disposal of dredged material minimize adverse effects on water quality, physical processes, marine productivity and public health, and take full advantage of opportunities for beneficial re-use.

- Ports and Harbors Policy #2: Obtain the widest possible public benefit from channel dredging and ensure that Designated Port Areas and developed harbors are given highest priority in the allocation of resources.

- Ports and Harbors Policy #3: Preserve and enhance the capacity of Designated Port Areas to accommodate water-dependent industrial uses and prevent the exclusion of such uses from tidelands and any other DPA lands over which an EEA agency exerts control by virtue of ownership or other legal authority.

- Ports and Harbor Policy #5: Encourage, through technical and financial assistance, expansion of water-dependent uses in Designated Port Areas and developed harbors, re- development of urban waterfronts, and expansion of physical and visual access.

The aforementioned policies are relevant to the major opportunities identified in the renewal, including expansion of industries such as marine tech, marine research, marine resources and renewables, fisheries and seafood, and coastal tourism. The Plan presents evidence of its accord with these policies and management principles, and, as required by 301 CMR 23.05(1), CZM has affirmed its consistency. As was true of the 2009 Plan, this renewal continues to view protection and promotion of the DPA and water-dependent industry as central to the working waterfront, even as it explores opportunities to expand the traditional scope of water-dependent industrial uses and maintain compatible commercial uses to support this industry and the economic vitality of the port overall.

B. Consistency with Tidelands Policy Objectives

As required by 301 CMR 23.05(2), I also must find that the Plan renewal is consistent with state tidelands policy objectives and associated regulatory principles set forth in the state Waterways Regulations of MassDEP (310 CMR 9.00 et seq.). As promulgated, the Waterways Regulations provide a uniform statewide framework for regulating tidelands projects. Municipal

Harbor Plans present communities with the opportunity to integrate their local planning goals into state c.91 licensing decisions by proposing modifications to the c.91 regulatory standards through either: 1) the amplification of the discretionary requirements of the Waterways Regulations; or 2) the adoption of provisions that—if approved—are intended to substitute for the minimum use limitations or numerical standards of 310 CMR 9.00 et seq. The approved substitute provisions of Municipal Harbor Plans, in effect, allow MassDEP to waive specific c.91 use limitations and numerical standards affecting projects in tidelands, in favor of the modified provisions specified in an approved Municipal Harbor Plan.

The Plan sections relating to 301 CMR 23.05(2) have been effectively summarized in Chapter 5 of the Plan, and further clarified in supplemental documentation submitted during the consultation period. The Plan proposes guidance that will have a direct bearing on MassDEP licensing decisions within the Harbor planning Area. Included in this proposed guidance are:

- A provision for a substitution of certain specific minimum numerical standards in the regulations;
- Several provisions that amplify certain discretionary requirements of the Waterways Regulations; and
- A suite of provisions that together comprise a Master Plan for the lands and waters within the Gloucester Harbor DPA.

These provisions are subject to particular approval criteria under 301 CMR 23.05(2)(b) through 301 CMR 23.05(2)(e). The analysis of the proposed provisions is explained below.

Evaluation of Proposed Substitute Provisions

The general framework for evaluating all proposed substitution provisions to the c.91 Waterways requirements is established in the Municipal Harbor Plan Regulations at 301 CMR 23.05(2)(c) and 301 CMR 23.05(2)(d). In effect, the regulations set forth a two-part analysis that must be applied individually to each proposed substitution in order to ensure that the intent of the Waterways requirements with respect to public rights in tidelands is preserved.

Applying part one of the analysis, in accordance with 301 CMR 23.05(2)(c), there can be no waiver of a Waterways requirement unless the Secretary determines that the requested alternative requirements or limitations ensure that certain conditions, specifically applicable to

each minimum use limitation or numerical standard, have been met. Part two of the analysis, as specified in 301 CMR 23.05(2)(d), requires that the municipality demonstrate that a proposed substitute provision will promote, with comparable or greater effectiveness, the appropriate state tidelands policy objective.

A municipality may propose alternative use limitations or numerical standards that are less restrictive than the Waterways requirements as applied in individual cases, provided that the plan includes other requirements that—considering the balance of effects on an area-wide basis—will mitigate, compensate for, or otherwise offset adverse effects on water-related public interests.

For substitute provisions relative to the minimum use and numerical standards of 310 CMR 9.51(3)(a) through CMR 9.51(3)(e), any proposal must ensure that nonwater-dependent uses do not unreasonably diminish the capacity of tidelands to accommodate water-dependent uses. Similarly, substitute provisions for nonwater-dependent projects on Commonwealth Tidelands must promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes, as provided in 310 CMR 9.53.

Water Dependent Use Zone

To approve any substitute provision to 310 CMR 9.51(3)(c), I must first determine that the Plan specifies alternative distances and other requirements that ensure new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent use and public access associated therewith as appropriate for Gloucester Harbor. Second, within the context of its Plan, the City must demonstrate that the substitute provision will, *with comparable or greater effectiveness*, meet this objective. My determination relative to whether or not this provision promotes this tideland policy with comparable or greater effectiveness is conducted in accordance with the MHP regulatory guidance is discussed below. A summary of the proposed substitute provision for the 2014 Plan, which is a continuation of an approved provision in the 2009 Plan, is provided below in Table 1.

Establishment and maintenance of an adequate and functional Water Dependent Use Zone (WDUZ) is critical to assuring necessary waterfront access for water-dependent industrial

uses within the DPA, and essential to sustaining these uses. Within the DPA, the Plan endorses the application of the WDUZ requirement at 310 CMR 9.51(3)(c) for the majority of parcels within the DPA. The Plan notes however, that in a few cases strict adherence to the stipulated dimensional requirements of the WDUZ may result in an oddly configured WDUZ and inefficient siting of uses. In these cases, the configuration of the WDUZ as directed by the Waterways standards may be less effective in providing use of the water's edge for water-dependent industrial use than another configuration allowed with flexibility to the existing standards. To address this concern, the Plan proposes a substitution to the WDUZ requirement at 310 CMR 9.51(3)(c) only for those parcels where (1) it can be demonstrated that the application of the c.91 standard would result in inefficient siting of uses without minor modification, and (2) a modified reconfiguration would achieve greater effectiveness in the use of the water's edge for water-dependent industrial use. For these limited properties, the City proposes a minimum width of 25 feet for the WDUZ along the project shoreline and ends of piers and 10 feet minimum along the sides of piers, as long as there is no net loss of WDUZ area on the site. The Plan further clarifies that application of this provision would be applied only upon a clear showing that application of the prescribed dimensions results in a diminished effectiveness of the WDUZ due to unusual configuration of the site itself and not the preferred characteristics in a development proposal.

While the Plan includes parameters to appropriately limit the application of this substitution to only those parcels where such application would provide improved effectiveness in the use of the water's edge for water-dependent industrial use and lays out clear alternative setback distances and appropriate maintenance of the net area of WDUZ, as a condition of my approval, projects proposed for modification of the WDUZ under this provision shall be subject to the review and approval of MassDEP, prior to the issuance of a Chapter 91 license.

As a result of my review, and with the conditions included in this Decision, I believe that the proposed substitute provision has been clearly articulated and has been sufficiently offset by limitations that achieve greater effectiveness of water-dependent use and ensure no net loss of WDUZ, so that the proposed substitute provision promotes the state's tidelands policy objective for guaranteeing that sufficient space along the water's edge will be devoted exclusively to water-dependent use as appropriate for Gloucester Harbor.

Table 1. Summary of Substitute Provision for Gloucester Harbor Plan

Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measures
310 CMR 9.51(3)(c): Establishment of a Water Dependent Use Zone (Continuation from 2009 Plan)	"…along portions of a project shoreline other than edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet…" and "…along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet" and "…along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet."	For project sites that meet the eligibility standard, the required WDUZ dimensions may be modified as long as a minimum width of 25 feet is maintained along the project shore line and the ends of piers and wharfs and a minimum of 10 feet along the sides of piers and wharves, and as long as the modification results in no net loss of WDUZ area.	Substitution provision can only be applied to those project sites where it is shown that application of the Ch. 91 standard would result in an inefficient siting of uses in the WDUZ, and where the reconfiguration achieves greater effectiveness in the use of the water's edge for water- dependent industrial use. The reconfigured zone must be adjacent to the waterfront and result in an increase in WDUZ immediately adjacent to the water. In no case will a reconfigured WDUZ that results in an area separated from the waterfront or in a net loss of WDUZ be allowed.

Evaluation of Proposed Amplification Provisions

The Review and Approval of Municipal Harbor Plans regulations at 301 CMR 23.05(2)(b) require a finding that any provision that amplifies a discretionary requirement of the Waterways regulations will complement the effect of the regulatory principle(s) underlying that requirement. Upon such a finding, MassDEP is committed to "adhere to the greatest reasonable extent" to the applicable guidance specified in such provisions, pursuant to 310 CMR 9.34(2)(b)(2). The renewal Plan contains four provisions that will have significance to the Chapter 91 licensing process as amplifications, pursuant to 301 CMR 23.05(2)(b). My determination of the relationship of these proposed local amplification provisions to c.91 standards in accordance with the MHP regulatory guidance is discussed below. A summary of the proposed amplification provisions for the 2014 Plan is provided below in Table 2.

Standards to Protect Water-Dependent Uses [9.36(4)(b)]

The c.91 standard at 310 CMR 9.36(4)(b) states that "…the project shall include arrangements determined to be reasonable by the Department for the water-dependent use to be continued at its existing facility, or at a facility at an alternative location having physical

attributes, including proximity to the water, and associated business conditions which equal or surpass those of the original facility as may be identified in a municipal harbor plan…". In the first proposed amplification provision, the Plan specifies that proposed projects with new uses will not displace existing commercial fishing vessel berthing in Gloucester Harbor without providing reasonably equivalent berthing space on site or at a suitable alternative site not already used by commercial fishing vessels.

The Plan recognizes that commercial berthing space on the harbor is limited, specifically for commercial fishing vessels, and seeks to protect these valuable spaces wherever possible. The proposed amplification will specifically protect commercial fishing vessels from displacement from an existing berth without the assurance of reasonable accommodation at a comparable and suitable alternative site, and assures that no commercial fishing vessel will be displaced at the alternative site. As an enduring stated goal of the 2014 Plan is to improve and protect commercial fishing fleet berthing, I find that this proposal will achieve this local goal while complementing the underlying principle of the c.91 regulatory standard, and I approve this amplification subject to the conditions provided at the end of this Decision.

Standards to Protect Water-Dependent Uses [9.36(5)(b)4]

The standard at 310 CMR 9.36(5)(b)4 states that "…in the case of supporting DPA use, conditions governing the nature and extent of operational or economic support must be established to ensure that such support will be effectively provided to water-dependent-industrial uses."

The Plan continues to emphasize the importance of improving the water-dependent marine industrial infrastructure on the waterfront, and therefore proposes to maintain an amplification approved under the 2009 Plan. Particularly, the Plan maintains that certain marine-industrial uses are critical to preserving Gloucester Harbor as a full-service regional port for the commercial fishing industry, and recognizes that maintenance of these uses directly related to commercial fishing is of utmost importance to the viability of the commercial fishing industry in Gloucester. However, the Plan acknowledges that in some cases, there may be no marine industrial use on a site or a clear opportunity to directly support such improvements on a given project site. For this proposed amplification provision, the Plan builds on the current c.91

requirement—where, in the absence of a water-dependent-industrial use on site, MassDEP identifies financial or other means (e.g., capital waterfront improvements) of direct support for the DPA—by providing specific guidance to MassDEP in their application of this standard. Specifically, the Plan offers a tiered approach to assure that supporting use funds provided under the above cited c.91 standard will be applied with due consideration for priority water-dependent marine industrial infrastructure. These tiers are set up as follows:

1. For properties with a water-dependent industrial port use, economic support from the supporting use to the water-dependent industrial use will be presumed.
2. If no water-dependent industrial use exists or is proposed on the site, an investment in on- site waterfront infrastructure (e.g., piers, wharves, or dredging) to improve capacity for water-dependent industrial use will be required. Whenever feasible, maintenance of existing berthing and creation of new berthing for commercial vessels should be required.
3. If, and only if, none of the above can be achieved adequately, a contribution to the Gloucester Port Maintenance and Improvement Fund will be required as mitigation. This fund shall be used only for investment in water-dependent industrial infrastructure within the DPA.

I find that the proposed amplification compliments the underlying principle of the c.91 regulatory provision within the local goals and context, and I approve the amplification as described above and subject to conditions below.

Utilization of Shoreline for Water-Dependent Purposes [9.52(1)(a)]

The standard at 310 CMR 9.52(1)(a) states that, for nonwater-dependent projects, "…when there is a water-dependent use zone, the project shall include one or more facilities that generate water-dependent activity of a kind and to a degree appropriate for the site given the nature of the project, conditions of the adjacent water body and other relevant circumstances." Activation of the waterfront continues to be an important theme in the 2014 Plan. The three amplifications proposed for this standard seek to improve public access to the working harbor without interfering with the water-dependent industrial uses that make up the waterfront.

The first amplification to the c.91 standard above proposes to incorporate public access as the open space requirement for nonwater-dependent supporting DPA use projects wherever possible, but only when it can be sited in a manner that is compatible with and not interfere with the water-dependent industrial uses and activities on the site. In this way, the City is able to encourage incorporation of public access into projects and move forward its goal of improved

access to the harbor, while assuring that the access is appropriate for the site and use in question. Successful public access in the DPA requires assurance that any such facilities will be designed and sited such that it does not interfere with the primary water-dependent industrial uses of a working waterfront. As this amplification acknowledges this need for balance, I am satisfied that this proposal effectively compliments the regulatory principle of this provision.

The second proposed amplification to the utilization of shoreline for water-dependent purposes standard requires areas of waterfront that are used only seasonally for water-dependent industrial activity be activated for temporary public access. In this way, the Plan allows flexibility in use to meet the City's public access goal, while still promoting the primary use of the waterfront for water-dependent industrial use. Again, because the provision maintains the water-dependent industrial character and use of these areas, while supporting considered shoreline use through public access, I find the proposal compliments the underlying regulatory principle of the standard.

The last requested amplification provision under 9.52(1)(a) requires that a proposed project include a provision to allow access to water-borne vessels wherever possible. This provision is intended to improve access to vessel berthing and activate the waterfront to the greatest extent possible. As the Plan clearly articulates the need for additional berthing and access to water-borne vessels as an important municipal priority, I find that the proposed amplification adequately compliments the effect of this regulatory principle.

Amplification of DPA Water-Dependent Industrial Uses [9.12(2)(b)]

The standard for water-dependent use at 301 CMR 9.12(2) requires that to be authorized, a use must "…require direct access to or location in tidal or inland waters, and therefore cannot be located away from said waters." Within this definition, 301 CMR 3.12(2)(b) provides specific examples of the types of activities that shall be considered to be water-dependent industrial. The Plan describes diversification of Gloucester's working waterfront as the cornerstone of the City's economic development and port development strategies, and proposes to amplify the discretionary aspects of this definition to include marine science and technology activities that have equivalent characteristics to those currently listed under 310 CMR 9.12(2)(b).

The proposed amplification preserves the use-based definition and water-related characteristics of the c.91 standard to clarify that marine research, testing, or development

activities with certain minimum characteristics, may be considered to be water-dependent industrial uses in the Gloucester DPA. These characteristics include:

1. A requirement to access coastal waters for research, testing, or development (310 CMR 9.12(2)(b)(2); and
2. Commercial fishing facilities, including those engaged in research, testing, or development related to commercial fishing safety, conservation, and sustainability (310 CMR 9.12(2)(b)(4); or
3. Boatyards, dry docks, and other facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures engaged in marine science and technology, including research, development, or testing (310 CMR 9.12(2)(b)(5); or
4. Facilities for tug boats, barges, dredges, or other vessels engaged in port operations or marine construction, including those related to marine research, development, or testing (301 CMR 9.12(2)(b)(6).

To approve this provision, I must find that the proposed amplification will not contradict the corresponding provisions of the Waterways regulations; does not alter the substantive nature of the requirement, narrow the range of factors that may be considered or otherwise unreasonably affect the ability of MassDEP to exercise discretion in the interpretation and application of the relevant c.91 provisions; and assure that the amplification is consistent with other relevant state agency regulations and statutes. Here I find that, because this amplification provision reasonably builds upon existing definitions of water-dependent industrial uses in the Waterways regulations, assures that the principal requirement for direct access to water is met, and provides broad discretion to MassDEP in the interpretation of the standard, the proposed amplification does not alter the effect of the underlying regulatory principle.

Table 2: Summary of Amplifications

Regulatory Provision	Chapter 91 Standard	Proposed Amplification
9.36(4)(b) Standards to Protect Water-Dependent Uses (displacement) (Continuation from 2009 Plan)	"…the project shall include arrangements determined to be reasonable by the Department for the water-dependent use to be continued at its existing facility, or at a facility at an alternative location having physical attributes, including proximity to the water, and associated business conditions which equal or surpass those of the original facility and as may be identified in a municipal harbor plan…"	No project will displace existing commercial fishing vessel berthing in Gloucester Harbor without providing reasonably equivalent berthing space on site or at a suitable alternative site not already used by commercial fishing vessels.

9.36(5)(b)(4) Standards to Protect Water-Dependent Uses (operational or economic support) (Continued from 2009 Plan)	"…in the case of supporting DPA use, conditions governing the nature and extent of operational or economic support must be established to ensure that such support will be effectively provided to water-dependent- industrial uses…"	For properties with a water-dependent industrial hub port use, economic support from the supporting use to the hub use will be presumed. If no water-dependent industrial use exists or is proposed on the site, an investment in on-site waterfront infrastructure (piers, wharves, dredging) to improve capacity for water-dependent industrial use will be required. Whenever feasible, maintenance of existing berthing and creation of new berthing for commercial vessels should be required. If, and only if, none of the above can be achieved adequately, a contribution to the Gloucester Port Maintenance and Improvement Fund will be required as mitigation. This fund shall be used only for investment in water-dependent industrial infrastructure (piers, wharves, dredging) within the DPA.
9.52(1)(a) Utilization of Shoreline for Water Dependent Purposes (Contination from 2009 Plan)	When there is a water-dependent use zone, "the project shall include … one or more facilities that generate water-dependent activity of a kind and to a degree appropriate for the site given the nature of the project, conditions of the adjacent water body and other relevant circumstances…"	To the extent practicable for a site, public access facilities shall be integrated into a project to activate the waterfront as part of the open space required with a non water-dependent supporting DPA use but must be sited to be compatible with and not interfere with water-dependent industrial uses and activities. Open areas used to support working waterfront activities seasonally during the year shall accommodate temporary public access when possible. Within the water-dependent use zone no use shall be licensed unless it provides access to water-borne vessels wherever possible.
9.52(1)(a) Utilization of Shoreline for Water Dependent Purposes (Continuation from 2009 Plan)	When there is a water-dependent use zone, "the project shall include … one or more facilities that generate water-dependent activity of a kind and to a degree appropriate for the site given the nature of the project, conditions of the adjacent water body and other relevant circumstances…"	To the extent practicable for a site, public access facilities shall be integrated into a project to activate the waterfront as part of the open space required with a non water-dependent supporting DPA use but must be sited to be compatible with and not interfere with water-dependent industrial uses and activities. Open areas used to support working waterfront activities seasonally during the year shall accommodate temporary public access when possible. Within the water-dependent use zone no use shall be licensed unless it provides access to water-borne vessels wherever possible.

9.12(2)(b) Standard for Water-Dependent Industrial Uses	The Department shall find to be water-dependent-industrial the following uses: 1. Marine terminals and related facilities for the transfer between ship and shore, and the storage of bulk materials or other goods transported in waterborne commerce; 2. Facilities associated with commercial passenger vessel operations; 3. Manufacturing facilities relying primarily on the bulk receipt or shipment of goods by waterborne transportation; 4. Commercial fishing and fish processing facilities; 5. Boatyards, dry docks, and other facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures; 6. Facilities for tug boats, barges, dredges, or other vessels engaged in port operations or marine construction; 7. Any water-dependent use listed in 310 CMR 9.12(2)(a)9 through 14., provided the Department determines such use to be associated with the operations of a Designated Port Area; 8. Hydroelectric power generating facilities; 9. Offshore renewable energy infrastructure facilities in the Commonwealth, including ocean wave energy facilities used to deliver electricity, natural gas or telecommunications services to the public from an offshore facility located outside the Commonwealth; and 10. Other industrial uses or infrastructure facilities which cannot reasonably be located at an inland site as determined in accordance with 310 CMR 9.12(2)(c) or (d).	In addition to existing allowable water-dependent industrial uses, MassDEP may find that marine research, testing or development activities are water-dependent industrial uses if they include the following characteristics: 1. Access to coastal waters for research, testing or development; AND 2. Commercial fishing facilities; including those engaged in research, testing, or development related to commercial fishing safety, conservation, and sustainability; or 3. Boatyards, dry docks, and other fishing facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures engaged in marine science and technology, including research, development, or testing; or 4. Facilities for tug boats, barges, dredges, or other vessels engaged in port operations or marine construction, including those related to marine research, development, or testing.

Evaluation of DPA Master Plan

Because the Plan is intended to serve, in part, as a Master Plan for the DPA, the approval criteria at 301 CMR 23.05(2)(e) requires a finding that the Plan preserves and enhances the

capacity of the DPA to accommodate water-dependent industrial use and prevent substantial exclusion of such use by any other use eligible for licensing in the DPA pursuant to 310 CMR 9.32. Specifically, the Plan must ensure that extensive amounts of the total DPA area are reserved for water-dependent industrial uses and that commercial uses will not, as a general rule, occupy more than 25% of the DPA land area covered by the master plan. The Plan must also set forth reasonable limits on commercial uses that would significantly discourage present or future water-dependent industrial uses and ensure that commercial uses mix compatibly and will not alter the predominantly maritime industrial character of the DPA. The Plan should also identify industrial and commercial uses allowable under local zoning that will qualify as a supporting DPA use, and identify a strategy for the ongoing promotion of water-dependent industrial use.

The stated goals of the DPA Master Plan section of Gloucester's Municipal Harbor Plan are to strengthen Gloucester's maritime industries, update the plan and its provisions to reflect the recent CZM boundary review decision, and help to build a flexible future for the waterfront that is responsive to emerging maritime uses and industries. To achieve these goals, the Plan proposes to amend the approach to meeting the above approvability standards in a way that will simplify state Chapter 91 licensing within the DPA and better clarify local versus state permitting jurisdictions by focusing the DPA master plan on the land area within Chapter 91 jurisdiction only. The new approach requires one-hundred percent WDI uses on the State Fish Pier; the U.S. Coast Guard Facility; Cruiseport Gloucester; or within or on any DPA roadway or pile-supported pier, while still maintaining the goal of allowing up to fifty percent supporting uses within Chapter 91 jurisdiction on most properties. This 2014 approach transfers the area to be reserved for WDI uses to be fully within filled and flowed tidelands in the DPA. Because these areas will be subject to Chapter 91 licensing, the approach provides a method to track WDI and commercial uses that is more equitable and easier to administer than the 2009 method. In terms of limiting commercial uses that would significantly discourage present or future water-dependent industrial uses, the proposed approach results in an increase of area reserved for WDI use in close proximity to the water as compared to the 2009 method (35 acres vs. 30 acres), and a slight increase of the total area of supporting uses that could be allowed within jurisdiction over that allowed under Chapter 91 (without an MHP), from 25% to approximately 28% (12.25 acres to 14 acres). The master plan also allows additional flexibility in location of the required WDI uses, promoting greater use flexibility for those properties with the greatest challenges for redevelopment in the planning area.

The DPA Master Plan continues to prevent commitments of space or facilities that would significantly discourage present or future water-dependent industrial activity, especially on waterfront sites, through amplifications of the Waterways regulations as discussed above, through maintenance of previous revisions to the local zoning ordinance that require special conditions through site plan review to address this standard as approved for the 2009 Plan, and through a more targeted approach to reserving WDI use area within Chapter 91 jurisdiction. While the local zoning provisions limiting commercial uses on parcels within the DPA to fifty percent will be removed to accommodate this new approach, I find that the proposed requirements serve to more effectively avoid displacement of existing uses, prevent interference of water-dependent industrial uses, and assure compatibility of uses between the working waterfront and the surrounding areas.

The 2014 Plan includes a recommendation to maintain most zoning changes implemented under the 2009 Plan, and further amend the City's Use Regulations Schedule, which identifies any industrial and commercial uses to be allowable for licensing by MassDEP as Supporting DPA Uses, to exclude new developments or conversions for (1) housing units and other residential use; (2) hotels, motels, and other facilities for transient lodging; (3) hospitals, nursing homes, and other care facilities; and (4) daycare centers, primary schools, secondary schools, or other schools unrelated to maritime trades or marine science and technology. Noting that all supporting DPA uses allowable for licensing must comply with the provisions of both the local zoning ordinance and the definition at 310 CMR 9.02, I find that the allowable industrial and commercial uses to be licensed as Supporting DPA Uses for the Gloucester DPA are appropriate.

Finally, the DPA Master Plan includes a strategy to guide the on-going promotion of water- dependent industrial use. The strategy includes recommendations for capital and operational improvements to be provided by projects involving DPA supporting uses, including specific recommendations that such improvements or use of funds be directed toward commercial berthing, dredging and improvement of water-dependent industrial infrastructure (wharves, piers) only. The Plan also seeks to support the fishing industry both directly and by seeking to attract and expand the kind of businesses and industries that might build upon the existing marine assets and knowledge base of the fishing community in order to further strengthen it. Toward this end, the Plan includes a provision to clarify that marine research,

testing, or development activities with certain key characteristics may be determined to be water-dependent industrial uses within the Gloucester DPA in order to provide direct and/or indirect support for commercial fishing while supporting the City's marine diversification goals. Further, the Plan maintains recommendations to support needed dredging, maintain commercial vessel berthing for the commercial fleet, support initiatives to bring more cruise ships to Gloucester, and further encourage new marine industrial technologies, such as producing new products from fish processing. Locally, the management and implementation of the goals of the DPA Master Plan will continue to be handled through the City's Community Development Office. These elements together will serve as a functional and effective strategy to guide the ongoing promotion of water-dependent industrial use for the Gloucester Harbor DPA.

Based on the information provided in the Plan as discussed above and subject to the conditions at the end of this Decision, I find that the DPA Master Plan components of the Plan are consistent with the requirements of 301 CMR 23.05(2)(e).

C. Relationship to State Agency Plans

The only state-owned property in Gloucester Harbor is the Jodrey State Fish Pier, which is owned by the Department of Conservation and Recreation and managed by MassDevelopment. The 2014 Plan includes three recommendations affecting activities on the State Fish Pier, which are consistent with the State's ongoing efforts to revitalize and diversify uses in order on the Pier to expand the harbor's capabilities and support the fishing industry in Gloucester. Recommendations carried over from the 2009 Plan include a plan to dredge the north face of the pier to provide for better vessel access, and a recommendation to allow some marine industrial businesses to utilize existing truck parking on the State Fish Pier in order to minimize the number of trucks parking along downtown streets. The third recommendation under this 2014 Plan is to maintain the State Fish Pier as one-hundred percent water-dependent industrial use, consistent with its mission. The City coordinated with MassDevelopment throughout the preparation of the Harbor Plan, therefore I find that no incompatibility exists with agency plans for continued operation.

D. Implementation Strategy

Pursuant to 301 CMR 23.05(4), the Plan must include enforceable implementation commitments to ensure that, among other things, all measures will be taken in a timely and

coordinated manner to offset the effect of any plan requirement less restrictive than that contained in 310 CMR 9.00. The provisions of this Plan will be implemented through proposed amendments to the Gloucester Zoning Ordinance. These local rule revisions, in concert with the Chapter 91 licensing provisions approved under this Plan will ensure that an extensive amount of the total DPA land area in close proximity to the water will be reserved for water-dependent industrial use and that commercial uses and any accessory uses thereto would be limited in the DPA. Further, the amended zoning provisions will assure that permitted uses are consistent with the approved substitute provision, offsetting measures and amplifications described in the plan. The Plan further provides additional direction in the application and issuance of Chapter 91 licenses for sites in the planning area. Accordingly, I find that this approval standard is met subject to the condition detailed below which requires local enactment of the implementation commitments.

II. EFFECTIVE DATE AND TERM OF APPROVAL

This Decision shall take effect immediately upon issuance on December 19, 2014. The City requested a five year approval for this Decision. However, in keeping with current practice, the Decision shall expire ten (10) years from this effective date, recognizing that a renewal request may be filed prior to that date in accordance with the procedural provisions of 301 CMR 23.06. No later than six months prior to such expiration date, in addition to a notice to the City required under 301 CMR 23.06(2)(b), the City shall notify the Secretary in writing of its intent to request a renewal and shall submit therewith a review of implementation experience relative to the promotion of state tidelands policy objectives.

III. STATEMENT OF APPROVAL

Based on the planning information and public comment submitted to me pursuant to 301 CMR 23.04 and evaluated herein pursuant to the standards set forth in 301 CMR 23.05, I hereby approve the 2014 Plan renewal as the Municipal Harbor Plan for the City of Gloucester, subject to the following conditions:

1. The DPA Master Plan elements of the MHP will not be in effect and MassDEP shall not issue a license reflecting water-dependent industrial use and supporting DPA use standards approved by this Plan until the local implementation commitments laid out in the 2014 Plan through amendments to the Gloucester Zoning Ordinance have been

enacted through the City's established governance process. The Plan shall be updated to reflect the final local code and standards accepted as required in condition 10.

2. MassDEP shall not license commercial DPA supporting uses within the Gloucester DPA within filled and flowed tidelands in the following areas: on the State Fish Pier; the U.S. Coast Guard Facility; Cruiseport Gloucester; or within or on any DPA roadway or pile-supported pier.

3. MassDEP shall apply a substitute reconfigured Water Dependent Use Zone (WDUZ) as described above only when a clear showing has been made that the application of the c.91 standard would result in an inefficient siting of uses in the WDUZ and where the resultant reconfiguration achieves greater effectiveness in the use of the water's edge for water-dependent industrial use. For reconfiguration of any WDUZ the following conditions shall apply:
    a. The reconfiguration shall result in no net loss of WDUZ area;
    b. The reconfigured WDUZ shall be adjacent to the water and must adhere to the following minimum dimensions: 25 feet width maintained along the project shoreline and the ends of piers and wharfs, and 10 feet width along the sides of piers and wharves; and
    c. The reconfigured WDUZ shall not result in an area of WDUZ separated from the water.

4. MassDEP shall not license a project use in the WDUZ zone unless access to water-borne vessels is provided, wherever possible.

5. MassDEP shall not license any project which will displace any commercial fishing vessel berthing in Gloucester Harbor without reasonable accommodation to provide equivalent berthing space on site or at a suitable alternative site not already used by commercial fishing vessels.

6. During licensing of projects with supporting DPA uses, MassDEP should establish the extent of operational or economic support provided to water-dependent industrial uses by supporting DPA uses, as follows:
    a. For properties with a water-dependent industrial hub port use (i.e., uses directly related to commercial fishing), economic support from the supporting use to the hub use will be presumed.

b. If no water-dependent industrial use exists or is proposed on the site, an investment in on-site waterfront infrastructure (piers, wharves, dredging) to improve capacity for water-dependent industrial use will be required. Whenever feasible, maintenance of existing berthing and creation of new berthing for commercial vessels should be required.
c. If, and only if, none of the above can be achieved adequately, a contribution to the Gloucester Port Maintenance and Improvement Fund will be required as mitigation. This fund shall be used only for investment in water-dependent industrial infrastructure (piers, wharves, dredging) within the DPA.

In the limited circumstances where a contribution to the Fund is required, MassDEP will determine the amount of the contribution and will require payment as a condition of licensing, consistent with current practice. The City will be responsible for creating and administering the Fund. Expenditures from the Fund are restricted to investment in water-dependent infrastructure within the DPA (such as, but not limited to: repairs or construction of piers and wharves or for support for marine industrial dredging) and will be made in accordance with a priorities plan to be prepared and maintained by a Port and Harbor Committee to be appointed by the mayor. The City shall submit to MassDEP an annual report detailing the Fund expenditures and balances.

7. MassDEP shall allow, to the extent practicable for a site, the integration of public access facilities into a project to activate the waterfront as part of the open space required with a nonwater-dependent supporting DPA use, so long as it is sited to be compatible with and not interfere with water-dependent industrial uses and activities.

8. MassDEP shall allow open areas used to support working waterfront activities seasonally during the year to accommodate temporary public access when possible.

9. In addition to existing allowable water-dependent industrial uses, MassDEP may find that marine research, testing or development activities are water-dependent industrial uses if they include the following characteristics:
   a. A requirement to access coastal waters for research, testing, or development; and
   b. Commercial fishing facilities, including those engaged in research, testing, or development related to commercial fishing safety, conservation, and sustainability; or
   c. Boatyards, dry docks, and other facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures engaged in marine science and technology, including research, development, or testing; or
   d. Facilities for tug boats, barges, dredges, or other vessels engages in port operations or

marine construction, including those related to marine research, development, or testing.

10. The City shall prepare a final, approved Gloucester Harbor Plan ("Approved Plan") to include:

    a. The Plan dated July 2014 as amended during the consultation period as further described in the supplemental documentation submitted by the Mayor on October 31, 2014,and by City enactment of local zoning; and
    b. This Approval Decision.

Copies of the final, approved plan shall be provided to CZM and MassDEP's Waterways Program, kept on file at the City Clerk and Community Development Offices, and made available to the public through the city's website and copies at the library. For waterways licensing purposes, the Approved Plan shall not be construed to include any of the following:

1. Except as described above, any subsequent addition, deletion, or other revision to the submitted plan dated July 2014, except as may be authorized in writing by the Secretary as a modification unrelated to the approval standards of 301 CMR 23.05 or as a plan amendment in accordance with 301 CMR 23.06(1); and

2. Any provision which, as applied to the project-specific circumstances of an individual license application, is determined by MassDEP to be inconsistent with the Waterways regulations at 310 CMR 9.00 or with any qualification, limitation, or condition stated in this Approval Decision.

In a letter from the Waterways Program Chief dated December 19, 2014, MassDEP has expressed support for approval of the renewal Plan and stated that the Plan will become operational for waterways licensing for all applications upon the effective date of Plan approval and in accordance with the conditions above. Subsequent to Plan approval, a determination of conformance with the Plan will be required for all proposed projects in accordance with 310 CMR 9.34(2).

Maeve Vallely-Bartlett
Secretary of Energy and Environmental Affairs

12/19/14
Date

MassDEP
Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

MAEVE VALLEY BARTLETT
Secretary

DAVID W. CASH
Commissioner

December 19, 2014

Maeve Vallely Bartlett, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, 9th floor
Boston, MA 02114

RE: DEP Recommendation for the Approval of the City of Gloucester's Municipal Harbor Plan and Designated Port Area Master Plan Renewal, dated July 30, 2014.

Dear Secretary Vallely-Bartlett:

The Department of Environmental Protection, Waterways Regulation Program ("the Department") has reviewed the City of Gloucester's Municipal Harbor Plan and Designated Port Area Master Plan Renewal ("Plan"), dated July 30, 2014, and the supplemental information submitted by the City on October 31, 2014. The Department's staff members have worked closely with the Massachusetts Office of Coastal Zone Management (CZM) and representatives of the City of Gloucester throughout the planning process and our comments have been adequately addressed and incorporated into the final Plan. The WRP, therefore, recommends that you approve the Plan and make a finding that it is consistent with state tidelands policy objectives, as required by 301 CMR 23.05(3).

The Department will adopt as binding guidance in all License application review any Substitute Provisions contained in the Approved Plan. The Plan has been carefully structured to ensure that any applicable Substitutions and Offsets will adequately meet or exceed the protected interests pursuant to 310 CMR 9.00. The only Substitution contained in the Plan will modify the standards pursuant to 310 CMR 9.51(3)(c), which governs allowable uses and setbacks in the Water-dependent Use Zone (WDUZ). Based on the conditions that must be met to qualify for this Substitute provision, and the minimum dimensional requirements that must be adhered to in the application thereof, the Department has determined that the Plan has established appropriate Offsets for this Substitution.

The Plan also establishes several important Amplifications, pursuant to 310 CMR 9.34(2)(b)2, whereby applicants must adhere to the greatest reasonable extent to the guidance specified in the Plan. Those Amplifications include carryover provisions from the Approved 2009 Plan, including protections against displacement of existing Water-dependent Industrial Uses, including commercial berthing, pursuant to 310 CMR 9.36(4)(b); conditions governing the nature and extent of the operational and economic support to effectively provide and promote water-dependent industrial use,

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pursuant to 310 CMR 9.36(5)(b)4; the appropriate location and seasonal use standards for facilities to generate water-dependent active use of the project shoreline, pursuant to 310 CMR 9.52(1)(a)1; and an Amplification new to the 2014 Plan, to clarify that under the definitions of Water-dependent Industrial Use, marine research, testing, or development activities with certain minimum characteristics, may be considered to be water-dependent industrial uses in the Gloucester DPA, pursuant to 310 CMR 9.12(2)(b).

In accordance with the provisions of 310 CMR 9.34(2), the Department will require conformance with any applicable provisions of the approved Plan in the case of all waterways license applications submitted subsequent to the Plan's effective date. It will apply as well to all pending applications for which no public hearing has occurred or where the required public comment period has not expired by the effective date of the approved Plan.

The Department looks forward to continuing its work with CZM and the representatives of the City of Gloucester in the implementation of this important planning effort. Should you have any questions in regard to the foregoing, please contact me at (617)292-5615. Thank you for your consideration.

Sincerely,

Ben Lynch
Program Chief
Waterways Regulation Program

Cc: Mayor Carolyn Kirk, City of Gloucester
Greg Cademartori, Planning Director, City of Gloucester
James Caulkett, City of Gloucester Harbormaster
Rick Noonan, Chair, Gloucester Harbor Planning Committee
Bruce Carlisle, Director, CZM
Brad Washburn, Assistant Director, CZM
Kathryn Glenn, Northern Regional Coordinator, CZM
WRP MHP files