

Chapter 711: SHORE OUTHAULS

HISTORY: Adopted by the Conservation Commission of the Town of Barnstable 6/1/2010.

GENERAL REFERENCES

Ch. 703 Private Docks and Piers.

Wetlands protection — See Ch. 237.

§ 711-1. Preamble.

- A. Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable, explicitly protects the values of the natural resources of its fore shores, intertidal areas and the Commonwealth of Massachusetts' tidelands and waters as well as inland wetlands, ponds and lakes.
- B. The purpose of these regulations is to establish performance standards for shore outhauls. The authority for these regulations derives from Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable, Section 8.
- C. The construction, use, and maintenance of shore outhauls are likely to have a significant or cumulative adverse effect on the wetland resource values of storm damage prevention, fin and shellfisheries, wildlife habitat, erosion and sediment control, and recreation. Construction, and use of shore outhauls can have adverse effects on resource areas and on the use of these areas for recreational purposes. Further, shore outhauls destroyed by storm pose a threat to nearby properties by increasing water-borne debris.
- D. Turbulence, such as caused by jet-drive boats, and propeller dredging generated by boat use with shore outhauls significantly increase turbidity levels. High turbidity levels attenuate light. Light is necessary for photosynthetic process responsible for the primary productivity and oxygen regeneration of the water. The suspended sediments settle on shellfish beds, smothering existing shellfish and altering the quality of the benthic environment essential for spat (mollusk larvae) settlement. Resuspension of bottom sediments causes redistribution of

sediments, alteration in sediment grain size distribution and causes changes in bottom topography relief, elevation and grade, including creation of depressions in the bottom. Settlement of sediments into depressions can create deep pockets of highly fluid-like sediment which may not be able to physically support shellfish or which can become anoxic and therefore not support shellfish. Disturbance of sediments during the period of shellfish larval settlement hinders or prevents the effective settlement of shellfish larvae. Boat traffic generated from shore outhauls will add to this disruption and may cause erosion of banks and marshes.

- E. Construction of shore outhauls and subsequent boat activity causes resuspension of nutrient-laden sediment particles which may cause a release of sediment-bound nutrients to the water column resulting in a "bloom" of vegetation. Release of nutrients to the water column leads to eutrophication and anoxic bottom conditions. Anoxic sediments and anoxic bottom conditions create adverse impacts on benthic resources, including shellfish and fisheries.
- F. Propeller turbulence near or in areas of submerged aquatic vegetation, such as eel grass, or salt marsh damages vegetation, thereby increasing the rate at which organic detritus is produced. If this organic detritus does not completely decompose aerobically, then anoxic bottom conditions will ensue, which adversely impact shellfish and fisheries.
- G. Cumulative impacts of the construction and use of shore outhauls threaten to decrease the overall productivity of the marsh ecosystem, to reduce its ability to absorb storm wave energy, and to reduce its contribution to groundwater and surface water quality. Cumulative impacts also affect shellfish habitat and shell fishing.
- H. Shore outhauls when placed in land containing shellfish or shellfish habitat have an adverse impact on the resource area value of recreation. The placement of shore outhauls can interfere with the harvesting of quahogs, soft shell clams, oysters, and scallops. Shore outhauls can have an unacceptable significant or cumulative effect on habitat and recreation as defined in Section 14 of Chapter 237, Wetlands Protection, of the General Ordinances of

the Code of the Town of Barnstable.

- I. Shore outhauls, depending on their length (distance from shore of their seaward piling), can have an adverse impact on recreation by interfering with recreational boating activities. Shore outhauls can interfere with intertidal lateral access for recreational fishing and fowling. Any proposal that affects navigation is likely to have a significant or cumulative adverse effect on recreation. The crowding or clustering of several outhauls on one parcel may exacerbate the adverse impacts to recreation.
- J. Shore outhauls conforming to the following regulations can be presumed to minimize the aforementioned possible negative impacts.
- K. All shore outhauls in Barnstable shall be governed by these regulations, whether accessory to residential use or serving commercial, Yacht Club, Association, Community, Town or other purpose.

§ 711-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

SHORE OUTHAUL — The term "shore outhaul" shall mean the entire structure of any boat securing and retrieval system by which a boat is secured to a line connecting a piling located in the water, and a post or similar structure on or near the shore. The shore outhaul system enables the craft to be retrieved for boarding or loading, and returned for securing following use.

PIER OUTHAULS — Pier outhauls are similar to shore outhauls but are connected in some way to a pier. Pier outhauls are subject to a different set of regulations (Ch. 703-Private Piers and Docks).

SEASONAL USE — The securing and retrieval system of the shore outhaul, including the line

and seaward piling, is not in place prior to April 1 of each year and is removed prior to November 1 of each year.

MOTORBOAT — Any vessel propelled by machinery whether or not such machinery is the principal source of propulsion (MGL CH. 90B, Sec. 1).

DRAFT — The maximum depth of a vessel as measured from the surface of the water to the deepest part when loaded to the manufacturer's maximum load specification. In vessels equipped with outboard or I/O engines, draft shall be measured with its propulsion unit in its lowest operating position.

MEAN HIGH WATER (MHW) — The present arithmetic mean of water heights observed at high tide over a specific 19-year metonic cycle determined by using hydrographic survey data of the National Ocean Survey and the U.S. Department of Commerce.

MEAN LOW WATER (MLW) — The arithmetic mean of water heights observed at low tide over a specific 19-year metonic cycle determined by using hydrographic survey data of the National Ocean Survey and the U.S. Department of Commerce.

MEAN LOWER LOW WATER (MLLW) — The average of the lower low water heights of each tidal day as established by the arithmetic mean of water heights observed at low tide over a specific 19-year metonic cycle determined by using hydrographic survey data of the National Ocean Survey and the U.S. Department of Commerce.

NAVIGATION — The ability to traverse a waterway by watercraft.

SHELLFISH HABITAT — Areas below MHW that exhibit, or can be demonstrated to have exhibited within a reasonable historical period, characteristics including but not limited to sediment type, grain size, circulation patterns, hydrologic regime, water chemistry, plant and algal communities, food supply, and normal predation patterns necessary to support shellfish species populations. A determination of shellfish habitat can be based on the results of a site analysis and/or on current or historic shellfish productivity, municipal shellfish population

development programs, or as shown on any maps or reports developed by the Marine and Environmental Affairs Division filed with the Commission and the Town Clerk (for example "The Significant Shellfish Resource and Habitat Area Mapping Project for the Three Bay Area," dated August 21, 2000). Shellfish relay areas are presumed to be good habitat. Absence of shellfish shall not be solely determinative of the quality of shellfish habitat due to the cyclic nature of shellfish population.

§ 711-3. *Application Requirements.*

A. Forms to be used to seek approval for new or existing shore outhauls

1. A Notice of Intent (NOI) is required for any new or existing shore outhaul on which a motorboat or any registered vessel is to be secured. All NOI applications shall satisfy the filing protocols as set forth in sections B through G below.

2. A Request for Determination of Applicability (RDA) is required for any new or existing shore outhaul on which exclusively non-motorized (and non-registered) boats are to be secured, or where the application seeks approval based on conditions that satisfy the Grandfathering criteria as set forth below under Subsection 4. Commission Guidelines for Filing an RDA Application shall be followed. Sketch plans are allowed. A copy of the RDA application shall be mailed (1st class postage) to the Harbor Master and, if the shore outhaul is to be located in salt water, to the Shellfish Biologist. Their address is 1189 Phinney's Lane Centerville, MA 02632.

3. Where an RDA has been filed, the Commission may determine that an NOI is necessary for any outhaul that is located in a high value shellfish habitat, or in a shellfish relay area, or where in its opinion the greater detail provided in the NOI filing requirements is necessary to aid the Commission in making its decision.

4. Grandfathering. An existing shore outhaul may be considered grandfathered only when it qualifies under one of the following subsections "a" or "b".

(a) A Chapter 91 license has been issued by the Commonwealth of Massachusetts prior to the adoption of these regulations by the Conservation Commission. Notwithstanding any prior Chapter 91 approval of a currently existing shore outhaul, an appropriate application for continued use must be filed with the Commission using the RDA permitting process described above.

(b) Grandfathering may also be extended for existing shore outhauls provided that the applicant submits the following information under either (b)(1) or (b)(2) below:

(1) Written proof of local approval granted prior to the construction and initial deployment of the shore outhaul and prior to the adoption of Chapter 711 by the Conservation Commission. The local approval shall have been granted by a town authority such as the Board of Selectmen or Town Council, Town Manager, Building Commissioner, Conservation Commission or other town authority deemed appropriate by the Commission. Proof of the above prior approval shall be in the form of a specific permit, such as a Building Permit, bearing the date and signature of the issuing authority, or published minutes from a public meeting of a town board, or a signed letter from a town authority on official letterhead or other proof as may be deemed acceptable by the Conservation Commission. Following Commission approval of an appropriate application under the RDA permitting process described above, the local permit holder must apply for and receive a Chapter 91 license from the Massachusetts Department of Environmental Protection.

(2) Upon submission of evidence, which the Commission deems satisfactory, that an existing shore outhaul or outhauls were in existence prior to January 1, 1973, the effective date of wetlands protection permitting in the Town of Barnstable. This evidence shall include an affidavit, signed under the pains and penalties of perjury, documenting that the construction and initial deployment of a shore outhaul or outhauls, as in the case of a community or association beach, occurred prior to that date and has been continuously maintained since that date. The Conservation Commission may require additional information including, but not limited to, dated photographs, vessel history, and other

documentation that are reasonably necessary for it to make its determination. Following Commission approval of an appropriate application under the RDA permitting process as described above, the local permit holder must apply for and receive a Chapter 91 license from the Massachusetts Department of Environmental Protection.

5. For all existing shore outhauls (including those to be permitted as being grandfathered) the deadline for application shall be no later than October 1, 2010. Upon request, the Conservation Commission or its staff may extend the deadline.

B. NOTICES OF INTENT: Except where noted below, Commission regulation Ch. 707, Regulation Governing Minimum Submission Requirements for Filing a Notice of Intent Application shall be adhered to. In addition, one copy of the NOI shall be provided to each person on the following list, by certified mail or hand-delivered, with a proof of mailing or receipt included in the NOI.

(1) Shellfish Biologist - Marine & Environmental Affairs Div. (for saltwater shore outhauls only)

(2) Harbor Master - Marine & Environmental Affairs Div.

C. The applicant shall provide evidence to the Conservation Commission at the time of the notice of intent filing that such copies have been mailed or delivered. The project shall be clearly identified, staked and marked on the landward end, and staked or buoyed at the seaward end at least two weeks prior to the hearing.

D. Any Notice of Intent (required for motorcraft use of a shore outhaul) shall include:

(1) Brief comments, where appropriate, on each of the Guidelines.

(2) Length, draft and type of boats, horsepower and type of propulsion system intended for use at the shore outhaul, including the depth of the propulsion system in its lowest

position.

- (3) Locus identified by Town Assessor's map and parcel number, and by street number, street and village.
- (4) Locus shown on Assessor's map.
- (5) Daytime telephone number of applicant, or name and telephone number of applicant's agent.
- (6) A shellfish survey (saltwater outhauls only), including an analysis of shellfish habitat suitability, and substrate sediment analysis. The minimum area surveyed shall be 50 feet in any direction from the area to be occupied by the shore outhaul. The actual samples shall represent no less than 0.5% of this area.
- (7) The shellfish survey report shall include as a minimum:
 - (a) The resume of the person(s) conducting the survey, including their qualifications for conducting such a survey;
 - (b) The date, time of day and tidal conditions at the time of the survey;
 - (c) A narrative explaining the methodology and equipment utilized, location and number of transects/quadrants utilized, results obtained, observations and conclusions.

E. The project plans shall show:

- (1) A description of all materials to be used and the method of pile installation; when near shellfish habitat, the type of precautions used to insure the barge and equipment used will not damage shellfish habitat.
- (2) Soundings within 100 feet of the shore outhaul and from the shore outhaul to the closest marked channel. Depth shall be measured to the top surface of soft sediments. Soundings shall be of sufficient density to allow the exact determination of water depths around the proposed shore outhaul, and to the closest navigable channel. The soundings

shall show the MLW in the areas where the proposed boat will be secured.

- (3) Data shall be supplied to the Commission showing the time and date of the depth survey, the existing weather conditions, the state of the tide and the actual depths measured from water surface to the bottom. The methodology used to determine MLW and MHW shall be given. If MLW or MHW is derived from NGVD or other reference Datum, an explanation of the calculations used must be included in the narrative.
- (4) Marked or recognized navigation channels within 100 feet of the proposed shore outhaul.
- (5) Any moorings within one hundred feet of the proposed shore outhaul and information affixed to those moorings
- (6) Location of other existing shore outhauls, Town landings (ways-to-water), public, association or community beaches, shellfish propagation or relay areas, and designated Town shellfishing areas within three hundred feet of the proposed shore outhaul.
- (7) Approximate shoreward boundary of any existing public or commercial mooring area within 200 feet of the proposed shore outhaul. (A recent aerial photograph, taken during the summer boating season, may be used for this purpose if desired.) Proximate moorings shall be shown on plan.
- (8) Location of existing piers and docks within 200 feet of the proposed shore outhaul.
- (9) The plan shall have the official stamp of a registered civil engineer or land surveyor.

F. In addition to the above requirements, the applicant shall comply with the Submission Requirements Checklist available at the Conservation Commission Office.

G. A Notice of Intent may not be accepted or approved by the Conservation Commission unless all of the foregoing requirements have been completed. If any section does not apply, such inapplicability shall be indicated.

§ 711-4. Regulations.

- A. Private shore outhauls, being structures accessory to and appurtenant to dwellings, will be permitted only on land contiguous to the dwelling being served, except where unusual circumstances of longstanding may apply, such as where the dwelling is separated from the shore by a road, or at a community or association beach, wherein the outhaul owner has standing. No private shore outhaul shall be constructed in the frontage of Town-owned parcels including, but not limited to public ways-to-water, landings, ramps, docks, beaches or conservation areas.
- B. No shore outhaul, even if otherwise permitted, may be constructed when it is appurtenant to a residential dwelling until an occupancy permit has been issued for that dwelling.
- C. Only non-CCA material may be used in the construction of the shore outhaul. Lead caps are not permitted. No creosote treated materials may be used.
- D. The DEP number and permit limitations sign shall be placed on the seaward piling visible from seaward. The designated color-code decal shall also be placed on the seaward piling, visible from both landward and seaward.
- E. No shore outhaul's seaward piling shall extend further from shore than:
 - (1) A point 35 feet from a publicly used channel, either a marked channel or a channel as defined by historic use.
 - (2) Is necessary to attain a depth of water at mean low water suitable for a private use of the shore outhaul that is consistent with protection of the wetland resources adjacent to the site and uses of the adjacent waters and wetlands by the public in pursuit of the interests protected under the Town of Barnstable Wetlands Protection Ordinance, but not greater than 50 feet from mean low water.
- F. Notwithstanding any other provision pertaining to length, no shore outhaul shall be longer than is necessary to attain the minimum depths required herein, and may not obstruct

waterways or foreshores normally used for recreation.

- G. The shore outhaul shall be as close as possible to the center line of the lot, and it shall project outwards at an angle as nearly perpendicular to the shoreline as possible.
- H. Within the limits of performance standards governing overall length of shore outhauls, the following depth requirements must be met for motorized vessels, with these draft requirements continuing over time:
 - (1) In areas determined to be of high-value shellfish habitat, the minimum depth under the draft of the boat must be 30 inches at MLW. High-value shellfish habitats are those found to be significant to the provision or protection of the wetland values protected under Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable.. Any area rated six or above on any maps or reports developed by the Natural Resources Division and filed with the Commission and the Town Clerk shall be presumptively considered a high-value shellfish area.
 - (2) In areas determined not to be high-value shellfish habitat, the minimum depth under the draft of the boat must be 12 inches at MLW.
 - (3) For vessels using unconventional drive systems, such as but not limited to jet-drives, the applicant, in addition to meeting the above minimum depth requirements, must further demonstrate that the water depth is adequate to protect the interests herein referenced.
 - (4) To prevent bottom scouring, the above-described minimum depths must exist not only at the shore outhaul where a boat is to be secured but also between the shore outhaul and the nearest navigable channel or open water. When secured to the retrieval system, the boat shall be kept at the seaward piling.
- I. Notwithstanding any other provisions contained herein, no shore outhaul shall be permitted within an ACEC (area of critical environmental concern).

- J. Shore out hauls shall be constructed so as to not interfere with any longstanding public recreational use of the waterway, e.g., an area used by sailboats tacking through a narrow waterway, an area used by boaters or others because of unique wind or current conditions, a structure that would interfere with public access to or from a way-to-water.
- K. All shore out hauls shall be seasonal, as defined under 711-2, and pile dimension shall not exceed 4"x4".
- L. Motorboats shall not be operated until minimum permitted depths are reached.
- M. A permit holder who knowingly violates the regulations listed in section 711-4 or fails to meet the general and special conditions listed in the Order of Conditions, or the special conditions listed in the Determination of Applicability may be subject to enforcement action by the Conservation Commission including, but not limited to, temporary or permanent revocation of the shore out haul permit if deemed appropriate by the Conservation Commission at the conclusion of a public hearing.

§ 711-5. Presumption of adverse effect; burden of proof; cumulative impact

- A. When a proposed project involves the dredging, removing, filling, altering or causing of a potentially adverse effect to an area subject to protection under the ordinance by the construction of a shore out haul, the Commission shall presume that the proposed activity will have a significant or cumulative adverse effect upon the resource values specified in Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable. These presumptions are rebuttable and may be overcome only by a preponderance of evidence showing that the work does not have a significant or cumulative adverse effect upon the resource values. The burden of proof to overcome the presumption shall be borne by the applicant. Moreover, the Commission will consider the impact of both existing and future shore out hauls with pending applications in determining the cumulative effects upon the protected resource areas. Where appropriate, the applicant may be required to submit a

drawing showing all possible shore outhauls that may meet Commission guidelines within 1/2 mile of the proposed shore outhaul or other agreed to cumulative physical location. The cumulative impact of such shore outhauls and the related boat use pattern on the values protected by the ordinance will be considered by the Commission. A project which may otherwise comply with these regulations and guidelines may be denied where its cumulative effect would result in an adverse impact upon the protected resource areas.

- B. These regulations notwithstanding, the Conservation Commission will consider any and all shore outhaul proposals on a site-specific basis, disposing of each according to its merit and to the degree that the preponderance of evidence shall show that the statutory interests have been preserved and protected.

§ 711-6. Construction protocol.

- A. The Natural Resources Department shall be given written notice by the applicant not less than 10 working days before the start of construction in order to arrange shellfish removal, reseeding, replanting, monitoring, and subsequent replanting if necessary, at the applicant's expense.
- B. The Conservation Commission shall be given written notice by the applicant not less than five business days before the start of construction.
- C. All construction shall proceed in compliance with the plan of record and the order of conditions. No alterations for which revised plans have not been approved prior to construction will be allowed.