FV93
4th quarter
PSM projects

New York Department of State
Division of Coastal Resources and Waterfront Revitalization

Harbor Management Plans

§309 Project of Special Merit

TC225.N7 N121.11

GUIDELINES FOR THE PREPARATION OF HARBOR MANAGEMENT PLANS

to the Office of Ocean and Coastal Resources Management
National Ocean Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

June 1994

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

DRAFT

NEW YORK STATE DEPARTMENT OF STATE
COASTAL MANAGEMENT PROGRAM

GUIDELINES FOR THE PREPARATION OF HARBOR MANAGEMENT PLANS

INTRODUCTION

NEED FOR HARBOR MANAGEMENT

Dramatic increases in the State's recreational boating fleet and other changes in the use of harbors has resulted in competition for space within and along the shores of the State's harbors and nearshore waters. Conflicts have increased between recreational boating and other recreational uses of harbors; between recreational and commercial activities; and between all uses and natural and cultural resources. These conflicts and a lack of clear authority to solve them has resulted in degraded natural and cultural characteristics of many harbors, and their ability to support a range of appropriate uses. The ability of municipalities to take advantage of potential growth in water-dependent recreation without destroying the viability of other water-dependent uses and important natural or cultural resources, has been constrained by a lack of clear municipal authority to regulate the wide range of uses and activities occurring in harbor and nearshore areas.

Despite growing problems associated with the use of harbors, municipal regulation within harbors and nearshore areas has been limited primarily to regulating vessel use, speed, anchoring, and mooring. Municipal regulation of other in-water uses and activities on underwater lands has varied by region of the State, and is different for cities, towns, and villages. For example, special State enabling legislation authorizes specific municipalities to regulate structures such as boathouses and docks. However, until recently, there had been no clear State enabling legislation authorizing all municipalities to regulate all uses and activities occurring in harbor and nearshore areas. This lack of clear enabling legislation, and overlaps in federal, State and local government regulatory authority, severely hampered the ability of the State and local governments to comprehensively manage activities in harbor and nearshore areas, and to resolve conflicts and other issues in these intensely used and important areas.

In order to resolve these issues, Chapter 791 of the Laws of 1992 was enacted, amending Article 42 of the Executive Law (Waterfront Revitalization and Coastal Resources Act) to provide local governments with the clear authority to comprehensively manage activities in harbor and nearshore areas by developing comprehensive harbor management plans and laws to implement those plans.

Article 42 of the Executive Law and Department of State regulations contain procedures for the development and approval of harbor management plans and their local implementing legislation. Harbor Management plans are to be developed with the participation of the public and federal, State and local governments and agencies. The Department of State provides information,

technical, and financial assistance to municipalities for the development of Harbor Management Plans as components of their LWRPs.

RELATIONSHIP OF HARBOR MANAGEMENT PLANS TO THE LOCAL WATERFRONT REVITALIZATION PROGRAM

To date, LWRPs have primarily been developed to address land uses in the coastal area, and have not fully addressed water use issues seaward of the shoreline. Harbor management plans address the problems of conflict, congestion, and competition for space in the use of harbors, surface waters and underwater lands within a city, town or village or bounding a city, town or village to a distance of fifteen hundred feet from the shore. They can be viewed as the seaward extensions of traditional land use planning and zoning concepts for the "wet side" of the coastal area.

These harbor management plans are to be undertaken as part of a Local Waterfront Revitalization Program (LWRP). Harbor management plans and their local implementing legislation are integral components of LWRPs. They are required for a Local Waterfront Revitalization Program to be approved. However, LWRPs approved prior to July 1994 or for which a Draft Environmental Impact Statement has been prepared prior to July 1994 are not required to include harbor management plans. These municipalities are, however, encouraged to amend their LWRPs to include harbor management plans. LWRPs without harbor management plans must include harbor management plans as part of any future substantial amendments to the LWRP. Once a municipality has completed a harbor management plan and its necessary implementing laws, they are submitted to the Secretary of State for approval as part of, or as an amendment to, a municipality's approved LWRP.

BENEFITS OF A HARBOR MANAGEMENT PLAN

The benefits of a harbor management plan to a municipality are similar to those of an approved LWRP. In coastal waters, the State and federal government have the most authority to regulate in-water activities, and most municipalities have little or no authority to regulate structures and uses of surface waters and underwater lands other than vessel uses. Harbor management plans enable local governments to address a wide range of uses in harbor and nearshore areas in full partnership with the State's Coastal Management Program. These benefits include:

- determining the status of harbor areas and developing a strategy to achieve goals for harbor areas;
- requiring state and federal adherence to harbor management plans (see Consistency of Federal, State and Local Actions below);
- technical assistance in addressing harbor management issues;

- financial assistance for small-scale construction and land acquisition projects;
- research, design and other preconstruction activities that implement the harbor management plan;
- addressing harbor and nearshore issues that transcend local boundaries.

An important additional benefit is that when a harbor management plan is approved by the Secretary of State as a component of a LWRP, a municipality is delegated the authority to regulate all structures and uses of waters and underwater lands. A municipality may then directly regulate the construction, size and location of structures in, on or above waters and the use of surface waters and underwater lands within the municipality or bounding the municipality to a distance of fifteen hundred feet from the shore. They may impose fees for reasonable expenses incurred by the municipality in carrying out this regulatory authority.

This new authority does not limit or change any existing authority a municipality may now have to regulate certain harbor uses and activities. If a municipality is regulating any harbor use or activity based on an authority not derived from Article 42 of the Executive Law, the exercise of that authority, even if used to implement the municipality's harbor management plan, is not subject to the Secretary of State's approval.

CONSISTENCY OF FEDERAL, STATE AND LOCAL ACTIONS WITH HARBOR MANAGEMENT PLANS

Upon approval of a harbor management plan as a component of an LWRP by the Secretary of State and federal Office of Ocean and Coastal Resource Management, federal and state actions, such as funding, permit, approval and direct actions by agencies are required to be undertaken in a manner consistent with the approved LWRP and harbor management plan. Where a harbor management plan includes standards for the siting or construction of in-water structures and the use of surface waters and underwater lands, no federal or state agency may undertake or permit any actions that are inconsistent with those standards.

The consistency benefit is even more significant with regard to harbor management, since little or no activity occurs over or in surface waters without federal or state involvement.

As with LWRPs, in exchange for federal and state consistency with approved harbor management plans, local governments are required to bind themselves to the harbor management plan. Usually this would be done through the same local consistency law that binds the local government's regulatory, approval, direct and funding actions to the policies and purposes of the LWRP.

PREPARING THE HARBOR MANAGEMENT PLAN

Harbor management plans are to be comprehensive. They must consider regional needs and, as applicable, the competing needs of commercial shipping and recreational boating, commercial and recreational fishing and shellfishing, aquaculture, waste management, mineral extraction, dredging, public access, recreation, habitat and other natural resource protection, water quality, open space, aesthetic values and common law riparian or littoral rights, and the public interest in underwater lands. They must cover all surface waters within or adjacent to a municipality. This includes in-water areas adjacent to open shorelines as well as actively used enclosed bays or harbors. The harbor management plan provides a rational basis for the allocation and use of space within a harbor or nearshore area. A harbor management plan and its implementation effectively zones surface water areas and underwater lands for specific uses or a range of specific uses in order to avoid conflicts or improve conditions within harbor or nearshore areas.

A harbor management plan may consist of a single document prepared as an appendix or supplement to a Local Waterfront Revitalization Program, or it may be integrated into the LWRP. If it is integrated into a LWRP it would consist of the "wet side" components of the boundaries (Section I), inventory and analysis (Section II), policies (Section III), proposed land and water uses (Section IV), techniques for implementation (Section V), and other federal and state actions necessary to advance a Local Waterfront Revitalization Program (Section VI.B) of a Local Waterfront Revitalization Program.

CONTENTS

The basic components of a harbor management plan should include the following. If it is a stand-alone part of an LWRP, rather than integrated into the various parts of an LWRP, then what follows also provides a useful outline of a harbor management plan. The text in *italics* indicates how a harbor management plan may be integrated into an LWRP.

If the harbor management plan is a separate part of the LWRP, then the policy section of the LWRP should include policy standards referencing the harbor management plan and the standards found in the harbor management plan's implementing legislation.

INVENTORY

A narrative inventory of the natural and cultural resources, physical features, and uses of the surface waters and underwater lands that the plan is being developed for. The inventory should describe the following, and be supplemented by maps:

- commercial, industrial, and recreational water-dependent uses (such as marinas, boat yards, transhipment facilities, swimming areas, commercial or recreational fishing or

shellfishing, types of vessel activity (commercial vessel or recreational vessel traffic) and vessel anchorage or mooring areas;

- water quality classifications and use standards;
- wetlands and significant habitats;
- the general pattern of public and private ownership of underwater lands;
- historic underwater sites or structures (such as shipwrecks, historic dry docks, or archaeological sites, if any);
- underwater cables or pipelines; and
- existing infrastructure such as navigation channels and basins, bulkheads, docks and docking facilities, sewage treatment and vessel waste facilities, public water supplies, and roadways supporting the harbor area.
- a description of adjacent existing land uses and zoning.

This material may be incorporated in the text and maps of Section II of an LWRP (Inventory and Analysis).

ISSUES

A narrative summary of issues of local and regional importance that should be addressed in the harbor management plan, such as:

- interferences with existing navigation channels by structures such as docks, floats or anchored or moored vessels;
- public health and safety (such as conflicts between shellfishing and vessel anchorage or mooring areas, or between the operation of vessels in or near swimming areas, and general boating congestion);
- substandard water quality and a need to improve water quality for a range of desired uses, such as fishing, swimming, or year-round or seasonal shellfishing;
- degraded or threatened natural areas such as wetlands or significant coastal fish and wildlife habitats;

- a need to maintain or provide harbor infrastructure such as roadways, navigation channels, bulkheads, boat ramps, docks, sewage treatment and vessel waste pumpout facilities;

- limits on public access to or use of the harbor area;

- a high demand for, but a lack of, appropriate commercial vessel support facilities or sufficiently maintained navigation channel or basin depths;

- problems related to dredging and dredged material disposal; and

- the need to protect important water-dependent uses in appropriate areas within harbors.

The narrative should also provide a brief description of any conflicts between existing land or water uses and existing zoning standards. Such conflicts might include:

- existing nonconforming water-dependent uses in areas appropriate for water-dependent uses, but zoned for non-water dependent uses; or

- intertidal wetland areas, bays or other offshore or intertidal areas that are used or zoned for residential or other inappropriate uses in these areas.

This material may be incorporated in or included under a separate heading for harbor management issues in the summary of issues at the end of Section II of an LWRP.

EXISTING AUTHORITIES

A narrative summary of the existing roles and responsibilities and existing authorities of federal, state and local agencies in the harbor area, including those of another local government which does or has the authority to regulate activities within 1500' of the municipality's shore. Examples of the agencies with the greatest roles in advancing or implementing harbor management plans that should be addressed in this summary include:

- the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, U.S. Army Corps of Engineers, and the Department of Interior;

- the State Departments of State, Environmental Conservation, and Transportation and the Offices of General Services and Parks, Recreation, and Historic Preservation;

- agencies of the city, town, or village, or a county if the county regulates activities in the harbor area;

- in certain towns, the trustees of the towns responsible for managing harbor or foreshore areas; and

- the local Harbormaster, Bay Constables, Police Department or Sheriff's Office.

This material may be included in the Inventory and Analysis in Section II of an LWRP. The existing authorities of local agencies that are necessary to implement or advance the harbor management plan should be identified in Section V (Techniques to Implement the Program) for necessary implementing legislation, intermunicipal legislation, memoranda of understanding, or agreements, etc.

OPPORTUNITIES

A narrative summary of opportunities to resolve issues or advance desired projects or uses in harbor areas, such as:

- land available for water-dependent uses;

- wetland restoration projects;

- public access projects;

- redevelopment of underutilized or deteriorated areas for projects that advance harbor management efforts.

This material may be incorporated in Section II of an LWRP.

OBJECTIVES

A narrative summary of the overall objectives of the harbor management plan, that can be reflected in enforceable policies or capital/construction projects, such as:

- protecting existing or providing for new water-dependent uses such as marinas, boat yards, yacht clubs, port facilities, swimming beaches, or shellfishing;

- providing necessary commercial fishing support facilities such as a commercial fishing vessel loading and offloading platform or dock at a specific publicly owned site;

- protecting water quality by providing sufficient vessel waste pumpout and waste reception facilities to support designation of a harbor as a vessel waste no-discharge zone;

- providing a balance among the various uses of a harbor, i.e., what the primary uses are in a harbor area.

This material should be reflected in the policy statements and explanations of policy in Section III of an LWRP.

HARBOR MANAGEMENT PLAN MAP

An identification of the harbor management area and a use plan shown on a map of the surface water area and adjacent uplands that are relevant to the use and management of surface waters and underwater lands.

This map will depict proposed water uses within harbor areas, and should be included in Section IV (Proposed Land and Water Uses) of an LWRP.

Mapping Requirements

The harbor management plan map should be of sufficiently large scale to illustrate all of the information necessary. Many municipal boundaries, especially on the north shore of Long Island and in the Great Lakes region, extend offshore for several miles. It is not necessary to show large expanses of offshore open water areas on the large scale harbor management plan map, however, all of the surface waters within a municipality or within 1500' from a municipality whose corporate limits end at the shore should be shown on a map that supplements the large scale harbor management plan map. The large scale, detailed harbor management plan map will usually only be necessary for nearshore areas such as harbors, bays, and rivers, or small lakes or embayments within lakes. A smaller scale map that shows all offshore areas within or adjacent to the municipalities should be included as a component of the plan, but need not show discrete water use zones unless specific areas offshore are designated for specific uses.

All use zones, infrastructure and special projects should be shown on the large scale harbor management plan map. A map key should explain each zone, infrastructure type and project.

Geographical Extent of Harbor Management Areas

In order to determine the required geographical extent of a municipality's harbor management plan and represent this area on a harbor management plan map, the map must show existing waterside municipal boundaries as well as any extraterritorial area in which the State has

delegated regulatory authority to the municipality.* This may occur under circumstances where a municipality's boundary coincides with the shore or is less than 1500' from shore.

Section 922 of the Executive Law enables cities, towns and villages to regulate all structures in, on, or above surface waters and all uses of surface waters and underwater lands within a city, town or village's municipal limits, or, where a city, town or village's municipal limits end at the shoreline, to 1500' from shore, whichever distance from shore is greater. Thus, whether or not a municipality has already obtained some extraterritorial jurisdiction, where a municipality's corporate limits end at the shoreline or is less than 1500' from the shore, the map should indicate the offshore 1500' extraterritorial limit.

If a municipality's corporate limits are more than 1500' from the shore, the map should indicate that the seaward limits of the municipality's harbor management area are coincident with the seaward limits of the municipality's corporate limits.

Where a municipality's corporate limit ends at the shoreline or is less than 1500' from shore, the 1500' offshore extraterritorial limit is measured in the following manner:

- where the shore is generally even, the 1500' is measured from the mean low water line (figure 1);

- where the shore is uneven because of indentations such as coves, small bays, inlets or similar conditions, the 1500' is measured from a straight line drawn across the indentation from the two points representing the furthest waterward extent of the mean low water line on either side of the indentation (figure 2).

---

* Section 46-a of the Navigation Law and Section 130.17 of the Town Law provide municipalities with the authority to regulate certain vessel uses upon waters within a municipality, or bounding a municipality to a distance a 1500' from shore. These enabling statutes only apply to the regulation of the over-water use of vessels. Where a municipality's corporate limits end at the shore, Sections 46-a of the Navigation Law and Section 130.17 of the Town Law provides municipalities with the extraterritorial authority to regulate the over-water use of vessels up to 1500' from shore. However, Section 130.17.(3) of the Town Law prohibits a town from regulating the over-water use of vessels upon waters within a village, or within 1500' from the shore of a village.

Section 46-a.(2) of the Navigation Law specifically names certain towns and villages that are authorized to regulate the construction and location of boathouses, moorings and docks in any waters within or bounding the specifically named municipalities. Similar authority, including the authority to all structures within certain water bodies, is granted to certain municipalities in Niagara County by Section 32-e of the navigation Law.

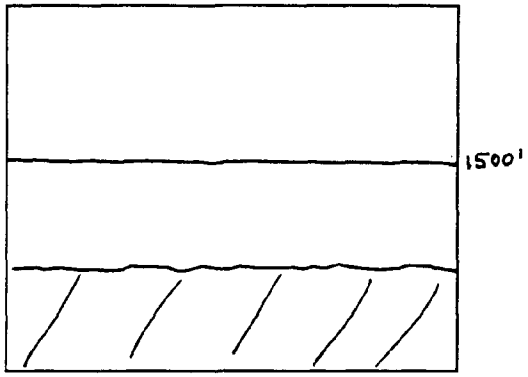

Figure 1.

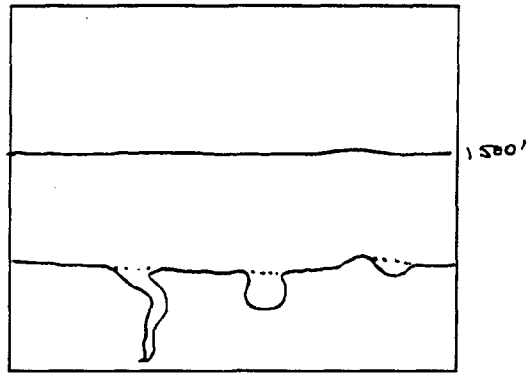

Figure 2.

- where municipalities share a water body that is less than 3000' wide, the Department of State will advise where the offshore limit of the are should be (figure 3).

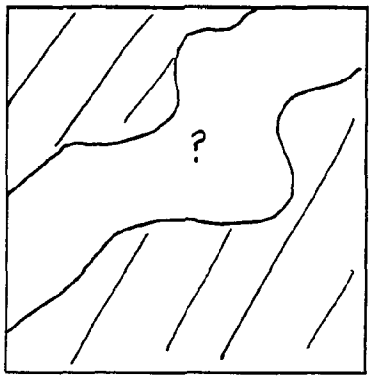

Figure 3.

- where an offshore island is part of a mainland municipality, and the municipality's corporate limits do not encompass the water area between the mainland and the island or surrounding the island, the 1500' distance from the shore of the island is measured from the mean low water line surrounding the island (figure 4).

DRAFT

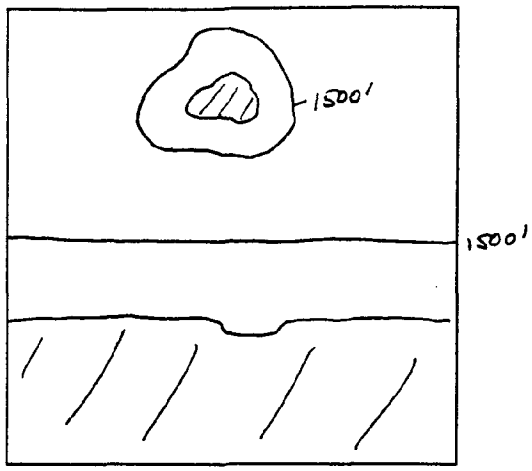

Figure 4.

Harbor Use or Water Use Zones

The harbor management plan map is a graphic depiction of what types of uses are allowed and where uses are and are not allowed in a harbor area. Bear in mind that a harbor management plan map is similar to a zoning map, and needs to be supported by a single law or ordinance or more than one special purpose laws or ordinances, just as a zoning map is implemented by a zoning law or ordinance. Laws or ordinances and descriptions of capital or physical projects provide a narrative translation of what the map shows, and makes the map "work" by regulation.

The map should depict areas representing surface waters and underwater lands that will be designated for certain uses, such as:

- existing or proposed navigation channels, fairways, or accessways over the water's surface;
- open water areas;
- mooring or anchorage areas;
- special use zones, e.g. areas set aside for or designated for water skiing, races, or other special events;
- buffer areas between water surface uses;
- swimming areas;

- harbor or pierhead lines, and bulkhead lines;
- perimeter permit areas
- major structures such as groins, jetties, seawalls, bulkheads, and piers
- sensitive habitat or shellfishing areas;
- marinas; and
- upland areas adjacent to the water body where water-dependent uses are proposed.

The map should also depict important proposed public improvements, such as public docks or vessel waste disposal facilities, launching ramps, parking areas, etc.

The harbor management plan map should be included in Section IV of an LWRP.

TECHNIQUES TO IMPLEMENT THE HARBOR MANAGEMENT PLAN

An identification of various techniques to address issues described in the summary of issues and to implement the harbor management plan and map. These techniques may include:

Local Laws or Ordinances

The adoption of local laws or ordinances that implement the harbor management plan map by regulating vessels, structures, and uses within the harbor management area, such as:

- the use, operation, speed, and anchoring and mooring, and other uses of or activities associated with vessels;
- the siting and construction of docks, piers, bulkheads or other in-water structures;
- activities in sensitive area such as highly productive wetlands and significant habitats, or prohibiting the operation of vessels in swimming areas;
- dredging and dredged material disposal, mining, or excavating; and
- swimming, SCUBA diving or other primary contact in-water recreational activities.
- adopting new or amending the text of zoning laws or ordinances where appropriate to favor water-dependent uses, or to allow limited water-enhanced or non-water-dependent uses that support water-dependent uses;

These local laws or ordinances should provide the narrative description of areas and allowable or prohibited uses shown on the harbor management plan map, and should include standards for these uses. In effect, these laws are much like the text of a traditional zoning law or ordinance that provides the narrative text and standards to implement a standard zoning map.

Existing laws or ordinances, if any, that implement portions of the harbor management plan; and proposed amendments to existing laws or ordinances and proposed new laws or ordinances to implement the harbor management plan, should be included in Section V.A (Techniques for Implementation of the Program) under the heading of Local Laws or Ordinances and Regulations Necessary to Implement the LWRP.

Procedural Actions

Procedural actions that change how activities in harbor areas are managed, that create special districts, or establish responsibilities to manage activities in harbor areas, such as:

- Harbor Improvement Districts - establishing harbor improvement districts pursuant to Section 190 of the Town Law to provide a funding mechanism for public projects and physical improvements in and adjacent to the harbor area, such as: water quality improvement projects; studies; construction and maintenance of public launching ramps, docks, vessel waste pumpout and waste reception facilities; land acquisition; and dredging;

- Management - appointing a harbor manager to administer the plan, or providing a Harbormaster or other person with the training and authority necessary to administer the plan; designating the harbor responsibilities of existing officials and boards;

- Enforcement - appointing a Harbormaster or Bay Constables to enforce the plan's regulations, or improving the ability of a Harbormaster, Bay Constables, Sheriff's Office or Police Department to enforce the plan;

- Education - providing information to recreational boaters and other users of the harbor area, such as tourists, regarding harbor safety and public health, maritime history, uses of the harbor area, natural resources, or other information that increases public awareness of harbor issues.

These procedural actions should be included in Section V of an LWRP.

Studies and Research

Special studies, design projects, or research necessary to advance or refine a harbor management plan or a component of it, such as:

- detailed studies of the extent of grants, leases or easements of underwater lands, in order to determine the extent of public and private rights in and to underwater lands where information is not readily available or sufficiently detailed to be included in a harbor management plan;

- water quality, pollutant transport, or sedimentation studies;

- commercial fishing facility, recreational fishing facility, or public access project needs design or specific assessments; and

- conceptual or detailed design studies of harbor infrastructure needs such as docks, drainage and water quality improvements, etc.

These studies and projects should be included in Section IV of an LWRP.

Capital Projects

Capital improvement or construction projects that are necessary to maintain or improve uses or conditions within a harbor area, such as:

- providing public commercial or recreational fishing docks, public docking facilities, or vessel waste pumpout and disposal facilities, and the maintenance of public navigation channels;

- dredging and dredged material disposal;

- improvements to street drains to treat runoff and improve water quality in harbor areas; or

- other harbor infrastructure improvement projects.

These studies and projects should be included in the proposed projects in Section IV of an LWRP, and in Section V.B (Other Public and Private Actions Necessary to Implement the Program) of an LWRP.

Other Implementation Actions Necessary

Actions by federal and State agencies are often necessary in order to fully implement and advance projects in harbor areas. These actions may include approving anchorage and mooring areas prior to designation, designating vessel waste no-discharge zones, dredging or maintaining major navigation channels and basins, constructing or maintaining breakwaters,

funding certain studies, or providing technical assistance. These necessary actions should be described in the harbor management plan.

The actions of federal and state agencies, such as the acquisition of land, capital funding, conducting special studies or providing technical assistance necessary to further advance the program, should be included in Section VI.B of an LWRP.

PROCEDURAL REQUIREMENTS

APPROVAL

Harbor management plans will be reviewed and approved by the Secretary of State in the same manner as an LWRP or an amendment to an LWRP.

For a harbor management plan to be approved, it must incorporate, to an extent commensurate with the circumstances of the municipality seeking approval, those elements described earlier in the contents section of these guidelines.

Local laws or ordinances to implement the harbor management plan are to be developed in consultation with the Department of State, and are to be submitted to the Department of State for review and comment a reasonable time prior to the scheduling of any public hearing concerning such local law or ordinance.

In order to ensure the effectiveness of local laws or ordinances to implement a harbor management plan developed under the delegation authority of Section 922 of the Executive Law, it is necessary for the Secretary of State and municipalities to approve and adopt local laws and ordinances in a coordinated manner. Prior to submitting a harbor management plan for the Secretary of State's approval, the local laws or ordinances necessary to fully implement the harbor management plan should be adopted by municipalities. However, these local laws or ordinances will not become effective unless and until they are approved by the Secretary of State. Therefore, it is suggested that the effectiveness of the laws or ordinances and the Secretary's approval be concurrent, ie., the laws or ordinances should be written so that they become effective immediately upon approval by the Secretary of State.

AMENDMENT OF AN APPROVED HARBOR MANAGEMENT PLAN

Harbor management plans may be amended as amendments to an approved LWRP, in the same manner as an amendment to an LWRP (see LWRP Handbook).

WITHDRAWAL OF AN APPROVED LWRP OR HARBOR MANAGEMENT PLAN

If a municipality decides to withdraw from the Local Waterfront Revitalization Program or decides to withdraw its approved harbor management plan, all of the benefits to the local government derived from the Secretary of State's approval of the LWRP and the harbor management plan will be terminated. The benefits that will be terminated include, but are not limited to, any funding or technical assistance, and the effect of any authority delegated to the local government to implement the harbor management plan by local laws or ordinances or portions of local laws or ordinances, that required approval of the Secretary of State. For example, if a municipality did not have the authority to regulate in-water structures prior to approval of the harbor management plan, and the Secretary of State approved a harbor management plan and the local laws necessary to implement the plan by regulating in-water structures, the Secretary of State's approval of those laws is automatically withdrawn, and the force and effect of the local laws are terminated. All of the benefits of federal and state consistency with the LWRP and harbor management plan will also be terminated.

SPECIAL CIRCUMSTANCES

Expedited Harbor Management Plan

To accommodate the realities of size, complexity, location or other uniqueness and the need for timely action, municipalities may submit a written request to the Secretary of State for permission to prepare an expedited harbor management plan. Such a request is required to specify the circumstances that would justify approval of such a request. If the Secretary approves such a request, the approval may include terms and conditions applicable to the permission to develop an expedited harbor management plan, and will specify additional requirements for the approval of the harbor management plan and its implementing legislation. The following two circumstances are ones which might warrant such a request:

- Multiple Harbor Areas in a Single Municipality

  Some cities and towns possess several discrete harbors. It may not be practical to develop a detailed harbor management plan as outlined above for all these areas in a reasonable period of time. Therefore, a municipality may submit a LWRP with a harbor management plan component that is more general in nature. Such a component should establish general policies with regard to the use of surface waters and regulation of in-water structures. A schedule should be included for the development of more detailed harbor management planning for each of the municipality's harbors.

- More Than One Municipality in a Harbor Area

Many harbor areas are shared by several municipalities. An ideal harbor management plan for these harbors would of necessity require the participation and cooperation of all municipalities sharing the harbor area. Such a cooperative harbor management plan is strongly encouraged. However, in order to avoid undue delay in completing a LWRP where the possibility of cooperative harbor management among several municipalities is foreseeable but not immediate, a municipality may submit a general harbor management plan along the lines outlined above in anticipation that a more detailed harbor management plan will be developed as part of an intermunicipal cooperative effort.

More Than One Municipality with Regulatory Authority in the Same Harbor Area

In some circumstances another municipality may regulate, or have the authority to regulate, harbor activities within 1500' of the shore of the municipality that is preparing a harbor management plan. This situation is most likely to occur in Nassau and Suffolk Counties. There, a town may have authority to regulate certain harbor activities, such as docks or other structures in water, within 1500' of the shore of a city, village, or town whose corporate boundary is at the shoreline or less than 1500' from shore. In these circumstances it is necessary to avoid having potentially conflicting laws apply. To achieve this the municipality preparing the harbor management plan may either avoid regulating the activities subject to the other municipality's jurisdiction or it may enter into an intermunicipal agreement that spells out how the municipalities will share responsibilities for regulating the activities. The latter is encouraged.

It is important to note that the need to avoid a conflict applies to regulation arising from a municipality's police powers, and not to regulation based solely on a municipality's proprietary interests, that is, from ownership of underwater lands. Nevertheless, to avoid conflicting regulation under the latter circumstances as well, it is strongly encouraged that the municipalities agree on cooperative management. This problem of conflicting laws is not likely to occur elsewhere in the State because State law does not allow towns to regulate within 1500' of a city or village, it does not generally provide authority to regulate docks or other structures in water, and towns do not generally own underwater lands outside of Nassau and Suffolk Counties. The Department of State will advise a municipality that is initiating a harbor management plan whether the potential for a conflict of laws is present and with regard to what activities.

Inland programs (outside of the State's defined coastal area)

Municipalities on designated inland waterways are not required to incorporate a harbor management plan as a component of a LWRP, but may and are encouraged to do so. Municipalities on lakes specifically designated as inland waterways may not prepare lakewide cooperative harbor management plans. They may prepare individual harbor management plans.

TERMS AND DEFINITIONS

The following is a general guide to the definitions of some of the terms used in these guidelines, and except for the terms "comprehensive harbor management plan", "harbor management plan", and "water-dependent use" are not legal definitions or definitions found in any overriding federal or State statutes. Many of these terms and definitions may be changed or used differently in harbor management plans and their implementing legislation.

Comprehensive Harbor Management Plan - a plan to address the problems of conflict, congestion and competition for space in the use of harbors, surface waters and underwater lands of the state within a city, town or village or bounding a city, town or village to a distance of fifteen hundred feet from shore.

Harbor or Pierhead Line - a line designated by the local legislative body of a city, town or village, or the State or federal government or an agency of the State or federal government, represented on a harbor management plan map, that is the waterward limit of any in-water structure such as docks, piers, gangways, ramps, groins, jetties or any other structure projecting from the shoreline.

Bulkhead Line - a line designated and represented in the same manner as a harbor or pierhead line, but representing the waterward limit of any bulkhead, seawall, fill material, revetment, or similar structure.

Harbor Management Area - all surface waters and underwater lands lying within a city, town or village and, where the municipal limits of a city, town or village end at the water's edge, all surface waters and underwater lands within 1500' of the shore of a city, town or village.

Perimeter Area - a boundary of a docking facility, mooring area or other in-water use area consisting of a series of connected imaginary lines on a plan or map, drawn generally perpendicular and parallel to the shore, that encompasses all related structures or uses such as docks, bulkheads, breakwaters, pilings, floats, piers, platforms, moorings, or swimming or boating areas, that function to create a facility or area for specific uses.

Water-dependent Use - an activity which can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.

DRAFT

BIBLIOGRAPHY

"A Guide To Managing Recreational Boating Areas", U.S. Department of Transportation, June, 1983.

Catskill Harbor Management Plan, Village of Catskill, New York. June, 1994.

New York/New Jersey Harbor Estuary Water Use Management Study, New York City Department of City Planning and New Jersey Department of Environmental Protection, February, 1991.

North Atlantic Water Dependent Use Study, Managing the Shoreline for Water Dependent Uses and Guidebook to the Economics of Waterfront Planning and Water Dependent Uses, prepared for the New England/New York Coastal Zone Task Force by the Marine Law Institute, University of Maine School of Law, December, 1988

NYS Criminal Procedures Law, Sections 2.10, 2.20, and 2.30.

NYS Executive Law, Article 42 and 19 NYCRR Parts 600, 601, and 603.

NYS Navigation Law, Sections 32-e, 46, 46-a.

NYS Town Law, Section 130.17.

Oswego LWRP, 1994

Ports and Harbors: Our Link To The Water. Proceedings of the Eleventh International Conference, October 1988, Boston, Massachusetts. The Coastal Society.

Putting the Public Trust Doctrine to Work, Coastal States Organization, November, 1990.

Town of Hempstead Structures in Waterways Law

Village of Mamaroneck LWRP Amendments, 1994

Village of Mamaroneck Underwater Lands Study, 1986.

C:hmpguide.1\SCR/mab7/94

NOAA COASTAL SERVICES CTR LIBRARY
3 6668 14111881 2