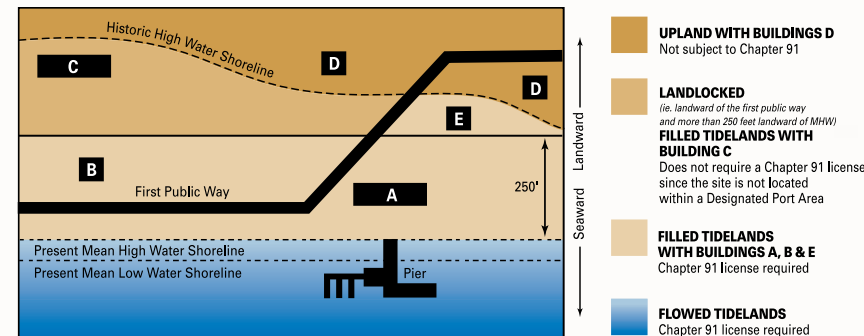


Geographical Jurisdiction

Any activity taking place in one of the areas listed below requires the issuance of some form of Chapter 91 authorization. This applies to existing unauthorized activities as well as new projects.



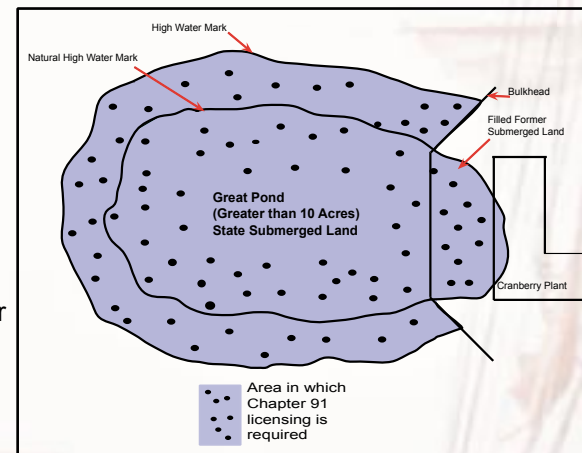
mark and landward of a public way (or interconnected public ways) existing as of January 1, 1984;

Great Ponds

Projects located in, on, over, or under the waters of any great pond, which is defined as any pond or lake that contained more than ten acres in its natural state; any pond or lake presently larger than ten acres is presumed to be a Great Pond unless information is submitted demonstrating the original size was less than the ten acres; and

Non-tidal Rivers and Streams

Any project located in, on, over, or under any non-tidal river or stream on which public funds have been spent either upstream or downstream within the river basin, except for completely non-navigable portions.



Activities Requiring a License or Permit

The basic categories of activity that require authorization according to Chapter 91 include both new and existing unauthorized activities listed below. It is best to check with the Waterways Program to see if the activity is subject to permitting.

1. **Structures not already authorized** – Placement, construction, or alteration of any structure – regardless of size or whether permanent or seasonal;
2. **Filling not already authorized** – Placement of any unconsolidated material that is confined or expected to remain in place in a waterway;
3. **Uses not currently authorized** – Any use of fill or structures not covered by a presently valid license or authorized by a Legislative grant;
4. **Changes in a previously authorized use** – Any change from an authorized use;
5. **Alteration of a currently authorized structure or fill** – Any change in a structure or fill from the specifications contained in the existing license;
6. **Demolition or removal of structures** – Removal of any structure or fill for which there is no current and valid grant or license may be authorized by written approval of DEP;
7. **Change in water levels in great ponds** – Lowering of the water level of a great pond – unless that body of water is used for agriculture, manufacturing, irrigation, insect control purposes, or public water supply and the lowering furthers those activities;
8. **Other work in waters subject to Chapter 91** – Removal of materials (i.e., dredging) during any excavating, cleaning, deepening, widening, or lengthening, of any tidal waters of the Commonwealth including, but not limited to: rocks, bottom sediments, debris, sand, refuse, plant or animal matter.

Types of Licenses and Permits

1. **DEP Waterways License** – All activities subject to the jurisdiction of Chapter 91 require a standard Waterways license unless they are eligible for one of the other three authorizations listed below.
2. **DEP Waterways Permit** – Activities not involving work on structures or fill may apply for a DEP Waterways Permit. These activities include beach nourishment, dredging, disposal involving subaqueous placement or unconsolidated materials, burning of rubbish or other material upon the water, and lowering the water level of any great pond except for purposes described in 310 CMR 9.15(2)(e).
3. **License or Permit Amendment** – Applicants may apply to amend a valid waterways license or permit, issued pursuant to the 1999 regulations, for the following reasons:
 - a. To renew a license or permit term in accordance with the provisions of 310 CMR 9.25(2);
 - b. To delineate a reconfiguration zone within a marina in accordance with 310 CMR 9.39(1)(b); and
 - c. To authorize a structural alteration or change in use that is not exempt pursuant to 310 CMR 9.05(3).

4. **Harbormaster Annual Permit** – Pursuant to Section 10A of Chapter 91 statutes and 310 CMR 9.07 of the Waterways Regulation, the placement on a temporary basis of moorings, floats, rafts held by bottom anchor and associated ramps may be authorized by an annual permit from the local Harbormaster. No other Chapter 91 authorization is required as long as the Harbormaster permit remains valid. This provision only applies to bottom anchored moorings, floats, or rafts. No piles may be placed without proper Chapter 91 authorization from DEP's Wetlands/Waterways Program.

Additional Information

Statutory and Regulatory citations:

Massachusetts General Law (MGL) c. 91 §1-63, Web site: <http://www.state.ma.us/legis/laws/mgl/gl-91-toc.htm>
310 CMR 9.00, DEP Waterways Regulations, Web site: <http://www.state.ma.us/dep/brp/waterway/ch91regs.htm>
301 CMR 23.00, Massachusetts Coastal Zone Management Office Municipal Harbor Planning Regulations, Web site: <http://www.state.ma.us/czm/regs.htm>
301 CMR 25.00 Massachusetts Coastal Zone Management Office Designated Port Area Regulations, Web site: <http://www.state.ma.us/czm/regs.htm>

For Chapter 91 information, see DEP's Web site, <http://www.state.ma.us/dep/brp/waterway/waterway.htm>

For Harbor Planning and Designated Port Area information contact the Massachusetts Coastal Zone Management Office in Boston or any of that office's regional coordinators or CZM's Web site, <http://www.state.ma.us/czm/regions.htm>

For ACEC Resource Management Plans, contact the Department of Environmental Management's ACEC coordinator or staff, or visit the Web site at <http://www.state.ma.us/dem/programs/acec/acec1.htm>

For information about Army Corps Permits, contact the regulatory branch of the New England District of the Corps in Concord, MA 978/318-8338, Web site <http://www.nae.usace.army.mil/>

This brochure was developed with funds provided to the Massachusetts Department of Environmental Protection by the U.S. Environmental Protection Agency under § 104 (b)(3) of the U.S Clean Water Act.

brochure design by Sandy Rabb, DEP/BRP



Mitt Romney
Governor
Ellen Roy Herzfelder
Secretary, EOE
Robert W. Gollodge, Jr.
DEP Commissioner
Lealdon Langley
Director, Wetlands/Waterways



Massachusetts

Chapter 91 History

Chapter 91 Public Waterfront Act

Massachusetts's principal tool to protect and promote the public use of its inland waters and tidelands is the Chapter 91 waterways licensing law of 1866. Chapter 91 also provides for the prudent management of development on certain navigable rivers, streams, and waterways.

The oldest law of its kind in the nation, Chapter 91 regulates activities in both inland and coastal areas such as great ponds, certain rivers and streams, tidelands and historically filled tidelands. Massachusetts' colonial government encouraged private investment in the development of wharves and warehouses for maritime commerce by transferring ownership of the intertidal area between the high and low water marks to waterfront property owners. However, the public's right to fish, fowl, and navigate in the intertidal area was not relinquished, nor did the state cede ownership over tidelands seaward of the mean low water mark. State action to protect the public interest in all tidelands is rooted in a body of law known as the public trust doctrine.

The public trust doctrine has two major principles:

1. The public has fundamental rights and interest in natural resources such as the air, the sea, and the shore; and
2. The state, as trustee of the public interest, has a duty to preserve and enhance both these natural resources and the public's right to use them.

Today, the state recognizes the continuing need to affirm public jurisdiction over filled and flowed tidelands, great ponds, and other inland waterways, and is taking steps to guarantee access and to ensure that waterfront development best utilizes this precious public resource through its Chapter 91 licensing program.

Unlike other programs administered by DEP that focus on environmental protection and pollution prevention, Chapter 91 deals primarily with land use and preservation of Commonwealth property. While other state agencies, including the Department of Conservation and Recreation (DCR), Coastal Zone Management (CZM), and the Division of Fish and Game (DFG) play a role in preserving public rights in public trust lands, the Wetlands/Waterways Program in DEP is the primary division charged with implementing Chapter 91.

These regulations seek to:

1. *Protect and promote tidelands as a workplace for commercial fishing, shipping, passenger transportation, boat building and repair, marinas, and other activities for which proximity to the water is either essential or highly advantageous.*
2. *Protect Designated Port Areas (DPA) from encroachment of non-water dependent and non-industrial uses.*
3. *Encourage the development of city and town harbor plans to dovetail local waterfront land use interests with the Commonwealth's statewide concerns,*
4. *Protect the right of waterfront property owners to approach their property from the water.*
5. *Preserve pedestrian access to and along the water's edge for fishing, fowling, and navigation in private tidelands, and in return for permission to develop non-water dependent projects on Commonwealth tidelands, provide facilities to enhance public use and enjoyment of the water.*
6. *Protect and extend public strolling rights, as well as public navigation rights.*
7. *Protect Areas of Critical Environmental Concern (ACEC), ocean sanctuaries, and other ecologically sensitive areas from unnecessary encroachment by fill and structures, and*
8. *Assure removal or repair of unsafe or hazardous structures.*



Who benefits from Chap. 91?

Chapter 91 enables the state to promote water-dependent uses of its tidelands, making them more accessible to the public, especially benefiting:

- Cities and towns
- Commercial Fishing
- Boaters
- Marine Industries
- Sports Enthusiasts
- Marinas and Yacht Clubs
- Beachstrollers
- Ferry Operators
- Environmentalists
- Commercial Shipping
- Waterfront Visitors



The Massachusetts Department of Environmental Protection
Wetlands/Waterways Program
One Winter Street, 6th floor
Boston, MA 02108