

**Can State Coastal Management Programs Ensure Water Access?  
An Evaluation of Northeastern Coastal Programs' Policies  
for Mitigating the Conversion of Marinas and Boatyards to Residential Use**

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Recently, much attention has been given to the loss of water access due to the conversion of marina and boatyard facilities to private residential development.<sup>1</sup> Such a “conversion problem” would seem to run counter to coastal management principles as embodied in the Coastal Zone Management Act of 1972, 16 U.S.C. §1451 *et. seq.*, which requires participating states to prioritize water-dependent uses of the coast as well as public coastal access. Yet in practice, state coastal management programs have widely varying policies, programs and institutional structures through which they address these issues. A study of five northeastern state coastal management programs from Massachusetts to New Jersey lends insight into how state programs address these conversions in practice. These programs have varying definitions of water-dependent uses and policies regarding public access that influence coastal development in their respective states. Further, these programs have varying jurisdictions and permit review procedures that limit their ability to enforce these policies and track the cumulative impacts of such developments. This paper will discuss the policies, jurisdictions, and monitoring capabilities of these five state programs, and conclude with recommendations for ways these and other coastal programs can more effectively manage the conversion of marina and boatyard properties to residential use.

### **Conversions and Coastal Management**

Recent news stories, boating industry reports and policy documents indicate that marina and boatyard properties throughout the United States are being converted to private residential development, thus resulting in a loss of water access to boaters, the boating industry, and waterfront communities.<sup>2</sup> Specifically, sources describe a trend in which developers purchase parts of or entire marina and boatyard properties, and construct condominium towers or single-family subdivisions in their place. In most such cases, the developers tear down the upland marina or boatyard facilities (which may include boat storage and work areas), and either maintain or improve the boat slips and associated in-water facilities, usually for the exclusive use of the new residents. Recent examples of this include the Royal Marina on City Island, New York, a 140-slip marina recently redeveloped with 22 detached two-family homes and 44 boat slips reserved for residents, and Admiral Cove in Stonington, Connecticut, where a five-home subdivision with residential docks now occupies a site that once hosted a 60-slip marina (Battista, 2006; Merritt, 2005).

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<sup>1</sup> For further discussion see Smythe, Tiffany. *Closing the Shoreline: The Conversion of Marina and Boatyard Properties to Private Residential Use in the Northeastern U.S.* Master's Thesis, Department of Marine Affairs, University of Rhode Island, 2007.

<sup>2</sup> See *supra* note 1.

State governments exert influence over the development and use of coastal lands and waters through the federal Coastal Zone Management Act (CZMA). Through the CZMA, the federal government offers states incentives, including federal funding, to develop and implement state coastal management programs. To receive this funding, state coastal programs must meet a series of broad requirements; among these are provisions through which the state will ensure “priority consideration” of “coastal-dependent uses,” as well as “public access to the coasts for recreation purposes” (16 U.S.C. §1452). Marina and boatyard properties undoubtedly fall into both of these categories. Marinas and boatyards comprise both in-water and upland facilities, including boat slips as well as Travelifts and storage areas, which rely on water access and as such are water-dependent uses. Further, marinas and boatyards, even if they are privately owned and operated, provide access for much of the public – boaters, boaters’ guests, and in some cases even non-boaters – to waters that are held by state governments in trust for public use under the public trust doctrine.<sup>3</sup> Moreover, such facilities, together with boat ramps, are the primary means through which the public engages in boat-based recreation. For these reasons it is clear that state coastal programs can and should monitor, and take action to address, the loss of marinas and boatyards to private residential development.

To examine these ideas in practice, the author investigated how five state coastal programs – Massachusetts, Rhode Island, Connecticut, New York, and New Jersey – manage the conversion of marina and boatyard properties to residential use. During the winter of 2005-06, the author conducted phone interviews with coastal managers from each of the five programs. In addition, the author examined each program’s relevant policies, regulations, and related guidance documents and reports. The following explores some results of this study.

### **Water Dependent Uses**

Review of these five state coastal programs revealed widely varying definitions and regulations regarding water dependent uses. Whereas some program definitions of “water dependent use” were very specific and therefore potentially effective tools for mitigating the displacement of marinas and boatyards, others were notably ambiguous. For example, Massachusetts defines “water dependent” through a detailed list of examples, including “marinas, boat basins, channels, storage areas, and other commercial or recreational boating facilities.” In addition, Massachusetts further defines “water dependent industrial” as a subset of water dependent uses, including “boatyards, dry docks, and other facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures” (Mass Regs. Code 310 §9.12 (2000)). By contrast, New York simply defines “water dependent” as “an activity which can only be conducted in, on, 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” (N.Y. Exec. Law §42). It is important to note that Massachusetts’ definitions, which specify storage, maintenance, and other such elements of marinas and boatyards, could be powerful tools for policymakers seeking to preserve such facilities, whereas New York’s definition may not be as effective in addressing this issue.

All states reviewed for this study have definitions of water-dependent uses, but only a few states have policies to protect such uses from displacement by non water-dependent uses. For example, Rhode Island has no policy that explicitly addresses the displacement of a water-

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<sup>3</sup> See supra note 1.

dependent use, although it does employ a system of water zoning through which it specifies upland locations in which water-dependent uses are preferred over non-water dependent uses (RI Coastal Resources Management Council, 1996). However, it is doubtful that ‘preferred’ status is enough to save marinas and boatyards from conversion. By contrast, other states have policies that directly address this issue. Massachusetts has a “non-displacement provision” for water dependent uses (Mass Regs. Code 310 §9.23 (2000)), and New Jersey’s “filled water’s edge” rule restricts the displacement of water dependent uses on sites that meet certain conditions (N.J. Admin. Code 7:7E §3.23 (2006)). Connecticut also requires consideration of “adverse impacts on future water-dependent development” when reviewing a project (Conn. Gen. Stat. 444 §22a-93 (2001)). These more targeted policies could be effective tools for policymakers seeking to mitigate the conversion of marinas and boatyards to residential use.

### **Public Access**

Review of the state coastal management programs also reveals widely varying approaches to the issue of public coastal access. Of importance to the conversion problem is whether the state program acknowledges the water access that may be provided to the public through privately-owned facilities such as marinas and boatyards. New Jersey’s program offers the most expansive definition of public coastal access in this regard: “public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts” (N.J. Admin. Code 7:7E §8.11 (2006)). This language suggests that public water access is not only provided by publicly-owned facilities. Other state programs explicitly acknowledge the importance of privately-owned facilities in providing water access; for example, Massachusetts’ coastal policy encourages support of “private recreational facilities and sites that increase public access to the shoreline” (Mass Regs. Code 301 §21.98 (1999)). By contrast, some state programs describe coastal access in a way that suggests only publicly-owned lands and facilities; for example, New York’s public access policy references “access from adjacent or proximate *public* lands or facilities to *public* water-related recreation resources and facilities” (emphases added) (“State Coastal Policies”, 2001).

As with water-dependent uses, there is also great variation among the state programs in the application of these public access policies. For example, Rhode Island does not require public coastal access as part of residential developments (RI Coastal Resources Management Council, 1996) whereas New Jersey does require public access as part of nearly all such developments (N.J. Admin. Code §7:7E (2006)). Especially relevant to the conversion problem is whether the state program has a policy on “dockominiums,” boat slips that are sold or leased long-term, often in connection with upland residential units. Although some legal scholars argue that dockominiums run counter to the public trust doctrine (see for eg. Hall, 1990) no state reviewed for this study has explicit policies prohibiting such arrangements. Massachusetts does, however, prohibit selling or leasing a boat slip “contingent upon ownership or occupancy of a residence” (Mass Regs. Code 310 §9.38 (2000)), and Rhode Island reviews dockominium proposals for “consistency with the state of RI’s public trusts responsibilities” (RI Coastal Resources Management Council, 1996). Still other states, such as Connecticut, consider such a private development a non-water dependent use, and therefore usually limit the portion of a marina that is available only to residents of an adjacent development by requiring ‘sharing’ agreements such that a percentage of the slips are available to the public (Szymanski, 2005).

## Permitting, Jurisdiction and Oversight

It is important to note that while each of the state programs reviewed for this study has policies on water-dependent uses and public access that could be used to mitigate the conversion of marinas and boatyards to private residential use, these policies have limited use due to the narrow permitting powers and jurisdictions of these programs. Whereas some states can enforce the abovementioned policies either by issuing or reviewing waterfront development permits, others have no such oversight. For example, Massachusetts and New Jersey both issue permits or licenses for waterfront development projects, though each program has limited jurisdiction such that they only review *some* such projects. For example, Massachusetts' jurisdiction is limited only to tidelands and filled tidelands (Mass Regs. Code 310 §9.04 (2000)), while New Jersey's jurisdiction varies widely throughout the state depending on the applicable statute (NJ Division of Land Use Regulation, 2006). In practice, then, each of these states has some ability to enforce its water-dependent use and public access policies and therefore minimize the conversion of marinas and boatyards to private residential use. By contrast, New York has very limited ability to do so as the state neither issues nor reviews permits for waterfront development. New York's coastal policies are enacted through municipalities that elect to develop "Local Waterfront Revitalization Programs" (N.Y. Exec. Law §42), and therefore all permitting is handled at the local level. As such, New York's coastal program has extremely little oversight over the conversion of marina and boatyard properties to residential use throughout the state.

The limited permitting and regulatory jurisdiction of these state programs means that in practice some of these states have very limited ability to even monitor the conversion of marina and boatyard properties to private residential use, much less enforce water-dependent use and public access policies that could be used to mitigate such conversions. As illustrated above, this varies significantly by state; New York's coastal program has very limited monitoring capacity due to its decentralized nature, while programs that have centralized permitting authority – such as Rhode Island and New Jersey – have greater potential ability to monitor such conversions. Even in those cases, however, the programs' permit databases may not be conducive to monitoring such a trend. For example, up until recently, Rhode Island's permit database contained only basic information such as plat, lot, owner, and project description, such that a search for projects that involved a use change, like a conversion from a marina or boatyard to residential, would not be feasible (Willis, 2006). This lack of monitoring is problematic. It gives rise to a knowledge gap between coastal managers and coastal communities, such that managers aren't aware of conversions and other developments that impact water-dependent uses and public access. This study found that knowledge gap especially evident in New York, where the researcher identified several converted marinas but found that the coastal manager interviewed for the study had no knowledge of those cases, nor of any such developments.<sup>4</sup>

Despite these considerable limits on permitting and regulatory jurisdiction, some state coastal management programs have developed strategies to specifically address development pressures on water-dependent uses on a regional basis. One such strategy employed by Rhode Island's program is the Metro Bay Special Area Management Plan (SAMP). This plan is currently being developed to supplement the state's coastal program and is targeted specifically at the Providence metropolitan area, which is currently experiencing a great deal of economic growth. Goals of the SAMP include increasing public water access and managing the large

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<sup>4</sup> See supra note 1.

concentration of water dependent uses in this region that “risk being shut out by condominiums and office spaces, resulting in an inaccessible and homogenous waterfront” (RI Coastal Resources Management Council & RI Sea Grant/Coastal Resources Center, n.d.). However, this approach does not extend regulatory jurisdiction, nor does it involve a strategy for monitoring coastal development. Another such strategy that even more directly targets the loss of water-dependent uses to residential development is Massachusetts’ Designated Port Area (DPA) program. Through this program, areas surrounding the state’s most active ports and harbors, including Boston, Gloucester and New Bedford, are designated as DPAs and then subject to rigorous regulations regarding the development of non-water dependent uses such as condominiums and hotels (Donovan, 2003). While DPAs target marine industrial waterfronts, and therefore do not allow the development of recreational boating facilities, they nonetheless illustrate a strategy which may be used to mitigate the conversion of marina and boatyard properties to private residential use.

## **Conclusion**

This study found that these five state coastal programs have a wide variety of definitions and policies that can be used mitigate the conversion of marina and boatyard properties to private residential use. Some of these definitions and policies, such as those that explicitly define water-dependent uses and those that explicitly address the potential displacement of such a use, may be effective tools for policymakers seeking to mitigate such conversions. However, these state programs have in practice limited permitting authority and regulatory jurisdiction, such that these policies can only be enforced in certain circumstances. This means that state coastal programs are limited not only in their ability to regulate conversions, but in their ability to monitor the scope of the conversion problem on a statewide basis. However, regional planning strategies employed by Rhode Island and Massachusetts illustrate how a targeted approach, focused on certain waterfront areas especially prone to development pressure, may be an effective method for protecting marinas, boatyards, and other water-dependent uses in their state.

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