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The Sustainable Working Waterfronts Toolkit

Working Waterfronts and the CZMA: Defining Water-dependent Use



WORKING WATERFRONTS AND THE CZMA: DEFINING WATER-DEPENDENT USE

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Abstract

Water-dependent businesses, including marine transportation companies, seafood processing plants, commercial fishing, and charter boats, require infrastructure located on or adjacent to water to maintain their operations. The working waterfronts necessary to support these industries, such as slips, dry-docks, ramps, loading and unloading facilities, and warehouses, are often at risk of displacement by non-water-dependent uses like restaurants, hotels, retail, or residential housing. Traditional working waterfronts and the businesses that rely on them can be preserved, in part, through the incorporation of water-dependency definitions and requirements into state and local laws, regulations, and policies.

Introduction

The federal Coastal Zone Management Act (CZMA) provides a framework for state management of the nation's coastal zone lands and waters, including the Great Lakes. The National Oceanic & Atmospheric Administration (NOAA) administers the National Coastal Zone Management partnership at the federal level. Thirty-four states and territories have approved coastal management programs that are implemented through various state laws, regulations, and programs.¹

Among other things, the CZMA requires participating states to give priority consideration to

coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial development in or adjacent to areas where such development already exists.²

Although the CZMA requires states to give priority consideration to “coastal-dependent uses,” Congress provides no definition. Nor does the CZMA give states specific instructions for managing development in the coastal zone. As a result, states and territories with federally approved coastal programs define “coastal-dependent uses” differently. In some states, coastal-dependent uses are defined narrowly to only encompass fishery-related activities; in others, the uses are broadly defined to include marinas, boat yards, seafood processing plants, and other businesses essential to maintaining healthy working waterfronts. The classification terminology also varies, with many states utilizing the term “water-dependent” instead of “coastal-dependent.” Both terms, however, often refer to similar uses. Some states also have secondary levels of water-dependency and usually refer to these lower priority uses as “water-related” or “water-enhanced” uses.

Local governments interested in protecting working waterfronts and water-dependent uses can look to definitions in their respective state coastal management programs. Depending on the relationship between the state and local governments, state definitions may even have to be

¹ Of the coastal states, only Alaska does not have a NOAA-approved coastal management program. Alaska voluntarily withdrew from the program on July 1, 2011. Alaska's laws and regulations concerning water dependency, however, remain in force.

² 16 U.S.C. § 1452(2)(D) (emphasis added).

reflected at the local level, as discussed in more detail in Section II. States often have delegated authority to local governments to enact laws and ordinances to protect public health, safety, and welfare, which may include the encouragement of water-dependent uses along their shorelines through zoning, comprehensive plans, or tax policies.

This report examines the current water-dependency definitions of coastal states and recommends a path towards greater protection of working waterfronts through increased attention to such definitions. Part I examines how states currently define water-dependency and includes a table categorizing state use of water-dependency terminology. Part II highlights several local government definitions that have been implemented pursuant to state coastal management programs. Part III examines best practices in crafting a definition, as set forth by the University of Florida Conservation Clinic at the Fredric G. Levin College of Law in Gainesville, Florida, in “Water-Dependent Use Definitions: A Tool to Protect and Preserve Recreational and Commercial Waterfronts” (hereinafter “Water-Dependent Use Definitions”).³ Part IV concludes with recommendations for how governments can better protect working waterfronts through water-dependency definitions.

I. State Water-Dependency Definitions

Generally, water-dependency definitions can be broken down into three levels: water-dependent, water-related, and water-enhanced. Most states provide definitions for either water-dependent or water-related uses in their coastal management plans, state laws, or administrative regulations (Table 1). Generally, water-dependent uses are considered the highest priority uses, followed by water-related uses as a secondary priority. For example, marinas are water-dependent and given highest priority, while a seafood processing plant would usually be considered a water-related use with a lower priority for location immediately adjacent to the water. A few states also have definitions for water-enhanced, which might include hotels or restaurants. In theory, any use that does not fall within the water-dependent or water-related category could be considered “water-enhanced,” as there are often tangible benefits from a use being located next to the water.

States may use different water-dependency terminology. For example, most states use the term “water-dependent” to refer to activities that must occur on or next to water. Some states, however, use the term “coastal-dependent” to refer to those same activities. Further, each state’s definition will be tailored to its needs, resources, and priorities; therefore, the particular uses included in each state’s definition will likely vary. Although the state definitions do not always fit neatly into the three water-dependency classifications (water-dependent, water-related, and water-enhanced), a general overview of state definitions for each tier is provided following Table 1. A full inventory of state definitions can be found in the Appendix.

³ University of Florida Conservation Clinic, Fredric G. Levin College of Law, Water-Dependent Use Definitions: A Tool to Protect and Preserve Recreational and Commercial Working Waterfronts (2006).

Table 1. State Water-Dependency Definitions by Category. This table highlights the water-dependency terminology used by each coastal state. Illinois, Michigan, Pennsylvania, and Wisconsin have not formally adopted definitions in state law or regulation. A full inventory of state definitions is listed in Appendix A.

State/Territory	Water-dependent	Coastal-dependent	Water-related	Coastal-related	Water-enhanced	Water-oriented
Alabama	X					
Alaska	X		X			
California		X		X		
Connecticut	X					
Delaware	X					
Florida	X		X			
Georgia	X					
Hawaii		X				
Illinois						
Indiana		X				
Louisiana	X					
Maine	X		X			
Maryland	X					
Massachusetts	X	X				
Michigan						
Minnesota	X					X
Mississippi	X					
North Carolina	X					
New Hampshire	X		X			
New Jersey	X					X
New York	X				X	
Pennsylvania						
Ohio	X					
Oregon	X		X			
Puerto Rico	X					
Rhode Island	X					
South Carolina	X		X			
Texas	X					
Virginia	X					
Washington	X		X			
Wisconsin						
American Samoa	X		X			

State/Territory	Water-dependent	Coastal-dependent	Water-related	Coastal-related	Water-enhanced	Water-oriented
Guam	X		X			X
NMI	X					
USVI		X				

A. Water-dependent Definitions

Several states include basic “water-dependent” definitions in their coastal management plans. American Samoa, for example, simply defines water-dependent as “a use, activity or development which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body to function at all.”⁴ Mississippi, likewise, has a basic definition for water-dependent industry: “Those commercial, industrial, or manufacturing activities which, for purposes basic to their existence, must occur or locate on or adjacent to the estuaries, sounds, channels, shores or marshlands of the coast.”⁵

Other state definitions go beyond the basics and include examples of specific uses that are to be considered water-dependent. For example, Florida defines water-dependent as “A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production, or source of water.”⁶ Minnesota similarly provides that “A water-dependent use is one that must be located near the lake for its successful existence and/or operation, that is, water is required either for the transportation or use of finished product or raw materials or water is needed for the industrial process, or water is otherwise needed to support or sustain the economic viability of the industry. If an industry does not require a waterfront location to exist, then it is not a water-dependent use.”⁷ Guam’s definition and example for “water-dependent” states simply: “waterfront location is necessary for its physical function – such as handling goods and services for transportation on water (i.e. port facilities).”⁸

California, Massachusetts, the U.S. Virgin Islands, Indiana, and Hawaii use the term “coastal-dependent.” California and the Virgin Islands have identical “coastal-dependent” definitions—“any development or use which requires a site on, or adjacent to, the sea to be able to function at

⁴ National Oceanic and Atmospheric Administration & Development Planning Office of American Samoa, American Samoa Coastal Management Program and Final Environmental Impact Statement 171 (1980), available at <http://www.gpo.gov/fdsys/pkg/CZIC-ht395-a3-u55-1980/pdf/CZIC-ht395-a3-u55-1980.pdf>.

⁵ National Oceanic and Atmospheric Administration & Mississippi Department of Wildlife Conservation, Mississippi Coastal Program II-9 (1983), available at <http://www.gpo.gov/fdsys/pkg/CZIC-ht393-m7-m5-1983/pdf/CZIC-ht393-m7-m5-1983.pdf>.

⁶ National Oceanic and Atmospheric Administration & Florida Department of Environmental Regulation, Florida Coastal Management Program Final Environmental Impact Statement xiv (1981), available at <http://www.gpo.gov/fdsys/>.

⁷ National Oceanic and Atmospheric Administration & Minnesota Department of Natural Resources, Minnesota Lake Superior Coastal Management Program (1999), available at http://files.dnr.state.mn.us/waters/lakesuperior/feis/mlscp_feis5.pdf.

⁸ National Oceanic and Atmospheric Administration & Guam Bureau of Planning, Guam Coastal Management Program and Final Environmental Impact Statement 54-55(1979), available at <http://www.gpo.gov/fdsys/pkg/CZIC-td194-58-g85-f56-1979-v-1/pdf/CZIC-td194-58-g85-f56-1979-v-1.pdf>.

all.” Hawaii defines coastal-dependent developments as “developments which, if not located adjacent to coastal resources, would result in a loss of quality in the goods or services provided. Examples include harbors, ports, and visitor industry and energy facilities.”⁹ Massachusetts has a definition for “coastal-dependent energy facilities” in addition to “water-dependent uses.”

B. Water-related Definitions

American Samoa defines “water-related” as a “project, use, or action which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with a water-dependent use.”¹⁰ Maine’s definition is virtually identical. Florida and Oregon include the language used in American Samoa’s definition, but also add that “if not located adjacent to water, [it] would result in a public loss of quality in the goods or services offered.”¹¹

South Carolina and Washington’s definitions both focus on uses that benefit economically from a shoreline location. In South Carolina, water-related uses are “significantly enhanced economically by proximity to the shoreline,”¹² but in Washington such uses’ operation “cannot occur economically without a shoreline location.” New Hampshire’s definition for water-related facilities just requires “benefit from their proximity to coastal waters due to the nature of their operation or function.” Guam’s definition for the term “water-related” states that this “includes most industries requiring cooling water, or industries that receive raw material via navigable waters for manufacturing or processing.”

While most state programs with a secondary level use the term “water-related,” others use phrases like “coastal-related” or “accessory use” to define lower priority, but related, uses. For example, California defines “coastal-related” as “any use that is dependent on a coastal-dependent development or use.” Massachusetts uses the term “accessory use,” which probably should be referred to as “water-related” for clarity and uniformity with other states. Regardless of the terminology states use, all of these definitions focus on uses that are subordinate to water-dependent uses.

C. Water-enhanced Definitions

Only one state defines the term “water-enhanced.” New York defines a water-enhanced use as “a use or activity that does not require a location adjacent to or over coastal waters, but whose location on land adjacent to the shore adds to the public use and enjoyment of the water’s edge.

⁹ National Oceanic and Atmospheric Administration & Hawaii Office of State Planning, Hawaii Coastal Management Plan, 62, B-2, B-3 (1990), available at <http://www.gpo.gov/fdsys/search/home.action>. See also, Hawaii Revised Statute §§ 205A-2 (c)(3)(D), 205A-2(c)(5)(A)-(C).

¹⁰ American Samoa Administration Code 26.0204(x); American Samoa Coastal Management Plan, *supra* note 4.

¹¹ Florida Coastal Management Program, *supra* note 6.

¹² National Oceanic and Atmospheric Administration & South Carolina Coastal Council, South Carolina Coastal Management Program, III-35 (1995), available at http://www.scdhec.gov/environment/ocrm/czmp.htm#program_doc.

Water-enhanced uses are primarily recreational, cultural, retail, or entertainment uses. A restaurant which uses good site design to take advantage of the view is an example.”¹³

Others states use terms like “water-oriented,” which may refer to similar water-enhanced uses. Guam, New Jersey, Oregon, and Minnesota all have slightly different definitions for “water-oriented.” “Water-oriented” in Guam means “facing the shoreline or water, but not requiring a location on the waterfront or shoreline (i.e. hotels, restaurants, condos, apartments).”¹⁴ New Jersey’s definition of water-oriented requires that development “derives economic benefit from direct access to the water body along which it is proposed.”¹⁵ Oregon’s “Statewide Planning Goals and Guidelines” define “water-oriented” as “a use whose attraction to the public is enhanced by a view of or access to coastal waters.”¹⁶ Minnesota defines “surface water-oriented commercial use” as “the use of land for commercial purposes, where access to use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts, and restaurants with transient docking facilities are examples.”¹⁷ Although Minnesota’s definition requires use of the water be an integral part of the business, the use examples provided are similar to those included in the other states’ water-oriented definitions. California’s regulations include a list of uses that are “water-oriented land uses.”

It is important to note that South Carolina, New Hampshire, Washington have “water-related” definitions that actually more closely fit a third-tier dependency definition like “water-enhanced” due to the nature of their definitions. For example, New Hampshire defines water-related uses as those that “Benefit from their proximity to coastal waters due to the nature of their operation or function.”

As mentioned earlier, states may specify what uses they do not consider water-dependent. In a way, these clarifying exclusions identify “water-enhanced” uses. For example, New Jersey lists “housing, hotels, motels” as non-water-dependent. Such uses are then included in New Jersey’s water-oriented definition. “A hotel or restaurant, since it serves the public, could be water-oriented if it takes full advantage of a waterfront location... Housing is not water-oriented despite the economic premium placed on waterfront housing, because it only benefits those who can afford to buy or rent the housing units.”¹⁸ Another example is Massachusetts, which lists “housing units and other residential facilities; hotels, motels, and other facilities for transient lodging” as uses that are not water-dependent, and lists “general residential facilities” and

¹³ National Oceanic and Atmospheric Administration & New York Department of State, New York Coastal Management Program and Final Environmental Impact Statement (1982), available at <http://www.dos.ny.gov/communitieswaterfronts/pdfs/NY%20CMP%20.pdf>.

¹⁴ Guam Coastal Management Program, *supra* note 8

¹⁵ New Jersey Administrative Code § 7:7E-1.8.

¹⁶ Oregon Department of Land Conservation and Development, Statewide Planning Goals and Guidelines, available at http://www.oregon.gov/lcd/docs/goals/compilation_of_statewide_planning_goals.pdf.

¹⁷ Minnesota Regulation. § 6120.2500 subpt. 18a; “water-oriented accessory structure or facility.” Minnesota Regulation § 6120.2500 subpt. 20.

¹⁸ New Jersey Administrative Code § 7:7E-1.8.

“hotels” as uses that are not accessory to water-dependent uses.¹⁹ Oregon also includes a list of uses that are generally not water-related.²⁰

II. Local Government Definitions

Some states have delegated authority to local governments to enact laws and ordinances to protect public health, safety, and welfare, which may include the encouragement of water-dependent uses along their shorelines. In fact, several state coastal management programs require local governments to adhere to state definitions or policies regarding water- or coastal-dependency. In these states, local governments may adopt state definitions or craft local definitions that closely mirror the state definition but reflect local considerations. In states that do not require local governments to consider water-dependency, local governments must ensure that state law does not preempt regulations defining water-dependency. Preemption could occur where the local definition conflicts with state law or when the state government prohibits local government regulation. Below are several examples of local government definitions drawn from states that require local government planning along the coast.

A. Maine

Maine’s Mandatory Shoreland Zoning Act requires municipalities to adopt, administer, and enforce local ordinances that regulate land use activities in the shoreland zone. To that end, several Maine municipalities have implemented or defined water-dependent use definitions. In Maine, “functionally water-dependent uses” are defined as

those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. These uses include commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site and uses that primarily provide general public access to coastal or inland waters.²¹

Many of the local government definitions closely mirror the state definition. For example, in Augusta,

functionally water-dependent uses are those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale marketing facilities, waterfront

¹⁹ 310 Massachusetts Code Regulations. 9.12.

²⁰ Oregon Administrative Regulation 660-037-0040(5).

²¹ Maine Revised Statute Ann. tit. 38, § 436-A (2011).

dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably [be] located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.²²

Some cities have enacted an abbreviated version. They simply state that water-dependency means uses that require close proximity to water and contain an abbreviated list of such uses. For example, in Auburn,

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term “functionally dependent use” includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.²³

Portland simply defines water-dependent uses as “Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.”²⁴

Other Maine municipalities have defined additional levels of water dependency. The City of Belfast, for example, defines water-related use as “Water-related use means a use which does not require direct access to or location in or upon the water, but whose primary purpose is to support the successful functioning of a water-dependent use.”²⁵

B. North Carolina

The North Carolina Coastal Area Management Act requires each of the 20 coastal counties to have a local land use plan in accordance with guidelines established by the Coastal Resources Commission (CRC).²⁶ Coastal counties must specifically address Areas of Environmental Concern (AEC) in these plans. The state guidelines for AECs establish water-dependent use standards:

Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water-dependent. Uses that are water-dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches.²⁷

²² Augusta, Maine, Revised Code of Ordinances § 2.2 (1991).

²³ Auburn, Maine, Code of Ordinances § 60-892 (2009).

²⁴ Portland, Maine, Code of Ordinances § 14-47 (2012).

²⁵ Belfast, Maine, Code of Ordinances § 66-1 (2006).

²⁶ North Carolina General Statute §§113A-106 – 113A-112 (2012).

²⁷ 15A North Carolina Administrative Code 7H.0208(a)(1)(2012).

“Water-dependent Structures” are further defined as “a structure for which the use requires access or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and boat storage areas are not considered water-dependent uses.”²⁸

North Carolina municipalities have enacted local land use regulations to reflect these guidelines. For example, in Wilmington, development activities within the buffer zone are limited to water-dependent structures. Examples of water-dependent structures include “docks, piers, boat ramps, navigation markers, and access channels.”²⁹

Several municipalities have defined “functionally dependent facility” as “A facility, which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking, or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair.”³⁰ Carolina Beach specifically includes seafood processing facilities as an example.³¹ Most of the municipalities with a functionally dependent definition exclude certain uses from dependent facilities. For example, in Havelock, “the term does not include long-term storage, manufacture, sales or service facilities.”³² In its functionally dependent definition, New Bern also excludes structures from its water-dependent facility, including restaurants, outlets for boat supplies, parking lots, and commercial boat storage areas.³³

C. Washington

The Washington Shoreline Management Act (SMA) establishes a planning program and regulatory permit system initiated at the local level under state guidance.³⁴ Local programs consist of a shoreline inventory and a “shoreline master program” (SMP) to regulate shoreline uses. SMPs must be in accordance with SMA guidelines, but can be tailored to the specific needs of the community. In enacting the SMA, the legislature noted

uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state’s shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location

²⁸ 15A North Carolina Administrative Code 02H.1002(20)(2012).

²⁹ Wilmington, North Carolina, Code of Ordinances § 18-341(e)(3)(d)(2005).

³⁰ Havelock, North Carolina, Code of Ordinances § 18-553; Morehead City, North Carolina, Code of Ordinances § 2-2.121(2012).

³¹ Carolina Beach, North Carolina, Code of Ordinances § 12-169 (2012).

³² Havelock, North Carolina, Code of Ordinances § 18-553; Morehead City, North Carolina, Code of Ordinances § 2-2.121(2012).

³³ New Bern, North Carolina, Code of Ordinances § 15-506(2012).

³⁴ Washington Revised Code § 90.58 et. seq. (2010).

on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.³⁵

In general, in provisions relating to state aquatic lands, water-dependent use is defined as “a use that cannot logically exist in any location but on the water. Examples include, but are not limited to: Water-borne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks.”³⁶

Many Washington cities use this basic definition and tailor examples to local needs. For example, Seattle defines water-dependent use as

a use which cannot exist in other than a waterfront location and is dependent on the water by reason of the intrinsic nature of its operations. The following uses, and similar uses, are included: Ferry and passenger terminals, marine construction and repair, aquaculture, cargo terminal for marine commerce or industry, boat launch facilities, marinas, floating home moorages, tour boats, cruise ships, tug and barge operations, shoreline recreation, moorage, yacht clubs, limnological or oceanographic research facilities.³⁷

Other definitions are simpler. Many Washington municipalities define water-dependent structure as “a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.”³⁸ Arlington defines water-dependent as “A use for which the use of surface water would be essential in fulfilling the purpose of the proposed project.”³⁹

Seattle’s water-related use is “a use which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without use of the water adjacent to the site. The construction, maintenance and use of facilities such as docks, piers, wharves or dolphins shall be required. The following uses, and similar uses, are included: Seafood and fish processing, lumber and plywood mills, sand and gravel companies, concrete mix and cement plants, water pollution control services, marine electronics, marine refrigeration, marine sales, freeze/chill warehouses, and boat rigging operations.”⁴⁰

³⁵ Washington Revised Code § 90.58.20 (2010).

³⁶ Washington Revised Code § 79.105.060(24)(2005).

³⁷ College Place, Washington, Code of Ordinances § 18.10.020 (2009); Darrington, Washington, Code of Ordinances § 18.08.420 (2011).

³⁸ Anacortes, Washington, Code of Ordinances § 17-70-030 (2008); Camas, Washington, Code of Ordinances § 18.03.050 (2012); Cheney, Washington, Code of Ordinances § 19.20.005 (2004); Dayton, Washington, Code of Ordinances § 5-8.10 (2006); Duvall, Washington, Code of Ordinances § 14.84.030 (2007); Franklin County, Washington, Code of Ordinances § 15.08.050 (2008); Gold Bar, Washington, Code of Ordinances § 15.28.030 (1999); Mason County, Washington, Code of Ordinances § 17.06.010 (2010); Millwood County, Washington, Code of Ordinances § 15.20.005 (2010).

³⁹ Arlington, Washington, Code of Ordinances § 20.88.100DE (2003).

⁴⁰ Seattle, Washington, Code of Ordinances § 23.60.944 W (1997).

III. Guidance for Crafting Effective Definitions

While states or local governments may have varying terminology or definitions for water-dependent uses, states or local governments can ensure that their definitions adequately protect working waterfronts by incorporating certain elements. In “Water-Dependent Use Definitions,” the UF Conservation Clinic provides guidance as to recommended terminology and elements that can help states in fulfilling specific visions for their waterfront. State and local governments are encouraged to review the Conservation Clinic’s report in its entirety, as what follows is only a summary of some of their recommendations and key findings.

A. Elements of an Effective Definition

1. Statement of Purpose

A “statement of purpose” explaining why specific water dependency tests were enacted may help to preserve traditional waterfronts by guiding decision-making with respect to future development.⁴¹ For example, a statement of purpose might articulate priority goals, such as maintaining maritime heritage or strengthening the economy. State and local decision-makers can then look to these statements for guidance when faced with permitting and development decisions. Additionally, purpose statements can be essential during judicial review, as judges may look to the purpose behind a law to determine whether the law is being carried out in the manner intended.

While state coastal management programs generally do not include “statements of purpose” specifically addressing water-dependency tests, most state laws and regulations contain statements regarding the general goal or objective of the enactment or the program it creates. For example, Oregon’s administrative rules include the following policy statement:

The reasons to protect certain shorelands for water-dependent uses are both economic and environmental. Economically, shoreland sites for water-dependent development are a finite economic resource that usually needs protection from prevailing real estate market forces. By its very nature, water-dependent development can occur only in shoreland areas and only in certain shorelands with suitable characteristics relating to water access, land transportation and infrastructure, and surrounding land use compatibility. Once these suitable sites are lost to non-water-dependent uses, they are very difficult and expensive to recover, if at all. Environmentally, providing “suitable” areas for water-dependent development means less economic and political pressure to accommodate future development in environmentally sensitive areas such as wetlands, marshes, and biologically productive shallow subtidal areas. As a matter of state policy, it is not desirable to allow these scarce and non-renewable resources of the marine economy to be irretrievably committed to, or otherwise significantly impaired by, nonindustrial or non-water-dependent types of development which enjoy a far greater range of locational options.⁴²

⁴¹ Conservation Clinic, *supra* note 3, at 18.

⁴² Oregon Administrative Regulation 660-037-0020.

Washington law states, for example, that

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.⁴³

In Maine, the legislature adopted a policy to “Support shoreline management that gives preference to water-dependent uses over other uses, that promotes public access to the shoreline and that considers the cumulative effects of development on coastal resources.”⁴⁴ North Carolina and Alabama also have policy statements that could be viewed as statements of purpose.⁴⁵ These statements, although generally applicable, provide insight into the policies and priorities underlying the coastal management programs which can be considered when making decisions related to water-dependent uses.

2. Policy Considerations

To address working waterfront concerns, the UF Conservation Clinic recommends “definitions should first seek to promote both increased public access and preservation of traditional maritime activities by prohibiting uses that do not substantially further either one or both goals.”⁴⁶ However, before crafting water-dependency definitions and adding examples, communities should consider the policy reasons behind their definitions. Communities considering writing or amending water-dependency definitions should consider:

- The rationale and goals of limiting development to water-dependent uses; these may involve the economy and jobs, the culture of the community, the physical environment, access to the waterfront and many other dimensions;
- The uses or mix of uses the community wants to preserve (the “vision”);
- The area to be regulated;
- The need to have an inventory of resources in order to make informed, rational policy choices regarding public and private needs; and
- The public trust doctrine and the responsibility of state officials.⁴⁷

⁴³ Washington Administrative Code § 90.58.020.

⁴⁴ Maine Revised Statute tit. 38, § 1801.

⁴⁵ 15 North Carolina Administrative Code 7H. 0203; Alabama Administrative Code r. 220-4-.09.

⁴⁶ Conservation Clinic, *supra* note 3, at 21.

⁴⁷ *Id.*

Regulations and zoning ordinances related to water-dependent uses usually exclude hotels and other non-water-dependent or marine-related businesses from being considered “water-dependent.” While these types of businesses benefit from a waterfront location, their presence at the waterfront often displaces traditional waterfront uses. If communities wish to allow such development on the water, they should limit the geographic application of water-dependency requirements so that waterfronts retain traditional waterfront uses.

3. Model Dependency Tests and Examples

The UF Conservation Clinic suggests states and local governments define two levels of water dependency: water-dependent uses and water-related uses. A third definition for uses which are merely “water-enhanced,” such as hotels, motels, resorts, or private residences, could be used to clarify what uses should not be considered water-dependent or water-related. Most states with coastal management programs have a definition for at least the first level of water-dependency, that is, water- or coastal-dependent uses. Many of these states also define secondary levels of water-dependency.

While a general test may be given for each of the dependency levels, “The best way to ensure certainty concerning the nature of a proposed use is to list representative uses within the definition.”⁴⁸ These lists can make clear what will and will not be allowed in waterfront areas and help alleviate later confusion in deciding whether proposed land uses are water-dependent, water-related, or water-enhanced.

In general, a water-dependent use should only include “An activity that must physically be located in, on, over, or adjacent to water in order to conduct its primary purpose and which, therefore, cannot be located inland.”⁴⁹ Examples in a representative list could include: “commercial fishing, public waterfront recreation (such as public parks or walkways promoting public use and enjoyment of the water), fishing piers, marinas, boat ramps, fuel sales for boats, facilities related to marine public safety and law enforcement or marine fire-fighting capabilities, marine transportation facilities (including docks and wharves but potentially not the associated warehouses), industrial uses requiring large amounts of cooling water (such as power generating facilities), fish processing plants, terminal and warehouse buildings.”⁵⁰

Water-related uses should only include “An activity not dependent on direct access to water in order to conduct its primary purpose, but which provides goods or services directly related to water-dependent uses.”⁵¹ Examples could include: “short-term parking needed to allow enjoyment of a water-dependent use (such as that necessary for use of boat ramps), access roads, small shops (such as bait shops) or restaurants primarily serving those engaged in water-dependent uses, administrative office space necessary for water-dependent uses, fish canning/processing plants, retail and wholesale of seafood, storage associated with marine shipping, boat sales, marine supplies, and access roads.”⁵²

⁴⁸ Conservation Clinic, *supra* note 3, at 21.

⁴⁹ *Id.* at 27.

⁵⁰ *Id.* at 22.

⁵¹ *Id.* at 27.

⁵² *Id.* at 24.

Water-enhanced uses should only include “An activity that benefits economically from being located on or near the water but that is neither dependent on direct access to water nor provides goods or services directly related to water-dependent uses.”⁵³ Prime examples include: residential homes, condominiums, hotels, restaurants, gifts shops, or other retail stores not essential to water-dependent uses. These uses should never be included in any definitions or examples, even though they promote access for residents, as they reduce public access. At best, private residences could be considered uses that benefit from a waterfront location.

States or local governments do not necessarily need to expressly define “water-enhanced.” Instead, as discussed above, water-enhanced uses are often specifically excluded from definitions of both water-dependent and water-related uses. For local governments, zoning laws may also designate certain areas where the water-dependency test does not apply or where hotels and resorts are an exception.

IV. Recommendations

State and local governments can realize goals for protecting waterfronts by ensuring that laws and policies related to coastal development contain certain water-dependency requirements. State and local governments seeking to preserve traditional working waterfronts should periodically review their existing water-dependency definitions and policies to ensure that clear guidance is provided for those tasked with making permitting and other decisions.

- Water-dependency definitions should not be adopted without full consideration of the policy objectives behind the definitions. A clear understanding and articulation of the policy reasons for the definition will improve the drafting process, guide future development decisions, and provide support if the law or decision is challenged in court. Local governments should consider including a statement of purpose in comprehensive plans and land development regulations explaining the policies behind their water-dependency definitions. Reviewing bodies, such as a local planning board, may use these statements of purpose to help justify decisions to limit development to water-dependent uses.
- Most states with coastal management programs have at least one definition for either water-dependent or coastal-dependent uses. Many states also have two or more levels of water-dependency. State and local governments are encouraged to review their existing laws, regulations, and policies to ensure that at least two levels of water-dependency, water-dependent and water-related, are expressly defined. If water-enhanced uses are not separately defined, guidance as to such uses should be provided in the other definitions.
- Examples or representative lists should be included in definitions to help alleviate later confusion in deciding whether proposed land uses are water-dependent, water-related, or water-enhanced. Most states either have lists in their coastal management plans and statutes or have supplemented these definitions by including lists of water-

⁵³ Conservation Clinic, *supra* note 3, at 27.

dependent activities in their administrative regulations. Some states include representative lists of what should be considered water-dependent. Local governments can incorporate or build upon these lists to guide local policy. Connecticut, Massachusetts, New Hampshire, New Jersey, and Oregon outline very specific water-dependent uses in their plans. For example, Connecticut defines “water-dependent uses” as

those uses and facilities which require direct access to, or location in marine or tidal waters and which therefore cannot be located inland, including but not limited to: marinas, recreational and commercial fishing and boating facilities, finfish and shellfish processing plants, waterfront dock and port facilities, shipyards and boat building facilities, water-based recreational uses, navigation aids, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an inland site and uses which provide general public access to marine or tidal waters.⁵⁴

⁵⁴ National Oceanic and Atmospheric Administration & Connecticut Department of Environmental Protection, Connecticut Coastal Management Program, (1980), available at <http://www.gpo.gov/fdsys/search/home.action>.

Appendix
State Coastal Management Programs
Water-Dependent Use Definitions

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Program (Approval Date)	Lead State Agency(s)	Local Government CZM Authority	Coastal-Dependent Definitions	Water-Dependent Definitions	Other definitions
Alabama Coastal Area Management Program (1979)	Alabama Department of Conservation and Natural Resources and Alabama Department of Environmental Management	ADEM has delegated authority to the City of Gulf Shores and the City of Orange Beach to implement the permitting, monitoring and enforcement section of the ADEM Division 8 Coastal Program rule related to construction on Gulf-fronting beaches and dunes.	N/A	Alabama regulations state that "water dependent use means those uses which must, under normal operating conditions, be located on or in or immediately adjacent to coastal waters in order to be physically and economically practicable." (Alabama Administrative Code r. 335-8-1-.02). Alabama regulations also define "water dependent activity," which "means an activity which can only be conducted on, in, over, or adjacent to water areas because the activity requires direct access to the water body or state owned submerged lands for transportation, recreation, energy production or transmission, or source of water, and where the use of the water or state owned submerged lands is an integral part of the activity." (Alabama Administrative Code r. 220-4-.09).	N/A
Alaska Coastal Management Program (withdrew July 1, 2011).	Alaska Department of Natural Resources, Division of Coastal & Ocean Management	No	N/A	Water-dependent "means a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body." (Alaska Administrative Code tit. 6, § 80.900(17)).	Water-related "means a use or activity which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with water-dependence and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered." ((Alaska Administrative Code tit. 6, § 80.900(18)).
American Samoa Coastal Program (1980)	American Samoa Department of Commerce	No	N/A	"Water-dependent means a project, use or action, which can be carried out only on, in, or adjacent to water areas because it requires access to water." (American Samoa Administrative Code § 26.0204(w)).	Water-related means a project, use or action which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with a water-dependent use. (American Samoa Administrative Code § 26.0204(x)).
California Coastal Management Program (1977)	California Coastal Commission, except for San Francisco Bay, where the San Francisco Bay Conservation and Development Commission oversees development.	Yes, local counties and cities located in the coastal zone must create local coastal programs (LCPs). Each LCP must include a land use plan and measures to implement the plan (such as zoning ordinances). While each LCP reflects unique characteristics of individual local coastal communities, regional and statewide interests and concerns must also be addressed in conformity with the California Coastal Act goals and policies. After an LCP has been approved by the California Coastal Commission, coastal permitting authority over most new development is transferred to the local government.	"Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all. (California Public Resolution Code § 30101).	N/A	(1) "Coastal-related development" means any use that is dependent on a coastal-dependent development or use. (California Public Resolution Code § 30101.3). (2) In establishing the San Francisco Bay Conservation and Development Commission, the Legislature declared that "water-oriented land uses along the bay shoreline are essential to the public welfare of the bay area, and that these uses include ports, water-related industries, airports, wildlife refuges, water-oriented recreation and public assembly, desalinization plants, upland dredged material disposal sites, and power plants requiring large amounts of water for cooling purposes." (California Governance Code § 66602)
Connecticut Coastal Management Program (1980)	Connecticut Department of Energy and Environmental Protection, Office of Long Island Sound Programs	Coastal municipalities may adopt a municipal coastal program. Municipal coastal programs, which are implemented through the municipal plan of conservation and development and zoning ordinances, must be consistent with state coastal management goals and policies. Coastal municipalities also undertake coastal site plan reviews in accordance with the Connecticut Coastal Management Act.	N/A	Water-dependent uses "means those uses and facilities which require direct access to, or location in marine or tidal waters and which therefore cannot be located inland, including but not limited to: marinas, recreational and commercial fishing and boating facilities, finfish and shellfish processing plants, waterfront dock and port facilities, shipyards and boat building facilities, water-based recreational uses, navigation aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an inland site and uses which provide general public access to marine or tidal waters." (Connecticut General Statute § 22a-93(16)).	"Adverse impacts on future water-dependent development opportunities" and "adverse impacts on future water-dependent development activities" include but are not limited to (A) locating a non-water-dependent use at a site that (i) is physically suited for a water-dependent use for which there is a reasonable demand or (ii) has been identified for a water-dependent use in the plan of development of the municipality or the zoning regulations; (B) replacement of a water-dependent use with a non-water-dependent use, and (C) siting of a non-water-dependent use which would substantially reduce or inhibit existing public access to marine or tidal waters. (Connecticut General Statute § 22a-93(17)).

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Delaware Coastal Management Program (1979)	Department of Natural Resources and Environmental Control (DNREC)	No	N/A	"Water-Dependent Activity" means an activity which can only be conducted on, in, over, or adjacent to water, and where the use of the water or subaqueous lands is a primary and integral part of the activity or use (7 Delaware Administrative Code § 7504-3.0).	N/A
Florida Coastal Management Program (1981)	Florida Department of Environmental Protection	Local governments abutting the Gulf of Mexico or the Atlantic Ocean must include a coastal management element in their comprehensive plans. The coastal management element must, among other things, include "A shoreline use component that identifies public access to beach and shoreline areas and addresses the need for water-dependent and water-related facilities, including marinas, along shoreline areas." (Florida Statute Ann. § 163.3178(2)(g)).	N/A	"Water dependent activity" means an activity which can only be conducted on, in, over, or adjacent to, water areas because the activity requires direct access to the water body or sovereignty lands for transportation, recreation, energy production or transmission, or source of water and where the use of the water or sovereignty lands is an integral part of the activity. (18 Florida Administrative Code r. 18-20.003(72) (aquatic preserves) and r. 18.21.003(71) (sovereign submerged lands)).	"Recreational and commercial working waterfront" means a parcel or parcels of real property that provide access for water-dependent commercial activities, including hotels and motels as defined in s. 509.242(1), or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. (Florida Statute Ann. § 342.07(2)).
Georgia Coastal Program (1998)	Georgia Department of Natural Resources, Coastal Resources Division	No	N/A	Although the term is not formally defined, Georgia's marina regulations refer to "water-dependent activities such as boating and fishing." (Ga. Comp. R. & Regs. 391-2-3-.03).	N/A
Guam Coastal Management Program (1979)	Bureau of Statistics & Plans	No	N/A	"Water-dependent use" means a use where a "waterfront location is necessary for its physical function -- such as handling goods and services for transportation on water (i.e. port facilities)." (Guam Coastal Management Plan at p. 55).	(1) "Water-related use" is a use "requiring access to water, or water itself as a resource, but does not require a waterfront location. Includes most industries requiring cooling water, or industries that receive raw material via navigable waters for manufacturing or processing." (Guam Coastal Management Plan at p. 55). (2) "Water-oriented use" is a use "facing the shoreline or water, but not requiring a location on the waterfront or shoreline (i.e. restaurants, hotels, condominiums, apartments)." (Guam Coastal Management Plan at p. 55).
Hawaii Coastal Zone Management Program (1978)	Hawaii Department of Business, Economic Development, and Tourism, Office of State Planning	No	Although there is no formal definition, the Hawaii Coastal Zone Management Policies refer to "coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities and energy generating facilities." (Hawaii Revised Statute § 205A-2(c)(5)(B)).	N/A	N/A
Illinois Coastal Management Program (2012)	Illinois Department of Natural Resources	No	N/A	N/A	N/A
Indiana Lake Michigan Coastal Program (2002)	Indiana Department of Natural Resources	No	N/A	N/A	N/A

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Louisiana Coastal Resources Program (1980)	Louisiana Department of Natural Resources	The State and Local Coastal Resources Management Act (SLCRMA) has provisions which allow parish governments to assume authority over certain types of coastal uses. However, in order to obtain this authority, parishes need to develop a local coastal management plan which must be approved by the state and federal coastal management agencies. Once a parish program has been approved, it officially becomes part of the Louisiana Coastal Resources Program, and it then regulates "uses of local concern" as defined in SLCRMA (see Louisiana Revised Statute § 49:214.28). There are 20 parishes which are either fully or partially within the Louisiana Coastal Zone boundary. Ten of these parishes have approved coastal management programs.	N/A	Coastal Water-Dependent Uses: "those which must be carried out on, in or adjacent to coastal water areas or wetlands because the use requires access to the water body or wetland or requires the consumption, harvesting or other direct use of coastal resources, or requires the use of coastal water in the manufacturing or transportation of goods. Examples include surface and subsurface mineral extraction, fishing, ports, & necessary support commercial & industrial facilities, facilities for the construction, repair and maintenance of vessels, navigation projects, & fishery processing plants." (Louisiana Administrative Code. tit. 43, § 700).	N/A
Maine Coastal Program (1978)	Maine State Planning Office	The Maine Mandatory Shoreland Zoning Act requires municipalities to adopt, administer, and enforce local ordinances that regulate land use activities in the shoreland zone.	N/A	"Functionally water-dependent uses" means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. These uses include commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site and uses that primarily provide general public access to coastal or inland waters. (38 Maine Revised Statute § 436-A(6)).	"Working waterfront land means a parcel of land, or a portion thereof, abutting water to the head of tide or land located in the intertidal zone that is used primarily or used predominantly to provide access to or support the conduct of commercial fishing activities." (36 Maine Revised Statute § 1132(11)).
Maryland Chesapeake and Coastal Program (1978)	Maryland Department of Natural Resources	Local governments located within Maryland's "Critical Area" (defined as all land within 1,000 feet of the Mean High Water Line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries), must develop local critical area management programs pursuant to guidelines developed by the statewide Critical Area Commission.	N/A	(1) "Water-dependent activity" as defined in the Nontidal Wetlands Protection Act "means an activity for which the use of surface water would be essential to fulfill a basic purpose of the proposed project." (Maryland Code Regulations 26.23.01.01(B)(88)). (2) "Water-dependent" as defined with respect to tidal wetlands "means a temporary or permanent structure or activity, which by reason of its intrinsic nature or operation, requires location in or over State or private wetlands." (Maryland Code Regulations 26.24.01.02(B)(62)). (3) "Water-dependent facilities" as defined for purposes of Local Critical Area Program development "means those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline..." (Maryland Code Regulations 27.01.03.01(A)).	N/A

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Massachusetts Coastal Management Program (1978)	Executive Office of Energy & Environmental Affairs, Office of Coastal Zone Management, and Massachusetts Department of Environmental Protection	No	"Coastally-Dependent Energy Facility" means: "(1) a facility which uses indigenous energy resources of the coastal zone; (2) a facility which serves as a transfer point between ocean and land; (3) a facility which transmits or transports energy or energy sources from a transfer point or other energy facility in the coastal zone to an inland or other coastal location; (4) a facility which stores energy or energy sources necessary for transshipment from the ocean, for surge storage, or to supply coastal energy facilities and maritime industries..." (980 Massachusetts Code Regulations § 9.01(2)).	(1) "Water dependent use" is defined as "those uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore cannot be located inland, including but not limited to: marinas, recreational uses, navigational and commercial fishing and boating facilities, water-based recreational uses, navigation aids, basins, and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an inland site." (Massachusetts General Laws Ann. ch. 91 §1). Detailed regulatory guidelines govern water-dependency determinations, which include examples of categories of uses which are deemed "water-dependent" and "water-dependent industrial." (310 Massachusetts Code Regulations § 9.12). (2) "Water dependent use project" is any project which consists entirely of water dependent uses and/or uses accessory to water-dependent uses. (310 Massachusetts Code Regulations § 9.12(1)).	"Accessory Use" means a "use customarily associated with and necessary to accommodate a principal water-dependent use. Such a finding shall be made only if the proposed use is: (a) integral in function to the construction or operation of the water-dependent use in question, or provides related goods and services primarily to persons engaged in such use; and (b) commensurate in scale with the operation of the water-dependent use in question. Examples of uses that may be determined to be accessory to a water-dependent use include, but are not limited to, access and interior roadways, parking facilities, administrative offices and other offices primarily providing services to water-dependent uses on the site, yacht clubhouses, restaurants and retail facilities primarily serving patrons of the water-dependent use on the site, bait shops, chandleries, boat sales, and other marine-oriented retail facilities. Uses that may not be determined to be accessory to a water-dependent use include, but are not limited to, general residential facilities, hotels, general office facilities, and major retail establishments." (310 Massachusetts Code Regulations § 9.12(3)).
Michigan Coastal Management Program (1978)	Michigan Department of Environmental Quality	No	N/A	N/A	N/A
Minnesota Lake Superior Coastal Program (1999)	Minnesota Department of Natural Resources	Municipalities with shoreland within its corporate boundaries may develop ordinances and rules for the use and development of its shorelands. Such ordinances and rules must be submitted to DNR for a determination whether the rules and ordinances are in substantial compliance with state shoreland management standards and criteria. (Minnesota Statute Ann. § 103F.221).	N/A	N/A	(1) "Surface water-oriented commercial use" means the use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use. (Minnesota Regulation 6120.2500 Subp. 18a). (2) "Water-oriented accessory structure or facility" means a small, above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks. (Minnesota Regulation 6120.2500 Subp. 20).
Mississippi Coastal Program (1983)	Mississippi Department of Marine Resources	No	N/A	"Water-dependent industry," as defined in the Coastal Wetlands Protection Act "means those commercial, industrial or manufacturing activities which, for purposes basic to their existence must occur or locate on or adjacent to the estuaries, sounds, channels, shores or marshlands of the coast." (Mississippi Code Ann. § 49-27-5(i)). Examples of "water dependent industry" (criteria) are listed in Mississippi Administrative Code 22-1-3:8-2 Pt. II (E).	N/A

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New Hampshire Coastal Program (1982)	New Hampshire Department of Environmental Services	No	N/A	(1)The New Hampshire Coastal Program Ocean and Harbor Segment states that for the purposes of the state coastal program, "a water-dependent use is an activity or facility which requires direct access to or location in coastal waters. Water-dependent uses include: marinas; commercial fishing facilities; recreational boating facilities; fish processing plants; waterfront port and dock facilities; shipyards; water-based recreation; navigational aids; basins and channels; industrial uses dependent upon water borne transportation or requiring large volumes of cooling or process water, which cannot reasonably be located or operated at an inland site; and uses which provide general public access to coastal waters." (2)"Water-dependent structure" means a structure that is a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp or other similar structure, or any part thereof, built over, on, or in the waters of the state. (New Hampshire Revised Statute § 483-B:4(XXVI)).	The New Hampshire Coastal Program Ocean and Harbor Segment states "Water-related facilities benefit from their proximity to coastal waters due to the nature of their operation or function are also important coastal uses. Such facilities include beach and yacht clubs; boat rentals and sales; restaurants, motels, automobile parking when necessary to a water related use; coastal resorts and other commercial activities serving coastal recreation or marine commerce."
New Jersey Coastal Management Program (1980)	New Jersey Department of Environmental Protection	No	N/A	"Water-dependent means development that cannot physically function without direct access to the body of water along which it is proposed... 1. Examples of water-dependent uses include: docks, piers, marina activities requiring access to the water, such as commissioning and decommissioning new and used boats, boat repairs and short term parking for boaters, storage for boats which are too large to be feasibly transported by car trailer (generally greater than 24 feet), rack systems for boat storage, industries such as fish processing plants and other commercial fishing operations, port activities requiring the loading and unloading of vessels, and water oriented recreation. 2. Water-dependent uses exclude, for example: housing, hotels, motels, restaurants, warehouses, manufacturing facilities (except for those which receive and quickly process raw materials by ship), dry boat storage for boats that can be transported by car trailer, long-term parking, parking for persons not participating in a water-dependent activity, boat sales, automobile junk yards, and non-water-oriented recreation such as roller rinks and racquetball courts." (New Jersey Administrative Code 7:7E-1.8).	"Water-oriented means development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed. (Industrial uses need not serve the general public.) A hotel or restaurant, since it serves the public, could be water-oriented if it takes full advantage of a waterfront location. An assembly plant could be water-oriented if overland transportation is possible but water-borne receipt of raw materials and shipment of finished products is economically advantageous. Housing is not water-oriented despite the economic premium placed on waterfront housing, because it only benefits those who can afford to buy or rent the housing units." (New Jersey Administrative Code 7:7E-1.8).
New York Coastal Management Program (1982)	Department of State, Office of Communities and Waterfronts	Local governments may prepare and adopt local waterfront revitalization programs (LWRP), subject to State approval, which provide more detailed implementation of the New York Coastal Management Program through the use of existing local powers such as zoning and site plan review. When a LWRP is approved by the New York Secretary of State, state agencies' actions must be consistent with the approved LWRP to the maximum extent practicable.	N/A	"Water-dependent use means 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." (New York Executive Law § 911(7)).	"Water-enhanced use means a use or activity which does not require a location adjacent to coastal waters, but whose location on the waterfront adds to the public use and enjoyment of the water's edge. Water-enhanced uses are primarily recreational, cultural, retail, or entertainment uses." (New York Comprehensive Codes Rules. & Regulations. tit. 19, § 600.2(ai)).

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North Carolina Coastal Management Program (1978)	North Carolina Department of Environment & Natural Resources, Division of Coastal Management	The North Carolina Coastal Area Management Act requires each of the 20 coastal counties to have a local land-use plan in accordance with guidelines established by the Coastal Resources Commission. (North Carolina General Statutes §§ 113A-106 - 113A-112).	N/A	North Carolina does not have a formal definition, but the State Guidelines for Areas of Environmental Concern state "Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water-dependent. Uses that are water-dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches. (North Carolina Administrative Code tit. 15A, r. 7H.0208(a)(1)).	N/A
Commonwealth of the Northern Mariana Islands Coastal Resources Management Program (1980)	Coastal Resources Management Office	No	N/A	CNMI Coastal Management Plan states that "Water-dependent Use means a use which cannot logically exist in any location but on the water. Examples include, but are not limited to, water-borne commerce; watercraft sales in conjunction with water-dependent uses; watercraft construction, repair and maintenance; moorage and launching facilities; aquaculture; and public fishing piers, marinas and marine parks."	N/A
Ohio Coastal Management Program (1997)	Ohio Department of Natural Resources	No	N/A	Ohio has not adopted a formal definition, but the state's Erosion Area Construction Permit regulations refer to "non-water-dependent development or activity (i.e., an improvement which by its nature does not depend on being located in or upon the water)." (Ohio Administrative Code 1501-6-03(D)(1)).	The Ohio Coastal Management Act mentions "lake-dependent" development, which "requires actual lakefront access to operate. These include commercial fishing, port facilities, certain mineral extraction industries, large boatworks, shipyards, and marinas. Other developments require water, but not necessarily lakefront land, as an integral part of their operation. Electrical generating facilities and steel plants are examples of this." (Ohio CMP at p. 5-69)
Oregon Coastal Management Program (1977)	Oregon Department of Land Conservation & Development	Oregon's statewide goals are achieved through local comprehensive planning. State law requires each city and county to have a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect. The local comprehensive plans must be consistent with the statewide planning goals.	N/A	Water-dependent means a "use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water." (Oregon Statewide Planning Goals & Guidelines) "Typical examples of water-dependent uses include the following: (A) Industrial - e.g., manufacturing to include boat building and repair; water-borne transportation, terminals, and support; energy production which needs quantities of water to produce energy directly; water intake structures for facilities needing quantities of water for cooling, processing, or other integral functions. (B) Commercial - e.g., commercial fishing marinas and support; fish processing and sales; boat sales, rentals, and supplies. (C) Recreational - e.g., recreational marinas, boat ramps, and support. (D) Aquaculture. (E) Certain scientific and educational activities which, by their nature, require access to coastal waters - estuarine research activities and equipment mooring and support... [Examples] that are not "water-dependent uses" include restaurants, hotels, motels, bed and breakfasts, residences, parking lots not associated with water-dependent uses, and boardwalks." (Oregon Administrative Regulation 660-037-0040(6)(b)-(c)).	(1) Water-oriented means "A use whose attraction to the public is enhanced by a view of or access to coastal waters. (Oregon Statewide Planning Goals & Guidelines). (2) Water-related means "Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs. (Oregon Statewide Planning Goals & Guidelines). (3) "Structure or facility that provides water-dependent access" means anything constructed or installed, regardless of its present condition, functionality or serviceability, that provides or provided water-dependent uses with physical access to the adjacent coastal water body. Examples include wharves, piers, docks, mooring piling, boat ramps, water intake or discharge structures, or navigational aids. (Oregon Administrative Regulation 660-037-0040(5)).
Pennsylvania Coastal Resources Management Program (1980)	Pennsylvania Department of Environmental Protection	No	N/A	N/A	N/A

Appendix
State Coastal Management Programs
Water-Dependent Use Definitions

Program (Approval Date)	Lead State Agency(s)	Local Government CZM Authority	Coastal-Dependent Definitions	Water-Dependent Definitions	Other definitions
Puerto Rico Coastal Management Program (1978)	The Department of Natural & Environmental Resources is the lead agency for maritime zone, coastal waters, and submerged lands. The Puerto Rico Planning Board is the primary agency for managing coastal development.	No	N/A	"Water-dependent uses are those requiring direct access to, or to be located in, property in the maritime public domain, and that, therefore, can not be located elsewhere." The regulation goes on to provide a detailed, although not exhaustive, list of uses that should be considered water-dependent, including marinas and fishing villages; areas for storage and any other commercial or recreational establishments required for the use and handling of boats and vessels; aquariums, marine research laboratories, and other establishments for education or training, dedicated principally to marine resources; establishments for aquaculture; and establishment for transporting passengers in boats or vessels, such as ferries, cruise ships, excursion boats, boating, and/or aquatic shuttles or water taxis. (Puerto Rico Regulation for the Use, Surveillance, Conservation, and Management of the Territorial Waters, Submerged Lands Thereunder and the Maritime Zone, Article 6 - Granting Concessions for New and Used Construction, 6.1(A)).	"Accessory water-dependent uses are those which, are generally related to and are necessary for the conveniences of a main beneficial use which is water-dependent... Examples of uses which may be considered as accessory to a water dependent use are, but are not limited to, interior access roads, parking, management offices, and other offices providing services chiefly related to water-dependent uses; yacht clubs, restaurants, and retail facilities mainly serving users of such water-dependent uses; stores which sell bait, vessels or boats, and any other retail establishment for marine matters or articles. Among the uses which can not be determined as accessory to a water-dependent use are, but are not limited to, general residential structure, hotels, general office establishments, and retail market centers and shopping centers, or other major retail establishments." Puerto Rico Regulation Article 6.1(A)(4)).
Rhode Island Coastal Resources Management Program (1978)	Coastal Resources Management Council	No	N/A	A "Water-Dependent Activity or Use" is defined as "Activities or uses which can only be conducted on, in, over, or adjacent to tidal waters or coastal ponds because the use requires access to the water from transportation, recreation, energy production, or source of water: also includes non-water-dependent activities that provide access to the shore to broad segments of the public." (Rhode Island Administrative Code 16-2-1).	N/A
South Carolina Coastal Zone Management Program (1979)	South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management	Following the enactment of the South Carolina Coastal Zone Management Program, local governments could elect to develop a management program for the critical areas within its jurisdiction. Such programs have to be consistent with the state program and are subject to DHEC review. (South Carolina Code Ann. § 48-39-100).	N/A	"Water-Dependent: A facility which can demonstrate that dependence on, use of, or access to, coastal waters is vital to the functioning of its primary activity." (South Carolina Code of Regulations Rule 30-1(D)(52)).	N/A

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Water-Dependent Use Definitions

Program (Approval Date)	Lead State Agency(s)	Local Government CZM Authority	Coastal-Dependent Definitions	Water-Dependent Definitions	Other definitions
Texas Coastal Management Program (1996)	Texas General Lands Office	Local governments, in conjunction with the Texas General Land Office, issue or review permits for coastal construction associated with the Open Beaches Act and the Dune Protection Act.	N/A	Water-dependent use or facility: "An activity or facility that must be located in coastal waters or on submerged lands or that must have direct access to coastal waters in order to serve its basic purpose and function. Facilities that are water-dependent include, but are not limited to, public beach use and access facilities, boat slips, docks, breakwaters, marinas, wharves and other vessel loading or off-loading facilities, utility easements, boat ramps, navigation channels and basins, bridges and bridge approaches, revetments, shoreline protection structures, culverts, groins, saltwater barriers, navigational aids, mooring pilings, simple access channels, fish processing plants, boat construction and repair facilities, offshore pipelines and constructed wetlands below mean high water. Activities that are water-dependent include, but are not limited to, marine recreation (fishing, swimming, boating, wildlife viewing), industrial uses dependent on marine transportation or requiring large volumes of water that cannot be obtained at inland sites, mariculture, exploration for and production of oil and gas under coastal waters or submerged lands, and certain meteorological and oceanographic activities." (Texas Administrative Code tit. 31, § 501.3(a)(14)).	N/A
Virgin Islands Coastal Management Program (1979)	Virgin Island Department of Planning & Natural Resources	No	"Coastal dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function effectively. (Virgin Islands Code Ann. tit. 12 § 902(d)).	N/A	N/A
Virginia Coastal Zone Management Program (1986)	Virginia Department of Environmental Quality	No	N/A	"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities. (4 Virginia Administrative Code 50-90-40).	N/A
Washington Coastal Zone Management Program (1976)	Washington Department of Ecology	The Shoreline Management Act (SMA) establishes a planning program and regulatory permit system initiated at the local level under state guidance. Local programs consist of a shoreline inventory and a "shoreline master program" (SMP) to regulate shoreline uses. SMPs must be in accordance with SMA guidelines but can be tailored to the specific needs of the community.	N/A	"Water-dependent use means a use that cannot logically exist in any location but on the water. Examples include, but are not limited to: Water-borne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks." ((Washington Revised Code 79.105.060(24)).	"Water-oriented use means a use that historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and houseboats." ((Washington Revised Code 79.105.060(25)).
Wisconsin Coastal Management Program (1978)	Wisconsin Department of Administration	No	N/A	N/A	N/A

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Final Report

