

TITLE 85: DEPARTMENT OF LANDS AND NATURAL RESOURCES

SUBCHAPTER 85-30.2

SMILING COVE MARINA RULES AND REGULATIONS

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Subchapter Authority: 1 CMC § 2654; PL 6-13 § 3.

Subchapter History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 25 Com. Reg. 20399 (July 15, 2003); Amdts Adopted 17 Com. Reg. 13723 (Sept. 15, 1995); Amdts Proposed 17 Com. Reg. 13515 (June 15, 1995); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (July 15, 1992) (effective for 120 days from July 13, 1992).

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Commission Comment: PL 1-8, tit. 1, ch. 13 (effective Aug. 10, 1978), formerly codified at 1 CMC §§ 2651, et seq., originally created a Department of Natural Resources within the Commonwealth government.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. According to Executive Order 94-3 § 104:

Section 104. Department of Lands and Natural Resources.

The Department of Natural Resources is re-designated the Department of Lands and Natural Resources.

The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001.

In 1997, the Legislature passed the “Public Lands and Natural Resources Administration Act of 1997,” PL 10-57 (effective Apr. 18, 1997), codified as amended at 1 CMC §§ 2651, et seq. PL 10-57 repealed and reenacted chapter 13, division 2 of title 1 of the Commonwealth Code, 1 CMC §§ 2651, et seq., and statutorily established the Department of Lands and Natural Resources (DLNR) with the structure, duties and responsibilities set forth in the act. See 1 CMC § 2651 and the commission comment thereto. 1 CMC § 2654 authorizes the Department of Lands and Natural Resources to adopt rules and regulations in furtherance of its duties and responsibilities.

PL 6-13 § 3 provides the Division of Fish and Wildlife with the authority to manage the improvements in the Smiling Cove Marina.

In 2006, the Department of Lands and Natural Resources, Division of Fish and Wildlife, promulgated amendments that repealed and replaced all prior rules and regulations relating to Smiling Cove Marina. See § 85-30.2-1205.

Part 001 - General Provisions

§ 85-30.2-001 Authority and Purpose

(a) Authority. Department of Lands and Natural Resources/Division of Fish and Wildlife. The regulations in this subchapter (“Marina Regulations”) are promulgated under the authority of 1 CMC §§ 2653 and 2654 providing the Department of Lands and Natural Resources with the authority to adopt rules and regulations in furtherance of its powers and duties, including the responsibility for the protection and enhancement of the natural resources of the islands, including the marine environment. Further, 1 CMC § 2661 provides the Division of Fish & Wildlife with the authority to manage marine resources and to administer Public Law 2-51, the Fish, Game, and Endangered Species Act, as amended (2 CMC §§ 5101 et seq.). Further, Public Law 2-51 (at 2 CMC § 5106) provides for the assent of the Commonwealth of the Northern Mariana Islands to the Federal Aid in Sport Fish Restoration Act (16 U.S.C. §§ 777 et seq.), allowing for the Department of Lands and Natural Resources to receive federal grant funds. Federal aid grant funds were used to construct the improvements in Smiling Cove Marina, and are being used to maintain and manage the marina.

(b) Purpose. It is the purpose of this subchapter to maintain Smiling Cove Marina in a sanitary, sightly, and orderly condition and to preserve the public health, safety, peace, welfare, and convenience in the use thereof.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments changed the last sentence of subsection (a).

§ 85-30.2-005 Application and Scope

(a) Geographic Area. The Marina Regulations codified in this subchapter shall apply to the berthing of vessels at docks, their mooring in the waterways, and other activities conducted within the Smiling Cove Marina as depicted in the charts attached hereto as Exhibits A-1 and A-2. The term “Smiling Cove Marina,” as used in this subchapter, shall apply to all that area circumscribed on Exhibit “A-1.” When the docks are referred to by slip number, reference shall be to Exhibit “A-2.”

(b) Other Laws and Regulations. The regulations in this subchapter in no manner diminish the authority of laws and lawful regulations that otherwise apply to the waters and lands of the Smiling Cove Marina, such as the Boating Safety Regulations [NMIAC, title 150, chapter 20] and the Vehicle Code.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In subsection (a), the Commission moved the comma after “Marina” and the periods after “A-1” and “A-2” inside of the closing quotation marks. In 2006, this section was re-promulgated without change. Exhibits A-1 and A-2 were not attached to the 2006 regulation.

Part 100 - Selection of Leases and Permits for Berthing Slips

§ 85-30.2-101 Lease or Permit Required for Tenancy in Smiling Cove Marina

(a) Berths: No vessel shall be permitted to be berthed at a dock slip in Smiling Cove Marina without a lease approved by the Director of Fish & Wildlife after consulting with the marina manager. This includes government-owned vessels that are also required to pay berth fees. There are no exemptions unless mutually agreed upon between the government agency and authorized by the Director of Fish & Wildlife.

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(b) Moorings: No vessel shall be permitted to be moored in the waterways of Smiling Cove Marina, except as provided for in part 300 for storm and typhoon conditions.

(c) “Tenant Vessels” defined: “Tenant vessels” are vessels for which a valid berthing lease has been issued.

(d) Other Permits: The marina manager, at his discretion and judgment, shall be allowed to issue temporary berthing permits at Smiling Cove Marina for visiting or transient vessels, not to exceed thirty days in duration, without the prior approval of the Director of Fish & Wildlife.

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-105 Categories of Vessel Exclusions

Except as provided for in part 300 of this subchapter, the following vessels shall not be granted leases, issued permits, or be allowed to berth on any dock or moor within the waterways of Smiling Cove:

(a) Vessels as a Place of Abode. Vessel is deemed to be lived aboard if a person or persons occupy the vessel and engage in those usual and customary activities associated with a person’s residence or abode, such as sleeping, preparation of meals, etc., for any period in excess of 72 consecutive hours in any seven day period unless the vessel is transient and has a holding tank for containment of waste by-products.

(b) Unseaworthy Vessels. Lessees, permittees, and applicants shall, upon request, demonstrate or allow inspection of vessels for seaworthiness by the marina manager or his designee.

(c) Work Boats. The term “work boats” includes tugboats, crew boats, landing crafts, vessels engaged in cargo trade, fishing trawlers, utility boats, construction boats, barges, and dredges.

(d) Deep Draft Vessels. Vessels with a draft deeper than eight feet are “deep draft vessels.”

(e) Vessels Greater than 60 feet Long. The length of the vessel shall be determined by its length overall (LOA) rounded upward to the next whole foot, including all permanent and functioning overhangs.

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(f) Vessels Without Auxiliary Propulsion. Auxiliary propulsion means an engine, either outboard or inboard, sufficient to provide the vessel with safe maneuvering ability in the marina.

Modified, 1 CMC § 3806(c), (e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The Commission made “craft” plural in subsection (c) and moved the period after “vessels” in subsection (d) inside of the closing quotation mark. The Commission inserted commas after the words “permittees” in subsection (b) and “barges” in subsection (c) pursuant to 1 CMC § 3806(g). In 2006, this section was re-promulgated without change.

§ 85-30.2-110 Categories of Exclusion for Leases

No vessel shall be granted a lease for a berthing slip that comes within any of the categories listed in § 85-30.2-105.

(a) Unregistered or Undocumented Vessel. A vessel must have either current CNMI registration or U.S. Coast Guard documentation.

(b) Commercial Vessel. A vessel engaged in the commercial carriage of passengers, including but not limited to, sport-fishing boats, Managaha transfer boats, tour boats, and parasailing tow boats may only be allowed to lease a berthing slip on a month-to-month basis after all non-commercial priority preference berthing slip requests are satisfied. Commercial vessel month-to-month berthing slip leases may only be granted or renewed if there are no pending berthing slip lease requests from non-commercial vessels.

(c) Minimum Length. A vessel with a length overall (LOA) of less than fifteen feet.

(d) Maximum Beam. A vessel with a beam greater than fifteen feet (15'), except that vessels of greater than 15' beam may be berthed at dock “G”. “Beam” is defined as the maximum breadth of the vessel.

(e) Vessel has Alternate Government Berth. A vessel with any form of permit, license, or lease from the government or any agency or corporation of the Commonwealth, or any vessel which has been habitually berthed for a year or longer alongside any dock, pier, quay, or jetty shall be excluded from obtaining a lease unless the other permit, license, or lease is first canceled and rescinded and/or the use of the dock, pier, quay or jetty is abandoned.

(f) Applicant has Another Berth. An applicant must not currently possess a lease for the berthing of another vessel at Smiling Cove. For purposes of this exclusion, “applicant” shall include a natural person, corporation, partnership, joint venture or other legal entity.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The Commission inserted “a” before the first occurrence of “berthing slip” in this section. In subsection (e), the Commission changed the “of” before “any agency” to “or” to correct a manifest error. The Commission inserted a comma after the word “license” in subsection (e) pursuant to 1 CMC § 3806(g). The 2006 amendments changed subsections (b) and (c).

§ 85-30.2-115 First Come-First Served Priority

Slips shall be assigned by the marina manager according to first come-first served priority, recognizing an absolute priority preference for non-commercial vessels, and vessels shall be matched to slips so as to maximize useable berthing space and not restrict maneuverability.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments added the priority preference for non-commercial vehicles to this section.

§ 85-30.2-120 Grant of Berthing Lease

Upon selection for the grant of a lease, an applicant shall have ten days to complete the berthing lease, execute it, and pay the first month’s berthing fees and the security deposit. Failure to do so will result in the denial of the application and the award of the lease to another applicant.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments changed “ten calendar days” to “ten days.”

§ 85-30.2-125 Security Deposit

A security deposit in the amount of three months’ berthing fees shall be required of a new applicant for a berthing lease. A security deposit in the amount of six months’ berthing fees shall be required of an evicted lessee or permittee whose application is being

reconsidered pursuant to § 85-30.2-710. All security deposits shall be applied to expenses incurred by the Division of Fish and Wildlife for violations of lease or permit terms or violations of the rules and regulations in this subchapter, including but not limited to curing delinquent berthing fees and expenses for impoundment or removal of a vessel pursuant to § 85-30.2-701 and § 85-30.2-705. The security deposit shall not be considered to be an advance payment of berthing fees by the lessee or permittee. In the event that all berthing fees are paid on a timely basis, then at the conclusion of any lease or permit period, the lessee or permittee shall be entitled to a return of his or her security deposit without interest.

Modified, 1 CMC § 3806(c), (d).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-130 Mooring Permits

[Reserved.]

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

§ 85-30.2-135 Location of Moorings

[Reserved.]

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

§ 85-30.2-140 Restriction on Moorings

[Reserved.]

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Part 200 - Berthing and Mooring Fees

§ 85-30.2-201 Fees for Berthing Slips

The following fees shall be assessed lessees assigned berths, on a monthly basis:

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- (a) Non-Commercial Activity Vessels
 - (1) Vessels 29.0 feet or less in length: \$3.50 per foot.
 - (2) Vessels 29.1 feet to 44.0 feet in length: \$5.50 per foot.
 - (3) Vessels 44.1 feet or greater in length: \$8.00 per foot.
- (b) Vessels Involved in Commercial Activities
 - (1) Vessels 29.0 feet or less in length: \$5.00 per foot.
 - (2) Vessels 29.1 feet to 44.0 feet in length: \$8.00 per foot.
 - (3) Vessels 44.1 feet to 60 feet in length: \$10.00 per foot.
 - (4) Vessels 60.1 feet and greater in length: \$15.00 per foot.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment The Commission changed “involve” to “involved” in subsection (b). The 2006 amendments repealed the former fee schedule, added subsection (b), and designated all subsections in this section.

§ 85-30.2-205 Fees for Moorings

[Reserved.]

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

§ 85-30.2-210 Delinquency

The due date for berthing slip lease payment shall be no later than the 10th day of each month (e.g., January lease payment is due by January 10). All delinquent payments, including those made after the 10th day of each month, shall be charged a 10% late fee for each month that payment is not made. Failure to pay berthing or mooring fees for a period of 30 days after the date that those fees are due, shall constitute delinquency, and shall be grounds for cancellation of the lease or permit pursuant to § 85-30.2-701.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: The 2006 amendments added the first two sentences to this section.

Part 300 - Typhoons and Tropical Storms

§ 85-30.2-301 “Storm Conditions” Defined

“Storm conditions” means the government has declared that Saipan is currently in tropical storm condition 2 or 1 or typhoon condition 2 or 1.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-305 Typhoon Contingency Plan

All references to storm or typhoon preparation shall be in accordance with the current year’s typhoon contingency plan. The plan specifies where each vessel will be berthed or moored in the event of a storm. The plan may be amended by the marina manager as needed to accurately reflect the assigned berthing and mooring locations of all vessels during storm conditions.

Modified, 1 CMC § 3806 (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-310 Temporary Lifting of Exclusions During Storm Conditions

In the event of storm conditions, vessels excluded from Smiling Cove Marina under § 85-30.2-105(a) and § 85-30.2-105(f) may enter and moor in Smiling Cove Marina provided that they have applied for and received an approved non-tenant storm condition permit from the marina office, in accordance with § 85-30.2-330 and § 85-30.2-335. The permit will specify where the non-tenant vessel may berth or moor in the marina area during storm conditions, according to the typhoon contingency plan. All vessels registered in the typhoon contingency plan but which do not hold a valid lease issued pursuant to § 85-30.2-101 are required to leave within forty-eight hours after the return to condition 3 or the giving of the “all clear” signal.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

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Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-315 Emergency Moorings

In the event of storm conditions, any vessel permitted in Smiling Cove may moor across the channel of the waterway if the following conditions are observed and the vessel does not obstruct other permitted vessels according to the typhoon contingency plan:

- (a) The vessel operator must follow the directions of the Director of the Division of Fish and Wildlife or his designee.
- (b) The vessel must be moored in a manner that will not jeopardize the safety of adjacent vessels in a storm.
- (c) All floats, gangways, and other floating obstacles other than vessels must be removed entirely from the water and secured on high ground.
- (d) All loose objects on the vessel shall be either removed or sufficiently tied down to withstand typhoon strength winds.
- (e) Mooring lines must use chafing protection on the vessel and at the end where they are fastened to trees, posts, or other objects out of the water.
- (f) Vessels entering the Smiling Cove Marina specifically for storm protection, which are not registered according to the typhoon contingency plan, shall be placed in available locations on a first-come, first-served basis by the marina manager or his designee.
- (g) Mooring lines must be removed from crossing the channel and all other locations that impede the movement or navigation of vessels in the waterways within twelve hours of the announcement of the “all clear” signal.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change. The Commission inserted a comma after “protection” in subsection (f) to correct a manifest error.

§ 85-30.2-320 Unattended Vessels During Storm Conditions

Any vessel with a berthing lease that is within Smiling Cove Marina during storm conditions and is not attended to by a person or persons who adequately secure the vessel for typhoon strength winds shall have its lease or permit terminated. It is the obligation of

every boat owner to adequately secure his vessel so that it does not present a hazard to other vessels in the marina.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-325 Marina Manager's Authority

The marina manager is empowered to regulate all vessel movement and placement within Smiling Cove Marina, its boundaries and shore areas prior to or during storm conditions as the designee of the Director of Fish & Wildlife. The marina manager or his/her designee shall:

- (a) Announce when the marina is officially closed to vessel movement into or out of it when condition 2 is aired by weather broadcast, via, VHF marine band radio on channel 16 as notice to mariners. This broadcast will be transmitted at ten minute intervals for one hour.
- (b) Advise owners of trailerable vessels to remove them from the marina before storm condition 2 or typhoon condition 2.
- (c) Monitor the placement of non-tenant vessels according to size and berth space. Non-tenant vessels are accorded refuge at Smiling Cove Marina pursuant to compliance with § 85-30.2-330 and § 85-30.2-335.
- (d) Ensure that no vessels moor or anchor in the marina channel.
- (e) Penalize and assess fines pursuant to CNMI laws for violations of this section.
- (f) [Reserved.]
- (g) [Reserved.]

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: The 2006 amendments changed subsection (e).

§ 85-30.2-330 Non-tenant Storm Condition Permit Procedures

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An owner of any vessel that is not a tenant at Smiling Cove Marina who wishes to berth or moor within its premises during storms or typhoons must apply for a Non-Tenant Storm Condition Permit in accordance with § 85-30.2-330(a) through § 85-30.2-330(d) below:

- (a) Complete an application and submit it to the marina office during the open application period, held each year between January 1 and March 31;
- (b) Produce evidence of current, adequate and applicable insurance coverage along with the application;
- (c) Pay the required annual fee if the application is approved; and
- (d) Have a current vessel inspection report and certificate of number, as applicable.
- (e) Any application submitted that cannot show evidence required by § 85-30.2-330(a) through § 85-30.2-330(d) above will be denied.
- (f) No non-tenant vessel has the right to infringe upon the safety and welfare of the tenants of Smiling Cove Marina.
- (g) All applications are subject to availability of berthing slips or mooring spaces at the marina.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-335 Non-Tenant Storm Condition Permit Fees

The fees to be charged for the privilege to berth, moor, or anchor within Smiling Cove Marina premises during storm conditions are assessed on an annual basis, are due and payable when the application is received and approved, and are not refundable. Fees are charged as follows:

- | | |
|---|---------------|
| (a) Vessels under 20 feet in length: | Not permitted |
| (b) Vessels 20 feet to 30 feet in length: | \$50.00 |
| (c) Vessels 31 feet to 40 feet in length: | \$55.00 |
| (d) Vessels 41 feet to 50 feet in length: | \$60.00 |
| (e) Vessels over 51 feet in length: | \$65.00 |

(f) Vessels at anchor: \$30.00.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: The Commission changed “51over feet” to “over 51 feet” in subsection (e) to correct a manifest error. The Commission inserted a comma after the word “moor” pursuant to 1 CMC § 3806(g). The 2006 amendments changed subsection (e).

Part 400 - Convenience Dock

§ 85-30.2-401 “Convenience Dock” Defined

The “convenience dock” is marked on exhibit “A-2” as the dock due north of the launching ramp.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change. Exhibit A-2 was not attached to the 2006 regulation.

§ 85-30.2-405 Commercial Vessels Prohibited

Commercial vessels engaged in carrying passengers for hire, whether for transportation or any activity (fishing, parasailing, sightseeing, etc.) are prohibited from using the convenience dock.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-410 Use of Convenience Dock

The convenience dock is for the use of recreational boaters and fishermen. They shall use the dock for no longer than one-half hour at a time and shall tie up to the dock in a manner so as to allow the maximum number of vessels to use the dock.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

Part 500 - Visiting Vessels

§ 85-30.2-501 “Visiting Vessel” Defined

A “visiting vessel” is a vessel registered outside of the Commonwealth or documented with a home port other than in the Commonwealth whose owner is not a resident of the Commonwealth and which will remain on Saipan for less than fourteen days.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments changed “thirty consecutive days” to “fourteen days.”

§ 85-30.2-505 Procedure Upon Entry

(a) Visiting vessels that visit from outside of the Commonwealth must clear various government inspections, such as customs, agricultural quarantine, and immigration. To receive such clearance, visiting vessels must call port control at the Commonwealth Port Authority on channel 16, announce their arrival, and present themselves for inspection at the area designated by port control near Charlie Dock.

(b) Visiting vessels that have been cleared may request permission from the marina manager to temporarily berth in Smiling Cove. This permission will be granted if there is sufficient room to accommodate the vessel and the vessel does not come within a category of exclusion under § 85-30.2-105. In particular, a visiting vessel cannot be used as a place of abode, as defined in § 85-30.2-105(a), while in Smiling Cove Marina, unless permitted by the Director of Fish & Wildlife or his designee.

Modified, 1 CMC § 3806(c), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The original regulation was not found on consecutive pages of the October 2006 Commonwealth Register due to a misplaced page in the middle of this section. The Commission inserted part of this section from 28 Com. Reg. 26246 (Oct. 30, 2006) rather than from the consecutive page (28 Com. Reg. 26245 (Oct. 30, 2006)).

In 2006, this section was re-promulgated without change.

§ 85-30.2-510 Fees for Visiting Vessels

The following fees shall be collected daily from visiting vessels for berthing in Smiling Cove Marina:

- (a) First three days in one month: free;
- (b) Every day, or a fraction of a day, thereafter:
 - (1) Vessels 29.0 feet or less in length: \$4.00 per day
 - (2) Vessels 29.1 feet to 44.0 feet in length: \$8.00 per day
 - (3) Vessels 44.1 feet or greater in length: \$12.00 per day.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The Commission inserted the final period in this section. In 2006, this section was re-promulgated without change.

§ 85-30.2-515 Maximum Stay Permitted

A visiting vessel may stay only as long as permitted by the marina manager and in no event longer than 13 days per month.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments changed “30 calendar days” to “13 days per month.”

Part 600 - Special Events

§ 85-30.2-601 “Special Events” Defined

“Special events” include use of the Smiling Cove Marina facilities for events including, but not limited to, fishing derbies and holiday celebrations, hosted by a person, a company, a non-profit organization, or a government agency. Marina facilities include, but are not limited to, berthing docks, launching ramp, trash bins, weigh station, convenience dock, parking area, water facilities, and channel access.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: In 2006, this section was re-promulgated without change. The Commission inserted a comma after the word “facilities” pursuant to 1 CMC § 3806(g).

§ 85-30.2-605 Permit Required

Sponsors of special events are required to apply for a permit from the marina manager for the special event. Application will be made in writing, on a form supplied by the marina manager. A non-refundable fee of \$50.00 will be charged for the use of the marina facilities for the special event. No special event will be allowed to occur in Smiling Cove Marina without a permit approved by the marina manager and full payment of the special event fee.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: The 2006 amendments added the comma in the second sentence between “writing” and “on.”

Part 700 - Leases and Permits

§ 85-30.2-701 Cancellation

(a) The Director of Fish & Wildlife may cancel and terminate any lease or permit upon five days written notice to the lessee or permittee for failure to comply with:

- (1) Any provision of the lease or permit, including without limitation, nonpayment of lease rent or permit fees;
- (2) The Smiling Cove Marina rules and regulations in this subchapter; or
- (3) The Boating Safety rules and regulations [NMIAC, title 150, chapter 20].

(b) In addition, if there is any change of circumstances that causes a vessel to come within § 85-30.2-105 or § 85-30.2-110, the lease or permit may be canceled.

(c) Notice shall be deemed served within twenty-four hours of the time said notice is deposited in the United States Postal Service, if mailed by first-class mail, postage prepaid, to the lessee’s or permittee’s address as designated on the lease or permit. In the case of personal service, notice shall be effective upon such service.

(d) The notice shall specify the applicable provision of the lease or permit, Marina Regulations in this subchapter or Boating Safety Regulations [NMIAC, title 150, chapter 20] with which the lessee or permittee has failed or refused to comply, the date and time on or before which the slip must be vacated, and the cancellation date.

(e) The lessee or permittee shall be liable for all berthing or mooring fees accruing prior to the date of cancellation.

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Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The Commission designated subsections (a), (b), (c), (d), and (e). The 2006 amendments added subsection (a)(3) and modified subsections (a), (c), and (d). The Commission changed “effected” to “effective” in subsection (c) to correct a manifest error.

§ 85-30.2-705 Impoundment of Vessel upon Cancellation of Lease or Permit

(a) If the lessee or permittee shall fail or refuse to remove his or her vessel from a slip on or before the date of cancellation of the lease or permit, the Director or his designee shall impound the vessel at the lessee’s or permittee’s risk and expense.

(b) Impoundment shall consist of chaining the vessel to the dock and placing a dated sign upon the vessel explaining the reasons for impoundment.

(c) The Director or his designee may also impound a vessel by removing it from the slip.

(d) Neither the Division nor the Commonwealth government nor any of its officers or employees shall be liable for any such actions and all lessees and permittees waive all claims for damage to persons and property sustained by a vessel resulting from its movement pursuant to this provision.

(e) The lessee or permittee shall reimburse the Division for costs incurred in moving and storing the vessel. Fines may be assessed as well.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designation subsections (a)-(e). The 2006 amendments added subsection (d) and changed subsections (c) and (e).

§ 85-30.2-710 Reconsideration of Evicted Lessees or Permittees

Any lessee or permittee evicted from the marina under part 700 of this subchapter who wishes to berth again at Smiling Cove Marina must make a new application and must wait for a space on the waiting list, if any. Any such new application made by an evicted lessee or permittee will be considered only after all delinquent berthing fees are paid, and any other violations or lease or permit provisions are cured. The marina manager is authorized to require an advance deposit of six months’ rental fees for any such new application.

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Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-715 Reassignment of Slips

(a) The marina manager shall have the right to temporarily or permanently reassign berthing slip spaces and to move or cause to be moved any vessel so reassigned. A lessee or permittee, by applying for and accepting the use of a slip, shall be deemed to have consented to the reassignment and movement of the vessel to another slip:

- (1) For the proper operation, maintenance and repair of Smiling Cove Marina,
- (2) For the convenience of the Commonwealth,
- (3) For a special event, or
- (4) In case of an emergency.

(b) The lessee or permittee further consents to the movement of the vessel by the marina manager if, after notice to move the vessel is given by the marina manager, the lessee or permittee fails to comply with any such notice. The lessee or permittee shall reimburse the Division for costs incurred in moving the vessel.

(c) Neither the Division nor the Commonwealth government nor any of its officers or employees shall be liable for such action and all lessees and permittees waive all claims for damage to persons and property sustained by a vessel resulting from its movement pursuant to this provision.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments changed subsection (b) and added subsection (c).

In the original, part of this section appears out of order due to a misplaced page, which caused the last part of this section not to appear on the consecutive page. The Commission inserted the appropriate part of this section found at 28 Com. Reg. 26245 (Oct. 30, 2006).

§ 85-30.2-720 Non-Transferability of Lease

A lessee or permittee shall not give, sell, sublease, assign, or transfer, or attempt to give, sell, sublease, assign, or transfer, whether voluntarily or involuntarily, the use of a designated slip, the lease or permit therefor, or any interest therein. No agreement, whether oral or in writing, between the lessee or permittee and any other person, firm, or entity may be made in connection with:

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- (a) The use of a designated slip by a person other than the lessee or permittee,
- (b) The use of a designated slip by a vessel other than one owned by the lessee or permittee,
- (c) The transfer of ownership of or an interest in a vessel, or
- (d) A transfer of an interest in a corporation or partnership (general or limited) or joint venture owning a vessel, by which agreement lessee or permittee attempts to give, sell, sublease, assign, or to otherwise transfer the lease or permit and interest therein, or the right to use the designated slip, shall make the lease void and shall constitute grounds for the cancellation of the lease.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The Commission inserted a comma after the word “assign” pursuant to 1 CMC § 3806(g). The 2006 amendments modified subsection (d) by removing the reference to § 85-30.2-701.

§ 85-30.2-725 Sale of Vessel

- (a) A lessee or permittee may retain his or her designated slip for a period of thirty days after transferring title to or agreeing to sell his or her vessel provided:
 - (1) The lessee or permittee shall notify the marina manager in writing of the sale of the vessel and his or her intent to acquire another vessel of appropriate length for the occupancy of the slip within five days of the date the agreement for the sale of the vessel is entered into, and
 - (2) The lessee or permittee shall pay slip fees equal to the amount specified in the lease or permit for the vessel sold pending the acquisition of another vessel.
- (b) An extension of an additional period may be granted at the discretion of the marina manager upon presentation of proof of a contract to purchase or construct another vessel.
- (c) If the lessee or permittee does not acquire and accept delivery of another vessel of appropriate length for the assigned slip within the thirty day period or any extension thereof; the lease or permit shall be canceled. The lessee or permittee shall remain liable for all fees accruing prior to cancellation.
- (d) A lessee or permittee shall notify the marina manager in writing within five days of any change of ownership in his or her vessel resulting from a gift, sale, lease, withdrawal, addition or substitution of partners, the sale or transfer of stock in a closely held corporate ownership of the vessel or a change of officers or directors of a closely

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held corporation owning the vessel. If a lessee or permittee fails or refuses to notify the marina manager within five days from the date of any such change, such failure or refusal shall constitute grounds for cancellation of the lease or permit.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments removed “calendar” before “days” in subsections (a), (a)(1), and (d) and before “day” in subsection (c). The 2006 amendments also removed references to § 85-30.2-701 in subsections (c) and (d).

§ 85-30.2-730 Partnerships and Corporations

(a) No lease will be issued in the name of a partnership, corporation, joint venture, or other legal entity.

(b) A lease or permit for a vessel which is registered or documented by a partnership, corporation, joint venture, or other legal entity will be issued only to a sole natural person whose name appears on the Smiling Cove Marina waiting list and whose interest in the vessel is equal to or greater than that of each of the other partners, stockholders, members, or associates.

(c) An application for a berthing lease for a vessel owned by a partnership, corporation, joint venture, or other legal entity shall submit to the Director of the Division of Fish and Wildlife a fully executed marine bureau statement of ownership.

(d) If a lessee or permittee fails or refuses to notify the Director of a change to any of the information contained in the marine bureau statement of ownership within five days from the date of any such change, such failure or refusal shall constitute grounds for cancellation of the lease or permit.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The original paragraphs of this section were not designated. The Commission designated subsections (a)-(d). The Commission inserted commas after the words “venture” in subsections (a) and (c) and “member” in subsection (b) pursuant to 1 CMC § 3806(g). The 2006 amendments removed “calendar” before “days” and removed the reference to § 85-30.2-701 in the last sentence of this section.

§ 85-30.2-735 Absence from Slips

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(a) In the event of an absence from a slip of more than seven days, the marina manager shall be notified of the intended length of absence so that the slip may be made available to other vessels under a temporary permit.

(b) In the event that the planned absence is greater than ninety days, then a leave of absence must be requested from the marina manager. The manager may grant a leave of absence for a reasonable period. If the period is deemed to not be reasonable, then the lease or permit shall be canceled.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments removed “calendar” before “days” in subsections (a) and (b) and removed the reference to § 85-30.2-701 in the last sentence of subsection (b).

§ 85-30.2-740 Temporary Slip Permit

The marina manager may issue temporary permits to occupy and use vacant or unassigned slips upon such terms and conditions as may be required for the efficient operation of Smiling Cove Marina.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-745 Waiver of Claims

Neither the Commonwealth of the Northern Mariana Islands government nor any of its officers or employees shall be liable to a lessee or permittee and their guests for any damages to persons or property within Smiling Cove Marina.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments removed the exception regarding the Government Liability Act of 1983 and added “and their guests” to this section.

Part 800 - General Regulations

§ 85-30.2-801 Application

The regulations in this part shall control the conduct of all lessees and permittees of Smiling Cove Marina and shall be incorporated as a part of any berthing lease or temporary slip permit. The regulations in this part may be changed from time to time and shall apply prospectively as changed or amended to all existing lessees and permittees.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-802 No Commercial Use of Slips

No slip or dock structure within the Smiling Cove Marina shall be used for commercial purposes.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-804 Storage on Docks

Nothing shall be stored on the dock by any lessee or permittee. Each lessee or permittee is responsible for keeping the adjacent dock area clean and free of litter. A lessee or permittee shall not place items on the dock except for short periods of time; and at such times shall place the items in such a manner so as to not obstruct free passage along the dock.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-806 Fenders on Dock

No lessee or permittee shall install fender material, dock wheels, or carpet on the docks without the express permission of the marina manager. Upon installation, title to said fender or dock wheels shall be vested in the Commonwealth.

Modified, 1 CMC § 3806(f).

TITLE 85: DEPARTMENT OF LANDS AND NATURAL RESOURCES

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-808 Movement of Vessels in Marina

Movement of vessels within Smiling Cove Marina shall be for the purpose of entering or leaving a slip only.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments removed “by marina tenants” after “Smiling Cove Marina.”

§ 85-30.2-810 Speed Within the Marina

(a) Basic Speed Law: No vessel shall be operated at such a speed in the Smiling Cove Marina and its channel that a wake is created that will disturb other vessels docked or moored or cause destruction of the shoreline. This shall apply to all vessels for the full length of the channel.

(b) Heavy Displacement Vessels: Heavy displacement vessels, greater than twenty tons are particularly prone to causing destructive wakes at slow speeds. Operators of these vessels shall maintain their speeds at less than 3 mph while traveling within Smiling Cove Marina.

(c) All Other Vessels: All vessels not specified in § 85-30.2-810(b) shall observe a 5 mph speed limit within Smiling Cove Marina for the full length of the channel, subject at all times to the basic speed law.

(d) Complaints: Lessees and permittees are encouraged to report incidents of vessels traveling in excess of any of the above subsections.

(e) If the marina manager finds a violation of this section, a lessee or permittee shall have its right to berth or moor in the marina canceled.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments added subsection (e).

§ 85-30.2-812 Toilet Usage

Toilets or marine heads shall not be used aboard a vessel in Smiling Cove Marina unless waste removal from vessel toilets or marine heads are conducted pursuant to a process approved in writing by the Director of Fish & Wildlife or his designee.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-814 Mooring of a Vessel

A lessee or permittee shall, at all times, ensure that his or her vessel is safely moored with lines adequate for the weather conditions.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-816 Maintenance Work on Vessel

- (a) Major repair or reconstruction work shall not be performed in or at any slip.
- (b) No repair or other work on a vessel shall be performed before 8:00 a.m. nor after sunset, except in the case of emergency repairs to keep a vessel afloat. The marina manager may provide written authorization to have a vessel repaired after sunset in the marina if the repairs require a longer period of time provided that the repairs do not infringe upon the safety and welfare of the tenants of Smiling Cove Marina. Such authorization must state a “start” and “ending” time and date for the repairs.
- (c) Tools and equipment must not be placed on the dock in a manner that will obstruct free passage along the dock. The dock area must be kept in a neat, clean, and orderly condition.
- (d) No material of any type resulting from maintenance work, such as solvents, paints, sandpaper, and other non-biodegradable materials shall be allowed to enter the water of Smiling Cove Marina.
- (e) Spray painting, welding, burning, and other hazardous activities are strictly prohibited in the marina.

TITLE 85: DEPARTMENT OF LANDS AND NATURAL RESOURCES

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments added “in a manner that will obstruct free passage along the dock” to subsection (c). The Commission inserted a comma after the word “clean” in subsection (c) pursuant to 1 CMC § 3806(g).

§ 85-30.2-818 Garbage and Littering

(a) No lessee or permittee shall have or keep on a vessel or on the adjacent dock any garbage or decaying matter. Trash bins are provided at the Smiling Cove Marina parking area for proper disposal of trash and other disposable materials.

(b) No lessee or permittee shall throw, place, leave, deposit or abandon, or cause to be thrown, placed, deposited or abandoned, any litter within the Smiling Cove Marina and the adjacent areas of American Memorial Park except in receptacles designated by the Division of Fish & Wildlife for the disposal of such materials. A lessee or permittee shall place only that garbage or litter within such receptacles as is generated during and results from a vessel’s voyage.

(c) No lessee or permittee shall place, throw, deposit or discharge or cause to be placed, thrown, deposited, or discharged into the waters of Smiling Cove Marina any litter, sewage, garbage, gaseous liquid or solid materials which render the water unsightly, noxious, or unclean so as to be detrimental to the public health and welfare.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The Commission changed the “&” to “and” in subsection (a). In 2006, this section was re-promulgated without change.

§ 85-30.2-820 Fire Safety

(a) Basic Rule: No lessee or permittee shall use or permit his or her vessel to be used or maintained in a manner as to create or constitute a potential fire hazard.

(b) Fire Extinguishing Equipment: Any vessel berthed in the Smiling Cove Marina shall have at least two operable hand portable fire extinguishers containing ten pounds of dry chemicals. This requirement is waived if the vessel has a current safety inspection by the local boating safety office, Coast Guard or a vessel safety check that has passed the Coast Guard Auxiliary inspection criteria.

(c) Fueling: No fueling of vessels, whatsoever, shall be permitted within Smiling Cove Marina.

(d) LPG: Any vessel equipped with liquid propane gas for cooking shall also be equipped with a solenoid or a warning indicator for detecting LPG leaks.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The Commission inserted “or” before “permittee” in subsection (a). In 2006, this section was re-promulgated without change.

§ 85-30.2-822 Dumping of Hazardous Substances

No lessee or permittee shall dump, discharge or pump oil, spirits, gasoline, diesel, distillate, any petroleum product, any other flammable materials, detergent, cleaning solutions or any substance that violates CNMI Water Quality Standards [NMIAC, title 65, chapter 130] into the waters of Smiling Cove Marina, upon any of the docks, or on any land adjacent to the marina. Combustible materials shall not be placed in trash receptacles, but only in receptacles specially marked for combustibles and petroleum products. In the absence of such a receptacle, a lessee or permittee shall remove the substances for disposal at a site other than the marina or American Memorial Park.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-824 Swimming

No person shall swim in the Smiling Cove Marina, except as necessary to moor or anchor a vessel, clear a fouled propeller, assist a vessel in clearing another vessel’s mooring lines, or remove a vessel that is aground.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-826 Fishing

No person shall fish from any docks of the marina and adjacent locations. No shoreline or fishing from the banks within Smiling Cove Marina is permitted beginning westward from the convenience dock to the south end of the marina ending at the last slip at dock G. Fishing in Smiling Cove Marina is strictly prohibited.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-828 Visitors

Visitors, unless accompanied by a lessee or permittee, or designated by the lessee or permittee in writing, shall not be permitted on the docks after sunset.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-830 Small Children on Docks

Children under ten years of age are not permitted on the docks without the immediate presence of their parents or other responsible adults.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-832 Obstructions Placed in Water

No float, pier, dock, pile, ramp or other obstruction may be placed in the Smiling Cove Marina without the prior authorization of the marina manager.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-834 Signs

- (a) No lessee or permittee shall place, erect, or maintain any sign, display, or notice on any property, structure, or improvement within the Smiling Cove Marina, without the prior written authorization of the marina manager.
- (b) A lessee or permittee may place one sign on the exterior of a vessel advertising the sale or offering for sale of said vessel; provided however, the size of any such sign shall not exceed nine inches by twelve inches and the lettering thereon shall not exceed four inches in height. Such a sign shall be displayed on the vessel for seven consecutive calendar days that is written on the authorization.
- (c) Application for another week to post a sign shall be made again to the marina manager.
- (d) The marina manager may direct the removal of any nonconforming or unauthorized sign, display, or notice. In the event that a lessee or permittee refuses to remove it, such shall constitute grounds for cancellation of the lease or permit.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a)-(d). In 2006, this section was re-promulgated without change. The Commission inserted commas after the words “erect” and “display” in subsection (a) pursuant to 1 CMC § 3806(g).

§ 85-30.2-836 Maintenance of Marina

A lessee or permittee shall immediately notify the marina manager of the need for repairs to the docks or any dangerous conditions in the marina requiring attention.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-838 Alteration of Docks

A lessee or permittee shall not alter any dock in any way without the prior written consent of the marina manager.

TITLE 85: DEPARTMENT OF LANDS AND NATURAL RESOURCES

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments did not make any changes to this section.

§ 85-30.2-840 Nuisance

No lessee or permittee shall use his or her vessel in such a manner or maintain it in such a condition that its presence in the marina is a nuisance. A “nuisance” is defined as when the health or safety of others is threatened or their quiet and peaceful use of the marina is interfered with.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The Commission changed “their” to “his or her” in the first sentence of this section. In 2006, this section was re-promulgated without change.

§ 85-30.2-842 Guests Aboard at Night

A lessee or permittee shall not have more than five guests aboard his or her vessel while at its berthing space between the hours of 8:00 p.m. and 4:00 a.m. The exception to this rule shall be when a vessel is departing or arriving at its berth space. In such an event, any guests may remain only as long as engaged in performing any acts necessary for the departure or arrival, such as the loading and unloading of the vessel.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments removed “one” before “exception” in the second sentence of this section.

§ 85-30.2-844 Noise

A lessee or permittee shall not create, or allow to be created by any person, animal, machinery, hardware, sound system, radio, television, or any form of device, any sound which may be considered offensive or a nuisance to any other users of the marina, taking into consideration the circumstances of the time, place, and nature of the sound.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-846 Articles and Equipment Left on Dock

[Repealed.]

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: The 2006 amendments did not include this section, but did not expressly repeal it. The final section of the 2006 amendments noted its intent to supersede all previous Smiling Cove Marina regulations. Therefore, this section is superseded.

Part 900 - Parking Area

§ 85-30.2-901 “Parking Lot” Defined

The paved parking area adjacent to and immediately south of the docks at Smiling Cove Marina is referred to herein as the “parking lot.”

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The Commission moved the final period inside of the quotation mark. In 2006, this section was re-promulgated without change.

§ 85-30.2-905 Use Restrictions

- (a) A lessee or permittee is entitled to leave one vehicle in the parking lot while aboard his or her vessel. Two additional vehicles of guests of a lessee or permittee may be left in the parking lot while the guests are aboard the lessee’s or permittee’s vessel.
- (b) Buses and mini-buses shall be permitted to load and unload passengers in the parking lot, and park at the designated bus parking location.
- (c) No person shall sleep or cook in a vehicle while it is in the parking lot.
- (d) Trailers shall be permitted in the parking lot in the area that is marked and designated for “trailers.”

(e) No vehicle or trailer may be left in the parking lot for more than seventy-two hours without the written authorization of the marina manager. Any vehicle that does not belong to a tenant of the marina or his/her guest, and that remains in the parking lot after 8:30 p.m., shall be towed away at the owner's expense. A parking fine will also be assessed.

(f) No person shall remain, stay, or loiter in the parking lot between the hours of 8:30 p.m. and 5:00 a.m.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In subsection (d), the Commission moved the final period inside of the closing quotation mark. The 2006 amendments modified subsection (e).

§ 85-30.2-910 Risk of Use

The parking lot is maintained by the government for the gratuitous use of boat owners. Any person who parks a vehicle in the parking lot does so at his or her own risk.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

Part 1000 - Enforcement

§ 85-30.2-1001 Effect of Regulations on Lease and Permits

(a) The rules and regulations in this subchapter, as stated herein, and as they may be amended from time to time, are express conditions of every lease and permit.

(b) A violation of the rules and regulations in this subchapter may result in the cancellation of a lease or permit by the Director of Fish & Wildlife.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments removed the reference to § 85-30.2-701 in subsection (b).

§ 85-30.2-1005 Enforcement of Regulations

- (a) The rules and regulations in this subchapter may be enforced against persons who are not lessees or permittees by an action for specific performance and/or damages.
- (b) No action for legal or equitable relief may be filed for enforcement except by the government. However, any lessee may file an action in his or her own name against any person who places or maintains a vessel at the lessee's berthing slip without the consent of the lessee.
- (c) The Secretary of Lands & Natural Resources is hereby empowered to deputize marina enforcement personnel for the issuance of citations in violation of the regulations in this subchapter.
- (d) The marina manager is directed to instruct and train the marina enforcement personnel in the proper procedures for the issuance of citations and/or notices pursuant to the regulations in this subchapter.
- (e) Marina enforcement personnel must be attired in identifiable uniforms and must carry identification cards in the performance of their duty.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The Commission deleted "or" located before "without the consent of the lessee" in subsection (b) to correct a manifest error.

The 2006 amendments inserted a new subsection (c) and re-designated the remaining sections. The 2006 amendments modified subsection (d) (formerly subsection (c)) by inserting "citations and/or" before "notices."

§ 85-30.2-1010 Discretion of the Marina Manager in Removing Applicants from Waiting List

The marina manager may remove an applicant for a berth lease from the waiting list for failure to comply with the regulations in this subchapter or to obey the directives of the Director of Fish & Wildlife. No application will be accepted if that person has an unpaid debt to Smiling Cove Marina for prior usage of the facility. Upon complete payment of all debts in arrears, the marina manager may consider including the applicant on the waiting list.

Modified, 1 CMC § 3806(d), (f).

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History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

§ 85-30.2-1015 Nature of Lease and Permit

No person has a right to a lease or a permit or the use of the government's docks or the Smiling Cove Marina. Upon execution of a lease agreement or a permit, a holder obtains certain rights to the extent provided in the agreement.

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: In 2006, this section was re-promulgated without change.

Part 1100 - Fines

§ 85-30.2-1101 Fines

Assessment of fines for violation of the Smiling Cove Marina Rules and Regulations in this subchapter is as follows:

- (a) Illegally berthed vessel: \$4.00 per linear foot per day.
- (b) Impounded vessel:
 - (1) \$25.00 per week for vessels from 20 feet to 30 feet in length;
 - (2) \$50.00 per week for vessels from 31 feet to 45 feet in length; and
 - (3) \$75.00 per week for vessels over 45 feet in length.
- (c) Trailer removal: \$25.00 per trailer.
- (d) Vessel removal:
 - (1) \$50.00 per vessel from 20 feet to 30 feet in length;
 - (2) \$100.00 per vessel from 31 feet to 45 feet in length; and
 - (3) \$250.00 per vessel over 45 feet in length.
- (e) Illegal parking: \$25.00 per day.
- (f) Unauthorized signs: \$10.00 per sign after warning to remove it.
- (g) Unauthorized persons on dock: \$10.00 per person after warning to leave.

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- (h) Articles and equipment on dock: \$50.00 per occurrence after warning to remove it.
- (i) Dumping of hazardous substances: \$500.00 per occurrence.

Modified, 1 CMC § 3806(d), (g).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: The Commission changed “are” to “is” in the first sentence of this section to correct a manifest error. The Commission designated subsections (b)(1)-(3) and (d)(1)-(3). The 2006 amendments made several changes throughout this section, including replacing the title of Part 1100 and § 85-30.2-1101 (“Cost Reimbursement” replaced with “Fines”).

§ 85-30.2-1105 Opportunity to Contest Imposition of Costs

[Repealed.]

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: The 2006 amendments did not include this section, but did not expressly repeal it. The final section of the 2006 amendments noted its intent to supersede all previous Smiling Cove Marina regulations. Therefore, this section is superseded.

Part 1200 - Miscellaneous Provisions

§ 85-30.2-1201 Severability

If any section or portion of a section herein is invalid, it shall be deleted from this subchapter and shall not invalidate the remaining sections of the regulations.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003); Adopted 14 Com. Reg. 9633 (Sept. 15, 1992); Proposed 14 Com. Reg. 9338 (July 15, 1992); Emergency 14 Com. Reg. 9327 (effective for 120 days from July 13, 1992).

Commission Comment: The 2006 amendments replaced this section in its entirety.

§ 85-30.2-1205 Supersedure

The Smiling Cove Marina Rules and Regulations contained in this subchapter supersede all other rules and regulations regarding Smiling Cove Marina previously promulgated, including but not limited to those published in the Commonwealth Register:

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- (a) On July 15, 1992 at pages 9327 through 9334;
- (b) On July 15, 1992 at pages 9338 through 9380;
- (c) On September 15, 1992 at pages 9633 through 9636;
- (d) On June 15, 1995 at pages 13515 through 13517; and
- (e) On September 15, 1995 at page 13723.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: The Commission corrected the spelling of “supersede” and “supersedure” pursuant to 1 CMC § 3806(g). In 2006, this section was re-promulgated without change. However, Exhibits A-1 and A-2, although referenced in this subchapter and formerly located at the end of the subchapter, were not published with the 2006 amendments. Therefore, Exhibits A-1 and A-2 were repealed pursuant to this section (§ 85-30.2-1205).

Exhibit A-1

[Repealed].

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006) (repealed); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: The 2006 amendments did not include this exhibit, but did not expressly repeal it. The final section of the 2006 amendments noted its intent to supersede all previous Smiling Cove Marina regulations. Therefore, this exhibit is superseded. See 25 Com. Reg. 20423 (July 15, 2003) for the original Exhibit A-1.

Exhibit A-2

[Repealed].

History: Amdts Adopted 28 Com. Reg. 26409 (Dec. 29, 2006) (repealed); Amdts Proposed 28 Com. Reg. 26231 (Oct. 30, 2006); Amdts Adopted 25 Com. Reg. 21401 (Sept. 18, 2003); Amdts Proposed 58 Com. Reg. 20399 (July 15, 2003).

Commission Comment: The 2006 amendments did not include this section, but did not expressly repeal it. The final section of the 2006 amendments noted its intent to supersede all previous Smiling Cove Marina regulations. Therefore, this section is superseded. See 25 Com. Reg. 20424 (July 15, 2003) for the original Exhibit A-2.