



## **SECTION FOUR**

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## SECTION 4 ENVIRONMENTAL CONDITIONS

### 4.1 Surface Water Quality

#### A. Existing Surface Waters

The estuarine environment within the Village of Sag Harbor consists of a large open embayment, a semi-enclosed man-made harbor area, a series of interconnected tidal basins, a tidal pond and a small tributary draining into Sag Harbor Bay. The most seaward of these water bodies is Sag Harbor Bay followed by a man-made harbor area called "Sag Harbor." The interior water bodies consist of a series of inland tidal embayments known collectively as Sag Harbor Cove, actually consisting of Outer Sag Harbor Cove, Inner Sag Harbor Cove, Upper Sag Harbor Cove and Morris Cove. Otter Pond is a tidal pond in Mashashimuet Park. Little Northwest Creek is the small tributary draining into greater Sag Harbor on the eastern Village boundary.

#### Sag Harbor Bay

Sag Harbor Bay is a shallow subtidal embayment adjunct to Northwest Harbor and Shelter Island Sound bordered in the south by Havens Beach and Cor Maria.

#### Sag Harbor

Sag Harbor is a semi-enclosed area situated at the entrance to Sag Harbor Cove. Sag Harbor is protected from the open bay by an elongated stone breakwater and is connected to Sag Harbor Cove by a tidal strait spanned by the North Haven/State Route 114 bridge. The area experiences incomplete tidal flushing twice daily by strong tidal currents. Water quality is seasonally affected by boat traffic and docking and marina facilities.

#### Sag Harbor Cove Complex

Sag Harbor Cove is actually a series of four water bodies (i.e., Outer Sag Harbor Cove, Inner Sag Harbor Cove, Upper Sag Harbor Cove and Morris Cove) that will be referred to collectively as the Cove complex. Each of the basins is connected by a series of narrow navigation channels; a strait from the northern end of the Outer Sag Harbor Cove connects these waters to Sag Harbor. The overall surface area of the Sag Harbor Cove Complex is approximately 0.7 square mile; average depth within this area is approximately five feet. Average tidal range is at least 1.7 feet; average spring tide range is closer to 3 feet. A limited salinity study conducted in 1991 indicated that the entire Cove complex was "nearly well-mixed" and is influenced strongly by coastal salinities. There was a slight longitudinal salinity gradient, with salinity decreasing mildly in an upstream direction (Najarian Associates and Cornell Cooperative Extension, 1992).

### Little Northwest Creek

Little Northwest Creek is a small tributary that feeds into Sag Harbor Bay and forms the eastern border of the Village. The tidally-influenced portion of the Creek is surrounded by approximately 190 acres of State-owned tidal wetlands and buffering upland managed by NYSDEC.

### Otter Pond

Otter Pond is a shallow intertidal pond of approximately four acres located within Mashashimuet Park. Otter Pond receives saltwater from a tidal creek originating in Upper Sag Harbor Cove which flows under Main Street. Due to restrictions caused by stones and debris at the pond's connection to the creek, tidal fluctuation for the Pond is approximately one foot while the tidal amplitude in Upper Sag Harbor Cove is approximately 1.7 feet. Freshwater enters the eastern end of the pond from a large red maple swamp across Jermain Street between Joels Lane and Archibald Way.

The water quality of Otter Pond is generally poor. The pond receives high nutrient loads and is nearly eutrophic. Much of the pond bottom is covered by a thick organic sediment layer, which contributes to nutrient availability, and is indicative of high primary production and low decomposition rates.

### John Street Pond

The John Street Pond is an isolated intertidal pond and associated wetland fringe that is connected to Upper Sag Harbor Cove via a culvert running under John Street. Freshwater enters the southwestern portion of the area through storm drains and flows towards the culvert at the northeastern corner of the pond. The pond is very shallow with a sandy bottom overlain by pockets of organic matter. Tidal fluctuation is minimal due to restrictions caused by the diameter and elevation of the culvert under John Street.

### Ligonee Brook

Ligonee Brook is a small freshwater brook running from east to west draining into the southeastern end of Inner Sag Harbor Cove. The Sag Harbor Village boundary is along the entire length of the Brook. For surface water quality classification purposes, this creek is conveniently divided into two reaches; from the mouth to Brick Kiln Road and from Brick Kiln Road to the source. West of Brick Kiln Road in the lower reach of the Brook there is some salt water influence; east of the road in the upper reaches there is little if any salt influence except during extreme storm surges.

## **B. Water Quality Classifications and Use Standards**

Discharge standards and water quality classifications have been assigned by NYSDEC to the surface waters in the Village of Sag Harbor, pursuant to Title 6, Chapter 10 of the Codes, Rules and Regulations of New York State (NYCRR). These classifications set discharge standards and are not necessarily indicative of existing water quality conditions.

General water quality classifications are summarized in terms of their best usage, as presented in Table 2. The general water quality classifications assigned to each water body in the harbor management area are shown on [Figure 7](#) and summarized in Table 3.

The quality of marine and estuarine waters can be assessed on the basis of a variety of variables, including color, odor, floating and suspended solids, oil, toxic compounds, and other deleterious substances. Water quality classifications in New York State are currently based primarily on three indices: total coliform level, fecal coliform level, and dissolved oxygen concentration.

In order to be certified as a shellfish harvesting area, the median total coliform level for any series of samples must be 70 MPN/100 ml or less (where MPN/100 ml is the most probable number of organisms per 100 milliliters of sample). New York State (2 NYCRR Part 701.20) classifies these certified shellfishing waters as "SA", which designates the highest level of water quality. An "SB" classification is assigned where the monthly median total coliform level is 70 to 2400 MPN/100 ml, where no more than 20 percent of the samples exceed 5000 MPN/100 ml, and where the monthly geometric mean value is 200 MPN/100 ml or less. The best intended use for SB waters is swimming.

Shellfish harvesting is restricted in portions of the harbor management area, as depicted in [Figure 7](#), due to actual or potential water quality deterioration. The area between the breakwater and the North Haven/State Route 114 bridge, which contains the Village STP outfall and mooring areas, is closed year-round to shellfish harvesting. An additional year-round closure has recently been set by NYSDEC in the southern portion of Upper Sag Harbor Cove due to poor water quality at the outlet of the tributary from Otter Pond. There are two seasonal harvesting restrictions in the waters of Outer Sag Harbor Cove - just west of the North Haven/State Route 114 bridge and the Redwood Cove area. Shellfish may not be harvested from these waters anytime from May 15th through October 31st. The seasonal restrictions that were placed by NYSDEC on these two areas were based primarily on historic records of reduced water quality during the warmer months of the year. The reviewer should note that all NYSDEC shellfish harvesting restrictions discussed above and depicted in [Figure 7](#), are based on 1995 conditions. These are subject to change on an annual basis. A detailed discussion of NYSDEC water quality sampling data and results which support the State closure areas is presented in the following Section 4.1.C. Shellfish harvesting regulations are discussed in further detail in Section 5.6.

### C. Existing Water Quality Conditions

The primary objective of most on-going water quality monitoring programs in New York State is to prevent human health impacts from exposure to pathogenic bacteria and viruses (e.g., the hepatitis and Norwalk viruses, and the Salmonella bacteria), which can result from either direct contact with contaminated water or the consumption of tainted shellfish. However, the detection of these pathogens is generally a time consuming and tedious undertaking. Consequently, water quality testing typically entails the use of coliform bacteria, which are relatively easy to measure; these bacteria co-occur with the pathogens of primary concern and serve as indicators of the possible presence of those pathogens.

TABLE 2

**NEW YORK STATE WATER QUALITY CLASSIFICATIONS  
DEFINED ACCORDING TO BEST USAGE**

<b>Freshwater Classification</b>	<b>Best Usage</b>
AA	Source of water supply for drinking, culinary or food processing purposes and any other usages.
A	Source of water supply for drinking, culinary or food processing purposes and any other usages.
B	Primary contact recreation and any other use except as a source of water supply, for drinking, culinary or food processing purposes.
C	The waters are suitable for fishing and fish propagation. The water quality shall be suitable for primary and secondary contact recreation even though other factors may limit the use for that purpose.
D	The waters are suitable for fishing. The water quality shall be suitable for secondary contact recreation even though other factors may limit the use for that purpose. Due to such natural conditions as intermittency of flow, water conditions not conducive to propagation of game fishery, or stream bed conditions, the waters will not support fish propagation.
<b>Saline Classifications</b>	<b>Best Usage</b>
SA	The waters shall be suitable for shellfishing for market purposes and primary and secondary contact recreation.
SB	The waters shall be suitable for primary and secondary contact recreation and any other use except for the taking of shellfish for market purposes.
SC	The waters are suitable for fishing and fish propagation. The waters shall be suitable for primary and secondary contact recreation even though other factors may limit the use for that purpose.
SD	All waters not primarily for recreational purposes, shellfish culture or the development of fish life, and because of natural or man-made conditions cannot meet the requirements of these uses.
<b>Special Classification</b>	<b>Best Usage</b>
I	The waters shall be suitable for secondary contact recreation and any other usage except for primary contact recreation and shellfishing for market purposes.

Definitions:

- **Best usage of waters** as specified for each class shall be those used as determined by the commissioner and the administrator in accordance with the considerations prescribed by the Environmental Conservation Law and the Federal Water Pollution Control Act of 1972.
- **Primary contact recreation** shall mean recreational activities where the human body may come in direct contact with raw water to the point of complete submergence. Such uses include swimming, diving, water skiing, skin diving and surfing.
- **Secondary contact recreation** shall mean recreational activities where contact with the water is minimal and where ingestion of the water is not probable. Such uses include, but are not limited to, fishing and boating.

TABLE 3

CLASSIFICATIONS ASSIGNED TO SAG HARBOR WATER BODIES.

<u>WATER BODY</u>	<u>CLASSIFICATION</u>
Sag Harbor Bay	SA
Sag Harbor Cove Complex (All of cove southwest of North Haven/State Route 114 Bridge)	SA
Ligonee Brook -- Mouth to Brick Kiln Road.	SC
From Brick Kiln Road to source.	C
Otter Pond -- Connecting water/Tributary of Shelter Island Sound.	SC
	SD
John Street Pond*	--
Little Northwest Creek -- Tidal portion.	SC
Freshwater portion.	B

\*Note: The surface waters of John Street Pond are currently unclassified by NYSDEC.  
It is uncertain whether these waters will be classified in the future.

Sources: 6NYCRR, Chapter 10, Article 16  
Jacobsón, NYSDEC, February 10, 1995

Surface water quality data are collected and analyzed by NYSDEC on a routine basis in shellfish growing areas, including the estuarine waters of the harbor management area. A total of 17 sampling stations have been established by NYSDEC throughout the Sag Harbor Cove/Bay Complex, including 16 stations west of the breakwater and one station to the immediate east of the breakwater. These waters have been designated by NYSDEC as shellfish growing area No. 19.

The water quality data collected by NYSDEC, which consist of total and fecal coliform bacteria measurements, as well as shoreline inventories of actual and potential point source and non-point source pollution, are used to determine the certification status of shellfish beds in accordance with the provisions of the National Shellfish Sanitation Program. Bacterial water quality at any given station is considered to be acceptable with respect to shellfish harvesting for direct human consumption if either of the following two conditions apply: (a) the median total coliform level is 70 MPN/100 ml or less and no more than percent of the samples exceed a total coliform level of 330 MPN/100 ml; OR (b) the median fecal coliform level is 14 MPN/100 ml or less and no more than 10 percent of the samples exceed a fecal coliform level of 49 MPN/100 ml. The units MPN/100 ml are the most probable number of organisms per 100 milliliters of water sample, as determined by standard laboratory protocol.

Based on NYSDEC's review of coliform data collected during the five-year period between 1986 and 1991, as summarized in a report prepared September 22, 1991, 155 acres of underwater lands situated between the North Haven/State Route 114 bridge and the breakwater are presently classified as uncertified year-round. These waters include the buffer zone of closure around the sewage treatment plant outfall. The single sampling station located in close proximity to the STP outfall consistently failed to meet the shellfish harvesting standards for both total and fecal coliform levels, under dry weather conditions as well as during significant rainfall events during the 1986 through 1991 sampling period.

An additional 25 acres of underwater lands are closed year-round to shellfishing in Paynes Creek, which extends westward from Inner Sag Harbor Cove (to the south of the Long Beach causeway), outside the harbor management area. This closure area is defined by the results of coliform testing at a single station at the head of the creek which fails to meet shellfish harvesting criteria.

Seasonal closures covering two separate areas totaling 28 acres are presently in effect in the harbor management area. These seasonally certified areas include underwater lands to the immediate west of the North Haven/State Route 114 bridge (which contains the Village A and B docks, Sag Harbor Cove West Marina, and Sag Harbor Cove East Marina) and the cove on the north side of the Redwood peninsula in which the Ship Ashore Marina and Redwood Boat Basin are situated. Both of these areas of seasonal closure are in effect as a precautionary measure due to potential contamination derived from vessel waste discharges. Shellfish harvesting can occur in these waters between November 1 and May 14, when vessel activity is minimal.

A station in the southeastern corner of Upper Sag Harbor Cove, between Bluff Point and the outlet of Otter Pond, consistently failed to meet the standards for total and fecal coliform bacteria under both dry weather and wet weather conditions during NYSDEC's

1986 to 1991 analysis period. On the basis of those data, NYSDEC subsequently classified the affected area as closed to shellfish harvesting on a year-round basis. The causes of deteriorated water quality in this area are not fully clear, according to NYSDEC. However, it is suspected that the discharge from Otter Pond is a significant source of coliform bacteria. Otter Pond is known to support a large waterfowl population, which is a significant contributor of fecal matter, and collects stormwater runoff from adjacent roadways which contains non-point source contaminants. In addition, this portion of the shoreline is closely surrounded by older residences, which may be adding to pollution conditions via inadequately treated septic wastes. Poor mixing at the eastern end of Upper Sag Harbor Cove also may be a factor in elevated coliform levels.

During NYSDEC's 1986 to 1991 analysis period, all of the sampling stations located in Upper Sag Harbor Cove failed to meet the fecal coliform standard during wet weather conditions. However, except for the aforementioned single station in the southeastern corner of the cove, all of these stations were in compliance with the total coliform standard during wet weather conditions. As noted previously, bacterial water quality is considered to be unacceptable for shellfish harvesting only when both the total and fecal coliform criteria are contravened. Consequently, only the southeastern corner of the cove has been incorporated into the area of year-round closure. The remaining portions of the cove are designated for continued certification, except during emergency conditions such as extraordinary rainfall events.

During the period between October 1991 and July 1994 (i.e., subsequent to the preparation of the September 22, 1991 water quality report), NYSDEC measured coliform levels during 14 separate sampling events. Although these data have not yet been incorporated into a new water quality report by NYSDEC, a preliminary analysis was undertaken by Cashin Associates for the purposes of this Harbor Management Plan. The findings of that preliminary analysis indicate that coliform levels at four stations have contravened shellfish harvesting standards during the supplemental sampling period. These include the two stations located within the current, year-round uncertified areas adjacent to the STP outfall and at the head of Paynes Creek. The station in the southeastern corner of Upper Sag Harbor Cove, which defines an area that was closed year-round to shellfish harvesting on the basis of NYSDEC's 1991 report, continues to contravene the shellfish harvesting standard according to the 1991 through 1994 data.

NYSDEC's supplemental data indicate that the station located immediately east of the breakwater also contravened the shellfish harvesting standard for the sampling period between October 1991 and July 1994. However, this station was in compliance with the fecal coliform standard (and, therefore, is in compliance with the overall shellfish harvesting criteria) for the entire monitoring period, which comprises 44 separate sampling events between June 1986 and July 1994. This situation warrants continued close monitoring in the coming years, and may indicate that water quality mitigation measures are needed to prevent possible further closure of currently certified shellfish beds located east of the breakwater in Sag Harbor Bay.

NYSDEC also conducts periodic shoreline and pollution source surveys as part of its duties under the National Shellfish Sanitation Program. The most recent survey was conducted between April and July 1988. Since development conditions have not changed

substantially during the intervening seven-year period, the findings and conclusions of that report are still generally applicable today.

The 1988 pollution source survey indicated that water quality in shellfish growing area No. 19 may be adversely affected by septic effluent from residential dwellings, particularly those houses that are situated in close proximity to the shoreline. However, no evidence of actual system malfunctions was observed. It should be noted that NYSDEC's study area includes some neighborhoods that lie outside the harbor management area (e.g., along Paynes Creek and the south shore of Ligonee Brook, and the southern portion of the North Haven peninsula).

Other pollution sources noted in NYSDEC's report include the STP outfall, stormwater drains, road ends and boat launching ramps, and freshwater inputs from Ligonee Brook, Otter Pond, and other small streams and ponds. The six marinas surveyed at that time were all found to be located within year-round or seasonally uncertified areas. Waterfowl were observed throughout the area, particularly in Otter Pond.

#### **D. Stormwater Runoff and Non-Point Source Pollution**

When considering impacts to surface water quality, pollution sources are generally classified into one of two categories, namely point or non-point sources. The term "point source" as defined by the federal Clean Water Act means "any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." Although diffuse runoff is generally treated as non-point source pollution, runoff that enters and is discharged from a conveyance as described above (i.e., stormwater outfall pipes) is treated as a point source. Point sources also include effluent discharges such as those from sewage treatment plants and industrial waste treatment facilities.

##### Point Sources

Stormwater outfalls are a significant point source of pollution affecting surface water quality in the Village. While not subject to federal or state permit requirements, stormwater outfalls are considered point sources. This category of point source pollution also includes the localized impacts resulting from runoff that is directed to surface waters via culverts, streams, and tidal inlets. A culvert located under John Street directs runoff to the tidal creek and salt marsh that connects to Upper Sag Harbor Cove. A culvert that passes under Jermain Avenue carries runoff into Otter Pond and its associated fringing wetlands. Culverts are also located at Haven's Beach and under Redwood Road and Main Street. Tidal inlets are located at Little Northwest Creek, Haven's Beach, and Ligonee Brook. Stream flow is discharged via Little Northwest Creek and its tributary, Rattlesnake Creek, as well as Ligonee Brook.

Stormwater discharges from upland areas can contribute sediment loads, pathogens, nutrients, road salts, metals, hydrocarbons and organic materials into adjacent surface waters. The Harbor Committee has developed a listing and map of the potential point-source discharges in the Village (see [Figure 8](#)).

The Suffolk County Department of Health Services found contaminated wells in a small residential area along the Village's southern boundary at Ligonee Brook. A significant groundwater plume of organic contamination is flowing northwest towards, and has reached, its discharge boundary at Sag Harbor Cove. The plume, which is approximately 600 feet wide, 3000 feet long, and about 80 feet below the ground surface at its maximum depth, is entering the Cove along the shoreline to the west of the mouth of Ligonee Brook. The source of the contamination has been determined to be an industrial plant located on the east side of the Sag Harbor-Bridgehampton Turnpike between Carroll Street and Lily Pond Drive. The plume originated due to the activities of the former industrial tenant, Rowe Industries, Inc. Rowe Industries, Inc. was an electric motor manufacturing firm that used solvents for degreasing.

The immediate action taken to provide the affected residents with an adequate and safe drinking water supply was to extend the Suffolk County Water Authority's distribution system, and to install individual hookups to the mains. This work was completed in 1985. In 1988, a Consent Order was signed between the EPA and the present and former site owners to conduct a Remedial Investigation/Feasibility Study to evaluate the exact nature and extent of the contaminants present and to assess the resulting impacts on public health and the environment. In September 1992 a Record of Decision was issued to begin the remedial design and implement the proposed remedial action at the site.

The Remedial Action for the Rowe Industries Superfund site will remove VOCs from the groundwater by pumping it through a series of extraction wells, both on-site and in the surrounding area, which tap into the contaminant plume. The contaminated groundwater will be conveyed from the extraction wells by underground piping to air-stripping equipment located on the site. The on-site air stripper facility will be operated in accordance with the operations and maintenance plan to avoid any spills or clean them up should they occur. The treated groundwater will be discharged to Sag Harbor Cove via a pipe fitted with a diffuser at the outlet end. The diffuser will extend into the cove and be placed on the sediment surface. Treated water shall meet all applicable State water quality standards.

Throughout the duration of the remedial action, surface and groundwater conditions will be monitored to ensure that pumping and discharge activities do not cause significant adverse effects to nearby surface water bodies and wetlands. Baseline studies will be conducted prior to the commencement of the remedial action. During remediation, monitoring of the condition of surface water, groundwater and the ambient air will be conducted to ensure that the project is protective of human health and the environment. Once the clean-up action levels are achieved, the air strippers, diffuser, and above-ground features of the project will be removed and the ground surface and bay bottom will be returned to conditions similar to that which existed prior to the remedial action.

### Non-point Sources

By contrast to point sources, non-point sources of surface water contamination include stormwater sheet flow runoff (i.e. - unchanneled flow from paved surfaces, buildings and construction sites), and infiltrated groundwater flows from cesspools and septic tanks. Fertilizers and pesticides also contribute nitrogen and organic compounds to ground and surface waters. Technically, the term "non-point source" is defined to mean "any source of water pollution that does not meet the legal definition of "point source" under the Clean Water Act. In contrast to point sources, non-point sources are not subject to federal and state permit requirements.

Many categories and subcategories of non-point sources affect coastal waters. The U.S. Environmental Protection Agency, pursuant to 1991 amendments to the Coastal Zone Management Act, has developed guidance to focus on five major categories of non-point sources that impair or threaten coastal waters nationally: (1) agricultural runoff; (2) urban runoff (including developed and developing areas); (3) silvicultural (forestry) runoff; (4) marinas and recreational boating; and (5) hydromodification and wetlands (channelization and channel modification; dams; stream bank and shoreline erosion; wetlands and riparian areas). A full description of EPA's guidance for coastal non-point sources can be found in EPA's publication entitled Guidance Specifying Management Measures for Sources of Non-Point Pollution in Coastal Waters (U.S. EPA January 1993).

Non-point sources of pollution affecting coastal waters and tributaries within the Village of Sag Harbor fall within the following three EPA categories: (1) urban runoff; (2) marinas and recreational boating; and (3) hydromodification and wetlands. Overlapping areas between point sources and non-point sources occur with respect to urban runoff, marinas and recreational boating. While stormwater discharges and marinas are subject to point source regulation under the state and federal stormwater regulations, the factors contributing to the sources are largely non-point in nature. For example, while a stormwater outfall into Sag Harbor is a discernable and direct point source, the contributing areas and sources are extremely diffuse and are considered to be non-point. Accordingly, water pollution from urban runoff, marinas and recreational boating activities needs to be addressed in both the point and non-point source management programs.

Marinas and mooring areas can contribute significantly to the concentration of pollutants in the water column, bottom sediments, and tissues of benthic organisms living within the limits of the marina itself. Pollutants from marinas and recreational boating may enter the water through discharges from boats, spills, maintenance areas, stormwater runoff and vessel operation. The types of pollutants often associated with marinas and recreational boating activities include: organic materials discharged from recreational boats; toxic heavy metals associated with boat maintenance and repair operations at boat yards and marinas; petroleum hydrocarbons from refueling activities and bilge or fuel discharges from boats; fecal coliform bacteria; disruption of sediment and habitat from boat operations and dredging.

The Sag Harbor Bay/Cove Complex and the tributary ponds and freshwater systems that feed into these waters (e.g. - Otter Pond which is located at the head of Upper Sag Harbor Cove, and Ligonee Brook in the southwesterly corner of the Village) are heavily utilized

by waterfowl. Fecal wastes from these birds can contribute significantly to the overall coliform levels in the receiving waters. This problem is exacerbated by recreational feeding of waterfowl, which results in increased population levels and interrupted seasonal migratory patterns. Waterfowl feeding is a popular activity at Otter Pond (Lane, February 6, 1995).

#### **E. Sewage Treatment Plant Effluent**

The coastal waters in the Village harbor management area presently receive effluent from the Sag Harbor STP. As discussed in Section 3.1.F, the Sag Harbor STP is situated near the shoreline and discharges secondary-treated effluent to the surface waters of Sag Harbor proper via an outfall pipe through a steel bulkhead. The pipe outlet may lie above or below the water level depending upon the stage of the tide.

Requirements for the level of treatment and monitoring of the STP effluent are set forth in the New York State Pollutant Discharge Elimination System (SPDES) permit issued by the NYSDEC for the facility. Under the present conditions of the permit, the plant operator is required to continuously monitor the flow rate and record the Ph level, settleable solids, dissolved oxygen (DO), residual chlorine and temperature of the effluent on a daily basis. Monthly monitoring of BOD5 (5-day biochemical oxygen demand), suspended solids, fecal coliform and total coliform must also be recorded. The current permitted design capacity of the Sag Harbor STP is 0.15 million gallons per day (MGD), and according to the plant operator, the facility has not experienced any recent problems meeting the actual flow rates or effluent constituent requirements set by the SPDES permit. Details concerning historic improvements to the plant are discussed in Section 3.1.F. Discharge Monitoring Reports (DMRs) which summarize the influent and effluent quantities and constituent concentrations, are sent monthly to the NYSDEC headquarters in Albany, the Region I NYSDEC office in Stony Brook, and the SCDHS in Farmingville, New York. The present SPDES permit expires on April 1, 1999 and is expected to be renewed with no additional conditions (Banarge, February 17, 1995; Ryder, March 3, 1995).

NYSDEC typically designates shellfish harvesting closure areas around STP outfalls. These closure areas are established to provide adequate dilution to the effluent and as a precaution to offset potential impacts to the sanitary condition of the shellfish stock in the event of a plant malfunction. A shellfish harvesting closure area of approximately 155 acres was established when the Sag Harbor plant became operational in December of 1977. Within this area of the harbor, the waters are designated as uncertified for shellfish harvesting although the surface water quality classification in the area is Class SA (see Section 4.1.B for a discussion of water quality classifications).

#### **F. Vessel Waste Discharges**

NYSDEC has identified two specific areas in the harbor complex that are of concern with regard to the potential contamination of shellfish beds due to seasonal water quality degradation and/or vessel waste discharges: the easterly portion of Outer Sag Harbor Cove, and the waters in the Redwood boat basin. Both of these areas are used on a

seasonal basis for high density, overnight anchoring, especially during summer holiday weekends. NYSDEC has indicated that concentrated sewage discharges from vessels in these areas have the potential for the localized contamination of the underlying shellfish beds. NYSDEC believes that the potential exists for tainted shellfish to reach market if these areas are harvested during or immediately after a busy period of vessel activity during which boats discharge untreated wastewater into the bay.

As discussed above, vessels docked, moored, anchored or otherwise operating on the waters of Sag Harbor are potential contributors of pollution and can adversely affect water quality, fish and wildlife habitats, and human health. During peak periods of the boating season, more than 800 vessels have been recorded entering Sag Harbor and Sag Harbor Cove daily and accommodations for approximately 750 vessels are available for overnight stays throughout the harbor.

Many of the vessels operating on the waters of Sag Harbor are equipped with one of three types of marine sanitation devices (MSDs) and the mechanisms needed for storage and discharge of vessel wastes. Type I MSDs produce an effluent having a fecal coliform bacteria count of not greater than 1,000 per 100 milliliters and no visible floating solids. Type II MSDs (required on vessels over 65 feet in length) produce an effluent having a fecal coliform bacteria count not greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter. Type III MSDs are designed to prevent the overboard discharge of treated or untreated sewage or any waste derived from sewage (33 CFR 1593).

Storage or discharge of vessel sewage is regulated on board through the use of a "Y-valve" which can be controlled by the operator. There are two settings for a Y-valve, one which directs the effluent to a holding tank, and the other which discharges it directly overboard. Coast Guard regulations require the Y-valve to be secured or disabled while the vessel is inside the federally-established three-mile no discharge zone so as to prevent any possible removal of untreated sewage other than to a marine pump-out facility (40 CFR 140.3).

The Village of Sag Harbor, in cooperation with adjoining municipalities, may wish to pursue a vessel waste no-discharge zone designation within the waters of the harbor complex, adjacent coves, and the Peconic Estuary. The advantage of this designation would be to prohibit the discharge of vessel sewage within the bounds of the harbor zone and give jurisdiction to local officials for the enforcement of laws governing discharges and vessel inspections. Although Federal law prohibits the discharge of untreated sewage within three miles of shore, treated sewage may be discharged inside this boundary and the United States Coast Guard has the sole responsibility for enforcement. Legislation has recently been enacted that would authorize no-discharge zones. If the Sag Harbor area is approved as a no-discharge zone, the Village may enforce the State no-discharge designation or adopt and enforce a local law prohibiting the discharge of vessel wastes in Sag Harbor waters.

The Village of Sag Harbor presently maintains two pump-out facilities (one stationary and one mobile) which are available free of charge to any vessel operator. The stationary pump-out is located on the bulkhead at the Marine Park facility. Use of this device requires that the vessel be docked in the adjacent slip in order to gain access. Collection

at this location is constrained due to the hose length and by the availability of dockage. An additional station west of the bridge would encourage greater use of pump-outs.

The majority of vessel sewage collected in the Village is through the mobile pump-out facility, which was set up in 1992. The Harbormaster or dockmaster must be contacted for use of the mobile facility. The maximum wait to use the pump-out is approximately 30 minutes; however, an appointment can be set up in advance to use the facility.

The mobile facility is located on a truck, giving it a broader scope of usage. The mobile unit has shown increased usage in the last two years. In 1993, it was the only facility available and collected 2,370 gallons of boat wastes. In 1994, the combined total was 3,900 gallons collected mostly from the mobile pump-out. A permit from NYSDEC is issued for the truck to operate within the Village. The amount of waste collected by the mobile device is also constrained by the length of the hose. It can only reach a maximum of 34 feet from the dock.

It is important to note that the Town of Southampton has acquired five 22-foot pump-out boats with 300-gallon capacity. These boats will patrol throughout Town waters and pump-out any vessel free of charge. Patrons can hail the vessels on the established marine radio channel. One of these boats will frequent the Sag Harbor Cove area, which lies within Town boundaries.

All of the vessel sewage collected by the pump-out facilities are presently stored in an underground tank. These wastes are removed by a licensed private carter and trucked to the Suffolk County Scavenger Waste Facility at Bergen Point, in the Town of Babylon, for treatment and disposal.

#### G. Toxic Substances

The nearshore marine environment is highly susceptible to toxic pollutant inputs from a variety of sources including urban runoff, marinas, mooring areas, boat repair operations, fuel storage facilities and other upland sources. Heavy metals such as copper, lead and zinc are the most prevalent non-point chemical pollutants typically found in urban runoff. As noted previously, activities associated with boat yards and marinas often contribute metals and petroleum hydrocarbons to the water column and bottom sediments.

Metal-containing compounds are highly used in boat operation, maintenance and repair. Lead is used in fuel additives; ballast and bilge discharges cause its release. Arsenic is used in paint pigments. Copper and tin are used in antifoulant paints. Other metals (i.e., iron and chrome) are used in the construction of marinas and boats. Heavy metals adhere to fine-grained sediment particles. Contaminated sediments become resuspended into the water column during dredging operations. High metal concentrations may bioaccumulate in fish and shellfish and impact beneficial uses of the affected waterbodies. In addition, marinas and boat storage and repair facilities may also contribute solvents, antifreeze, cleaning agents and paints to the marine environment.

Petroleum hydrocarbons are derived from oil products. The source of most petroleum hydrocarbons in urban runoff can be attributed to vehicle engine drippings, and illegal disposal of used oil in storm drains. Concentrations of petroleum hydrocarbons in marine environments are also attributed to commercial fuel storage facilities, refueling activities and bilge or fuel discharges from boats. Petroleum hydrocarbons are toxic to marine organisms and can also accumulate in benthic sediments.

Toxic materials may also be delivered to the marine environment via groundwater flows which originate from contaminated upland sources. Groundwater becomes contaminated when water percolating through the soil carries pollutants downward through the soil and to the water table. Eventually, groundwater resurfaces in springs or in discharges to streams, wetlands, or other surface waters. There are several facilities in the Village which have had documented spills of hazardous substances. Spills that have a potential for contaminating the marine resources within the harbor management area include the Rowe Industries site, the Bulova Watchcase Factory, the former Mobil Oil property, and the Sag Harbor-Bridge Street site. These spill sites are described in greater detail in the LWRP.

## 4.2 Ecological Resources

### A. Wetlands

Wetlands within the Village of Sag Harbor have been classified by the NYSDEC as either tidal or freshwater, based on the vegetation they support. The type of vegetation is largely determined by the salinity of the surface water and the degree of inundation. The depth of water and the predominance of certain vegetative species serve as indicators to help distinguish between different types of wetlands.

There are six, State-regulated freshwater wetlands scattered throughout the Village. One of those, in the area of Little Northwest Creek, is a Class I (most important) wetland. The other five are Class II wetlands. Additional brackish and freshwater wetlands have also been identified within the Village, which have not yet been incorporated into the NYSDEC wetland inventory maps (Blumer, May 1994). Those will be suggested to the NYSDEC as future amendments to the NYSDEC wetlands inventory maps, and are also shown on [Figure 9](#).

Tidal wetlands found within the Village of Sag Harbor consist of the following four, major types: intertidal marsh (IM), high marsh (HM), coastal shoals, bars and mudflats (SM), and littoral zone (LZ), which are briefly described below.

- An IM classification is assigned to those wetland areas located between average high and low tide levels, and within which smooth cordgrass (*Spartina alterniflora*) is the predominant vegetative species. IM areas are the most biologically productive of all wetlands categories, and have high values for flood and sediment control. Even small patches of IM wetland are considered by NYSDEC to be of critical importance.

- HM areas are normally the uppermost tidal wetland zone, and are typically dominated by salt meadow cordgrass (*Spartina patens*) and salt grass (*Distichlis spicata*). The upper limit of this zone is often occupied by marsh elder (*Iva frutescens*) and groundsel bush (*Baccharis halimifolia*). The common reed (*Phragmites australis*) may also be present, especially in areas that have been disturbed by human activities.
- SM wetlands are those areas lacking smooth cordgrass that are covered by water at high tide and are exposed or covered by less than one foot of water at low tide. Sediment texture can vary significantly in SM areas, from mud flats in many protected embayments to sandy shoals in areas subject to wave and current action.
- LZ wetlands occur in tidal waters of average depth less than six feet that do not meet the requirements for classification under any of the other wetland categories. SM and LZ areas exhibit extreme variability in their contribution to biological productivity and other tidal wetland values, but are generally less valuable than IM or HM areas in this regard.

Significant areas of tidal wetlands that are found in the harbor management area are described briefly as follows and are shown on [Figure 9](#).

#### Sag Harbor Bay

There is very little intertidal vegetation within the bay area, except a small patch of smooth cordgrass (*Spartina alterniflora*) occurring near the breakwater. The shallower sub-tidal portions of the bay, however, support extensive beds of eelgrass (*Zostera marina*).

#### Little Northwest Creek

Surrounding Little Northwest Creek is a 190 acre State-owned wetland and buffering upland managed by NYSDEC. The intertidal portions of the marsh consist of undisturbed high marsh with salt meadow cordgrass (*Spartina patens*), spike grass (*Distichlis spicata*), black grass (*Juncus gerardii*), perennial glasswort (*Salicornia virginica*), sea lavender (*Limonium carolinianum*), perennial salt marsh aster (*Aster tenuifolius*) and seaside gerardia (*Agalinis maritima*), with a low marsh fringe with smooth cordgrass (*Spartina alterniflora*). The upland fringe is dominated by a narrow to wide stand of common reed (*Phragmites australis*). Reeds are more extensive in the upper reaches of the tidally influenced portion of the creek.

#### Sag Harbor Cove Complex

The series of embayments comprising the Sag Harbor Cove complex consists of some of the most productive waters within the Village of Sag Harbor. The intertidal fringe of the Cove is surrounded by typical estuarine marsh species (*Spartina alterniflora* & *patens*) where structural fortification and dock facilities are absent. The width of the fringe is determined by the slope of the intertidal shoreline and the presence of upland disturbances and barriers. In the shallow intertidal waters starting at the marsh fringe there are

extensive areas of highly productive mudflats and sand bars colonized by numerous species of algae including: bladder wrack (*Fucus vesiculosus*), knotted wrack (*Ascophyllum nodosum*) and Irish moss (*Chondorus crispus*). Sea lettuce (*Ulva lactuca*) common throughout the cove is indicative of high nutrient conditions. Deeper waters within the cove support very dense beds of eelgrass (*Zostera marina*) which greatly increases primary productivity.

#### Ligonee Brook

The entire length of the lower intertidal portion of Ligonee Brook is bordered by typical estuarine marsh vegetation with pockets of common reed (*Phragmites australis*) where upland disturbance has taken place (e.g., near houses). Just west of Brick Kiln Road, there is occasional tidal influence, but the species composition is more representative of a freshwater-dominated wetland with a small pocket of maple swamp north of the Creek adjacent to Brick Kiln Road, unique to this area of the Village.

#### Otter Pond

At one time Otter Pond was bordered by a healthy fringe of estuarine wetland. Today the majority of the pond perimeter is vegetated by turf grasses and only a fringe of smooth cordgrass (*Spartina alterniflora*) remains on the northern shorelines. This very shallow habitat is characterized by high nutrient loads and near-eutrophic conditions. Extensive subtidal growth of sea lettuce (*Ulva lactuca*) is indicative of high-nutrient conditions. Widgeon grass (*Ruppia maritima*) is also found in the pond. Waterfowl concentrations on Otter Pond have contributed significantly to the degradation of water quality, as discussed in Section 4.1.C.

#### John Street Pond

John Street Pond is very shallow with a sandy bottom overlain by pockets of organic sediment. Vegetation surrounding the pond is typical of a disturbed estuarine marsh; common reed (*Phragmites australis*) dominates the upland edge of otherwise native intertidal species such as smooth cordgrass (*Spartina alterniflora*) and salt meadow cordgrass (*Spartina patens*). The presence of the reeds forms an effective barrier around the entire pond system which is located in the middle of a residential neighborhood. As a result, this area acts as "oasis" in the center of this otherwise heavily populated area.

### **B. Significant Coastal Fish and Wildlife Habitats**

Under the New York State Coastal Management Program, the New York State Department of State (NYS DOS) has designated Sag Harbor/Northwest Harbor as a Significant Coastal Fish and Wildlife Habitat. Portions of this protected area lie within the harbor management area, as depicted in [Figure 9](#). Coastal fish and wildlife habitats throughout New York State were evaluated by NYS DOS as to their State-wide significance. A habitat is considered significant if it meets the following criteria:

- the habitat is essential to the survival of a large portion of a particular fish or wildlife population (e.g., feeding grounds, nursery areas);
- the habitat supports a species which is either endangered, threatened or of special concern as those terms defined in 6NYCRR Part 182;
- the habitat supports fish or wildlife populations having significant commercial, recreational or educational value;
- the habitat is a type which is not commonly found within the State; and
- the habitat or its values are difficult or impossible to replace in kind.

The Village, through implementation of this Harbor Management Plan and the Local Waterfront Revitalization Program, has incorporated policy standards to protect the State-designated habitat. The following is a description of the Sag Harbor and Northwest Harbor Significant Coastal Fish and Wildlife Habitat and the relative values of the natural resources occurring there.

### Sag Harbor/Northwest Harbor

#### *Location and Description of Habitat:*

The Sag Harbor/Northwest Harbor Significant Coastal Fish and Wildlife Habitat covers an area of approximately 3,000 acres in the Towns of Southampton, East Hampton and Shelter Island in Suffolk County on the north shore of Long Island's South Fork (7.5-minute Quadrangles: Greenport, N.Y.; and Gardiners Island, N.Y.). The Habitat extends northward and eastward from the Sag Harbor breakwater and consists mostly of the open waters of Sag Harbor Bay and Northwest Harbor, but also includes the State's Little Northwest Creek tidal wetland preserve and exposed rocks near the breakwater. Only the southwestern-most portion of the Habitat, in the Town of East Hampton, lies within the Village harbor management area.

Water depths in most of the Sag Harbor/Northwest Harbor Habitat range from 6 to 20 feet below mean low water. The bays are bordered by much undeveloped land, including Suffolk County parklands and the Nature Conservancy's Mashomack Preserve. NYSDEC owns approximately 190 acres of land surrounding Little Northwest Creek. The only major developments along the entire shoreline of these bays are to the southwest, within the Village of Sag Harbor.

#### *Fish and Wildlife Values:*

Sag Harbor Bay and Northwest Harbor are generally representative of the Peconic Bays ecosystem, with broad expanses of moderately shallow water. This habitat type is unlike the very shallow bays on the south shore of Long Island or the relatively narrow bays on the north shore. Little Northwest Creek is an important component of this ecosystem, contributing to the biological productivity of the area.

Sag Harbor Bay and Northwest Harbor are important to fish and wildlife throughout the year. Least Tern (State endangered species), piping plover (State endangered species), and osprey (State threatened species) feed in the harbor area. Diamondback terrapin are scattered along the harbor coastline and tidal creeks, but the importance of the area to this species is not well documented. From November through March, Sag Harbor Bay and Northwest Harbor support wintering waterfowl concentrations of county-level significance. Mid-winter aerial surveys of waterfowl abundance for the ten-year period 1975-1984 indicate average concentrations of over 440 birds in the bays each year (1,082 in peak year), including scaup, black duck, common goldeneye, bufflehead, red-breasted merganser, canvasback, mallard, and Canada goose. During much of the same time period (December - early May), concentrations of harbor seals also occur in Sag Harbor Bay and Northwest Harbor. Exposed rocks near the Sag Harbor breakwater provide an important "haulout" area, which seals use for resting and sunning. This location is one of about five major haulout sites around Long Island, serving as a focal point for seals feeding in the Sag Harbor area. Northwest Harbor may also be important feeding and resting habitat for juvenile Kemp's Ridley sea turtles (State endangered species), especially during the late summer and fall. More documentation is needed on the use of the area by this species as well as other sea turtle species.

Sag Harbor Bay and Northwest Harbor are productive habitats for marine finfish and shellfish. This area is one of the most important bay scallop producing areas on Long Island, supporting a commercial shellfishery significant in the northeastern United States. Oysters are present in lesser numbers, providing limited recreational and commercial shellfishing opportunities. The bays serve as nursery and feeding areas (April-November, generally) for many estuarine fish species, such as weakfish, winter flounder, and scup. Northwest Harbor sustains a commercial and recreational winter flounder fishery of county-level significance. Fishing pressure in the area extends from spring through fall.

### *Impact Assessment*

Any activity that would substantially degrade the water quality in Sag Harbor or Northwest Harbor would affect the biological productivity of this area. All species of fish and wildlife would be adversely affected by water pollution, such as chemical contamination (including food chain effects), oil spills, excessive turbidity or sedimentation, and waste disposal. It is essential that high water quality be maintained in the area to protect the shellfishery. Efforts should be made to control discharges of sewage from recreational boats and upland sources. Thermal discharges, depending on the time of year, may have variable effects on the use of the area by marine species and wintering waterfowl. Installation and operation of water intakes would have significant impacts on juvenile (and adult, in some cases) fish concentrations, through impingement or entrainment. Construction of shoreline structures, such as docks, piers, bulkheads, or revetments, in areas not previously disturbed by development (i.e., natural beach or salt marsh), may result in the loss of productive areas which support the fish and wildlife resources of Sag and Northwest Harbors. Undeveloped woodlands bordering Sag Harbor and Northwest Harbor are particularly important for maintaining the water quality and habitat value of the harbors and should be preserved as a buffer zone. Any permanent alteration or human disturbance of the harbor seal haulout area, or obstruction of seal

migrations, would adversely affect this species. Significant underwater noise, from dredging or other activities, could also preclude harbor seals from using this area.

### C. Shellfish Resources

As discussed in earlier Sections (3.2.F and 4.2.B), the coastal waters off the Village of Sag Harbor are extremely productive habitats for shellfish, and support a commercial shellfishery of great significance to the northeastern United States. Sag Harbor Bay/Northwest Harbor is one of the most important bay scallop (*Argopecten irradians*) producing areas on Long Island. American oysters (*Crassostrea virginica*) are present in lesser numbers, providing limited recreational and commercial shellfishing opportunities. Both bay scallops and hard-shelled clams (*Mercenaria*) can be found within the Sag Harbor Cove complex. Soft-shelled clams (*Mya arenaria*), ribbed mussels (*Modiolus demissus*) and conch (*Busycon* spp.) are also harvested from waters within the Village harbor management area. Other shellfish species present include: slipper shell (*Crepidula fornicata*), common periwinkle (*Littorina littorea*), blue mussel (*Mytilis edulis*), mud snail (*Nassarius obsoletus*), and oyster drill (*Urosalpinx cinerea*) (Sag Harbor Village Draft LWRP, 1995; Semlear, January 20, 1995; Andersen, January 19, 1995).

As discussed in the LWRP, the populations of bay scallops and oysters (*Argopecten irradians* and *Crassostrea virginica*, respectively) throughout the Peconic Estuary system suffered a dramatic crash during successive brown tide episodes that commenced in 1985. Data provided in the BTCAMP study (SCDHS, 1992) show a decline in the Peconic Estuary scallop harvest (in terms of shucked meats) from 683,000 pounds in 1974 to 5,200 in 1986, and 250 pounds in 1988. The harvest recovered somewhat in 1989 to 1,570 pounds, but was still only a fraction of the peak annual yield.

A similar effect during the recent brown tide episodes has been noted for the American oyster. The landings of oysters from the Peconic system declined from more than 1.5 million pounds in 1976 to 56,700 pounds in 1985, 1,800 pounds in 1987, and less than 900 pounds in 1989. The catch of Peconic Estuary hard clams (*Mercenaria*) during the late 1980's did not suffer a comparable overall decline; however, the clams harvested during that period were observed to have reduced weight and quality relative to pre-brown tide specimens (SCDHS, 1992).

Based on analyses conducted during the ongoing Submerged Aquatic Vegetation Study for the Peconic Estuary Program (summarized in a draft report to the SCDHS, by Cashin Associates, P.C., dated February 1995), it appears that the recent crash of the Peconic Estuary shellfishery was due in large part to the direct, physiological effect of the brown tide micro-organism (*Aureococcus anophagefferens*) on the affected shellfish species. In particular, it is believed that *Aureococcus* has a relatively low nutritional value, is too small to be efficiently retained by the filter feeding apparatus of shellfish, produces a toxin that inhibits feeding by shellfish, and possesses structural features which impair digestion. Due to these factors, it is hypothesized that bay scallops and oysters are unable to take in a sufficient quantity of food during brown tides to fully support their biological activities, resulting in retarded growth and higher mortality.

For the past several decades, the Trustees of the Town of Southampton have been conducting a hard clam and bay scallop seeding program. In 1994, 40,000 seed scallops were distributed throughout the Sag Harbor Cove complex, and chowder clams were placed for spawning purposes in the cove waters between Bay Point and Sag Harbor Cove West Marina. The Trustees expect to double their seed clam program in 1995, and are considering distributing these to Sag Harbor waters. In addition, approximately one million juvenile scallops are scheduled for placement in Sag Harbor in 1995 (Semlear, January 30, 1995).

The harvesting of shellfish from restricted waters is sometimes undertaken by municipalities to deplete shellfish stock in uncertified waters, and to use these shellfish (which cannot be harvested for direct marketing) in order to increase the stock in certified areas. A purification period is necessary to allow the shellfish to cleanse themselves of microbial contamination. This purification is typically achieved by relaying, which involves the direct transfer of shellfish from uncertified to certified waters; the harvesting of this stock would be prohibited for the amount of time necessary to complete purification (set by NYSDEC at 21 days minimum). Shellfish cleansing can also be achieved through depuration, which involves the placement of the shellfish in a controlled aquatic environment for a minimum period of 48 hours prior to transfer to certified waters.

The Town of Southampton Trustees have not been involved in any shellfish transplant programs in the past. However, they may consider removing shellfish from Paynes Creek (which is currently closed year-round to shellfish harvesting) and transplanting these to suitable receiving waters at some time in the future (Semlear, January 30, 1995). The replenished beds would be closed to harvesting for a temporary period as dictated by NYSDEC to allow for adequate cleansing of the transplanted shellfish. During this temporary closure period, the receiving waters must be patrolled to prevent illegal harvesting.

#### D. Finfish and Crustacean Resources

Sag Harbor Bay and adjacent Northwest Harbor support expanses of eelgrass (*Zostera marina*) beds, and for this reason, are extremely productive habitats for marine shellfish, finfish and crustaceans. The eelgrass beds are discussed in further detail in the LWRP. These waters also serve as a nursery and feeding area (generally from April through November) for many estuarine finfish including weakfish (*Cynoscion regalis*), winter flounder (*Pseudopleuronectes americanus*) and porgy or scup (*Stenotomus chrysops*).

The waters of the Sag Harbor Cove complex are also highly productive habitats for finfish and crustaceans. Table 4 presents a list of the finfish and crustacean species which are commonly found in the coastal waters of Sag Harbor.

Late summer (1994) shallow water seining in the area indicated the presence of large numbers of locally-significant fish species including: bay anchovy (*Anchoa mitchilli*), menhaden (*Brevoortia tyrannus*), Atlantic silverside (*Menidia*), snapper bluefish (*Pomatomus saltatrix*) and winter flounder (*Pseudopleuronectes americanus*). Other species caught during this seining include: sheepshead minnow (*Cyprinodon variegatus*),

TABLE 4

FINFISH AND CRUSTACEANS COMMONLY FOUND  
IN THE WATERS SURROUNDING SAG HARBOR

FINFISH

blueback herring (*Alosa aestivalis*)  
alewife (*Alosa pseudoharengus*)  
American shad (*Alosa sapidissima*)  
American sandlance (*Ammodytes americanus*)  
bay anchovy (*Anchoa mitchilli*)  
American eel (*Anguilla rostrata*)  
menhaden (*Brevoortia tyrannus*)  
weakfish (*Cynoscion regalis*)  
sheepshead minnow (*Cyprinodon variegatus*)  
mummichog (*Fundulus heteroclitus*)  
killifish (*Fundulus majalis*)  
three-spined stickleback (*Gasterosteus aculeatus*)  
naked goby (*Gobiosoma boscii*)  
Atlantic silverside (*Menidia menidia*)  
striped bass (*Morone saxatilis*)  
rainbow smelt (*Osmerus mordax*)  
summer flounder, fluke (*Paralichthys dentatus*)  
bluefish (*Pomatomus saltatrix*)  
winter flounder (*Pseudopleuronectes americanus*)  
porgy (*Stenotomus chrysops*)  
Atlantic needlefish (*Strongylura marina*)  
bay pipefish (*Syngnathus leptorhynchus*)  
blackfish, tautog (*Tautoga onitis*)

CRUSTACEANS

blue crab (*Callinectes sapidus*)  
rock crab (*Cancer irroratus*)  
green crab (*Carcinus maenas*)  
mud crab (*Eurypanopeus depressus*)  
American lobster (*Homarus americanus*)  
spider crab (*Libinia spp.*)  
horseshoe crab (*Limulus polyphemus*)  
hermit crab (*Pagurus longicarpus*)

Source: Village of Sag Harbor Draft LWRP, 1995.

mummichug (*Fundulus heteroclitus*), killifish (*Fundulus majalis*), three-spined stickleback (*Gasterosteus aculeatus*), naked goby (*Gobiosoma boscii*), Atlantic needle fish (*Strongylura marina*) and bay pipefish (*Syngnathus leptophynchus*). Weakfish (*Cynoscion regalis*), striped bass (*Morone saxatilis*), and porgy (*Stenotomus chrysops*) have also historically been caught in the Cove complex.

Although less important economically as compared with local shellfish and finfish landings, the waters of Sag Harbor Bay and the Cove complex also support various crustaceans. Blue-claw crab (*Callinectes sapidus*) and American lobster (*Homarus americanus*) are two species of commercial importance found in these waters. Benthic crustaceans, primarily spider crabs (*Libinia* spp.) and rock crabs (*Cancer irroratus*), are the primary prey species taken by juvenile sea turtles which utilize the waters of Sag Harbor Village from June through November. Sea turtles are discussed in further detail in Section 4.2.F.

#### **E. Resident and Migratory Birds**

Over 50 species of birds reportedly utilize the coastal waters and shoreline areas for overwintering, feeding and resting; these species are listed in Table 5. The majority of the overwintering birds breed further north in the Arctic to subarctic areas from Alaska to Greenland and south through Canada.

The coastal waters and upland areas within the Village Harbor Management area provide feeding or resting habitat for at least nine species of birds which are currently listed by the State or Federal government as endangered, threatened or of special concern. These species include: bald eagle, northern harrier, osprey, least tern, roseate tern, common tern, piping plover, least bittern and eastern bluebird. None of these birds, however, are known to nest within the harbor management area.

All of the waters west of the North Haven/State Route 114 bridge (including the Sag Harbor Cove Complex/Paynes Creek and the mouth of Ligonee Brook) are designated as a protected sanctuary area for waterfowl, pursuant to Article 4 of the Rules and Regulations for the Management and Products of the Waters of the Town of Southampton. This regulation prohibits the hunting, shooting or taking of any waterfowl within the sanctuary boundaries.

#### **F. Endangered, Threatened and Special Concern Species of Wildlife**

The coastal waters and upland areas in the vicinity of Sag Harbor Village provide habitat for at least 14 rare wildlife species. These include 9 species of birds, 3 species of reptiles, and 2 species of amphibians. Four species are listed as federally endangered and one as threatened nationally under the Endangered Species Act, and the remainder are listed by NYSDEC as endangered (3 species), threatened (3 species) or species of special concern (4 species) within New York State. These species are listed along with their protected status codes in Table 6.

TABLE 5

## WINTER WATERBIRDS FOUND IN AND AROUND SAG HARBOR

wood duck (*Aix sponsa*)  
 razorbill (*Alca torda*)  
 dovekie (*Alle alle*)  
 northern pintail (*Anas acuta*)  
 American wigeon (*Anas americana*)  
 northern shoveler (*Anas clypeata*)  
 green-winged teal (*Anas crecca*)  
 blue-winged teal (*Anas discors*)  
 Eurasian wigeon (*Anas penelope*)  
 mallard (*Anas platyrhynchos*)  
 American black duck (*Anas rubripes*)  
 gadwall (*Anas strepera*)  
 great blue heron (*Ardea herodias*)  
 ruddy turnstone (*Arenaria interpres*)  
 lesser scaup (*Aythya affinis*)  
 redhead (*Aythya americana*)  
 ring-necked duck (*Aythya collaris*)  
 greater scaup (*Aythya marila*)  
 canvasback (*Aythya valisineria*)  
 American bittern (*Botaurus lentiginosus*)  
 brant (*Branta bernicla*)  
 Canada goose (*Branta canadensis*)  
 bufflehead (*Bucephala albeola*)  
 common goldeneye (*Bucephala clangula*)  
 Barrow's goldeneye (*Bucephala islandica*)  
 sanderling (*Calidris alba*)  
 dunlin (*Calidris alpina*)  
 red knot (*Calidris canutus*)  
 purple sandpiper (*Calidris maritima*)  
 least sandpiper (*Calidris minutilla*)  
 common snipe (*Capella gallinago*)  
 willet (*Catoptrophus semipalmatus*)  
 killdeer (*Charadrius vociferus*)  
 snow goose (*Chen caerulescens*)  
 old squaw (*Clangula hyemalis*)  
 mute-swan (*Cygnus olor*)  
 American coot (*Fulica americana*)  
 common loon (*Gavia immer*)  
 red-throated loon (*Gavia stellata*)  
 American oystercatcher (*Haematopus palliatus*)  
 bald eagle (*Haliaeetus leucocephalus*)  
 harlequin duck (*Histrionicus histrionicus*)  
 herring gull (*Larus argentatus*)  
 laughing gull (*Larus atricilla*)  
 ring-billed gull (*Larus delawarensis*)  
 lesser black-backed gull (*Larus fuscus*)  
 Iceland gull (*Larus glaucoides*)  
 glaucous gull (*Larus hyperboreus*)

Diamondback terrapins (*Malaclemys terrapin*) have been reported throughout the study area, feeding in Little Northwest Creek and the Sag Harbor Cove complex, and breeding along the shoreline of Sag Harbor Bay. The diet of terrapins consists primarily of marine snails, clams and worms (The Audubon Society Field Guide to North American Reptiles and Amphibians, 1987).

Kemp's Ridley sea turtles (*Lepidochelys kempii*) have recently (1993) been reported and confirmed as occurring throughout the Peconic Estuary, east of Nassau Point (Southold Town), and notably within the Sag Harbor Bay/Northwest Harbor area. Whereas adult Kemp's Ridelys are typically concentrated near their breeding grounds in the Gulf of Mexico, juveniles of this species have been found with great regularity along the inshore waters off the northeastern Atlantic Coast. These northern waters have been found to provide an important developmental habitat for juvenile sea turtles. Juvenile Kemp's Ridelys actively forage in local waters for approximately 21 weeks, from about June 12th through the first week of November. Approximately 90 percent of their diet consists of crabs, and the majority are the non-swimming types including spider crabs (*Libinia* spp.) and rock crabs (*Cancer irroratus*) which are presumably easier for juvenile sea turtles to catch.

Although not currently listed as a rare species, but worthy of being noted, there is a significant population of harbor seals (*Phoca vitulina*) which utilizes the stone breakwater in Sag Harbor as a "haulout" area for resting and sunning. This location is significant, because Sag Harbor is one of only five major seal haulout areas on Long Island. In addition, two other species of seals have been observed in the area on occasion by the Okeanos Ocean Research Foundation, Inc., including harp seal (*Phoca groenlandica*) and grey seal (*Halichoerus grypus*).

#### **4.3 Flooding and Erosion**

##### **A. Natural Protective Features**

Protection from coastal erosion is provided by a variety of natural shoreline features. In the Village of Sag Harbor, these features primarily comprise nearshore areas, beaches, and vegetated marshes. Dunes and bluffs, which are also important natural protective features found throughout Long Island, are absent from the Village's shoreline.

Nearshore areas, beaches, and vegetated marshes protect the adjacent upland from coastal erosion by dissipating the energy of incident waves. In general, maximum protection is provided by gradually sloping nearshore areas and wider, more gently sloped beaches; wave impacts are more forceful, and thus the degree of erosion susceptibility is greater, if these features have a steeper gradient. Wide, thickly vegetated marshes also provide the greatest level of protection against waves.

A large section of shoreline containing bluffs is located on Barcelona Neck, less than one mile to the northeast of the Village. As discussed more fully in Section 4.3.B below, these bluffs serve an important function in protecting the Village shoreline from coastal erosion

TABLE 6

ENDANGERED, THREATENED, OR SPECIAL CONCERN WILDLIFE SPECIES  
FOUND IN OR AROUND SAG HARBOR

COMMON NAME	SCIENTIFIC NAME	STATUS	
		FEDL.	NY
<i>BIRDS</i>			
Bald Eagle	<i>Haliaeetus leucocephalus</i>	E	E
Northern Harrier	<i>Circus cyaneus</i>	--	T
Osprey	<i>Pandion haliaetus</i>	--	T
Least Tern	<i>Sterna antillarum</i>	--	E
Roseate Tern	<i>Sterna dougllii</i>	E	E
Common Tern	<i>Sterna hirundo</i>	--	T
Piping Plover	<i>Charadrius melodus</i>	T	E
Least Bittern	<i>Ixobrychus exilis</i>	--	E
Eastern Bluebird	<i>Sialia sialis</i>	--	SC
<i>REPTILES</i>			
Kemp's Ridley Sea Turtle	<i>Lepidochelys kempü</i>	E	E
Leatherback Sea Turtle	<i>Dermochelys coriacea</i>	E	E
Diamondback Terrapin	<i>Malaclemys terrapin</i>	--	SC
<i>AMPHIBIANS</i>			
Tiger Salamander	<i>Ambystoma tigrinum</i>	--	E
Spotted Salamander	<i>Ambystoma maculatum</i>	--	SC

KEY TO STATUS CODES:

- E = Endangered - Any native species in imminent danger of extirpation or extinction  
T = Threatened - Any native species likely to become an endangered species within the foreseeable future  
SC = Special Concern - Any native species for which a welfare concern or risk of endangerment has been documented  
-- = Unlisted - Not currently listed as one of the above status codes

Sources: New York State Department of Environmental Conservation, State Listed Species, February 1993.  
Okeanos Ocean Research Foundation, Inc., January 1995.  
National Marine Fisheries Services, January 1995.  
Sag Harbor Village Draft LWRP, 1995.

(particularly along the beachfront to the east of the breakwater) by providing a continuous natural supply of sand in the littoral drift system.

## **B. Erosion Hazard Areas**

The Village shoreline does not contain any officially designated erosion hazard areas, and generally does not suffer from a significant erosion problem. Slight shoreline erosion was noted at several locations during a field survey conducted in January 1995; these included the bayfront at the extreme easterly end of the Village (near Little Northwest Creek), the area to the immediate east of Ship Ashore Marina, and the northwest corner of the Redwood peninsula.

The virtual absence of significant coastal erosion in the Village is attributable to a number of factors. The area to the west of the North Haven/State Route 114 bridge is sheltered from the most energetic waves originating in the open bays of the Peconic system. The two shoreline segments that were noted to have experienced minor erosion in the inner harbor, to the east of Ship Ashore Marina and at the northwest corner of the Redwood peninsula, are oriented perpendicular to the longest fetch lines in Outer and Inner Sag Harbor Cove, respectively (where "fetch" is the distance of continuous open water over which winds can blow to create waves). However, both of these two sites have suffered only minor slumping of the low embankment along the shore, and no structures are threatened. Consequently, neither site can be characterized as being an area of critical erosion.

The portion of the Village shorefront between the North Haven/Route 114 bridge and the breakwater is effectively sheltered from most waves by the breakwater. Additionally, almost this entire stretch of shoreline has been armored with bulkheads or revetments, providing artificial structural protection against potential erosion. However, it should be noted that the effectiveness of the breakwater has reportedly decreased dramatically over the years due to the gravitational settlement and wave-induced shifting of the rocks. As a result, even moderate storms, especially northeasters (which drive waves directly against the breakwater) can cause surging waves to overtop the breakwater. During a relatively modest storm in December 1994, waves that bypassed the breakwater caused substantial damage to the bulkhead at the Village sewage treatment plant.

The shoreline to the east of the breakwater has the greatest potential for coastal erosion damage, since this area is exposed to waves traversing the open waters of Sag Harbor Bay. However, erosion there is presently limited to minor slumping of the low embankment at the easterly end of the beach. This lack of a significant erosion problem is due largely to the virtual absence of artificial impediments to the natural supply of sand delivered via littoral drift. Sand derived from the erosion of the bluffs at Barcelona Point is carried to the southwest by littoral currents. The shoreline along the west side of Barcelona Neck is undeveloped (including State natural resource management lands and an expansive tidal marsh), and shoreline structures (e.g., groins, jetties, etc.) that could interfere with littoral drift are not present.

In the area to the east of Walker Avenue, which includes the area of minor erosion near Little Northwest Creek discussed earlier, the individual residential lots are generally more than 200 feet deep. The houses on these properties are situated close to the street, allowing a large buffer against potential future erosion along the shoreline. These properties do not have structural protection along the shoreline.

The housing lots between Walker Avenue and Havens Beach are generally 100 feet deep or less. The homes on these parcels, which are situated much closer to the water than the homes further to the east, are all protected with structural devices (i.e., a continuous wooden bulkhead for the properties on Terry Drive and a concrete rubble revetment for the properties between Beach Road and Havens Park).

### C. Flood Hazard Areas

The Village contains flood zones that have been designated by the Federal Emergency Management Agency (FEMA). There are several categories of flood zones, as depicted on FEMA's Flood Insurance Rate Maps, based on the degree of susceptibility to flood damage. Four general flood zones exist within the Village, as summarized below:

- *V zone* (i.e., high velocity zone, also called the coastal high hazard area) - that area of land which would be subject to breaking waves of three feet or greater height, in addition to still water flooding, during the 100-year storm event
- *A zone* (also called the area of special flood hazard) - that area of land which would primarily experience still water flooding, without significant wave activity, during the 100-year storm
- *B zone* - areas between the limits of the 100-year flood and the 500-year flood; or certain areas subject to 100-year flooding with average water depths of less than one foot or where the contributing drainage area is less than one square mile; or areas protected by levees from the base flood
- *C zone* - areas of minimal flooding

Figure 17 depicts the 100-year floodplain (i.e., the V and A zones), which encompasses all or a portion of every waterfront property in the Village. The width of the floodplain depends on topography. To the east of Milton Avenue, the floodplain lies immediately adjacent to the beach due to the relatively steep gradient of the adjacent upland. Between Milton Avenue and the breakwater, where the land is flatter, the floodplain extends further inland (especially at Havens Beach). The low-lying areas to the west of Main Street also have a wider floodplain.

The V zone is located entirely to the east of the breakwater, and generally occurs as a narrow band along the shore. A zones extend landward of the V zone to the east of the breakwater, and occupy the entire 100-year floodplain in the inner harbor area. Small

areas of B zone are also present within the Village, and extend inland from the A zones. Most of the upland in the Village is designated as C zone.

#### D. Shoreline Protection Structures

As shown in [Figure 11](#), a large portion of the shoreline in the Village of Sag Harbor, particularly within the harbor district, has been developed with structural protection devices. The general design and function of the primary categories of structures found in the Village are described as follows.

- *Bulkheads* - These wall-like structures are usually composed of timber, but are sometimes constructed with steel, concrete, masonry, or other materials. Bulkheads are built along the shoreline and are intended primarily to retain upland material, but also provide a barrier against shoreline recession. Bulkheads are the most common coastal structures in the Village, particularly on the commercial properties between the breakwater and Ship Ashore Marina. Bulkheads are also present on numerous residential properties throughout the Village.
- *Revetments* - These devices are also built along the shoreline, but are composed of heavy rocks or concrete rubble that is intended strictly to provide "armoring" for protection against wave attack. Revetments are also fairly common in the Village, being found beneath the North Haven/State Route 114 bridge, at Sag Harbor Cove West Marina, between Havens Beach and Beach Road, and at several other locations.
- *Groins* - These structures, which are usually composed of rock or concrete rubble, but can also be constructed of timber or other materials, are installed perpendicular to the shoreline for the purpose of trapping sediment moving nearshore in the littoral drift. Groins are not present in the Village, except the finger of concrete and masonry rubble projecting perpendicular to the shore at the Cor Maria property, which functions somewhat like a groin.
- *Breakwaters* - These structures can consist of uncemented rocks or rubble, concrete, and a variety of other materials. Breakwaters are oriented perpendicular to the primary path of travel of waves, and are primarily designed to provide a sheltered harbor area on the lee side by intercepting or dissipating incoming wave energy.



## **SECTION FIVE**

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**SECTION 5  
LAND AND WATER USE REGULATIONS**

**5.1 Land and Beach Use**

Chapter 27 of the Village of Sag Harbor Code regulates the main provision of Chapter 27 pertaining to this Harbor Management Plan is summarized as follows.

- A current parking permit is required for vehicles to park at the premises of Havens Beach. Permits are available to both residents (defined as Village taxpayers, permanent residents, temporary residents, and guests at lodging facilities within the Village) and non-residents, although the fee structure differs between these two categories of beach users.

**5.2 Recreational Motor Vehicle Control (Chapter 41)**

The main provision of Chapter 41 pertaining to this Harbor Management Plan is summarized as follows.

- The operation of a recreational motor vehicle is prohibited on: (a) the private property of another person, unless the operator has the express written consent of the land owner; and (b) any public grounds or property, including Village-owned land, except in areas dedicated to or commonly used by motor vehicles.

Although not expressly stated, the above restrictions effectively prohibit general vehicular traffic along beaches throughout the Village, which applies particularly along the shoreline to the east of the breakwater. Vehicular traffic along the shoreline in other portions of the Village is precluded by the presence of wetlands and structures (i.e., docks and bulkheads).

**5.3 Sewers (Chapter 43)**

The main provisions of Chapter 43 pertaining to this Harbor Management Plan are summarized as follows.

- The entire Village is designated as single "sewerage system". All properties within the Village are assigned to one of three categories: (a) "service areas", in which the sewer system is in actual use; (b) "construction areas", in which construction of the sewer system has commenced, but is not in actual use; and (c) "deferred areas", which includes all portions of the Village not designated as service areas or construction areas.
- The boundary encompassing each of the seven individual service areas is delineated by street. No areas are presently included in the "construction areas" category; therefore, all properties that are not located within the boundaries of one of the services areas are classified as "deferred".

- All premises situated within any of the service areas and which are used for human occupancy, employment or recreation, are required to be connected to the Village sanitary sewer system.
- A general sewer use permit is required for most uses that are connected to the system. A special sewer use permit is required for certain uses, including a major contributing industry, which is defined as having: (a) an average sewage flow in excess of 50,000 gallons per day (GPD), or (b) a flow that exceeds five percent of the total daily flow of the entire system, or (c) a discharge containing toxic substances (as defined under applicable regulations), or (d) a significant impact to the sewer system, either singly or in combination with other contributing industries, either on the treatment plant itself or upon the quality of the effluent from the discharge pipe. A special sewer use permit is also needed for any facility that requires a variance due to the generation of wastes that fail to meet certain specific criteria, or that requires ancillary equipment to mitigate the effect of a non-complying waste.
- The law establishes specific design and construction standards for physical connections to the sewer system and related appurtenances, and specifies a review procedure for ensuring that all such equipment conforms with these requirements.
- A general prohibition is established on discharges to the sewer system that would interfere with the operation of the system. The following specific discharges are prohibited: stormwater, surface water, groundwater, roof runoff, and subsurface drainage; unpolluted cooling water and unpolluted industrial process water; any excessive volume of discharge or excessive concentration of any material in the discharge; gasoline, benzene, naphtha, fuel oil, and any flammable or explosive substance; toxic substances; any substance not conforming to specified Ph limitations; solid or viscous substances that may obstruct the flow in sewers or otherwise interfere with system operation; noxious or malodorous substances; radioactive wastes; pathogenic wastes; substances that are not amenable to treatment by the processes employed; industrial wastes exceeding specified color criteria; wastes from gasoline and diesel engine cleaning operations; paints and associated wastes; plating bath wastes, formaldehyde and carbide wastes; wastewaters exceeding specified criteria for hydrogen sulfide, sulphur dioxide, nitrous oxide, or any halogen; any water added for the purpose of diluting wastes which would otherwise contravene applicable limitations; any wastewater exceeding specific criteria for biological oxygen demand, suspended solids, chlorine demand, dissolved solids, heavy metals, chloride, cyanide, fluoride, nitrogen, PCBs, phenols, phosphorus, sodium, and sulfide; and any wastewater exceeding the standards established under the Federal Water Pollution Control Act Amendments.
- For wastes that do not comply with the restrictions outlined above, mitigative action that can be taken by the Village includes the following, singly or in combination: (a) rejecting the wastes, (b) requiring the installation of suitable appurtenances to eliminate the prohibited matter, (c) requiring pre-treatment so as to render the wastes acceptable for introduction into the sewer system, and (d) requiring controls over the volume and rate of discharges to the system.

- A wastewater sampling schedule is established for industrial, commercial and institutional users, based on average annual flow and type of discharge. The Village is also provided with the right to require 24-hour composite sampling of any major contributing industry. Specific protocols are established for monitoring, analysis, reporting, and record-keeping.

#### **5.4 Bulkheading, Dredging and Canals (Chapter 12)**

The main provisions of Chapter 12 governing activities within or adjacent to Village waters are summarized as follows.

- A permit from the Village Board of Trustees is required for: the erection of any bulkheading, dock, wharf, or pier; the excavation of any canal, boat basin or boat ramp; the dredging or filling in the tidal wetlands of the Village (with the term “wetlands” corresponding to the State definition). All such permit applications are subject to a public hearing.
- A permit shall not be granted under Chapter 12 for any project that would have any of the following effects: (a) materially contribute to shoreline erosion in the Village; (b) cause salt water intrusion into the groundwater aquifer serving the Village; (c) create unreasonable waterway traffic; or (e) adversely affect marine life in wetland areas.
- If the Village Board determines that a given proposed project consists exclusively of maintenance dredging or maintenance bulkheading to restore conditions that previously existed, the Board may waive the requirement for public hearing.

#### **5.5 Waterways (Chapter 53)**

The Waterways Law applies to all waters of the Village and waters adjacent to the Village to a distance of 1,500 feet from the mean high tide line. The area covered by the Law generally coincides with the waterside boundary of the study area for this Harbor Management Plan (see [Figure 2](#)). The main provisions of Chapter 53 are summarized as follows.

- The dumping of petroleum products, refuse, garbage or waste, and the discharge of toilets is prohibited.
- A Village permit is required for each vessel mooring. Mooring locations are governed by a grid established and controlled by the Harbormaster and/or Village Police.
- No boat shall be anchored or moored in such a way that it, at any time, rests within the lines of any navigation channel.
- The mooring of floats requires a Village permit and is controlled by the Harbormaster and/or Village Police.
- All boats, other than those propelled by hand, are prohibited from operating within 50 feet of lifelines and bathing floats and 50 feet from any swimming area or beach regularly used for bathing.
- No person shall moor within 1,500 feet of the shoreline east of the breakwater except moorings that are accessory to waterfront residence within 500 feet of the shoreline. Vessels moored in this area shall not exceed 26 feet in length.

- No person shall moor or anchor a vessel or float that will endanger the safety of or cause damage to any vessel previously moored or anchored.
- Maximum vessel speed is 45 miles per hour (mph), unless otherwise posted. The speed limit within harbors, within 500 feet of the shoreline east of the breakwater, and other areas congested with boats is 5 mph.
- Waterskiing, windsurfing, and similar activities are prohibited within 200 feet of the shoreline and within 50 feet of any bather, except when commencing or ending a ride.
- Water scooters (e.g., jet skis) are prohibited within harbor areas and designated public bathing beaches. Such vessels are prohibited outside harbor areas to a distance of 250 feet of the shoreline or within 50 feet of any bather, except when commencing or ending a ride at a speed no greater than 10 mph.
- Skin diving, scuba, swimming, and related activities are prohibited within any channel.

## 5.6 **Shellfish Harvesting Restrictions**

The Village of Sag Harbor has no authority to regulate the taking of shellfish in the Sag Harbor Cove/Bay Complex. As discussed in Section 2.2.B, the State of New York and the Town of Southampton own the bottom lands underlying the waters of the harbor management area. The Town of Southampton has adopted its own set of regulations governing the use of this resource. In addition, the taking of shellfish in any waters in the State requires a permit from the NYSDEC. These regulations are discussed as follows.

### A. Town of Southampton

In 1992, the Town of Southampton adopted by resolution the “Rules and Regulations for the Management and Products of the Waters of the Town of Southampton”. Article II, which pertains specifically to shellfish, contains the following provisions which pertain to that portion of the Village’s harbor management area within the Town of Southampton:

- establishes specific requirements for harvesting methods and limits applicable to the taking of oysters, scallops, hard clams, soft clams, and crabs;
- restricts the taking of shellfish to Town of Southampton residents and taxpayers who have obtained the required permit;
- restricts the taking of shellfish to certified waters;
- requires that fish and crustaceans taken unintentionally during shellfish harvesting be returned to the water at once without unnecessary injury; and
- prohibits the return of live starfish, drills, drum fish, and moonsnails to the waters of the Town of Southampton

## B. New York State Department of Environmental Conservation

Pursuant to 6NYCRR, Part 41, NYSDEC regulates the harvesting of shellfish from all coastal waters in New York State and implements and enforces the provisions of the National Shellfish Sanitation Program (NSSP).

Perhaps NYSDEC's most important duty under the requirements of the NSSP is to classify all shellfish beds on the basis of regular water quality analyses (additional information on the NSSP is contained in Appendix A). NYSDEC's classification system consists of the following five categories (note that there is some degree of overlap among these categories):

- *certified (approved) area* - shellfish may be harvested for direct marketing throughout the year, except during a public health emergency (e.g., as may occur after a sewage treatment plant failure or a hurricane);
- *uncertified (closed) area* - shellfish harvesting is not permitted, either because water quality analyses indicate non-conformance with certification criteria, or because sampling is inadequate to satisfactorily demonstrate that the criteria are met;
- *seasonally certified area* - shellfish may be harvested for direct marketing during a specific portion of the year (typically during the winter months, when contaminant inputs are lower), except during a public health emergency, when all harvesting activities are prohibited;
- *conditionally certified (conditionally approved) area* - shellfish may be harvested for direct marketing only when certain specific criteria are met regarding rainfall and background coliform levels; and
- *restricted area* - an area that does not meet the water quality criteria for certification, but from which shellfish may be harvested (with NYSDEC permission and under NYSDEC supervision) for purification and transfer to certified areas.

There are three primary mechanisms by which NYSDEC can effect the closure of a shellfish bed that has been contaminated (or has the potential to be contaminated) to a level exceeding shellfish sanitation criteria. These mechanisms are described as follows:

- If an outbreak of shellfish-related illness can be definitively traced to a specific area in which boat mooring/anchoring is the only (or most apparent) potential source of fecal contamination, NYSDEC will implement an emergency closure within 24 hours.
- If a critical situation develops in a mooring/anchoring area, as determined through the application of the FDA dilution analysis based on the number of boats present, NYSDEC will effect closure through emergency rule-making. Closure typically occurs within several weeks of the initiation of this process.
- If NYSDEC determines that a definite, though non-critical problem exists, the standard rule-making process is followed, which typically takes four to six months.

If NYSDEC proceeds with rule-making, either through the emergency or regular process, the Village and adjoining towns will be notified of the problem early in the administrative proceedings. If an emergency closure is required, NYSDEC will attempt to notify the Village and adjoining towns in advance, but will not delay the closure if they are not successful in their initial efforts to alert the Village to the situation.

## **5.7 Zoning Regulations (Chapter 55)**

Article XVI of the Village of Sag Harbor Zoning Code authorizes the Village Planning Board to establish a Site Plan Review procedure. Under these provisions, site plans must be reviewed for all proposed residential projects for three or more units, and for all nonresidential construction and land use projects. This review is aimed at implementing the intent of the Zoning Ordinance; assuring the adequacy of proposed site improvements such as grading, drainage, on-site stormwater recharge, erosion protection, sewage disposal, and site access; integrating other required review procedures; coordinating development proposals and development potential of adjacent lands; and assessing the impacts of the proposed development on adjacent lands, the availability of open space, visual access, and other general environmental and social factors. Site plans are required to show the location of the proposed development in relation to adjacent freshwater and tidal wetlands; first-floor flood elevations if located adjacent to tidal waters; the location of all natural resources such as dunes, streams, ponds, and lakes, as well as canals and bulkheads; the existing topography of the site and adjacent properties; and existing and proposed stormwater drainage facilities to ensure that surface runoff is and/or will be directed away from surface waters and wetlands and into suitable structure designed to entrap pollutants prior to discharge.

All of the zoning classifications contained in the Village Zoning Ordinance include provisions that require a minimum percentage of site area be retained as natural or landscaped open space. In most districts natural vegetation that exists within 25 feet of the mean high water line or upland edge of a wetland must be preserved and sewage disposal systems must be set back a distance of 100 feet from these resources. Furthermore, in the R-20, Moderate Income and Multi-family residential districts, no fertilized vegetation can be planted within 25 feet of wetlands, coastal waters or beach and dune habitats.

## **5.8 Wetlands Regulations**

### **A. Village Tidal Wetlands Regulations**

The Village of Sag Harbor does not have a separate wetlands law. Rather, tidal wetlands within the Village (located above mean high water) are regulated pursuant to Chapter 12 of the Village Code, entitled Bulkheading, Dredging and Canals. The provisions of Chapter 12 which apply to wetlands are summarized as follows:

- a permit is required from the Sag Harbor Village Trustees to dredge or fill tidal wetlands, as defined on NYSDEC inventory maps;

- permit applications are subject to a public hearing held within 30 days after filing;
- activities which would adversely affect marine life within the wetland are prohibited - the Village trustees may solicit and consider the technical opinions of NYSDEC in reaching decisions to grant permit approvals;
- establishes a fee and/or imprisonment sentence for each violation; and
- established a wetland restoration requirement for all violations.

#### **B. Town of Southampton Wetlands Regulations**

The Town Trustees regulate the bottomlands of all water bodies in the Village which lie within the corporate limits of the Town of Southampton. Although not specifically stated in their Rules and Regulations, the Southampton Town Trustees regulate any activities which might alter wetlands occurring below the mean high water line. This is implied in Article VII which regulates dredging, the construction of shoreline hardening structures, and the placement of moorings, tie-off poles or other obstructions. This section states that "No person shall dig, dredge or change the bottom of any waters in the Town of Southampton...unless authorized by a permit issued by the Trustees" (O'Gara, February 23, 1995; Rules and Regulations for the Management and Products of the Waters of the Town of Southampton, April 1992).

#### **C. State Tidal Wetlands Regulations**

NYSDEC regulates tidal wetlands pursuant to Article 25 of the NYS Environmental Conservation Law. The Tidal Wetlands regulations went into effect in August of 1977. The intent of this article is to ensure that uses of tidal wetlands and adjacent areas are compatible with the preservation, protection and enhancement of these lands. Article 25 includes the following provisions:

- Directs NYSDEC to inventory tidal wetlands.
- Defines a spectrum of land use activities from, compatible to incompatible, within the regulated area.
- Details the set-back requirements and minimum lot sizes for buildings and appurtenances.
- Mandates NYSDEC to administer a permit program for any use or alteration of tidal wetlands. The regulated area extends generally 300 feet landward of the designated wetland boundary; or up to the seaward edge of existing (as of August 20, 1977) man-made structures; or to the elevation contour of 10 feet above mean sea level; or the topographic crest of a bluff or cliff.

- Directs NYSDEC to establish a public hearing forum for actions proposed within the regulated area.
- Empowers NYSDEC with enforcement capability.

All proposed actions involving State-regulated tidal wetlands located within the jurisdictional boundaries of the Village of Sag Harbor must be consistent with the policies and objectives of the Sag Harbor LWRP, as discussed in Section 5.12 below.

#### **D. State Freshwater Regulations**

NYSDEC regulates freshwater wetlands pursuant to Article 24 of the NYS Environmental Conservation Law. Article 24 was enacted on September 1, 1975 to preserve, protect and conserve freshwater wetlands and the benefits derived from them. This article includes the following provisions:

- Directs NYSDEC to inventory freshwater wetlands.
- Empowers NYSDEC to regulate the development and use of wetlands which are 12.4 acres or greater in size, and wetlands smaller than 12.4 acres which are deemed by NYSDEC to be of unusual local importance. The regulated area extends to 100 feet beyond the designated wetland boundary.
- Regulated activities include dredging, draining, filling and potential polluting activities.
- Mandates NYSDEC to administer a permit program for any use or alteration of regulated freshwater wetlands.
- Defines those activities which are exempt from permit requirements, such as all agricultural activities which do not involve the filling of wetlands.

All proposed actions involving State-regulated freshwater wetlands located within the jurisdictional boundaries of the Village of Sag Harbor must be consistent with the policies and objectives of the Sag Harbor Village LWRP, as discussed in Section 5.12 below.

#### **E. Federal Wetlands Regulations**

The U.S. Army Corps of Engineers (ACE) regulates activities in all navigable waters pursuant to Section 404 of the Clean Water Act. This regulation authorizes the ACE as the protector of federal wetlands, and prohibits the discharge of dredge or fill materials into navigable waters without a permit from the ACE. Section 404 contains the following provisions:

- Authorizes the ACE to issue permits for filling navigable waters in accordance with EPA guidelines so that..."no discharge of dredged or fill material be permitted if a practicable alternative exists which would have less adverse impact on the aquatic

ecosystem...and...no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of U.S. Waters."

- Empowers the EPA to veto a decision by the ACE to issue a permit to fill a wetland.
- Authorizes the ACE to issue General Permits on a statewide, regional or nationwide basis for certain activities in wetlands that are similar in nature and will cause only minimal adverse effect to the environment.
- Exempts certain activities from the permit requirements, including normal farming, forestry and ranching activities which are part of an established operation.

All Federal actions proposed within the jurisdictional boundaries of the Village of Sag Harbor must be consistent with the policies and objectives of the Sag Harbor Village LWRP, as outlined in Section 5.12 below.

## 5.9 Natural Resources Regulations

### A. Village of Sag Harbor

The Subdivision regulations (Chapter 46 of the Village Code) contain a number of sections that act to preserve and protect the natural and historic resources of the Village of Sag Harbor. The main provisions of Chapter 46 that pertain to this Harbor Management Plan are summarized as follows.

Section 46-14 regulates *lot specifications* and requires that any lot arrangement shall be constructed so as to avoid any foreseeable difficulties for reasons of topography or other natural conditions. Land subject to flooding or land deemed by the Planning Board to be uninhabitable shall not be platted for residential occupancy or for other such uses that may: increase the danger to health, life or property; aggravate flood hazards; or encourage the destruction of valuable wetlands through filling or pollution. Such land within the plat may be set aside for certain uses that would not be endangered by periodic or occasional inundation, or may be improved in a manner satisfactory to the Village, provided that such decisions are guided by the intent and purpose of Chapter 12 of the Village Code which regulates bulkheading, dredging and canals, and all other applicable wetlands legislation.

Section 15 of Chapter 46 authorizes the *preservation of the natural environment*. Section 46-15 contains the following restrictions:

- subdivision design shall preserve, to the greatest extent possible, the natural terrain and natural drainage pattern and endeavor to prevent the degradation or destruction of any pond, stream, tidal and ground waters found on the site or adjacent to it;
- all open watercourses and salt marshes beaches and shoreline shall be recognized as community assets and shall be protected and preserved in accordance with the intent of the Zoning Ordinance and other applicable legislation;

- if ponds, streams, unusual vegetative cover or other natural or historic locations are on the site, they shall be considered for park areas (as set forth in Section 46-13 of the Subdivision regulations which outlines park requirements);
- a conscious effort shall be made to preserve all worthwhile trees and shrubs existing on the site;
- the natural fertility of the soil shall be preserved by causing the least amount of disturbance as possible, and;
- all stormwater drainage shall be recharged into the subsurface groundwater reservoir by use of enclosed dry wells and leaching basins or open recharge basins. The appearance of all open recharge basins shall be enhanced by the use of screen plantings, including good natural vegetative cover where it exists. Natural drainage swales may be used for recharge provided that cover vegetation and subsoils permit appropriate water penetration and that such areas are offered for dedication to the municipality for such purposes.

In addition to Sections 46-14 and 46-15, Section 46-20 of the Subdivision regulations was designed to prevent any *threat to natural or historic assets*. Section 46-20 states that where the Village Planning Board finds that strict compliance with the subdivision regulations may cause conflict with the objectives and purposes of the Village Zoning Ordinance with regard to the preservation of both natural and historic lands or structures that are deemed important to the common welfare of the Village, the regulations may be varied so that the important resources are not threatened and so as to secure the public interest therein. Such variations may be permitted only when they will not have the effect of nullifying the intent and purpose of the Zoning Ordinance, the Official Map and the Master Plan (if such exists).

## B. Suffolk County

The entire Peconic Bay system (including its tributaries and all lands extending 500 feet from the shoreline) has been designated by the Suffolk County Legislature as a *Critical Environmental Area (CEA)* pursuant to Local Law No. 29 of 1988. Therefore, in accordance with Part 617.12(b)(11) of the State Environmental Quality Review Act (SEQRA), any unlisted action occurring wholly or partially within or substantially contiguous to this CEA is automatically considered a Type I action and is subject to a coordinated SEQRA review. In each case, a Lead Agency must be designated, a Long Environmental Assessment Form (LEAF) must be completed and a "Determination of Significance" must be publicly filed. This determination must be based on the review of the LEAF wherein the Lead Agency must determine if the proposed action would potentially result in at least one large and/or important impact to the environment. In those cases where the Lead Agency makes a "Positive Declaration of Significance", the preparation of an environmental impact statement (EIS) is required. Neither the Village of Sag Harbor nor the Towns of East Hampton or Southampton have designated any additional areas along the shoreline of the Village as Critical Environmental Areas.

## 5.10 Floodplain Regulations

The Village has adopted the Tidal Flood Hazard Overlay District (Article XVII of the Zoning Law) law to minimize structural damages, threats to public safety, and other potential adverse impacts engendered by development in the coastal floodplain. This law establishes a Tidal Flood Hazard Overlay District (TFHO), and provides regulations that apply in addition to those regulations of the standard zoning districts enumerated in Section 5.7.

The boundaries of the TFHO District are derived from the Flood Insurance Rate Maps which have been developed by FEMA (see Section 4.3.C). Activities within the TFHO District that are subject to the requirements of Article XVII include: constructing, moving, altering, or extending any building or structure; occupying a building or structure; and using land for such activities as mining, dredging, filling, grading, excavation, and drilling.

Article XVII specifies minimum design and construction standards for buildings and other structures within the TFHO District, and establishes a review procedure for ensuring that all regulated structures conform with these requirements. The Village Building Inspector is the primary agent responsible for implementing the provisions of Article XVII.

A distinct set of standards applies to structures in the V zone (coastal high hazard area) versus the A zone (area of special flood hazard). In general, due to the potential for wave impact damage in the V zone, structures in these areas must adhere to more stringent requirements than are specified for the A zone. The V zone standards include: the structure must be elevated on pilings of adequate strength to withstand anticipated wave impacts, as certified by a registered professional engineer or architect; the space below the lowest habitable floor shall not be enclosed, unless qualifying breakaway walls are used; and the structure must be placed on the property in a manner and at a location that minimizes adverse impacts to natural protective features.

All construction in the 100-year floodplain (A and V zone) must include the following features, as certified by a registered professional engineer or architect: anchoring sufficient to prevent flotation caused by rising floodwaters; structural strength adequate to resist expected hydrostatic and hydrodynamic loads; utility placement and installation in a manner that minimizes or eliminates impairment due to flooding; for residential construction, elevation of the lowest enclosed floor surface (including the basement) above the base flood elevation (BFE), as specified on the Flood Insurance Rate Map; for non-residential construction, elevation of the lowest enclosed floor surface above the BFE, or floodproofing of that portion of the structure situated below BFE.

## 5.11 Historic Preservation and Architectural Review Board

Pursuant to Article XV of Chapter 55 of the Village Code, an Historic Preservation and Architectural Review Board was established. The Board of Historic Preservation and Architectural Review is responsible for maintaining the desirable character of the Village's Historic District and of designated historic and cultural landmarks. The review board is

charged with the duty of disapproving the construction, reconstruction and alteration of buildings, structures or signs that are designed without considering the relationship of the new or altered building or structure to the character of existing buildings or structures and the environment within which they are set. The board also has the responsibility of exercising sound judgment and of rejecting plans which, in its opinion, are not of harmonious character because of: the proposed style, materials, scale, form, rhythm, proportion, mass, line, color, or detail; the placement or proposed or altered buildings or structures upon the property; the relation of the proposed or altered buildings or structures to the spaces between existing buildings or the natural character of the landscape; or because the proposed plans do not provide for the location and design of structures and open spaces so as to create a balanced and harmonious composition as a whole and with regard to the relation among its several parts and features.

When reviewing plans relating to property in the Historic District or plans involving designated historic or cultural landmarks, the review board must utilize the criteria set forth in Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings established by the U.S. Secretary of the Interior. Development plans and proposals for structural improvement or change that are found to conform with these requirements will be issued a Certificate of Appropriateness by the review board.

In addition to the above, the Board of Historic Preservation and Architectural Review has the power to:

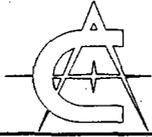
- conduct surveys of buildings for the purpose of determining those of historic and/or architectural significance and other pertinent facts;
- formulate recommendations concerning the preparation of maps, brochures and historic markers for selected historic and/or architectural sites and buildings;
- cooperate with and advise the Village Board of Trustees, Planning Board, and other municipal agencies in matters involving historic and/or architectural sites and buildings;
- advise owners of historic buildings on problems of preservation and restoration; and
- make recommendations to the Board of Trustees for amendments to the Zoning Map that would change the boundaries of the Historic District and/or include other properties or areas into this district.

#### 5.12 Sag Harbor Village Consistency Law

As a part of the adoption of the Local Waterfront Revitalization Program in 1986, the Village amended Chapter 15 of the Village Code (the Environmental Quality Review Law), to include provisions for the review of actions for consistency with the LWRP. Section 15-2.6 of the Village Code requires that any action to be undertaken within the local waterfront revitalization area must be consistent with the policies and purposes of the LWRP. All boards, departments, offices and other bodies and officers of the Village are required to review actions for consistency where it is determined that an action may have a significant effect on the

environment. Where it is resolved that an action will not have a significant environmental impacts, consistency must be determined subsequent to the initial determination of nonsignificance. If it is concluded that any action would cause a substantial hinderance to the achievement of any policy or purpose of the LWRP, the proposed action shall not be undertaken unless it is found that:

- no reasonable alternatives exist that would permit the action to be undertaken without substantial hinderance to such policy or purpose;
- the action would be undertaken in a manner which will minimize all adverse effects on such policy or purpose to the maximum extent practicable; and/or
- the action will result in an overriding Village, regional or statewide public benefit.



# **SECTION SIX**

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SECTION 6  
WATER USE PLAN: ISSUES AND OBJECTIVES

6.1 Local and Regional Issues, Opportunities and Objectives of Importance

When the Sag Harbor LWRP was adopted in 1986, it included the establishment of three *water use districts*. These include the harbor district, the limited-intensity district, and conservation district (see [Figure 4](#)). Although these districts were established, no use standards were developed to guide activities that occurred within the individual districts. Therefore, the following standards should be applied in all water use districts, many of these provisions are presently contained in Chapters 12 and 53 of the Village of Sag Harbor Code.

1. No structure erected below the mean high water line shall be permitted unless it is water-dependent in nature and used solely for the purpose of gaining access to a waterway for commerce, navigation, recreation and other public trust purposes, including the incidental right of public anchoring. Water-dependent uses include any activity which can only be conducted on, in over or adjacent to a water body because the activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.
2. Piers, docks, and catwalks are not permitted where the result would be unnecessary interference with the use of public trust lands. Interference with passage along the shoreline is limited to the minimum extent necessary to gain access from the upland to the water.
3. Obstruction of navigable waters is limited to the extent that it interferes with commercial navigation; to the minimum distance necessary to access navigable waters; by the extent and characteristics of the developable adjacent upland area and its ability to support in-water development for the water-dependent use; by potential adverse impacts on natural resources and their uses; and by potential adverse impacts on public safety.
4. No activity shall be permitted that would materially cause saltwater intrusion to the water table serving the Village of Sag Harbor.
5. No activity shall be permitted that would create unreasonable traffic and congestion upon the waters located within 1,500 feet of the Village shoreline.
6. No activity shall be permitted that would adversely affect marine life in wetland areas.
7. No boat shall be anchored or moored in such a way that it, at any time, rests within the lines of any channel.
8. All floats shall be anchored or moored in such a way as to be secure at all times and under all conditions.

9. No person shall operate a vessel at speeds greater than five (5) miles per hour within two hundred feet (200) of the shoreline west of the breakwater, within five hundred (500) feet of the shoreline of the breakwater, or within fifty (50) feet of swimmers, bathing floats, or lifelines.
10. No boat shall be operated within 1,500 feet of the shore at a speed in excess of that posted by speed markers.
11. No person shall ride on water skis or a surfboard or similar device or use or operate a boat to tow a person thereon in any marked channel, nor within 200 feet of any shoreline, nor within 50 feet of any bather or swimmer, except for the sole purpose of commencing or terminating the ride in an approach or departure that is perpendicular to the shoreline.
12. No person shall operate a personal watercraft or a specialty-prop craft within 500 feet of a designated swimming area.
13. No person shall skin-dive with any type of diving equipment within any channel, nor shall any person bathe or swim in any channel, except in the course of a rescue.
14. No person shall skin-dive with any type of diving equipment unless the diving area has been marked with the regulation red diving flag, nor shall any person allow or permit such diving flag to remain in any area unless such a person is actually skin diving in the area at the time. No boat shall operate within 50 feet of any area marked for skin diving by the placement of said regulation diving flag.
15. No person shall discharge any apparatus designed for use in spearfishing within 200 feet of any lifelines or bathing float, nor within 200 feet of any public or semi-public beach regularly used for bathing or swimming, nor within 50 feet of any person bathing or swimming.

The *harbor district* (Figure 12) is targeted as the appropriate location to foster most new water-dependent use and development. It is designated for the most intensive water uses, permitting activities that are customarily found in an active recreational boating harbor. This district is the most suitable location for the expansion or renovation of existing water-dependent uses. Only those uses that are incompatible to the safe operation of a harbor, or that are detrimental to the harbor environment, are prohibited. The harbor district includes the Sag Harbor and Outer Sag Harbor Cove areas, that are developed with, and contain concentrations of, water-dependent commercial and/or industrial uses and support facilities. The harbor and Outer Cove areas are the center for water-borne commerce, recreation, and other water-dependent business activity in the Village. Allowable surface water uses in the harbor district include secondary contact recreation, such as fishing, boating and shellfishing for market purposes (as permitted).

Within the harbor district, preference will be given to promoting and facilitating new water-dependent use and development in areas that have been previously developed and do not exhibit significant or high natural resource values. New water-dependent uses should be sited outside the harbor district only if the use has unique siting requirements that require a location outside of the district, and all potential significant impacts are mitigated. The following standards shall apply within the harbor district.

1. Existing shoreline stabilization and engineering structures, such as piers, wharfs, jetties, and bulkheads, shall be maintained and, where necessary, new shoreline stabilization and engineering structures may be constructed in accordance with the provisions of the WF Waterfront and MA Marine zoning districts.
2. Public and private navigation lanes, channels and basins shall be maintained to provide water depths consistent with requirements of existing water-dependent uses.
3. An increase in the use of surface waters in areas where such additional activity would pose safety hazards or obstruct navigation shall be prohibited.
4. Development shall be consistent with principal historic water-dependent harbor uses.
5. Development along the shoreline shall enhance or complement the harbor character in terms of scale, intensity of use, and architectural style.
6. Public access to the shore through provisions, such as including access from the upland, boat ramps and/or transient boat moorings, shall be encouraged, provided that such increased access does not pose safety hazards or create undue congestion.
7. Additional use of surface waters, where the resulting increase in traffic and congestion is likely to jeopardize public safety, is prohibited.
8. No boat shall be operated in any harbor or in any area where there is congestion of boats, either underway or at anchor, at a speed in excess of five miles per hour unless speed markers have been posted by the Village indicating otherwise.

The *low-intensity district* is a transition zone between the more permissible harbor district and the stringent conservation district. The purpose of this district is to accommodate the shoreline use associated with the historical pattern of development, which is predominantly residential, while encouraging public access and such water-dependent activities as fishing. General boating areas of Sag Harbor Bay and Outer Sag Harbor Cove are included in this district. Waters in the low-intensity district shall be used for activities involving primary contact recreation, including swimming, diving, water skiing and surfing, and secondary contact recreation, such as fishing, boating, and shellfishing for market purposes (as permitted).

Standards applicable to the low-intensity district include the following.

1. Water surface coverage shall be permitted only to accommodate water-dependent uses which require structures or activities in the water as a part of the use and to the minimum extent necessary to exercise littoral rights.
2. An increase in the use of surface waters in areas where such additional activity would pose safety hazards to swimming and public access or obstruct navigation shall be prohibited.
3. Hardening of the shoreline within the low-intensity district is discouraged. Hard structural erosion protection measures shall be used for control of erosion only where:
  - setback from the shoreline is not appropriate because a structure is functionally dependent on a location on or in coastal waters, located in an area of extensive public investment, or is otherwise not practicable;
  - vegetative approaches to controlling erosion would not be effective;
  - enhancement of natural protective features would not prove practical in providing erosion protection;
  - construction of a hard structure is the only practical design consideration and is essential to protecting the principal use;
  - the structure is necessary to mitigate the erosive effects of immediately adjacent structures;
  - the proposed hard structural erosion protection measures are limited to the minimum scale necessary and are based on sound engineering practices;
  - practical vegetative methods have been included in the project design and implementation; or
  - adequate mitigation is provided and maintained to ensure that there is no adverse impact to adjacent property, to natural coastal processes and natural resources, and if undertaken by a private property owner, does not incur significant direct or indirect public costs.

The *conservation district* is intended to support the sensitive environmental resources and habitats of the Village of Sag Harbor's waters. Low intensity use is necessary in some highly sensitive water areas to assure their preservation and enhancement, such as that in the coves where poor flushing action is prevalent. Waters in the conservation district shall be used for activities involving primary contact recreation, including swimming, diving, and surfing, and secondary contact recreation, such as fishing, boating, and shellfishing for market purposes (as permitted), and fishing and fish propagation.

Standards applicable to the conservation district include the following;

1. New bulkheading shall not be allowed. Use of vegetative non-structural measures which have a reasonable probability of managing flooding and erosion based on shoreline characteristics including exposure, geometry, and sediment composition.
2. The disturbance of natural shorelines shall be avoided.
3. The bottom condition of water bodies in the conservation district shall be enhanced and maintained at a level what would support shellfish propagation and harvesting.
4. The extent of surface water coverage shall be the minimum necessary for access to navigable waters.
5. The preservation of natural protective features shall be enhanced (beaches, nearshore, bars, spits, flats, wetlands, and all associated vegetation) and success of restoration efforts through relevant signage or other management measures which focus on presentation of educational, research or interpretive information.
6. Vegetative buffers between shoreline properties and surface waters within the conservation district shall be provided and maintained to achieve a high filtration efficiency of surface runoff. Avoid permanent or unnecessary disturbance within buffer areas. Such buffer areas shall be planted and maintained with indigenous vegetation.

As noted above, when the Sag Harbor LWRP was adopted in 1986, it established three harbor use districts for controlling the intensity of water uses within the Sag Harbor Cove/Bay Complex. In an effort to place a greater emphasis on environmental protection and resource preservation, a fourth district is proposed. The district, to be known as the "preservation district", would be more protective than the conservation district. Surface waters identified to be designated as preservation districts include Round Pond, Otter Pond, and the upper reaches of both Ligonee Brook and Little Northwest Creek. The only permitted activities in these areas would be passive in nature to avoid potential adverse environmental impacts. Access to these areas would be provided for passive recreational, educational, scientific, and interpretive uses of natural resources that would not result in adverse impacts. Motorized activities would not be permitted in these areas. Furthermore, the construction of shoreline structures or the hardening of the shoreline in these areas would be prohibited.

The following is a discussion of the issues of local and regional importance and opportunities exist for improvement in the harbor management area. The conditions and recommendations set forth below are illustrated on the [HMC](#) and [Fig. 12](#).

- 1. The character of Sag Harbor's waterfront is directly related to the dependency and intensity of water-related and enhanced uses**

Sag Harbor Village is one of two areas in the Peconic Bays region that supports a concentration of water-dependent uses. This is important from both a regional and local perspective. The uses and activities that occur along the Sag Harbor Village waterfront should benefit from this coastal location. In light of this, efforts should be taken to maintain Sag Harbor as a center for maritime uses. In all the water use districts, a pattern of development should be enhanced and encouraged that reflects a mix of appropriately located water-dependent commercial uses, recreational uses and open space, and residential uses. The Village's commercial maritime heritage should also be enhanced and maintained. In the Harbor District, priority should be given to establishment and maintenance of water-dependent uses over all other uses in this area. Sufficient infrastructure should be provided to support these efforts.

In the Low-intensity District and the Conservation District, efforts should be focused on the establishment of new, and the maintenance of existing, water-dependent recreational uses at appropriate locations. New development, however, should be avoided at sites in the Conservation District (as well as the Preservation District) that exhibit important natural resource value.

- 2. The viability of water-dependent uses and other uses that occur on the water surface is directly related to adequate dredging to protect the channels that provide access to the Harbor District**

Water-dependent uses in Sag Harbor rely upon the navigational access infrastructure that has been established. As discussed in Section 3.2.G and shown in [Figure D](#), there are a number of navigation channels located throughout the Sag Harbor Cove/Bay Complex. Some of these channels have not been dredged since they were first established. In addition, there are areas situated outside of the delineated channels that are in need of dredging to mitigate shoaling and water depth problems. The dredging guidelines set forth below should be utilized to direct future actions in Village waters. They should also provide the basis for seeking dredging assistance and funding from appropriate governmental agencies.

- Dredging is an important activity with costs and impacts that require it to be undertaken to meet the current and future needs of water-dependent uses in the Harbor District. Dredging activities undertaken east of the North Haven/Route 114 bridge should be continued to the ten-foot depths initiated by the Army Corps of Engineers. West of the bridge, access channels should be maintained at sufficient depths (four feet below mean low water) to meet the needs of existing water-dependent uses.
- In 1960, the Suffolk County Department of Public Works (SCDPW) constructed an extensive navigation channel through Outer Sag Harbor Cove. This channel extends west from the North Haven/State Route 114 bridge to the head of Paynes Creek. In 1965, this channel was extended south through Inner and Upper Sag Harbor Cove. The area in the vicinity of Marine Park was dredged in 1977 and the Village A and B Docks area was dredged in 1979. Through the analysis conducted as a part of this harbor management plan, it has been determined that the portion of the main channel that extends from the

North Haven/State Route 114 bridge west to the Big Narrows, including the spur for the Village docks and the spur to the Ship Ashore Marina and Redwood Boat Basin, should be maintained in the public interest. That portion of the main channel that extends into Paynes Creek and the Inner and Upper Cove areas should remain as a designated channel, but no longer be publicly maintained, except in extreme circumstances.

- The SCDPW has not conducted any maintenance dredging of the channels and basin areas in the Sag Harbor Cove/Bay Complex since they were originally established. The SCDPW has indicated that they have not received any formal requests for dredging from the Village through the Towns of East Hampton and Southampton and are unaware of localized shoaling conditions or current dredging needs. Furthermore, with the exception of permit applications that were filed in 1990 for the dredging of a spur from the main channel to the Redwood boat basin at the Ship Ashore Marina in Outer Sag Harbor Cove, all dredging permits for Sag Harbor projects have expired. The administrative process for initiating County-sponsored dredging in local waters is a lengthy one, which is exacerbated by the time constraints involved with securing the necessary state and federal permit approvals. Therefore, the Village should promptly advise the County of their dredging needs to commence the application process and facilitate dredging where required.
- There is a navigation channel and turning basin located within the Sag Harbor area that was originally dredged by the Army Corps of Engineers (ACE). This channel, which has not been dredged since it was constructed in 1937, was deauthorized by the ACE in 1992. The Village is responsible for the placement and maintenance of navigational aids in this area. However, although this channel has shoaled and requires dredging, the federal government is no longer responsible for the dredge maintenance of this channel. Therefore, the Village must either: 1) request that the ACE re-authorize this navigation channel; 2) request that the SCDPW add this channel to their list of dredging projects that are in the public interest; or 3) directly arrange for the private maintenance dredging of this channel.
- The ACE constructed a two-section, 3,180-foot breakwater to the east of the federal navigation channel and adjacent anchorage area. Shoaling is occurring along the western side of this structure, particularly near its intersection with the shoreline, and is impacting the full use of the anchorage area which is located between the channel and the breakwater. This has restricted the use of portions of the anchorage area to only shallow-draft vessels. Shoaling is also a problem in the small anchorage area located to the west of the Long Wharf. Bottom depths in this area have been reduced, making it accessible to only shallow-draft vessels. Dredging is required in these areas to re-establish the full extent of mooring activities and improve navigation. Since neither of these areas have been dredged in the past, they should also be added to the County's dredging list for the Sag Harbor area.
- NYSDEC is also taking a closer look at all new dredging projects (those areas that have not been dredged within the past 20 years are considered new projects). New projects are not likely to receive approval unless an overwhelming public need can be demonstrated and the issue of acceptable dredge spoil disposal methods and sites can be addressed. In the past, dredge spoils were disposed in upland areas in the vicinity of the

Redwood peninsula; Haven's Beach was utilized for the disposal of spoil materials from the Marine Park dredging site. However, disposal of dredge spoils in these areas is no longer feasible because these areas are residentially-developed, in close proximity to residential development, or (in the case of Haven's Beach) utilized for active public recreation. There are not upland areas suitable for dredge spoil disposal in the Village. Therefore, spoil materials generated from future dredging projects would have to be removed from the project site and disposed of at a suitable location outside of the Village.

- The expansion of water-dependent structures (i.e., docks and marinas) in the Harbor District is limited by the nearshore location of the navigation channels. Certain channels would have to be relocated further from shore to allow for such expansion. A channel relocation would result in a loss of navigable water depth of approximately two feet and a loss in anchorage space. The Village must access the alternatives for expansion of water-dependent structures and the relocation of channels required to permit such expansion.
- The breakwater in the Harbor District, that separates Sag Harbor from Sag Harbor Bay, was constructed in 1908. This structure acts to shelter the harbor from the open waters of the bay, reducing the impacts of wave action generated in the bay. The breakwater was rehabilitated in 1963 to restore it to its original height and structural integrity. The breakwater is once again in need of repair. In the past thirty years this structure has succumbed to gravitational settlement and wave-induced shifting of the rocks. Some of the supporting stones have fallen into the adjacent waters. Due to these changes, the effectiveness of the breakwater has been dramatically reduced. As a result, even moderate storms, especially northeasters (which drive waves directly against the breakwater) can cause surging waves to overtop the breakwater. During a relatively modest storm event in December of 1994, waves that bypassed the breakwater caused substantial damage to the bulkhead in front of the Village sewage treatment plant. The Village should issue requests to the Army Corps of Engineers for the repair of this structure.
- In the Low-Intensity District situated west of the North Haven/Route 114 bridge, water use activities have the inherent potential to conflict with navigation on the waters surface. Access through Outer Sag Harbor Cove is dependent on the maintenance of the existing navigation channel. Since the location of the channel in this area is fixed, the expansion of navigational access for private residential uses should not interfere or encroach on the navigation channel nor result in increased vessel congestion.

### **3. The use of surface waters depends on the size and nature of the waterbody**

The Harbor District is best suited for accommodating the high concentrations of water-dependent uses found along the Sag Harbor waterfront. The characteristics of the surface waters establish a hierarchy for determining where water-dependent uses should locate. Uses with the highest degree of dependence on waterfront access for navigation include: commercial water-dependent activities that require adequate water depths to navigate, turning basins, docking facilities, and access for the public as users (these water-dependent uses are generally found in the vicinity of the Long Wharf); marinas and yacht clubs for sail boats and larger vessels that require adequate water depths for navigation, adequate clearance for masts, and

docking and anchorage facilities and facilities for dinghies (these uses are generally found to the east of the North Haven/Route 114 bridge); and marinas for motorized vessels and small sail boats that require docking facilities, boat launching and public access (these uses are generally found west of the North Haven/Route 114 bridge).

- A total of 155 acres of underwater lands in the Harbor District area (situated between the North Haven/State Route 114 bridge and the breakwater) are uncertified by NYSDEC and closed year-round to shellfish harvesting. These waters are classified by the State as "SA" which is the highest possible ranking for surface waters. SA waters are considered suitable for the harvesting of shellfish for market purposes and primary and secondary contact recreation.

The activities occurring inside the harbor area are not compatible with shellfish harvesting activities and are not predicted to change. The marinas and anchorage areas are a prosperous element in the economy of Sag Harbor and help to support significant tourist activity. This area has been specifically designated as a part of the harbor district by the Village, and is considered an appropriate area for such intensive uses. In accordance with the National Shellfish Sanitation Program (described in 5.6.B and Appendix A), a seasonal closure area must be maintained around marinas to mitigate potential contamination problems. In addition, the outfall for the STP is located in Sag Harbor, and a large area around this outfall is permanently closed to shellfish harvest. The location of the outfall is not subject to change. Relocation of this structure to an area outside the breakwater would be cost prohibitive and would require the closure of additional underwater lands to shellfish harvest.

Since the NYSDEC water quality standards that mandate the closure of the harbor area to shellfishing will continue to be maintained, the water quality classification for this area should be changed to SB to reflect actual conditions. SB waters are considered suitable for primary and secondary contact recreation and any other use except the taking of shellfish for market purposes. However, although the water quality conditions in the harbor that warrant the closure of these waters to shellfishing may not change, efforts to improve water quality in this area through the prohibition of vessel waste and other discharges and the implementation of best management practices in the adjacent upland areas should not be relaxed.

- Another area in the Sag Harbor Cove/Bay Complex that is suffering from degraded water quality is the southeastern corner of Upper Sag Harbor Cove (which is designated as a Conservation District). Since 1986, water samples collected in this area have failed to meet the standards for total and fecal coliform bacteria under both wet and dry weather conditions. NYSDEC has consequently closed this area to shellfish harvesting on a year-round basis. The causes of this water quality problem are not totally clear; however, it is suspected that the discharge from Otter Pond is a significant source of coliform bacteria. Otter Pond is known to support a large population of waterfowl, a prominent contributor of fecal matter to surface waters. Both Otter Pond and the upper reaches of Upper Sag Harbor Cove are surrounded by older homes that may have failing septic systems that are adding to the pollution problem in this area. In addition, poor mixing and flushing action in this area of Upper Sag Harbor Cove may also be a factor in elevated coliform levels.

In an attempt to address the water quality problems in the Upper Sag Harbor Cove area, a number of mitigative actions could be implemented at Otter Pond. The Village, in conjunction with the Town of Southampton is currently upgrading the stormwater drainage appurtenances in the vicinity of Otter Pond to improve the quality of runoff entering this water body. In addition to this, the Sage Foundation, the entity that owns the Otter Pond property, is proposing to undertake a wetland planting to restore the fringe of wetland grasses around the perimeter of the pond. This will aid in the filtration of pollutants entering the pond. Additional planting in the vicinity of the outlet stream to Upper Sag Harbor Cove would also help to reduce pollutant loading to the upper cove area. The Sage Foundation and the Village should also undertake a educational campaign to inform the public about the detrimental effects of feeding wildfowl.

Failing on-site sewage disposal systems (OSDS's) are another serious problem that is difficult to pinpoint through direct observation. In order to identify faulty OSDS's in the vicinity of Otter Pond and Upper Sag Harbor Cove, a die-testing program should be conducted. The Village should investigate sources of funding, possibly in conjunction with the Suffolk County Department of Health Services, to establish a die-testing program that would allow for the testing of systems in the area of concern and provide financial incentives to enable local homeowners to upgrade failing systems.

#### **4. The nature of the existing use of the water's surface limits the extent of other uses**

In addition to navigation and access for water-dependent uses, it is important that other principal public uses of surface waters, such as mooring fields and docking facilities, are not obstructed by active recreational use of surface waters. Water skiing, jet skiing, skin diving and swimming should be uses designated for specific areas that do not conflict with other public uses of surface waters throughout the harbor management area. Swimming primarily occurs within 500 feet of the shoreline. This use should not be obstructed by other active surface water uses, such as jet skiing, water skiing or diving. In the Conservation District, the principal and preferred use of surface waters is shellfishing and the protection of natural resources. All other uses of the waters should be subordinate to this primary objective. Other surface water use concerns include the following.

- During the summer boating season, the harbor district area is subject to extensive vessel traffic, particularly on weekends, as evidenced by data collected by the Village Harbormaster's office to estimate the average number of vessels entering the harbor and outer cove areas during peak mid-summer periods. According to the Village Harbormaster, vessel congestion occurs in a number of locations throughout the harbor district. At some of these locations, congestion problems are heightened by localized shoaling. The ballast that was dumped at the end of the Long Wharf complicates congestion problems that may arise in this area and has led to a number of boating accidents.

In Sag Harbor, the area under the bridge tends to get congested due to the fact that the channel narrows and there are generally a significant number of boats seeking egress from and ingress to the four marinas and docking facilities in Outer Sag Harbor Cove. The Outer Sag Harbor Cove area provides dockage for up to 385 vessels and supports

an extensive amount of boating activity. The fueling dock at Baron's Cove Marina is another location of congestion in the Outer Cove area.

There is a significant amount of vessel activity occurring at the head of Sag Harbor, in the vicinity of Marine Park. Combined, the marinas and boat yard in this area provide dockage for approximately 225 boats. The Village anchorage area and the boat launch ramp can also accommodate a large number of vessels. Therefore, at the height of the summer, the Sag Harbor area can become congested with vessels seeking to access shoreside dockage and services or egress to Sag Harbor Bay. Congestion also occurs in the Sag Harbor area, where the channels meet and an increased number of boaters attempt to enter or exit from the main channel to the harbor channel on the eastern side of the Long Wharf or the dockage and anchorage areas on the western side of the Long Wharf.

- As shown in [Fig. 11](#) and the [HMC](#), there are a number of docks located throughout the harbor management area. The construction of private docks has become a growing concern to the Village, particularly docks constructed in areas subject to heavy vessel activity and in areas that possess significant natural resources. The increasing size and number of docking structures in Village waters exacerbates harbor congestion and threatens interference with navigation channels. At present, the construction of a dock in the harbor management area requires a permit from the Village. Dock construction in Sag Harbor Village also requires a permit from the Town of Southampton or the State of New York because each of these entities has jurisdiction over a portion of the underwater lands in the study area. As discussed in Section 3.3.B, the underwater lands inside the cove complex are owned by the Town of Southampton; the underwater lands situated east the of the cove complex are owned by the State of New York.

In an effort to control the construction of docks, this activity should be directly connected with the character of the upland use. If the upland use is not water-dependent, then a dock should only be permitted to provide necessary access to reach navigable waters. This action would essentially contain excessive dock construction activity within the harbor district, where the water-dependent are primarily located.

##### **5. The nature of shoreline hardening is directly related to upland use**

Water-dependent development is the functional use within the Harbor District. Much of this area has been subject to extensive public investment that is exposed to flood hazards out of necessity. Therefore, the water-dependent uses in the waterfront and marine zoning districts have a priority for shore hardening to protect them against the erosive forces of storm events. Where the shoreline has been hardened to support a water-dependent use, the existing bulkhead should be replaced in-kind when deteriorated. Where a substantial portion of the water-dependent use in the Harbor District has been bulkheaded, it may be desirable to continue the bulkheading along the full length of the use.

In the Low-Intensity District, shoreline hardening should be limited to locations above the mean high water line and should only be utilized after all other non-structural alternative for erosion protection have been exhausted. In the Conservation District, shore hardening

structures should only be used when no other practical design consideration is suitable and when they are essentially required to protect principal upland structures. Practical non-structural vegetative measures should be initially utilized.

**6. The use of surface waters is limited by potential adverse impacts on navigation and public interest in public lands underwater**

For public safety purposes, surface water uses in the Harbor District should be limited based on their consistency with the public interest for navigation. Water-dependent uses are reliant upon the utilization of surface waters and offer the public the benefit of access to the waters of Sag Harbor and beyond. Such uses, however, must not unreasonably impede navigation, the use and ownership of underwater lands, or riparian interests. Other areas of concern include the following.

- At present the Town of Southampton is responsible for the patrol of surface waters and enforcement of waterways regulations in Southampton Town waters, which includes those portions of Outer and Inner Sag Harbor Cove lying outside of the Village's jurisdiction. Throughout the summer boating season, when recreational boating and other in-water recreational activities increase, the Town does not conduct regular patrols in this area due mainly to the fact that these waters are isolated from the main body of the Town's waters. To ensure that an appropriate level of enforcement is provided in this area, the Town of Southampton should consider granting authority to the Village of Sag Harbor to allow the Village Harbormaster the ability to act on violations that are presently outside Village jurisdiction. Presently, the Harbormaster can only issue warnings to boaters outside Village waters that are violating speed restrictions or other waterways regulation; the Village cannot issue citations or enforce Town law to any other extent unless authorized by the Town. The Town and the Village should jointly pass a resolution to establish a cooperative arrangement to allow the Village to assist with patrols in this area and to transfer authority so the Village can enforce existing Town regulations.
- There is a boat launching ramp located at the Marine Park boat basin (see [Figure 5](#)). This ramp receives heavy usage throughout the year, particularly in the summer season. As a result, the ramp is in need of repair. The concrete ramp is beginning to crack and subside and the culvert located to the immediate east of this ramp is caving in. The Village should continue to seek funding for the reconstruction of this amenity.
- The State of New York issued seven grants to various upland property owners for underwater lands in the Sag Harbor area. These grants were issued between 1845 and 1968, and in most of these cases these lands consist of upland properties or portions of the upland that were formerly underwater lands that have been filled in. Research into the status of these seven grants has revealed that all of the grants were issued with full interest given to the grantee. Unless the upland was sold to another party, the ownership of the underwater lands remains with the original grantee; otherwise, the lands belong to the current upland owner. With the exception of a grant issued to the East Long Island Pottery Company in 1882, which was never utilized, the underwater land grants in Sag Harbor are all accounted for.

- There are three waterfront properties that have been developed that do not have grants from the State Office of General Services. These include the underwater lands that contain the Waterfront Marina, owned by Malloy Enterprises; the former underwater lands that comprise the Marine Park property, which is owned by the Village of Sag Harbor; and the underwater lands and small upland area that comprises the Sag Harbor Yacht Club property. Grants for these lands should be obtained from the State through the appropriate application process. In addition, the Village of Sag Harbor was conveyed a portion of the underwater lands originally granted to the Long Island Rail Road (LIRR) in 1888 when the existing North Haven/State Route 114 bridge was constructed. The Village should seek to gain ownership of the remainder of the underwater lands that are still owned by the LIRR.

### Natural Resources

- The Village contains a number of public recreation and open space areas, some of them quite large in size. These lands are currently zoned for either residential or waterfront use; the larger properties are all zoned for residential use. In an effort to insure that these lands will remain as public recreational and open space holdings, and to prevent the future possibility of these lands ever being residentially developed, it is recommended that the Village rezone these properties under an open space/recreation classification. The properties considered for rezoning include Otter Pond and Mashashimuet Park, Havens Beach, and the NYSDEC conservation area adjacent to Little Northwest Creek.
- The Village presently regulates development in wetland areas under Chapter 12, the Bulkhead, Dredging and Canals law. Although this law regulates, by permit, dredging and the construction canals, bulkheads and other shoreline structures that may impact tidal wetlands, this law is not comprehensive in its protection of wetland resources. In particular, the present law does not address impacts from upland development activities. The Village contains a significant number of freshwater wetland areas and extensive areas of tidal marsh throughout the Sag Harbor Cove Complex. These wetland resources warrant stronger protection, and the NYSDEC, under Articles 24 and 25 of the Environmental Conservation Law, cannot be fully reliant for this action. Therefore, the Village should adopt a separate wetlands and watercourses law that more specifically outlines provisions for activities that may impact both tidal and freshwater wetlands. This law should contain narrative that defines what tidal and freshwater wetlands are; outlines the significance of protecting these resources; and delineates where protected resources are found within the Village. This law should also outline the full realm of activities that should be regulated in order to protect wetland resources.

The wetlands and watercourses law would also contain the standards required to implement the provisions of the conservation and preservation districts. It would specify the necessary setback requirements and structural limitation applicable in these districts.

## Water Quality

- Marinas can contribute significantly to the concentration of pollutants in the water column, bottom sediments, and tissues of benthic organisms living within the limits of the marina itself. Pollutants from marinas and recreational boating may enter the water through discharges from boats, spills, maintenance areas, stormwater runoff and vessel operation. The types of pollutants often associated with marinas and recreational boating activities include: organic materials discharges from recreational boats; toxic heavy metals associated with boat maintenance and repair operations at boat yards and marinas; petroleum hydrocarbons from refueling activities and bilge or fuel discharges from boats; fecal coliform bacteria; and disruption of sediments and habitat from boat operations and dredging.

Point sources of pollution from marinas are primarily handled through the NYSDEC general permit system for industrial activities, which includes marina activities. To receive a NYSDEC permit, marina operators are required to develop and implement comprehensive stormwater management plans and controls to minimize the potential impacts from polluted stormwater runoff. Marinas are also required to monitor runoff and the types of pollutants that are being discharges. The Village currently applies its site plan review procedures to marinas and other nonresidential land use and construction to regulate stormwater runoff and other off-site discharges. To strengthen the Village's commitment to protecting coastal water quality, standards should be included in the Site Plan Review Law that specifically apply to marinas and boat yards, and their associated upland activities.

- Vessel discharges, although not the only source of pollutants to the Sag Harbor Cove/Bay Complex, can cause localized water quality problems. The discharge of sanitary wastes from boats can degrade water quality by: introducing microbial pathogens into surface waters; and locally increasing biological oxygen demand. Due to the high concentration of marine vessel activity (three marinas, one boat yard and two anchorage areas) and the location of the sewage treatment outfall, the entire area located inside the breakwater (the Sag Harbor area) is closed to shellfish harvesting by NYSDEC on a year-round basis. In addition, NYSDEC has identified two specific areas in the harbor complex that are of concern with regard to the potential contamination of shellfish beds due to seasonal water quality degradation and/or vessel discharges. These include the easterly portion of Outer Sag Harbor Cove and the waters in the Redwood boat basin. NYSDEC has indicated that concentrated sewage discharges from vessels in these areas have the potential for the localized contamination of the underlying shellfish beds.

To address the impacts associated with vessel waste discharges, Shelter Island Sound or, at a minimum, the entire Sag Harbor Cove/Bay Complex should be designated by the USEPA as a vessel waste "no-discharge zone". The advantage of this designation would be to prohibit the discharge of vessel sewage within the bounds of the harbor complex. Furthermore, it would provide State and local officials with the authority to enforce the laws governing vessel waste discharges and vessel inspections (to ensure that onboard discharge devices are disabled). Although Federal law prohibits the discharge of untreated sewage within three miles of shore, treated sewage may be discharged inside this boundary and the U.S. Coast Guard has the sole responsibility for enforcement.

- Haven's Beach is bisected by a drainage ditch which outlets to Sag Harbor Bay. This ditch carries stormwater runoff collected along Bay Street and Hempstead Street. This runoff is conveyed into this ditch without pretreatment to remove pollutants. Stormwater runoff can contain a high degree of contaminants, particularly the "first flush" that is collected at the onset of a storm event.

The development of a wet detention system at Haven's Beach would be one way to provide the recommended mitigation. Surface flows in the ditch would be diverted through the created wetland system to allow for settlement and some pretreatment of stormwater prior to discharge into Sag Harbor Bay. This detention system is expected to significantly reduce the load of suspended solids, pathogens, dissolved nutrients (i.e., nitrogen and phosphorus compounds, especially ammonia), oxygen-demanding substances, and certain metals currently carried in the stormwater runoff flowing through the ditch. After passing through the wetland system, flows would be diverted back into the drainage ditch to outlet to Sag Harbor Bay.

- The culvert underneath Redwood Road that connects Upper Sag Harbor Cove with Outer Sag Harbor Cove has partially collapsed which restricts tidal flow. Some debate has occurred over whether the culvert should be closed completely or restored. Advocates of closure have cited the fact that the culvert connects to a marina basin which is a potential source of pollutant loadings to the Upper Cove. Proponents of restoring the culvert believe that such a project would improve tidal flushing of the Upper Cove. The analysis performed for this Harbor Management Plan support the latter position.
- The implementation of best management practices at marinas and the installation of additional vessel pump-out facilities throughout, especially in the Outer Sag Harbor Cove area, are also key elements for improving surface water quality. The Village should also consider upgrading the Sewage Treatment Plant process to accept marine waste effluent collected by the Village pump-out systems. This would eliminate the current need to utilize a private waste hauler to transport stored wastes outside the Village for disposal.
- There are two boat ramps that provide access to the Sag Harbor Cove Complex that require improvement to address water quality problems. The boat launch ramp located on the Redwood peninsula, at the terminus of Amherst Road, is undeveloped. Boaters maneuver their trailers down this moderate slope to the water. Through the years of use, this site has developed ruts and small swales that convey roadway runoff and sediment directly into Inner Sag Harbor Cove. The boat launch ramp located off John Street, at the southeastern end of Upper Sag Harbor Cove, is in a similar state. These problems can be remedied by upgrading the surface conditions of these ramps.

Both the Amherst Road and the John Street ramps should be regraded and a large-size gravel should be installed that will stabilize the ramps, preventing sediment from entering the bay, and retain a permeable surface to permit continued percolation. In addition, small berms should be constructed at the top of each ramp, near the roadway, to prevent surface runoff from traveling down the ramp. At Amherst Road, the runoff should be conveyed from the berm into a storm grate that is connected to a leaching pool. At John Street, the runoff should be directed into the John Street wetland to provide filtration, rather than conveying it directly into the adjacent outlet stream that connects the pond

to Upper Sag Harbor Cove. These upgrades could be instituted without significant cost to the Village. Nonetheless, the Village should investigate the potential availability of funding for this type of water quality improvement project.

# **APPENDIX**

## EXISTING AUTHORITIES

### Political and Regulatory Jurisdiction

Jurisdiction over the Sag Harbor Cove/Bay Complex and its shoreline is divided among numerous entities at various levels of government. These include the Town of Southampton, the Town of East Hampton, and the Incorporated Village of North Haven, in addition to the Incorporated Village of Sag Harbor, the State of New York and various Federal government agencies. The current roles and responsibilities of the agencies and entities that effect the use, management and conservation of the Sag Harbor Cove/Bay Complex are shown in Table 1 in Section 2 of the Harbor Management Plan report.

The multiplicity of political jurisdictions which apply to the Sag Harbor Cove/Bay Complex complicates efforts to effectively manage this important resource. In many cases, more than one review, permit and/or approval is required to undertake a certain action. This can make it more difficult, as well as timely, when attempting to conduct dredging or other similar activities that are essential to the efficient operation of the harbor district. Furthermore, although tangible benefits can result from the initiatives undertaken by an individual municipality (e.g., the Village of Sag Harbor, in the case of this plan) or government agency, the cooperation of all involved political entities is necessary to achieve overall management goals such as the improvement of water quality and enhancement of ecological resources. The various political entities, and the extent of their regulatory jurisdiction, are discussed below.

#### A. Village of Sag Harbor

The Village of Sag Harbor exercises multi-faceted responsibilities with respect to activities within the Sag Harbor Cove/Bay Complex and the areas of the harbor complex watershed located within its jurisdiction. These responsibilities are summarized as follows.

- The Village has the exclusive authority to regulate land use activities within its boundaries.
- The Village has the exclusive authority to regulate the surface use of coastal waters extending for a distance of 1,500-feet from the mean high water line along the shoreline within its boundaries. This jurisdictional authority for the Village, which is derived from the State Navigation Law, does not affect the proprietary rights of the owner(s) of the underwater lands. Nor does the Village's water surface jurisdiction supersede the authority of the Town of Southampton or the State to regulate the use of underwater lands within their respective jurisdictions.

- The Village has the authority to control the placement of moorings on Town-owned underwater land, including those areas within the Village's 1,500-foot area of water surface jurisdiction.

These responsibilities extend to a variety of Village agencies and entities, as described below.

*Village Board of Trustees* - enacts ordinances which govern land and water use activities within the Village and approves modifications to same; makes final decisions on actions such as change of zone and special use permit applications, including SEQRA determinations; appoints the Village Planning Board and Zoning Board of Appeals; allocates and approves funding for projects and studies related to coastal management (as well as all other aspects of the Village budget).

*Village Attorney* - The Village Attorney drafts local ordinances and amendments to same; regulates the issuance of summonses for violations of the Village ordinances and enforces same; and aids in the prosecution of cases involving illicit dumping of hazardous materials into local waters, and other illegal activities.

*Village Clerk* - The Village Clerk processes administrative paperwork for the Board of Trustees, the Harbormaster, and all Village boards and committees. The Clerk also coordinates communications between these entities. In addition, the Village Clerk processes applications for docks and shoreline hardening structures or other activities pursuant to Chapters 12 of the Village Code, files sewer permits after they are processed by the Village Sewer Department in accordance with Chapter 43 of the Village Code, and presents information relevant to these permit applications to the Board of Trustees, as required, prior to public hearings.

*Planning Board* - The Planning Board is a five member board appointed by the Sag Harbor Village Board of Trustees. The Chairman is designated by the Board of Trustees in accordance with Section 179-g of the Village Law. The Planning Board is empowered and directed to undertake studies and make plans incorporating proposed legislation in the form of amendments to the Zoning Ordinance. The Planning Board must report to the Village Board of Trustees annually as to its progress and recommendations relative to the effectuation of foregoing studies and plans. The actions and objectives of the Planning Board must consider the following:

- the designation of those areas and structures which are of historic value and which warrant special action to ensure their preservation;
- the conservation and preservation of the natural shoreline and wetlands with special reference and attention to ecological relationship and needs;
- the proper use of those portions of the waterfront which are required and most suited for human activities, including both recreation and commerce; and

- appropriate changes to the Zoning Code which incorporate the results of foregoing studies as well as consider such other elements as business district requirements, traffic and parking, aesthetic and architectural review of new construction and alterations to existing structures, parks and recreation, and general land use development.

Zoning Board of Appeals - The Zoning Board of Appeals consists of five members appointed by the Sag Harbor Village Board of Trustees. Every decision made by the Board must be made by resolution and contain a record of full findings, after first holding a public hearing. The Zoning Board of Appeals is empowered to hear and decide:

- any matter where an applicant alleges that the Village Building Inspector was in error in refusing to issue a building permit or certificate of occupancy as a result of misinterpreting the meaning, intent or application of any section of the Zoning Code;
- any matter where the appellant alleges that the Building Inspector was in error in his determination as to the exact location of a district boundary line on the Zoning Map; and
- any matter which the Building Inspector appeals on grounds of doubt as to the meaning or intent of any provision of the Zoning Code or to the location of any district boundary on the Zoning Map.

The ZBA also has the power to authorize, upon appeal in specific cases and where not contrary to the public interest, a variance from the terms of the Zoning Code in special cases where an applicant is able to demonstrate that the strict application of certain aspects of the Zoning Code would result in undue hardship.

Harbor Committee - The five members of the Harbor Committee are appointed by the Mayor and are subject to approval by the Board of Trustees. Members must be Village residents, although residents from adjacent communities may be designated as adjunct members at the discretion of the Mayor, subject to Board of Trustees approval. All decisions are governed by a majority vote of the full Committee. Adjunct members may participate in all discussions, but have no vote.

The duties and responsibilities of the Harbor Committee include:

- monitoring all activities and reviewing all applications and proposals that may affect local waters;
- maintaining liaison with other appropriate government and civic bodies, to assure cooperation that is to the mutual benefit of all concerned parties;
- being alert for sources of funding to implement projects related to water quality improvement and the implementation of other Committee recommendations;

- making timely and appropriate comments and recommendations to the Mayor and Board of Trustees and other Village boards so that their actions protect and preserve local waters;
- promoting public education efforts regarding the role that individual citizens play in protecting and preserving local waters; and
- making recommendations to the Board of Trustees with respect to revising and updating the LWRP.

Harbormaster - The Harbormaster is responsible for the day-to-day operations of the Village of Sag Harbor marina facilities (Marine Park and boat basin, the Long Wharf marina, A dock and B dock) and mooring area. This involves a number of duties, including:

- inspecting the marina facilities daily and making recommendations for any necessary repairs to structures or appurtenances therein, overseeing all repairs, and cataloguing any winter damage and contracting for repairs of same;
- conducting regular patrols of the harbor and cove complex to insure that this area is kept clear of navigational hazards, assisting boaters in distress, and enforcing local marine ordinances, particularly during the boating season;
- assigning all boat berths and mooring locations on a seasonal basis, handling all transient boating activity and collecting transient docking fees, computing and mailing all bills for berths and mooring locations, and all requisite record keeping;
- assisting with the preparation of budget requests and all other dock-related correspondence;
- overseeing the management, operation, and maintenance of the vessel waste pump-out facilities;
- reviewing inspection reports for mooring ground tackle; and
- supervising the installation of the winter ice protection system in the marina area, and the relocation of boats to winter storage areas and back to regular berths at the end of the winter season.

The Harbormaster is also responsible for overseeing the dockmasters and other assistant waterways personnel. To undertake these tasks, the Harbormaster is required to have knowledge of basic seamanship, dock construction, local and State marine and navigation laws, public relations skills, basic fire and rescue and first-aid techniques, and basic business and accounting procedures.

Upon request, the Sag Harbor Village Police provide limited assistance to the Harbormaster with boating accidents, death and distress calls. Whereas the Harbormaster's authority is restricted as a Peace Officer, the Village Police will also assist with arrests along the waterfront (Salargo, February 24, 1995).

Board of Historic Preservation and Architectural Review - The Board of Historic Preservation and Architectural Review consists of five members appointed by the Sag Harbor Board of Trustees. All members must be residents of the Village of Sag Harbor. Every decision made by this board must be by resolution and contain a full record of findings. This board is responsible for maintaining the desirable character of the Village of Sag Harbor's Historic District and designated landmarks, and for disapproving plans and proposals that are designed without consideration of, or that would alter the character of, this district and the buildings and structures contained therein.

#### B. Village of North Haven

The primary authority of the Incorporated Village of North Haven, with respect to harbor management planning, is summarized below:

- North Haven Village has the exclusive authority to regulate land use activities within its respective boundaries. In general, the water-side boundary of the village lies along the mean high water line.
- The Village of North Haven has the exclusive right to regulate the surface use of coastal waters within 1,500 feet of its respective corporate boundary. In some areas the Village of North Haven's surface water jurisdiction overlaps with that of the Village of Sag Harbor. This, however, has not led to conflicts over the use of the harbor and cove complex, particularly with regard to the construction of docks and similar structures, and the placement of moorings.

#### C. Town of East Hampton

Harbormaster - Since the Village of Sag Harbor employs their own Harbormaster, many of the routine duties of the East Hampton Harbormaster are undertaken outside of the Village limits. The duties of the East Hampton Harbormaster within the Village limits consist primarily of mutual aid activities requested by the Village, including assistance with search and rescue efforts, vessel fires, drownings and other emergencies. Upon occasion, the East Hampton Harbormaster will assist with the more routine enforcement and peace keeping functions while patrolling the neighboring Northwest Creek and Harbor areas, and during busy holidays (e.g., Fourth of July) when water use is at its peak (Taylor, February 23, 1995).

#### D. Town of Southampton

Board of Trustees - acts as the steward of the public waters within the Town of Southampton; regulates all activities affecting the underwater land from the high water mark seaward, including the installation and repair of docks, bulkheads, and boat moorings; regulates alterations to bottom lands (i.e., dredging, filling, or other construction activities); regulates the harvesting of shellfish from coastal waters and finfish from freshwaters, and controls stocking programs; and maintains two public boat launch ramps located at the following road ends: Bayview Drive in Bay Point, near the narrows between

Outer and Inner Sag Harbor Cove; and Cove Road at The Little Narrows, near the mouth of Ligonee Brook on the western shoreline.

Bay Constables - The Southampton Bay Constables are responsible for the Town waters located within the Sag Harbor Cove complex, including Paynes Creek and portions of Outer and Inner Sag Harbor Cove and Ligonee Brook. During their patrol, they will assist with routine enforcement and peace keeping functions in these waters. The duties of the Southampton Bay Constables within the Village of Sag Harbor jurisdictional limits consist primarily of mutual aid activities requested by the Village, including assistance with search and rescue efforts, vessel fires, drownings and other emergencies. Since the Village of Sag Harbor employs their own Harbormaster, many of the routine duties of the Southampton Bay Constables are undertaken outside of the Village limits, within the Sag Harbor Cove complex. It has been indicated by the Village of Sag Harbor that the Southampton Bay Constables do not make regular patrols throughout the Sag Harbor Cove Complex. This is due to the excessive amount of time required to travel the length of the cove complex as the result of the five mile per hour speed limit. The possibility of the Town of Southampton ceding their jurisdiction in this area to the Village, allowing the Village Harbormaster to patrol these waters on the part of the Town, should be considered.

#### E. Suffolk County

Suffolk County Department of Health Services (SCDHS) - SCDHS is the primary local agency that administers regulatory programs for groundwater protection and management. SCDHS regulates potential pollutant sources through the authority of the Suffolk County Sanitary Codes, particularly Article 7 - Water Pollution Control and Article 12 - Toxic and Hazardous Materials Storage and Handling Controls. SCDHS also oversees a comprehensive groundwater monitoring program.

Serving at the technical coordinating Agency for the Peconic Estuary Program, SCDHS has conducted surface water quality monitoring within Sag Harbor and Outer Sag Harbor Cove. In addition, SCDHS, in conjunction with the New York State Department of Environmental Conservation (NYSDEC), monitors and regulates the quality of the effluent originating from the Village of Sag Harbor Wastewater Treatment Facility.

Suffolk County Department of Public Works (SCDPW) - SCDPW is the local agency coordinating and conducting public dredging and beach nourishment projects, as authorized pursuant to Suffolk County Code Article VIII which states "except as otherwise provided by law, have full care, custody and control of all waterways". SCDPW, in conjunction with the Suffolk County Sewer Agency, regulates sewage collection, treatment and disposal.

## F. New York State Department of State

As the State's designated coastal management agency, the New York State Department of State (NYSDOS), through the Division of Coastal Resources and Waterfront Revitalization, is responsible for administering the New York State Coastal Management Program (CMP) as well as coordinating activities essential to the program's implementation. Major responsibilities of NYSDOS include the review and certification of proposed State or federal activities for consistency with the State's CMP. Actions that are deemed to be inconsistent with the State Program are not permitted to proceed. In addition, NYSDOS provides assistance to communities for the preparation of Local Waterfront Revitalization Programs (LWRP's) and Harbor Management Plans (HMP's). NYSDOS, in coordination with the New York State Department of Environmental Conservation, also administers the State's Significant Habitat Program.

## G. New York State Department of Environmental Conservation

The New York State Department of Environmental Conservation (NYSDEC) has five primary regulatory responsibilities relative to important harbor management issues: (1) implementation and enforcement of the provisions of the National Shellfish Sanitation Program (NSSP), (2) administration of the permit program for activities undertaken within or adjacent to tidal wetlands, (3) administration of the permit program for wastewater discharges to surface waters (known as the State Pollution Discharge Elimination System, or SPDES), and (4) spill cleanup oversight, and (5) State law enforcement responsibilities. Each of these regulatory programs are described below.

Perhaps NYSDEC's most important duty under the requirements of the NSSP is to classify all shellfish beds on the basis of regular water quality analyses (additional information on the NSSP is contained in Sub-Section I below, and Section 5.6 of the Harbor Management Plan report). NYSDEC's classification system consists of the following five categories:

- *certified (approved) area;*
- *uncertified (closed) area;*
- *seasonally certified area;*
- *conditionally certified (conditionally approved) area; and*
- *restricted area.*

NYSDEC's shellfish harvesting regulations and closure classifications are described in further detail in Section 5.6 of the Harbor Management Plan report.

NYSDEC's other main obligations with respect to the NSSP's requirements for the sanitation of shellfish growing areas are to:

- administer the permit program for commercial shellfish harvesting;
- conduct shoreline surveys to identify pollution sources;

- enforce harvesting restrictions and prohibitions, with the assistance of local agencies (e.g., Town bay constables);
- prosecute violations of shellfish sanitation regulations; and
- provide access to shellfish growing areas.

NYSDEC's regulatory responsibilities with respect to activities conducted within or adjacent to tidal wetlands are established in Part 661 of Title 6 of the New York Code of Rules and Regulations (6NYCRR 661). See Section 5.7 of the Harbor Management Plan report for further discussion.

NYSDEC's regulatory responsibilities under the SPDES program entail oversight of major facilities that discharge wastewater to surface water bodies (large-scale discharges to the ground are also covered by SPDES). Facilities that are typically governed by the provisions of the SPDES regulations include sewage treatment plants, industrial outfalls, outfalls from groundwater remediation projects, and other high volume effluent sources. The Village of Sag Harbor sewage treatment plant (STP) effluent is the main point discharge to the Sag Harbor Cove/Bay Complex that is regulated under this program.

NYSDEC also has oversight responsibilities for the cleanup of hazardous material spills, including spills into the harbor complex and unauthorized upland discharges that can threaten harbor waters (e.g., into storm drains, tributary streams, wetlands, etc.). During an emergency situation, NYSDEC oversees the cleanup operation to ensure that the spill is effectively contained and environmental impacts are minimized. For chronic contamination problems (e.g., leaking underground tanks), NYSDEC may issue a consent order, which legally binds the responsible party to an agreed-upon program and schedule for remediation.

NYSDEC employs two Environmental Conservation Police (ENCON Police) officers whose patrol areas overlap in the vicinity of Sag Harbor. The duties of the ENCON Police include enforcement of the State criminal and penal laws as well as the provisions of the NYS Navigation Law, NYS Environmental Conservation Laws, NYCRR and NYS Parks and Recreation regulations. The jurisdictional area for the ENCON Police extends across the mainland to three miles offshore. Since the patrol area of each officer is so large, the ENCON Police typically respond first to complaint calls received from their NYSDEC Headquarters in Stony Brook, the local police precincts and harbormasters. Other routine patrol duties are prioritized on an as-need basis (e.g., priority patrol would include a seasonally certified shellfishing ground the first day of closure) (Officer Hodor, February 23, 1995).

#### **H. New York State Department of Parks, Recreation and Historic Preservation**

The New York State Office of Parks, Recreation and Historic Preservation (OPRHP) administers both the National and State Registers of Historic Places. The National and State Registers of Historic Places are the official lists of buildings, structures, districts, objects and sites significant in the history, architecture, archeology and culture of New York and the nation. The same eligibility criteria are used for the National and State

Registers. All sites, structures, etc. within New York State that are listed on the National Register are also listed on the State Register.

Nominations for sites and/or structures to be listed on the State or National Register can be made by members of the general public, municipal officials, historic preservation boards, and the staff of the OPRHP. All official nominations are maintained in a State logbook and are reviewed by the State Historic Preservation Office. The Commissioner of the OPRHP serves as the State Historic Preservation Officer.

The State Board of Historic Preservation evaluates each nomination to determine if it satisfies the eligibility criteria. If it meets the criteria, the Board will then make a recommendation to the State Historic Preservation Officer for approval of the nomination. The State Historic Preservation Officer may then forward the proposal to the National Park Service for National designation.

The National Historic Preservation Act of 1966 (amended 1980 by public law 89-665) and the New York State Historic Preservation Act of 1980 (chapter 354, laws of 1980) are the legal bases for the National and State Register programs.

There are a number of benefits that can be derived if a property is listed on these Registers. These include the following.

- Registered properties and properties determined eligible for the State and National Registers receive a measure of protection from the effects of Federal and/or State agency sponsored or assisted projects through a notice, review and consultation process.
- Owners of depreciable, certified properties may take a 25 percent Federal income tax credit for the costs of certified, substantial rehabilitation as provided for under the Economic Recovery Tax Act of 1981 (P.L. 97-34).
- Registered properties also receive priority consideration from Federal and State agencies in space rental or leasing. (Public Buildings Cooperative Use Act of 1976 and New York State Historic Preservation Act of 1980, Section 4b.).
- Owners of registered properties may apply for 50 percent matching grants-in-aid for preservation work (subject to available funding).

There are no restrictions placed on private owners of registered properties. Private property owners may sell, alter or dispose of their property as they wish, although an owner who demolishes a certified registered property may not deduct the costs of demolition from his/her Federal income tax (Economic Recovery Tax Act, 1981).

Nearly one half of the Village of Sag Harbor is included within a National Historic District, and a significant portion of the waterfront is included within a local Historic District. The portion of the Harbor Management District which lies within the Historic District is shown on [Figure 6](#). The Village of Sag Harbor has established a Board of Historic Preservation and Architectural Review which is charged with protecting local landmarks and historic places. The duties of this local board are described in Sub-Section A above. The OPRHP, therefore, functions primarily as an advisory service to the Village. However, projects

which receive State or Federal funding require OPRHP review and approval under the State Environmental Quality Review Act (SEQRA).

## **I. U.S. Food and Drug Administration**

The regulation of the shellfish industry, with regard to human health considerations, is overseen on a Federal level by the U.S. Food and Drug Administration (FDA), within the Public Health Service of the Department of Health and Human Services. The FDA's primary role is to conduct systematic surveys to ensure that each shellfish-producing state has implemented, and effectively enforces, a shellfish sanitation program which meets uniform minimal requirements.

Each state's shellfish sanitation program is reviewed annually by the FDA. The findings of FDA's review are reported to all states that are participating members of the National Shellfish Sanitation Program (NSSP). This reporting procedure has an important, positive influence on overall shellfish sanitation, since shellfish products from states that are less diligent in their implementation of program requirements will likely suffer a decrease in their out-of-state shellfish market. The New York State Department of Environmental Conservation (NYSDEC) is the regulatory agency within New York State which is charged with implementation and enforcement of the provisions of the NSSP. NYSDEC's local authority is described further in Sub-Section G above.

The FDA's authority includes oversight of the following aspects of shellfish resource utilization (see Sections 3.2.F and 5.6 of the Harbor Management Plan report for further discussion of specific items listed below as they pertain to New York State):

- state shellfish laws and regulations;
- data and files maintained by the states to demonstrate compliance with the administrative requirements of the NSSP;
- standardization and quality assurance for laboratory procedures for the measurement of bacteriological, toxicological, chemical, and physical parameters;
- surveys and classification of shellfish growing areas;
- controlled relaying programs;
- patrol of shellfish growing areas and enforcement of laws and regulations;
- shellfish harvesting permit programs;
- methods used to identify closed areas;
- educational methods; and
- operation, inspection, and certification of shellfish shippers, processors, and depuration facilities.

In addition to the responsibilities outlined above, the FDA (in cooperation with the Interstate Shellfish Sanitation Commission, which is composed of state shellfish regulatory officials, industry representatives, the FDA, and other Federal agencies) also updates the NSSP Manual of Operations as necessary. This manual sets forth the principles and requirements for the sanitary control of shellfish shipped in interstate commerce in the United States, and is used by the agency (or agencies) in each state that is charged with implementing the provisions of the NSSP.

#### **J. National Oceanic and Atmospheric Administration**

The National Oceanic and Atmospheric Administration (NOAA) has numerous responsibilities that impact on coastal and harbor management. Within NOAA, the Office of Ocean and Coastal Resources Management (OCRM) is responsible for administering the federal Coastal Zone Management Program; the National Weather Service (NWS) is responsible for issuing weather forecasts and coastal storm warnings; and the National Ocean Service (NOS) is responsible for conducting bathymetric surveys, preparing the nautical charts used by boaters for navigation, and determining changes in sea level and publishing tide tables.

Also within the NOAA, the National Marine Fisheries Service has jurisdiction over any endangered marine species that might utilize the waters within the Village harbor management area. As discussed in Section 4.2, endangered sea turtles have been documented as using the waters within Sag Harbor Bay for feeding and resting. Local municipal agencies are indirectly responsible for the protection of endangered species pursuant to Section 9 of the Endangered Species Act.

#### **K. U.S. Department of the Interior**

There are two agencies within the U.S. Department of Interior that are indirectly involved with coastal issues within the Village Harbor District; namely, the U.S. Fish and Wildlife Service (USFWS) and the National Park Service (NPS). The USFWS has regulatory jurisdiction over any federally endangered wildlife species which might breed on the upland areas or be affected by activities within the Village Harbor District.

Although no Federally-listed wildlife species are known to use the uplands within the Village Harbor District boundaries, least terns (listed as endangered by NYSDEC, unlisted by USFWS) have been reported as historically nesting on Long Beach, just west of the Village. This is important because Long Beach had been used in the past (and is likely to be used in the future) as a deposition area for dredged material removed from Sag Harbor Cove. Piping plovers (federally-listed as threatened and State-listed as endangered) commonly nest within least tern colonies or in similar suitable habitats on fresh sandy deposits and dredge spoils. The Village and SCDPW should coordinate all dredging operations with the USFWS to avoid potential conflicts concerning endangered species habitats.

The involvement of the NPS in the Village Harbor District is limited to those areas contained within the Historic District boundaries, as well as those properties which are likely to become nominated and accepted onto the National Register of Historic Places.

As discussed briefly in Sub-Sections A and H above, the OPRHP and the Village Board of Historic Preservation and Architectural Review have a more active, direct role in protecting local landmarks.

The following is a summary of the Sag Harbor Village Historic District, as provided by the NPS:

"The Sag Harbor Historic District includes the historic core of the Village and represents just under 50% of the total acreage. Freestanding frame residences on small plots of land with front, rear and side yards make up the bulk of the structures in the district, but there are four cemeteries, two large parks and the business district as well. The house lots vary widely in size and shape, from about twenty to one hundred twenty five feet wide and roughly one hundred to one hundred to one hundred fifty feet deep."

"The historic district is an expansion of the Sag Harbor Historic District, listed on the National Register in 1973. It was expanded based on new information and research uncovered during a comprehensive 1990 survey. This form supersedes the old form. The expanded district is about 35% larger in land area and has 305 more primary buildings, 136 more ancillary buildings, 1 more structure, 3 more sites and 2 more objects than the old district. The expansion is based on documentation in the 1991 Sag Harbor Survey undertaken by the Village under the guidance of the State Historic Preservation Office. The study area for this survey was larger than the new district and incorporated approximately 1200 primary structures and features."

"There are 698 contributing primary buildings, 7 sites, 2 structures, and 3 objects in the district and its expansion. There are 458 contributing primary buildings, 4 sites, 1 structure, and 3 objects in the old district and 240 contributing primary buildings, 3 sites and 1 structure in the expansion. There are 122 non-contributing primary buildings, 2 non-contributing objects and 1 non-contributing site in the district and its expansion, with 59 non-contributing buildings and 1 non-contributing site in the old district and 63 non-contributing and 2 non-contributing objects in the expansion. There are 172 contributing ancillary buildings, primarily garages and sheds, 62 of which are in the expansion. There are 195 non-contributing ancillary buildings, 76 of which are in the expansion. The few modern intrusions are primarily later twentieth century houses which are low rise frame structures similar to the historic buildings. Other non-contributing primary structures are older buildings which have been so extensively altered that they lack historical significance."

#### **Boundaries**

"The boundaries have been drawn to include as much as possible of the historic Village within the period of significance and as much of the waterfront as possible. Individual and groups of non-contributing structures have been excluded at the edges of the district. Beginning at the north, starting at the Long Wharf, the district takes in the Long Wharf and proceeds east along the water (Shelter Island Sound) to the end of the Sag Harbor Yacht Club building, approximately across from Rysam Street. Excluded are the modern and altered industrial structures east of the Yacht Club. There were industries connected with whaling and maritime trade in the nineteenth

century along Bay Road near the Long Wharf but major fires in the nineteenth century (the last in 1845 and 1877) destroyed the buildings. Included in the district on the south side of Bay Street is a mix of nineteenth and twentieth century commercial and industrial structures. They represent the last of the pre-World War II industrial structures along the waterfront."

#### **L. U.S. Coast Guard**

The U.S. Coast Guard is primarily charged with overseeing all waterborne activities in Federal waters, but their responsibilities overlap locally into all coastally connected navigable waterways. The U.S. Coast Guard places and maintains navigational aids situated outside of the Village breakwater in the waters of Sag Harbor Bay. They are also responsible for the placement and maintenance of navigation aids in the navigation channel located inside the breakwater, that was formerly authorized by the Army Corps of Engineers. The U.S. Coast Guard undertakes general law enforcement activities, such as imposing fines and/or penalties for reckless or negligent vessel operation, enforces the zero tolerance policy regarding the shipping of illegal contraband, and conducts marine inspections of recreational boat safety equipment. Other responsibilities of the U.S. Coast Guard include responding to search and rescue requests, and enforcing the provisions of the Federal Water Pollution Control Act.

#### **M. U.S. Army Corps of Engineers**

The U.S. Army Corps of Engineers (ACE) exercises regulatory authority over actions undertaken within the waters of the United States (e.g., dredging, and the placement of structures such as docks and bulkheads). Often, a separate permit is required from the Department of the Army for actions that also require a tidal wetlands permit from NYSDEC.

The breakwater that is situated in Sag Harbor Bay at the eastern end of the Village harbor management area was authorized for construction in 1902 and completed in 1908 by the ACE. By 1937, the ACE had also constructed a navigational channel 10 feet deep, and 100 feet wide running a length of approximately 0.4 miles, which terminated into a turning basin and channel anchorage area eight feet deep just east of the navigational channel. The ACE still maintains responsibility for the breakwater, which was last repaired in 1963, but all maintenance dredging is conducted by the Suffolk County Department of Public Works (Friedman, January 24, 1995). Channel and maintenance dredging is discussed further in Sub-Sections E above, and 3.2.G of the Harbor Management Plan report.

**CHAPTER 53     WATERWAYS**

[HISTORY: Adopted by the Board of Trustees of the Village of Sag Harbor 7-2-1996 as L.L. No. 2, 1996.

Editor's Note: This local law also provided for the repeal of former Ch. 53, Waterways, adopted 6-2-1992 as L.L. No. 2, 1992.

Amendments noted where applicable.]

**GENERAL REFERENCES**

Bulkheading, dredging and canals — See Ch. 12.

Harbor Committee — See Ch. 21.

Land and beach use — See Ch. 27.

**ARTICLE I       General Provisions (§ 53-1 — § 53-4)****§ 53-1           Title.**

This chapter shall be cited as the "Waterways Law of the Village of Sag Harbor."

**§ 53-2           Findings and purpose.****A.**

Sag Harbor supports a wide range of public and private in-water uses, including recreational and commercial boating, anchorage and mooring areas, recreational fishing and swimming, marinas and yacht clubs, passenger ferry service, charter vessels and commercial and recreation shellfishing. The Village of Sag Harbor finds that in order to manage the efficient use of the harbor, ensure the safety of commercial and recreational navigation in the waters or waterways of the Village of Sag Harbor or waters adjacent to the Village of Sag Harbor, protect access to marketable shellfish and provide for equitable allocation of the water's surface for a variety of uses, Chapter 53 of the Code of the Village of Sag Harbor should be amended to implement a harbor management plan.

**B.**

The operation and mooring of vessels in Sag Harbor, the safe and efficient use of space within the harbor and the maintenance of available shellfish beds for human consumption being a matter affecting the public interest are and should be subject to the regulatory controls hereinafter set forth. The purpose of this chapter is to establish standards, requirements and procedures for the safe and sanitary operation of vessels; mooring of vessels; regulation of matters relevant to safety, sanitation and environmental conservation within waters bounding the Village of Sag Harbor; and to implement a harbor management plan for the use of surface waters and underwater lands within the harbor.

**§ 53-3           Authority.****A.**

This chapter is adopted pursuant to § 46-a of the Navigation Law, § 10 of the Municipal Home Rule Law and Article IX of the State Constitution.

**B.**

The provisions of this chapter shall, except when prohibited by the laws of the United States, apply to all waters or waterways in the Village and to all waters or waterways bordering the Village to a distance of 1,500 feet from the shore, except as otherwise shown on the chart.

Editor's Note: Said chart is located in a pocket at the end of this Code.

**C.**

All provisions of the Navigation Law of this state, of the inland rules enacted by Congress and governing the navigation of the inland waters of the United States and the Pilot Rules for United States inland waters applicable to the channel systems relative to the rules for vessels passing each other as to lights on vessels and other matters consistent with the proper use of the channel systems shall be complied with by all persons operating or in control of a vessel navigating within the harbor management area.

**§ 53-4           Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

AIRCRAFT

A machine, heavier than air, used for navigation in the air that is supported by the dynamic reaction of the air against its surfaces. The term "aircraft" includes fixed wing airplanes that are driven by a propeller or by a high-velocity jet and helicopters whose support in the air is derived chiefly from the aerodynamic forces acting on one or more rotors turning about substantially vertical axes.

ANCHOR

To secure a vessel temporarily to the bottom of a waterbody by dropping an anchor or anchors or other ground tackle from a vessel for a period of no longer than 12 consecutive hours.

BUFFER AREA

An area 15 feet wide immediately adjacent to the outside lines of channels, basins and mooring areas; and, an area 25 feet wide immediately adjacent to public swimming areas, as shown on the chart.

Editor's Note: The Harbor Management Chart is located in a pocket at the end of this Code.

CHANNEL

Water areas specifically reserved for unobstructed movement of vessels and marked in the water by aids to navigation. Channels are depicted on the Village of Sag Harbor chart.

DISCHARGE

The disposal of sewage from a vessel by any method into the water.

Editor's Note: The former definition of "fairway," which immediately followed this definition, was repealed 4-28-2005 by L.L. No. 7-2005.

[Added 7-13-2004 by L.L. No. 4-2004]

FLOAT

A structure buoyant on the water's surface, anchored to the underwater land by cables or lines, which provides an offshore surface for swimmers, storage of small vessels or other purposes.

FLOATING HOME

Any vessel in fact used, designed or occupied as a dwelling unit, business office or source of any occupation or for any private or social club of whatsoever nature, including but not limited to a structure constructed upon a barge primarily immobile and out of navigation which functions substantially as a land structure while the same is moored or docked within the harbor management area of the Village of Sag Harbor, whether such vessel is self-propelled or not.

HARBOR MANAGEMENT AREA

All surface waters, inlets, bays and coves, including the area between the mean high and mean low water mark, within or bounding the Village of Sag Harbor to a distance of 1,500 feet from the shore or less, as such waters are designated on the chart.

Editor's Note: The Harbor Management Chart is located in a pocket at the end of this chapter.

HARBOR MANAGEMENT CHART, VILLAGE OF SAG HARBOR

The map prepared by First Coastal Corp., dated April 14, 2005, for purposes of this chapter, and sometimes referred to as "the chart" in this chapter.

[Amended 4-28-2005 by L.L. No. 7-2005]

HARBOR MANAGEMENT PLAN

A plan comprised of the policies, goals, objectives, standards and the chart.

HARBOR MASTER

The harbor master appointed by the Village Board of Sag Harbor, who is a peace officer pursuant to § 2.10, Subdivision 19, of the New York State Criminal Procedure Law.

MARINE SANITATION DEVICE, MARINE TOILET OR MARINE HEAD

Any equipment on board a vessel or watercraft which is designed to receive, retain, treat or discharge sewage, and any process to treat such sewage; any such equipment that has been permanently sealed and made inoperable is exempted from this definition.

[Added 7-13-2004 by L.L. No. 4-2004]

MOOR

To attach a vessel to a pier or dock or other structure or to attach a vessel to the ground or lands underwater by means of tackle so designed that, when such attachment is terminated, some portion of the tackle remains below the surface of the water and is not under the control of the vessel or its operator.

MOORING AREA

The areas designated by the Village of Sag Harbor, as shown on the chart, that are reserved specifically for the mooring of vessels.

MOORING DEVICE

A permanent or semi-permanent vessel anchoring device and its associated tackle, such as chains, buoys and other equipment, other than a common anchor, manufactured and used specifically for the permanent or semi-permanent mooring of vessels.

PERSONAL WATERCRAFT

A vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing or kneeling on or being towed behind the vessel rather than in the conventional manner of sitting or standing inside the vessel.

PERSONS

Those, including individuals, partnerships, corporations, associations or any other legal entity, using the facilities and areas within the harbor management area and subject to the provisions of this chapter.

SEWAGE

All human body wastes.  
[Added 7-13-2004 by L.L. No. 4-2004]

SHORELINE

The line of the shore depicted on the chart  
Editor's Note: Said chart is located in a pocket at the end of this Code.  
at mean high water.

SPECIALTY PROP-CRAFT

A vessel which is powered by an outboard motor or a propeller derive motor, which is designed to be operated by a person sitting, standing or kneeling on or being towed behind the vessel rather than in the conventional manner of sitting or standing inside the vessel.

SPEED

The speed of a vessel as measured in slack water in statute miles.

SWIMMING AREA

A water area designated on the Village of Sag Harbor chart set aside for swimming.

TURNING BASIN

An area in the harbor, other than a federally or locally designated channel, commonly used as an open accessway between marine structures, designated channels and mooring areas.  
[Added 4-28-2005 by L.L. No. 7-2005]

VESSEL

Includes every description of vessel and watercraft or other contrivance used or capable of being used as a means of transportation in the water, including seaplanes and personal watercraft. Specifically excluded from this definition are floating homes.

VESSEL OWNER

Includes the person under whose name the vessel was last registered in accordance with the provisions of 46 U.S.C., Chapters 121-125, or the Motor Vehicle and Traffic Law and in any other case the last known owner or the person who claims lawful possession of such vessel by virtue of legal title or equitable interest therein which entitles him to such possession.

VESSEL WASTE

Sewage from a marine toilet, marine sanitation device, marine head.

[Added 7-13-2004 by L.L. No. 4-2004]

VILLAGE BOARD

The Board of Trustees of the Village of Sag Harbor.

WATERWAY

All waters within the municipal limits of the Village of Sag Harbor or otherwise subject to its jurisdiction.

**ARTICLE II**      **Boundaries, Designated Areas and Standards for Harbor Use and Activities (§ 53-5 — § 53-12)**

**§ 53-5**              **Harbor Management Area boundaries and designated areas.**

[Amended 4-28-2005 by L.L. No. 7-2005]

The boundaries of the Sag Harbor Management Area include all waters and intertidal areas as described on the chart. Channels, buffer areas, mooring areas, and swimming areas are hereby established in Sag Harbor as shown on the chart.

**§ 53-6**              **Method of operation of vessels.**

A.

Dangerous operation prohibited. No person shall operate a vessel at a speed greater than is reasonable or prudent, including, without limitation, the throwing of its wake, so as not to:

(1)

Endanger the life or limb of another person using the harbor under the conditions and having regard to the actual and potential hazards then existing.

(2)

Disturb the reasonable comfort or endanger person on or operating another vessel or cause damage to another vessel, structure, shoreline property, the environment or interfere with the free and proper use of the waters of any channel.

B.

Use of power. No person shall operate any vessel having mechanical power without using such power while entering or leaving the harbor management area between the breakwater and 1,200 feet west of the eastern buttress of the State Highway 114 bridge.

C.

Speed of vessels.

[Amended 4-28-2005 by L.L. No. 7-2005]

(1)

No person shall operate any vessel at a speed in excess of that posted by speed markers. The Village Board of Trustees may, from time to time, by resolution, establish speed limits for any portion or portions of waters or waterways subject to this chapter and provide for the posting of speed markers.

(2)

No person shall operate a vessel at speeds greater than five miles per hour within 200 feet of the shoreline west of the breakwater and within 500 feet of the shoreline east of the breakwater to the eastern boundary of the Village of Sag Harbor or within 50 feet of swimmers, bathing floats or lifelines.

(3)

No person shall operate a vessel in any area where there is congestion of vessels, either underway or at anchor, at a speed in excess of five miles per hour.

(4)

The Village Board of Trustees may, by resolution, from time to time and for periods stated in such resolution, suspend the enforcement of this section with respect to any portion or portions of waters or waterways and designate such areas by the location of appropriate speed markers.

D.

Operation of vessels in proximity to swimmers. No boat propelled other than by hand shall cruise or be operated within 50 feet of any lifeline or bathing float or, if there is no lifeline or bathing float, within 50 feet of any swimming area. Any such boat shall not cruise or be operated in excess of five miles per hour within 50 feet of any person bathing or swimming or of an anchored or moored boat, except when being used to effect a rescue or to render assistance to prevent harm to a person or damage to property.

[Amended 4-28-2005 by L.L. No. 7-2005]

E.

Identification. Vessel operators shall, at all times, identify themselves and produce the vessel's registration to Village, state or federal law enforcement authorities upon request. Failure to produce such registration upon request shall be presumptive evidence of a violation of this section.

F.

Required equipment. No person shall operate a vessel which does not meet all duly adopted and published requirements of the Navigation Law with regard to safety equipment to be carried on or incorporated into vessels of its type.

**§ 53-7                    Operation of aircraft.**

[Amended 9-7-1999 by L.L. No. 6-1999; 6-6-2000 by L.L. No. 3-2000]

A.

No person shall take off or land any aircraft within the harbor management area of the Village of Sag Harbor.

B.

No person shall taxi or otherwise operate an aircraft within the harbor management area, except by special permit issued by the Village Board.

C.

Special permit regulations.

(1)

The special permit issued by the Village shall not permit the establishment of any aircraft landing and takeoff area within the harbor management area.

(2)

Said special permit shall only allow an aircraft to taxi within the harbor management area within a sea-lane to a docking facility which is approved by the Village in the special permit.

(3)

The applicant for the special permit shall identify the channel and docking facility within the Village that would be used to dock the aircraft. Only said sea-lane and docking facility may be utilized by the aircraft.

(4)

The applicant shall possess an approval from the Federal Aviation Administration for a seaplane base. The takeoff and landing area for the seaplane base must be outside the harbor management area of the Village of Sag Harbor.

(5)

The docking facility for aircraft shall be located only within the Waterfront District or the Marine District on the Zoning Map of the Village.

(6)

A docking facility for aircraft must be open to the public at large. Private docking areas are prohibited.

(7)

All accessory uses for the docking facility, including but not limited to the sale of aviation fuel, repair shops and hangars, shall be prohibited.

(8)

In addition to the special permit required herein, the establishment of a docking facility for aircraft shall also

require site plan approval from the Planning Board.

(9)

The establishment of a docking facility for aircraft must comply with all provisions of the Sag Harbor Village Zoning Code.

Editor's Note: See Ch. 55, Zoning.

(10)

The special permit issued pursuant to this section shall be valid for one year and may be renewed upon the application to the Village Board of Trustees.

(11)

No special permit or renewal shall be issued until a public hearing has been held by the Village Board upon 10 days' notice to be published in the official newspaper of the Village. No special permit shall be issued or renewed until the Village Board of Trustees has received a report on the proposed application from the Harbor Master, the Harbor Committee and the Village Police Department.

(12)

An applicant for such special permit shall have the burden of proof to demonstrate that such aircraft can be operated within the harbor management area without threat to public safety.

**§ 53-8                    Wharfage fees at certain public docks.**

No person shall tie up or berth a vessel at a Village-owned dock or bulkhead within the Village unless a slip rental or wharfage fee has been paid to the Village for use and occupancy of such space by such vessel. Any person who fails to move such vessel when ordered by the Village Police Department, harbor master or any lawful enforcing authority shall be in violation of this chapter. Each day that the violation continues shall constitute a separate additional violation.

**§ 53-9                    Skin diving within the Harbor Management Area.**

A.

No person shall skin dive with any type of diving equipment within any channel nor shall any person bathe or swim in any channel designated on the chart, except in the course of a rescue or similar emergency.

B.

No person shall skin dive or use self contained underwater breathing apparatus (SCUBA) in the harbor management area unless a regulation red diving flag is displayed in accordance with the Navigation law nor shall any person allow or permit such diving flag to remain in any area unless a person is actually skin diving in the area while such flag is displayed.

C.

No person shall operate a vessel within 50 feet of any area marked for skin diving by the placement of a regulation red diving flag.

**§ 53-10                    Spearfishing.**

No person shall discharge any apparatus designed for use in spearfishing within 200 feet of any lifelines or bathing float nor within 200 feet of any public or other beach regularly used for bathing or swimming nor within 50 feet of any person bathing or swimming.

**§ 53-11                    Prohibited discharges.**

[Amended 4-28-2005 by L.L. No. 7-2005]

The dumping or discharge of petroleum products, refuse or garbage into Village waters is prohibited.

**§ 53-11.1                    Vessel Waste No-Discharge Zones.**

[Added 7-13-2004 by L.L. No. 4-2004]

Editor's Note: This local law provided for the addition of this material as § 53-13. It was included in the Code as

§ 53-11.1, with the permission of the Village, to avoid duplicate numbering.

]

A.

The waters identified in the Sag Harbor Harbor Management Plan, adopted in 1996, are designated as "No-Discharge Zones."

B.

Securing of marine sanitation devices; use of pump-out station.

(1)

Any marine sanitation device on board a vessel being operated in waters designated as a Vessel Waste No-Discharge Zone must be secured to prevent any discharges to such waters. In accordance with federal regulations, the marine sanitation device shall be secured by closing the seacock and padlocking, using heavy nonresealable tape, using a nonreleasable wire-tie, removing the seacock handle or locking the door to the "head" while such vessel is being operated upon waters within Vessel Waste No-Discharge Zones. Use of a padlock, heavy nonresealable tape, wire-tie, or the removal of the valve handle are adequate methods of securing the device. The method chosen shall be one that presents a physical barrier to the use of the valve.

(2)

If a marine sanitation device on a vessel provides a means of discharging sewage directly to the water, the discharge valve must be secured in a readily visible manner and closed position while the vessel is being operated in a Vessel Waste No-Discharge Zone.

(3)

The provisions requiring marine sanitation devices to be secured and rendered inoperable in Vessel Waste No-Discharge Zones shall not apply while the wastes from the marine sanitation device are being lawfully disposed of in an approved marine sanitation device pump-out or dump station, or pump-out boat located within a Vessel Waste No-Discharge Zone.

C.

Inspections. Any vessel being operated upon a water body of the Village of Sag Harbor that has been designated as a Vessel Waste No-Discharge Zone may be boarded and inspected by the Village Harbor Master, Police Officer or any other lawfully designated agents acting pursuant to their special duties for the purposes of determining whether such vessel is being operated in compliance with this chapter.

## **§ 53-12                    Special permits for aquatic events.**

Nothing herein contained shall prohibit the Village Board of Trustees from issuing special permits for aquatic events or vessel races under proper supervision in limited areas and for limited periods of time.

## **ARTICLE III            Mooring Areas (§ 53-13 — § 53-21)**

### **§ 53-13                    Location of mooring areas.**

The location of mooring areas as indicated on the chart,

Editor's Note: Said chart is located in a pocket at the end of this Code.

the use thereof and the types of mooring permitted are subject to standards recommended by the harbor master and approved by the Village Board of Trustees. Location and use conditions for moorings will be stated on the mooring permit.

### **§ 53-14                    Mooring permits.**

A.

No person shall place a mooring or mooring tackle or moor a vessel without first obtaining a mooring permit from the Village Harbor Master. Such permit shall be applied for on forms to be supplied by the Village and shall be accompanied by an application fee as shall be fixed from time to time by resolution of the Board of Trustees. Upon receipt of a properly prepared application, the Village Harbor Master shall determine if the application is complete and, if so, shall process the application. No application shall be deemed complete until the permit fee is paid. The permit shall expire on October 31 in the year issued.

B.

The owners of all moorings, including moorings maintained by private boating and yacht clubs for use by members, guests and transient boaters, are required to obtain a permit from the Village Harbor Master.

C.

Permits for the use of individual private moorings shall be issued to the owner of the vessel to be moored.

**§ 53-15                    Mooring and anchoring within the Harbor Management Area.**

[Amended 4-28-2005 by L.L. No. 7-2005]

A.

No person shall moor any vessel except in designated areas as shown on the Harbor Management Chart unless the vessel is secured to a dock, at a marina or yacht club or at a mooring accessory to a waterfront residential use. (One such mooring is allowed per property.)

B.

No person shall moor any vessel whether to mooring tackle or a pier or dock in such a manner that it lies within the lines of any channel, swimming area, buffer area, turning basin or within 50 feet of a channel marker or in a manner that interfaces with the full use of a channel, except in cases of emergency.

C.

No person shall moor any vessel within 1,500 feet of the shoreline east of the breakwater to the eastern boundary of the Village of Sag Harbor (as shown on the Harbor Management Chart), except at a mooring accessory to a waterfront residential use where such mooring lies within 500 feet of the shoreline. One mooring is allowed per property.

(1)

The location and number of moorings shall be set by the Harbormaster as permitted by the provisions of this chapter.

(2)

In assigning moorings, the Harbor Master shall give first priority to waterfront property owners; residents in waterfront communities or associations shall receive second priority.

(3)

The length of a boat at a mooring accessory to a waterfront residential use shall not exceed 26 feet long.

D.

The Harbor Master may, in his discretion, permit the temporary anchoring of vessels under 26 feet long for over 12 hours. The Harbor Master may also, in his discretion, restrict anchoring where necessary to preserve the health, safety and welfare of the public, environmental conservation and the continuation of traditional waterfront uses.

E.

No person shall anchor any vessel in such a manner that it lies within the lines of any channel, swimming area, turning basin, buffer area, mooring area, or within Upper Sag Harbor Cove or Morris Cove, and in no case shall any person anchor a vessel within 50 feet of a channel marker or in a manner that interferes with the full use of any channel, except in cases of emergency.

F.

Any vessel or float moored or anchored in violation of any part of this section shall be removed by the owner or person in charge thereof on written notice of the Harbor Master or the Village Police. If the vessel or float is not removed after the Harbor Master or Village Police Department provides written notice to the owner, that vessel or float may be removed at the direction of the Village Board of Trustees after a hearing upon five days' notice. The notice in either instance shall be served by mail upon the owner of the vessel or float at the last known address of the owner and shall also be attached to the vessel. All expenses incurred by the Village, including reasonable attorney's fees, shall be paid by the owner of the vessel or float, and the Village may enforce that obligation by civil action. Such expenses shall be in addition to, and not in lieu of, any penalties as may be prescribed by or imposed under this chapter or under any other law, ordinance, rule or regulation of the Village.

G.

No person shall moor or anchor a vessel or float that will endanger the safety of or cause damage to any vessel

previously moored or anchored. The Harbor Master shall have authority for reasons of safety to direct and order that the location or position of moorings within a mooring area be changed. The Harbor Master shall give notice to the owner or operator of the vessel using such mooring, and compliance shall be required within 10 days thereof. Failure to comply with such direction or order of the Harbor Master by any person shall be a violation of this section.

**§ 53-16**            **Floats.**

**A.**

No person shall anchor or moor any float without a permit obtained from the Village. Such permit shall be applied for on forms to be supplied by the Village and shall be accompanied by an application fee as shall be fixed from time to time by resolution of the Board of Trustees.

**B.**

All floats shall be anchored or moored in such a way as to be secure at all times and under all conditions, and such mooring shall be subject to approval and supervision by the harbor master.

**§ 53-17**            **Floating homes.**

No person shall live aboard a vessel or on any other floating structure over the water except on a vessel moored at a marina or in a designated mooring area between April 1 and October 31.

**§ 53-18**            **Hazards to navigation.**

[Amended 4-28-2005 by L.L. No. 7-2005]

Any vessel which becomes a menace to navigation or unseaworthy or sinks, grounds or otherwise becomes disabled shall be removed by the owner or person in charge thereof on written order of the Harbor Master or Village Police Department. If the vessel is not removed within 10 days after the order, the vessel may be removed at the direction of the Village Board of Trustees after a hearing upon five days' notice. The notice in either instance shall be served upon the owner of the vessel by mail at the last known address of the owner and shall also be attached to the vessel. All expenses incurred by the Village, including reasonable attorneys fees, shall be paid by the owner of the vessel, and the Village may enforce that obligation by civil action. Such expenses shall be in addition to, and not in lieu of, any penalties as may be prescribed by or imposed under this chapter or under any other law, ordinance, rule or regulation of the Village and the laws of the State of New York.

**§ 53-19**            **Enforcing authority.**

[Amended 4-28-2005 by L.L. No. 7-2005]

**A.**

The Village police officers and the Harbor Master are empowered to enforce the provisions of this chapter, and every person in charge of a boat navigating or using the waterways of the Village shall at all times obey the lawful orders of a police or peace officer and the Harbor Master.

**B.**

The Harbor Master is empowered to issue application forms, permit forms, mooring tackle standards and otherwise promulgate such forms and information as may be necessary for the administration of this chapter.

**§ 53-20**            **Penalties for offenses.**

[Amended 4-28-2005 by L.L. No. 7-2005]

Any person, firm or corporation violating any provision of this chapter shall be guilty of a violation and may, upon conviction, be punished by a fine not exceeding \$1,000 or by imprisonment for not more than 15 days, or both. Each day that a violation under this chapter continues shall be deemed a separate offense.

**§ 53-21**            **Severability.**

The provisions of this chapter are hereby declared to be severable and, if any section, sentence, clause or phrase hereof shall for any reason be held to be invalid, ineffective, in conflict with regulations of the federal or state authorities or unconstitutional, such decision shall not affect the validity of the remaining portions hereof, but such portions shall remain in full force and effect.