



*From the desk of Jamy B. Madeja, Esq.,
MMTA General and Government Relations Counsel
jmadeja@buchananassociates.com*

617-227-8410

Members have been inquiring about how to renew or obtain a longer term on current Chapter 91 Licenses for marinas and boatyards, often to finance long-term capital projects or to sell or value the business. The information below is based on my conversations with DEP staff and a review of relevant regulations.

If you want to renew the term of your existing license...

-Marinas and boatyards may apply for a renewal of the term of your current license through the **license amendment** process under Chapter 91 pursuant to 310 CMR 9.24(1) and 310 CMR 9.25(2).

-A public comment period will be required, but not always a public hearing.

-You can renew your existing license for a term of years not to exceed the term

-You can apply for renewal **at any time before your current license expires**. Plan for plenty of time, even a year, before you need the decision, due to extremely limited staffing at DEP.

-No marina appraisal is necessary if you are renewing the term of the original license.

-According to the Southeast Region staff, no matter when you apply before license expiration, your new license term will begin when the old license expires. For nearly all licenses, as of today, this means **four additional years from the date stated on the license**, due to the Permit Extension Acts (Section 173 of Chapter 240 of the Acts of 2010 and extended by Sections 74 and 75 of Chapter 238 of the Acts of 2012). With limited exceptions, the Act automatically extends for four years beyond its otherwise applicable expiration date, any permit or approval that was in effect or existence between August 15, 2008-August 15, 2012. So for example, if you have a license that is to expire on Dec. 21, 2017, it actually won't expire until Dec. 21, 2021, pursuant to the Permit Extension Act.

If you want to apply for a longer term than is stated on your existing license...

-Marinas and boatyards may apply to the Department of Environmental Protection for a new long-term license for water-dependent uses pursuant to 310 CMR 9.15(1)(b).

-If your project is located on filled tidelands or Great Ponds, an extended term license can be issued for up to 99 years.

-If your project is located on flowed tidelands or other waterways, an extended term license can be issued for up to 65 years.

-If your project is located on both filled and flowed tidelands, you can request that the

based on an evaluation of the surface area of the filled and flowed tidelands.

-When applying for a longer term license, be prepared to provide to the Department:

- a justification that an extended term is warranted given the expected life of the structure,
- your typical financing requirements,
- any consistency with a municipal harbor plan, if one exists
- appropriateness of long-term dedication of tidelands to the proposed use(s) in the particular location, and
- any other information you believe to be relevant.

-Requests for longer term licenses are evaluated by the Department on a case-by-case basis.

-The Department will provide guidance both before and during the application process to answer questions you may have about obtaining an extended term license.

-Please note that **an appraisal** of your project is necessary if you are looking to extend the term of your license beyond the usual 30 years for a water dependent use.

Potential Next Steps...

-If you are certain your current license authorizes the actual structures and uses at your facility, including all floats and uses of buildings, it is in your best interest to request a longer term or renewal of your license NOW before fees go up, Department staff “forget” about the application of the Permit Extension Act, or the Department does away with the opportunity to apply in advance of expiration. Application now can be quite an advantage in monetizing the asset of one’s business, to have a pre-approved license renewal.

-Before bringing attention to your business by submitting a request for a longer term license or renewal, you **MUST** get in compliance or at least be aware of what is out of compliance!

-To do so, gather any and all licenses and approvals you have on file and call an experienced consultant or attorney to review these documents. The most important step is to overlay the existing license plans with actual facilities to identify even seemingly minor non-compliance, such as wider docks than originally authorized or floats which have been moved without an authorized reconfiguration zone or added docks. Changes in use, such as from marina showers to a small snack shop are also quite important to identify in advance of application.

In summary: the term of your Chapter 91 license is a valuable business asset to be maintained just as one would maintain physical facilities. Extending the term is very much possible, with advance planning.



This email was sent to randall@boatma.com

[why did I get this?](#) [unsubscribe from this list](#) [update subscription preferences](#)

Massachusetts Marine Trades Association · P.O. Box 6133 · Plymouth, MA 02362 · USA

MailChimp