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## **Maine Guide to Federal Consistency Review (June 2002)**

Maine Coastal Program

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**MAINE GUIDE TO  
FEDERAL CONSISTENCY REVIEW**

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**MAINE COASTAL PROGRAM**

**2<sup>ND</sup>. EDITION**

**JUNE 2002**

# **MAINE GUIDE TO FEDERAL CONSISTENCY REVIEW**

June 2002

**MAINE STATE PLANNING OFFICE**

**Maine Coastal Program**

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## I. INTRODUCTION

The Maine Coastal Zone Management Program ("Maine Coastal Program") was created by the State of Maine and approved by the National Oceanic and Atmospheric Administration ("NOAA") in 1978, pursuant to the federal Coastal Zone Management Act of 1972 ("CZMA"). The State Planning Office ("SPO") administers the program, which provides funding for policy initiatives, technical assistance, and enforcement of state laws that affect the "coastal zone" in Maine. One component of this program is the authority of the State to review certain federal actions that affect the coastal zone to ensure that these activities are consistent with the enforceable State policies that have been made a part of the Maine Coastal Program. This review process is generally known as "federal consistency review." This handbook is intended to help federal agencies, federal permit applicants, and federal assistance applicants to understand when a federal consistency review is needed and how Maine conducts federal consistency review.

On December 8, 2000, NOAA published revisions of the federal rules governing the federal consistency review process<sup>1</sup>. This guide reflects those revisions.

**Note:** While this document is intended to act as a guide to federal consistency review, it is not legally binding and does not substitute for the federal regulations applicable to this review procedure. The reader is referred to the regulations noted throughout this document and the federal Coastal Zone Management Act, 16 U.S.C. §1451 *et seq.*, for the legal authority on which is this guide is based.

## II. THE MAINE COASTAL ZONE

Maine's federally approved coastal zone extends from the inland boundary of all 147 coastal towns that contain tidal waters to the outer limit of the State's territorial jurisdiction (3 nautical miles). Appendix B is a map of the Maine coastal zone. Only those federal actions that "affect any land or water use or natural resource" in Maine's coastal zone are subject to federal consistency review. This includes federal actions that are conducted *outside* the coastal zone, but still affect any land or water use or natural resource *inside* Maine's coastal zone.

All federally owned properties are *excluded* from the coastal zone. However, federal actions on these properties that can be reasonably expected to affect any land or water use or natural resource in Maine's coastal zone *outside* the federal property are still subject to a federal consistency review.

## III. FEDERAL ACTIONS SUBJECT TO CONSISTENCY REVIEW

Federal actions subject to federal consistency review fall into the following four categories:

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<sup>1</sup> 65 FR 77123 - 77175, December 8, 2000 (CZMA Federal Consistency Regulations, amending 15 CFR Part 930) (final rule). This rule, which became effective January 8, 2001, is the first revision of NOAA's federal consistency regulations since their promulgation in 1979. The rule is codified at 15 CFR Part 930.

- ◆ Activities conducted or supported by any federal agency or any federal development project, whether within or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone ("Federal Agency Activities"). 15 CFR Part 930, Subpart C
- ◆ Activities for which a federal license or permit is required, whether within or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone ("Federal License or Permit Activities"). 15 CFR Part 930, Subpart D
- ◆ Activities described in any plan submitted to the Secretary of the Interior for the exploration or development of, or production from, any area, which has been leased under the Outer Continental Shelf Lands Act ("Outer Continental Shelf Plans"). 15 CFR Part 930, Subpart E
- ◆ Activities that are the subject of applications for federal assistance under other federal programs submitted by state and local governments ("Federal Assistance Activities"). 15 CFR Part 930, Subpart F

## **A. Federal Agency Activities**

### *1. Federal Agencies' Consistency Obligations*

As a general rule, a federal agency undertaking an activity that the federal agency determines will affect any coastal use or resource must provide a consistency determination to SPO for review by the State. 15 CFR §930.34(a)(1). A federal agency is required to meet this obligation regardless of whether a state has listed the activity in its coastal program as an activity that the state believes has reasonably foreseeable coastal effects. The Maine Coastal Program lists the following as federal agency activities that, in the State's judgment, are matters for which a federal consistency determination is required:

- a. Army Corps of Engineers
  - proposed project authorization for dredging, channel works, breakwaters, other navigation works, erosion control structures, beach replenishment and dams
  - proposed acquisitions
- b. Department of Commerce
  - fisheries management proposals by National Marine Fisheries Service
- c. Department of the Interior
  - proposed National Park Service acquisitions
  - proposed U.S. Fish & Wildlife Service acquisitions
- d. Department of Defense
  - location and design of new or enlarged defense installations
- e. Department of Transportation
  - location and design of new or enlarged Coast Guard stations, bases, and lighthouses
  - location and design of aviation communication and air navigation facilities
- f. General Services Administration

- location and design of proposed Federal government property acquisition and building construction
- disposal of surplus Federal lands

Note: Since as noted above the responsible federal agency must submit a consistency determination for any federal agency activity that will affect any land or water use or natural resource in the Maine coastal zone, the foregoing list of federal agency activities is provided as an aid to federal agencies pursuant to 15 CFR §930.34(b). SPO monitors unlisted activities, which may also be subject to consistency review, primarily through Maine's Intergovernmental Review Process under Federal Executive Order 12372.

## *2. Negative Determinations*

If a federal agency decides that its proposed activity will not have coastal effects, the federal agency must submit a “negative determination” to SPO in the following circumstances:

- ◆ the activity is one of the listed activities described in the subsection 1, above, or is an unlisted activity that the SPO has identified on a case-by-case basis as an activity with potential coastal effects;
- ◆ the federal agency has prepared a consistency determination for the same or similar actions in the past; or
- ◆ the federal agency has undertaken a consistency assessment and developed initial findings on coastal effects. 15 CFR §930.35(a)

The federal agency must notify SPO of the basis for its negative determination at least 90 days prior to initiation of the activity. 15 CFR §930.35(b), (c). SPO encourages federal agencies to provide such notice as soon in the planning process as practicable. In the event of a disagreement, either party may seek mediation by the Secretary of Commerce. 15 CFR §930.35(d).

## *3. Environmentally Beneficial Activities*

Having provided opportunity for public comment, the State and federal agency may agree to exclude an “environmentally beneficial” activity from further federal consistency review. 15 CFR §930.33(a)(4) (definition of “environmentally beneficial activities”). A federal agency interested in this option should contact SPO, which will request that DEP and other state agencies with jurisdiction over the relevant coastal resources issues evaluate the foreseeable coastal effects of the federal proposal.

## **B. Federal License or Permit Activities**

### *1. Listed License or Permit Activities*

The federal license or permit, or other form of federal approval, certification, or authorization, listed below, may not be issued until the State agrees that the proposed activity is consistent with the enforceable policies of the Maine Coastal Program. For the following listed activities occurring within or potentially affecting the coastal zone, the State uses the same standards and procedures for evaluation of consistency as are used to evaluate license and permit applications

under applicable state coastal management program core laws. To the extent practicable, consideration of core law permits will constitute the State's consistency review, and approval of all core law permits with attached conditions shall constitute the State's consistency concurrence.

- a. U.S. Army Corps of Engineers
  - permitted activities under Section 404 of the Federal Water Pollution Control Act for discharges of dredged or fill materials in navigable waters of the U.S. and their adjacent wetlands
  - permitted activities under Section 10 of the Rivers and Harbor Act of 1899 for structures or work in or affecting navigable waters of the U.S.
  - permitted activities under section 103 of the Marine Protection, Research, and Sanctuaries Act for transportation of dredged materials for the purpose of dumping in ocean waters
- b. U.S. Coast Guard
  - permits for construction or modification of bridge structures across navigable waters of the U.S.
  - deepwater Port Licenses
- c. Environmental Protection Agency
  - Ocean Dumping permits (issued jointly with Corps of Engineers) under the Marine Protection, Research and Sanctuaries Act
- d. Department of the Interior
  - federally licensed or permitted activities described in detail within Outer Continental Shelf (OCS) plans
  - permits for pipeline rights-of-way for oil or gas transmission on the Outer Continental Shelf
- e. Department of Energy / Federal Energy Regulatory Commission
  - licenses required for non-federal hydroelectric projects and associated transmission lines under Section 4(e) of the Federal Power Act
  - certificates authorizing construction, extension, acquisition or operation of pipelines, terminals or facilities for transportation or storage of natural gas for interstate commerce
  - permission and approval for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act
- f. Department of Energy / Economic Regulatory Administration
  - opinions and orders for permission of the delivery of imported liquefied natural gas
- g. Nuclear Regulatory Commission
  - license for construction and operation of a nuclear power plant

## *2. Unlisted License and Permit Activities*



SPO, on behalf of the State, may also request a consistency review of a federal license or permit activity that is not listed under subsection 1, above, if the activity can reasonably be expected to affect the coastal zone. 15 CFR §930.54(a)(1). In order for the State to review an unlisted activity, the State must obtain approval from NOAA's Office of Coastal Resource Management (OCRM), which must base its decision solely on whether the proposed activity has reasonably foreseeable effects on Maine's coastal zone.

### **C. Outer Continental Shelf Plans**

Federal license or permit activities described in detail within OCS plans are reviewed for consistency with the enforceable policies contained in the Maine Coastal Program. See 15 CFR Part 930, Subpart E.

### **D. Federal Assistance Activities**

Federal assistance activities that affect the coastal zone are subject to consistency review. 15 CFR Part 930, Subpart F. The term "federal assistance activities" means federal grants, contracts, loans, subsidies, guarantees, insurance, or other form of financial aid provided to units of state or local government. See 15 CFR §930.91

SPO monitors federal assistance activities in the coastal zone, as well as those occurring outside but affecting the coastal zone, through the Intergovernmental Review Process pursuant to Federal Executive Order 12372. Through this process, applicants provide notice to the State that they intend to seek federal assistance.

## **IV. ENFORCEABLE POLICIES**

### **A. State Authorities Included in the Federal Consistency Review**

As noted above, the CZMA requires certain federal actions affecting Maine's coastal zone to be consistent with the "enforceable policies" contained in the Maine Coastal Program. *If a federal action is not addressed by one of the enforceable policies, it is presumed to be consistent with the Maine Coastal Program, and a federal consistency review is not necessary.* The enforceable policies of the Maine Coastal Program are contained in the state laws and implementing regulations listed in Appendix A. Since these laws and regulations are administered by various state agencies and municipalities, SPO coordinates the consistency review as necessary and serves as a single point of contact to receive requests for consistency reviews and to communicate with federal agencies and the public on consistency review issues and decisions.

### **B. Standard of Review**

Maine's consistency review process uses the same standards and, to the extent practicable, the same procedures used in processing license and permit applications. A consistency denial by the State must cite and be based *directly* on provisions contained in the federally approved enforceable policies. 15 CFR §930.43(a). State authorities that are not included in Maine's Coastal Program *cannot* be used as a basis for denying consistency.

## **V. FEDERAL CONSISTENCY REVIEW PROCEDURE**

### **A. Overview**

The procedure for obtaining the State's agreement with a determination that a federal activity is consistent with applicable state law varies depending on the type of federal activity described above. Sections C, D, and E of this part separately outline the process as it applies to federal agencies, federal license and permit activities, and federal assistance activities.

Maine encourages early coordination regarding federal consistency review. The initial step for federal consistency review of any federal action should be to contact the federal consistency coordinator at SPO to inform the State of the proposed action. This early coordination will answer questions concerning whether a review is necessary and the scope of the review. In many instances, SPO will refer the federal agency to the Maine Department of Environmental Protection (DEP) to discuss whether and how enforceable policies apply to the federal proposal. If necessary, SPO will arrange an "early coordination" meeting at which the activity is discussed by the relevant state authorities, typically DEP, to identify and, whenever possible, to resolve any issues that are likely to arise when the formal consistency request is made.

### **B. Federal Agency Activities**

The CZMA requires federal agency activities affecting Maine's coastal zone to be "consistent to the maximum extent practicable" with the enforceable policies contained in the Maine Coastal Program. The phrase "consistent to the maximum extent practicable" is interpreted in NOAA's federal consistency regulations to mean "fully consistent with the enforceable policies of [a state's approved coastal management program] unless full consistency is prohibited by existing law applicable to the Federal agency." 15 CFR §930.32(a)(1). "Accordingly, whenever legally permissible, Federal agencies shall consider the enforceable policies of [state coastal] management programs as requirements to be adhered to in addition to existing Federal agency statutory mandates." 15 CFR §930.32(a)(2).

The State has 60 days to respond to a request for a consistency review. 15 CFR §930.41. The time period begins when:

- ◆ the State receives a consistency determination; and
- ◆ the documentation for the review is sufficient to perform the review. See 15 CFR §§930.39(a) and 930.41(a). The State will promptly notify the federal agency if it receives a consistency determination not accompanied with the supporting information required by 15 CFR §930.39.

The federal agency must grant one 15-day extension if requested by the State, and may grant further extensions at its discretion. The federal agency may presume state concurrence with a consistency determination if the State does not respond within the 60-day time period. *Id.* The State and the federal agency may agree to a longer review period.

A final federal action may not be taken sooner than 90 days from the issuance of the consistency determination by the federal agency to the State, unless the State has concurred or is presumed to have concurred prior to that time, or unless otherwise agreed by both the federal agency and the State. 15 CFR §930.36(b)(1); 15 CFR §930.41(c).

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| 1. | The federal agency sends a copy of its consistency determination, request for state review, and all supporting documents to SPO ("submission") | At least 90 days prior to final approval by the federal agency |
| 2. | SPO sends a copy of the submission to the Department of Environmental Protection (DEP) and/or other appropriate agency(ies);                   | As soon as possible  |
| 3. | The lead reviewing agency (typically DEP) checks the submission for completeness.  | As soon as possible  |

If the submission is complete, the State's review begins and the 60-day time period starts when the submission was received by SPO.

If the submission is not complete, SPO or the lead reviewing agency (typically DEP) will notify the federal agency. The reviewing agency works with SPO and the federal agency to address any information needs. The reviewing agency notifies SPO and the federal agency when the submission is complete and is accepted for review, and the 60-day review period starts when the complete information was received by the State.

**Note:** As noted above, to the extent practicable, Maine uses the same procedures and standards used in processing state license and permit applications for review of federal consistency determinations. Consequently, even though the federal agency may not be required to follow state permit procedures and obtain a permit *per se*, information from federal agencies is often most conveniently and expeditiously submitted as a permit application. 15 CFR §930.39 outlines the information that a federal agency must submit in support of its consistency determination.

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| 4. | The State will ensure publication of notice of the federal agency's consistency determination and opportunity for public comment in accordance with 15 CFR §930.42. In most cases, the public comment period will be 14 days, although DEP and other review agencies may accept and consider comments received up to the issuance of its findings and decision regarding consistency. | Usually within 30 days |
| 5. | The lead reviewing agency consults with other state agencies (such as the Maine Geological Survey (MGS), the Department of Marine Resources (DMR), and the Department of Inland Fisheries and Wildlife (IFW) as needed. If the agency requires  | Within 60 days         |

additional time to perform its review, it will notify the SPO as soon as possible. SPO, in consultation with the lead reviewing agency, will then request an extension from the federal agency.

6. The lead reviewing agency makes its decision regarding concurrence or objection to the consistency determination and transmits that decision to SPO. Typically, this decision will be in the form of an agency order that grants or denies permit approval. The order provides the factual findings and legal conclusions for the State's concurrence with or objection to the federal agency's consistency determination.
7. Based upon the lead reviewing agency's findings and decision, SPO notifies the federal agency of the State's agreement or disagreement with the consistency determination for the proposed federal activity.

If the State objects to a federal agency's consistency determination, SPO's notification will: (a) indicate the specific enforceable policies with which the proposed activity is inconsistent; (b) describe how it is inconsistent; and (c) indicate what time extension was granted by the federal agency, if the objection is issued beyond the 60-day review period. The notification may also identify alternative measures, if any, under which the activity could be found consistent. If the State's disagreement is based on a finding that the federal agency has failed to supply sufficient information, SPO will describe the nature of the requested information and why it is needed. See 15 CFR §930.43(b).

Concurrent with Step 6

Within 90 days

8. SPO will notify the Director of OCRM in all cases where the State objects to a federal consistency determination. 15 CFR §930.43(c).
9. If the State and the federal agency cannot resolve any disagreements by the end of the 90 day period, the State or the federal agency can attempt to resolve disagreements through mediation by the Secretary of Commerce or OCRM. 15 CFR §930, Subpart G.

Note: The above process applies to all federal agency actions (both listed and unlisted activities) for which a federal consistency determination is required.

### **C. Federal License or Permit Activities**

An applicant for a federal license or permit (e.g. private citizens, industry, state and local governments) shall provide in the application to the authorizing federal agency a consistency certification in the following form:

“The proposed activity complies with the enforceable policies in the approved Maine Coastal Zone Management Program and will be conducted in a manner consistent with those policies.”

Most activities requiring a consistency certification are already subject to State and local permit requirements under state environmental laws that comprise the enforceable policies used for federal consistency reviews and the permit applications provide the information needed to initiate review. *Consequently, in most instances, receipt of all the necessary state and municipal permits constitutes the State's concurrence with the applicant's consistency certification, and no further federal consistency review is required.* In these circumstances, the State and local permitting processes provide opportunities for public notice and comment on the project's consistency with applicable enforceable policies. Federal permit applicants may wish to contact SPO regarding applicable federal consistency procedures.

If no enforceable policy is applicable, then consistency with the Maine Coastal Program is presumed. Procedures for listed and unlisted activities are outlined below.

### 1. Listed Activities

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1. For listed activities within the State's coastal zone, the federal applicant includes in its application(s) certification that the proposed activity complies with and will be conducted consistently with the enforceable policies of the Maine Coastal Program. Typically, the filing of state permit applications with DEP and other appropriate state agencies and municipalities provides the necessary data and information necessary under 15 CFR §930.58.

At or near the time federal permit application(s) are filed

For listed activities that are outside the State's coastal zone, the applicant must submit a consistency determination if the activity falls within the area of the Gulf of Maine, including Georges Bank or on federal lands within the coastal zone. The applicant must submit the data and information necessary to demonstrate consistency, including any state or local permits or permit applications required for the proposed activity. 15 CFR §930.58. In any case, applicants are strongly encouraged to provide the necessary data and information in the form of state permit application(s) as a means to expedite review and approval. In reviewing the certification and supporting data and information, the lead state agency (typically DEP) will make consistency findings based on the enforceable policies using the same procedures and standards used in evaluating permit and license applications under these laws and regulations.

2. If the applicant receives the applicable state licenses and permits within six months of its consistency certification, the state licensed and permitted activity is deemed consistent with the

Within 6 months days of receipt of a complete review

enforceable policies of the Maine Coastal Program. On request, SPO will respond directly to the permit applicant that the State, in accordance with pertinent licenses and permits, agrees with the finding that the proposed activity is consistent with the Maine Coastal Program. If the State does not object to the certification within six (6) months from the State's receipt of a complete consistency review request, the project is deemed consistent. Consequently, in some instances, the State may condition its concurrence on receipt of all applicable permits. As noted above, in most instances, where the State has license and permitting jurisdiction over the activity, the State ensures consistency with applicable state laws through issuance of applicable licenses and permits.

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| 3. | <p>If the State objects to an applicant's consistency determination, the applicant must receive SPO's objection letter within six (6) months from the State's receipt of a complete consistency review request. SPO's objection letter must notify the federal agency and OCRM of the State's decision. The letter must describe how the activity is inconsistent with specific enforceable policies in the Maine Coastal Program and may describe alternative measures (if they exist) that, if adopted, would permit the project to be conducted in a manner that is consistent with the enforceable policies. The letter shall also notify the applicant of its right to appeal the State's objection to the Secretary of Commerce who may override the State's objection if the Secretary finds that the project is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. If the State objects to the consistency certification, the federal agency shall not issue the license or permit absent override of the State's objection by the Secretary of Commerce pursuant to 15 CFR Part 930, Subpart H.</p> | <p>application</p> <p>Within 6 months of receipt of a complete application</p> |
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*2. Unlisted Activities*

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| 1. | <p>If the State wishes to review an unlisted federal license or permit activity, or a listed license or permit activity outside the coastal zone for which OCRM's approval is required by 15 CFR §930.53(a)(2), SPO will notify the federal agency and the applicant that SPO intends to request approval from OCRM to review the unlisted activity. See 15 CFR §930.54.</p> | <p>Within 30 days of the federal notice of the activity</p> |
| 2. | <p>SPO notifies OCRM that it seeks to review the unlisted activity and provides support for the State's assertion that coastal effects are reasonably foreseeable.</p>   | <p>Concurrent with Step 1</p>                               |

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| 3. | The federal agency and the applicant may submit comments to OCRM regarding whether the State should be allowed to review the activity.  | Within 15 days of SPO's notice to OCRM |
| 4. | OCRM will issue a decision to SPO, the federal agency and the applicant.<br><br>If OCRM denies the request, the federal agency may issue the license or permit without consistency certification.<br><br>If OCRM approves the request for review, the applicant must follow the same procedure for reviewing listed licenses or permits, above. | Within 30 days of SPO's notice to OCRM |

**D. Outer Continental Shelf Plans**

The procedure for obtaining a consistency certification for outer continental shelf activities is essentially the same as the procedure for federal license or permit activities, outlined above. See 15 CFR Part 930, subpart E.

**E. Federal Assistance Activities (assistance to state agencies and local government)**

SPO and other coastal program agencies monitor federal assistance activities in the coastal zone and areas potentially affecting the State's coastal zone through the intergovernmental review process established under state law and Federal Executive Order 12372. Applicants provide notice of their intent to apply for federal funds through the intergovernmental review process.

The State typically ensures that these activities are consistent with its enforceable policies through issuance of applicable licenses and permits, if and when the projects are later funded and undertaken. If earlier consistency review is needed, SPO will inform the federal agency and the applicant of the State's desire to conduct a consistency review within 30 days of receipt of notice through the intergovernmental review process. In this case, consistency review of an application for federal assistance will be performed by the lead review agency (typically DEP) using the same procedures and standards used to evaluate permit and license applications to the extent practicable.

The applicant may appeal the State's consistency objection to the Secretary of Commerce pursuant to 15 CFR Part 930, Subpart H. If the State objects to the consistency certification, the federal agency shall not provide funding for the activity until the State's objections have been satisfied or overridden on appeal to the Secretary of Commerce. Id.

**F. Mediation**

In the event of a disagreement between a federal agency and the State over consistency with the Maine Coastal Program, either party may seek mediation by OCRM or the Secretary of the U.S. Department of Commerce. 15 CFR Part 930, Subpart G.

**G. Appeal of a State Objection**

As noted above, non-federal applicants for federal licenses, permits or funding may appeal a State objection to the Secretary of the U.S. Department of Commerce. 15 CFR Part 930, Subpart H.



## APPENDIX A

### ENFORCEABLE POLICIES OF THE MAINE COASTAL PROGRAM<sup>1</sup>

- ❖ **Natural Resources Protection Act** (38 M.R.S.A. §§480-A to 480-S; 480-U to 480-Z)
  - Wetlands Protection rules (DEP rules ch. 310)
  - Coastal Sand Dune rules (DEP rules ch. 355)
  - Permit by Rule standards (DEP rules ch. 305)
  - Significant habitat rules (DIFW rules ch. 10)
  
- ❖ **Mandatory Shoreland Zoning Law** (38 M.R.S.A. §§435 to 449)
  - Guidelines for Municipal Shoreland Zoning Ordinances (DEP rules ch. 1000)
  
- ❖ **Site Location of Development Law** (38 M.R.S.A. §§481 to 485-A; 486-A; 487-A to 490; 490-A to 490-EE; 23 M.R.S.A. §704-A (MDOT traffic movement permit))
  - Definitions of terms used in the site location of development law and regulations (DEP rules ch. 371)
  - Policies and procedures (DEP rules ch. 372)
  - Financial capacity standard (DEP rules ch. 373)
  - Rules regarding the traffic standard (DEP rules ch. 374)
  - No adverse environmental impact standard (DEP rules ch. 375)
  - Soil types standard (DEP rules ch. 376)
  - Review of roads (DEP rules ch. 377)
  - Variance criteria; performance standards (storage of petroleum products) (DEP rules ch. 378)
  - Planning permit (DEP rules ch. 380)
  
- ❖ **Erosion Control and Sedimentation Law** (38 M.R.S.A. §420-C)
  
- ❖ **Storm Water Management Law** (38 M.R.S.A. §420-D)
  - Storm Water Management rules (DEP rules ch. 500)
  - Direct Watersheds of Water bodies Most at Risk from New Development, and Sensitive or Threatened Regions or Watersheds (DEP rules ch. 502)
  
- ❖ **Subdivision Law** (30-A M.R.S.A. §4401 to 4407)
  
- ❖ **Maine Rivers Act** (12 M.R.S.A. §§403 and 407)
  
- ❖ **Maine Waterway Development and Conservation Act** (38 M.R.S.A. §§630 to 636; 640)
  
  
- ❖ **Protection and Improvement of Air Law** (38 M.R.S.A. §§349; 581 to 610-A)<sup>2</sup>

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<sup>1</sup> The statutory provisions listed are those with the force and effect of state law, as amended, as of September 21, 2001, unless otherwise indicated. Rule provisions listed are those with the force and effect of state laws, as amended, on November 10, 1999, unless otherwise indicated.

<sup>2</sup> State air and water pollution control laws, adopted in accordance with requirements or authorities recognized under the federal Clean Air and Clean Water Acts, are incorporated into the Maine Coastal Program pursuant to the CZMA, 16 U.S.C. §1456(f).

- DEP rules ch's. 100 (regulatory definitions), 113 (growth offset regulations), 115, Appendix A (modeling guidelines), 117 (source surveillance), 118 (gasoline vapor recovery), 134 (RACT for VOCs emitting facilities), 138 (RACT for nitrous oxides emitting facilities)
- ❖ **Protection and Improvement of Waters Act**<sup>3</sup> (38 M.R.S.A. §§347; 361 to 367; 371-A to 372; 410-N; 411 to 424; 451 to 455; 464 to 470)
    - Surface water toxics control program, (DEP rules ch. 530, section 5)
  - ❖ **Nutrient Management Act** (7 M.R.S.A. Part 10)
  - ❖ **Land Use Regulation Law** (12 M.R.S.A. §§681 to 689)
    - List of Coastal Islands in the Jurisdiction of the Maine Land Use Regulation Commission
    - LURC Rules and Regulations, Ch. 10 - Land Use Districts and Standards
  - ❖ **Maine Hazardous Waste, Septage and Solid Waste and Management Act** (38 M.R.S.A. §§1301 to 1310-BB; 1316 to 1316-L; 1317 to 1319-W; 1362; 2157; 2302 - 2313)
  - ❖ **Nuclear Facility Decommissioning laws** (PL 1999 c. 739 and PL 1999 c. 741)
  - ❖ **Oil Discharge Prevention & Pollution Control Law** (38 M.R.S.A. §§344 to 349; 541 to 560; 563-A; 564; 566-A; 568-A; 569-A to 569-B; 570; 570-A to 570-L; 585-D; 585-H)
  - ❖ **Marine Resources Law** (12 M.R.S.A. §§6171 to 6192)
  - ❖ **Coastal Barrier Resources System Act** (38 M.R.S.A. §§1901 to 1905)
  - ❖ **Maine Endangered Species Act** (12 M.R.S.A. §§7753 to 7755-A; 7756 to 7758)
    - Endangered species (DIFW rules ch. 8)
  - ❖ **Fee Schedule** (38 M.R.S.A. §§352-353)<sup>4</sup>

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<sup>3</sup> See footnote 2.

<sup>4</sup> In approving 38 MRSA §352 as an enforceable policy, NOAA clarified that federal agencies are not obligated to pay fees absent a requirement to do so under a federal law other than the Coastal zone Management Act.

# APPENDIX B MAINE COASTAL TOWNS

