MAINE GUIDE TO FEDERAL CONSISTENCY REVIEW

Maine Coastal Program

4th Edition – Update 6

January 2013

Maine Guide to
Federal Consistency Review

January 2013

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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 Maine Department of Agriculture, Conservation, and Forestry, Division of Geology, Natural Areas and Coastal Resources ("DACF") administers the program, which provides funding for policy initiatives, technical assistance, and enforcement of state laws that affect Maine's coastal uses or resources. One component of this program is the authority of the State to review certain federal actions that affect coastal uses or resources 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 state and federal agencies, federal permit applicants, federal assistance applicants, and the public understand when federal consistency review is needed and how Maine conducts federal consistency reviews.
This guide is based on the federal regulations governing the federal consistency review process issued by NOAA. [1]
Note: This guidance document describes the activities and authorizations subject to review for federal consistency pursuant to the State's authority under the CZMA, and the core laws that contain the enforceable policies which apply to those activities. While this document is intended to act as a guide to the federal consistency review process, it should not be relied upon as a substitute for the federal regulations applicable to these review procedures. The reader is advised to refer to the CZMA Federal Consistency 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 provides a map and list of municipalities as well as unorganized townships and plantations located in the Maine coastal zone. Only those federal actions that "may have reasonably foreseeable effects on any land or water use or natural resource" of Maine's coastal zone are subject to federal consistency

[1] *See* 15 Code of Federal Regulations (CFR) Part 930 (2012).

review. This may include federal actions that are conducted *outside* the coastal zone, but still affect any land or water use or natural resource *of* Maine's coastal zone. All federally owned properties are *excluded* from the coastal zone. However, federal actions on these properties that have reasonably foreseeable effects on any land or water use or natural resource of Maine's coastal zone 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:

- 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 proposed by non-federal applicants 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[2]

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

[2] 15 CFR §930.31 provides a detailed definition of the term "federal agency activity."

determination to DACF 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 if the activity has reasonably foreseeable coastal effects. The Maine Coastal Program currently lists the following as federal agency activities[3] that, in the State's judgment, are matters for which a federal consistency determination is required:

- Army Corps of Engineers
  - ✓ proposed project authorization for dredging, channel works, breakwaters, other navigation works, erosion control structures, beach replenishment and dams
  - ✓ proposed acquisitions
- Department of Commerce
  - ✓ fisheries management proposals by National Marine Fisheries Service
- Department of the Interior
  - ✓ proposed National Park Service acquisitions
  - ✓ proposed U.S. Fish & Wildlife Service acquisitions
- Department of Defense
  - ✓ location and design of new or enlarged defense installations
- 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
- 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 of 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). DACF

[3] Maine Coastal Program document (Final Environmental Impact Statement, August 1978), Appendix E2, p. 295.

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 DACF in the following circumstances:

- the activity is one of the listed activities described in the subsection 1, above, or is an unlisted activity that DACF 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 DACF of the basis for its negative determination at least 90 days prior to final federal approval of the activity. *15 CFR §930.35(b), (c).* DACF 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 or NOAA's Office of Ocean and Coastal Resource Management (OCRM). *15 CFR §930.35(e) and Part 930, Subpart G.*

3. Environmentally Beneficial Activities

Activities which are deemed as environmental beneficial are not excluded from federal consistency review. 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 DACF, which will request that DEP and/or other state agencies with jurisdiction over the relevant coastal resources evaluate the foreseeable coastal effects of the federal activity. OCRM's rules governing the federal consistency review process establish other specific procedures to facilitate federal-state coordination regarding actions that a federal agency expects would have insignificant direct or indirect coastal effects ("*de minimis* activities")[4] ; phased consistency determinations where, for example, a development activity will be undertaken in

[4] *15 CFR §930.33(a)(3)*

discrete, related steps[5]; and general consistency determinations that address a repeated activity other than a development activity.[6]

B. Federal License or Permit Activities[7]

1. Listed License or Permit Activities

A federal license or permit, or other form of federal approval, certification, or authorization, listed below, may not be issued until the State concurs that the proposed activity is consistent with the enforceable policies of the Maine Coastal Program. For the following listed activities[8] occurring within 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. 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.

United States Army Corps of Engineers:

- Permit for discharges of dredged or fill materials in waters of the United States and their associated wetlands required under Section 404 of the Clean Water Act, 33 U.S.C. §1344.
- Permit for structures or work in or affecting navigable waters of the United States required under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. §403.
- Permit for transportation of dredged material for the purpose of dumping in ocean waters required under Section 103 of the Marine Protection, Research, and Sanctuaries Act ("Ocean Dumping Act"), 33 U.S.C. §1413.

Department of Homeland Security - United States Coast Guard:

- Permit for construction or modification of bridge structures across navigable waters of the United States under Section 9 of the Rivers and Harbors Act of 1899, 33 U.S.C. §401 and/or the General Bridge Act of 1946, 33 U.S.C. §525.
- Permit for a deep water port under the Deepwater Port Act, 33 U.S.C. §§ 1501, *et seq*.

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[5] *15 CFR §930.36(d)*

[6] *15 CFR §930.36(c)*

[7] *15 CFR §930.51* (defines the term "federal license or permit").

[8] *See* Maine Coastal Program document, *supra,* pp. 296-7, and the routine program change approved by NOAA on October 25, 2005.

Environmental Protection Agency:

- National Pollution Discharge Elimination System (NPDES) permit[9] under Section 402 of the Clean Water Act, 33 U.S.C. §§1342, *et seq*.
- Ocean dumping permit (authority exercised jointly with the United States Army Corps of Engineers) required under the Marine Protection, Research, and Sanctuaries Act (Ocean Dumping Act), 33 U.S.C. §1401, *et seq*.

Department of the Interior:

- Permits for pipeline rights of way for oil and gas transmission on the Outer Continental Shelf required under the Outer Continental Shelf Lands Act, 43 U.S.C. §§1334, *et seq.*

Department of Energy – Federal Energy Regulatory Commission:

- Licenses required for non-federal hydro-electric projects and associated transmission lines under Section 4(e) of the Federal Power Act, 16 U.S.C. §797e.
- Certificates authorizing construction, extension, acquisition or operation of pipelines, terminals or facilities for transportation or storage of natural gas for interstate commerce, under the Natural Gas Act, 15 U.S.C. §717b (Section 3) or §717f (Section 7).
- Permission and approval for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act, 15 U.S.C. §717f(b).
- Authorization for importation of liquefied natural gas, under Section 3 of the Natural Gas Act, 15 U.S.C. §717b.

Nuclear Regulatory Commission:

- License for construction and operation of a nuclear power plant, required under the Energy Reauthorization Act of 1974 and/or 10 CFR Part 52.

2. Unlisted License and Permit Activities

DACF, 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, or, if listed occurs outside Maine's coastal zone or a "geographic location" described in Maine's federally approved coastal program, above, if the activity will have reasonably foreseeable coastal effects. *15 CFR §§930.53(a)(2) and 930.54*. If OCRM determines that the State has demonstrated that the proposed activity has reasonably foreseeable effects on Maine's

[9] Note: NPDES permits issued by the Maine Department of Environmental Protection under delegated authority are state actions not subject to federal consistency review.

coastal resources or uses, OCRM must grant the State's request. Alternatively, a federal applicant may agree to subject its proposed activity to federal consistency review, in which case OCRM's approval is not required. 15 CFR §930.54(f).

C. Outer Continental Shelf (OCS) 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. *15 CFR Part 930, Subpart E.*

D. Federal Assistance Activities

Federal assistance activities that affect coastal uses or resources 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 and 930.92.*

DACF 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 Core Laws Included in the Federal Consistency Review

As noted above, the CZMA requires certain federal actions affecting Maine's coastal uses or resources to be consistent with the "enforceable policies" contained in the Maine Coastal Program. *If an activity or effect is not addressed by one of the enforceable policies, the federal action 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 within the state statutes and implementing rules listed in Appendix A; these statutes and rules are commonly referred to as the program's "core laws." Since the core laws are administered by various state agencies and municipalities, DACF 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. DACF periodically (typically following each legislative session) updates the state core laws as these laws are amended and supplemented and submits the changes to OCRM. Once DACF publishes a notice announcing OCRM's approval of the incorporation of the changes into the Maine Coastal Program, the enforceable policies within the revised state core laws, as applicable, may be used for federal consistency reviews. Applicants and federal agencies are strongly encouraged to consult with DACF to determine the applicable enforceable policies.

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 under the core laws. A consistency objection by the State must cite and be based *directly* on specific federally approved enforceable policies. *15 CFR §§930.43(a) and 930.63(b).* State statutes and rules that are not included in Maine's Coastal Program *cannot* be used as a basis for finding an activity inconsistent.

V. Federal Consistency Review Procedure

A. Overview

The procedure for obtaining the State's concurrence with a determination or certification that a federal action is consistent with applicable enforceable policies varies depending on the type of federal action described above. Sections B, C, D, and E of this part separately outline the process as it applies to federal agency activities, federal license or permit activities, OCS plans and federal assistance activities, respectively. Maine strongly 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 DACF to inform the State of the proposed action. This early coordination will help answer questions concerning whether a review is necessary and the scope of the review. Typically, DACF will refer the federal agency or applicant to the Maine Department of Environmental Protection (DEP) to discuss whether and how enforceable policies apply to the proposed activity. If necessary, DACF will arrange a meeting at which the activity is discussed by the relevant state agency or agencies, again typically DEP, to identify and, whenever possible, to resolve

any issues that are likely to arise when a formal consistency determination or certification is subsequently submitted.

B. Federal Agency Activities

The CZMA requires federal agency activities affecting Maine's coastal uses or resources 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" means "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 consistency determination. *15 CFR §930.41.* The time period begins when:

- the State receives a consistency determination; and
- the information supporting the determination is sufficient to perform the review. *See 15 CFR §§930.39(a) and 930.41(a).* The State will notify the federal agency in writing within 14 days 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. *15 CFR §930.41(b).* The federal agency may presume state concurrence with a consistency determination if the State does not respond within the 60-day time period. *15 CFR §930.41(a).* The State and the federal agency may agree to a longer review period. *15 CFR §§930.41(b) and (c).*
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) and 930.41(c).*

STEP		TIME
1.	The federal agency sends a copy of its consistency determination, request for state review, and all supporting documents to DACF ("submission"). **Note**: Following consultation with DACF, the federal agency may submit all materials needed for	At least 90 days prior to final approval by the federal agency

	consistency review directly to the lead review agency (usually DEP), provided that DACF receives, at a minimum, a copy of the consistency determination referencing materials separately submitted to the lead review agency.	
2.	DACF sends a copy of the submission to the Department of Environmental Protection (DEP) and/or other appropriate agency(ies).	As soon as possible; as needed
3.	The lead reviewing agency (typically DEP) checks the submission for completeness (consistency determination and supporting information required by *15 CFR §930.39(a)*). If the submission is complete, the State's review begins and the 60-day time period starts when the submission was received. If the submission is not complete, DACF, in consultation with the lead reviewing agency (typically DEP), will notify the federal agency in writing. *See 15 CFR §930.41(a).* The lead reviewing agency works with the federal agency and DACF, as needed, to address any information needs. The reviewing agency notifies DACF 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. The State may request submission of additional information during the review period as needed to complete the consistency review.	Within 14 days

4.	If federal consistency review is required, 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 (DIFW) as needed. If the agency requires additional time to perform its review, it will notify DACF as soon as possible. DACF, in consultation with the lead reviewing agency, will then request an extension from the federal agency.	Within 60 days
6.	The lead reviewing agency makes its decision regarding concurrence with or objection to the consistency determination and transmits that decision to DACF, typically 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 on the lead reviewing agency's findings and decision, DACF notifies the federal agency of the State's concurrence with or objection to the consistency determination for the proposed federal activity. If the State objects to a federal agency's consistency determination, DACF'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	Concurrent with Step 6

	notification may also identify alternative measures, if any, under which the activity could be found consistent. If the State's objection is based on a finding that the federal agency has failed to supply sufficient information, DACF will describe the nature of the requested information and why it is needed. *See 15 CFR §930.43(b).*	Within 90 days
8.	DACF will notify the Director of OCRM in all cases where the State objects to a federal agency's 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 and review are required.

C. Federal License or Permit Activities

A non-federal 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 federal license or permit activities requiring a consistency certification (i.e., listed activities within the coastal zone) are subject to state and local permit requirements under the core laws that provide the enforceable policies used for federal consistency reviews and the permit applications provide the information needed to initiate review. The State's CZMA consistency review is integrated into its process for review of pertinent permit applications. *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.* Pertinent state and local permitting processes provide opportunities for public notice and comment on the project's consistency with applicable enforceable policies. Applicants for federal permits may wish to contact DACF regarding applicable federal consistency procedures and enforceable policies.

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

STEP		TIME
1.	For listed activities within the State's coastal zone, the federal applicant includes in its application(s) a certification that the proposed activity complies with and will be conducted consistently with the enforceable policies of the Maine Coastal Program. This certification, the federal application and related information specified in *15 CFR §930.58*, and the applicable completed state and local permit applications required under the core laws listed in Appendix A constitute the necessary data and information for consistency review.[10] Geographic Location Description. For listed activities that are outside the State's coastal zone, the applicant must provide a consistency certification if the activity falls within the area of the Gulf of Maine, including Georges Bank, or on excluded federal lands within the coastal zone and submit the necessary data and information to demonstrate consistency, including the information specified in *15 CFR §930.58* and the applicable completed state or local permit applications required for the proposed activity.[11] *15 CFR §930.58; 15 CFR §930.53.* In reviewing the certification and necessary data and information, the lead state agency (typically DEP) will make consistency findings based on the enforceable policies using the same procedures and standards	At or near the time federal permit application(s) are filed

[10] Maine Coastal Program document, *supra*, p. 298

[11] Maine Coastal Program document, *supra*, p. 296

	used in evaluating permit and license applications under the core laws.	
	The lead review agency will review the applicant's submission for completeness and notify the applicant and federal agency in writing, within 30 days, if all necessary data and information has not been provided. The six-month review period begins when all necessary data and information has been received. The lead review agency may request additional information during the review period.	Within 30 days
2.	If the applicant receives the applicable state licenses and permits within six months of the applicant's submission of its consistency certification and all necessary data and information, the state licensed and permitted activity is deemed consistent with the enforceable policies of the Maine Coastal Program. On request and as it deems appropriate, DACF will respond directly to the permit applicant and/or federal agency that the State, in accordance with pertinent state licenses and permits, concurs 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. In some instances, the State may condition its concurrence on receipt of all applicable permits.	Within six (6) months of receipt of a complete review application
3.	The State and applicant for a federal license or permit may agree in writing to stay the six-month review period for a specified period of time. The agreement must specify the dates when the six-month review period began and was scheduled to end; the dates when the stay begins and ends; and the date when a decision on CZMA consistency is due. Such a stay may be appropriate to accommodate review of complex permits using state administrative processes.	
4.	If the State objects to an applicant's consistency	Within six (6) months

	determination, the applicant must receive DACF's objection letter within six (6) months from the State's receipt of a complete consistency review request or, alternatively, within the period agreed to by stay, as described in paragraph 3. DACF's objection letter must notify the federal agency and OCRM of the State's decision. The objection 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 U.S. 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*. (See Appeal of a State Objection below.) *15 CFR Part 930.64.*	of receipt of a complete application

2. Unlisted Activities

STEP		TIME
1.	If the State wishes to review an unlisted federal license or permit activity, or a listed license or permit activity outside the coastal zone which requires OCRM's approval pursuant to *15 CFR §§930.53(a)(2) and 930.54*, DACF will notify the federal agency and the applicant that DACF intends to request approval from OCRM to review the unlisted activity. *See 15 CFR §930.54.*	Within 30 days of DACF receiving notice of the application filed with the federal agency
2.	DACF notifies OCRM that the State seeks to review the unlisted activity and provides support for the	Concurrent with Step 1

	State's assertion that coastal effects are reasonably foreseeable.	
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 DACF's notice to OCRM
4.	OCRM will issue a decision to DACF, the federal agency and the applicant. OCRM must base its decision solely on whether the proposed activity's coastal effects are reasonably foreseeable. *15 CFR Part 930.54(C).*	Within 30 days of DACF's notice to OCRM
	If OCRM denies the request, the federal agency may issue the license or permit without consistency certification.	
	If OCRM approves the request for review, the applicant must follow the same procedure for reviewing listed licenses or permits, above.	

Note: A federal applicant may agree to subject its proposed activity to federal consistency review, in which case the OCRM approval process outlined above is not required and the proposed activity is handled as a listed activity.

D. Outer Continental Shelf (OCS) Plans

The procedure for submitting a consistency certification for OCS plans is similar to the procedure for federal license or permit activities, outlined above. See *15 CFR Part 930, subpart E* for details.

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

DACF 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, DACF 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 U.S. 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:

THE CORE LAWS OF THE MAINE COASTAL PROGRAM[12]

The following state statutes and rules, commonly referred to as core laws, establish the authorities and organizational structure that the state relies on to administer the Maine Coastal Program. The program's enforceable policies are contained in many, but not all, of the core laws. Some core laws, such as the Coastal Management Policies Act, or portions of core laws do not contain enforceable policies but address governance issues or articulate state policy that is implemented through enforceable policies under other core laws or local ordinances. Activities subject to federal consistency review are only required to be consistent with the enforceable policies of the program and thus not all of the core laws are applicable. Prior to completing a consistency certification or determination, applicants and federal agencies should consult with DACF to determine which core laws or sections of the core laws contain the applicable enforceable policies.

- **Natural Resources Protection Act (38 M.R.S. §§480-A to 480-S; and 480-U to 480-HH)**
    - Wetlands Protection rules (Department of Environmental Protection (DEP) rules ch. 310)
    - Coastal Sand Dune rules (DEP rules ch. 355), as amended effective October 26, 2014
    - Permit by Rule standards (DEP rules ch. 305)
    - Significant habitat rules (DEP rules ch. 335, as amended effective January 7, 2014; Department of Inland Fisheries and Wildlife (DIFW) rules ch. 10)
    - Scenic Impact rules (DEP rules ch. 315)

- **Site Location of Development Law (38 M.R.S. §§481 to 485-A; 486-A, -B; 487-A to 490-TT)**[13]
    - 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), as amended effective June 3, 2016

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[12] Last updated in January 2017 to reflect routine program changes approved in August 2016. The statutory provisions listed are those with force and effect as state law, as amended, on July 29, 2016, unless otherwise indicated. Rule provisions are those with force and effect as state law, as amended, on August 17, 2012, unless otherwise indicated.

- No adverse environmental impact standard (DEP rules ch. 375), as amended effective June 3, 2016
- 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), as amended effective June 3, 2016

- **MaineDOT Traffic Movement Permit Law (23 M.R.S. §704-A)**

- **Erosion Control and Sedimentation Law (38 M.R.S. §420-C)**

- **Wind Energy Act (35-A M.R.S. §§3451-3459)**
  - Scenic viewpoints of state or national significance on public reserved lands or publicly accessible pedestrian trails (Department of Conservation rules ch. 3)

- **Storm Water Management Law (38 M.R.S. §420-D)**
  - Storm Water Management rules (DEP rules ch. 500), as amended effective August 12, 2015
  - Storm Water Management Compensation Fees and Mitigation Credit (DEP rules ch. 501), as amended effective May 22, 2016
  - Direct Watersheds of Water bodies Most at Risk from New Development, and Sensitive or Threatened Regions or Watersheds (DEP rules ch. 502)

- **Maine Waterway Development and Conservation Act (38 M.R.S. §§630 to 636-A; and 640)**

- **Protection and Improvement of Air Law (38 M.R.S. §§581 to 610-A, -B)**[14]
  - DEP rules chapters: 100 (regulatory definitions), as amended effective May 22, 2016; 113 (growth offset regulations); 115 (major and minor source air emissions license regulations), as amended effective November 26, 2012; 117 (source surveillance); 118 (gasoline vapor recovery); 134 (RACT for VOCs emitting facilities); 138 (RACT for

[14] State air and water pollution control laws, established pursuant to 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).

nitrous oxides emitting facilities); and 140 (Part 70 air emission regulations), as amended effective December 1, 2012

- **Protection and Improvement of Waters Act**[15] **(38 M.R.S. §§361 to 367; 371-A to 372; 410-N; 411 to 424; 451 to 455; and 464 to 470)**

- **Nutrient Management Act (7 M.R.S. §§4201-4214)**

- **Land Use Regulation Law (12 M.R.S. §§681 to 689)**
  - List of Coastal Islands in the Jurisdiction of the Maine Land Use Planning Commission
  - Land Use Regulation Commission (LURC) Rules and Regulations, ch. 10 - Land Use Districts and Standards, as amended effective September 1, 2013[16]

- **Maine Hazardous Waste, Septage and Solid Waste Management Act (38 M.R.S. §§1301 to 1310-BB; 1316 to 1316-L; and 1317 to 1319-W)**

- **Uncontrolled Hazardous Substance Sites Law (38 M.R.S. §§1362 and 1367)**

- **Asbestos Law (38 M.R.S. §§1273 and 1281)**

- **Lead Abatement Law (38 M.R.S. §§1296 and 1298(3))**

- **Sale of Consumer Products Affecting the Environmental Law (38 M.R.S. §§1608 and 1609-10)**

- **Mercury-Added Products and Services Law (38 M.R.S. §§1661-1661-C; 1665-A, -B; and 1672)**

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[15] See footnote 2

[16] P.L. 2011 ch. 682 replaces LURC with the Maine Land Use Planning Commission, which is responsible for administration of laws and regulations, as amended, previously administered by LURC.

- **Solid Waste Management and Recycling Law (38 M.R.S. §§2101, 2133, sub-§2(A) and 2165)**

- **Priority Toxic Chemical Use Reduction Law (38 M.R.S. §§2321-2330)**

- **Wellhead Protection Law (38 M.R.S. §§1391-1399)**
  - Wellhead Protection: Siting of Facilities that Pose a Significant Threat to Drinking Water (DEP rules ch. 700)
  - Siting of Oil Storage Facilities (DEP rules ch. 692)
  - Rules and Regulations for Flammable and Combustible Liquids (Dept. of Public Safety rules ch. 34)

- **Nuclear Facility Decommissioning Laws (PL 1999 c. 739 and PL 1999 c. 741)**

- **Oil Discharge Prevention & Pollution Control Law (38 M.R.S. §§541 to 560)**

- **Oil Storage Facilities and Ground Water Protection Law (38 M.R.S. §§561; 562-A; 563, sub-§1(A) and 2; 563-A-B; 564; 565-A; 566-A; 568; 568-A-B; 569-A, -C; 570; and 570-A-G, I-M)**
  - Rules for Underground Storage Facilities (DEP rules ch. 691), as amended effective April 3, 2016

- **Maine Endangered Species Act (12 MRSA §§12801-12810 [inland species]; 12 M.R.S. §6971-6977 [marine species]; and 12 M.R.S. §10001, sub-§§19 and 62 [definitions])**
  - Endangered species (DIFW rules ch. 8)

- **General licensing and enforcement authorities; fees (38 M.R.S. §§341-D; 344 to 349; and 352-353, and 353-A, -B[fees])**[17]

- **Maine Rivers Act (12 M.R.S. §§403 and 407)**

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[17] NOAA has 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.

- **Marine Resources Law (12 M.R.S. §§6171 to 6192; and 6432-A)**

- **Subdivision Law (30-A M.R.S. §§4401 to 4408)**

- **Mandatory Shoreland Zoning Law (38 M.R.S. §§435 to 449)**
    - Guidelines for Municipal Shoreland Zoning Ordinances (DEP rules ch. 1000), as amended effective January 26, 2015

- **Coastal Management Policies Act (38 M.R.S. §§1801 to 1802)**

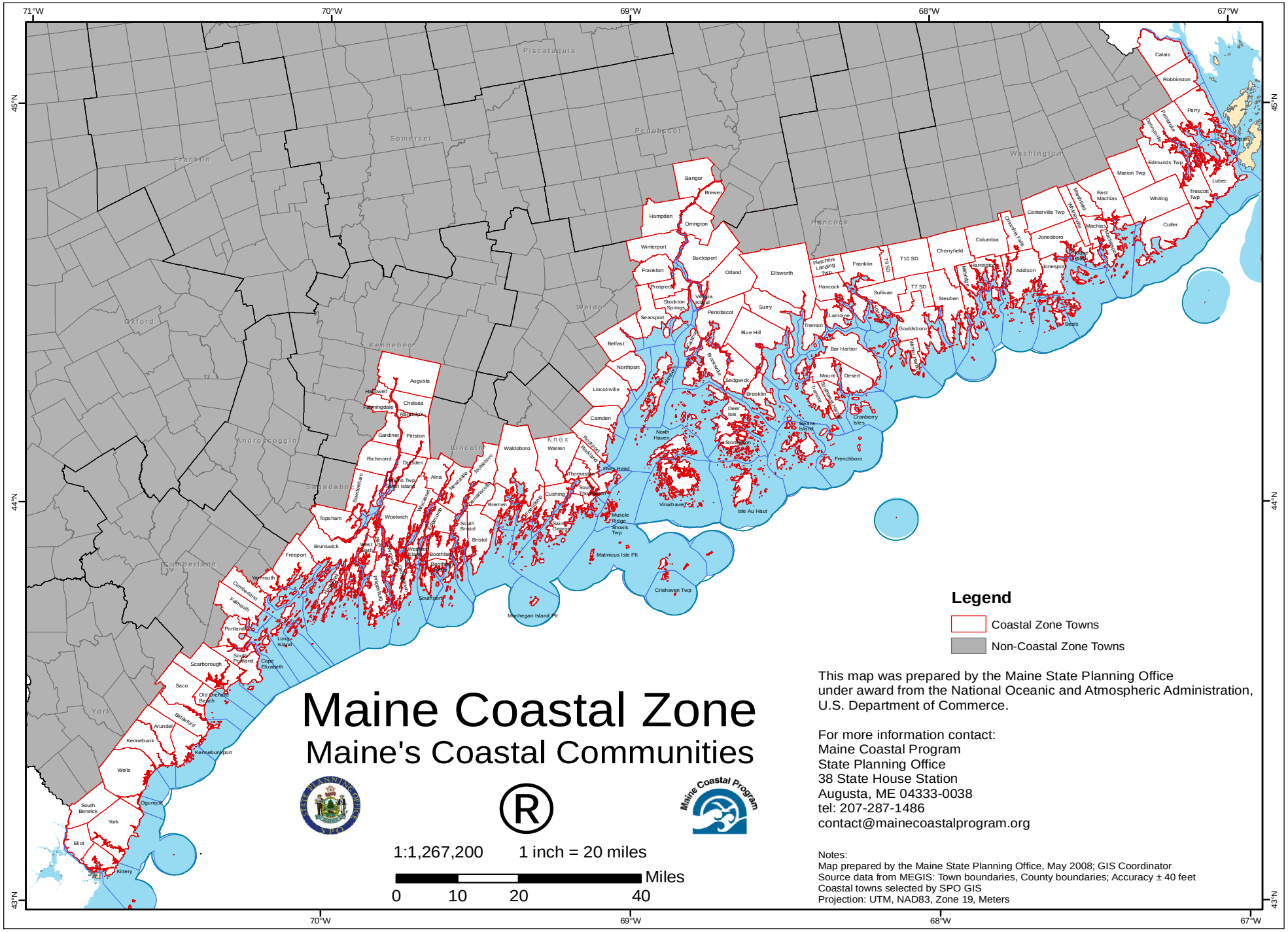
- **Coastal Barrier Resources System Act (38 M.R.S. §§1901 to 1905)**

Appendix B:
COMMUNITIES IN MAINE'S COASTAL ZONE

The "coastal zone" designated under Maine's coastal zone management program (see attached map) is comprised of the entire land and water area of the following cities, towns and other minor civil divisions that are located on waters subject to tidal influence as well as submerged lands and waters seaward to the three-mile limit of state ownership recognized under the federal Submerged Lands Act:

Addison
Alna
Arrowsic
Arundel
Augusta
Bangor
Bar Harbor
Bath
Beals
Belfast
Biddeford
Blue Hill
Boothbay
Boothbay Harbor
Bowdoinham
Bremen
Brewer
Bristol
Brooklin
Brooksville
Brunswick
Bucksport
Calais
Camden
Cape Elizabeth
Castine
Centerville Twp.
Chebeague
Chelsea
Cherryfield
Columbia
Columbia Falls
Cranberry Isles
Criehaven Twp.
Cumberland
Cushing
Cutler
Damariscotta
Deer Isle
Dennysville
Dresden
East Machias
Eastport
Edgecomb
Edmunds Twp.
Eliot
Ellsworth
Falmouth
Farmingdale
Frankfort
Franklin
Freeport
Frenchboro
Friendship
Gardiner
Georgetown
Gouldsboro
Hallowell
Hampden
Hancock
Harpswell
Harrington
Isle au Haut
Islesboro
Jonesboro
Jonesport
Kennebunk
Kennebunkport
Kittery
Lamoine
Lincolnville
Long Island

Lubec
Machias
Machiasport
Marion Twp
Marshfield
Matinicus Isle Plt.
Milbridge
Monhegan Island Plt.
Mount Desert
Muscle Ridge Shoals Twp.
Newcastle
Nobleboro
North Haven
Northport
Ogunquit
Old Orchard Beach
Orland
Orrington
Owls Head
Pembroke
Penobscot
Perkins Twp.
Perry
Phippsburg
Pittston
Portland
Prospect
Randolph
Richmond
Robbinston
Rockland
Rockport
Roque Bluffs
Saco
St. George
Scarborough
Searsport
Sedgewick
Sorrento
South Berwick
South Bristol
Southport
South Portland
South Thomaston
Southwest Harbor
Steuben
Stockton Springs
Stonington
Sullivan
Surry
Swans Island
Thomaston
Topsham
T7 SD
T8 SD
T9 SD
T10 SD
Tremont
Trenton
Trescott Twp.
Verona
Vinalhaven
Waldoboro
Warren
Wells
West Bath
Westport
Whiting
Whitneyville
Winter Harbor
Winterport
Wiscasset
Woolwich
Yarmouth
York


71°W
70°W
69°W
68°W
67°W
45°N
44°N
43°N
Piscataquis
Somerset
Penobscot
Franklin
Washington
Hancock
Waldo
Oxford
Kennebec
Androscoggin
Lincoln
Knox
Sagadahoc
Cumberland
York
Legend
Coastal Zone Towns
Non-Coastal Zone Towns
Maine Coastal Zone
Maine's Coastal Communities
1:1,267,200
1 inch = 20 miles
Miles
0
10
20
40
This map was prepared by the Maine State Planning Office under award from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.
For more information contact:
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Notes:
Map prepared by the Maine State Planning Office, May 2008; GIS Coordinator
Source data from MEGIS: Town boundaries, County boundaries; Accuracy ± 40 feet
Coastal towns selected by SPO GIS
Projection: UTM, NAD83, Zone 19, Meters