



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

Mr. David Keeley
Director
Maine Coastal Program
State Planning Office
184 State Street
Augusta, Maine 04333

NOV - 2 1991

Dear Mr. Keeley:

The Office of Ocean and Coastal Resource Management (OCRM) has completed its review of the changes to the Maine Coastal Program (MCP) which were received at this office on October 6, 1994. We concur with your determination that the following changes constitute routine program implementation, and we approve their incorporation into the MCP pursuant to 15 CFR 923.84. After you publish notice of this approval, Federal consistency will apply to these changes.

1. Protection & Improvement of Waters Act
2. Land Use Regulation Law
3. Subdivision Law
4. Protection & Improvement of Air Law
5. Maine Hazardous Waste, Septage & Solid Waste Management Act
6. Oil Discharge & Pollution Control Law
7. Marine Resources Law
8. Natural Resources Protection Act
9. Sand Dune Rules

At this time, we cannot concur with your determination that the following changes constitute routine program implementation because we lack sufficient information.

1. Site Location of Development Law and Regulations
2. Maine Endangered Species Act & Essential Habitat Rules
3. Permit by Rule Standards
4. Mandatory Shoreland Zoning and Subdivision Law


Basically, we need a more complete analysis of how the changes affect the four review criteria listed at 15 CFR 923.80: boundaries; uses subject to the management program criteria or procedures for designating or managing areas of particular concern or areas for preservation; and consideration of the national interest in siting facilities of greater than local importance.

Additionally, we received letters of comment on several of the changes. In order to fully analyze the proposed changes we need to know how the MCP responded to the comments. In particular, it would be useful to get your response to the concerns and questions listed on the attached sheets.



My staff is willing to work closely with you as you develop this additional information. Please call Pat Scott at (301) 713-3105 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Clement Lewsey'.

Clement Lewsey
Chief
Coastal Programs Division

Attachment

Additional Information Needed on Specific Program Changes:

1. Site Location of Development Law and Implementing Regulations

Definitions:

Sec. 482.2 - It is unclear why the definition of "development which may substantially affect the environment" was revised to exclude hazardous activities, multi-unit housing developments located in the shoreland area and certain borrow pit operations under acres in size. Your analysis should indicated under what state authorities these activities are now regulated. Whether or not these are core authorities will make a difference as to adequate coverage under the Maine Coastal Program. Is there documentation to support the removal of these activities from the Site Location of Development Law?

Sec. 482.4 - In adding federal agencies to the list of "persons" affected by the Site Law does not require federal agencies to obtain a state permit under the Site Location of Development Law for purposes of satisfying the Federal Consistency Provisions found under Section 307 of the Coastal Zone Management Act, as amended. OCRM has discussed this issue with the MCP and DEP staff during the past several years, and have previously clarified this point in several letters to the state.

Sec. 489-A. Municipal review of development - Who determines whether a municipality has met all of the appropriate provisions listed Section 489A.2 (e.g., under Title 30-A, chapter 187)? How is coordination with the relevant state agencies such as the DECD, etc.? Is this delegation considered an unfunded mandate for local governments? How many municipalities are currently registered under this section and how many, if any, has been suspended for non-compliance to the criteria listed?

2. Maine Endangered Species Act & Essential Habitat Rules

Additional information should be included in the state's analysis of the impact of incorporating these authorities into the MCP. For example, the state's analysis should discuss the scope of the Act and its implementing rules in terms of the activities/uses and the coverage provided under the law. In discussing the scope of the activities/uses included under the Act, please elaborate on any species covered under this Act that is not included under the NRPA or other approved core authorities for the MCP. The discussion could result in a finding of no substantial changes to the authorities of the MCP regarding the uses subject to the management program, criteria for designating or managing areas of particular concern or other special management areas, etc.

3. Permit by Rule Standards

Because the permit by rule standards have not previously been approved for incorporation into the MCP, they should not be the basis for federal consistency reviews pursuant to Section 307 of the Coastal Zone Management Act, as amended.

The State's analysis should include more information on the scope and intent of the permit by rule standards. Specifically, the scope of the rules should be discussed in contrast with existing authorities under the MCP (i.e., a discussion of the uses/activities covered by the rules and where these differ from existing authorities) and an assessment of how the rules impact the current uses that are subject to the MCP, procedures for designating areas of particular concern, etc.. .

4. Mandatory Shoreland Zoning and Subdivision Law

While OCRM has no specific concerns with changes included under this law, we did receive comments from the Coastal Waters Project in Rockland, Maine, in which Ron Huber, Director, questioned the coverage under Section 439A.2 relative to the regulation of buildings "over the water." Since today is a state shut down day in Maine, I was unable to contact anyone at the MCP. Keeley is not available today and he will be in Kennebunkport, ME Tuesday - Thursday attending a Gulf of Maine Conference. I recommend flagging this issue and not approving it in the letter to the state which should go out no later than Thursday of this week.