



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

Ms. Kathleen Leyden  
Coastal Program Manager  
Maine State Planning Office  
State House Station 38  
184 State Street  
Augusta, ME 04333-0038

**JUL 06 2011**

Dear Ms. *Kathleen* Leyden:

Thank you for the Maine State Planning Office's May 17, 2011 request that changes to the statutes described below be incorporated into the Maine Coastal Management Program (CMP) as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and Office of Ocean and Coastal Resource Management (OCRM) Program Change Guidance (July 1996):

- Department of Environmental Protection's permit by rule regulations,
- Department of Inland Fish and Wildlife's Essential Wildlife Habitat and Significant Wildlife Habitat, and
- Department of Conservation Scenic viewpoints rules.

OCRM received the request on May 17, 2011, and OCRM's decision deadline was extended until July 6, 2011.

Based on our review of your submission, we concur that the changes to the statutes described above are RPCs and we approve the incorporation of the changes as enforceable policies of the Maine CMP. Federal Consistency will apply to the approved changes only after you publish notice of this approval pursuant to 15 C.F.R. § 923.84(b)(4). Please include in the public notice the list of changes to enforceable policies provided in this letter, and please send a copy of the notice to OCRM.

### **CHANGES APPROVED**

See enclosed list of the changes incorporated into the Maine CMP.



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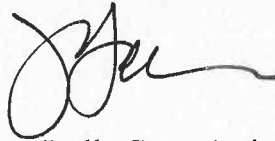


**PUBLIC AND FEDERAL AGENCY COMMENTS**

OCRM received a request for clarification from the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). None of the questions presented by BOEMRE pertained to aspects of the proposed RPC that would affect its approvability.

Thank you for your cooperation in this review. If you have any questions, please contact Becca Newhall at 978-281-9237.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joelle Gore', with a long horizontal flourish extending to the right.

Joelle Gore, Acting Chief  
Coastal Programs Division

Enclosure: Policies Approved and Incorporated into the Maine Coastal Management Program

**Routine Program Changes to the MAINE COASTAL MANAGEMENT PROGRAM: Changes to Department of Environmental Protection Rules, Chapter 305 (permit by rule) and Department of Inland Fisheries and Wildlife Rules, Chapter 8 (essential habitat) and 10 (significant wildlife habitat), and Department of Conservation Rules, Chapter 3 (scenic areas/wind power development)**

**May 2011**

The routine program changes listed in this table are from recent amendments to Chapter 305 of rules administered by the Department of Environmental Protection (DEP), which implement provisions of the Natural Resources Protection Act (NRPA); Chapters 8 and 10 of the rules administered by the Department of Inland Fisheries and Wildlife (DIFW), which implement the Maine Endangered Species Act (MESA) and NRPA, respectively; and Chapter 3 of the rules administered by the Department of Conservation, which implement wind power development-related provisions in the Site Location of Development Act (Site Law) and land use and development laws administered by the Maine Land Use Regulation Commission (LURC laws). OCRM has previously approved these DEP and DIFW rules and the NRPA and MESA provisions that they implement as enforceable policies. OCRM has also approved pertinent provision in the Site Law and LURC laws implemented by DOC rules chapter 3 as enforceable policies.

Except as otherwise noted, the MAINE COASTAL MANAGEMENT PROGRAM seeks to incorporate each of the changes described below into its coastal program as enforceable policies for purposes of federal consistency review. Rule provisions identified in the text as “notes” are not proposed for inclusion since they are for explanatory purposes only and do not have force and effect as state law. Likewise, changes marked with an asterisk (\*) involve state procedural or program administration matters and are not proposed for inclusion as enforceable policies.

NOTE: See Appendix B for the text of the rules as amended and related explanatory information.

<b>Name/Description of State or Local Law/Regulation/Policy/Program Authority or Change</b>	<b>State Legal Citation</b>	<b>Enforcement Mechanism(s)</b>	<b>Date of State Adoption</b>	<b>Date Effective in State</b>
<b>ADDED:</b>				
Clarifies design and location of footpath, stairs or steps allowed under DEP rules Ch. 3(2)(C)(1)(e), as amended (see below).	DEP rules Ch. 305(2)(C)(5-6)	Permit by rule	6.18.09	7.15.09
Requires scaled drawing of structure in submission for permit by rule re: replacement of a structure.	DEP rules Ch. 305(4)(B)(4)	Permit by rule	6.18.09	7.15.09
Requires scaled drawing of structure in submission for permit by rule re: shoreline stabilization; renumbers subsections.	DEP rules Ch. 305(8)(B)(3-4)	Permit by rule	6.18.09	7.15.09
Specifies that riprap must be constructed in accordance with plans or drawings submitted for approval.	DEP rules Ch. 305(8)(C)(20)	Permit by rule	6.18.09	7.15.09
Designates scenic viewpoints of state or national significance on public reserved lands or publicly accessible trails (one of which is in the coastal zone) for the purpose of Maine’s grid-scale wind energy development siting laws.	DOC rules Ch. 3	Site Law or LURC permit, as applicable	3.29.10	4.4.10
Adds provision for handbook explaining MESA species listing guidelines and criteria.	DIFW rules Ch. 8.02(A)(4)*	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Replaces DIFW rules ch. 10, which defines “significant wildlife habitat”	DIFW rules Ch. 10	NRPA permit	6.24.09	10.16.09

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under NRPA, and replaces it with language from NRPA and DEP's rules regarding "significant wildlife habitat" (DEP rules ch. 335). <u>Note:</u> OCRM has previously approved DEP rules ch. 335 and pertinent, related NRPA provisions as enforceable policies.				
<b>AMENDED:</b>				
Adds language that limits access ways within 75 feet of a protected resource for which there is deemed to be no practicable alternative to a footpath, stairway or steps.	DEP rules Ch. 305(2)(C)(1)(e)	Permit by rule	6.18.09	7.15.09
Clarifies that some intake pipes and wells adjacent to great ponds may be exempt from permit by rule requirements.	DEP rules Ch. 305(3)(A)(1)	Permit by rule	6.18.09	7.15.09
Clarifies and makes related technical changes in existing provision regarding applicability of permit by rule regarding replacement of structures.	DEP rules Ch. 305(4)(A)	Permit by rule	6.18.09	7.15.09
Amends the definition of rip rap in permit by rule re: replacement of structures to clarify types of stone that may be used.	DEP rules Ch. 305(4)(D)(8)	Permit by rule	6.18.09	7.15.09
Amends permit by rule for shoreline stabilization to provide that it does not apply to activities in a coastal wetland (for which an individual NRPA permit is required) and does apply to establishment of vegetation adjacent to any protected resource.	DEP rules Ch. 305(8)(A)(1)	Permit by rule	6.18.09	7.15.09
Amends permit by rule for shoreline stabilization to provide that only qualified projects that affect 100 feet or less of shoreline are eligible for permit by rule approval.	DEP rules Ch. 305(8)(A)(4)	Permit by rule	6.18.09	7.15.09
Makes change to clarify permit by rule for shoreline stabilization does not apply to a project in a coastal wetland.	DEP rules Ch. 305(8)(C)(2)	Permit by rule	6.18.09	7.15.09
Makes a technical correction.	DEP rules Ch. 305(8)(C)(4)(d)	Permit by rule	6.18.09	7.15.09
Clarifies crushed stone must be placed under riprap.	DEP rules Ch. 305(8)(C)(8-9)	Permit by rule	6.18.09	7.15.09
Clarifies how excavated material must be handled under permit by rule for shoreline stabilization.	DEP rules Ch. 305(8)(C)(17) (as renumbered)	Permit by rule	6.18.09	7.15.09
Clarifies requirements for re-establishment of disturbed vegetation under permit by rule for shoreline stabilization.	DEP rules Ch. 305(8)(C)(18) (as renumbered)	Permit by rule	6.18.09	7.15.09
Technical changes - renumbering of subsections.	DEP rules Ch. 305(8)(C)	Permit by rule	6.18.09	7.15.09

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Amends the definition of rip rap in permit by rule re: shoreline stabilization to clarify types of stone that may be used.	DEP rules Ch. 305(8)(D)(2)	Permit by rule	6.18.09	7.15.09
Amends the definition of rip rap in permit by rule re: utilities crossings to clarify types of stone that may be used.	DEP rules Ch. 305(9)(D)(4)	Permit by rule	6.18.09	7.15.09
Amends standards re: culvert crossings under the permit by rule re: stream crossings to clarify that the entire culvert must be at or below stream bed elevation and riprap installed as required under permit by rule standards for shoreline stabilization, and to make a technical correction.	DEP rules Ch. 305(10)(C)(10)	Permit by rule	6.18.09	7.15.09
Amends the definition of rip rap in permit by rule re: stream crossings to clarify types of stone that may be used.	DEP rules Ch. 305(10)(D)(6)	Permit by rule	6.18.09	7.15.09
Makes a technical correction.	DEP rules Ch. 305(11)(B)(2)	Permit by rule	6.18.09	7.15.09
Clarifies that the permit by rule habitat creation or enhancement and water quality improvement activities applies to activities in all protected resources covered by NRPA.	DEP rules Ch. 305(13)(A)(1)	Permit by rule	6.18.09	7.15.09
Makes a technical correction and adds the US Forest Service to the definition of “public natural resources agency” under permit by rule habitat creation or enhancement & water quality improvement.	DEP rules Ch. 305(13)(D)(2)	Permit by rule	6.18.09	7.15.09
Clarifies that an applicant needs to provide the State’s submerged lands program a copy of the design for a project proposed for approval under the permit by rule for public boat ramps if the project involves work below the mean low water line.	DEP rules Ch. 305(15)(B)(4)	Permit by rule	6.18.09	7.15.09
Makes a technical correction and adds the US Forest Service to the definition of “public natural resources agency” under permit by rule habitat creation or enhancement and water quality improvement.	DEP rules Ch. 305(15)(D)(2)	Permit by rule	6.18.09	7.15.09
In permit by rule re: activities in, on or over significant vernal pool habitat, allow new activities in existing developed areas without maintaining 75% forest cover.	DEP rules Ch. 305(19)(C)(2)	Permit by rule	6.18.09	7.15.09
In permit by rule re: activities in, on or over significant vernal pool habitat, clarifies definition of “existing developed area.”	DEP rules Ch. 305(19)(D)(2)	Permit by rule	6.18.09	7.15.09
In permit by rule re: activities in, on or over high or moderate value inland	DEP rules Ch. 305(20)(D)(2)	Permit by rule	6.18.09	7.15.09

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waterfowl and wading bird habitat, or shorebird nesting, feeding, and storage area, clarifies definition of “existing developed area.”				
Adds specified/mapped areas in Cape Elizabeth and Old Orchard to the “essential habitat” for piping plover under the Maine Endangered Species Act (MESA).	DIFW rules Ch. 8 (Index to Essential Wildlife Habitats by Town)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	3.25.10	4.5.10
Corrects cross reference.	Corrects cross reference	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Deletes language to reflect accurately MESA’s division of management authority between DMR (marine listed species) and DIFW (all other species) over threatened and endangered species.	DIFW rules Ch. 8.01(B)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Corrects a cross reference; clarifies Maine-based scope of the rules.	DIFW rules Ch. 8.02(A)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Makes technical, formatting edits; corrects cross reference.	DIFW rules Ch. 8.02(A)(1-2)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Clarifies meaning of term “endemism” under rules.	DIFW rules Ch. 8.02(A)(2)(f)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Corrects a cross reference.	DIFW rules Ch. 8.02(A)(3)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Amends rule to require DIFW to review listed species status every eight as opposed to five years.	DIFW rules Ch. 8.02(B)(1)*	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Clarifies process and information required to propose that DIFW recommend listing a species under MESA.	DIFW rules Ch. 8.02(B)(2)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Corrects cross-reference; makes technical corrections.	DIFW rules Ch. 8.05 (introductory section)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Makes technical edits.	DIFW rules Ch. 8.05(B)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Corrects cross references and makes other technical edits.	DIFW rules Ch. 8.05(C)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Clarifies designation criteria re: piping plover and least tern nesting, feeding, and brood-rearing areas.	DIFW rules Ch. 8.05(C)(3)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Provides for availability of essential habitat maps for review at all DIFW offices.	DIFW rules Ch. 8.05(C)(4)(a)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09



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Deletes references to bald eagle nests.	DIFW rules Ch. 8 (Index to Essential Wildlife Habitats by Town)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
<b>DELETED</b>				
Deletes language to clarify permit by rule for shoreline stabilization does not apply to project in coastal wetland.	DEP rules Ch. 305(8)(C)(17)	Permit by rule	6.18.09	7.15.09
In permit by rule for restoration of natural areas, removes requirement that DIFW approve removal of a beaver dam in accordance with NRPA exemption re: beaver dam removal.	DEP rules Ch. 305(12)(B)(4)	Permit by rule	6.18.09	7.15.09
Removes outdated list of MESA-listed species. MESA species are now listed by the Legislature in statute.	DIFW rules Ch. 8.04	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Deletes provisions re: bald eagle nest sites in accordance with de-listing of the bald eagle under MESA.	DIFW rules Ch. 8.05(A)	Site Law, NRPA, and LURC permits; MESA “take”-related provisions	9.27.09	12.5.09
Repealed and replaced - see above.	DIFW rules Ch. 10	n/a	6.24.09	10.16.09