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# MAINE GUIDE TO FEDERAL CONSISTENCY REVIEW

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**Maine Coastal Program**  
**5<sup>th</sup> Edition – Update 5, revision 5**

**Maine Guide to  
Federal Consistency Review**

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**MAINE DEPARTMENT OF MARINE RESOURCES**

**Maine Coastal Program**

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## I. INTRODUCTION

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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 Marine Resources (“DMR”) administers the program, which provides funding for policy initiatives, technical assistance, and enforcement of state laws that affect Maine’s coastal uses or resources.

A key 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 Program’s “enforceable policies.” State land use and environmental laws approved by NOAA for inclusion in the Program together with state air and water pollution control laws which are established pursuant to the federal Clean Air Act and Clean Water Act serve as the core laws that provide Maine’s enforceable policies. 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.<sup>1</sup>

**Note:** This guidance document describes the federal agency actions subject to review for federal consistency pursuant to the State’s authority under the CZMA, and the core laws that contain the enforceable policies of Maine’s coastal zone management program. 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 NOAA’s regulations governing the federal consistency review process which are referenced throughout this document and the federal Coastal Zone Management Act, 16 U.S.C. §1451 et seq.

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<sup>1</sup> See 15 Code of Federal Regulations (C.F.R.) Part 930 (2022).

## II. THE MAINE COASTAL ZONE

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Maine's federally approved coastal zone extends from the inland boundary of coastal municipalities or unorganized townships or plantations that contain tidal waters seaward to the outer limit of the State's territorial ownership three nautical miles from the baseline from which the territorial sea is measured. Appendix B provides a map and list of the municipalities and unorganized townships and plantations located in the Maine coastal zone. NOAA's approval is required to change the boundaries of the designated coastal zone. Only those federal actions that may have reasonably foreseeable effects on any land or water use or natural resources of Maine's CZMA-designated coastal zone are subject to federal consistency review. This may include federal agency activities 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* 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 C.F.R. Part 930, Subpart C.*
- ◆ Activities proposed by non-federal applicants for which a federal license or permit is required that are in or in some cases outside the coastal zone, affecting any land or water use or natural resource of the coastal zone (“Federal License or Permit Activities”). *15 C.F.R. 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 C.F.R. 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 C.F.R. Part 930, Subpart F.*

#### **A. Federal Agency Activities<sup>2</sup>**

##### 1. Federal Agencies’ Consistency Obligations

A federal agency undertaking an activity that the federal agency determines will affect any coastal use or resource must provide a consistency determination to DMR for review by the State. *15 C.F.R. §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<sup>3</sup> that, in the State’s judgment, are matters for which a federal consistency determination is typically required:

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<sup>2</sup> 15 C.F.R. §930.31 provides a detailed definition of the term “federal agency activity.”

<sup>3</sup> Maine Coastal Program document (Final Environmental Impact Statement, August 1978), Appendix E2, p. 295.

- ❖ 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, or maintenance or repair of such facilities
  - ✓ 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:** As explained above, the responsible federal agency must submit a consistency determination for any federal agency activity that it determines 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 C.F.R. §930.34(b). Some federal agency activities may not in fact have coastal effects in which case consistency review is not required. DMR monitors unlisted federal activities and strongly encourages federal agencies to contact the Maine Coastal Program as early as possible in their project planning process to discuss potential federal consistency review requirements.

## 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 DMR in the following circumstances:

- ◆ the activity is one of the listed activities described in the subsection 1, above, or is an unlisted activity that DMR 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 C.F.R. §930.35(a)*.

The federal agency must notify DMR of the basis for its negative determination at least 90 days prior to final federal approval of the activity. *15 C.F.R. §930.35(b), (c)*. DMR 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 for Coastal Management (OCM). *15 C.F.R. §930.35(e) and Part 930, Subpart G*.

3. Environmentally Beneficial and Other Activities for which a Project-Specific Consistency Determination May Not Be Required. The State and a federal agency may agree to exclude an "environmentally beneficial" activity from federal consistency review. *15 C.F.R. §930.33(a)(4)* (definition of "environmentally beneficial activities"). A federal agency which is planning an action that it thinks meets this definition and which is interested in this option should contact DMR, 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.

OCM'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")<sup>4</sup>; phased consistency determinations where, for example, a development activity will be undertaken in discrete, related steps<sup>5</sup>; and general consistency determinations that address a repeated activity other than a development activity.<sup>6</sup>

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<sup>4</sup> *15 C.F.R. §930.33(a)(3)*

<sup>5</sup> *15 C.F.R. §930.36(d)*

<sup>6</sup> *15 C.F.R. §930.36(c)*



## **B. Activities Requiring a Federal License or Permit**<sup>7</sup>

### 1. Listed Activities

A federal license or permit, or other form of federal approval, certification, or authorization, listed below, for a proposed activity located within Maine's designated coastal zone may not be issued until the State concurs that the proposed activity is consistent with the enforceable policies of the Maine Coastal Program. For these "listed activities"<sup>8</sup> 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 pertinent state core law license and permit applications constitutes the State's consistency review, and decisions on such applications provide a basis for the State's consistency concurrence or objection.

#### **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.

Note: The State has reviewed and concurred with the United States Army Corps of Engineers' Maine General Permit (MGP) now in effect as a federal agency activity; accordingly, projects eligible for approval under the MGP are not individually subject to consistency review.<sup>9</sup>

#### **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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<sup>7</sup> 15 C.F.R. §930.51 (defines the term "federal license or permit").

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

<sup>9</sup> See 15 C.F.R. §930.31(d).

### **Environmental Protection Agency:**

- National Pollution Discharge Elimination System (NPDES) permit<sup>10</sup> 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 Activities**

DMR, on behalf of the State, may request OCM's approval for a consistency review of an activity proposed to occur *inside* the coastal zone that requires a federal license or permit which is not listed in its coastal zone management program ("unlisted activity"). See subsection 1, above ("listed activities"). In addition, DMR may request such approval regarding a listed or unlisted activity that is proposed to occur *outside* the coastal zone and any additional area covered by a "geographic location description"

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<sup>10</sup> Note: NPDES permits issued by DEP under delegated authority are state actions not subject to federal consistency review.

("GLD") previously approved by OCM which authorizes consistency review of the proposed activity.<sup>11</sup> 15 C.F.R. §§930.53(a)(2) and 930.54. If OCM determines that the State has demonstrated that the proposed activity has reasonably foreseeable effects on Maine's coastal resources or uses, OCM must grant the State's request. Alternatively, a federal applicant may agree to subject its proposed activity to federal consistency review, in which case OCM's approval is not required. 15 C.F.R. §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 C.F.R. Part 930, Subpart E.

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

Federal assistance activities that affect coastal uses or resources may be subject to consistency review. 15 C.F.R. Part 930, Subpart F. The term "federal assistance activities" means federal grants, contracts, loans, subsidies, guarantees, insurance, or other forms of financial aid provided to units of state or local government or any related public entity such as special purpose district (collectively referred to as "applicant agency.") See 15 C.F.R. §§930.91 and 930.92.

An applicant agency is required to submit a consistency determination for any proposed federal assistance activity that is listed in the state coastal management program as a type of activity that will have a reasonably foreseeable effect on any coastal use or resource and occurring within the coastal zone. 15 CFR §930.94. Maine's program does not currently list any such federal assistance activities. Consequently, federal assistance activities are generally not subject to consistency review. However, the State may in its discretion review a federal assistance activity with reasonably foreseeable coastal effects that is not listed in its program or is outside its coastal zone as provided by 15 C.F.R. §930.98. Projects supported by federal assistance activities, like activities funded in other ways, are subject to state licensing and permitting requirements under the core laws of Maine's coastal program. Federal agencies which are planning funding or financial assistance activities for projects that are in or may affect Maine's coastal zone are encouraged to contact the Maine Coastal Program to discuss the need for consistency review.

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<sup>11</sup> The State currently has no GLD authorizing consistency review of activities outside its designated coastal zone.

## **IV. ENFORCEABLE POLICIES**

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### **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. The enforceable policies of the Maine Coastal Program are contained within select state statutes and their implementing rules. *See* Appendix A. These statutes and rules are commonly referred to as the Program's "core laws." In accordance with NOAA's CZMA rules, DMR periodically (usually following each legislative session) submits amendments or additions to the state core laws to OCM for its review and approval of them as changes to the MCP. Following publication of OCM's approval, the revised state core laws, as applicable, may be used for federal consistency review.

DMR coordinates the consistency review process as necessary, serving 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. Applicants and federal agencies are strongly encouraged to consult with DMR to determine the applicable enforceable policies. Since most core laws are administered by DEP, DMR will commonly refer questions regarding applicable enforceable policy(ies) to DEP, which in turn typically conducts the consistency review and makes the findings of fact and conclusions of law that serve as the basis for the state response to consistency determination or certification.

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

Maine's consistency review process uses the same standards and, to the extent practicable under OCM's rules governing the consistency review process, 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 a specific federally approved enforceable policy or policies. *15 C.F.R. §§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, activities requiring a federal license or permit, 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 DMR 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, DMR will refer the federal agency or applicant to DEP to discuss enforceable policies applicable to the proposed activity. If necessary, DMR 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 C.F.R. §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 C.F.R. §930.32(a)(2).

The State has 60 days to respond to a consistency determination. 15 C.F.R. §930.41. This review period begins when:

- ◆ the State receives a consistency determination from the federal agency; and

- ◆ the information which the federal agency provides in support of the determination is sufficient to perform the review. *See 15 C.F.R. §§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 C.F.R. §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 C.F.R. §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 C.F.R. §930.41(a).* The State and the federal agency may agree to a longer review period. *15 C.F.R. §§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 C.F.R. §§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 DMR (“submission”). | At least 90 days prior to final approval by the federal agency |
|----|---|--|

**Note:** Following consultation with DMR, the federal agency may submit all materials needed for consistency review directly to the lead review agency (usually DEP), provided that DMR receives, at a minimum, a copy of the consistency determination referencing materials separately submitted to the lead review agency. Electronic submissions via e-mail are acceptable and encouraged.

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|----|---|--------------------------------|
| 2. | DMR sends a copy of the submission to 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 <i>15 C.F.R. §930.39(a)</i> ). | Within 14 days                 |

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, DMR, in consultation with the lead reviewing agency (typically DEP), will notify the federal agency in writing. *See 15 C.F.R. §930.41(a)*. The lead reviewing agency works with the federal agency and DMR, as needed, to address any information needs. The reviewing agency notifies DMR 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 completed permit application(s). The State may request submission of additional information during the review period as needed to complete the consistency review.

4. When 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 C.F.R. §930.42*. In most cases, the public comment period will be no less than 14 days, although DEP and other review agencies may accept and consider comments received up to the issuance of their 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), DMR, and the Department of Inland Fisheries and Within 60 days

Wildlife (DIFW) as needed. If the agency requires additional time to perform its review, it will notify DMR as soon as possible. In consultation with the lead reviewing agency, DMR will then request an extension from the federal agency.

6. The lead reviewing agency makes its factual findings regarding the proposed federal activity's consistency with applicable enforceable policies and transmits them to DMR. These findings and conclusions, often in the form of a DEP decision and order that grants or denies permit approval under the pertinent core law(s) as well as water quality certification pursuant to Section 401 of the Clean Water Act, provide a basis for the State's response (concurring with or objecting to the federal agency's consistency determination).
7. Based on and in accordance with the lead reviewing agency's findings and decision, DMR notifies the federal agency in writing of the State's concurrence with or objection to the consistency determination for the proposed federal activity. The state response often incorporates by reference the pertinent DEP decision and order.

If the State objects to a federal agency's consistency determination, DMR's notification will: (a) indicate the specific enforceable policy(ies) 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 objection is based on a finding that the federal agency has failed to supply sufficient information, DMR will describe the nature of the requested information and why it is needed. *See 15 C.F.R. §930.43(b).*

Concurrent with Step 6

Within 90 days



8. DMR will notify the Director of OCM in all cases where the State objects to a federal agency's consistency determination. *15 C.F.R. §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 OCM. *15 C.F.R. §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. Activities Requiring a Federal License or Permit**

A non-federal applicant for a federal license or permit (e.g., a private citizen, business entity, or state or local government unit) shall provide with its application to the authorizing federal agency and to DMR 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 state permit applications provide the information needed to initiate review. The State's CZMA consistency review is integrated into its process for review of pertinent state core law license or permit applications.<sup>12</sup> Consequently, in most instances, receipt of all the necessary state core law licenses and permits constitutes the basis for State's concurrence with the applicant's consistency certification, and no further federal consistency review is required. State licensing and permitting processes provide opportunities for public notice and comment on the project's consistency with applicable enforceable policies. Receipt of pertinent municipal approvals is required as a standard condition of many state core law license and permit approvals. Applicants for federal permits may wish to contact DMR regarding applicable federal consistency

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<sup>12</sup> See 15 C.F.R. §930.6(c).

procedures and enforceable policies. In most instances, DMR will refer questions regarding the applicable core laws to DEP which administers most of the Program's core laws.

Procedures for listed and unlisted activities are outlined below.

### 1. Listed Activities

STEP	TIME
<p>1. For listed activities within the State's coastal zone, the federal applicant includes as part of its federal application(s) and provides to DMR 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, related information specified in 15 C.F.R. §930.58, and the applicable completed state core law license and permit applications ("state applications") constitute the necessary data and information for consistency review.<sup>13</sup> The applicant provides notice of opportunity to comment regarding its consistency certification by including CZMA-related language in the Notice of Intent to File the pertinent core law application(s). <i>See, e.g.,</i> the CZMA language provided for applicants' use in the Notice of Intent to File in DEP's application form for a Natural Resources Protection Act or Site Location of Development Act permit. Applicants may contact DMR to discuss questions regarding consistency certification and related public notice.</p>	<p>At or near the time federal permit application(s) is filed, although the consistency certification may be provided later while the federal application is under review</p>

For listed activities on excluded federal lands within the coastal zone, the applicant must submit the necessary data and information to demonstrate consistency, including the information specified in 15 C.F.R. §930.58 and the applicable completed state license and permit applications required for the

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<sup>13</sup> Maine Coastal Program document, *supra*, p. 298

proposed activity.<sup>14</sup> 15 C.F.R. §930.58; 15 C.F.R. §930.53.

In reviewing the certification and necessary data and information, the lead state agency (typically DEP) will make the findings of fact and conclusions of law under the applicable enforceable policies using the same procedures and standards used in evaluating permit and license applications under the core laws.

Within 30 days

The lead review agency will review the applicant's submission for completeness; and DMR will 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 the consistency certification and all necessary data and information has been received. The lead review agency may request additional information during the review period.

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. Based on and in accordance with decisions on applicable state license and permit applications, DMR will respond to the permit applicant and federal agency that the State concurs with or objects to the applicant's certification 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 or the longer review period established pursuant to a stay agreement (see below), the project is deemed consistent. In some instances, the State may condition its concurrence on receipt of applicable licenses or permits.

Within six (6) months of receipt of a complete review application

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<sup>14</sup> Maine Coastal Program document, *supra*, p. 296

3. DMR and the 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 projects using state processes for review of applications under applicable core laws.
  
4. If the State objects to an applicant's consistency certification, the applicant must receive DMR'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. DMR's objection letter must notify the federal agency and OCM 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 C.F.R. Part 930, Subpart H*. (See Appeal of a State Objection below.) *15 C.F.R. Part 930.64*.

Within six (6) months of receipt of a complete application

## 2. Unlisted Activities

STEP	TIME
1. If the State wishes to review an unlisted activity, or a listed or unlisted activity outside the coastal zone which requires OCM's approval pursuant to <i>15 C.F.R. §§930.53(a)(2) and 930.54</i> , DMR will notify the federal agency and the applicant that DMR intends to request approval from OCM to review the unlisted activity. <i>See 15 C.F.R. §930.54.</i>	Within 30 days of DMR's receipt of notice of the application filed with the federal agency
2. DMR notifies OCM that the State seeks to review the unlisted activity and provides support for the State's assertion that coastal effects are reasonably foreseeable.	Concurrent with Step 1
3. The federal agency and the applicant may submit comments to OCM regarding whether the State should be allowed to review the activity.	Within 15 days of DMR's notice to OCM
4. OCM will issue a decision to DMR, the federal agency and the applicant. OCM must base its decision solely on whether the proposed activity's coastal effects are reasonably foreseeable. <i>15 C.F.R. Part 930.54(C).</i>	Within 30 days of DMR's notice to OCM
If OCM denies the request, the federal agency may issue the license or permit without consistency certification.	
If OCM approves the request for review, the applicant must follow the same procedure for reviewing listed activities, above, provided that for unlisted activities outside the state coastal zone for which submission of completed pertinent core law applications is not required, submission of necessary data and information using such applications may be requested to facilitate consistency review.	

**Note:** A federal applicant may agree to subject its proposed activity to federal consistency review, in which case the OCM 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 C.F.R. Part 930, subpart E* for details.

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

DMR and other coastal program agencies monitor federal assistance activities in the coastal zone and areas potentially affecting the State's coastal zone.

As noted above, the State does not list any federal assistance activities as subject to federal consistency review. (In effect, the State ensures that activities which receive federal financial assistance are consistent with its enforceable policies through issuance of licenses and permits under the applicable core laws.) If it decides that earlier consistency review is needed, DMR 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 of the proposed federal assistance action. 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 C.F.R. 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 OCM or the Secretary of the U.S. Department of Commerce. *15 C.F.R. 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 C.F.R. Part 930, Subpart H.*

## APPENDIX A

### THE CORE LAWS OF THE MAINE COASTAL PROGRAM<sup>15</sup>

The following state statutes and their implementing regulations, 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 other 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 the Maine Coastal Program at DMR to determine which core laws or sections of the core laws contain applicable enforceable policies.

- **Natural Resources Protection Act (38 M.R.S. §§480-A to 480-S; and 480-U to 480-II)**

Wetlands Protection rules (Department of Environmental Protection (DEP) rules ch. 310), as amended effective November 11, 2018;

Coastal Sand Dune rules (DEP rules ch. 355), as amended effective October 26, 2014;

Permit by Rule standards (DEP rules ch. 305), as amended effective June 8, 2012;

Significant habitat rules (DEP rules ch. 335), as amended effective January 7, 2014;

Department of Inland Fisheries and Wildlife (DIFW) rules ch. 10, as amended effective October 21, 2009; and

Scenic Impact rules (DEP rules ch. 315), as effective June 29, 2003.

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<sup>15</sup> Last updated in October 2022 to reflect program changes approved by NOAA in September 2022 and make technical corrections. The statutory and rule provisions listed are those with force and effect as state law, as amended, on July 8, 2022, unless otherwise indicated.



- **Site Location of Development Law (38 M.R.S. §§481 to 485-A; 486-A, -B; 487-A to 490-FF)**

Definitions of terms used in the Site Location of Development Law and regulations (DEP rules ch. 371), as amended effective May 4, 1996;

Policies and procedures (DEP rules ch. 372), as amended effective December 27, 2011;

Financial capacity standard (DEP rules ch. 373), as amended effective June 2, 2016;

No adverse environmental impact standard (DEP rules ch. 375), as amended effective June 2, 2016;

Soil types standard (DEP rules ch. 376), as effective May 4, 1996;

Review of roads (DEP rules ch. 377), as effective May 4, 1996;

Variance criteria; performance standards (storage of petroleum products) (DEP rules ch. 378), as amended effective June 8, 2012; and

Long-Term Construction Projects under the Site Location of Development Act (DEP rules ch. 380), as amended effective June 2, 2016

- **Maine Metallic Mineral Mining Act (38 M.R.S. §§490-LL-490-TT)**

Metallic Mineral Exploration, Advanced Exploration and Mining rules (DEP rules ch. 200), as adopted effective December 28, 2017

- **MaineDOT Traffic Movement Permit Law (23 M.R.S. §704-A)**
- **Erosion Control and Sedimentation Law (38 M.R.S. §420-C)**
- **Expedited Permitting of Grid-scale Wind Energy Development (35-A M.R.S. §§3451-3459)**

Designated Scenic Viewpoints of State or National Significance, Located on Public Reserved Land or on a Publicly Accessible Trail Used Exclusively for Pedestrian Use, for Consideration in the Permitting of Expedited Wind Energy

Development (Department of Agriculture, Conservation and Forestry rules ch. 6), as effective October 18, 2021; and

Wind Energy Standards (DEP rules ch. 382), as adopted effective April 30, 2018

- **Solar Energy Development Decommissioning Law (35-A M.R.S. chapter 34-D)**

Farm and Open Space Tax Law (36 M.R.S. §1102, sub-§4) (related definition of “farmland”)

- **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; and

Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams (DEP rules ch. 502), as amended effective May 23, 2018

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

Administrative Regulations for Hydropower Projects (DEP rules ch. 450/LUPC rules ch. 11), as adopted effective November 2, 2017

- **Protection and Improvement of Air Law (38 M.R.S. §§581 to 610-A, -B)<sup>16</sup>**

Regulatory definitions (DEP rules ch. 100), as amended effective January 14, 2019;

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<sup>16</sup> This list contains only those state air and water pollution control statutes and regulations which have been submitted for NOAA’s review and approval. All state air and water pollution control statutes and regulations which are established pursuant to the federal Clean Air Act and Clean Water Act are incorporated into the Maine Coastal Program pursuant to the CZMA, 16 U.S.C. §1456(f). Federal agencies and applicants are encouraged to contact the Department of Environmental Protection to confirm the state air and water pollution control laws applicable to proposed activities and related licensing and permitting requirements.

Growth offset regulations (DEP rules ch. 113), as amended effective January 14, 2019;

Major and minor source air emissions license regulations (DEP rules ch. 115), as amended effective December 1, 2012;

Source surveillance (DEP rules ch. 117), as amended effective May 18, 2011;

Gasoline vapor recovery (DEP rules ch. 118), as amended effective April 3, 2011;

RACT for VOCs emitting facilities (DEP rules ch. 134), as effective May 8, 1996;

RACT for nitrous oxides emitting facilities (DEP rules ch. 138), as effective May 8, 1996; and

Part 70 air emission regulations (DEP rules ch. 140), as amended effective December 1, 2012

- **Protection and Improvement of Waters Act<sup>17</sup> (38 M.R.S. §§361-A, 362, 362-A, 363-D, and 372; 410-N; 411 to 424; 451, 451-A, and 452; and 464 to 470)**
- **Nutrient Management Act (7 M.R.S. §§4201-4214)**
- **Land Use Regulation Law (12 M.R.S. §§681 to 689)**

Definitions (LUPC rules ch. 2), as effective November 1, 2021)

Land Use Districts and Standards (LUPC rules ch. 10), as amended effective November 1, 2021;

Land Use District Requirements for Metallic Mineral Mining and Level C Mineral Exploration Activities (LUPC rules ch. 12), as amended effective May 27, 2013; and

Metallic Mineral Exploration, Advanced Exploration, and Mining (LUPC rules ch. 13), as effective September 20, 2018

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<sup>17</sup> See footnote 13.

- **Maine Hazardous Waste, Septage and Solid Waste Management Act (38 M.R.S. §§1301 to 1310-AA; 1316 to 1316-L; and 1317 to 1319-Y)**
- **Uncontrolled Hazardous Substance Sites Law (38 M.R.S. §§1361 - 1371)**
- **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)**
- **Solid Waste Management and Recycling Law (38 M.R.S. §§2101, 2133, sub-§2(A) and 2165)**

Beneficial Use of Solid Waste (DEP rules ch. 418), as amended effective July 8, 2018

- **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), as effective April 24, 2010;

Siting of Oil Storage Facilities (DEP rules ch. 692), as amended effective August 7, 2019; and

Rules and Regulations for Flammable and Combustible Liquids (Dept. of Public Safety rules ch. 34), as amended effective March 17, 2009

- **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-C; 570; and 570-C-G, I-M)**

Rules for Underground Storage Facilities (DEP rules ch. 691), as amended effective September 26, 2018

- **Maine Endangered Species Act (12 MRSA §§12801-12810 [inland species]; 12 M.R.S. §6971-6976 [marine species]; and 12 M.R.S. §10001, sub-§§19 and 62 [definitions])**

Endangered species (DIFW rules ch. 8), as amended effective April 8, 2017

- **General licensing and enforcement authorities; fees (38 M.R.S. §§341-D; 344 to 349; and 352-353, and 353-A, -B[fees])<sup>18</sup>**
- **Maine Rivers Act (12 M.R.S. §§403 and 407)**
- **Marine Resources Law (12 M.R.S. §§6052, sub-§6; 6171 to 6192; and 6432-A)**
- **Importing of Certain Marine Organisms (12 M.R.S. §6071)**
- **Aquaculture Leasing Laws (12 M.R.S. §6071-A (definitions); 12 M.R.S. §6072 (research and aquaculture leases); 12 M.R.S. §6072-A (limited-purpose lease for commercial or scientific research); 12 M.R.S. §6073 (exclusivity; prohibition or interference))**

Aquaculture lease regulations (DMR rules ch. 2), as amended effective March 13, 2022; and

Importation of live marine organisms regulation (DMR rules ch. 24), as amended effective August 10, 2021

- **Subdivision Law (30-A M.R.S. §§4401 to 4408)**
- **Mandatory Shoreland Zoning Law (38 M.R.S. §§435 to 448)**

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<sup>18</sup> 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.

Guidelines for Municipal Shoreland Zoning Ordinances (DEP rules ch. 1000), as amended effective January 26, 2015

Forest Practices Act (12 M.R.S. §8868, sub-§4 (related definition of timber harvesting))

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

Lamoine	Pleasant Point	Trenton
Lincoln County Island	Portland	Trescott Twp
Lincolntonville	Prospect	Veazie
Long Island	Randolph	Verona Island
Lubec	Richmond	Vinalhaven
Machias	Robbinston	Waldo County Island
Machias Seal Island	Rockland	Waldoboro
Machiasport	Rockport	Warren
Marshfield	Roque Bluffs	Washington County Island
Matinicus Isle Plt	Saco	Wells
Milbridge	Saint George	West Bath
Monhegan Island Plt	Scarborough	Westport Island
Mount Desert	Searsport	Whiting
Mount Desert Rock	Sedgwick	Winter Harbor
Muscle Ridge Twp	Sorrento	Winterport
Newcastle	South Berwick	Wiscasset
Nobleboro	South Bristol	Woolwich
North Haven	South Portland	Yarmouth
Northport	South Thomaston	York
Ogunquit	Southport	
Old Orchard Beach	Southwest Harbor	
Orland	Steuben	
Orono	Stockton Springs	
Orrington	Stonington	
Owls Head	Sullivan	
Pembroke	Surry	
Penobscot	Swans Island	
Perkins Twp Swan Island	T7 SD BPP	
Perry	Thomaston	
Phippsburg	Topsham	
Pittston	Tremont	



