



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

September 19, 2008

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

Dear Ms. Leyden:

Thank you for the Maine State Planning Office's July 17, 2008 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):

- Maine Wind Energy Act;
- Natural Resources Protection Act;
- Site Location of Development Act;
- Underground Oil Storage Facilities and Ground Water Protection Law;
- Protection and Improvement of Air Act;
- Waste Management Act;
- Wellhead Protection Act;
- Land Use Regulatory Law;
- Marine Resources Act;
- Department of Environmental Protection Law;
- Pollution Control Law;
- Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt Law;
- Performance Standards for Quarries Law;
- Uncontrolled Hazardous Substance Sites Law;
- Sale of Consumer Products Affecting the Environment Law; and
- Toxic Chemicals in Children's Products Act.

OCRM received the request on July 21, 2008, and OCRM's decision deadline was extended until September 19, 2008.



Based on our review of your submission, we concur, with the exceptions described below, 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.

### **QUALIFICATIONS**

OCRM's approval of Maine's policy relating to the take of marine organisms to protect other organisms (12 MRSA sec. 6171(5)) does not apply to marine mammals under the Marine Mammal Protection Act (MMPA) § 109(a). The MMPA § 109(a) provides that "[n]o state may enforce . . . any State law or regulation relating to the taking of any species . . . of marine mammal" within the State unless the Secretary of Commerce has transferred management authority for that species to the State. MMPA § 109(a), 16 U.S.C. § 1379(a); *cf.* 16 U.S.C. § 1362(13) (defining "take"). *See generally* 50 C.F.R. Part 403 (governing transfer of MMPA authority). This provision is unambiguous and preempts all state statutes and regulations specifically related to taking of marine mammals.

### **CHANGES WITHDRAWN AND NOT APPROVED**

The State Planning Office submitted a new statute, Toxic Chemicals In Children's Products Act (38 MRSA ch. 16-D), which establishes a program to identify chemicals used in children's toys and products that may pose health concerns, to require manufacturers to provide certain information to Maine Department of Environmental Protection, and to allow for promulgation of rules on sale of products using these chemicals. It appeared to OCRM that this provision would be an expansion of the ME CMP into consumer products regulation and as such constitute a new use which would require going through the program amendment process. Even then, in order to be incorporated into the ME CMP, it would have to be shown how it relates to the state's coastal land and water uses or resources. OCRM discussed this issue with Maine CMP staff and the state decided, on September 17, 2008, to withdraw the Toxic Chemicals In Children's Products Act as a proposed program change.

#### **Sections withdrawn and not approved:**

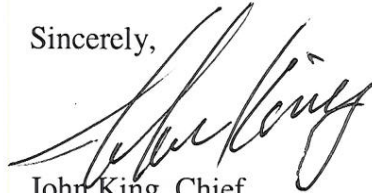
38 MRSA ch. 16-D

**PUBLIC AND FEDERAL AGENCY COMMENTS**

OCRM received no comments on this RPC submission.

Thank you for your cooperation in this review. If you have any questions, please contact R. Randall Schneider at (301) 713-3155, extension 110.

Sincerely,

A handwritten signature in black ink, appearing to read "John King". The signature is fluid and cursive, with a large initial "J" and "K".

John King, Chief  
Coastal Programs Division

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

Enclosure to OCRM's September 19, 2008, Approval of the Incorporation of Changes to  
the Maine Coastal Management Program

Changes marked with an asterisk (\*) are incorporated into the Maine Coastal Management Program, but do not  
contain enforceable policies that can be used for Federal Consistency.

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
<b>ADDED</b>			
New chapter in Wind Energy Act; fosters statewide consistency in permitting standards and criteria; provides approval criteria for smaller scale wind energy projects; makes procedural changes to streamline review of grid scale wind energy development.	35-A MRSA chapter 34-A	04.18.2008	04.18.2008
Clarifies permitting requirements for excavation/quarry operation approved before 6.8.2006 affecting upland portion of high or moderate value wading bird habitat.	38 MRSA sec. 480-GG	04.15.2008	07.18.2008
Provides certain site law permit exemption for accessory uses and facilities within an excavation or quarry operation.	38 MRSA sec. 488(24)	04.15.2008	07.18.2008
Authorizes DEP to prohibit delivery of product from underground oil tanks under certain conditions where violations are not corrected.	38 MRSA sec. 565-A	03.31.2008	06.30.2008
Creates exemption from requirements for vapor recovery at gas stations for certain new facilities.	38 MRSA sec. 585-E(7)	04.04.2008	06.30.2008
Creates penalty, with exceptions, for running gas-powered delivery commercial vehicle engine at idle for more than 5 minutes.	38 MRSA sec. 585-K (NOTE: A provision enacted in PL 2007 ch. 584, see below, was also enacted as 38 MRSA sec. 585-K)	04.09.2008	06.30.2008
Establishes moratorium on DEP licensing of a "coal gasification facility" pending rulemaking for greenhouse gas emission standards.	38 MRSA sec. 585-K (NOTE: A provision enacted in PL 2007 ch. 582, see above, was also enacted as 38 MRSA sec. 585-K)	04.09.2008	06.30.2008
Establishes/clarifies procedures for ordering shutdown of outdoor wood boilers under certain conditions.	38 MRSA sec. 610-B(4)	04.23.2008	07.18.2008
Establishes definition of "solid waste processing facility."	38 MRSA sec. 1303-C(32-A)	04.09.2008	06.30.2008
Requires municipality that closes a landfill to comply with closure requirements under existing law.	38 MRSA sec. 1310-E-1(6)	04.18.2008	07.18.2008
Refines repealed and replaced provision (former 38 MRSA sec. 1310-N(5)) establishing recycling and source reduction	38 MRSA sec. 1310-N(5-A)	04.07.2008	06.30.2008

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Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
licensing criteria.			
Restricts certain types of development within "wellhead protection zone"; provides exceptions and a variances provision; provides criteria regarding siting.	38 MRSA ch. 13-D (includes several statutory sections)	04.07.2008	06.30.2008
<b>MODIFIED</b>			
Technical correction to cross reference	12 MRSA sec. 685-A(10)	04.24.2008	04.24.2008
Addresses privately held lands designated by PUC as utility corridor.	12 MRSA sec. 685-A(11)	04.18.2008	07.18.2008
Authorizes LURC to add areas to the "expedited permitting area," regarding grid-scale wind energy development.	12 MRSA sec. 685-A(13)	04.18.2008	04.18.2008
Adds "grid-scale" wind power project in "expedited permitting area" as allowable use; procedures specific to review of such wind projects.	12 MRSA sec. 685-B(2-C)	04.18.2008	04.18.2008
Revises scenic impact and economic benefit standards applicable to grid-scale wind energy development in the expedited permitting area.	12 MRSA sec. 685-B(4)	04.18.2008	04.18.2008
Specifies and provides consistency for standards regarding noise, shadow flicker and setbacks applicable to wind energy development greater than 100 Kw	12 MRSA sec. 685-B(4-B)	04.18.2008	04.18.2008
*Technical change; updates cross reference	12 MRSA sec. 685-F(1)(B)	04.02.2008	06.30.2009
Clarifies what costs may be included in fee for "extraordinary projects."	12 MRSA sec. 685-F(2)	04.18.2008	04.18.2008
*Revises tax assessment approach applicable to areas in LURC jurisdiction.	12 MRSA sec. 685-G	04.02.2008	06.30.2009
*Revises (repeals and replaces section) provision regarding DMR's authority to enact rules limiting take of one marine species to protect another.	12 MRSA sec. 6171(5)	04.07.2008	06.30.2008
Establishes review procedures for grid-scale wind energy projects in the designated expedited permitting area.	38 MRSA sec. 344(2-A)(A)	04.18.2008	04.18.2008
Provides that applicant's agreement is not required if DEP contracts for outside review of wind energy development projects.	38 MRSA sec. 344-A, first para.	04.18.2008	04.18.2008
Provides that the Law Court has jurisdiction over an appeal of a DEP decision on an application for a grid-scale wind energy	38 MRSA sec. 346(1) and (4)	04.18.2008	04.18.2008

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Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
development.			
Clarifies fees DEP may charge for review of certain large scale, complex projects.	38 MRSA sec. 352(3)	04.18.2008	04.18.2008
Revises and updates DEP fee schedule.	38 MRSA sec. 352(5-A)	04.04.2008	06.30.2008
Provides for and establishes rate for annualized renewal fee for DEP-issued waste water discharge licenses.	38 MRSA sec. 353-B(1)(E) and 353-B(2)	04.04.2008	06.30.2008
Amends provision authorizing DEP to charge interest on fees owed.	38 MRSA sec. 353(9)	04.18.2008	07.18.2008
Amends provision regarding annual fee surcharge for DEP air licenses.	38 MRSA sec. 353-A(1-A)	04.09.2008	11.01.2008
Clarifies anniversary date and related due dates for fees for DEP air licenses.	38 MRSA sec. 353-A(3)	04.09.2008	11.01.2008
Extends period after which an air license may be revoked for non-payment of fees	38 MRSA sec. 353-A(8)	04.09.2008	11.01.2008
Increases fee DEP may assess for phosphorous discharge and allows for mitigation in lieu of fee	38 MRSA sec. 420-D(11)(A)	04.10.2008	06.30.2008
Clarifies that scenic impacts will be evaluated in accordance with new 35-A MRSA sec. 3452.	38 MRSA sec. 480-D(1)	04.18.2008	04.18.2008
Corrects cross reference provision regarding significant wildlife habitat.	38 MRSA sec. 480-FF	03.31.2008	03.31.2008
Updates cross reference defining the term "farm," re: agricultural ponds	38 MRSA sec. 480-Y(2)(A)	04.18.2008	06.30.2008
Expands compensation program to cover several habitat types in addition to coastal and freshwater wetlands.	38 MRSA sec. 480-Z	03.27.2008	06.30.2008
Clarifies that scenic impact issues will be assessed in accordance with 35-A MRSA ch. 34-A.	38 MRSA sec. 484(3)(G)	04.18.2008	04.18.2008
Clarifies issues that a "grid-scale wind energy project" must address in accordance with 35-A MRSA ch. 34-A.	38 MRSA sec. 484(10)	04.18.2008	04.18.2008
Amends language providing performance standards for excavation operations.	38 MRSA sec. 490-D(1)	04.15.2008	07.18.2008
Clarifies performance standards for excavation regarding natural resource buffer area if NRPA permit is obtained.	38 MRSA sec. 490-D(5-A)	04.15.2008	07.18.2008
Clarifies stormwater management requirements in performance standards for excavations.	38 MRSA sec. 490-D(9)(C)	03.20.2008	06.30.2008
Establishes lighting standard in performance standards for excavations to	38 MRSA sec. 490-D(17)	04.15.2008	07.18.2008

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further minimize effect on wildlife habitat.			
Amends performance standards for quarry operations for consistency with NRPA.	38 MRSA sec. 490-Z(1)	04.15.2008	07.18.2008
Clarifies performance standards for quarry operation regarding natural resource buffer area if NRPA permit is obtained.	38 MRSA sec. 490-Z(5)	04.15.2008	07.18.2008
Establishes lighting standard in performance standards for quarry operations.	38 MRSA sec. 490-Z(15)	04.15.2008	07.18.2008
Clarifies definition of "above ground storage tank."	38 MRSA sec. 562-A(1-B)	04.07.2008	06.30.2008
Technical correction updating cross reference.	38 MRSA sec. 562-A(17)(E)	04.18.2008	07.18.2008
Amends fee provision regarding registration of underground storage tanks.	38 MRSA sec. 563(4)	04.18.2008	07.18.2008
Amends provision regarding annual inspection of underground oil storage tanks.	38 MRSA sec. 563(9) [deletes para. B-D and adds para. E]	03.31.2008	06.30.2008
Requires submission of inspection form, re: aboveground motor fuel to DEP within 30 days of inspection.	38 MRSA sec. 563(10)(D)	03.31.2008	06.30.2008
Requires DEP approval to bring abandoned underground oil storage tanks back in service	38 MRSA sec. 566-A(1-A) [adds para. D and E]	04.18.2008	07.18.2008
Technical corrections.	38 MRSA sec. 568(1)	04.18.2008	07.18.2008
Clarifies provision regarding DEP's authority to issue clean-up order.	38 MRSA sec. 568(3)	03.31.2008	06.30.2008
Updates cross reference to Wellhead Protection law regarding fund for recovery of groundwater contamination related costs.	38 MRSA sec. 568-A(1)(J) and (K)	04.07.2008	06.30.2008
Changes definition of "air quality score" to "toxicity score" in air quality laws.	38 MRSA sec. 582(11-D)	04.09.2008	11.01.2008
Changes definition of "air quality score" and "air quality units" in air quality laws.	38 MRSA sec. 582(11-D) and (11-E)	04.09.2008	11.01.2008
Amends sunset date regarding vapor recovery at gas stations.	38 MRSA sec. 585-E(6)	04.04.2008	06.30.2008
Amends frequency with which certain stack tests must be conducted.	38 MRSA sec. 589(2)	04.09.2008	11.01.2008
Updates cross reference.	38 MRSA sec. 591(para. 1)	04.09.2008	06.30.2008
Clarifies public benefit determination required for publicly owned solid waste facility to accept out-of-state waste	38 MRSA sec. 1310-AA(3)(D)	04.18.2008	07.18.2008

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Technical corrections.	38 MRSA sec. 1310-E-1(4)	04.18.2008	07.18.2008
Clarifies, with cross reference, provision authorizing DEP to provide grants for remediation of landfill related impacts.	38 MRSA sec. 1310-F(1-A)	04.18.2008	07.18.2008
Clarifies criteria on issuing a solid waste facility license, re: solid waste processing facility and recycling and source reduction.	38 MRSA sec. 1310-N(1)(C)	04.09.2008	06.30.2008
Corrects cross reference.	38 MRSA sec. 1310-R(2)(A)	04.09.2008	06.30.2008
Corrects cross reference.	38 MRSA sec. 1310-R(2)(C)	04.09.2008	06.30.2008
Clarifies natural resources-related damages State may recover regarding impacts due to uncontrolled tire stockpile.	38 MRSA sec. 1316-C (para. 1)	04.18.2008	07.18.2008
Technical change.	38 MRSA sec. 1316-G(1)(H)	04.18.2008	07.18.2008
Technical change.	38 MRSA sec. 1316-G(1)(I)	04.18.2008	07.18.2008
Increases from 10% to 15% interest DEP may assess on state hazardous waste cleanup costs subject to recovery.	38 MRSA sec. 1319-G(1)	04.18.2008	07.18.2008
Clarifies that responsible parties may be responsible for natural resources damages due to uncontrolled hazardous waste site.	38 MRSA sec. 1367 (first para.)	04.18.2008	07.18.2008
Technical, clarifying correction on restricting sale and distribution of "deca" mixture (flame retardant).	38 MRSA sec. 1609(4)	04.18.2008	07.18.2008
<b>DELETED</b>			
Repeals general provision re: LURC's use of General Fund allocation.	12 MRSA sec. 685-D	04.02.2008	06.30.2009
Repeals exception for LURC's use of General Fund allocation for planning and related activities.	12 MRSA sec. 685-E	04.02.2008	06.30.2009
Repeals initial-year DEP fee provision.	38 MRSA sec. 353-B(6)	04.04.2008	06.30.2008
Repeals stormwater permit fee provision.	38 MRSA sec. 420-D(12)	04.04.2008	06.30.2008
Repeals prohibition on siting of new underground storage tanks near drinking water supplies.	38 MRSA sec. 563-C	04.07.2008	06.30.2008
Repeals interim reporting/administrative provisions for vapor recovery at gas stations.	38 MRSA sec. 585-E(3-5)	04.04.2008	06.30.2008



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Repeals provision on recycling and source reduction determination.	38 MRSA sec. 1310-N(5)	04.09.2008	06.30.2008
Repeals provision regarding report to Legislature.	38 MRSA sec. 1316-G(1)(J)	04.18.2008	07.18.2008
Repeals requirement regarding report to the Legislature.	38 MRSA sec. 1609(10)	04.17.2008	07.18.2008