



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

NOV - 5 2013

Ms. Kathleen Leyden  
Director, Maine Coastal Program  
Department of Agriculture, Conservation and Forestry  
Division of Geology, Natural Areas, and Coastal Resources  
93 State House Station  
Augusta, Maine 04333-0093

Dear Ms. Leyden:

Thank you for the Maine Department of Agriculture, Conservation and Forestry's August 28, 2013 request that changes to specified provisions in public laws enacted during the 126<sup>th</sup> Maine Legislature's First Regular Session, as well as select statutory provisions during prior legislative sessions, be incorporated into the Maine Coastal Management Program (CMP). You requested that the changes described below be incorporated 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). OCRM received the request on August 29, 2013, and OCRM's decision deadline was extended to December 27, 2013.

Based on our review of your submission, we concur that the changes are RPCs and we approve the incorporation of the changes as enforceable and non-enforceable policies of the Maine CMP. Federal Consistency will apply to the approved changes to enforceable policies 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 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**

States may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another regulation, policy, standard, guidance, or other such requirement or document (hereinafter "referenced policy"), the referenced policy itself must be submitted to and approved by OCRM as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. Therefore, no requirement or document referenced in these approved enforceable policies may be applied for federal consistency unless that requirement or document has separately been approved by OCRM.



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**PUBLIC AND FEDERAL AGENCY COMMENTS**

OCRM received no comments on this RPC submission.

Thank you for your cooperation in this review. Please contact Jackie Rolleri at (301) 563-1179, if you have any questions.

Sincerely,



Joelle Gore, Acting Chief  
Coastal Programs Division

Enclosure(s): Policies Approved and Incorporated into the Maine CMP

Enclosure to OCRM's November 5, 2013, Approval of the Incorporation of Changes to  
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ADDED:		mm/dd/yyyy	mm/dd/yyyy
Replacing 12 M.R.S. §685-C(1)(B), establishes the process for adoption of the Land Use Planning Commission's (LUPC) annual plan, which involves gubernatorial review and comment and legislative approval	*Public Law 2013, ch. 405(B-2) (12 M.R.S. § 685-C(1)(B-1))	07/08/2013	10/09/2013
Replaces the provision authorizing the commissioner of DMR to develop fisheries management plans and establishes general requirements and provides statutory direction to guide DMR's development of such plans	*Public Law 2013, ch. 287(1) (12 M.R.S. § 6171(2-A))	06/18/2013	10/09/2013
Clarifies that the DMR commissioner may share DMR-collected landings data with the Bureau of Marine Patrol when necessary for the enforcement of reporting requirements under this section	*Public Law 2013, ch. 49(1) (12 M.R.S. § 6173(1))	04/23/2013	04/23/2013
Defines "best practicable mitigation" under the DEP-administered permitting process for grid-scale wind energy development	Public Law 2013, ch. 325(1) (35-A M.R.S. § 3451(1-A))	06/21/2013	10/09/2013
Establishes a rebuttable presumption that wind energy development proposed in a Bicknell's Thrush habitat area 25 acres or larger in which Bicknell's Thrush have been documented would have significant adverse effects	Public Law 2013, ch. 325(2) (35-A M.R.S. § 3452-A)	06/21/2013	10/09/2013
Makes a technical correction in the statutes by repealing and replacing this previously enacted provision which creates a presumption that a grid-scale wind energy development has certain statutorily-identified tangible benefits and requires DEP to make findings regarding other such project-related benefits	Public Law 2013, ch. 424(A-21) (35-A M.R.S. § 3454, first paragraph)	07/16/2013	07/16/2013
Requires that an applicant for a grid-scale wind energy development permit to implement the "best practical mitigation" to reduce adverse effects on scenic or wildlife resources	Public Law 2013, ch. 325(3) (35-A M.R.S. § 3459)	06/21/2013	10/09/2013
Expands opportunities for public comment and public hearings, including intervenor requested adjudicatory public hearings, in the DEP-administered permitting process for gridscale wind energy development	*Public Law 2013, ch. 325(4) (38 M.R.S. § 344(2-A)(D))	06/21/2013	10/09/2013
Defines "agriculture" under the SZA	Public Law 2013, ch. 242(1) (38 M.R.S. § 436-A(1-B))	06/12/2013	06/12/2013

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<b>Note:</b> the changes adopted in chapters 242(1) and 320(1) for 38 M.R.S. § 436-A(1-B) are identical.	Public Law 2013, ch. 320(1) (38 M.R.S. § 436-A(1-B))	06/21/2013	10/09/2013
Defines "footprint" under the SZA	Public Law 2013, ch. 320(2) (38 M.R.S. § 436-A(4-A))	06/21/2013	10/09/2013
Exempts construction of a deck in an area over a river from certain otherwise applicable water and wetland setback requirements under the SZA if the proposed deck is under 700 square feet, located in a downtown revitalization project area, and is attached to or accessory to a use in a structure built prior to 1971	Public Law 2013, ch. 140(1) (38 M.R.S. § 439-A(4-B))	05/24/2013	10/09/2013
Provides limited exceptions under the SZA's amended vegetative clearing standards for areas locally-zoned as commercial fisheries and maritime activities or comparable districts and for activities necessary under a state or federally-approved brownfields clean-up located along a coastal wetland or river that does not flow into a GPA-classified great pond  <b>Note:</b> the changes adopted in chapters 231(2) and 320(11) for 38 M.R.S. § 439-A(6-A) are identical.	Public Law 2013, ch. 231(2) (38 M.R.S. § 439-A(6-A))	06/11/2013	10/09/2013
	Public Law 2013, ch. 320(11) (38 M.R.S. § 439-A(6-A))	06/21/2013	10/09/2013
Amends the Natural Resources Protection Act by adding definitions of "working waterfront activity" and "working waterfront land"	Public Law 2013, ch. 231(3) (38 M.R.S. § 480-B(11-12))	06/11/2013	10/09/2013
Exempts "working waterfront activities" on working waterfront land" that is part of a brownfields program or a voluntary response action program from the NRPA's compensatory mitigation requirements; makes a related technical change	Public Law 2013, ch. 231(4-5) (38 M.R.S. § 480-BB(2)(B-C))	06/11/2013	10/09/2013
Improves the consistency of regulation of motorized recreational gold prospecting in organized territories and in unorganized territories by creating an NRPA permit exemption for motorized recreational gold prospecting, subject to landowner permission and specified measures to protect the environment, including fish and aquatic habitat	Public Law 2013, ch. 260(1) (38 M.R.S. § 480-Q(5-A))	06/14/2013	10/09/2013
Exempts from Site Law review new construction or modification of an existing licensed development that is permitted if the additional disturbed area not to be revegetated does not exceed 10,000 square feet in ground area in any	Public Law 2013, ch. 183(1) (38 M.R.S. § 488(29))	05/31/2013	10/09/2013

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calendar year and does not exceed 20,000 square feet ground area in total and the construction or modification does not involve a division of the parcel of land, with the requirement that that permittee annually notify DEP of development governed by the exemption			
Incorporated as a CAA-related provision; Adopts federal definition of "reformulated gasoline" under Maine's air quality laws	Public Law 2013, ch. 221(1) (38 M.R.S. § 582 (10-B))	06/11/2013	06/11/2013
Incorporated as a CAA-related provision; Prohibits the sale of gasoline with more than 10% corn-based ethanol by volume, effective if and when two or more other New England states enact a comparable prohibition  <b>Note:</b> This section does not take effect until at least 2 of the 6 New England States in addition to Maine have enacted laws that prohibit the sale of gasoline that contains corn-based ethanol as an additive at a level greater than 10% by volume.	*Public Law 2013, ch. 69(1) (38 M.R.S. § 585-M)	05/07/2013	Not effective
Incorporated as a CAA-related provision; Provides that, effective May 1, 2014, in order to meet federal Clean Air Act requirements, only "reformulated gasoline" may be sold in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln counties	Public Law 2013, ch. 221(2) (38 M.R.S. § 585-N)	06/11/2013	05/01/2014
Provides that DEP may not process or act on an application for a new, modified or amended solid waste license for a solid waste disposal facility acquired by the State after January 1, 2007 until the facility has applied for and DEP has issued a public benefit determination; deems a solid waste disposal facility owned by the State before January 1, 2007 to hold a public benefit determination for the licensed disposal capacity at the facility on the Act's effective date of the Act; and for such state-owned authorizes DEP to require a modified public benefit determination if DEP that a material change in facts or circumstances has occurred or is proposed	Public Law 2013, ch. 243(2) (38 M.R.S. § 1310-AA(1-B))	06/12/2013	10/09/2013
The Coastal Management Policies Act articulates basic goals and objectives of Maine's Coastal Program that are implemented through the	*38 M.R.S. §§ 1801-1802	08/01/2013	08/01/2013

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Program's core laws and enforceable policies and technical assistance and other management program activities			
The Coastal Barrier Resources System Act mirrors the related federal Coastal Barrier Resources Act and, subject to statutory exceptions, provides that no state funds or state financial assistance may be expended for development activities within the statutorily specified and mapped coastal barriers in the state that provide important habitat and storm buffering capabilities	38 M.R.S. §§ 1901-1905	08/01/2013	08/01/2013
These Site Law provisions provide performance standards applicable to quarries over one acre in size to protect natural resources and public health and related provisions regarding inspection, state and municipal enforcement, and reporting of certain expansions and transfer of ownership	38 M.R.S. §§ 490-W to 490-FF	08/01/2013	08/01/2013
<b>MODIFIED:</b>			
Clarifies law regarding appointment of commissioners to serve on the state Land Use Planning Commission (LUPC) by the Governor and county commissioners by replacing the term "nominate" with "appoint" in various places; specifying steps in the appointment and subsequent legislative confirmation processes; and clarifying that one may not serve simultaneously as a county commissioner and LUPC commissioner.	*Public Law 2013, ch. 256(3) (12 M.R.S. § 683-A(1-4))	06/14/2013	10/09/2013
Clarifies that the above-noted bar on serving simultaneously as a county commissioner and LUPC commissioner applies to an incumbent county commissioner appointed after July 1, 2013.	*Public Law 2013, ch. 424(E-1) (12 M.R.S. § 683-A(3))	07/16/2013	10/09/2013
Clarifies that the Division of Forestry's responsibility for regulating land management roads and water crossings does not cover other roads, such as subdivision roads, that remain subject to management by the LUPC.	*Public Law 2013, ch. 256(4) (12 M.R.S. § 685-A(14))	06/14/2013	10/09/2013
Clarifies that under a current exemption in the state Subdivision Law a parcel of land created by a division that is transferred to an owner abutting that parcel is not a "subdivision" subject to municipal review and regulation.	Public Law 2013, ch. 126(1) (30-A M.R.S. § 4401(4)(D-6))	05/23/2013	10/09/2013
Corrects statutory cross-references in a provision of the Subdivision Law requiring a licensed	Public Law 2013, ch. 180(3) (30-A M.R.S. § 4403(3)(D))	05/31/2013	10/09/2013

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surveyors seal and signature on final plans or documents			
Corrects agency name to reflect the merger of the Department of Agriculture, Food and Rural Resources (DAFRR) and the Department of Conservation (DOC) to form the Department of Agriculture, Conservation and Forestry (DACF)	*Public Law 2013, ch. 405(D-13) (35-A M.R.S. § 3451(9)(E))	07/08/2013	10/09/2013
Corrects agency name to reflect merger of DAFRR and DOC to form DACF	*Public Law 2013, ch. 405(C-18) (35-A M.R.S. § 3457)	07/08/2013	10/09/2013
Makes a technical correction a DEP air license fee provision	Public Law 2013, ch. 300(9) (38 M.R.S. § 352(2)(E))	06/18/2013	10/09/2013
Makes a technical correction a DEP air license fee provision regarding rock crushing	Public Law 2013, ch. 300(10) (38 M.R.S. § 353-A(10))	06/18/2013	10/09/2013
Changes agency names to reflect the revised organizational structure of DACF	Public Law 2013, ch. 405(C-19) (38 M.R.S. § 361-A(1-D))	07/08/2013	10/09/2013
Changes agency name to reflect the revised organizational structure of DACF	*Public Law 2013, ch. 405(C-20) (38 M.R.S. § 401, paragraph 7)	07/08/2013	10/09/2013
Expands the current DEP stormwater permit exemption for a project that involves the development, construction, and maintenance of the statewide snowmobile trail system, subject to specified criteria, to include all-terrain vehicle (ATV) trails	Public Law 2013, ch. 43(1) (38 M.R.S. § 420-D(7)(H))	04/16/2013	10/09/2013
Corrects reference to DOC to reflect its merger into DACF	Public Law 2013, ch. 405(D-15) (38 M.R.S. § 435, paragraph 2)	07/08/2013	10/09/2013
Amends the definition of "functionally water dependent uses" under the Shoreland Zoning Act (SZA) to exclude recreational boat storage buildings and include shoreline structures needed to control erosion	Public Law 2013, ch. 320(3) (38 M.R.S. § 436-A(6))	06/21/2013	10/09/2013
Amends definition of "outlet stream" under the SZA to accurately reflect applicable USGS information	Public Law 2013, ch. 320(4) (38 M.R.S. § 436-A(9-A))	06/21/2013	10/09/2013
Amends definition of "stream" under the SZA to accurately reflect applicable map-based geological	Public Law 2013, ch. 320(5) (38 M.R.S. § 436-A(11-A))	06/21/2013	10/09/2013

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information and clarifies its applicability to a downstream channel formed when a "stream" meets a waterbody or wetland			
Clarifies and amends definition of "structure" under the SZA to include poles and equipment related to utility service drops and covered both temporarily and permanently located "structures"	Public Law 2013, ch. 320(6) (38 M.R.S. § 436-A(12))	06/21/2013	10/09/2013
Clarifies that the definition of "timber harvesting" under the SZA covers tree cutting primarily for purposes of sale and that tree cutting for other purposes may be addressed under the SZA's vegetative removal-related provisions	Public Law 2013, ch. 320(6) (38 M.R.S. § 436-A(13))	06/21/2013	10/09/2013
Makes technical clarifications to a SZA provision about notice to owners of land proposed for resource protection zoning	Public Law 2013, ch. 320(7) (38 M.R.S. § 438(1-B)(A))	06/21/2013	10/09/2013
Clarifies the existing requirement that structures or expansions of structures in the shoreland zone must meet applicable setback requirements; and, replacing 38 M.R.S. §439-A(4-A) (repealed; see below), clarifies and amends the criteria governing the limited circumstances under which a nonconforming structure in the shoreland zone (one that is legally-existing but does not meet the pertinent setback requirement) may be expanded	Public Law 2013, ch. 320(8) (38 M.R.S. § 439-A(4))	06/21/2013	10/09/2013
Amends and clarifies the Shoreland Zoning Act's minimum vegetative clearing standards and their applicability	Public Law 2013, ch. 231(1) (38 M.R.S. § 439-A(6))	06/11/2013	10/09/2013
<b>Note:</b> the changes adopted in chapters 231(1) and 320(1) for 38 M.R.S. § 439-A(6) are identical.	Public Law 2013, ch. 320(10) (38 M.R.S. § 439-A(6))	06/21/2013	10/09/2013
Clarifies the allowable "footprint" of a structure allowed under the SZA's special exception provisions	Public Law 2013, ch. 320(12) (38 M.R.S. § 439-A(7)(D))	06/21/2013	10/09/2013
Corrects reference to DOC to reflect its merger into DACF	Public Law 2013, ch. 405(D-16) (38 M.R.S. § 446)	07/08/2013	10/09/2013
Incorporated as a CWA-related provision; Authorizes DEP to issue an NPDES approval allowing discharges of pesticides that are: unintended and an incidental result of the spraying; and applied in compliance with federal labeling laws and rules, state laws and Board of Pesticides Control rules, and best management practices	Public Law 2013, ch. 193(1) (38 M.R.S. § 464(4)(A))	06/04/2013	10/09/2013



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Incorporated as a CWA-related provision; Allows discharges of pesticides into Class AA waters in accordance with 38 M.R.S. §464(4)(A)	Public Law 2013, ch. 193(2) (38 M.R.S. § 465(1)(C))	06/04/2013	10/09/2013
Incorporated as a CWA-related provision; Allows discharges of pesticides into Class A waters in accordance with 38 M.R.S. §464(4)(A)	Public Law 2013, ch. 193(3) (38 M.R.S. § 465(2)(C))	06/04/2013	10/09/2013
Incorporated as a CWA-related provision; Allows discharges of pesticides into Class GPA waters in accordance with 38 M.R.S. §464(4)(A)	Public Law 2013, ch. 193(4) (38 M.R.S. § 465-A(1)(C))	06/04/2013	10/09/2013
Incorporated as a CWA-related provision; Allows discharges of pesticides into Class SA waters in accordance with 38 M.R.S. §464(4)(A)	Public Law 2013, ch. 193(5) (38 M.R.S. § 465-B(1)(C))	06/04/2013	10/09/2013
Corrects agency name to reflect revised DACF organizational structure	Public Law 2013, ch. 405(D-17) (38 M.R.S. § 490-D(15))	07/08/2013	10/09/2013
Corrects agency name to reflect establishment of DACF and its revised organizational structure	Public Law 2013, ch. 405(C-22) (38 M.R.S. § 490-OO(6)(A))	07/08/2013	06/01/2014
Requires a person transporting crude oil by rail or highway to pay the assessment of 3¢ per barrel of crude oil being transported, which was previously imposed only on a person transporting refined oil, and specifies that Maine Coastal and Inland Surface Oil Clean-up Fund is funded by this assessment	Public Law 2013, ch. 349(1) (38 M.R.S. § 551(4))	06/25/2013	10/09/2013
Corrects the name of the entity referenced in a fee provision regarding a DEP permit for above-ground tanks	Public Law 2013, ch. 300(11) (38 M.R.S. § 568-A(2)(C))	06/18/2013	10/09/2013
Provides that the Fund Insurance Review Board will consult with or contract for assistance with DEP rather than the Finance Authority of Maine regarding management of the Ground Water Oil Spill Clean-up Fund	*Public Law 2013, ch. 22(1-2) (38 M.R.S. § 568-B(2)(C) and (E))	04/08/2013	10/09/2013
Raises the statutory cap on DEP's annual expenditure of funds from the Ground Water Oil Spill Clean-up Fund to cover related personnel and other qualifying expenses	*Public Law 2013, ch. 300(12) (38 M.R.S. § 569-A(8)(A))	06/18/2013	10/09/2013
Makes a technical change to clarify that DEP, not BEP, has authority to adopt testing protocols and methods regarding mercury air emissions	*Public Law 2013, ch. 300(13) (38 M.R.S. § 585-B(5))	06/18/2013	10/09/2013
Corrects the name of entity the referenced in a DEP air licensing-related provision	Public Law 2013, ch. 300(14)	06/18/2013	10/09/2013

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	(38 M.R.S. § 590-E(1))		
Incorporated as a CWA-related provision; Delays by six months (until July 1, 2016) the deadline after which Maine's air quality law prohibits use of a distillate fuel with a sulfur content greater than 0.005% by weight	Public Law 2013, ch. 300(15) (38 M.R.S. § 603-A(2)(A))	06/18/2013	10/09/2013
Harmonizes the state and federal permitting processes for a tidal energy demonstration project by specifying that a FERC-issued EA with a finding of "no significant environmental impact" is not required for DEP to accept an application for a general permit under the Maine Waterway Development and Conservation Act as complete for processing, although submission of such an EA remains necessary for issuance of that state general permit	Public Law 2013, ch. 177(1-2) (38 M.R.S. § 636-A(3-4))	05/31/2013	10/09/2013
Clarifies that, regardless of the date of state ownership, DEP may not process or act upon any application to expand a solid waste disposal facility until the facility has applied for and received a public benefit determination from DEP	Public Law 2013, ch. 243(1) (38 M.R.S. § 1310-N(1)(B))	06/12/2013	10/09/2013
Corrects agency name to reflect establishment of DACF and its revised organizational structure	*Public Law 2013, ch. 405(C-24) (38 M.R.S. § 1905(1))	07/08/2013	10/09/2013
Deletes an erroneous statutory cross reference in law regarding DEP's provision on solid waste-related technical assistance	*Public Law 2013, ch. 300(21) (38 M.R.S. § 2133(2-A))	06/18/2013	10/09/2013
DELETED:			
Repealed	Public Law 2013, ch. 405(B-1) (12 M.R.S. § 685-C(1)(B))	07/08/2013	10/09/2013
Repealed	Public Law 2013, ch. 405(B-3) (12 M.R.S. § 685-C(1)(C))	07/08/2013	10/09/2013
Repealed and replaced; see above	Public Law 2013, ch. 424(A-21) (35-A M.R.S. § 3454, paragraph 1)	07/16/2013	07/16/2013
Repealed	Public Law 2013, ch. 320(9) (38 M.R.S. § 439-A(4-A))	06/21/2013	10/09/2013
Repealed and replaced	Public Law 2013, ch. 242(2) and 320(3)	06/12/2013	06/12/2013

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	(38 M.R.S. § 439-B(3))		
Repealed; reflects and comports with legislative changes enacted last session to form the Land Use Planning Commission and address DEP's authority in LUPC territory which were approved as routine program changes	Public Law 2013, ch. 405(B- 5) (38 M.R.S. § 488(9))	07/08/2013	10/09/2013
Repealed	Public Law 2013, ch. 243(3) (38 M.R.S. § 1310-AA(6))	06/12/2013	10/09/2013