



August 27, 1984

Mr. David Keeley
CZM Program Manager
State Planning Office
184 State Street
Augusta, Maine 04330

Dear David:

The Office of Ocean and Coastal Resource Management (OCRM) has reviewed the changes to the Maine Coastal Management Program (MeCMP) covering the period from August 1978 through June 1984, which were submitted to OCRM on July 31, 1984, pursuant to 15 C.F.R. Section 923, Subpart 1. Except for the items listed below, the OCRM has found that the remaining revisions do not substantially change any enforceable policies or authorities of the MeCMP and therefore do not constitute an amendment to the Program.

The following changes, referenced by the item numbers assigned in your submittal, require additional information to clarify their intent, and although they are denied as RPIS at this time, they may be considered as RPIS after additional information is submitted.

(1) Item 3a, b, c. The modification to the Alteration of Coastal Wetlands Law and the Sand Dunes Regulations appear to be a substantial increase in authority and could possibly be an amendment unless it can be shown that the sand dunes were already protected under the approved Program.

(2) Item 9a, c, d and Item 17. The Maine Hazardous Waste, Septage and Solid Waste Management Act appears to give the State a substantially new authority over transportation and handling of hazardous wastes and septage, which could possibly be subject to the amendment process. The extent to which hazardous wastes and septage were previously managed under your solid waste laws needs to be further described.

(3) Item 16. The Nuclear Waste Activity Law -- This law appears to give the State new authority over nuclear waste. Please clarify how nuclear wastes were managed prior to enactment of this legislation. In particular, would it have been possible that their disposal would not have required a Site Location of Development Permit? Our General Counsel is of the opinion that Section 1452 conflicts with the eminent domain powers accorded the Federal government under the 5th Amendment of the U.S. Constitution and that Section 1479 is directly contrary to the dictates of Title I of the Nuclear Waste Policy Act of 1982, Public Law 97-425. If you or your attorneys would like to submit information to the contrary, we will be happy to review it. If not, we suggest you withdraw your request to incorporate this state law into the coastal program.



(4) Item 2, Item 12 and Item 15. Is the leasing of submerged and intertidal lands a new state authority? Will the leasing for aquaculture and other uses substantially impact Class SA and A waters? Since such waters are designated as areas for preservation and restoration in the MeCMP, we need additional information according to 923.30(c) of our regulations.

(5) Item 12a, b, c. Copies of the changes to the Marine Resources Law have been sent to the National Marine Fisheries Service (NMFS) in Gloucester, MA, for comments regarding the incorporation of these changes into the Program for Federal consistency purposes, and we will inform you of their response, if any, and our decision as to whether these changes are RPIs or amendments within the next few weeks.

(6) Change to Clarify Requirements Regarding Federal Consistency with Coastal Program Core Laws described in the document titled "A Report on Requested Changes to Maine's Coastal Program. These changes have been objected to by the Corps of Engineers. They have suggested alternative wording that would be satisfactory to them. We would like your response to their alternative wording before there is any action made on our part.

In accordance with these findings and subject to a notice being given by the Maine State Planning Office (SPO) pursuant to 15 C.F.R. Section 923.84(b)(2), we concur that the changes listed below constitute routine program implementation (RPI). Upon the date of the publication by SPO of the notice required by 15 C.F.R. Section 923.84(b)(4), Federal consistency shall apply to the MeCMP as amended by the following revisions:

1. Changes from Formula to Competitive Coastal Grant Program
2. Change to Reconstitute a Coastal Advisory Committee
3. Changes to the following Core Law Authorities:

Item

- (4a) Mandatory Shoreland Zoning and Subdivision Control Law (Title 12, Sections 4811-4817)
- (4b) Minimum Shoreland Zoning Ordinance, 1979
- (5a) Land Use Regulation Law (Title 12, Sections 681-689)
- (5b) Coastal Islands in the Jurisdiction of the Maine Land Use Regulation Commission, 1983
- (5d) Land Use Regulation Commission Jurisdiction within the Coastal Area, 1978
- (6) Subdivision Law (Title 30, Section 4956)

- (7a) Site Location of Development Law (Title 38, Sections 481-485, 488-490)
- (7c) Site Location of Development Law, DEP Regulations, Legal Analysis
- (7d) Special Conditions for Industrial Park Approvals
- (8) Protection and Improvement of Air Law (Title 38, Sections 581-611)
- (10a) Alteration of Rivers, Streams and Brooks Law (Title 12, Sections 776-7780)
- (10b) Regulations for the Processing of Applications for Stream Alterations
- (11a) Oil Discharge Prevention and Pollution Control Law (Title 38, Sections 541-560, 345-349)
- (11b) Regulations, Bureau of Oil and Hazardous Materials Control, DEP, February 1984
- (13) Maine Waterway Development and Conservation Act (Title 38, Sections 630-636)

OCRM has not received any other comments regarding these changes except from the Corps of Engineers as noted above.

We appreciate the time you and your staff have taken to develop the detailed summaries and other materials provided in the submission package. We look forward to working with you to resolve the remaining issues noted in this letter.

Sincerely,



Kathryn Cousins
North Atlantic Regional Manager

cc: GC/OS - Joan Bondareff