

APPENDIX G
CURRENT PROGRAMS AND AUTHORITIES



CURRENT PROGRAMS AND AUTHORITIES IN MAINE'S BAYS*

* Blue shading indicates federal agencies, green shading indicates state agencies, yellow shading indicates municipalities.

IF&W: manage populations, habitats, and consult on impacts of development for coastal seabirds (including Endangered & Threatened seabirds and Bald Eagles). Recreational public access, oil spill response, manage sea-run brook, brown and rainbow trout fisheries

DOC: Bureau of Parks & Lands leases state-owned submerged lands for erection of permanent or seasonal structures (not including aquaculture) such as construction of wharves and marinas, dredging and filling. LURC regulates activities in Unorganized Territories, which include many coastal islands

USACOE: permitting of projects located on intertidal and submerged lands, dredging of channels, construction of breakwaters

DMR: Fisheries and marine resource management, research, monitoring and regulation; aquaculture leasing & monitoring; shellfish toxin monitoring; anadromous fish restoration; consultation with state and federal agencies on proposed development projects

USCG: navigational issues, boating safety, search and rescue

NMFS: fisheries, protected resources, and EFH management

ASC: manage and enhance Atlantic salmon habitat, populations, and sport fisheries within historical habitat in all (inland and tidal) waters

DOT: shipping (cargo ports) ferries, surface water quality, coastal access

Municipalities: land use ordinances & zoning; harbor management; soft shell clam ordinances, intertidal leases

MCP – coordinate state review of federal agency actions, e.g., maintenance dredging and military construction projects, for consistency with applicable state environmental laws

DEP: Water quality regulation, such as discharges from vessels (e.g. pump-out program), overboard discharges, combined sewage overflows, issuance of MEPDES permits (including those needed for aquaculture facilities with discharges), issuance of land use permits under NRPA and site law

EPA: Water quality regulation through NPDES oversight

USFWS: Management of National Wildlife Refuges, Endangered and Threatened species, migratory birds

FERC: Regulation of the interstate transmission of natural gas, oil, and electricity.

Federal waters: Federal ownership, EEZ management authority, and regulatory jurisdiction extends from 3 miles out to 200 miles.

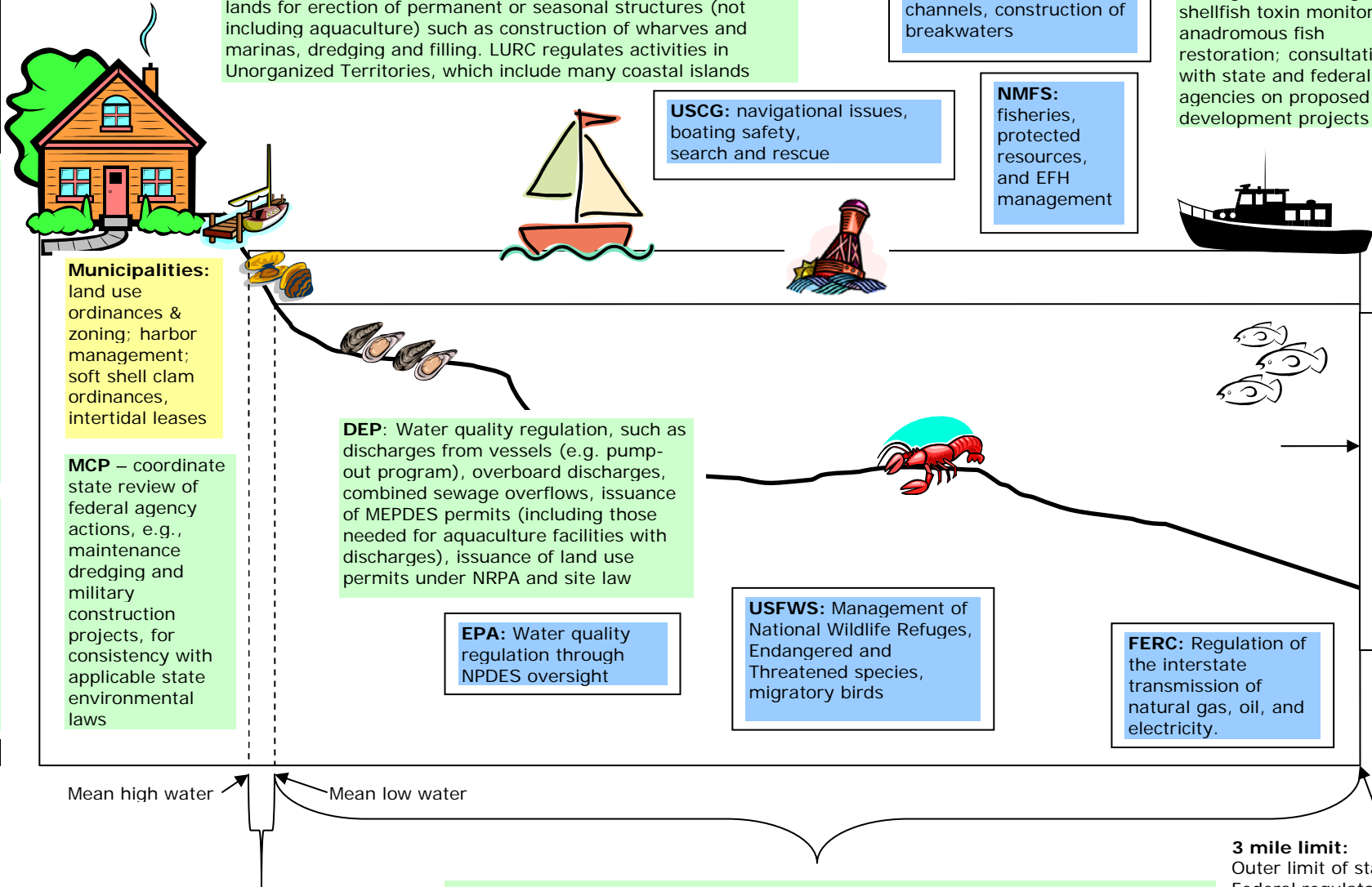
Mean high water

Mean low water

Intertidal zone – may be privately owned, subject to a public easement for "fishing, fowling, and navigation"

Maine state waters = mean low water to 3 miles
The Public Trust Doctrine provides that public trust lands, waters, and living resources are held by the State in trust for the benefit of all the people of Maine.

3 mile limit: Outer limit of state jurisdiction. Federal regulatory jurisdiction also extends into state lands and waters under select laws.



Current Programs and Authorities in Maine's Embayments

As the concept of bay management is examined and discussed, it is helpful to first consider the current mix of legal jurisdictions and authorities over Maine's nearshore coastal waters. Municipal, state and federal authorities often overlap in the same geographic coastal space. The regulation of certain activities may require the involvement of multiple agencies at multiple levels of government. This handout provides a broad overview of the programs and authorities that currently exist in coastal areas at the local, state and federal level.

Municipal Programs and Authorities

Under home rule authority, a town may assume certain regulatory powers. However, local ordinances and regulations cannot conflict with applicable federal or state statutes or regulations. In some cases, the state or federal government has expressly delegated authority to local governments to enact more stringent standards (such as a number of environmental laws). In the nearshore environment, primary municipal programs and authorities include:

- **Land use ordinances/zoning** – Municipalities have broad authority under home rule provisions to regulate land use, through local zoning and subdivision ordinances, etc. The Mandatory Shoreland Zoning Act requires all municipalities to establish zoning ordinances for land within 250 feet of great ponds, rivers, tidal areas, and freshwater and coastal wetlands. Local ordinances may be more restrictive, but not less restrictive than the state model ordinance. Shoreland zoning ordinances may also regulate aspects of structures which extend into and over the water (e.g. size, height, consistency with existing use and character), including boat ramps, piers, docks, and floats.
- **Harbor management** – Municipal harbormasters have authority for the issuance and siting of moorings, the designation of open, convenient channels for the passage of vessels, and the establishment of anchorages.
- **Soft shell clam ordinances** - Towns may establish local ordinances regulating the harvest of soft shell clams. ME DMR regulations detail the standards that local shellfish ordinances must meet in order to be approved.
- **Intertidal leases** – A municipality that has established a shellfish conservation program may issue a municipal shellfish aquaculture permit to a person for the exclusive use of shellfish in a designated area in the intertidal zone to the extreme low water mark, for the purpose of shellfish aquaculture.

Maine State Agency Regulatory Programs and Authorities

In Maine, the inner boundary of state ownership is the mean low water mark, unless the State owns the adjacent shorelands. Maine common law, derived from the Massachusetts Colonial Ordinance of 1641-7 allows private individuals to own submersible lands that lie between the mean high and mean low tide lines. The public, however, has certain rights of use in this intertidal area, including rights of fishing and navigation. The Submerged Lands Act sets the outer boundary of State waters at 3 nautical miles from the coastline.

Department of Marine Resources (DMR)

- **Fisheries management** – DMR has primary authority for the management of state water marine fisheries. Several species have advisory/management councils that provide recommendations to the Commissioner – the most well known are the seven lobster zone councils. For those species for which the fishery extends into federal waters and/or into adjacent states, DMR works with NOAA Fisheries (NMFS), the New England Fisheries Management Council (NEFMC), the Mid-Atlantic Fisheries Management Council (MAFMC), and the Atlantic States Marine Fisheries Commission (ASMFC) to coordinate federal, state, and interstate management of such species.
- **Aquaculture leasing and monitoring** – DMR has responsibility for evaluating finfish and shellfish lease applications, and monitoring environmental impacts of aquaculture operations in State waters.
- **Shellfish toxin monitoring** – DMR's division of public health oversees the application of the National Shellfish Sanitation Program within Maine. This program keeps molluscan shellfish safe for human consumption by ensuring that a common set of standards are used to classify shellfish growing areas and to handle shellfish when they go to market. The Marine Biotxin Monitoring Program uses the standards outlined in the NSSP to monitor levels of PSP ("red tide") and other marine biotoxins. When toxin is found at unacceptable levels, closures to the harvest of shellfish are implemented
- **Anadromous fish restoration** - Major restoration activities include the operation of fishways and traps to collect fish on their upstream spawning migration and transport them to upriver spawning areas. DMR also works closely with hydroelectric dam owners to provide for installation of fish passages to carry fish

Current Programs and Authorities in Maine's Embayments

upstream to spawning areas and safely pass seaward migrating adults and juveniles downstream around hydropower turbines.

- **Coastal permit review** - DMR is responsible for environmental impact reviews on projects seeking leases on publicly owned submerged and/or intertidal lands, and permits issued by DEP and LURC. DMR consults with federal resource and regulatory agencies on these issues, as well as reviewing and commenting on municipal comprehensive plans which may affect marine, estuarine and riverine resources.

Department of Environmental Protection (DEP)

DEP's role in the nearshore marine environment centers around water quality protection through the regulation of discharges – both from vessels and shore based facilities.

- **Discharges from vessels –**
 - Marine Sanitation Devices** - Under the Clean Water Act (Section 312), vessels with installed toilet facilities and operating on the navigable waters of the U.S. must contain operable marine sanitation devices (MSDs) certified as meeting standards and regulations promulgated under section 312.
 - Pump-out Program** - For vessels without MSDs, DEP manages the pump-out program in Maine. DEP administers the grant program for the installation and maintenance of holding tank pump-out stations in coastal areas.
 - Commercial Passenger Ships** - Maine recently enacted Chapter 650, which specifies a number of requirements applicable to commercial passenger vessels (cruise ships). It provides for future rulemaking and issuance of a general permit for the discharge of graywater, and mixtures of graywater and blackwater, from large commercial passenger vessels.
 - No Discharge Zones** - Section 312 also allows establishment of zones where discharge of sewage from vessels is completely prohibited. The process requires DEP to make an application to the EPA for a specific area. An application for Casco Bay is currently in development.
- **Other discharges -**
 - Combined sewer overflows (CSOs)** occur during storm events when a mixture of wastewater and stormwater runoff overflows the combined sewer collection system before receiving treatment at a licensed wastewater treatment facility. These discharges of diluted untreated wastewater violate both State and Federal water pollution laws. Municipalities or Sewer Districts that have CSOs are required to license them with DEP. License requirements direct these communities to evaluate their CSO problems and determine cost effective solutions to abate them.
 - Overboard discharge** is the discharges of sanitary waste from residential or commercial sources to streams, rivers, bays, and the ocean. All overboard discharges must be approved by the DEP.
 - National Pollution Discharge Elimination System (NPDES)** - Following Maine's authorization by the EPA in 2001, the State became the primary NPDES authority and point of contact for most wastewater discharge sources in Maine. State issued permits under the NPDES program are known as MEPDES or Maine Pollutant Discharge Elimination System permits.
- **Stormwater Management** - The Maine Stormwater Program includes the regulation of stormwater under two core laws: The Site Location of Development law (Site Law) and Stormwater Management Law.
- **Erosion and Sedimentation Control** - Under the Erosion and Sediment Control Law, activities that involve filling, displacing, or exposing soil must be conducted to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource.
- **Site Law** - Large developments considered to be of state or regional significance or of a type that may substantially affect the environment are required to obtain a Site Location of Development Permit.
- **Issuance of permits under the Natural Resources Protection Act** - Permits are required for certain activities (1) in, on, or over a protected natural resource and (2) on land adjacent to any great pond, river, stream or brook, coastal wetland and freshwater wetlands that may cause material or soil to be washed into those resources. DEP is responsible for issuing permits for specific activities up to 75' inland from the high water line, and up to 3 miles seaward.
- **Classification of Maine waters** - DEP establishes water quality goals for the State. Class SA is the highest classification of estuarine and marine waters. This classification is applied to waters that are outstanding natural resources and that should be preserved because of their ecological, social, scenic, economic or recreational importance. By law, Class SA waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, and navigation and as habitat for fish and other estuarine and marine life.

Current Programs and Authorities in Maine's Embayments

- **Watershed Management** is an approach to protecting water quality and quantity that focuses on a whole watershed. This is a departure from the traditional approach of managing individual wastewater discharges, and is necessary due to the nature of polluted runoff, which in most watersheds is the biggest contributor to water pollution.
- **Nonpoint Source Water Pollution Control Grants** – DEP provides grants to prevent or reduce nonpoint source pollutant loadings entering water resources so that beneficial uses of the water resources are maintained or restored
- **Provide technical assistance** to municipalities for the adoption, administration and enforcement of shoreland zoning ordinances.

Department of Conservation (DOC) Bureau of Parks and Lands (BPL) and Land Use Regulation Commission (LURC)

- **Submerged lands leasing** – BPL has authority to lease state-owned submerged lands for erection of permanent or seasonal structures and other activities, such as construction of wharves and marinas, dredging and filling (the exception is aquaculture leases, which are handled by DMR). Structures located on submerged land require a lease or easement when the existing use is being changed, or the size of an existing structure is being changed. A lease or easement is also required for new structures that will be permanent, or for new seasonal structures larger than 2,000 square feet and used for commercial fishing related purposes or larger than 500 square feet for any other purpose. Lease or easements are also required for pipelines, utility cables, outfall/intake pipes, and dredging. To qualify for a lease or easement, the proposed use cannot have adverse impacts on access to or over the waters of the State, the public trust rights (fishing, fowling and navigation), and/or services and facilities for commercial marine activities.
- **LURC regulates activities** in “Unorganized Territories” which include many coastal islands.

Department of Inland Fish & Wildlife (IF&W)

- **Manage populations, habitats and consult on impacts of development** for coastal seabirds (including Endangered & Threatened seabirds and Bald Eagles under the Maine Endangered Species Act)
- **Fund and develop** recreational public access
- **Partner** with other state and federal agencies in oil-spill response programs
- **Manage** sea-run brook, brown and rainbow trout fisheries

Atlantic Salmon Commission (ASM)

- **Atlantic salmon** - protect, conserve, restore, manage and enhance Atlantic salmon habitat, populations and sport fisheries within historical habitat in all (inland and tidal) waters of the State of Maine.

Maine State Planning Office, Maine Coastal Program (MCP)

- **Coastal Zone Management** – Maine has a federally approved Coastal Zone Management Plan (CZMP), and may therefore review any federal activities (either projects proposed by a federal agency or licensed or permitted by a federal agency) for consistency with the enforceable policies of the CZMP (the core laws). The core laws involve regulated activities such as wetland alteration, pollution discharge and dredging/dredge material disposal, both in organized and unorganized territories.

Maine Department of Transportation (DOT)

- **Shipping (cargo ports)/Ferries**
- **Surface Water Quality Protection Program (SWQPP)** - The purpose of this program is (1) to identify surface water bodies (lakes, rivers, streams, estuaries, etc.) where water quality is being adversely impacted by runoff from highways, (2) to select and prioritize candidate pollution elimination projects to fund, and (3) to manage the design, development and construction of projects selected for funding.
- **Wetland mitigation** - The Mitigation Unit directs and coordinates compensatory mitigation for impacts to wetland resources caused by transportation projects throughout the State.
- **NEPA Compliance** - DOT develops Environmental Impact Statements (EIS's) and Environmental Assessments (EA's) and Categorical Exclusions (CE's) for most major projects, as required by the National Environmental Policy Act (NEPA).

Current Programs and Authorities in Maine's Embayments

Federal Agency Regulatory Programs and Authorities

The United States Exclusive Economic Zone (EEZ) extends from the outer boundary of state waters (3 miles) out to 200 miles from shore. However, the federal government's legal authority in navigation, commerce and security extends shoreward into state waters. The federal agencies highlighted below are those that have a role in regulation or review of activities in state waters.

National Marine Fisheries Service (NMFS)

- **Fisheries Management** - Under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the U.S. claimed sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the EEZ. Fisheries regulations for federal water species are often developed through the Regional Fisheries Management Councils. However, for some species, the interstate Marine Fisheries Commissions (e.g. ASMFC) may recommend to the Secretary of Commerce that the Secretary adopt federal regulations that reflect state management approaches or incorporate specific state measures.
- **Protected Resource Management** - NMFS administers the Marine Mammal Protection Act, and shares statutory responsibility with the USFWS for the Endangered Species Act.
- **Act as a review agency on coastal projects** which affect living marine resources, including Essential Fish Habitat (EFH) as identified in cooperation with regional Fishery Management Councils.

US Fish and Wildlife Service (USFWS)

- **Act as a review agency on coastal projects** with impacts on resources under their jurisdiction. USFWS has responsibility for National Wildlife Refuges, Endangered and Threatened species, migratory birds, and other natural resources.

Environmental Protection Agency (EPA)

- **Water quality protection and monitoring** - The primary mechanism in the Clean Water Act (CWA) regulating the discharge of pollutants is the NPDES. Under the NPDES, a permit is required from EPA or an authorized state for the discharge of any pollutant from a point source into the waters of the US. Permits may be issued by states following approval of their permit program by EPA (ME's program was approved in 2001); for discharges beyond the territorial sea, EPA is the permit-issuing authority. In ME, as in all delegated states, EPA's role is to assure that state actions meet the requirements of the CWA. This includes review of draft permits prepared by the state, general oversight of program requirements and performance, and review of proposed changes to state laws and rules related to the NPDES program.
- **Disposal Site selection** in cooperation with other state and federal agencies.

US Army Corps of Engineers (USACOE)

- **Jurisdiction over projects located on intertidal or submerged land** through issuance of permits authorizing activities in or affecting navigable waters of the U.S., and adjacent wetlands, including the discharge of dredged or fill material, and the transportation of dredged material for the purpose of dumping it into ocean waters. This requires consultation with other federal agencies, including NMFS and USFWS, and frequently involves consultation with state agencies.
- **Navigation Project Development and Maintenance**, including maintenance dredging of channels and anchorages, construction and maintenance of breakwaters.
- **Disposal Site Selection and Monitoring**

US Coast Guard (USCG)

- **Navigational issues** – placement and maintenance of navigational aids, permitting of bridges and consultation with the ACOE on other activities that have the potential to impact navigation.
- **Boating safety/Search and rescue**

Federal Energy Regulatory Commission (FERC)

- **Regulation of the interstate transmission of natural gas, oil, and electricity.** FERC also regulates natural gas and hydropower projects.