



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office for Coastal Management
Silver Spring Metro Center, Building 4
1305 East-West Highway
Silver Spring, Maryland 20910

Kathleen Leyden
Maine Department of Marine Resources
State House Station 21
Augusta, ME, 04333-0021

JUL 31 2018

Dear Ms. Leyden,

Thank you for the May 30th, 2018, request for approval of changes to the Maine Coastal Management Program (MCMP) (received June 4, 2018). You requested that the changes be approved as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and the National Oceanic and Atmospheric Administration's (NOAA's) Office for Coastal Management's *Program Change Guidance (July 1996)*.

We concur that the changes are RPCs and approve their incorporation as part of the federally approved MCMP with the qualifications noted below. Please note that any changes to enforceable policies of the program can only be used for CZMA Federal Consistency review purposes after notice of this approval is published pursuant to 15 C.F.R. § 923.84(b)(4).¹ Please include in the public notice the list of changes provided in this letter, and send a copy of the notice to the Office for Coastal Management for our records.

PUBLIC AND FEDERAL AGENCY COMMENTS

The Office for Coastal Management received no comments on this RPC submission.

CHANGES APPROVED AND QUALIFICATIONS

The State is proposing modifications to the boundary for the Maine Coastal Management Program. The State is not proposing to change the definition of its coastal area as approved by NOAA, but is seeking to clarify the land area encompassed by that definition.

After reviewing the proposed modifications as discussed in the State's submission and the accompanying technical report identified as Attachment 1, NOAA finds that the changes to the coastal area boundary reflect updated information on areas included within it under the NOAA-approved definition of the boundary of the MCMP. These changes would not significantly change the coastal program. As detailed in Attachment 1, the land area and population affected by the addition or subtraction of these places from the coastal area, as applicable, are not significant in view of those of the coastal area as a whole. In addition, these changes would not significantly alter the State's regulatory or resource management framework. Federal agency

¹ See also the Office for Coastal Management's *Addendum to the July 1996 Program Change Guidance* (November 2013), <https://coast.noaa.gov/czm/consistency/policy/>.

activities are subject to consistency review based on their effects to coastal uses and resources of the coastal zone rather than their geographic location, so this change does not significantly affect the federal consistency obligations of federal agencies.

The boundary modifications add the land area of the towns of Veazie, Eddington, Orono, and Bradley, Maine, located on the Penobscot River in Penobscot County, Maine. These areas are located on waters subject to tidal influence, and thus within the coastal area under the NOAA-approved definition of the boundary of the MCMP. In addition, the State is removing the following towns and unorganized townships located in Hancock County and Washington County, Maine, from the MCMP boundary having found that these areas are not located on waters subject to tidal influence and not within the NOAA-approved definition of the boundary of the MCMP: Whitneyville; Marion Township; Centerville Township; T8 SD (Fletcher's Landing); T9 SD; and T10 SD (Attachment 1, Appendix 1b). Each of the corrections to Maine's coastal area noted above serves to conform the mapped boundary of the MCMP with the NOAA-approved narrative boundary. Accordingly, they are routine program changes.

The review of amended statutes and regulations of the MCMP found that Ch. 38 M.R.S. Section 349, Penalties, subsection 2-A (amended by P.L. 2017, c. 376, section 1), pertaining to supplemental environmental projects, does not have any applicability for CZMA federal consistency review purposes since Section 349 would only apply in instances after the federal consistency review process has been completed. This section has been marked with an asterisk in the Table of Approved Changes to indicate that it is not applicable as an enforceable policy for CZMA review purposes.

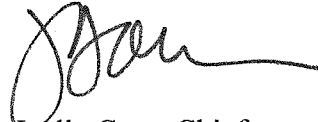
The review also questioned whether state permitting requirements for hydropower projects were preempted by the Federal Power Act. The approval of the DEP Ch. 450 and LUPC Ch. 11 rules pertaining to the regulation of hydropower projects as enforceable policies of the MCMP is only to the extent that those rule requirements and their application are not preempted by the Federal Power Act or other law. Please also note that only the substantive standards within the DEP Ch. 450 and LUPC Ch. 11 rules may be applied for determining the consistency of federal actions. Procedural requirements, including requirements to obtain a state permit, are not considered to be standards applicable for determining consistency and cannot be the basis for issuing a CZMA objection.

As a standard qualification applying to all program changes, states may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document, the referenced policy itself must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. No referenced policy may be applied for federal consistency unless that policy has been separately reviewed and approved as an enforceable policy by the Office for Coastal Management.

See the enclosed Table of Approved Changes.

Thank you for your cooperation in this review. Please contact Becca Newhall at 978-281-9237, if you have any questions. For future correspondence regarding these program changes, please refer to the file number assigned to this action, ME-2018-1.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joelle', with a long horizontal flourish extending to the right.

Joelle Gore, Chief
Stewardship Division

Enclosure: Table of Approved Changes

Table Of Approved Changes (ME-2018-1)

Enclosure for the July 31, 2018 letter from the NOAA Office for Coastal Management approving the incorporation of changes to the Maine Coastal Management Program (MCMP). Changes marked with an asterisk (*) are incorporated into the MCMP but cannot be applied as enforceable policies for CZMA Federal Consistency review purposes.

Name/Description of State or Local Law/Regulation/Policy/ Program Authority or Change	Public Law or Rule Chapter	Citation to codified statutory or rule provision	Enforcement Mechanism(s)	Date Effective in State	Notes
BOUNDARY MODIFICATION					
<p>Modification of the MCMP boundary to add the towns of Veazie, Eddington, Orono, and Bradley, Maine, located on the Penobscot River in Penobscot County, Maine.</p> <p>Modification of the MCMP to remove the following towns and unorganized townships located in Hancock County and Washington County, Maine: Whitneyville; Marion Township; Centerville Township; T8 SD (Fletcher's Landing); T9 SD; and T10 SD</p>	Not applicable.	Not applicable.	Not applicable.	Date of NOAA approval.	
STATUTORY CHANGES AMENDED:					
<p>Updates to Maine's water quality standards to align them with federal Clean Water Act regarding pesticide application to control invasive plants and mosquito-borne disease and to allow DEP to use an alternative low-flow requirement when assessing the effect of discharges of nutrients on water quality, subject to DEP's adopting rules for such discharges</p>	P.L. 2017, c. 319, sections 1-10	38 M.R.S. §§361-A, sub-§1-L; 464, sub-§4, ¶A; 464, sub-§4, ¶D; §465, sub-§1, ¶B; 465, sub-§2, ¶B; 465, sub-§3, ¶B; 465, sub-§3, ¶C; 465, sub-§4, ¶B; 465, sub-§4, ¶C; 465-A, sub-§1, ¶B; 465-B, sub-§1, ¶B; 465-B, sub-	DEP permit	8/1/2018	These CWA-related provisions are incorporated into Maine's coastal management program pursuant to 16 U.S.C. §1456(f)

Adds a definition of “publicly owned treatment works” and amends and provisions regarding registration and reporting by a “municipal satellite collection system” to state waste water discharge laws	P.L. 2017, c. 353, section 1-3	38 M.R.S. §361-A, sub-§3-D; 38 M.R.S. §414-B, sub-§ (repealed); 38 M.R.S. §414-D	DEP permit	8/1/2018	These are CWA-related provisions are incorporated into Maine’s coastal management program pursuant to 16 U.S.C. §1456(f)
Authorizes DEP and a license or permit violator to agree to a “supplemental environmental project” (environmentally beneficial project primarily benefiting public health or the environment that a violator is not otherwise required or likely to perform) to mitigate for up to 100% of the assessed civil penalty	P.L. 2017, c. 376, section 1	*38 M.R.S. §349, sub-§2-A	DEP enforcement action	8/1/2018	
Amends and clarifies several definitions in the State’s electronics recycling statute	P.L. 2017, c. 391, section 1	38 M.R.S. §1610, sub-§2	DEP enforcement action	8/1/2018	
Makes technical corrections, including those related to clarification of definitions, and adjustments related to the basis on which a consumer electronic device manufacturer is responsible and billed for recycling costs	P.L. 2017, c. 391, section 2	38 M.R.S. §1610, sub-§5	DEP enforcement action	8/1/2018	
Makes technical corrections, including those related to clarification of definitions, and changes the due date for consumer electronic device manufacturer annual registration from July 1st to April 1st	P.L. 2017, c. 391, section 3	38 M.R.S. §1610, sub-§6-A	DEP enforcement action	8/1/2018	
Removes reference to “orphan waste” in the provision regarding DEP enforcement and cost recovery to reflect the above-noted changes in definitions and basis on which a consumer electronic device manufacturer’s	P.L. 2017, c. 391, section 4	38 M.R.S. §1610, sub-§10	DEP enforcement action	8/1/2018	

recycling-related cost obligations						
RULE CHANGES ADDED:						
<p>Regulations implementing the Maine Metallic Mineral Mining Act, 38 M.R.S. §490-L.L. <i>et seq.</i> These regulations address:</p> <ul style="list-style-type: none"> • Administration, rulemaking, and local participation; • Mining permit application procedures; Mining permit duration, termination, revocation, transfer and amendment procedures; • Performance, operation and reclamation standards; • Financial assurance requirements; • Mining and reclamation reporting requirements; and • Enforcement and violation provisions 	DEP rules ch. 200	CMR 06-096, ch. 200	DEP permit	12/28/2017		
<p>Regulations implementing standards of approval under the Maine's Wind Energy Act, 35-A M.R.S. §§3451-59. These regulations clarify and provide further guidance on the review process for permit applications for wind energy projects under the WEA and elaborate on the licensing standards for wind energy projects, including those regarding impacts to scenic character, tangible benefits,</p>	DEP rules ch. 382	CMR 06-096, ch. 382	DEP permit	4/30/2018		

decommissioning, public safety, and shadow flicker	DEP rules ch. 418	CMR 06-096, ch. 418	DEP permit	7/18/2018	
Chapter 418 addresses the beneficial use of solid waste (termed “secondary materials”) or waste derived products for a variety of manufacturing, construction, and industrial purposes, including use as fuel, raw material, and construction material; establishes a regulatory framework for assessment and permitting of a variety of proposed beneficial uses of solid wastes subject to management (rule specifies secondary material that are exempt) that is protective of the environment and public health, and is consistent with Maine’s solid waste management hierarchy (38 M.R.S. § 2101) that favors recycling and reuse over disposal, in part through use of “reduced procedures for select beneficial use activities”, including beneficial use of de-watered dredge material as construction fill.	DEP rules ch. 450 and LUPC rules ch. 11	CMR 06-096, ch. 450 and CMR 01-672, ch. 11	DEP or LUPC permit	11/2/2017	See qualification regarding federal preemption within decision letter.
Rule Changes AMENDED:					
Implementing the Storm Water Management Act and Site Location of Development Act, in pertinent part, Chapter 502 details criteria used to identify the direct watersheds of lakes	DEP rules ch. 502	CMR 06-096, ch. 502	DEP permit	2/18/2018	

<p>most at risk from new development and urban impaired streams, and lists those waterbodies. These changes update the rule to reflect current water quality conditions and identify the lakes now most at risk from development activities and urban impaired streams</p>	<p>LUPC rules ch. 10</p>	<p>CMR 01-672, ch. 10, sections 10.2(199 and 200); 10.21 (various provisions)</p>	<p>LUPC zoning and permit</p>	<p>3/5/2018</p>	
<p>Amendments to various provisions in the LUPC's land use districts and standards to allow development of grid-scale solar energy generation facilities in the Commercial Industrial Development Subdistrict (D-CI), subject to LUPC permitting by establishing criteria for locations eligible for redistricting to D-CI for the purpose of developing a grid-scale solar energy generation facility, providing for automatic reversion to the prior sub-district designation if the facility is not developed within a reasonable period of time or if built, when it's decommissioned, and limiting such development in areas with prime agricultural soil.</p>	<p>LUPC rules ch. 10</p>	<p>CMR 01-672, ch. 10, sections 10.02(189); 10.21 (various provisions); and 10.26 (various provisions)</p>	<p>LUPC zoning and permit</p>	<p>3/5/2018</p>	
<p>Amendments to various provisions in the LUPC's land use districts and standards to create the opportunity for Rural Business Development (D-RB) sub-districts in Washington County by encouraging a range of well-sited, economically and environmentally-sound development that is in or proximate to existing developed areas and concentrated along major transportation corridors and that is compatible with the region's rural character</p>	<p>LUPC rules ch. 10</p>	<p>CMR 01-672, ch. 10, sections 10.02(189); 10.21 (various provisions); and 10.26 (various provisions)</p>	<p>LUPC zoning and permit</p>	<p>3/5/2018</p>	