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

MAY 17 2010

Martha Freeman, Director
Maine State Planning Office
38 State House Station
Augusta, Maine 04333-0038

Dear Ms. Freeman:

Enclosed are the final evaluation findings for the Maine Coastal Program (MCP) for the period from May 2004 to September 2009.

The fundamental conclusion of this evaluation is that the MCP is adhering to its programmatic obligations as defined by its approved program document, the terms of federal financial assistance awards, and the Coastal Zone Management Act of 1972, as amended. This evaluation findings document contains numerous program accomplishments as well as a few recommendations, none of which are mandatory.

We greatly appreciate your cooperation and assistance, and that of your staff, during the accomplishment of this evaluation.

Sincerely,

Donna Wieting

Donna Wieting
Acting Director

Enclosure

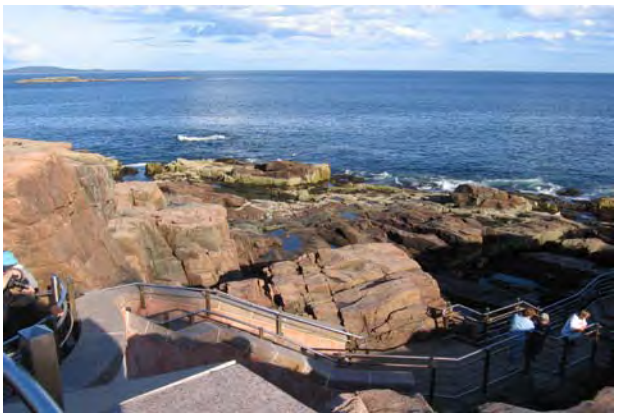
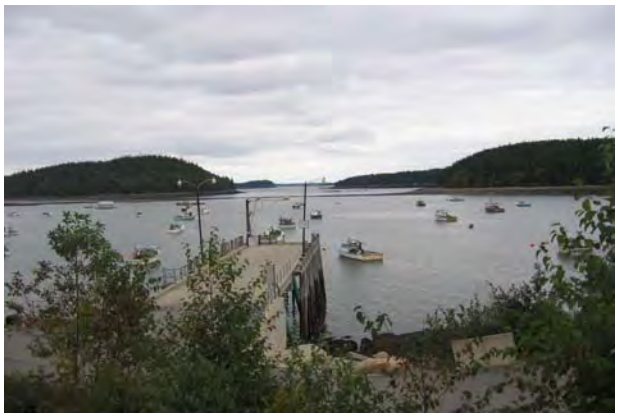
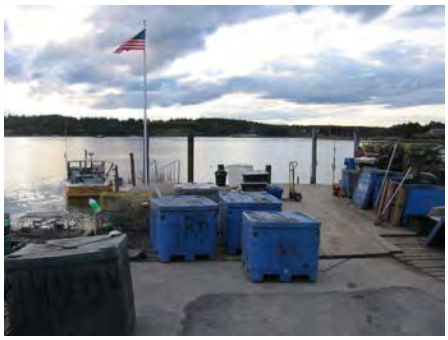
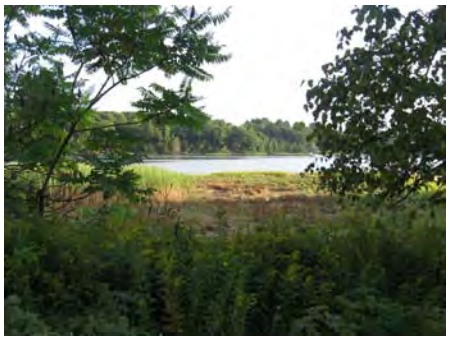
cc: Kathleen Leyden, Director, Maine Coastal Program
Matt Fleming, Director, Chesapeake and Coastal Program, Maryland
John King, Chief, Coastal Programs Division, OCRM
Liz Mountz, Coastal Programs Division, OCRM

FINAL Evaluation Findings

# Maine Coastal Program

*June 2004 – September 2009*

May 2010


Office of Ocean and Coastal Resource Management
National Ocean Service
National Oceanic and Atmospheric Administration
United States Department of Commerce

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# I. EXECUTIVE SUMMARY

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to conduct periodic evaluations of the performance of states and territories with federally approved coastal management programs. This review examined the operation and management of the Maine Coastal Program (MCP) by the Maine State Planning Office (SPO), the designated lead agency, for the period from June 2004 to September 2009.

This document describes the evaluation findings of the Director of OCRM with respect to the MCP during the review period. These evaluation findings include discussions of major accomplishments as well as recommendations for program improvement. This evaluation concludes that the SPO is successfully implementing and enforcing its federally approved coastal program, adhering to the terms of the Federal financial assistance awards, and addressing the coastal management needs identified in §303(2)(A) through (K) of the CZMA.

The evaluation team documented numerous MCP accomplishments during this review period, not all of which could be captured in this document. Overall, OCRM finds that the MCP continues to make great progress addressing coastal management issues through successful coordination and collaboration with both governmental and non-governmental program partners. Specific accomplishments are noted with regard to protecting natural resources, mitigating coastal hazards, and sustaining working waterfront access. The MCP demonstrated great leadership in the development of policy direction on new and emerging issues, such as climate change adaptation and ocean energy, while also working to strengthen core program authorities for resource protection. In addition, the MCP provided strong support to its regional and local partners through the development decision-support tools and technical assistance resources to help inform and implement coastal management at the community level.

The evaluation team also identified a few areas where MCP implementation could be strengthened. While the evaluation team found that the MCP has good collaborative relationships with Maine Sea Grant and the Wells National Estuarine Research Reserve, OCRM encourages the three programs, all of which are supported by NOAA, to better coordinate how they address priority coastal issues in Maine. OCRM also encourages the Coastal Program to prioritize education and outreach efforts to support program goals and current and emerging policy issues. In addition, OCRM found that implementation of the MCP could be enhanced through a proactive planning process between SPO and the Maine Department of Environmental Protection in advance of the development of their annual Memorandum of Understanding, and the development of priorities and expected outcomes for SPO's financial assistance grants to coastal regional planning organizations. And while commending the MCP's progress with regards to its draft Coastal and Estuarine Land Conservation Program plan development and marine spatial planning efforts, OCRM encourages continued work on these.

## II. PROGRAM REVIEW PROCEDURES

### A. OVERVIEW

NOAA began its review of the MCP in July 2009. The §312 evaluation process involves four distinct components:

- An initial document review and identification of specific issues of concern;
- A site visit to Maine, including interviews and a public meeting;
- Development of draft evaluation findings; and
- Preparation of the final evaluation findings, partly based on comments from the State regarding the content and timetables of recommendations specified in the draft document.

Accomplishments and recommendations made by this evaluation appear in boxes and **bold** type and follow the findings section where facts relevant to the recommendation are discussed. The recommendations may be of two types:

> **Necessary Actions** address programmatic requirements of the CZMA's implementing regulations and of the MCP approved by NOAA. These must be carried out by the date(s) specified;
>
> **Program Suggestions** denote actions that OCRM believes would improve the program, but which are not mandatory at this time. If no dates are indicated, the State is expected to have considered these Program Suggestions by the time of the next CZMA §312 evaluation.

A complete summary of accomplishments and recommendations is outlined in Appendix A.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA §312(c). Program Suggestions that must be reiterated in consecutive evaluations to address continuing problems may be elevated to Necessary Actions. The findings in this evaluation document will be considered by NOAA in making future financial award decisions relative to the MCP.

### B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT

The evaluation team reviewed a wide variety of documents prior to the site visit, including: (1) the 2005 MCP §312 evaluation findings; (2) the federally-approved Environmental Impact Statement and program documents for the MCP; (3) federal financial assistance awards and work products; (4) semi-annual performance reports; (5) official correspondence; and (6) relevant publications on natural resource management issues in Maine.

Based on this review and discussions with NOAA's OCRM, the evaluation team identified the following priority issues prior to the site visit:

- Program accomplishments since the last evaluation;
- Implementation of federal and state consistency authority;
- Changes to the core statutory and regulatory provisions of the MCP;
- Effectiveness of interagency and intergovernmental coordination and cooperation at local, regional, state, and federal levels;
- Public participation and outreach efforts;
- Public access;
- Coastal habitat;
- Coastal hazards;
- Water quality;
- Coastal dependent uses and community development;
- Performance measurement efforts; and
- The manner in which the MCP has addressed the recommendations contained in the §312 evaluation findings released in 2005. The MCP's assessment of how it has responded to the recommendation in the 2005 evaluation findings is located in Appendix B.

## C. SITE VISIT TO MAINE

Notification of the scheduled evaluation was sent to the Maine State Planning Office, the MCP, relevant environmental agencies, members of Maine's congressional delegation, and regional newspapers. In addition, a notice of NOAA's "Intent to Evaluate" was published in the *Federal Register* on July 30, 2009.

The site visit to Maine was conducted from September 14-18, 2009. The evaluation team consisted of Kimberly Penn, Program Evaluator, OCRM National Policy and Evaluation Division; Liz Mountz, Maine's Program Specialist, OCRM Coastal Programs Division; and Matt Fleming, Director, Maryland's Chesapeake and Coastal Program.

During the site visit the evaluation team met with MCP staff, SPO staff and other state officials, federal agency representatives, coastal regional planning commission representatives, nongovernmental representatives, tribal representatives, and private citizens. Appendix C lists individuals and institutions contacted during this period.

As required by the CZMA, NOAA held an advertised public meeting on Tuesday, September 15, 2009, at 7:00 p.m., at the Ellsworth City Hall Auditorium, 1 City Hall Plaza, Ellsworth, Maine. The public meeting gave members of the general public the opportunity to express their opinions about the overall operation and management of the MCP. Appendix D lists persons who registered at the public meeting. NOAA's response to written comments submitted during this review can be found in Appendix E.

The MCP staff members were crucial in setting up meetings and arranging logistics for the evaluation site visit. Their support is most gratefully acknowledged.

## III. COASTAL MANAGEMENT PROGRAM DESCRIPTION

NOAA approved the Maine Coastal Management Program (MCP or Coastal Program) in 1978. The lead coastal agency is the Maine State Planning Office (SPO), with the Coastal Program implemented through a network of 19 state laws. Core implementing authorities include the Maine Rivers Act, Marine Resources Laws, Coastal Management Policies Act, the Natural Resources Protection Act, and the Site Location of Development Act.

The MCP works cooperatively with state, regional and local agencies, nonprofit organizations, private businesses, and the public towards a shared goal of a healthy coast and vibrant coastal communities. At the state level, the Coastal Program provides support to natural resource agencies to implement and enforce appropriate laws. At the local level, the Coastal Program assists communities with land use planning and provides funding and technical assistance for other local efforts. While SPO coordinates local technical assistance efforts pertaining to land management in the state, the Maine Department of Environmental Protection (DEP) administers and enforces most of the environmental protection statutes that serve as MCP's core laws. Other state networked partners include the Maine Department of Marine Resources, the Maine Geological Survey, and the Office of the Attorney General.

Maine's coastal zone extends to the inland boundary of all towns bordering tidal waters and includes all coastal islands. Maine's rocky coastline is well known, but sandy beaches are found along the southern portion of the state's shoreline, and other regions contain eroding bluffs. Maine's coastal waters have historically supported a variety of diverse human activities such as commercial fishing, maritime commerce and transportation, and recreational boating. In addition to those "traditional" uses, Maine waters are utilitized by a variety of newer economic development activities such as aquaculture, whale-watching, kayak touring and cruise ship visitation.

The Coastal Program works to sustain coastal resources and enhance the maritime economy through work in:

- Coastal community planning and land use regulation
- Effective administration of core coastal laws
- Public access planning and land acquisition, with an emphasis on working waterfronts
- Habitat restoration
- Reduction of nonpoint source pollution
- Support of coastal stewardship through education, outreach, and volunteer support
- Innovative initiatives in special places including sand beaches and watersheds of sensitive embayments.

## IV. REVIEW FINDINGS, ACCOMPLISHMENTS, AND RECOMMENDATIONS

## A. OPERATIONS AND MANAGEMENT

Overall, OCRM finds that the Maine State Planning Office is successfully implementing the Maine Coastal Program.

### 1. Organization and Administration

The Maine Coastal Program, administered by the State Planning Office (SPO), is a networked program implemented in partnership with the Maine Department of Marine Resources, Maine Department of Environmental Protection, Maine Geological Survey, and the Office of the Attorney General. The MCP works cooperatively with these state agencies, regional and local agencies, nonprofit organizations, private businesses, and the public towards a shared goal of a healthy coast and vibrant coastal communities.

The evaluation team noted that the administration of the MCP through SPO, a part of the State's Executive Department, strongly supports relationships with a wide variety of partners (e.g. other state agencies, local governments, nonprofits, etc.). The MCP is thus best able to ensure comprehensive, coordinated, and balanced coastal management statewide. In addition to raising the Program's visibility, this placement also allows greater opportunities for input into policy development.

As described, the MCP is a networked program, with each agency contributing to implementation. Many notable accomplishments attributable to the network will be discussed throughout this document, but a brief overview of agency responsibilities for the MCP follows:

- The Department of Environmental Protection (DEP) administers most of the 19 core laws that constitute the MCP. The Coastal Program thus provides funding to support 5.5 positions for permitting and enforcement in the Bureau of Land and Water Quality.
- The Department of Marine Resources (DMR) coordinates the review of development proposals that may affect marine resources, provides expertise on fisheries management and bay management, and coordinates the volunteer monitoring that informs shellfish management. The Coastal Program funds three staff positions at DMR.
- The Department of Conservation (DOC) Maine Geological Survey (MGS) provides a wealth of technical assistance to the Coastal Program and partners in the form of mapping and decision support tools (e.g. assessments associated with the administration of the sand dune regulations, planning for seal level rise, and provisions for coastal bluffs). The MGS also plays an important technical assistance role to the local and regional coastal management partners. The Coastal Program funds one staff position at DOC/MGS.
- The Office of the Attorney General (OAG) provides legal analysis, assistance with legislative proposals and represents DEP, DMR and other natural resource agencies in enforcement matters and challenges to state environmental laws. The Coastal Program funds one staff position at OAG.

The MCP also collaborates with other State agencies (e.g. Maine Department of Transportation) on initiatives including habitat restoration, coastal dredging, and climate change adaptation.

The evaluation team observed numerous accomplishments that are directly attributable to MCP's dedicated and knowledgeable staff. Staff demonstrate a keen understanding of current coastal issues, and of the opportunities for cooperative management and mitigation of them. They do an excellent job of engaging and collaborating with regional and local partners in coastal stewardship.

**Accomplishment: The MCP successfully coordinates and collaborates with agencies and organizations (at federal, regional, state, and local levels) to address state and national coastal management goals.**

### 2. Coastal Policies and Program Changes

During this review period, the State has enacted new laws or revised existing ones that have implications for Maine's coastal resources. The MCP has accordingly—and promptly—submitted routine program changes to NOAA (3 in 2006, 1 in 2008, 1 in 2009 prior to the evaluation) that have included amended or new agency rules, implementing core law authorities, and a clarified list of federal license or permit activities subject to federal consistency review. Some of these changes will be discussed in greater detail throughout this document. It must be noted that NOAA has needed more than the 30-day period provided under its rules to complete its review in some cases, and has had to ask for (and been granted) extensions by SPO. OCRM commends SPO on their timely completion and submission of program change documentation, and will attempt to provide its own review in a timely manner in the future.

As mentioned, Maine has revised or adopted a number of rules to better protect coastal resources, including improvements to shorebird protection regulations and coastal sand dune provisions, and changes to the comprehensive planning process (which will be discussed in detail later in this document). OCRM commends the MCP for its continuous assessment of implementing regulations and thoughtful consideration of how to improve them better support the state's goals for coastal management.

The MCP also continues to demonstrate leadership in the development of new and emerging coastal policy. For example, during this evaluation period, MCP personnel have served on or staffed the Governor's Task Forces on Ocean Energy, Wind Energy Development, and Climate Change Adaptation. Positions such as these not only allow for thoughtful staff input to the policy process, but also raise the visibility of the Coastal Program and provide great opportunities for staff to gather information to help guide MCP programs and activities. MCP's role with regard to specific policy issues (e.g., off-shore wind energy, climate change) will be discussed further throughout this document. OCRM commends MCP staff on their leadership in these areas.

**Accomplishment: The MCP has demonstrated great leadership in helping Maine to develop policy recommendations on new and emerging coastal issues such as climate change adaptation and ocean energy.**

### 3. Coordination with Partners

OCRM finds that the MCP maintains productive partnerships to further Maine's coastal zone management priorities. The evaluation team observed a good rapport between staff and program partners, including the Wells National Estuarine Research Reserve (NERR), Maine Sea Grant, the Gulf of Maine Research Institute (GMRI), and regional planning organizations, which has resulted in successful collaborations on initiatives including coastal land acquisition, outreach and education, and supporting working waterfronts. As will be described throughout this document, these partnerships have helped to address the needs of the coastal management community, and to strengthen coastal management in the state and region.

While collaborative efforts are without doubt successful, they seem to be initiated on a somewhat informal basis. The evaluation team noted that these efforts could potentially be more effective if they were planned more strategically, particularly given the reality of funding limitations and the breadth of MCP priority issues. Specifically, the team noted that the MCP, Wells NERR, and Maine Sea Grant could enhance both their individual and collaborative efforts if they worked together to identify overlap and gaps in both topic areas and services (e.g. the Wells NERR Coastal Training Program and technical assistance outreach for municipalities), and planned strategically with regard to how they can address key coastal issues. Efficiencies could thus be achieved by effectively deploying limited resources to shared priorities, and identifying which program (or collaboration) is best suited to address which issues or service gaps. The evaluation team also noted an opportunity for MCP and GMRI to communicate better on research priorities, and think about how to interact where there is overlap in priorities given that the way the programs address issues can be very different.

A more strategic approach to collaborative work would allow Maine to better leverage NOAA funds to engage partners, and would help to maximize the impact of efforts, particularly in the realm of public outreach to and technical assistance for local governments. For example, planning might be structured around priority issue areas, in order to identify what resources programs currently have to address them (e.g. financial assistance, decision-support tools) and what needs there are (e.g. outreach materials, training opportunities).

**Program Suggestion: OCRM strongly encourages the MCP to work with Wells NERR and Maine Sea Grant to plan more strategically regarding how they can better coordinate and collaborate to address coastal issues in Maine.**

### 4. Outreach and Education

The MCP's objective for education and outreach efforts is to enhance public awareness, information and concern for coastal resources and promote stewardship of these resources. The Coastal Program does this in concert with a number of partners (Wells NERR, Maine Sea Grant, GMRI, Gulf of Maine Council, etc.), through a variety of projects, including publications such as Maine Coastline and the Gulf of Maine Times, and events such as Coastweeks. During this evaluation period, the MCP also supported a number of partners' education and stewardship efforts through a small grant program initiated to fund educational initiatives relating specifically to Maine coastal issues and more generally to increasing ocean literacy. Audiences for MCP efforts

are diverse and include residents, resource managers, coastal industries, students, teachers and visitors.

OCRM finds that the MCP does an excellent job of working with partners to initiate and implement various education and outreach activities throughout the State. The evaluation team was particularly impressed with the energy and engagement of MCP staff. That said, while current outreach efforts are high quality, successful, and of course valuable, there appears to be a number of other opportunities ripe for targeted education and outreach. The evaluation team thus noted that the MCP could benefit from more strategic planning with regard to identifying and prioritizing outreach and education efforts, particularly given limited resources.

A number of outreach opportunities that were evident to the evaluation team were with regard to the MCP's work with regional organizations and municipalities on comprehensive planning and key coastal issues (e.g. information on revised/new regulations, available technical and financial assistance, model ordinances, regional challenge grant lessons learned, etc.). For example, the evaluation team heard during the site visit that land use planning efforts (e.g. engagement in comprehensive planning processes, adoption of plans) could greatly benefit from outreach targeted at municipalities. The MCP could, for example, consider developing outreach materials that demonstrate linkages between land use and nearshore water quality/coastal resource health. In addition, as will be discussed later in this document, MCP networked agencies would benefit from coordinating outreach and education efforts, where appropriate, to program partners such as regional planning organizations and municipalities.

**Program Suggestion: OCRM encourages the MCP to clarify its education and outreach strategy considering both program goals and current policy issues/development, and to prioritize efforts based on program needs.**

## B. PUBLIC ACCESS

In its recent §309 Assessment and Strategy (2006), the MCP concluded that public access remains a high priority area. Maine is also one of only a few coastal states whose intertidal areas are privately owned. The assessment found continuing loss of traditional access, competition for limited coastal lands for public uses and working access, and widespread public concerns for preserving adequate access to the coast. The MCP thus works to ensure that communities continue to have adequate public access to Maine's coastal resources. The Coastal Program addresses public access primarily through waterfront access programs and land conservation and acquisition efforts.

The Coastal Program primarily addresses public access through waterfront access programs (including grants for harbor planning and management, and securing public access) that are focused on the needs of recreational and commercial fisherman, and land conservation and acquisition efforts. The MCP also administers a Right-of-Way Discovery grant program which provides coastal communities with small grants to support discovery or affirmation of public rights-of-way to the water that may have been lost or forgotten. (Note that land conservation and acquisition will be discussed in more detail in *Section C. Coastal Habitat*.) The evaluation team

was able to see a number of access projects throughout the site visit, including a recent success story of the Working Waterfronts Access Pilot Program at the Davis Wharf in West Tremont.

The Working Waterfronts Access Pilot Program, which was created in 2006 is implemented by the Maine Department of Marine Resources (DMR) and the Land for Maine's Future (LMF) program (funded in part by the MCP), provides funds to help preserve and protect key properties on the coast that provide access to and support commercial fisheries activities. Funds are available to assist commercial fisheries businesses, co-ops, municipalities and other interested parties in securing strategically significant working waterfront properties, and are awarded through a competitive process. Matching funds can be used to purchase a property, or access easements, rights of way, or development rights to preserve walk-in or small boat access properties entirely dedicated to commercial fisheries uses.

When a project receives funding, the working waterfront property's development rights are extinguished through the sale of a "working waterfront covenant" held by the DMR. The agreement protects all current and future fisheries related uses of the land by prohibiting all conflicting non-fisheries activities (e.g. condos, marinas). The property owner retains all other rights of ownership, including some flexibility to manage the property as needed—including a degree of mixed use—to remain viable, and they are free to sell or lease. If the property owner chooses to sell the property, the State has a "right of first refusal" to assure that the land will be valued at its working waterfront value and thus remain affordable to those who would purchase it with the intent to continue commercial fishing activities.

In 2009, the Working Waterfront Access Pilot Program released statistics of its success including: securing 19 properties encompassing 40 acres of land that represent a fair market value of over $17 million; supporting more than 520 boats and 950 fishing industry jobs, and more than $40 million in income directly dependent on working waterfronts and more than $80 million in additional economic contribution to the local economy.

OCRM commends the MCP on supporting this innovative program, which has helped not only to address the high cost of commercial fisheries properties on the coast of Maine (particularly in the face of unpredictable fisheries markets) but also to protect traditional community assets for future generations.

**Accomplishment: The Working Waterfront Access Pilot Program is an excellent example of how the MCP is working to protect traditional public access and the coastal dependent industries that rely upon them.**

The MCP also administers a Shore and Harbor Technical Assistance Grant program to promote sound waterfront planning, harbor management, and balanced development of shore and harbor areas to improve marine infrastructure and assure access to the shore. This program provides support for projects including harbor plans, mooring field design and improvements, and waterfront development projects which provide public access for both commercial and recreational users. The evaluation team was able to visit some of the communities who have benefited from this program, including Bucks Harbor in Machiasport, and heard very positive feedback.

Another notable accomplishment during this evaluation period, the MCP partnered with Maine Sea Grant, The Center for Law and Innovation of University of Maine School of Law, and Island Institute (funded by a grant from the National Sea Grant Law Center) to conduct research on legal and policy tools for coastal access in Maine and to translate these findings into outreach approaches that would enable coastal property owners, public interest entities, and recreational users to address their coastal access issues. One of the outreach approaches developed is a website, "Access the Maine Coast," which contains information to help waterfront users, coastal communities, and land owners address issues regarding the rights and responsibilities of accessing the Maine coast. This approach has proved so successful, that the National Sea Grant Law Center is providing funds for other states to develop similar outreach websites.

OCRM finds that the MCP is supporting a variety of initiatives that are successfully addressing public access to Maine's coastal resources. MCP's efforts enable commercial fishing to continue as a viable component of the State's economy, and ensure opportunities for recreational use of the water by residents and tourists alike.

## C. COASTAL HABITAT

With the pressures of development and changing land uses, Maine is at risk of losing many of the natural landscapes that residents cherish and that are so important to its natural and cultural heritage as well as to its economic vitality. The MCP supports a variety of programs and initiatives that focus on the protection and restoration of critical coastal habitats. During this evaluation period, the MCP has allocated funding to habitat conservation and restoration, land acquisition, and the implementation of habitat regulatory programs. In addition, Maine has received approximately $5.2 million in federal Coastal and Estuarine Land Conservation Program funds to date. It should be noted, however, that the MCP also conducts and funds activities that help to protect and restore coastal habitat that fall more generally under the categories of technical assistance, education and outreach, and land use and community planning (discussed elsewhere in this document).

### 1. Land Conservation Planning

In 2006, the Brookings Institution released a report, *Charting Maine's Future*, (funded in part by the MCP) which argues that Maine must invest in managing its unique natural resources, because their viability is the key to sustaining the State's future economy. Critical to supporting Maine's natural resources is habitat, and yet habitat loss and fragmentation have been identified as a significant threat. The MCP has thus worked with an impressive suite of partners during this evaluation period to identify and integrate coastal conservation priorities into local and regional planning efforts.

Maine's State Wildlife Action Plan (SWAP) designates Focus Areas of Statewide Ecological Significance throughout the state. The original focus areas—natural areas of statewide ecological significance that contain unusually rich concentrations of at-risk species and habitats—were delineated in 2003, and their identification was based primarily on terrestrial drivers. These focus areas are promoted through Maine's Beginning with Habitat (BwH) program (initiated in 2000 and

discussed in detail in the last evaluation findings). A collaborative program of federal, state and local agencies and non-governmental organizations, BwH compiles habitat information from multiple sources, integrates it into one package, and makes it accessible to towns, land trusts, conservation organizations and others to use proactively. Many towns and land trusts have incorporated the information they have received from BwH into their comprehensive plans and strategic approaches to conservation.

During this evaluation period, BwH partners re-visited the focus areas and designated new focus areas based on coastal, intertidal and subtidal marine resource data. Models were developed that incorporated elements such as: intertidal and sub-tidal species of greatest conservation need as identified in the SWAP, rare and exemplary marine influenced natural communities and rare plant species as tracked by Maine Natural Areas Program, and US Fish and Wildlife Service data regarding priority diadromous fish habitat. BwH also incorporated the extent of remaining undeveloped shoreline of a minimum of 100 acres and extending 1000 feet inland from high water to assess extent of functional supporting landscape. Regional biologists used this information and a series of rules to identify and delineate new focus areas. The new models identified six new (and refined 13 existing) focus areas for habitat protection in the coastal zone that have been incorporated into the State Wildlife Action Plan.

BwH partners anticipate that the program's technical assistance and outreach efforts, including the development and delivery of data and mapping products, will inform, and increase local support for, conservation activities. SPO noted that recent comprehensive plan submissions have included well done habitat sections, which they believe is attributable to BwH assistance. Unfortunately, the technical assistance and outreach aspects of the program are time intensive and expensive and so a challenge to continues to be identifying a stable funding stream. OCRM commends the MCP and partners on enhancing BwH to incorporate more coastal and marine information and better serve coastal land conservation efforts. OCRM also encourages MCP to think about how to potentially use outreach and education partners (such as the Wells NERR and Maine Sea Grant) to help support the goals of BwH.

The MCP (through the LMF Program) has also been working with over seventy partners in land conservation, including conservation organizations and state and federal agencies, on the Maine Coastal Protection Initiative (MCPI). In 2004, the MCPI project team, which includes SPO, the Land Trust Alliance, Maine Coast Heritage Trust, and NOAA's Coastal Services Center, engaged these partners in a year-long planning process. The MCPI Coalition was formed, and developed a *Strategic Conservation Framework* with three overarching goals that include: creating a viable network of conserved lands that protects priority coastal and estuarine habitat, adequate coastal access to support commercial fisheries and recreational pursuits, and sufficient scenic viewsheds to preserve the unique character of the Maine coast; provide land trusts with sustainable, professional and technical capacity engaged in proactive strategic land conservation and long-term stewardship; and increase support and funding for coastal land conservation. Overall, the MCPI aims to increase the pace and quality of land protection by enhancing the capacity of Maine's conservation community.

Through the MCPI, partners have worked together to establish a suite of coastal conservation priorities (access, scenic quality, and habitat protection) and to increased land trusts' capacities to

carry out conservation projects (e.g. by supporting the development of enhanced GIS capabilities). The evaluation team heard from a number of partners who assert that the MCP has been a catalyst in engaging the wide variety of groups in this effort to think strategically about conservation planning at a regional level.

Another accomplishment of the MCPI during this evaluation period was the development of a GIS Service Center at the University of Maine at Machias (UM-Machias) to increase GIS capacity for land trusts by providing support for conservation planning. GIS capacity was identified as a significant gap by the MCPI, and so they provided the initial funds for the Service Center's upstart. The GIS Center employs a number of interns and students, and is currently funded through an NSF grant and fees for service. The Center's client base has already expanded from land trusts to also include municipalities, Washington County Council of Governments (WCCOG), and emergency response entities. Notable accomplishments of the UM-Machias GIS Services Center (and its partners which include the MCP, the WCCOG, and the Hancock County Planning Commission among other) have been the development of a GIS based Coastal Scenic Assessment and Inventory and the development of a GIS model to generate Shoreland Zoning maps to meet new DEP guidelines. OCRM commends MCP on their leadership in the MCPI, which has created a number of efficiencies (e.g. joint priorities, mapping capacity) that have allowed conservation organizations to get a much more significant return on their investments.

**Accomplishment: The MCP has provided leadership and support to initiatives that have greatly enhanced Maine's ability to plan for and implement land conservation activities in the coastal zone.**

### 2. Land Acquisition

MCP works closely with Land for Maine's Future (LMF), and other partners, to identify and accomplish land acquisition projects in the coastal zone. The LMF Program was initiated to conserve lands that have exceptional natural or recreational value, and that are vital to the State's natural and cultural heritage and economy. The MCP federal grant provides funding for one staff person, who works jointly with the LMF Program. The evaluation team was able to visit some recently acquired properties and spoke with a variety of partners who have collaborated to make the acquisitions a success.

In addition to LMF, Maine is able to access acquisition funds through the Coastal and Estuarine Land Conservation Program (CELCP), established by Congress in 2002 to protect coastal and estuarine lands considered important for their ecological, conservation, recreational, historical or aesthetic values. This program provides state and local governments with matching funds to purchase significant coastal and estuarine lands, or conservation easements on such lands, from willing sellers. Lands or conservation easements acquired with CELCP funds are protected in perpetuity so that they may be enjoyed by future generations. The program is coordinated at the state level through each state's CELCP lead within the state's lead coastal management agency. According to the CELCP guidelines, a state must have an approved CELCP plan in order to compete for funding.

The MCP is the designated lead agency for Maine's CELCP, and the State currently has a draft CELCP Plan in place (2005) to guide the prioritization of coastal and estuarine land conservation projects. The State also has a CELCP committee that assists with project solicitation, review and selection. During this evaluation period, the State received funding for five CELCP projects, including the 168 acre Maquoit Bay acquisition in Brunswick, which was ranked first in the FY2007 funding competition. The evaluation team was able to visit another project, the Royal River Bayview Estuary project, an acquisition of approximately 43 acres, including 2400 feet of tidal shoreline. Maine used CELCP, LMF, and other funds to a cost of $2.7 million for this parcel, which is held by the Town of Yarmouth. The team was able to meet with a number of the partners responsible for the acquisition, and now the stewardship and management of the land, all of whom noted the significance of the MCP's engagement in the effort.

OCRM commends Maine on its land acquisition efforts. Maine's draft CELCP Plan meets the current requirement for participating in the national competition, however, it is anticipated that soon the requirement will be for final, approved. Therefore, OCRM strongly encourages the MCP to continue to work with NOAA to obtain final approval of its CELCP Plan.

**Program Suggestion: OCRM encourages the State to finalize their CELCP Plan as soon as possible.**

### 3. Habitat Restoration

MCP's Habitat Restoration Program aims to provide technical assistance and increased capacity within Maine and the Gulf of Maine region for the restoration of habitats with linkages to coastal ecosystems. The evaluation team finds that MCP is successful in these efforts as evidenced by its leadership and involvement in initiatives including the Gulf of Maine Council-NOAA Habitat Restoration Grants Program, the Maine Stream Connectivity Task Force, and a number of highlighted local restoration efforts.

A major activity during this evaluation period has been coordination of the Gulf of Maine Council – NOAA National Marine Fisheries Service Habitat Restoration Grants Program, which is managed by the MCP's Habitat Restoration Coordinator. The Partnership includes representatives from Gulf of Maine Council states and territories, NOAA, and the U.S. Gulf of Maine Association. MCP had made a number of enhancements to the Partnership's administration including improvements to website function and the development of a web-based grant tracking system, and changes to grantee guidance and reporting procedures. The Coastal Program also continues to enhance and maintain Habitat Restoration Web Portal.

For the grants program, the Partnership releases an annual RFP. At the time of the site visit, the Program had provided funding for 91 projects totaling $2.8 million since its inception. There were 22 active projects at the time of the site visit. There is not a formal prioritization process for project selection; those funded in any given year are dependent on the project proposals received. Most projects have tended to be for diadromous fish habitat or wetlands. This effort provides a significant benefit to communities and ecosystems in the Gulf of Maine region, and OCRM commends the MCP for taking the lead.

When possible, the MCP also supports restoration projects through technical assistance and capacity building, both at the local community level as well as for state-wide, multi-agency efforts. For example, the MCP provides coordination and technical assistance to the Maine Stream Connectivity Task Force, a group of state and federal government and non-government participants whose goal is to enhance statewide stream and river restoration efforts. Another example of a successful collaborative restoration effort during this evaluation period is the Penobscot River Project. The Penobscot River Project was undertaken through an impressive collaboration of partners that included the Penobscot Indian Nation, six conservation groups, state and federal agencies, and the hydropower company PPL Corporation. The MCP facilitated an agreement with the PPL Corporation whereby the Corporation removed two dams from the river (a third will be decommissioned and retrofitted with a fish bypass) in exchange for the opportunity to increase generation at other dams in order to maintain current energy yeild. PPL Corporation will also improve fish passage at four additional dams, while the coalition of partners is working together to restore 11 species of diadromous fish to the River.

The MCP often collaborates with the Maine Department of Transportation's Environmental Office on habitat restoration initiatives as well, particularly with regard to the maintenance and construction of transportation ways in the coastal zone. For example, during this evaluation period, the offices worked together to develop a restorative solution for Sherman Marsh. This project was precipitated by an earthen dam failing under a MDOT roadway during an extreme storm event in 2005. The MCP and DOT worked with other federal and state agencies to remove the tidal restriction, enhance the channel depth to improve tidal exchange, and return what had been Sherman "Lake" to its natural state as Sherman Marsh , which includes now both high and low salt marsh.

OCRM finds that the MCP is undertaking habitat restoration activities that benefit local communities, the State, and the Gulf of Maine region as a whole, and commends them on these efforts. The evaluation team noted, however, the need for increased staff capacity for restoration work in Maine in particular. The MCP is addressing state needs as best as it can in light of its staffing constraints, but the need is significant. The habitat restoration coordinator is currently funded through the GOMC-NOAA partnership, and though the position is based at MCP, his ability to focus on restoration specifically in Maine is constrained (to less than 50%) by the administrative demands of the Partnership. In addition, continuity of position (and thus MCP's Restoration Program) is not a longterm solution, as the position is mainly supported by a competitive NOAA grant. Given the statewide interest in and need for habitat restoration expertise, OCRM encourages the State to consider how to increase the MCP's capacity in this area. Possibilities might include using some amount of the NOAA grant funding for general administrative support for the Partnership, and using a state/dedicated funding source for supplementing the restoration coordinator's position with a state funding source in order to allow the position to focus more time on Maine's habitat restoration goals and needs.

### 4. Resource Protection through Permitting

The MCP provides funding to DEP's Bureau of Land and Water Quality for permitting and enforcement of the Coastal Program's core laws. Some significant revisions to these laws have occurred during this evaluation period, and will be discussed here.

*Natural Resources Protection Act*

Maine's Natural Resources Protection Act (NRPA) was created to regulate a range of activities in and adjacent to significant resource areas of the state, including wetlands, great ponds, rivers and streams, significant wildlife habitat areas and sand dunes. In 2006, the State Legislature approved a change to NRPA that affords greater protection to certain areas defined as significant wildlife habitat. Protection was thus extended to certain vernal pools, moderate and high value wading and waterfowl habitat, and moderate and high value shorebird feeding, nesting and staging areas. Previously, if significant wildlife habitats such as these were not defined or delineated on maps, the rules were not applicable, and so there was essentially no protection of these areas.

Following this substantive expansion of NRPA, the DEP (and partners such as Maine Audubon) developed detailed websites and other outreach materials to explain the changes that were accessible to the average citizen. These materials were designed to explain the biological significance of these habitats as well as the regulatory framework and how landowners could access information about these habitats on their property. Maps of all municipalities were posted on the DEP website as easily downloaded files. In addition display ads were taken out in regional and statewide papers introducing these new regulations. Following that there have been two years of training sessions for consultants, municipal officials, and citizens on these new regulations where over 500 people have attended.

That said, the evaluation team noted that there is still a capacity issue—primarily at the regional and municipality level—to either obtain or develop accurate maps for use in permitting decisions (for NRPA and/or the Mandatory Shoreland Zoning Act). OCRM encourages the State to continue to support efforts to improve the municipalities' abilities to implement the revised—improved—aspects of the MCP's implementing authorities including NRPA and the Mandatory Shoreland Zoning Act.

Riprap has been allowed under the permit-by-rule procedure since the previous evaluation period, in lieu of submitting an individual project application through NRPA, in order to allow for a faster approval process for the applicant. At the time of the last findings, OCRM and MCP agreed that it would be valuable to review the extent of riprap coverage along Maine's coastline as well as the potential cumulative effects of its placement.

DEP thus assessed a large number of coastal riprap projects in 2008 for compliance with the permit standards. DEP also noted that the potential for habitat loss (including excessive upland clearing sometimes associated with riprap) and the scenic effect of large riprap projects were reason to also reassess how best to permit such projects. The review indicated that more information, including engineering design, is often necessary to ensure projects are actually necessary and that they will have minimal impact on the surrounding environment. Thus DEP now requires an individual permit (rather than permit by rule) for coastal riprap. DEP also requires vegetative plantings within the rip rap and specifies rock type, size, and color to minimize visual impacts.

During the previous evaluation period, the Coastal Sand Dune Rules (under NRPA) were amended to include, among other things, revised limitations on building in frontal dune, requirements to

make sea walls less damaging when rebuilt, and requirements for all projects to consider native vegetation restoration. These revised rules were provisionally adopted by Maine's Board of Environmental Protection (as discussed in the last findings), and brought to the Maine Legislature in 2004. However, the revised rules were pulled out of the Legislature before adoption, and a stakeholder process was created to facilitate discussion on and increase knowledge of the rules, and to strengthen stakeholder commitment to the various aspects of sand dune protection. DEP led this effort with SPO and MGS providing additional staff support. A successful compromise was finally reached in the legislature in response to citizen concerns, and the improvements were incorporated into coastal sand dune provisions.

*Mandatory Shoreland Zoning Act*

Maine's Mandatory Shoreland Zoning Act requires that each of Maine's organized municipalities adopt and administer ordinances regulating land use activities in the shoreland zone. This Act helps to: prevent and control water pollution; protect wildlife habitat including waterbodies and wetlands; project buildings and lands from flooding and accelerated erosion; protect historic resources; protect commercial fishing and maritime industries; control building sites and land uses; conserve shore cover, and visual as well as actual points of access to inland and coastal waters; conserve natural beauty and open space; and anticipate and respond to the impacts of development in shoreland areas. The shoreland zone consists of those areas within 250 feet of the normal high-water line of great ponds, rivers and tidal waters, within 250 feet of the upland edge of freshwater and coastal wetlands, and within 75 feet of streams. The law is primarily administered through each municipality, and the DEP is responsible for ensuring that the municipalities are reasonably administering and enforcing the ordinances. During this evaluation period, changes were made to the shoreland zoning regulations that address: (1) unstable coastal bluffs, setbacks have to be measured from the top of the bluffs (previously it was from the waterline); (2) freshwater wetlands, requirements for new resource areas to be included; and (3) new understory related requirements, saplings or brush cannot be removed in order to maintain adequate buffer. OCRM again commends the MGS for its development of coastal bluff maps that informed and support the establishment of new setbacks.

Municipalities were supposed to be in compliance with these revisions by 2008. Due to delays in producing some of the appropriate maps, revisions to municipal shoreland zoning ordinances were still underway at the time of the site visit. In addition to MGS, the GIS Service Center at UM-Machias has been a significant help in this effort by generating digital maps at the 1in : 2000ft scale necessary for shoreland zoning. There is still, however the challenge of digitizing high to moderate value coastal wetlands, which are currently unavailable.

As with the NRPA revisions, DEP has conducted outreach on the new Shoreland Zoning rules that included newsletters and a series of workshops with the regional planning councils. That said, the evaluation team still noted a lack of understanding and ability to implement. The regional organizations tend to provide assistance to the municipalities with regard to shoreland zoning, so it appears that outreach to them should be prioritized. An evaluation of the Mandatory Shoreland Zoning Act had been planned for this evaluation period, but has been postponed due to budget constraints. OCRM encourages the MCP to prioritize this evaluation, possibly in conjunction with other DEP efforts discussed below.

**Accomplishment: The MCP networked agencies have worked to strengthen core laws to better protect coastal resources.**

During the site visit, the evaluation team and the MCP discussed other areas where program implementing authorities could be enhanced through analysis of overlapping and/or complimentary rules. In particular, DEP expressed interest in analyzing the overlap between Mandatory Shoreland Zoning, NRPA, and floodplain management rules. (The evaluation team also heard while at UM-Machias that the GIS Service Center could potentially provide assistance in digitizing the geographical overlap.) This exercise would both strengthen the Coastal Program and streamline the planning and permitting process for local municipalities, and OCRM encourages it. The annual MOU between SPO and DEP, developed to guide coastal program efforts as DEP administers most of the core laws that constitute the MCP, would be an appropriate place to include activities such as this analysis that would strengthen Coastal Program implementation. SPO and DEP could work together to use the MOU development process to identify and support initiatives that are outside the day-to-day implementation of the Coastal Program. Another opportunity that was discussed during the site visit included more in depth reviews of rule/regulation implementation and on-the-ground impact to coastal resources (e.g. riprap permit-by-rule, water quality impacts from development).

**Program Suggestion: OCRM encourages SPO and DEP to consider how to use the process of developing their annual MOU to plan strategically about what they would like to accomplish throughout the year to strengthen the implementation of the MCP.**

## D. WATER QUALITY

An objective of the MCP is to protect and improve coastal water quality, which it addresses by focusing efforts on minimizing land and water use effects to water quality and identifying how to best reduce harmful impacts. Nonpoint source pollution continues to be a significant threat to Maine's coastal water quality, resulting in closed shellfish harvest areas, beach pollution advisories, and nutrient loading in coastal waters. In order to address these issues, Maine developed a state Coastal Nonpoint Pollution Control Program (fully approved in 2003) and supports programs including the Maine Clean Boatyards and Marinas Program, volunteer monitoring, and Maine's Nonpoint Education for Municipal Officials.

During this evaluation period, the MCP has focused efforts on enhancing priority technical assistance programs and the development of municipal tools to protect water quality. Two programs that the MCP has supported during this period deserve special mention:

- Shore Stewards—The MCP supports municipalities and watershed groups in their water quality protection efforts through the Shore Stewards program. Fifteen projects were funded during this evaluation period, helping to start local monitoring programs, build local capacity, develop watershed plans, create tools. The MCP has seen results of these efforts that include the opening of closed shellfish harvesting areas, leveraging of other funding, and significant water quality improvements.

- Maine Clean Boatyards and Marinas Program—During this evaluation period, the Maine Clean Boatyards and Marinas Program was expanded from a pilot in southern Maine to a statewide program. At the time of the site visit, sixteen facilities had achieved "Clean Marina" designation. These facilities will be reevaluated every two years in order to retain their designation.

Notable technical assistance/tools developed by the MCP include:

- Low Impact Development (LID) Guidance for Maine Communities—This guidance not only introduces LID to municipalities, but also provides recommendations for state agencies on how to include LID in other model ordinances.
- Model stormwater utility—This information assists municipalities and regional groups in identifying financing mechanisms as they start to comply with Maine's stormwater rules.

The evaluation team and MCP staff, however, further discussed the importance of both 1) articulating the relationship between land use (or stormwater runoff, faulty septic systems, etc.) and nearshore water quality (or shellfish harvesting area closures, etc.) to municipalities and also 2) developing and providing the technical assistance and/or tools to address the issue. The evaluation team noted a good example of this in the collaboration between MCP and Wells NERR to report on the Healthy Beaches Program (moved from SPO to DEP in 2009). The Coastal Program and Reserve developed a series of reports based on program data to inform participating municipalities about monitoring results, and to provide information on possible causes and potential remediation actions. OCRM commends the MCP on this effort and encourages similar outreach and education in the future (see *Section A.4. Outreach and Education*). Strategic development of outreach materials and technical assistance can begin to address the challenges to water quality noted throughout the site visit: climate change impacts on nonpoint pollution sources, nutrient loading, and adequate wastewater system design.

As part of its water quality efforts, the MCP also addresses marine debris. In addition to continuing to lead the Coastal Cleanup effort for the region, the MCP has begun to address the issue of derelict fishing gear in the Gulf of Maine. The retrieval and disposal of derelict gear is complicated by a set of legal issues. Gear is regarded as private property, and as such it cannot be removed by anyone but the owner without special permits, thus protecting fishing gear from molestation. In order to work within these legal limitations and still take advantage of volunteer efforts, the MCP is collaborating with the Maine Marine Patrol to develop protocol that enables the use of volunteer fishing boats to assist with the removal of derelict gear. OCRM commends the MCP on initiating this effort, and looks forward to learning of the results.

OCRM finds that the MCP is working to protect and improve coastal water quality through a thoughtful variety of initiatives. As mentioned, OCRM encourages the MCP to consider how to best articulate the links between land use decisions and water quality in education and outreach efforts.

## E. COASTAL HAZARDS

MCP's most recent §309 Assessment and Strategy reports that coastal hazards and hazard avoidance continue to be a high management priority. In response to continuing upward trends in

coastal population growth and development, the State is focused on enhancing and supporting land use planning efforts to avoid development in high hazard areas and to protect coastal resources. MCP's coastal hazards work includes technical support, pilot projects with coastal towns, outreach, and policy development, which they do in partnership with coastal towns, property owners, and other stakeholders. MCP networked agencies are specifically working towards: improving knowledge on coastal hazards and providing information to develop sound policy and regulation for the coastal zone; improving communities abilities to assess existing coastal hazards and identify vulnerable coastal areas, and building community resiliency through adaptive planning.

OCRM finds that the MCP has made great progress during this evaluation period in addressing the State's priority coastal hazards issues, and its §309 objectives through the collection and analysis of data, development of decision support tools for planning and policy making, and outreach and technical assistance to the state agencies and municipalities.

### 1. Technical support and tool development

The primary agency in the State that provides information and technical support on coastal hazards issues is the Maine Geological Survey (MGS). MGS decision-making support tools are used for developing state regulatory language, local storm response, resource protection, sustainable development, and climate change adaptation planning. The evaluation team noted that during this evaluation period, the MCP supported a number of MGS activities that have contributed substantially to advancements in State's ability to address coastal hazards.

**Accomplishment: The Maine Geological Survey, with support from the MCP, has increased its development of decision support tools and technical assistance with regards to coastal hazards, which have helped to enforce existing regulations and to inform policy development.**

A significant accomplishment during this evaluation period was that MGS compiled a substantial coastline/shoreline dataset that has been used for hazard risk assessment and coastal planning. Using this data, MGS has developed a number of GIS tools to inform State policy decisions and to help coastal municipalities assess and plan for coastal hazard and climate change impacts. Notable examples of tools that MGS has developed, which have helped to inform policy and enforce existing regulations include:

- Costal Bluff and Landslide Hazard Maps – MGS Coastal Bluff maps show shoreline type and the relative stability of bluffs along the coast to determine local vulnerability to land loss from higher sea levels and accelerated erosion. These maps informed and support a revision to the Mandatory Shoreland Zoning Act establishing new setbacks from coastal bluffs. The model shoreland zoning rules now requires the setback for new development to be measured from the top of unstable and highly unstable coastal bluffs, as opposed to the shoreline which often coincides with the coastal edge of a bluff. In addition to the protection of property, this change will help to prevent premature bluff failure due to development to close to the bluff edge.
- Static Inundation Maps: MGS used NOAA LIDAR data and recent orthophotographs in GIS to develop detailed static inundation maps simulating the potential impacts of a two

foot sea level rise in conjunction with different tidal ranges in southern Maine. These maps, in addition to other analyses and projections using the data, informed the revision of the definition of the Erosion Hazard Area in the Coastal Sand Dune Rules (CSDR). OCRM commends MGS for conducting these analyses which now support DEP in effectively implementing the CSDR.

- Improvements to the Beach Scoring System: MGS adapted the Beach Scoring System (GIS tool for hazard rating and identification of mitigation measures developed during the previous evaluation period) to help provide more detailed hazard information for the majority of beach communities in Maine. The Beach Scoring System uses historic shoreline change data, in addition to various physical beach characteristics (e.g. shoreline type, dry beach width, FEMA Flood Zone designation), to develop a "score" that identifies the need for beach management, and provides initial guidance on applicable management alternatives. The initial Beach Scoring System project focused on Saco Bay in Southern Maine, and enabled managers to identify and prioritize beaches in need of erosion control efforts, and also helped managers to determine which type of beach management action would be most appropriate. Using this scoring system, Maine was able to identify and rank 21 areas in Saco Bay that needed some type of beach management. They also were able to identify which areas needed dune restoration, which would benefit from nourishment and where a combination of both activities was needed. Towns along Saco Bay and private citizens have reviewed the report to understand the state of their shores. In addition, Maine's Sand Dune Stakeholder Group, a legislatively-appointed body tasked with rewriting the state's Coastal Sand Dune Rules and recommending policies regarding beach management and beach nourishment, has also endorsed the Scoring System as the recommended methodology for evaluating and ranking Maine's beaches for beach renourishment.

Though MGS has made much progress using available data and GIS capacity to develop tools that inform coastal hazard mitigation and resiliency planning, challenges to improving these tools for policy and regulatory use were noted. For example, currently less than 2% of Maine's coastline has been mapped using LIDAR. More comprehensive LIDAR coverage would provide valuable information for hazard identification and a strong scientific basis for rule changes. Having data sets of both geological and economic information for the State's coastal zone would inform vulnerability assessments and support the development of coastal community resiliency. Another example of data that would enhance the State's hazard mitigation is detailed sand budget data, which could be used to develop new dynamic model development that could predict shoreline changes, erosion, and dune migration for use in permitting decisions.

### 2. Outreach and Regional/Local Partnerships

Building on their strengths in data analysis and GIS tool development, the MGS has also enhanced its role as a translator of this information to coastal communities. In particular, during this evaluation period, MGS has begun to focus more on the delivery of coastal hazards information and tools to municipalities. For example, MGS has enhanced the dissemination of information regarding coastal hazards through a new website launched in 2005 with new content and products on coastal geology and hazards. In addition, MGS works with regional planning organizations to

increase their capacity to implement decision-support tools, and to enable MGS to reach a greater number of coastal communities.

A great example of addressing Maine coastal hazard needs through both outreach and local partnerships is the MCP and MGS's partnership project with the Southern Maine Regional Planning Commission (SMRPC) and the Towns of Saco, Biddeford, Scarborough, and Old Orchard Beach. This partnership (and the Saco Bay Hazard Resiliency project) was initially supported through a regional challenge grant to help Saco Bay communities prepare for sea level rise by using science and decision-support tools to inform planning. Through the project, MGS is helping communities to better understand their risk from sea level rise and to use tools to develop and eventually adopt adaptation strategies (eg. amending shoreland zoning ordinances and floodplain management ordinances.) The SMRPC is currently researching how coastal resiliency can be incorporated into existing regulations at the state and local levels, and is helping to develop new model municipal ordinance language that could be incorporated within the Shoreland Zoning rules. In addition, MGS is developing a web-based guide, *Guide for Developing Community Resiliency*, which will include lessons learned and outcomes of the project.

### 3. Policy development

The MCP has also been involved in developing policy recommendations for the management of the State's sandy beaches, which are vulnerable to erosion and sea level rise. In response to a State Legislative directive (PL 2003 Resolve 130) the MCP worked with coastal stakeholders and staff of MGS and DEP (who convened the group) to address the goals of: reducing the threat or risk of erosion to beaches; enhancing beachfront for habitat, recreation, and tourism; improving public safety and coastal public access; and protecting existing residential and commercial development and public facilities. The group thus proposed a system of regulations, incentives, public investment, and hazard mitigation in the document *Protecting Maine's Beaches for the Future: A Proposal to Create an Integrated Beach Management Program* (February 2006). This document outlines a strategy for integrated beach management that includes discussion of six key program elements (beach nourishment, wildlife habitat, acquisition of storm-damaged property, education and outreach, hazard mitigation and funding) and 31 recommendations for implementation. The recommended "integrated" approach includes: 1) soft solutions (beach nourishment, dune restoration), 2) hazard mitigation (e.g. willing-seller acquisition), and 3) no action (allowing for natural processes).

## F. CLIMATE CHANGE

There has been much activity in Maine during this evaluation period with regards to addressing climate change mitigation and adaptation. In 2003, the Maine State Legislature passed a bill charging DEP with developing an action plan with the goal of reducing greenhouse gas emissions from state sources. In response, DEP initiated a stakeholder process to gather input and build consensus on how best to meet the required emissions reductions. In December 2004, the Department submitted a *Climate Action Plan* to the legislature, which focused on climate change mitigation, setting greenhouse gas reduction goals for the State.

In late 2007, the Governor of Maine requested the University of Maine's Climate Change Institute to lead a comprehensive analysis of the state's future in the context of changing climate during the 21st century. In early 2009, the University published *Maine's Climate Future,* a climate impact assessment that concluded that the climate is already changing in the state and that Maine needs to "expand climate planning beyond mitigation to encompass adaptation to the changes that are inevitable, and to capture the economic and management opportunities presented by our changing chemical and physical climate." As a response, in April of the same year, the State Legislature charged DEP with convening a stakeholder group to evaluate the options and actions available to prepare for and adapt to impacts of climate change, building on the University's assessment. At that time, there was already an active coalition of NGOs focused on developing strategies for climate change adaptation. The new group, the Climate Change Adaptation Task Force, includes balanced representation from: the original NGO coalition; business, industry, and trade organizations; and state agencies. DEP chairs and facilitates the Task Force, and The Nature Conservancy provided additional funding. DEP is supposed to submit recommendations for how Maine should begin to respond to climate change to the Legislature in February 2010.

The MCP has demonstrated a high level of leadership and coordination in support of the Climate Change Adaptation Task Force, with representation on both the Built Environment and Marine Resources subcommittees. OCRM commends the MCP on its attention and contributions to this effort, which will help to frame State policy addressing climate change adaptation.

OCRM is also pleased to see that the MCP is working to address climate change adaptation from the bottom-up in a number of critical ways. Given that much climate change adaptation occurs at the local level, the MCP has developed and/or supported climate change education and outreach programs and materials for municipal officials, coastal landowners and the general public. MCP has focused efforts on activities such as the development of education and outreach programs and materials and the consideration of how to incorporate climate change into local comprehensive planning efforts.

For example, MCP enhanced their land use planning website to include a webpage on planning for climate change, which provides a suite of resources for communities to get information on climate change in general and also on how to incorporate climate change into their local planning processes. One such resource is a DVD that provides information targeted to improve coastal resiliency in Maine communities. *Building a Resilient Coast: Maine Confronts Climate Change* was produced through a partnership of MCP, Maine Sea Grant, Oregon Sea Grant, the University of Maine Cooperative Extension, and MGS. The MCP is also partnering with Maine Sea Grant on a project to better understand the needs of municipal officials, coastal landowners and the general public with regards to developing and implementing adaptation strategies. This project is using a "social marking" approach informed by surveys and focuses groups (conducted in 2008) which provided an opportunity for the State to gather information on how to best educate and motivate target audiences. This information will help the State better focus outreach and education product development to help municipal officials and the general public to plan for the impacts of climate change both in their towns, and on their own properties.

In addition, SPO has been exploring how to best incorporate climate change into the comprehensive plan framework. For example, the Land Use Program designed a worksheet to

help municipal officials and local planners brainstorm and develop municipal responses to climate change. The worksheet identifies likely climate change impacts and scenarios by management sector (e.g. built environment, natural resources), as well as challenges to and opportunities for addressing them. The worksheet also provides examples of actual responses from municipalities in other states. In addition, SPO has provided planning guidance language for municipalities regarding climate change, and plans to monitor how it is used to gain insight to how communities choose to address climate change.

A notable challenge that Maine is facing with regards to its climate change adaptation efforts is the availability of LIDAR data (to develop better models that predict sea level rise and provide visualizations). The MCP has tried to address this need by assisting with funding proposals to support LIDAR at the regional and national level. In addition, the State must rely on municipal officials' willingness to embrace adaptation strategies. Therefore, Maine needs to consider how to develop a climate change messaging/outreach strategy (specifically for coastal homeowners and municipal officials) that draws attention to the issue and identifies adaptation strategies that are "doable". The Coastal Program's work with Sea Grant should be able to inform this effort.

OCRM commends the MCP on its leadership role developing climate change adaptation policy, and on its engagement with coastal communities increasing their understanding of, and ability to adapt to, climate change. OCRM recommends that the State consider how adaptation efforts (and responsible entities) will be coordinated into the future.

**Accomplishment: MCP has demonstrated leadership in shaping climate change policy at the state level, and in providing critical resources to municipalities that inform implementation of climate change adaptation strategies at the community level.**

## G. COASTAL DEPENDENT USES AND COMMUNITY DEVELOPMENT

The MCP supports both state and local partners with their roles in protecting and developing coastal and ocean resources. As stated in MCP's most recent §309 Assessment and Strategy, increased coastal development and other human impacts continue to affect marine ecosystems. In addition, the report states that the cumulative impacts of coastal development, including increased impervious surfaces and nonpoint source pollution, habitat fragmentation and degradation, are a high priority for the Program. While general policies for coastal resource protection and development are developed at the state level, municipalities in Maine have the primary responsibility for managing those within their communities primarily through the comprehensive plan process.

OCRM finds that the MCP supports community development and coastal dependent uses by providing coastal communities with the technical, and when possible financial, assistance necessary to help plan for and manage coastal resources. In addition, it was evident that local partners value the Coastal Program's involvement and expertise in planning and community development initiatives, and resource management. The evaluation team noted that the MCP's nexus with the Land Use Program, also implemented through SPO, is critical to the Coastal Program's work with communities.

## 1. Land Use Planning

Municipal Home Rule was codified by the Maine Legislature in 1969. Yet while comprehensive planning is still voluntary, the State does provide incentives for town that develop a comprehensive plan that is found by SPO to be consistent with the Growth Management Act (GMA). Maine's eight coastal counties cover a quarter of the State's land area and are home to over 50% of its population. In addition to implementing the Growth Management Act, coastal communities are responsible for implementing the nine Coastal Policies to guide local and regional decisions including land use management, natural resource conservation, and economic development.

The Land Use Program, partially funded through the MCP, provides technical assistance to municipalities on comprehensive planning, land use regulation, low impact development and other planning/zoning-related topics. Unfortunately, during this evaluation period, a reduction in SPO's budget resulted in a staff decrease to only three coastal planners. Given that Maine's coastal areas are experiencing double the population growth of the rest of the State, this reduction concerns the evaluation team, and OCRM will continue to monitor the situation.

That said, even with a reduction in staff and budget during this evaluation period, SPO and MCP conducted a number of activities that enhanced land use planning and protection of resources in coastal communities. The Land Use Program provides a variety of critical services to citizens, municipalities, regional organizations and the legislature, and the MCP continues to develop and offer a wealth of tools for municipalities in the coastal zone (e.g., model ordinances, climate change planning resources, regional challenge grants).

A notable accomplishment during this evaluation period is the evaluation of the Growth Management Act and comprehensive planning process as administered through the Comprehensive Plan Review Criteria Rule (the Rule). SPO lead this evaluation, with the goal of making the comprehensive planning process more accessible and meaningful at the local level. The process included a number of stakeholder meetings and listening sessions. The result was a new Rule, adopted in 2008. The Rule provides guidance for SPO's consistency review of a municipality's comprehensive plan and is based on the Act's goals, substantive guidelines, and procedures. It does not prohibit or discourage a community from developing a plan, ordinance, or program that is more specific or detailed, or that covers more subject areas than called for by required elements. At the time of the site visit, the new Rule had been used in the development and review of seven coastal comprehensive plans. OCRM commends the MCP for proactively responding to municipality needs (accessibility, meaningfulness of the comprehensive planning process) and for its leadership in evaluating and enhancing this important Rule.

**Accomplishment: SPO lead a thoughtful evaluation of the Growth Management Act and comprehensive planning process as administered through the Comprehensive Plan Review Criteria Rule (the Rule), which resulted in new, more meaningful guidelines.**

The evaluation of the Growth Management Act revealed continued strong support for comprehensive planning at the local level. Municipalities that have comprehensive plans found consistent with the GMA also have: enhanced legal basis for local land use ordinances, preference

for state grant opportunities, and eligibility for community development block grants. A consistent comprehensive plan is also required before a town can adopt zoning, impact fees, and/or rate of growth ordinances. SPO, who conducts the consistency reviews of comprehensive plan, finds however that municipalities often do not take the next step of actually adopting the plan, and many other adopt it but do not develop ordinances from them. This lack of plan adoption and implementation is an issue that could undermine the implementation Maine's coastal policies. OCRM, therefore, encourages SPO to evaluate barriers to the adoption and implementation of comprehensive plans at the local level, and consider how to best support and strongly encourage (potentially incentivize) municipalities in these efforts.

As with many home-rule states, Maine faces challenges in working with a large number of local municipalities who each possess land use planning priorities and varying capacity. The MCP thus also works closely with regional planning organizations (both Regional Planning Commissions and Councils of Governments) with the goal of assisting municipalities in a more coordinated and efficient way. The evaluation team, however, noted both a diversity of engagement of regional planning organizations and a range in their capacity and capabilities. In order for this to be an effective and efficient means for the MCP to provide technical assistance to municipalities and support regional efforts, SPO needs to consider how to best/most fairly support regional planning organizations in their coastal management-related efforts. The evaluation team noted that some of these regional entities merit support given their vast ability to assist their municipalities, while others need support in increasing their own capacity. OCRM encourages SPO to evaluate its collaborations with the regional planning councils, and to determine what approach (i.e. means of providing financial assistance) is most beneficial to MCP implementation.

Even with support for comprehensive planning at the local level, Maine is still experiencing extensive sprawl. As mentioned, even plans found to be consistent are not always adopted or implemented. Therefore, another that the evaluation discussed with the Land Use Planning team is the idea of, and potential for, regional planning. As noted in its §309 Assessment and Strategy, the MCP has considered inter-jurisdictional planning as a tool to address the cumulative impacts of development and encourage coordinated management of certain sensitive areas along the coast. The MCP also noted that the success of §309 strategies in other high priority issue areas (e.g. coastal hazards, and cumulative and secondary impacts) depends on regional, coordinated management.

Regional planning organizations are uniquely suited to help with regional planning efforts. They are already looking at issues on a regional scale, they understand individual municipality priorities, and working with them does not require any changes to Maine's current organizational structure (and the MCP already provides funding to them). The MCP also continues to support regional initiatives through Regional Challenge Grants. This program provides non-competitive small grants to support promising regional land use initiatives consistent with smart growth principles. Successful grant projects during this evaluation period included those on regional hazard resiliency planning, regional open space planning, and collaborative land use planning. The MCP might consider using federal grants more strategically, and possibly make them competitive to incentivize regional approaches and increase capacity at the regional, and also local, level. In addition, a review of the potential for transferability of some of the approaches used in supported through these grants would be interesting and informative for the Coastal Program.

**Program Suggestion: OCRM encourages SPO to identify what its priorities and expected outcomes are for MCP's work with regional planning organizations and to evaluate its current approach to supporting these collaborations, including consideration of competitive funding options.**

As mentioned, the MCP also develops valuable technical assistance materials and decision support tools for municipalities to use in land use planning and implementation. One of the tools developed during this evaluation period garnered a lot of attention, as it was named "Outstanding Planning Achievement of 2009" by the Maine Association of Planners—the Scenic Assessment Handbook. The MCP supported the development this Handbook to help planners use SPO's scenic inventory methodology to identify, evaluate, and document scenic resources and to identify scenic viewpoints of state or national significance. Known locations of scenic viewpoints of state and national significance are needed for implementation of Maine's new windpower law. This methodology has been employed in Hancock and Washington counties, where the UM-Machias GIS Service Center worked to develop a GIS application to automatically identify, based the Handbook and digital rules, possible "scenic" features on maps. The features are then ground-truthed, and GIS staff have found good correlations.

The MCP has developed a number of model ordinances during this evaluation period, including a model wind energy development ordinance and accompanying guidebook to provide direction to municipalities seeking to regulate the full range of wind development options – from homeowner to grid scale.

**Accomplishment: The MCP has developed, or supported the development of, a variety of technical assistance resources, including model ordinances, guidance manuals, and visualization tools, to inform and enhance municipalities land use planning efforts.**

As discussed throughout this document, Maine has made significant enhancements to the implementation of the MCP, including not only the development of technical assistance resources and decision-support tools, but also revising implementing authorities. The evaluation team was highly impressed with the MCP networked agencies' commitment to outreach and providing educational opportunities (for municipalities, regional planning organizations, and other partners) as new technical resources are developed or rule revisions are adopted. That said, the team also noted that efficiencies could be achieved by better coordinating (and potentially integrating) these information delivery at the regional and local levels. OCRM therefore encourages the MCP networked agencies to work to better coordinate individual outreach and education efforts, where appropriate, to program partners. This will not only increase efficiencies at the State level, but also provide a more holistic picture of the MCP and technical assistance available at the local level.

### 2. Ecosystem-based Management

The MCP has been exploring options for more regional, ecosystem-based, management of nearshore waters in the State. In 2003, the Maine Legislature directed the Land and Water

Resources Council (a group with mulit-agency representation, and chaired and staffed by SPO) to undertake a two-year study "to explore and document potential new and innovative concepts for the management of Maine's embayments." (Discussed in greater detail in the last findings.) In 2006, the agencies jointly released *The Maine Bay Management Study*, an analysis of how Maine needs to improve in the areas of geographically-specific resource management, interagency coordination and ecosystem approaches, availability and usefulness of data and GIS, and funding for resource management.

The MCP thus invested in two pilot projects to evaluate the potential for innovations in coastal governance, in Taunton Bay and Muscongus Bay, which address the recommendations of the Bay Management Study. The evaluation team was able to meet with partners in Taunton Bay to discuss MCP's bay management efforts. Staff (from both SPO and DMR) have been working in this ecosystem with a group of stakeholders representing commercial fisheries and conservation interests over the last several years to address fisheries management issues. The group has developed a comprehensive management plan and formed an Advisory Group to guide research in and management of the resource.

This intensive effort in Taunton Bay provides an excellent example of both the benefits of, and challenges to, ecosystem-based, adaptive management. Highlights from this effort include:

- In 2007, the State Legislature passed a bill that enables more adaptive management of marine resources by removing the requirement for legislative approval when DMR seeks to limit the taking of a marine organism for the purpose of protecting another marine organism.
- The Taunton Bay Advisory Group used stock assessments (required by the Taunton Bay Comprehensive Management Plan) to establish Total Allowable Catch, and worked with fisherman develop stock allocation plans for Taunton Bay fisheries including urchins, mussels, and scallops.
- Taunton Bay Advisory Group efforts to develop an ecological characterization of the estuary to inform management decisions has been a catalyst to significant increase ecological research projects (by DMR, individual researchers, etc.) in the region.

**Accomplishment: The MCP's engagement and leadership in ecosystem-based, adaptive management efforts in Taunton Bay have not only helped to increase capacity in the region but also have protected valuable coastal resources.**

As described, the MCP has learned a great deal through this process that will inform the implementation of other ecosystem-based management efforts in the state. Lessons learned include: engagement of municipal governments and the full range of resource users can be difficult; the success of ecosystem-management efforts are contingent upon the engagement and work of volunteers (for advisory services, monitoring, etc.); and skepticism of key stakeholders can be hard to overcome. Unfortunately, while the pilot projects have generally been successful in managing individual embayments in partnership with stakeholders and in tailoring regulations to the resources assessments at the local level, expanding this concept throughout Maine will prove to be especially challenging with current state agency capacity. OCRM therefore encourages the

MCP to consider how to use the successes and lessons learned from these pilots to best inform and support other local and regional adaptive management efforts in the State.

Another challenge to ecosystem-based management is the scarcity of nearshore data necessary for making local/regional decisions—it often does not exist or is not collected at the right scale. It has also proved difficult to locate and compile available data, and there have been no concerted efforts to create a robust marine GIS for Maine's nearshore environment.

### 3. Fisheries

The MCP and DMR continue to be continues to active participants in the State's fisheries co-management approach, which involves both resource users and the government. This collaborative effort aims "to generate approaches that are sensible both biologically and socially." This approach in Maine has been used in the lobster, scallop, and sea urchin fisheries, and is characterized by sharing of the decision-making power and a focus on management process. Co-management has thus had success in areas such as effort reduction, area-based strategies, and harvesting closures. In addition to the state and fisheries associations, key partners in these efforts include the Penobscot East Resource Center, the Island Institute, the Gulf of Maine Research Institute.

While recent resource assessments for the Maine lobster fishery indicate a relatively high overall stock abundance, the level of effort in the fishery is still regarded as potentially too high. During this evaluation period, DMR and the Lobster Advisory Council (LAC), have worked closely to implement some important changes to the management of the lobster fishery. This collaboration resulted in the Maine Legislature passing two bills that specifically address fisheries levels of effort:

- 2007 - An Act To Amend Laws Pertaining to Entry into the Lobster Fishery incorporates effort reduction steps including: a new zone option that will allow for the creation of a "parallel" waiting list for young people less than 18 years of age; a proposed statewide 17-year-old minimum age requirement to obtain a commercial lobster license; and a change in the exit/entry ratio that ties the number of trap tags retired to the number of trap tags issued.
- 2009 - An Act To Protect the Long-term Viability of Island Lobster Fishing Communities creates a limited-entry zone programs for islands in the coastal waters with year-round communities. Specifically it provides that a year-round island community on an island in the coastal waters that is not connected to the mainland by an artificial structure may petition the Commissioner of Marine Resources for the establishment of a limited-entry program for that island if a minimum of 5 Class I, Class II or Class III lobster and crab fishing license holders who are residents on the island or 10% of the island's resident Class I, Class II or Class III lobster and crab fishing license holders, whichever is greater, signs the petition.

Though the evaluation team did not have the opportunity to speak with a cross-section of harvesters, DMR indicated that the Lobster Advisory Council and zone council system is generally viewed as a success by both participants and the Department. That said, the recent discussions regarding effort reduction have evidently been more controversial and not as productive as those in

the past. DMR plans to evaluate the zone council process in partnership with the LAC to identify how to better facilitate the discussion of controversial topics/management measures in the future. OCRM encourages this effort.

Important changes to the scallop fishery were also implemented during this evaluation period. Scallops are generally managed using a combined approach of effort limitation and rotating harvest areas, which maximizes scallop yields while protecting beds of young scallops. In 2008, the Maine Legislature's Marine Resources Committee requested that DMR and the Scallop Advisory Council (SAC) develop a comprehensive strategic plan for the fishery that discussed management options and proposed legislative changes. Based on this plan, the Legislature adopted a number of new rules including a substantially reduced season. In addition, DMR worked with the SAC through local scallop community meetings to create rules on rotating closures (which at the time of the site visit were still in the legislature). OCRM commends the DMR on this work, which supports a more place-based management approach for the scallop fishery.

OCRM commends the MCP and DMR on their fisheries co-management efforts. This approach, while effective and inclusive, is also time-consuming. It requires longterm and intensive engagement with harvesters to build understanding and trust. In addition, there are significant data/GIS needs (e.g. benthic habitat maps, flow, human use) at the right scale to inform management. OCRM encourages the MCP to consider how to best support co-management efforts, including potentially using §309 enhancement funds it did with scallop and urchin fisheries management strategies.

### 4. Ocean Energy

In An Act Regarding Maine's Energy Future, Maine envisions reducing its consumption of liquid fossil fuels by at least 30 percent by 2030. The State is already a recognized leader in on-shore wind energy development, as it is currently home to 95% of the operating on-shore wind capacity in New England. In addition, the Gulf of Maine contains a globally significant offshore wind energy resource estimated at over 100 gigawatts, as well as tidal and wave power resources with significant potential. In order to facilitate the development of alternative ocean energy in Maine, the Governor's Ocean Energy Task Force (on which SPO has a seat) recommended and drafted L.D. 1465 An Act to Facilitate Testing and Demonstration of Renewable Ocean Energy Technology, which was passed by the Maine State Legislature in June 2009.

Included in this legislation is a task for the Maine Department of Conservation and SPO to select up to five locations within Maine state waters to be designated as "Ocean Energy Testing Areas." These sites were to be identified using both GIS analysis for suitability and thorough stakeholder input through a comprehensive public outreach effort, to be concluded in November 2009. The evaluation team had the privilege of meeting with Senator Kevin Raye, who noted that this public outreach and input process had been working extremely well, and that he had noted less anxiety from the public than in the past when the state talked about ocean energy development. Results of this thoughtful and intensive process were released after the site visit. Three demonstration sites were identified off Monhegan Island, Boon Island, and Damariscove Island.

The MCP Program Manager also chairs Regulatory Subcommittee of the Ocean Energy Task Force. One of the issues that the subcommittee is considering is how to use the permit revenue stream from the demonstration sites. An option would be to use some of the funding to support additional data (GIS) for the nearshore environment. This would not only help inform future siting for industry to develop the resource but also would support natural resource protection efforts.

The Coastal Program has also been engaged in hydrokinetics policy development efforts. Given the State's interest in exploring tidal power potential, the MCP and DEP worked closely with Federal Energy Regulatory Commission (FERC) to develop a Memoranda of Understanding (MOU) aligning state and federal regulatory review requirements for hydrokinetic power projects. FERC requires anyone seeking to study the potential for development of a hydrokinetic project at to apply for a preliminary permit. Preliminary permits are issued for up to three years to allow a developer priority to study the potential for a project at a given site, otherwise known as "guaranteed first-to-file status". This MOU will not only facilitate the development of tidal energy in Maine, but also by entering into this agreement, the State is sending a clear message that it anticipates and supports the future development tidal energy.

The MCP, as reflected through both its engagement in State ocean energy activities and its ocean energy-related initiatives funded through §309, has played a significant role in the State's efforts to move forward to a renewable energy based economy. The evaluation team noted that the MCP is many aspects of the development of alternative energy, focusing on balancing conservation, economic development, and interagency coordination. The evaluation team was also able to meet with stakeholders invested in varies aspects of the process—from a State Senator focused on the benefits to his district and Maine's economy, to University of Maine researchers involved in research and development of composite materials for turbines, and industry representatives focused on the development of the resources—all of whom commended the MCP's energy and commitment. The team also heard that state partners feel that there is still not enough communication on the part of federal agencies with regard to the newer field of alternative (ocean) energy regulation. OCRM has taken this concern into consideration, and will work to better support our state partners on this issue.

**Accomplishment: The MCP has taken a very active role in Maine's efforts to develop renewable energy alternatives, including serving on the Ocean Energy Task Force, facilitating a public process to identify demonstration sites for offshore wind, and working with FERC to develop an MOU aligning state and federal regulatory review requirements for tidal energy development.**

The evaluation team had the opportunity to visit eastern Maine, and spoke with a variety of program partners and local stakeholders in Ellsworth, Machais, and Eastport. These regional representatives were extremely appreciative of the Coastal Programs efforts in the area—in Eastport it was particularly with regard to its support of energy development (offshore wind, LNG, tidal) and but also fisheries management efforts (including aquaculture) and land conservation throughout the region. Many of the partners also commended the work and process of the Ocean Energy Task Force, which one partner noted "demonstrates how government can work effectively."

### 5. Marine Spatial Planning

The MCP's interest in building marine spatial planning (MSP) capacity began as a dialogue during the Bay Management Study effort. The Coastal Program and partners considered whether advance planning for the use of Maine's marine waters was advisable and necessary, and also whether it was feasible. In the end, however, the Study did not specifically recommend the development and use of MSP.

Not long following the Bay Management Study, however, the Ocean Energy Task Force effort (e.g. off-shore wind siting) provided the impetus for building MSP capacity in Maine. The benefits of using GIS to illustrate ecosystem and human use information to proactively plan for uses in state waters became more clear, and advisable.

In MCP's most recent §309 Assessment and Strategy, the State characterizes a number of ocean resources and issues (e.g. marine fisheries and habitats, ecological knowledge, use conflicts) and identifies their degree of threat as high. During the site visit, the evaluation team heard a number of current MCP efforts (coastal hazards planning, energy siting, fisheries co-management, etc.) that would benefit from more comprehensive GIS coverage of ecosystems, living marine resources, and human use data. Building a MSP capability within the State could certainly help to address some of these issues, particularly those relating to acquiring basic information on marine resources and identifying/mitigating use conflicts. That said, the MCP does not currently have the capacity to do so, costs for a more robust effort are prohibitive, and outside ocean energy planning the political will is uncertain.

The evaluation team also noted some concern about who should take the lead on, or coordinate, MSP efforts in the Gulf of Maine region. States urgently need the data, but in many cases federal agencies are better equipped to collect it. The benefits of federal (NOAA, US Fish and Wildlife Service, US Army Corps of Engineers) and state partners working together to proactively plan for building MSP capacity in the region are clear. Issues brought up during the site visit, which need to be discussed, include scale, funding, capacity, and data storage. Currently, the MCP has a CSC fellow who has been working to identify and acquire data for regional MSP. OCRM encourages the MCP to continue its MSP efforts, and will assist in MSP data identification/collection where it is able.

**Program Suggestion: OCRM encourages the MCP to continue to enhance its Marine Spatial Planning capacity in order to support and inform work in priority issue areas including coastal hazards, fisheries management, and energy siting.**

## H. GOVERNMENT COORDINATION AND DECISION-MAKING

As discussed throughout in this document, OCRM finds that the MCP successfully supports government coordination and coastal management decision-making in Maine through a variety of activities. The organization of the Coastal Program within SPO, and through its networked agencies, provides a solid structure for state policy and management coordination and regional

engagement through both informal information flow and more formally through the Federal Consistency process and regional collaborations.

### 1. Federal Consistency

The CZMA's federal consistency provision (§307) is a primary incentive for states to participate in the national coastal zone management program. It is also a powerful tool that states use to manage coastal uses and resources and to facilitate cooperation and coordination with federal agencies. The federal consistency provision requires that federal agency activities that have reasonably foreseeable effects on any resource in the coastal zone must be consistent to the maximum extent practicable with the enforceable policies of a state's coastal management program and that non-federal applicants for federal licenses or permits and that state agency and local government applications for federal funding be fully consistent. Federal consistency reviews are the responsibility of the lead state agency that implements or coordinates the state's federally-approved coastal management program—SPO in Maine. Since consistency in Maine is obtained via compliance with state laws and rules, this review is coordinated with networked agencies, such as DEP, which administer the core laws that constitute the State's Coastal Program.

During this evaluation period, the MCP revised the *Maine Guide to Federal Consistency* in order to reflect the regulations as revised by NOAA in 2006. This handbook is intended to help state and federal agencies, federal permit applicants, federal assistance applicants, and the public understand when federal consistency review is needed and how Maine conducts federal consistency reviews. The evaluation team found no issues with regard to Maine's federal consistency implementation during this review.

### 2. Regional Collaborations

Maine is active in a number of regional collaborations, across state and national boundaries, that are focused on managing the Gulf of Maine's natural resources for conservation and sustainable use. Current regional issues include ocean energy, habitat restoration, and resiliency. Partnerships such as these can be extremely valuable to states in achieving their coastal management objectives. The evaluation team was able to speak with individuals who represent many of the MCP's regional partners, and noted a strong respect and gratitude for Maine's engagement and strong leadership in regional efforts (e.g. regional ocean governance, restoration grants, marine spatial planning). The MCP also often represents these successful regional collaborations nationally, which has helped to raise the visibility of the Coastal Program and its initiatives with new audiences.

**Accomplishment: The MCP continues to take a leadership role in a number of regional efforts, including: managing the Gulf of Maine Council Habitat Restoration Grants Partnership (with NMFS), Gulf of Maine Council on the Marine Environment, and Northeast Regional Ocean Council.**

The evaluation team recognized that the MCP, as well as other state coastal programs, might require additional support to effectively participate in cross-boundary coordination and management of regional resources. Sustained involvement in regional partnerships, especially in the types of leadership roles that the MCP often occupies, can come at a cost to state-specific

priorities. The evaluation team did not note this as an serious issue right now, but as regional efforts continue to grow, OCRM encourages the MCP to think strategically about to best balance state and regional initiatives. NOAA is currently expanding upon its existing regional coordination and communication efforts (like the Northeast Regional Ocean Council) to better integrate program activities to address NOAA's priorities at both the national and regional scale. OCRM will work with the MCP to identify leveraging opportunities that may arise from this new structure.

## V. CONCLUSION

For the reasons stated herein, I find that the State of Maine is adhering to the programmatic requirements of the Coastal Zone Management Act and its implementing regulations in the operation of its approved MCP.

The MCP has demonstrated many accomplishments, and made notable progress in the following areas: strengthening core laws, ensuring coastal access, coastal hazards planning and decision-support tool development, supporting municipalities in coastal management, land conservation planning, and providing leadership with regard to emerging policy issues including ocean energy and climate change adaptation.

These evaluation findings also contain six Program Suggestions. Program Suggestions should be addressed before the next regularly-scheduled program evaluation, but they are not mandatory at this time. Summary tables of program accomplishments and recommendations are provided in Appendix A.

This is a programmatic evaluation of the MCP which may have implications regarding the State's financial assistance awards. However, it does not make any judgment about or replace any financial audits.

Donna Wieting
Acting Director
Office of Ocean and Coastal Resource Management

5/17/10
Date

# VI. APPENDICES

## APPENDIX A: SUMMARY OF ACCOMPLISHMENTS AND RECOMMENDATIONS

**Accomplishments**

| Issue Area | Accomplishment |
|---|---|
| Organization and Administration | **The MCP successfully coordinates and collaborates with agencies and organizations (at federal, regional, state, and local levels) to address state and national coastal management goals.** |
| Policy Development | **The MCP has demonstrated great leadership in helping Maine to develop policy recommendations on new and emerging coastal issues such as climate change adaptation and ocean energy.** |
| Coastal Access and Coastal Dependent Uses | **The Working Waterfront Access Pilot Program is an excellent example of how the MCP is working to protect traditional public access and the coastal dependent industries that rely upon them.** |
| Land Conservation | **The MCP has provided leadership and support to initiatives that have greatly enhanced Maine's ability to plan for and implement land conservation activities in the coastal zone.** |
| Protection of Coastal Resources | **The MCP networked agencies have worked to strengthen core laws to better protect coastal resources.** |
| Coastal Hazards | **The Maine Geological Survey, with support from the MCP, has increased its development of decision support tools and technical assistance with regards to coastal hazards, which have helped to enforce existing regulations and to inform policy development.** |
| Climate Change | **MCP has demonstrated leadership in shaping climate change policy at the state level, and in providing critical resources to municipalities that inform implementation of climate change adaptation strategies at the community level.** |
| Land Use Planning | **SPO lead a thoughtful evaluation of the Growth Management Act and comprehensive planning process as administered through the Comprehensive Plan Review Criteria Rule (the Rule), which resulted in new, more meaningful guidelines.** |
| Decision Support Tool Development | **The MCP has developed, or supported the development of, a variety of technical assistance resources, including model ordinances, guidance manuals, and visualization tools, to inform and enhance municipalities land use planning efforts.** |
| Ecosystem-Based Management | **The MCP's engagement and leadership in ecosystem-based, adaptive management efforts in Taunton Bay have not only helped to increase capacity in the region but also have protected valuable coastal resources.** |
| Ocean Energy | **The MCP has taken a very active role in Maine's efforts to develop renewable energy alternatives, including serving on the Ocean Energy Task Force, facilitating a public process to identify demonstration sites for offshore wind, and working with FERC to develop an MOU aligning state and federal regulatory review** |

| | |
|---|---|
| | **requirements for tidal energy development.** |
| Regional Governance | **The MCP continues to take a leadership role in a number of regional efforts, including: managing the Gulf of Maine Council Habitat Restoration Grants Partnership (with NMFS), Gulf of Maine Council on the Marine Environment, and Northeast Regional Ocean Council.** |

**Recommendations**

All recommendations are in the form of Program Suggestions.

| Issue Area | Recommendation |
|---|---|
| Program Coordination | **OCRM strongly encourages the MCP to work with Wells NERR and Maine Sea Grant to plan more strategically regarding how they can better coordinate and collaborate to address coastal issues in Maine.** |
| Education and Outreach | **OCRM encourages the MCP to clarify its education and outreach strategy considering both program goals and current policy issues/development, and to prioritize efforts based on program needs.** |
| CELCP | **OCRM encourages the State to finalize their CELCP Plan as soon as possible.** |
| SPO – DEP Coordination | **OCRM encourages SPO and DEP to consider how to use the process of developing their annual MOU to plan strategically about what they would like to accomplish throughout the year to strengthen the implementation of the MCP.** |
| Regional Planning Organizations | **OCRM encourages SPO to identify what its priorities and expected outcomes are for MCP's work with regional planning organizations and to evaluate its current approach to supporting these collaborations, including consideration of competitive funding options.** |
| Marine Spatial Planning | **OCRM encourages the MCP to continue to enhance its Marine Spatial Planning capacity in order to support and inform work in priority issue areas including coastal hazards, fisheries management, and energy siting.** |

## APPENDIX B. MCP'S RESPONSE TO 2004 EVALUATION FINDINGS

**FINDING: NOAA encourages DEP and its partners to continue to address concerns regarding the revised sand dune rules through the comprehensive stakeholder process and the framework agreement on sand dunes and coastal management in Maine. NOAA also encourages DEP to keep them apprised of progress in this area.**

**RESPONSE:** In 2004 and 2005 the MCP, DEP, and Maine Geologic Survey conducted an extensive stakeholder process with coastal landowners and environmental organizations to negotiate substantial revisions to the sand dune rules. These revisions included clarification on what types of development could be provided in the dune system for handicap accessibility, more requirements for restoration of native dune vegetation, limits on reconstruction in the frontal dune system, and flexibility for how seawalls could be reconstructed to maintain their height but be reconfigured to improve their functioning. These changes were adopted in 2006.

Since the adoption by the legislature of revised sand dune rules in 2006, the DEP and its partners have continued to refine administration of the sand dune rules by additional rule making to clarify what types of minor activities could be accomplished via permit by rule. In 2009 rule changes were adopted that clarified the regulation of open fences in the frontal dune, the establishment of temporary cobble trapping fences designed to allow sand and water movement but protect structures from cobble throw during storm events, and other de minimis activities. The Maine Geologic Survey has continued to refine mapping of erosion hazard areas to assist in the accurate administration of the rule for projects located in these areas.

**FINDING: NOAA encourages MCP to: 1) examine the extent of rip rap along the Maine coastline, 2) review the standards for the placement of rip rap under the permit by rule standards, 3) and determine if additional standards or alternative permits should be required to lessen or mitigate for habitat damage resulting from cumulative effects of rip rap placement**

**RESPONSE:**
During the fall of 2008, MCP and Maine Geological Services worked with a GIS student from the University of Southern Maine to do an analysis of habitat types impacted by rip-rap along the coast. This was seen as the pilot for a larger coastwide assessment. The purpose of the project was three-fold: 1. to assess the historical patterns of rip-rap along the coast, 2) to look more closely at where rip-rap has occurred during the last 5 years, and 3) to analyze the types of coastal habitats are being impacted and in what amount. The student created a methods for the analysis, developed questions about reconciling GIS layers from different sources and cataloged the number of permit by rule applications were in pre-defined habitat layers. The analysis was not completed in the original timeframe, but will be completed by the student during this academic year.

The DEP has recently adopted rules that remove coastal rip rap from eligibility for PBR in order to improve the standards for placement of coastal rip rap. Project standards now include conditions that rock be of similar shape and color to any adjacent rip rap, it must be irregular in shape, plantings where possible are to be interspersed in rip rap and other vegetation allowed to overgrow

the reinforced bank. Similar native vegetation to what is already on site is routinely required to be replanted following any needed removal during work.

**FINDING: NOAA encourages MCP to identify priority management-related information needs such as data, field assessments, monitoring and research studies to assistance with implementation and enforcement of Maine's core environmental laws. Information needs should be routinely communicated to the scientific community and other appropriate parties.**

**RESPONSE:** Since 2004 the priority management-related information need has been the mapped extent of new significant wildlife habitat areas for vernal pools, inland wading and waterfowl, tidal wading and waterfowl, and shorebirds. These GIS maps have been central to the implementation of these new regulations. DEP and its partners have worked extensively to ensure that easily accessible and readable maps have been available to all interested parties including the general public and researchers at the University of Maine.

SPO staff (Leyden) and DEP staff (Fisk) serve on Sea Grant's Policy Advisory Committee. Sea Grant's annual RFP for research projects is created through the PAC, facilitating state staff input of management-related research needs into the RFP. MCP's Maine Coastal Plan is available on the web for researchers to view when looking for management-oriented needs for agency programs.

MCP staff has assisted researchers with designing outreach-related activities for presentation of research findings.

Due to the typical cost of research and monitoring, MCP does not routinely invest in this work. Researchers will not undertake these efforts without funding.

**FINDING: In order to address the challenges presented by the upward trend in permit reviews, NOAA encourages MCP to consider 1) developing criteria to prioritize enforcement actions, and 2) assessing trends regarding requests for enforcement visits and inquiries about potential violations in order to identify opportunities where additional public outreach materials could clarify activities allowable under current laws and rules, thus minimizing unnecessary field trips.**

**RESPONSE:** Following the significant expansion of the Natural Resources Protection Act in 2006, where additional habitats including coastal shorebird and tidal wading and waterfowl habitats became jurisdictional the DEP spent significant time developing detailed websites and other materials that were accessible to the average citizen. These materials were designed to explain the biological significance of these habitats as well as the regulatory framework and how landowners could access information about these habitats on their property. Maps of all municipalities were posted on the DEP website as easily downloaded files. In addition display ads were taken out in regional and statewide papers introducing these new regulations. Following that there have been two years of training sessions for consultants, municipal officials, and citizens on these new regulations where over 500 people have attended. This extensive outreach work has had

the effect of minimizing staff time in the field after the first year of implementation as there was a large degree of public awareness of the rule and a wide range of individuals could conduct field assessments or provide information rather than Department staff directly. As well the DEP has continued to schedule and assign general field requests in a manner that maximizes staff field time and prioritizes requests based on need and complexity. The use of digital photographs by members of the public has also significantly reduced the need for many types of initial field visits.

## APPENDIX C. PERSONS AND INSTITUTIONS CONTACTED

**Maine State Planning Office**

| Name | Position, Program |
|---|---|
| Kathleen Leyden | Director, Maine Coastal Program |
| Ruta Dzenis | Senior Planner, Land Use Program |
| Jim Connors | Senior Planner, Maine Coastal Program |
| Todd Burrowes | Policy Development Specialist, Maine Coastal Program |
| Phil Carey | Senior Planner, Land Use Program |
| Martha Freeman | Director |
| Elizabeth Hertz | Director, Land Use Program |
| Slade Moore | Coordinator, GOM Habitat Restoration Program |
| Tom Merrill | Economist |
| Tom Miragliulo | Senior Planner, Land Use Program |
| Matt Nixon | NOAA Coastal Fellow, Maine Coastal Program |
| Theresa Torrent-Ellis | Outreach/Education Coordinator, Maine Coastal Program |
| MacGregor Stocco | Senior Planner, Land Use Program |

**Maine State Agencies**

| Name | Department/Office |
|---|---|
| Jim Dusch | DEP, Office of the Commissioner |
| Rich Baker | DEP, Bureau of Land and Water Quality |
| Jim Cassida | DEP, Bureau of Land and Water Quality |
| Andy Fisk | DEP, Bureau of Land and Water Quality |
| Peggy Bensinger, Esq. | Attorney General's Office |
| Stephen Dickson | DOC, Maine Geological Survey |
| Pete Slovinsky | DOC, Maine Geological Survey |
| Tim Glidden | SPO, Land For Maine's Future Program |
| Judy Gates | DOT, Environmental Services |
| Steve Walker | DIFW, Beginning with Habitat Program |
| David Etnier | DMR, Community Resource Development |
| Deirdre Gilbert | DMR, Office of the Commissioner |

**Other Program Partners**

| Name | Affiliation |
|---|---|
| Senator Kevin Raye | State Senator, also Governor's Ocean Energy Task Force |
| George "Bud" Finch | City Manager, City of Eastport |
| Gary Edwards | Selectman, Town of Sullivan |
| Lewis Pinkham | Town Manager, Town of Milbridge |
| Nathaniel Tupper | Town Manager, Town of Yarmouth |
| Robert Davis | Working Waterfront Access Program grantee |
| Wayne Davis | Working Waterfront Access Program grantee |
| Judy East | Executive Director, Washington County Council of Governments |
| Tom Martin | Hancock County Planning Commission |
| Jon "JT" Lockman | Planning Director, Southern Maine Regional Planning Commission |

| | |
|---|---|
| Paul Dest | Director, Wells National Estuarine Research Reserve |
| Cindy Huggins | President, University of Maine – Machais |
| Tora Johnson | University of Maine – Machais |
| Jake Ward | Vice President for Research, University of Maine |
| Natalie Springuel | Maine Sea Grant |
| Don Perkins | President, Gulf of Maine Research Institute |
| Chris Gardiner | Executive Director, Eastport Port Authority |
| John Ferland | Director of Projects, Ocean Renewable Power Company |
| Frank Dorsey | Tauton Bay Advisory Group |
| Linda Mercer | Tauton Bay Advisory Group, fisherman |
| Will Hopkins | Cobscook Bay Resource Center |
| Tom Boutureira | Director, Downeast Coastal Conservancy |
| Lee Sochasky | Executive Director, St. Croix Regional Waterway Commission |
| Thomas Sidar | Executive Director, Frenchman Bay Conservancy |
| Wolf Tone | Trust for Public Land |
| Barbara Vickery | Director, Conservation Programs, The Nature Conservancy – Maine |
| Bob Lent | US Geological Survey |
| Hilary Neckles | US Geological Survey |
| Betsy Nicholson | NOAA |
| Mel Cote | Environmental Protection Agency |

## APPENDIX D: PERSONS ATTENDING THE PUBLIC MEETING

One public meetings were held during the site visit on Tuesday, September 15, 2009, at 7:00 p.m., at the Ellsworth City Hall Auditorium, 1 City Hall Plaza, Ellsworth, Maine. A list of attendees follows:

| Name | Affiliation |
|---|---|
| Michelle Gagnon | City of Ellsworth, City Planner |
| Sally A.B. Rowan | Town of Cranberry Isles, Selectman |
| Eric Dyer | Town of Cranberry Isles, Municipal Facilities Supervisor |
| Ken Cline | Union River Watershed Coalition |
| Leila J. Percy | State Representative; Chair, Marine Resources Committee |
| Tom Martin | Executive Director, Hancock County Planning Commission |
| Jim Connors | Maine Coastal Program |
| Ruta Dzenis | Maine Coastal Program |
| Kathleen Leyden | Maine Coastal Program |
| Paula Thomson | Maine Coastal Program |

## APPENDIX E: NOAA'S RESPONSE TO WRITTEN COMMENTS

OCRM received 1 set of written comments regarding the Maine Coastal Management Program. Comments are summarized below and followed by OCRM's response.

**Shawn Murphy, Harbormaster**
**Town of Mount Desert, Maine**

**Comments:**
Mr. Murphy wrote to express his support and gratitude for the Maine Coastal Program (MCP). He explained how the MCP enabled his small coastal town "to accomplish goals that have been thought about for many years but were not attainable without the assistance available through [the MCP's harbor planning grants program]." The Town of Mount Desert was awarded a grant to help with funding a significant mooring realignment project at Somes Harbor. Once the realignment was completed, it was possible to add over forty additional moorings. This area utilized a smaller mooring field within the harbor than there was before, while also creating a designated anchorage area for transient vessels. They were able to eliminate a mooring waitlist and offer many individuals, which in some cases were on this list for over ten years, moorings. The Town of Mount Desert has also been awarded a subsequent grant, which will be utilized for the planning stage of a proposed renovation of the Northeast Harbor Waterfront area.

Mr. Murphy also expressed appreciation for the relationship he is building with MCP staff, and ended by noting that "these projects have and will continue to help the commercial and recreational fishermen from our area, transient and resident boaters, residents and non residents, along with the thousands of individuals that visit this area throughout the year."

*OCRM Response:* OCRM thanks Mr. Murphy for taking the time to provide comments on the implementation of Maine's Coastal Program. The evaluation team was impressed with the relationships that the Coastal Program is building with local communities to advance public access goals, such as harbor planning initiatives.