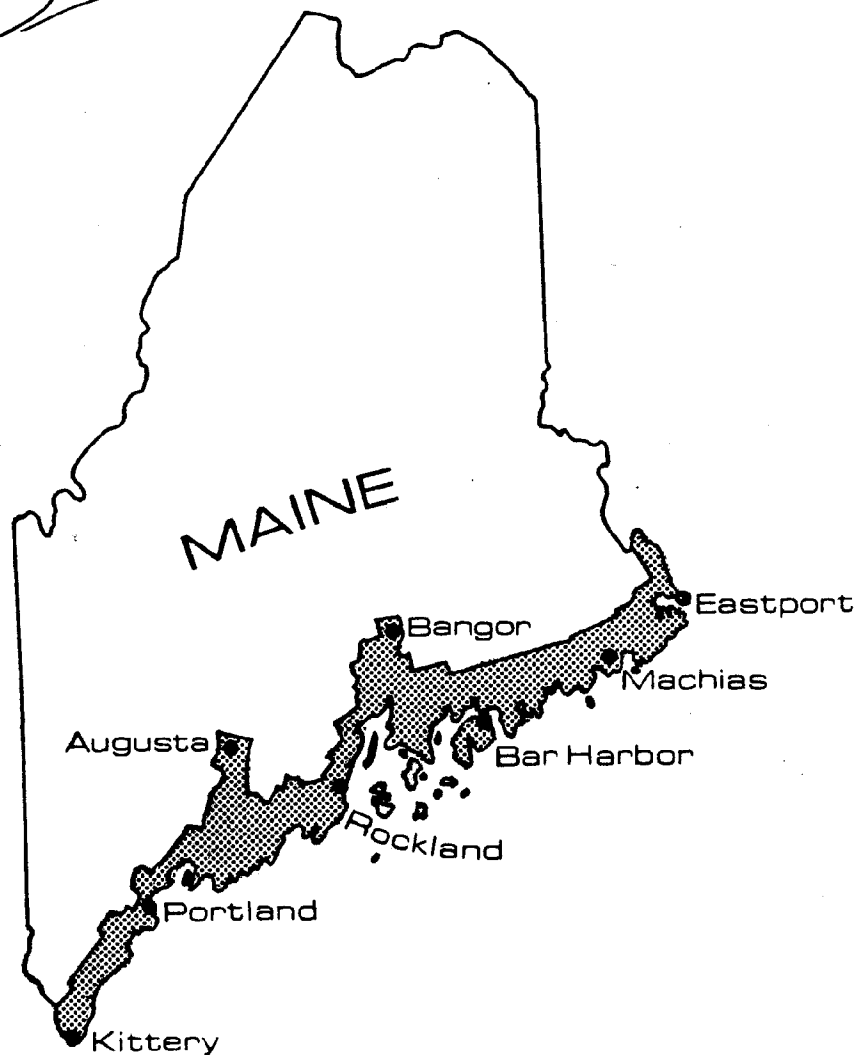


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Maine's Coastal Program

PROGRESS REPORT

January 1 to June 30, 1985



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JAN-JUNE
1985

Department

Maine State Planning Office

Maine State Planning Office

MAINE'S COASTAL PROGRAM

Progress Report

January 1 to June 30, 1985

Prepared by the
State Planning Office

Submitted to

The National Oceanic & Atmospheric Administration
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HIGHLIGHTS OF THE REPORTING PERIOD

- Major steps to improve enforcement of the Shoreland Zoning Law were successfully completed. (See pages 3 and 40)
(303) (2) (A) (B)

Shoreland zoning workshops sponsored by the Coastal Program attracted 160 local officials representing 80 municipalities. An educational video-tape of the review process for permit applications was produced and made available. Twenty-three local code enforcement officers were certified to prosecute local land use violations in District Court under Rule 80K.

- The Board of Environmental Protection asked the Attorney General's Office to initiate legal action against Old Orchard Beach's approval of a 16 story condominium. (See pages 10 and 19). (303) (2) (A) (B)

The 142-foot high structure was approved by the Town under variance proceedings despite a 70-foot height restriction in its Shoreland Zoning Ordinance. The Attorney General found that the State had no legal recourse under existing statutes and declined to intervene. A local landowners association is appealing the town's decision.

- The Sand Dunes Law was upheld in Superior Court in the first case to challenge its constitutionality (see page 19).
(303) (2) (A) (B)

The Hall Case involving a cottage built at Popham Beach was subsequently appealed to the Maine Supreme Court, which upheld the State but referred the case back to Superior Court.

- The U.S. District Court ruled that the environmental impacts of the Sears Island Cargo Port Project had been adequately assessed
(See page 16). (303) (2) (C)

However, on August 8 the U.S. Federal Court of Appeals in Boston overturned a January ruling by Judge Edward Gignoux and remanded the case for a full environmental impact statement.

- The State showed its commitment to environmental protection through new legislative enactments (See pages 21 and 40).
(303) (2) (A) (B) (C) (E)

A new wetlands law establishes a program to regulate alteration of freshwater wetlands ten or more acres in size. Several significant legislative measures will help protect groundwater resources from pollution. Administration of the Shoreland Zoning Law and the Alteration of Rivers and Streams Law was transferred to the Department of Environmental Protection. Municipalities were authorized to adopt maritime activity zones. Critical Areas Program surveys were funded by the State for the first time, and a Maine Rivers Grant Program was established.

- o The State hosted a major National Symposium on Wetlands Management
(see page 21). (303) (2) (A) (B)

Maine's wetlands and regulatory system provided case study material for 350 participants from throughout the country.

- o Rockland's Fish Pier received a green light from the City Council
(See page 25) (303) (2) (C) (E)

This decision paves the way for completion of the last of the seven fish pier development projects planned with Coastal funds.

- o The State assured protection of Great Duck Island (See page 39).
(303) (2) (A)

This island had long been considered a top acquisition priority by the Department of Inland Fisheries & Wildlife.

- o Governor Joseph E. Brennan issued an Executive Order providing for coordination of a consistent State position in federal hydropower licensing proceedings. (see page 40).
(303) (2) (F)

The Order directs the Executive Secretary of the Land & Water Resources Council to mediate any disagreements among State agencies regarding comments submitted to the Federal Energy Regulatory Commission (FERC) or an applicant for a federal hydropower license. It also establishes that the official position of the State is that established through the decisions of the Board of Environmental Protection and the Land Use Regulatory Commission.

SECTION 1 - Work Program Progress Report

Task 1-A: Improving the Enforcement of the Shoreland Zoning Law

o **Shoreland Zoning Assessment Follow-up Technical Assistance**

The coastal regional councils have completed the technical assistance phase of the Shoreland Zoning Assessment and Technical Assistance project. A program of regional workshops and individualized technical assistance was designed specifically for each region based on the findings of the shoreland zoning administration and enforcement assessment completed in January. A total of fifteen workshops held throughout the coastal area were attended by 160 local officials representing 80 municipalities. Individual assistance was offered to each community which was identified as having administrative or enforcement weaknesses. Approximately 50% of the communities took advantage of this opportunity.

o **Shoreland Zoning Workshop Video-Tape**

Three regional councils collaborated to produce a shoreland zoning video-tape. The video shows the review process of a shoreland zoning permit application by the planning board and a variance request hearing by the board of appeals. This video-tape will be available for loan from each coastal regional council and the State Planning Office.

o **Rule 80K Workshops and Certification**

The Maine Municipal Association completed the "Rule 80K Enforcement Handbook" in March and presented a series of 6 workshops throughout the State in May. The handbook served as the basic text for the workshops and for the certification exam which was administered by the Department of Human Services. The day-long workshops covered the handbook material and provided detailed information on the rules of evidence and other important components of court case preparation. The workshops were attended by 158 local officials representing 124 municipalities. At this time, 60 code enforcement officers (CEO) have taken the certification exam; 23 have passed the exam and received official certification. The handbooks and a video-tape of a certification workshop are available from the Department of Human Services to any CEO who would like to become certified. The availability of the handbooks was publicized in the most recent SPO Advisory Bulletin. Handbook requests are processed by the SPO and the Department of Human Services.

o **Shoreland Zoning Technical Assistance**

Staff at the SPO, DEP and the regional councils provided technical assistance to communities on shoreland zoning matters throughout the six month reporting period. The SPO handled approximately 300 telephone calls during this period. Fifteen municipalities filed shoreland zoning ordinance amendments with the SPO. The majority of these amendments were minor changes or clarifications of administrative and land use standards provisions.

Ogunquit CEO takes new court rule seriously

By Marty Le Blanc

Ogunquit will get its first taste of a new rule of the Maine District Court Civil Rules when six Ogunquit residents defend actions the code enforcement officer says are against town zoning ordinances.

CEO Maurice Eichenblat recently filed suit against the six residents for a variety of alleged zoning violations ranging from a too-large garage to an illegally built retaining wall.

These are the first violations Eichenblat has brought to court under the new rule, 80K, which allows CEOs to prosecute minor land-use violations.

Angela Festa of the Berwick Road is not happy with the action against her and said that Eichenblat is being petty. Festa is charged with rebuilding her garage six inches by one foot larger than allowed on the building permit. Eichenblat said the garage now crosses into a setback area.

According to Festa, the six inches of the garage in question are completely on her property and are not a hazard or problem to anyone. She said her contractor was not able to build the garage the original 11½-foot-by-18-foot size and had to enlarge it.

Festa said she would like to settle the case out of court, but added that she will refuse to take down the overhang as the summons requests.

Jacqueline Bevins, owner of Jackie's restaurant on Shore Road, also was unhappy with Eichenblat's actions. She had requested a meeting with Eichenblat and the Board of Selectmen to discuss the matter Tuesday night. Bevins withdrew her request, however, but would not comment on the reasons.

Bevins is being cited for displaying a canvas banner outside her restaurant, which is a violation of the town's sign regulations.

Harold and Loretta Drelinger of Morrison Lane also were served with a notice of zoning violations.

According to Eichenblat, the couple built a deck on their house even though the building permit did not allow it. The deck, he said, overlaps a setback area. Eichenblat is seeking the removal of the deck and a fine.

The Drelingers would not comment on the case and their attorney, Sheila Fine, could not be reached.

Richard Luccini, Julianne Thurlow and Madalynne Preston are three others named in Eichenblat's suits.

Eichenblat claims Luccini, of Chelmsford, Mass., built a closed-in porch on a Marginal Way home without the proper permits. Jeffrey Lind, a contractor hired by Thurlow, renovated a bathroom in Thurlow's Highland Avenue home without the proper permits. Eichenblat also has charged that Lind threatened him when he went to inspect the work.

Lind also is named in a suit against Preston. According to Eichenblat, Lind built an extra deck on the Preston home without the proper permits. A retaining wall that incorrectly diverts water run-off into a neighbor's yard also was built without a permit.

Eichenblat wants the building permit changed to allow the deck and wants the nine-foot-high retaining wall removed.

Neither the Thurlows nor the Prestons would comment on the charges. Their attorney, Sheila Fine, and Lind were not available for comment.

York County Court Star 6/5/85

- o **Publications**

The State Planning Office printed 100 copies of the "Handbook for Local Planning Boards: A Legal Perspective" and "A Handbook for Municipal Boards of Appeals". Also printed were several hundred copies of the "Minimum Shoreland Zoning Ordinance", the "Chapter 796" and the "Handbook for Local Code Enforcement Officers". The availability of these publications was announced at workshops and in the SPO Advisory Bulletin.

Task 1-B: Core Law Enforcement & Administration, DEP Report

With the summer construction season ahead, the number of applications received by the Land Bureau in the first quarter of 1985 increased 58 percent over the number for the previous quarter. Coastal Wetlands Law applications rose from 56 to 111. As a result, substantial staff time was given to development of a prioritization system to focus field inspections on coastal projects with the most potential for impact or located in particularly sensitive areas.

The second quarter of 1985 saw the beginning of the construction season, and near record level numbers of project applications. Coastal zone projects examined by the Land Bureau showed a trend towards larger and more complex projects. Citizen complaints in the coastal zone more than doubled, from 55 during the previous quarter to 139. The number of complaints in southern Maine more than tripled, accounting for nearly three-fourths of the total. Despite the dramatic increase in complaints the Bureau managed to complete more compliance inspections during this quarter than previously.

Tables 1-4 on the following pages show DEP permit applications, compliance inspections, enforcement actions, complaints and consent agreements in the coastal area for the January 6 to June 30, 1985 reporting period. Major Land Bureau issues arising during this period were:

- o **Belfast City Park Beach Project**

The Army Corps of Engineers proposed the construction of a beach erosion control project in Belfast, designed to create a 550' sand beach and control erosion through stabilization of the adjacent upland area at Belfast City Park. The project involves the construction of a permanent groin/rock revetment system and the use of coarse sand fill.

Environmental concerns include accelerated erosion caused by the groin structure, sand transport due to wind and wave action and loss of softshell clam habitat.

- o **Ogunquit Shoreline Stabilization Project**

The Army Corps of Engineers received a positive consistency determination as well as water quality certification from the Department of Environmental Protection for a shoreline stabilization project on Marginal Way in Ogunquit.

Table 1

DEP PERMIT APPLICATIONS IN THE COASTAL AREA

January 6 to June 30, 1985

Law/Type	Downeast	Central	Southern	Total
Site Location Law:				
Residential	3	13	33	49
Industrial	3	1	17	21
Mining	0	0	5	5
Solid Waste	(solid waste projects noted below)			
Retail Facilities	2	3	7	12
Wetlands Law:				
Sea Walls	1	2	5	8
Piers, ramps, floats	15	41	44	100
Dredging	3	5	14	22
Dunes	0	0	43	43
Fill	3	7	11	21
Solid Waste Management Law:				
	7	6	15	28
Maine Waterway Conservation & Development Act				
	0	4	3	7
TOTAL	37	82	197	316

Table 3

DEP COMPLAINTS IN THE COASTAL AREA

January 6 to June 30, 1985

Status	Downeast	Central	Southern	Total
Resolved	7	9	22	38
Pending	6	28	82	116
Deadfile	7	6	27	40
TOTAL	20	43	131	194

Table 2

DEP COMPLIANCE INSPECTIONS & ENFORCEMENT ACTIONS
IN THE COASTAL AREA

January 6 to June 30, 1985

Region/ Statute	Compliance Inspections	Consent Attempted	Agreement Resolved	Pending	Referrals Atty. General
DOWNEAST --					
Site Law	9	2	0	2	0
Wetlands Law	1	0	0	0	0
Solid Waste Law	17	0	0	0	1
CENTRAL --					
Site Law	2	0	0	0	0
Wetlands Law	3	0	0	0	0
Solid Waste Law	14	6	2	4	0
SOUTHERN --					
Site Law	31	4	1	3	0
Wetlands Law	10	12	0	12	0
Solid Waste Law	30	10	0	11	0
TOTAL COASTAL					
Site Law	42	6	1	5	0
Wetlands Law	14	12	0	12	0
Solid Waste Law	61	16	2	15	1
TOTALS					
	117	34	3	32	1

Table 4

CONSENT AGREEMENTS IN THE COASTAL ZONE

January 6 to April 1, 1985		April 1 to June 30, 1985	
<u>RESOLVED</u>		<u>RESOLVED</u>	
Town of Boothbay	Boothbay	Walter Wilson	Saco
			Permit violations siltation
Town of Gardiner	Gardiner		
<u>PENDING</u>		<u>PENDING</u>	
<u>Site Location of Development</u>		<u>Site Location of Development</u>	
Paul R. Bietle	Freeport	Claude Debois	Saco
		Gerald LeBrun	Wells
		Harry Crooker & Sons	Topsham
<u>Coastal Wetlands/Sand Dunes</u>		<u>Coastal Wetlands/Sand Dunes</u>	
S. E. McMillan Company	Yarmouth	Edward McCarthy	S. Portland
Town of Wells	Wells	Portland Paving, Inc.	S. Portland
Robert McAttee	Biddeford	Harry Crooker	Brunswick
		McAttee	Biddeford
		Schatter	Biddeford
		Lefebvre	Enlarge Seawall
		Town of Wells	Enlarge Seawall
		Claude DeBois	Bulldozing
			Enlarge Seawall
<u>Solid Waste</u>		<u>Solid Waste</u>	
Town of Jefferson	Jefferson	Abbott Bros.	York
Town of Damariscotta	Damariscotta	Regional Waste System	Scarborough
City of Belfast	Belfast	City of Biddeford	Biddeford
Town of York	York	Town of York	York
City of Biddeford	Biddeford	Harry Crooker & Sons	West Bath
		Town of Scarborough	Scarborough
		Town of Scarborough	Scarborough
		Town of Yarmouth	Yarmouth
		City of Bath	Bath
		Town of Damariscotta	Damariscotta
		City of Belfast	Belfast
			Improper operation septage site
			Groundwater contamination
			Revision of past agreement
			Groundwater
			No permits
			No permits
			Improper operation septage site
			Improper operation
			Surface water contamination
			Operation, surface water
			contamination
			Ground and surface water
			contamination

096/

DEP — Both Bane And Blessing To Towns

By Stephen Holt
Staff Writer

The Department of Environmental Protection is often looked upon as "Big Brother" by many municipal and industry officials, who feel the mainland state environmental agency too often flexes its muscles and rides roughshod over communities.

With a staff of 230 and an annual budget of \$12 million, the DEP is seen as a formidable force that frequently cites cities and towns for various violations of environmental regulations.

The DEP's authority extends to several areas which regularly puts it in conflict with local municipal governments and businesses. Foremost among these, in the local arena, have been dumps and treatment plants.

The state agency was officially created by the Maine State Legislature in 1972. Before then it held various titles beginning in 1941 when the Sanitary Water Board was created by the legislature. Ten years after that board was founded, it was renamed the Water and Air Environmental Improvement Commission. That name was shortened in 1967 to the Environmental Improvement Commission and operated for the next three years under that title. The commission was upgraded to a formal state department in 1972.

The legislature has given the DEP the power to enact regulations with the power of law. On its own the DEP can order dumps closed, put a halt to major developments, or subpoena witnesses to testify at hearings.

Conflict

In an interview, the commissioner of the DEP agreed that many times the DEP is looked upon with less than a favorable attitude by local government.

Commissioner Henry Warren said he can sympathize with local government officials who feel the state is being a nuisance by requiring conformance with Maine environmental laws, but that laws must be enforced and obeyed.

"We get complaints from municipalities from time to time. I can sympathize with the financial constraints on communities," Warren said, noting that conforming to these regulations can cost money.

"The state statutes are for everyone, though I feel municipalities should have to follow the rules and regulations as much as industry, if not more so," Warren said, adding that governments should set an example for the rest of the community.

The DEP chief administrator said the Midcoast district in the state agency is violating regulations established by the state.

Warren said municipal officials are kept abreast of new rules and changes in rules made by the department. He said the DEP includes the Maine Municipal Association.

(The MMA acts as consultants to Maine communities.) Warren said input is also sought from regional planning commissions when discussions are held regarding the development of new regulations.

"It's very public and open," he said. "Some responsibility lies with the communities to be aware of statutes and regulations."

As an example, the DEP commissioner said when the department's solid waste regulations were recently overhauled, "tens" of copies were sent to the MMA, municipalities and review organizations.

Gang Too Far?

Municipal officials contacted for their opinions on the DEP were reluctant to speak on the record, fearing repercussions.

The recent problems with the Rockland dump, the Rockland treatment plant, the lockport dump, the Tom Sawyer landfill and local cemeteries were all mentioned as recent run-ins with the state.

The Rockland City Council has had harsh words to say about the DEP in past years over the agency's opposition to the city's efforts to move into an adjacent quarry when the current quarry used for a landfill was filled.

Regional planner Fourn Powell said he is a strong supporter of the aims of the agency but that he has concerns about recent actions taken locally.

"At the moment, the solid waste group seems to be overly zealous," Powell said. "I have trouble saying that since I agree with the philosophy (of strong environmental laws)."

The Midcoast's planning consultant said the solid-waste division of the DEP ap-

pears to be getting "too letter-of-the-law technical in recent months" and has not tried hard enough to work with the towns and cities.

"While I feel the DEP has been fair and judicious, I feel it has not gone the extra mile to find solutions for the communities," he said.

Powell noted that the recent problems at the Rockland landfill were temporary problems and not standard practices. He said he is concerned that an over aggressive attitude by the DEP could cause a backlash which would lessen the agency's powers. Powell pointed out that other areas of the state are experiencing similar difficulties and that if developers feel throughout the state go to the legislature, the legislature and the state's activities could throw out some laws which he considers important to protecting the state's environment.

Warren said the department tries to separate its enforcement responsibilities from its assistance functions.

"When we're exerting our enforcement capacity we might be seen as wearing a big stick, while at the same time we're trying to help communities," Warren said.

He said the department has spent countless hours working with Rockland and Rockport to assist in their solid-waste management.

Warren admitted there are sometimes communication problems and they stem, in part, from turnover in municipal government and from turnover in the DEP staff.

"The first responsibility is to try to stop the environmental impact with enforcement action," he said.

Warren noted that he has been with the department for 15 years and that a lot of progress has been made in cleaning up the environment. He said the clean water act is one of the best examples of the impact on environmental regulations.

"It seems like everytime we solve a problem, another one pops up," he said.

Warren noted that there has been a dramatic reduction in the number of landfills which are in violation of DEP regulations.

"The state's goal is to work with the communities when we can and when we can't we have to use the enforcement powers," he said.

The project consisted of the placement of an additional layer of armor stone along a 150 foot section of Marginal Way, (a walkway in the shoreland area) and the construction of 150 linear feet of shore slope protection along an unprotected portion of the walkway.

Environmental concerns included whether the stone would be placed at an appropriate slope to properly protect the area and loss of wetland habitat as a result of slope placement and excavation.

- o Worcester Landfill, Southwest Harbor

The Worcester landfill is a private waste disposal site which has served the towns of Southwest Harbor, Bar Harbor, Mt. Desert and Trenton for a number of years. Leachate from the facility discharges to Marshall Brook which flows through adjacent Acadia National Park property. Attempts were made to resolve the problem through consent agreement, but negotiation failed to produce an acceptable schedule and plan for problem correction. The matter was referred to the Attorney General's Office in February for appropriate action.

- o Viking Fish Farm, Brooklin

This is a proposal to construct and operate a land based fish farm over 7 acres on Harriman Point, Brooklin, Maine. The project includes smelt tanks, fish raceways, icemaking, feeding, and processing facilities. Approximately 38 million gallons of seawater will be circulated through the raceways daily. Production is estimated at 1000 metric tons of Atlantic salmon annually. Wastewater disposal is the primary environmental concern.

- o Bangor Dam Hydroelectric Project, Bangor

Swift River Company proposed to rebuild the existing Bangor Dam on the Penobscot River in Bangor to produce hydroelectric power. The project includes replacing and reconstructing the existing spillways, constructing a new gate and installation of 3 turbine-generator units rated at a total capacity of 25.5 MW. Because of a spillway failure in 1976 tidal influence has resumed its natural range approximately 3 miles upstream of the dam. Environmental concerns include the Atlantic Salmon fisheries, anadromous fish restoration program, American bald eagle (endangered species), flooding, rare plants, water quality, and historic places.

- o Regional Waste Systems Incinerator, Portland

R.W.S. proposed to construct a 500 ton per day refuse incinerator to produce electrical power. The incinerator will accept waste from approximately 20 greater Portland area towns. Environmental concerns identified with the project include air quality, climate alteration, water quality and ash disposal.

- o Rockport Marine Inc., Rockport

Rockport Marine proposed to place 3500 cubic yards of fill in Rockport Harbor to enlarge the boat storage area and to upgrade the existing pier. The marine habitat in the proposed fill area is thought to be of marginal quality. Environmental concerns include water quality, navigation, and marine habitat.

o Danton Towers Condominium Project, Old Orchard Beach

Danton Towers is a proposed 16 story (142 foot) 163 unit condominium building located on a coastal sand dune in Old Orchard Beach, Maine. In addition to the 80 foot by 230 foot main structure two parking areas for 328 cars are proposed. The construction of the building will require the excavation of 2700 cubic yards of sand from the sand dune system. Environmental concerns include the effects of a large development of the dune system, sunlight, recreational use, and flooding.

See also page 19 .

o Harborside Condominiums, Scarborough

E&R Development Corporation proposed to fill an area of coastal wetland and coastal sand dune on Pine Point to construct a condominium complex. The property would be filled to raise it above the 100 year flood elevation. Environmental concerns include flooding, filling of productive wetland, alteration of a coastal sand dune, and recreational uses.

o Fill at Thomas Point Beach

The DEP ordered the dumping of sand at Thomas Point Beach in Brunswick stopped because it was being conducted without a permit. An application subsequently was accepted for review.

Task 1.C: Provision of Technical Assistance by the RPCs

See Task 1.A, "Shoreland Zoning Assessment Follow-up Technical Assistance".

Task 1.D: Land Use Litigation Fund

No work was performed on this task during the reporting period.

Task 1.E: Maine Municipal Association

See Task 1.A, "Rule 80K Workshops and Certification".

Task 2. Waterfront Revitalization

Local waterfront revitalization projects funded for nine coastal communities under the Coastal Program were described in the previous Progress Report. The status of these projects is described below:

BANGOR -- Front Street Area Re-Use Plan, \$ 21,700 grant

This project has provided the following products: a base map of the study area, soils profile, site evaluation; a series of working papers discussing problems and opportunities, market and re-use feasibility, alternative development scenarios, and development plan and implementation strategy; property appraisals; and a memorandum to the City Council on costs and implementation. The study recommended immediate City acquisition of two key properties, one of which is the old petroleum tank farm.

BAR HARBOR -- West Street Harbor Park, \$ 5,000 grant

This project has provided preliminary engineering and cost estimates for repair and/or replacement of the failing granite retaining wall on West Street and development of a mini-park at the site.

BELFAST -- Waterfront Planning & Development Project, \$ 18,750 grant

Belfast's engineering consultants have provided five construction alternatives for repair of the City pier, together with construction and maintenance costs. A series of meetings was held, including two public hearings, and an alternative selected. Preliminary design and construction specifications were completed. Consultants also furnished a harbor plan, usage fees and other harbor management recommendations, and a harbor ordinance subsequently adopted by the City. Landside, Belfast received a waterfront plan and zoning regulations from their land use planning consultant, and held hearings on both.

CASTINE -- Waterfront Development Project, \$ 15,450 grant

Preliminary engineering and designs for proposed improvements to Castine's waterfront were prepared by the consultant working with the Local Harbor Improvement Committee. The Committee also conducted a pedestrian and traffic survey in the small but very congested village center/waterfront area. This project's next stage involves final local approval of improvements to the waterfront and acceptance of a strategy for financing the improvements.

EASTPORT, CALAIS, & LUBEC -- Ferry Service Feasibility Study \$8,000 grant & Coastal Development Strategy \$ 3,000

Ferry Study: This study found strong potential demand for regularly scheduled waterborne passenger/vehicle service between Eastport and Lubec, especially during peak summer months. Water distance between the two communities is 2.8 miles, land distance by road is 40 miles. An active Committee comprised of area residents, businesses, and

Eastport-Lubec ferry study completed

by Marie Jones

A draft report of a feasibility study for a ferry service in the Passamaquoddy Bay area, particularly between the communities of Eastport and Lubec, has been completed. The firm of CE Maguire, Inc. undertook the study. Key issues that were considered included determination of the service needed, use of service, fare structure, resulting revenue estimates, determination of capital cost required for vessel and facilities to implement the service and annual cost estimates for operating and maintaining the service.

Two types of ferry services were examined: (1) a tug and barge service, designated as Ferry Service A, which would traverse the 2.8 mile course from the Lubec public launch to Sea Street in Eastport in approximately 40 minutes, depart from either shore on the hour and cost \$3.00 per automobile; (2) a nine-car vessel, designated as Ferry Service B, which would traverse the same 2.8 mile course in approximately 12 minutes, depart from either shore on the half hour and cost \$4.50 per automobile.

A market analysis of the two services indicates that, once implemented, average rider ship would exceed the capacities of either vessel A or B during the months of operation, May through September. Average daily demand for Ferry Service A is estimated to be 96 vehicles per day while it is estimated 411 vehicles per day would use Ferry Service B.

Although demand is strong for both types of ferry services, the revenue from Ferry Service A is estimated to be \$51,000 per year, which would not be adequate to cover the estimated operating and maintenance costs of \$63,000 per year. Ferry Service B, which has shorter travel times, higher capacity and is more competitive with the automobile, would generate an estimated surplus of approximately \$96,000 per year prior to the retirement of debt service for needed capital improvements.

Capital improvements required in both Eastport and Lubec to accommodate Ferry Service B would be extensive. The pier requirements in both communities are estimated to cost three million dollars. The generated surplus would not cover the \$400,000 for annual debt service retirement.

The Maguire report suggests an alternative to the extensive pier requirements

needed for Ferry Service B. A ferry could be retrofitted with a hydraulic transfer bridge, thus eliminating the expensive pier requirements for Ferry Service B. In the report it is strongly recommended that this option be studied prior to attempting to secure capital assistance for the construction of the Lubec and Eastport piers to accommodate Ferry Service B.

The capital costs of Ferry Service A would include the purchase of a 24-foot wide, 60-foot long barge at \$75,000 plus the landside improvements at Sea Street in Eastport.

The capital costs of Ferry Service B would include purchase of a used ferry such as the *Rebel*, belonging to Casco Bay Lines, estimated at \$100,000 plus major capital improvements to both the Lubec and Eastport docking areas.

The potential sources of funding are dependent upon who would operate the service: the State of Maine, the Eastport Port Authority or a private operator. It is doubtful that a private concern would be the operator. Either the State of Maine or the Eastport Port Authority could operate the facility and issue revenue bonds at 10% per annum to finance the capital improvements. The Eastport Port Authority is authorized by the State of Maine to issue revenue bonds up to \$6 million.

Rep. Harry Vose has investigated the possibility that maintenance functions for the ferry boat could be performed at the W.C.V.T.I. Marine Center in Eastport. A letter received by Vose from the Department of Education indicates no problem legally for the school to provide maintenance for a ferry boat. An agreement would have to be worked out with Ron Renaud, Director of W.C.V.T.I. Rep. Vose has also contacted Senator George Mitchell's office and the Army-Navy Surplus office in Augusta in hopes of obtaining a surplus landing-craft vessel or a vessel now in mothballs.

The feasibility report is being studied by the Eastport Port Authority.

Quoddy Tides July 26, 1985

local officials directed the study by a consultant. This Committee is now seeking the financing needed to establish ferry service on a trial basis.

Coastal Development: This cooperative planning effort is the result of a strong desire on the part of coastal communities fronting on Passamaquoddy Bay to attract business and tourist trade. The communities share common problems, with low employment, underutilized natural coastal resources, and little tourism compared with other coastal areas further south or east. Both Maine and New Brunswick (Canada) communities are involved.

A major accomplishment of this project was the organizing of a second annual Passamaquoddy Bay Area Planning Conference in St. Andrews, New Brunswick. The Maine communities of Eastport, Calais, Lubec and Robbinston were represented along with the New Brunswick communities of St. Stephen and St. Andrews. State and Provincial government officials also attended the two-day conference, including Cabinet level representation from the Maine State Planning Office, and the New Brunswick departments of Tourism and Municipal Affairs. The Director of the State Planning Office, the New Brunswick Minister of Tourism and the Minister of Municipal Affairs were keynote speakers.

ELLSWORTH — Dredging & Waterfront Feasibility Assessment, \$2,000 grant

Ellsworth undertook an assessment of its riverfront development potential in conjunction with its overall downtown revitalization planning effort. A local "Blue Ribbon" Committee is overseeing both planning efforts and will present its final recommendations to the City Council later this year. The City hopes to compete for future Community Development Block Grant funds to implement its final recommendations.

PORTLAND — Waterfront Park Design Project, \$ 12,000 grant

A waterfront park is to be located on the outer end of the city-owned Maine State Pier. Work completed under this coastal grant includes a structural feasibility analysis and recommendations regarding the pier itself, an analysis of needs and potential uses of a park-type facility, development of concept plans, and preliminary designs and cost estimates for three phases of park development.

**ROCKLAND — Waterfront Development Feasibility & Marketing Study
\$ 8,000 grant**

The City completed a marketing study which found that a city-owned, privately-operated marina facility could be viable if it provided a full range of services and accommodated 100 vessels. Available space will only allow about 40 vessel berths, so the city is looking for ways to enhance the feasibility of the proposal.

YORK — Fair Price Study for Town-Owned Moorings, \$ 1,500 grant

York's consultant prepared a preliminary draft report covering capital costs, operating costs and a sliding scale of charges for town-owned moorings for a five year period, based on a mooring plan prepared by the volunteer York Port Authority. At the last minute, after much Town controversy and a complete change in Port Authority membership, the new Port Authority adopted a new mooring plan. The consultant subsequently provided the town with a summary of representative slip and mooring charges for selected harbors from Salem, Massachusetts to Boothbay Harbor, Maine, and a revised report reflecting the new mooring plan. Port Authority members intend to follow through with their own report to the Selectmen as part of their continuing harbor planning efforts.

Task 3.A: Federal Consistency

(See Section 12)

Task 3.B: Coastal Advisory Committee

Committee members discussed statements of coastal activities and issues, prepared by individual State agencies as agreed at the previous meeting, at a meeting on January 8, 1985. It was recognized that many agencies are addressing the same coastal issues from different perspectives (e.g. through regulation, planning, daily management, etc.) and that better coordination was needed. The SPO agreed to prepare an overall coastal priorities statement based on the individual agency statements. At this meeting the committee also was briefed on the new U.S. - Canadian Maritime boundary and its effect on oil and gas activities and fisheries management, the 1985-86 coastal program, and a proposed research symposium on the Gulf of Maine.

On April 11, 1985 the Committee was briefed on anticipated funding levels and schedule for the 1985-86 coastal program, reauthorization of the Coastal Zone Management Act, coordination of coastal access funding, the 1985-86 local and regional grant programs, and Coastweek '85 activities. Members also discussed their individual rankings of the twenty coastal issues in the Coastal Priorities Statement drafted by the State Planning Office, and reached a consensus on the six most pressing coastal management issues: (1) incremental development and growth management; (2) natural resource data base; (3) technical assistance, public education and enforcement; (4) economic planning and development; (5) public access to the shoreline; and (6) marine resource management. (See Appendix for Coastal Advisory Committee Minutes.)

The final Coastal Priorities Statement was used to guide funding decisions for projects in the 1985-86 coastal program. It also was used by the Sea Grant Policy Advisory Committee, of which the coastal program manager is a member, to develop their long range plan.

The Coastal Advisory Committee currently is pursuing a major initiative to gain legislative support for increasing the State's commitment to enforcing environmental laws.

Task 4.A: Technical Assistance & Local Grant Administration

Local grants for waterfront revitalization and development are discussed under Task 2. A meeting of the local managers of these coastal projects was held at the State Planning Office on February 7, 1985. The agenda included presentations and discussion of the status of individual projects, followed by a roundtable discussion of waterfront problems and issues more generally. Issues of greatest concern were the need for local tax increases, economic development, unemployment, building support in face of local opposition, and competition between towns for cruise ships.

Issue number 3 of the Advisory Bulletin on coastal management activities was prepared during the reporting period for mailing the first week in July. Bulletins are aimed at informing local, state and federal officials of state developments and information affecting Maine. This issue included discussions of coastal management priorities and of highlights from the legislative session just concluded, as well as a feature article on the Portland waterfront (see Appendix to this report).

Task 4.B: State Grant Administration

The meeting of Special Award Conditions B-24 and Significant Improvement Benchmarks required by "Maine 1984-85 306 Financial Assistance Award Approval" (memo from Kathryn Cousins to James Burgess, May 9, 1984), was reported in the previous Progress Report. Final Benchmarks required by that memo are described in this Progress Report as follows:

Task 1A, Improving Enforcement of the Shoreland Zoning Law, page 3 ;
Task 1B, Core Law Permitting and Enforcement, page 5 ;
Task 1E, Maine Municipal Association, page 10 .

Task 5.A: Coastal Investment Strategy

- o Work Item 1 -- The inventory of State and federal investment programs was completed during the reporting period. Results indicate few programs are directed specifically at the coastal region or at coastal resources. The exceptions include the Department of Marine Resources and Coastal Management related programs.

An analysis will be completed examining:

- a) the distribution of public investment between coastal communities; and
- b) the impact of public investment on economic indicators in the coastal area.

- o Work Item 2 -- A socio-economic characterization of the coastal area has been completed. This includes data on housing patterns, population shifts, and employment patterns. In addition, three economic indices were prepared. These include the Economic Health Index (EHI), a composite measure of economic activity, unemployment, and income; the Trade Growth Index (TGI), a measure of growth in taxable consumer retail sales; and the Tourism Intensity Index (TII), a measure of restaurant/lodging sales as a percentage of consumer retail sales.
- o Work Item 3 -- A characterization of coastal natural resources has been completed. This includes a description of resource development and use trends from both a coastwide perspective and a coastal regional perspective.
- o Work Item 4 -- This item is the development of guidelines for public investment policies in the coastal area. This will be achieved by considering the trends in the coastal area's demographic, economic and natural environments identified in work items 2 and 3 and reviewing past public investment practices and current potentials identified in work item 1. This work item is nearing completion.

Task 5.B: Peatland Research & Management Strategy

See previous Progress Report.

Task 5.C: Sears Island Cargo Port Development

Work proceeded smoothly on this project until a ruling on August 8 by the First U.S. Circuit Court of Appeals vacated a January district court ruling, and required an environmental impact statement for the project and secondary development that might be stimulated on Sears Island. This ruling came as the mainland access road to the causeway site and the access road to the port site on the island were nearing completion, three quarters of the dredging was complete, and preparation at the port site had begun.

All work was stopped after the Court ruling except site preparation. This work was continued, with the consent of the Court and the Sierra Club, in order to complete sediment basins and other measures to prevent soil erosion.

The Circuit Court ruling came at the same time the U.S. Coast Guard was processing the State's application for a bridge permit for the causeway to the island.

Since the August Court ruling, several meetings have been held to coordinate preparation of the Environmental Impact Statement (EIS) for the project. The Federal Highway Administration has been designated lead agency in preparing the EIS and the Army Corps, Coast Guard, Economic Development Administration, and the Federal Railroad Administration are

BDN 3/27/85 Officials ponder causeway decision

By David Platt
NEWS Environment Writer

State officials flew to Washington, D.C., Monday to see what can be done about last week's decision stripping Maine of its permit to build a causeway to Sears Island.

The causeway is critical to the \$2 million Sears Island Cargo Port development. Approach roads to the causeway are already under construction and clearing and dredging for the po are underway.

"We've made no decision as to how I respond" to U.S. District Judge J. Ward T. Gignoux's decision vacating the Coast Guard permit for the causeway, Assistant Attorney General Wayne Howard said Tuesday after a hearing. Howard represented the DOT, but Gignoux, whose decision stems from a lawsuit brought late last

by the Sierra Club. Howard accompanied Maine Transportation Commissioner Dana F. Connors and other state officials to Washington Monday. They met with representatives of the Coast Guard and members of the state's professional delegation.

The Coast Guard will for the first time last week, after Judge Gignoux's ruling in fact a cause.

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Sears Island Project Progressing; Site Preparation Bids Are Received

By Toni Mailoux

Two weeks ago Department of Transportation (DOT) Commissioner Dana Connors announced the state was moving full-speed ahead on the Sears Island project despite an unfavorable court ruling on the permit for construction of the causeway.

"While the causeway matter may force us to alter our approach to completion of the project, it will not stop development... We feel we would be making a grave error to delay overall development until the causeway issue is resolved... In essence, we're divorcing the causeway issue from the rest of the overall project," Connors said.

That divorce may be for the

Power several years ago. As a condition of the original sale, CMP had to offer the land back to B & A if they decided not to build a power generating plant at that location. B & A accepted the offer and late last week the deed was recorded at the Waldo County Registry of Deeds. The state is in the process of beginning "friendly" condemnation proceedings to obtain the 50 acres B & A is giving the state for the port site. The condemnation is being done to "clear the title."

The state has applied for a \$20-million discretionary grant from the Federal Railroad Administration.

dredging of the cell construction area finished by June 1. The dredging not expected to be completed by the cut-off date could be delaying the officials.

KJ 4/6/85

Cargo port project to continue

By The Associated Press

Work on the \$20-million Sears Island cargo port project will continue despite a federal court ruling requiring a construction permit for a causeway linking the island to the mainland, state Transportation Commissioner Dana F. Connors said Monday.

The Sears Island project, which would build a 50-acre port on the island, is being developed by the Maine Port Authority. Connors said the state is divorcing the causeway issue from the rest of the project. Connors said the state is divorcing the causeway issue from the rest of the project. Connors said the state is divorcing the causeway issue from the rest of the project.

Sierra Club wins port round Sears Island permits ruled illegal

By JERRY HANLEY
Associated Press Writer

A federal appeals court in Boston has ruled in favor of the Sierra Club, saying the state's permit for a causeway to Sears Island is illegal. The ruling is a setback for the state's plan to build a \$20-million cargo port on the island.

The court said the state's permit for the causeway was illegal because it was issued without a proper environmental impact statement. The court also said the state's permit for the port was illegal because it was issued without a proper environmental impact statement.

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State accepts Sears Island ruling

By The Associated Press

State officials said Thursday they will not appeal a federal court ruling against the planned deepwater cargo port on Sears Island, but will try instead to expedite the environmental impact statement that the court found lacking.

Meanwhile, the Maine chairwoman of the Sierra Club denied that it opposes construction of the \$20-million project in any form, insisting that the environmental group's goal is only to ensure that the law is obeyed.

"The issue in this case is not one of jobs vs. the environment," said Nancy Stone, whose group claims 1,000 members in the state.

Transportation Commissioner Dana F. Connors and Attorney General James E. Tierney said an appeal to the U.S. Supreme Court would take longer than preparing the impact statement that the three-judge U.S. Circuit Court of Appeals in Boston said was needed.

Although that work is the responsibility of the federal government, Tierney said the state will be "an active participant in the process." Connors said "we would make our case" for federal officials to delegate to the state the authority to prepare the impact statement.

Connors said most of the primary environmental effects of the project were weighed in less comprehensive assessments that already have been completed. He said the information needed to complete the impact statement mainly involves the effects of additional development that the port project will invite.

"It's the secondary environmental impacts that the finger is being pointed at," the commissioner said.

Connors reiterated that his main concern is continuing the momentum of the project, on which work began last year. He said he would seek to proceed with construction of the \$20-million port terminal building while the impact statement is being prepared.

An access road to the site is virtually complete and Connors has said he intends to complete site-preparation work that would compound environmental risks if left unfinished. Dredging at the site was suspended earlier this summer and would not resume until October anyway under

the state contract.

Stone, speaking at a State House news conference, said her group would accept the conclusions of the environmental impact statement even if it shows that the project would cause no serious harm.

"We just want the proper environmental laws followed," she said, adding that allowing the project to proceed without the impact statement would set a dangerous national precedent.

In an immediate response, John Melrose of the Maineport Council, a coalition of public and private groups promoting the project, said the Sierra Club had won only "a procedural victory" that would do little except cause costly delays. He said the recent ruling jeopardizes a \$20-million grant that the Economic Development Administration was expected to approve.

"A lower court said that we did the right thing" in opting not to prepare an environmental impact statement, said Melrose.

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cooperating agencies. The Environmental Protection Agency, National Marine Fisheries Service and U.S. Fish & Wildlife Service have been invited to be cooperators but have not yet responded.

In addition to these meetings, a high level meeting was held at which MDOT, DEP, SPO and the Governor's Office reviewed project status and future plans. The need to undertake a thorough EIS was discussed, as was the need to bring the private owners of Sears Island (all but the cargo pier site) into active coordination with the Town and State. Coastal Program staff also plan to met separately with local officials in order to help determine any additional local planning or studies needed to assess community impact of the project, and to provide technical assistance where needed.

The full text of the Circuit Court ruling is reproduced in the Appendix to this report. A more detailed report on the preparation and coordination of the EIS for the project will be submitted to OCRM shortly.

SECTION 2 — Monitoring & Enforcement Activities

See Section 1, Tasks 1.A - 1.C in addition to the following:

o Old Orchard Beach Condominium

Developers have proposed to build a 140 foot high condominium at Old Orchard Beach, the tallest building on the Maine coast. Old Orchard Beach was developed in the early part of this century and its beach is fronted by densely packed Victorian hotels. In 1980, the Town negotiated with the Shoreland Zoning Task Force to allow higher densities in their shoreland zone that would more appropriately fit their beachscape. The Task Force agreed to allow 43 units per acre with a 70 foot height restriction, buildings separated by at least 100 feet, and 65 percent of each site left undeveloped.

In April, the Zoning Board of Appeals for Old Orchard Beach granted the developers of the Danton Towers Estate a variance to build the 140 foot tower. The developers were required by the town to preserve a famous structure on half their property and claimed hardship to be allowed a higher structure.

Following the variance, the Board of Environmental Protection and the Land Use Regulation Commission asked the Attorney General to initiate legal action against the town. The Attorney General noted that the reasons for issuing the variance are legally deficient and that the variance should not have been granted; however, the State's legal recourse under the Shoreland Zoning law is questionable. At most, the State might obtain a court order for the Town to obey its ordinance. Refusal would then require obtaining a contempt of court citation. On the other hand, if a civil suit filed on behalf of the Grand Beach Association to protest the variance was appealed, the State could join the plaintiffs.

The Board of Environmental Protection is currently processing the Sand Dune Permit for this project (see page 10). Because more than 600 residents have signed a petition against the Danton development, a public hearing will be held in August before the Board makes its decision.

o Sand Dune Law Upheld

The first case to challenge the constitutionality of the six-year old sand dunes law has been appealed to the Maine Supreme Court. In February, a Superior Court ordered a New Hampshire couple to remove a cottage they built on the foredune at Popham Beach. The couple were not told they needed a state permit when they obtained their plumbing and building permits from the Town Code Enforcement Officer in 1976. The State upon learning of the project, denied an after-the-fact permit. The Supreme Court heard the arguments in March, and in early September unanimously upheld the Board of Environmental Protection's denial of the permit. The Court also returned the case to Superior Court, with instruction to look at whether the Sand Dune Law unconstitutionally takes property without compensating the owner.

A similar case is now in Superior Court. The Rubins built an addition to their cottage which is located in the foredune area, also at Popham Beach. Again, an after-the-fact permit was denied. The State is asking that the Court uphold the denial and require the couple to remove the addition.

OOB tower may face tough DEP scrutiny

By SID LEAVITT
York County Bureau

OLD ORCHARD BEACH — The tallest building on the Maine coastline would be built under a proposal that has received local approval but is expected to get rougher scrutiny from the state.

The chairman of the board of the Maine Department of Environmental Protection said Tuesday that pushing a proposed Danton Towers condominium to 16 rather than eight stories seemed to be a "clear violation" of shoreland zoning laws.

Samuel Zaitlin, a Biddeford resident whose board has had several major run-ins with Old Orchard Beach on other environmental matters, said he "wouldn't be at all surprised" to see the state attorney general's office take legal action against the project.

Local sentiment was clearly different Monday night when the Zoning Board approved a variance for the Danton family's proposed 164-unit luxury condominium to exceed the town's 70-foot shoreland height limit by another 70 feet.

Besides being the tallest building on the coast, perhaps anywhere in the state, the 140-foot structure would be about three times larger than any of seven other high-rises now being developed under the town's three-year-old shoreland zoning ordinance.

Danton Towers would produce an estimated \$700,000 a year in tax revenue, more than 10 percent of the town's annual budget, and that has made the project popular with most townspeople now facing one of the highest effective tax rates in the state.

William M. Danton, manager of his family's 3.8-acre estate in the posh Grand Beach area at the north end of the town beach, said doubling the condominium's height would be the only way to keep the family villa from being razed.

BEP denies sand dune variance

The Board of Environmental Protection recently voted to deny Dorothy Rubin's request for a variance to the Coastal Sand Dune Rules. The Board thus denied for a second time Rubin's after-the-fact request for a permit to construct an addition to her summer home on the Hunnewell Beach section of Popham Beach in Phippsburg.

NRCM closely monitored the Rubin application, the first variance request since the adoption of the variance provision to the Sand Dune rules in October, 1984.

The Rubin case has a long history. The house addition was built during the winter of 1980-81 but an application for a permit was not made until August 1983. That application was denied in November 1983 because the addition is located on a frontal dune. The Sand Dune rules prohibit both new buildings and additions on a frontal dune. After the adoption of the variance provisions to the rules, Rubin applied for a variance.

The Board's decision to deny the variance rested primarily on its determination that the seawall presently protecting the Rubin residence will fail within 100 years, leaving the property unprotected

from storms and natural beach processes and making the addition a flood hazard to itself and neighboring property. Ken Fink — NRCM director, University of Maine professor, and beach geologist — testified in opposition at the hearing. "The record of two seawall failures within a period of only ten years along Hunnewell Beach makes clear the ultimate fate of seawalls there. It is only by virtue of the seawall that the property still exists. When the seawall fails, the shoreline will probably adjust to a position behind the proposed location of the addition, because the level of the sea has risen over the years, we must expect a constant retreat of the shoreline with cycles of accretion and erosion."

Board members were unswayed by arguments by Rubin's attorney or the geologist she hired. Board member Peter Wiley commented, "The project is against the intent of the regulations right down the line." Board chairman Sam Zaitlin urged the Board to take a conservative approach because of the dynamic nature of the beach.

Despite the board's denial of the variance request the Rubin case is not over. Rubin is appealing the Board's decision to the Maine Supreme Court.

~~STAFF PHOTOGRAPH BY SID LEAVITT~~

Danton originally proposed an 8-story condominium that wouldn't have required a zoning variance but would have meant demolishing the villa. The plan also would have needed parking space across the street in a marshland that isn't included in the plan approved Monday.

The 16-bedroom villa, known as the Snow Mansion because the clam-chowder family once owned it, was enough reason for a 4-1 majority of the Zoning Board to find special circumstances justifying a hardship for Danton's variance.

The board majority also felt that Danton had been led into the higher proposal by the Planning Board, which approved the 140-foot structure on a split vote after expressing sentiment for saving the villa.

Zaitlin said he would like to review both board decisions in detail, but on the face of it, he said, a 70-foot variance for a 70-foot

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height limit "isn't really a variance."

That point was argued Monday night by Saco attorney Bruce M. Read, representing a beach property owners association that has filed lawsuits against three other high rises at Grand Beach and is expected to do the same against Danton Towers.

"There are no unique circumstances that justify a variance of this magnitude," Read told the board. "Sure, maybe you could grant a smaller variance — but 70 feet?"

Board member Robert LoPresti, who moved for approval, said the villa was worth saving: "It's the only Snow Mansion in the whole country."

SECTION 3 — Wetland/Estuary Report

Three significant events occurred during the reporting period. The State and Town of Wells continued to acquire strategic wetland and upland areas in the Wells National Estuarine Sanctuary, the State Legislature enacted freshwater wetland legislation and the State hosted the first annual wetland managers' conference in Portland, Maine.

Management activities in the Wells National Estuarine Sanctuary are increasing with the preparation of four educational brochures, the hiring of consultants to prepare interpretive, access, and facilities plans for the Sanctuary, the solicitation for a Sanctuary Manager, the preparation and distribution of a national brochure on estuarine sanctuaries, and receipt of a grant to construct trails in the Sanctuary. Sanctuary activities are reviewed in detail in the Sanctuary Advisory Bulletin No. 2, April, 1985. (see Appendix).

The new wetlands law (L.D. 838, AN ACT to Protect Freshwater Wet Lands, Public Law Chapter 485) establishes a program within the DEP to regulate the alteration of unforested freshwater wetlands which are ten or more acres in size. Five types of activities are exempted from regulation: agriculture, normal forestry management and harvesting; peat exploration and mining; operation of hydropower projects; and construction, operation, maintenance, and repair of interstate pipelines. The law provides that permits shall be granted for activities which do not unreasonably harm significant wetland values such as flood prevention and wildlife habitat. Permit granting authority may be delegated to municipalities.

Alternative approaches to the evaluation of wetlands for regulatory and management purposes were examined at a national symposium in Portland, Maine, June 17-20. The symposium, sponsored by the Association of State Wetland Managers, featured field trips and 25 workshops as well as presentations by 70 speakers, many of whom were nationally-recognized experts. Several of the workshops focused on Maine wetlands and the State's regulatory system. Approximately 350 people attended from all over the country.

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SECTION 4 — Fisheries Management Activities

o Effects of the World Court Boundary Decision

Prior to the decision by the World Court on the U.S./Canadian boundary in the Gulf of Maine (see Progress Report for July 1 - December 31, 1984, pages 31 and 37), the New England Governors and Eastern Canadian Premiers established a Bilateral Working Group on the Economic Development of the Fisheries. The Commissioner of Marine Resources and the Director of SPO's Policy Division represented Maine on the Group.

The second and third meetings of the Bilateral Working Group were held during this reporting period in Montreal, Canada, and New Seabury, Massachusetts. Meetings focused on identifying the issues arising out of the boundary decision and out of current trade tensions in the fisheries. The group's immediate concern was narrowed to issues concerning government's role in assisting the fisheries, the structure and functions of the New England fish marketing system, and its effects on both U.S. and Canadian fishing interests.

o Lobster Management

The Legislature during this reporting period approved a grant program to create five lobster hatcheries along the coast. Passage of this law acknowledges the importance of the lobster fishery to the State and the commitment the State is prepared to make to improve this sector of the marine resource economy.

o Quahog Management

The pilot quahog study sponsored last year by the Machiasport Conservation Commission and funded under Maine's Coastal Program has paved the way for more extensive research. Questions that remained unanswered regarding spawning times and growth rate of quahogs prompted Dr. Gayle Kraus, Assistant Professor of marine ecology at the University of Maine at Machias, to propose an in-depth research study of the quahog. Professor Kraus' \$17,000 proposal was accepted by Sea Grant for funding. To be studied are the effect of water temperature and depth, and the relationship of bottom conditions on growth. Further information on age, growth rates and spawning cycles will also be sought.

The value of the Machias Bay quahog harvest from May 1983 to May 1984 has been estimated at \$10,000 a week during the summer and half that amount during the winter, for a total annual dockside value of \$350,000. Wholesale value after sorting and shipping approached \$700,000 for the period. The new research should help in the management and conservation of this resource for a reliable harvest for the years to come.

o Sea Grant

Additional 1985-86 Sea Grant projects include assistance in development of a successful trading operation in connection with the Portland Fish Pier and Auction, evaluation of alternatives for international management of Georges Bank fish stocks, publication in Territorial Sea of legal analyses of important marine management decisions, and support of the June, 1985 East Coast Fisheries Law Conference.

NE fishermen hurt by Georges Bank decision

By Nancy Griffin

New England fishermen could lose \$19.4 million a year as a result of the World Court decision that divided Georges Bank, according to a National Marine Fisheries Service (NMFS) report.

Stanley Wang, head of the NMFS economic department that prepared the April report, notes that estimated revenue losses from the court ruling are "minimum values" and could be even higher than the anticipated New England-wide average of 10%. The figures included by NMFS reflect the effect on harvesters only, not on processors or dealers.

The report states that Rockland, Maine, would suffer the greatest loss in percentage of ex-vessel revenue: about 19% of the fleet's annual income.

"That's a lot of crap," declares Frank O'Hara, owner of Rockland's largest fleet of fishing vessels. "That's nowhere near enough. It's more like 50% or 60%."

NMFS based its estimates on landings and fish sales in New England's seven major ports during the five-year period from 1979 through 1983. Those ports account for more than 60% of the region's fish landings and revenues.

Hardest hit in actual dollars will be New Bedford, with a potential loss of \$10.2 million, because 50% of that fleet fished the disputed grounds before the court declared them off-limits.

"If 50% of the boats went there, the figures should be even higher," says Jim Costakes, head of the New Bedford Seafood Producers' Association, an organization of more than 70 individually owned fishing vessels.

The other ports, in decreasing order of potential revenue loss, are Gloucester, Boston, Portland, Newport and Point Judith. The seven ports account for 90% of the fish previously landed by Americans from the zone now controlled by Canada.

"You can play all kinds of games with these numbers," says Costakes. "But there's no doubt there's been an impact. It's just hard to really tell yet because the product's gone down anyway, and the northern edge of Georges is closed for spawning until May."

Gloucester's dependence on the Canadian zone is estimated at only 8% of its fleet's annual revenue. But Angela Sanfilippo, head of the Gloucester Fishermen's Wives' Association, says the fleet is "suffering" from loss of the grounds.

"Especially the big boats," she explains. "There's been a big impact; it's been evident all winter long."

Frank O'Hara agrees. "Those figures are a real underestimate. Already there's no redfish left; it's down to 2% or 3%. Our boats are now fishing on the Grand Banks for the first time in 15 years."

"The five-year period they studied started in 1979. On June 6, 1978, the Canadians said, 'Don't come across our line again.' That report only shows the fish we lost in the disputed area," adds O'Hara. "You'd have to count the fish we lost that we harvested traditionally in their waters, not just in the disputed area."

Wang says the summary report is just that — a summary of a more detailed report that will be published later. That report will list more specific data about New England's dependence on the Canadian zone.

NMFS staffers are also hard at work on another report, the flip side of this economic impact estimate. The next one will attempt to show the impact the boundary decision has had on the Canadian fishery.

Landings for the Major Ports of New England (annual average of quantity and ex-vessel revenue)

1979 - 1983

Port	Total Landings		Landings from Canadian Zone		Dependence of Port on Canadian Zone	
	Million lbs.	Million \$	Million lbs.	Million \$	% of Quantity	% of Revenue
Rockland	40.9	9.1	4.8	1.7	11.8	19.0
Portland	61.3	14.5	2.9	1.2	4.7	8.7
Gloucester	175.1	39.0	7.7	3.1	4.4	6.0
Boston	30.7	12.1	5.2	2.2	17.0	18.1
New Bedford	173.2	81.7	20.8	10.2	12.0	12.5
Newport	33.0	16.5	1.8	0.8	5.5	4.8
Point Judith	53.2	16.4	0.1	0.2	0.2	0.9
Total	567.4	189.3	43.4	19.4	7.6	10.3

* Percentages calculated prior to rounding of landings data.

National Fisherman 7/85

U.S., Canada identify key fishing issues

By JOHN FERLAND
Staff Writer

Government fishery leaders from New England and eastern Canada have identified key issues that need to be resolved if the American and Canadian fishing industries are to get along better in the marketplace.

The extent of government subsidies, potential improvements in the market and the potential for American access to Canadian waters will each get further study this spring, according to spokesmen from each side of the border.

In addition, the Portland Fish Pier will get more attention because fishery leaders want to determine the pier's impact on international fishing trade.

Spencer Apollonio, Maine's commissioner of marine resources, said last week's meeting of fishery commissioners and ministers from the two countries was "useful and productive."

He said the Montreal meeting's focus was "entirely consistent" with a proposal on access and marketing proposed in December by Gov. Joseph E. Brennan.

The meeting, sponsored by the New England Governors' Conference, is part of a series of meetings being held to organize a long-term plan to see if the fishing industry relationship between the two countries can be changed.

Apollonio said he hopes recommendations may be ready for the June meeting of New England's governors and the eastern Canadian premiers.

The next fishery meeting will be held in April. According to Apollonio and D.A. MacLean, deputy minister of fisheries in Nova Scotia, each country will bring to the meeting a report on their subsi-

dy programs and characteristics of the marketplace that each feels hurts trade.

The subsidy report is intended to explain the extent of each country's public contribution to their industries, and is expected to contain recommendations about which types of subsidies may be reduced to improve the coexistence of the Canadian and American industries.

Apollonio said the assessment of marketplace characteristics may include such information as how the Boston auction influences regional prices despite the fact auction information on quality may be unrelated to supplies elsewhere in the region.

Preliminary plans for the April meeting indicate an explanation of the Portland Fish Pier will be part of the agenda.

D.A. MacLean, deputy minister of fisheries in Nova Scotia, said he is uncertain how Canadian fishermen regard the prospect of using the pier, but the potential for the pier to be an efficient and closer marketing area for Canadian fish makes the facility worth exploring.

MacLean remains cautious about an American proposal for access to Canadian waters.

He said "the question of access is an extremely difficult one" because each country uses different approaches to resource management. Last fall, MacLean said American fishermen may overfish Canadian waters if allowed to fish there.

But he acknowledged after the Montreal meeting he is interested in an American proposal for access only if it includes ways for the Canadian fishery to benefit.

Brennan's plan would offer U.S. cooperation in the development of North American markets in exchange for access to Canadian waters.

SECTION 5 — Hazard Management Activities

o Coastal Barriers

Draft maps of areas under consideration for inclusion in the Coastal Barrier Resources System were received from the Department of the Interior, National Park Service, during the reporting period. Ownership information on the sites was obtained by the SPO through the regional planning commissions and councils of government, who also were asked to inform the affected towns of the proposals. State comments were compiled on each proposed addition to the Coastal Barrier System.

o Affect of the Bay of Fundy Tidal Power Project on Tides

Sea Grant's 1985-1986 program includes implementation of a joint University of Maine/University of New Hampshire effort to study tidal effects of the Bay of Fundy project. The potential for a one foot increase in tides will be examined through development of a circulation and tidal response numerical model of the Bay of Fundy/Gulf of Maine.

SECTION 6 -- Urban Waterfront & Commercial Harbor Projects

o **Local Waterfront Revitalization Projects**

(See Section 1, Task 2.)

o **Sears Island Development**

(See Section 1, Task 5.C)

o **Maine's Fish Pier Program**

Six of the seven fish pier development projects started in 1978 with State support were operating as of the end of the reporting period -- Portland, Kennebunk, Vinalhaven, Eastport, Saco and Stonington. The Rockland City Council on April 8, 1985 voted to proceed with engineering studies of the McLoon Wharf for use as a fish pier, a change of site which had been approved by the EDA in October. Near the end of May the Council voted to give the city manager the authority to negotiate the purchase of the McLoon Wharf.

In Portland it was announced in April that Biotherm International was proceeding with a small pilot plant to test and demonstrate to City officials the new fish waste processing system it has proposed for the Portland Fish Pier. In May the Portland City Council approved a \$540,000 money package for construction and equipment needed to open its highly acclaimed fish display auction on the Fish Pier (see clipping page 27).

o **Maine's Ports & Marine Transportation Program**

Maine's Fish Pier Program has been instrumental in modernizing marine infrastructure, but it omitted many smaller projects. The Maine Department of Transportation proposed during the reporting period to supplement construction of the major public fish piers with rehabilitation and construction on some of the small and medium-size piers used for fishing and commercial marine activities, recognizing that increased costs have made it impossible for wharf users to pay the entire bill. A coast-wide pier needs inventory was undertaken by the DOT and Coastal Program to provide the basis for a program and budget to be submitted to the second regular session of the 112th Legislature, for funding by a bond referendum in November 1986.

o **Portland's Waterfront**

Portland's waterfront was the subject of a four-hour port program on July 16th, part of the Eastern Regional Conference of the Council of State Governments. The program highlighted Portland as one of the few examples

Eastport is looking to the sea — again

By Brad Pokorny
Globe Staff

EASTPORT, Maine — As its name might suggest, the sea has always been important to this isolated community in Down East Maine. In the 1800s, the island city was a bustling sailing stopover, a rival to Portland and Portsmouth.

As sailing faded, sardine canning boomed. By 1982, 18 sardine factories operated here, and the population reached 5000. But after World War II, the domestic sardine industry declined rapidly, battered by foreign competi-

tion and declining fish stocks. The last factory closed two years ago.

With its unemployment rate running at nearly double the state average in recent years and per capita income about 25 percent below what most Mainers earn, the city of 2000 has looked desperately for a way to boost its fortunes.

The sea, officials say, once again may provide the answer. Last month, Eastport passed a major milestone on its comeback trail with completion of a \$3.5 million pier extension that gives the

harbor a full 40 feet of water for cargo ships that tie up to its wharf. That, officials say, allows world-class freighters to load in Eastport and enables the city to compete with major ports in Canada for a share of the paper pulp trade to Europe and the Far East.

It may seem a small thing to outsiders, but the project shows how a small community, with a little help from state and federal agencies is working to pull itself up by the bootstraps, fighting its long history of economic defeatism.

EASTPORT, Page 47

Boston Globe 4/21/85

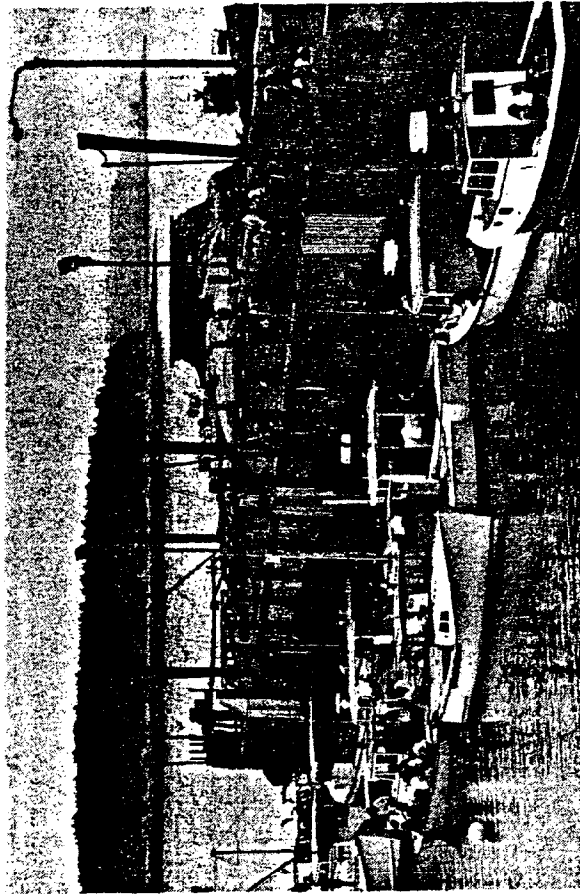
Expanded Eastport Breakwater attracts ships

by Marie Jones

Eastport's newly expanded breakwater has been used, in recent weeks, by three ships. The 465-foot Greek freighter *Ronia* was the first freighter to use the renovated breakwater. The ship arrived February 24 and took on 3,500 tons of Georgia-Pacific kraft paper destined for Grangemouth, Scotland.

The 545-foot, Norwegian freighter *Dryas*, the largest ship to use the breakwater, arrived Wednesday, March 27 and departed the following day. The five-story ship took on 3049.2 short tons of kraft paper and 211.1 metric tons of beech, maple, birch, oak and ash destined for ports in England, Germany and the Netherlands.

The LASH ship *Bilderdyk* moored off Eastport on April 4 and took on 14 barges of kraft pulp. The 857-foot ship which was built in Belgium in 1972, carries a crew of 24 Spanish and Dutch nationals. The ship had sailed from New Orleans, La. to Eastport and its next scheduled port was Sheerness, United Kingdom.



The Stonington Fish Pier in Stonington, ME is open for business. There is a flat, \$10 a foot yearly fee (prorated) for boats, and a \$100 yearly truck charge for pier use. Plans are in progress to get an ice facility on the pier. The pier is pictured above during race festivities on June 29.

photo by Brian Perkins

Commercial Fisheries News 8/85

The Quoddy Tides • April 12, 1985

Portland Fish Exchange

Commercial Fisheries News, May 1985

No sell overs, same day payment to fishermen seen as major advantages of proposed auction

PORTLAND, ME - The Portland Fish Pier has faced many critical moments during its eight-year planning and construction phase, but perhaps the most important period is now.

The time has come to implement the display auction that is proposed to make the multi-million dollar pier the seafood marketing center of northern New England.

City officials, using a pier operations proposal developed by Thomas A. Fulham, expect to have a pier management system by summer so fish can be traded later this year. A display auction for groundfish has never been used in the United States, but Fulham's recent received general endorsement from fishermen and processors attending an auction seminar at the Maine Fishermen's Forum in March.

Participants in the seminar emphasized, however, that one thought must be given to who will handle fish at the pier, including the unloading of boats, culling and weighing, and security provisions. There was also discussion about the extent of Portland City Council involvement at the pier and the prospects for the council giving the auction a loan to get it going, and discussion about having Canadian use the pier.

Thomas F. Valieu, Portland's director of transportation and water facilities, said two big features of the auction - called the Portland Fish Exchange - will be same day payment to fishermen and no "sellovers." In other words, all sales will be final, with disputes about quality, quantity, price or condition subject to a binding ruling by the fish exchange manager.

Many of Fulham's recommendations establish an outline for the auction with such details as exact fees and rules to be set by a board of governors. Here is how Fulham envisions the auction:

Management

The exchange would be led by a seven-member board of governors. The membership would include three people familiar with the operation and ownership of fishing vessels; three people familiar with the operation of fish processing and marketing; and one person from the public at large who is knowledgeable about the

industry. The members would be appointed by the city from nominations by the industry. The city has not officially asked for nominations, but people have begun submitting names to Valieu.

The governors would hire a full-time exchange manager. Valieu said the exchange would probably need at least another full-time employee and two part-time employees.

The governors would solely manage the exchange, administer trading rules and work with their own budget, making the exchange separate from the rest of the pier. The idea, Fulham said, is to make the exchange public, democratic and flexible to market conditions.

Membership and responsibilities

Buyers must pay a fee to get a "seat" on the exchange. Valieu said the fee will be set by the governors, but would probably be "a few thousand dollars."

Buyers must also post a cash deposit or file a bond or other security in order to cover sums which are due vessels.

Vessels will be charged fees for using the pier, equipment and auction services based on a percentage of volume of sales. A similar formula will be used to calculate a vessel's cost of registering sales at the exchange and using various exchange services.

Vessels would be responsible for unloading, sorting, grading and weighing their fish. Auction personnel will be responsible for moving fish onto the auction floor, but vessels will be responsible for auctioning their fish.

Over-the-road dealers must also pay fees based on volume of sales.

Fish sales

The exchange would allow the display auction or a combination of display auction and bulk sales, in which species to be sold in bulk remain aboard a vessel.

Two auctions may be held - one in the morning and another late in the afternoon or in the early evening. Fishermen would get payment a day of the auction by receiving a bonded check from the fish exchange. Buyers would have to pay the ex-

change within 24 hours. A late payment from the buyer would ban the buyer from the exchange for a period to be set by the governors.

In a letter accompanying his proposal, Fulham said the increased costs needed to participate in the exchange are the "two principal disadvantages" of the auction. But he added that the costs are "minor" burdens "when balanced against the same day settlement for fishermen and selective buying and known product cost to buyers."

Fulham also said that non-local buyers and non-local producers may be attracted by the exchange. "Although this may be viewed by the local industry initially as a disruption, it could prove to be a valuable answer to the current problems of at times not enough buyers or not enough suppliers and the attendant severe supply demand fluctuations," Fulham wrote. "The proposed rules and regulations are designed to provide for the participation of non-local participants to broaden market activity especially from foreign sources."

Display auction logistics aired

The seminar at the Maine forum was the first opportunity for public discussion of Fulham's pier operations proposal. There were many questions about the display auction, such as how much fish could be handled and who would be the auctioneer. In opening remarks, panel moderator Valieu said this was the time for discussion and questions.

The major issue for most fishermen at the seminar was the unloading of fish and preparing the product for the auction floor. Fulham wants fishermen to take the responsibility because he believes that if another party is responsible, that party would have the potential to control the exchange - in

short, the idea is a protection against unionization.

But industry representatives on the seminar panel said unloading and preparation of fish should be another management responsibility of the exchange, paid for by the fees levied on auction users.

"Do you think processors would accept the harvesters' culls and weights?" asked fisherman Robert Tetrault. Tetrault said there should be independent contractors doing it.

Processor John Norton of Cozy Harbor Seafood said an exchange-controlled movement of fish would mean a "single-source authority" at the pier, ensuring against cheating or theft, and providing standardization of culls and weights.

While telling the group that the display auction approach is right, Gene Connors of the New England Fisheries Development Foundation urged the importance of security. Connors said it must be clear the stealing fish will not be tolerated.

Fulham's recommendations must follow channels at City Hall before being implemented. Valieu said city administrators want to have the City Council consider the recommendations by late spring so the exchange governors can be in place by mid-summer. The exchange's opening date is uncertain, but city officials expect the federally funded \$12.2 million building housing the auction to be completed in August.

It appears that two issues will be at the forefront of the council's consideration of Fulham's report: Will the council agree to give the governors the autonomy Fulham recommends? And, will the council agree to loan the fish exchange start-up money until the exchange is earning enough to be self-sustaining?

John Ferland

in the northeast of a city that has given priority to marine industries. About forty participants learned how waterfront zoning has been adopted to encourage marine development, and how millions of taxpayers dollars have been invested in the fish pier and the Bath Iron Works shipyard. (For further information on Portland's waterfront zoning see the feature article reproduced in the Appendix to this report, page 53).

The pace of change on the Portland waterfront is captured by the news article reproduced on page 29 . In a related story it was announced that Ocean Canyon Corp. was planning a \$2 million expansion to its Central Wharf facility in Portland to use low value red hake and whiting to produce surimi (products imitating lobster tails, scallops, and crab), offering fishermen another alternative in seafood processing.

Portland's City Council during this reporting period adopted design guidelines proposed by the Planning Board for future development on the waterfront. With financial assistance from Maine's Coastal Program, the guidelines were prepared to (1) preserve and enhance public access to the water, (2) provide for compatibility of new construction with existing buildings, (3) ensure high preservation standards for the rehabilitation of historic buildings, and (4) provide for streetscape amenities that reinforce the traditional strength and character of Portland's waterfront. The guidelines are voluntary for private projects but mandatory for those which include public financing. They have already proven their value in the Planning Board's site plan review process in connection with a Central Wharf project involving 88 condominium units.

o Harbor Management Problems and Needs

In January the Coastal Program staff conducted a statewide review of harbor problems and needs, including a survey of selected state and local officials. The topic was explored further during a meeting of project managers for local waterfront grants on February 7th (see page 15), in a Portland Harbor Management Workshop held for this purpose by the State Planning Office on February 21st (see page 30), and in a Harbormasters' Workshop organized by the Cooperative Extension Service on February 23rd in West Bath.

The priority issues which emerged from these discussions were:

- o responsibilities, authority, status, visibility, education and training of harbormasters; and the need for a formal statewide harbormasters' association and a comprehensive overhaul of State law pertaining to harbormasters and harbor management;
- o interagency communication and coordination, local/State/federal;
- o a need for increased public awareness of the economic importance of ports and harbors;
- o a need for financing for harbor improvements; and
- o a need for local technical assistance with harbor management problems and issues.

Waterfronts bustling with changes

Development likely to retain pace in 1985

By JOHN FERLAND
Staff Writer

The number of properties in transition on or near Portland Harbor continues to make the Portland and South Portland waterfronts resemble a Monopoly board.

Each property represents a potential new use that will dramatically affect neighboring areas.

The situation indicates that interest in waterfront development will continue to grow. In the last three years, more than \$60 million worth of public and private investment and nearly \$300,000 in planning studies have focused attention on the area.

The properties in flux, projects scheduled to begin this year and the respective locations on the map include:

- 1. The Gault Block**
Donald T. Cohen of Bangor has proposed a \$8 million, 44-room Seaside Inn hotel and retail complex at this property, situated at Commercial Street and Franklin Arterial, across from Bath Iron Works. But Cohen's options on the property has run out. Neither Cohen nor the building's owner, Michael Marino, will comment. Another prospective buyer has made an offer on the building, but the deal is still in the real estate broker handling the property.

- 2. Commercial Street**
The city intends to begin work this year on a \$1.8 million reconstruction of Commercial Street. Tonight, the Portland City Council Street Committee approved the plan as part of the project.

- 3. West side of Maine State Pier**
Also scheduled for work this year is the start of construction of a taxpayer-financed \$3.6 million Casco Bay ferry terminal and parking garage.

- 4. Portland Pier**
The city plans \$210,000 worth of street, sidewalk and lighting improvements this year on Portland Pier and behind the Thopson and Carroll Blocks.

- 5. Milk Street Armory**
Renovation of the property into the \$7 million Old Port Regency Hotel is expected to start next month, said Eric Clanchette, spokesman for the owners, Armory Associates. The hotel may open in about 18 months. The property is one of a 130,000-sq-ft area on the site now occupied by the Jordan's Meats warehouses on Front Street.

- 6. Cumberland Wharf**
Owner Bob Levine has closed his Cumberland Cold Storage business. Levine had planned to build a \$2.1 million last summer in the Wall Street Journal is entertaining ideas from developers. He said the

site is being studied for housing and a mixed-use project that may involve a proposal for the Gulf of Maine Aquarium.

- 7. Portland Fish Pier**
The city will continue improvements at the fish pier, including construction of a \$1.5 million cooler-auction building. A privately built, \$1.8 million service building will open in March.

- 8. Porteous Warehouse**
The Finch Group of Boston is planning to buy the Porteous, Mitchell and Braun warehouse on Commercial Street. Finch wants to build an 80,000-sq-ft factory and warehouse building, but the project has not disclosed costs, but the project will obviously involve several million dollars.

Porteous is moving its warehouse operations to a new building in the Sproutwater Estates Industrial Park.

Christine Dunn, director of acquisition for the Finch Group, said the company expects to begin renovations this spring for an opening in the spring of 1986.

- 9. Hobson's Wharf**
General Properties Inc. of Portland bought the unused pier last summer. General Properties intends to develop it for marine-oriented companies, said John L. Silles, a partner in General Properties.

General Properties expects to lease space to that unit, Silles said. The company also intends to make about \$200,000 worth of pier improvements, including dredging. In order to make a commercial marina for fishing vessels, Silles estimates that eight to 10 boats in the 76- to 80-foot range may be able to berth at Hobson's.

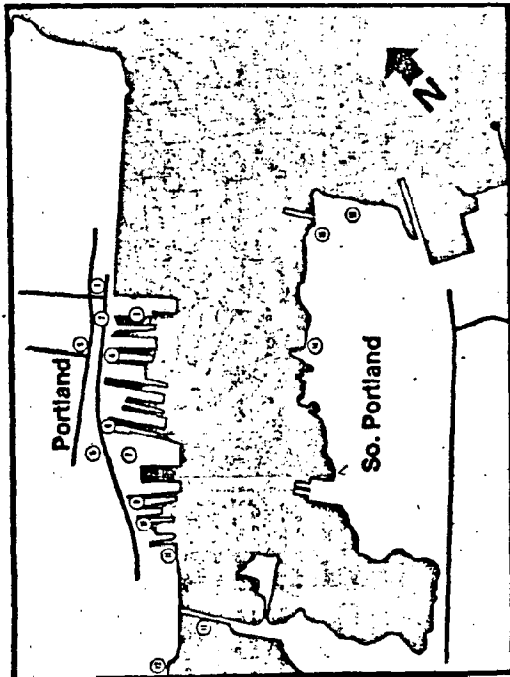
- 10. Holyoke Wharf**
He is in the process of selling it to an undisclosed buyer. Levine said no major changes would occur immediately at the property because the major tenant, Maine Fisheries, the city's largest seafood processor, has another 2½ years left on its lease.

- 11. Proposed Gulf of Maine Aquarium**
The city gave the Gulf of Maine Aquarium a three-year option on three acres for the aquarium's proposed \$9 million facility. But the aquarium is also reviewing proposals from developers who would like the aquarium on other properties. Waterfront Park Associates proposed a National Park Terminal plan for the site. The National Park Terminal plan, which would include a museum, a plan of an undisciplined cost for the west side of the Maine State Pier. The Richmond plan would need to be coordinated with the city's plan to build a Casco Bay ferry terminal.

- 12. Proposed cargo pier site**
The Maine Department of Transportation has organized a committee and hired a consultant to study a proposed \$12 million cargo pier at Portland Terminal Co. Pier 3 and the International Ferry Terminal. The committee expects review progress on the project this month.

- 13. Proposed new bridge**
MDOT is also planning a new bridge between Portland and South Portland at a cost of between \$59 million and \$83 million, depending on which alternative plan is chosen. MDOT plans a public hearing in late spring.

- 14. Channel Crossing Restaurant and Marina**



Map by Ed Harrison

Here's a lineup for changes

Properties on Portland Harbor facing changes include:

1. Gault Block
2. Commercial Street
3. West side of Maine State Pier
4. Portland Pier
5. Milk Street Armory
6. Cumberland Wharf
7. Portland Fish Pier
8. Porteous Warehouse
9. Hobson's Wharf
10. Holyoke Wharf
11. Proposed Gulf of Maine Aquarium site
12. Proposed cargo pier site
13. Proposed new bridge
14. Channel Crossing Marina
15. Former Pine State By-Products site
16. Former General Electric and shipyard site

Situated in South Portland on Front Street, the \$1 million Channel Crossing opened last spring. The owner, Jamison Tavern Associates, is planning a \$500,000 expansion to more than double the size of its marina to 150 slips.

- 15. Pine State By-Products property**
Harbor's Edge Trust of Massachusetts bought the 7.6-acre last summer for \$832,000 at a foreclosure auction. When the company bought the property it intended to build condominiums and a marina, but the firm is awaiting a development study to determine a specific plan. Wild Don Egan, who has nearly finished planning all of the buildings on the island, said that all of the buildings on the property. New construction will probably begin in the spring of 1986, Egan said.

- 16. Former General Electric and Greater Portland Development Commission shipyard property**
The 60-acre area is owned by Spring Point Associates, which is offering the area for lease. The owners have not announced specific plans for the property, although a mix of uses has been discussed. Albert B. Glickman, a spokesman for the owners, could not be reached for comment.

In other waterfront matters, several policy issues are facing the Portland City Council. Tonight, the council will vote on a waterfront access criteria intended to keep walkways and views open to the public at the

waterfront is developed.

A future issue is whether or not to change zoning on two city-owned properties — the west side of the Maine State Pier and the International Ferry Terminal — to encourage waterfront development. Private property owners on the waterfront asked for the same consideration two years ago, but city officials refused to grant it.

Waterfront issues are also becoming more apparent in South Portland.

Tonight, the City Council will consider asking the Planning Board to study the former shipyard area next to the Portland Bridge and determine if the remaining waterfront property should be sold to the city for waterfront development while the study is in progress.

Development proposals are also affecting the Casco Bay Islands.

The Sisters of Mercy have been given city approval to create 17 single-family lots on Little Diamond Island. On Great Diamond Island, Dictar Associates is organizing a 350-unit housing development at Fort McKinley. The city wants to rezone the islands, partly as a result of development pressure. The Dictar Associates and zoning proposals are being considered by the Portland Planning Board.

Another island property of interest is the 200-acre Long Island owned by Tascor Inc. of New York. Tascor is planning to develop the island from time to time. Last year it was offered in the Wall Street Journal for \$1.6 million.

PORT & HARBOR MANAGEMENT PRIORITIES
IDENTIFIED AT THE SPO WORKSHOP 2/21/85

The discussion centered almost entirely around planning, management and promotional issues. No major engineering, construction or other physical problems shared in common by many communities emerged, probably because of the diversity between harbors, not only physically but also in usage patterns and growth rates.

Needs identified at the workshop were as follows:

Technical assistance and information needs

- Need for model harbor ordinances and harbor plans
- Need for model zoning ordinances
- Assistance regarding harbor management and harbor financing (e.g. model financing strategy, use of mooring fees, etc. to support the harbor, assistance in making harbors self-sustaining.
- Technical workshops, e.g. on moorings, dredging, etc.
- Handbook of State/federal regulations and the regulatory process
- Assistance with the harbor management and planning process (e.g. how to involve harbor masters, harbor committee, selectmen and gain community support)
- On-going educational program in harbor management for harbor masters, harbor committees, port authorities, selectmen, etc.
- Technical information, e.g. regarding soil erosion, storm drainage and channel sedimentation.

Need for coastwide projects

- Harbor needs inventory
- Research & analysis of potential harbor investment opportunities (i.e. possible projects with significant multiplier effects in terms of local/State jobs and income)
- Harborfront land strategy
- A clear and consistent submerged lands policy
- Evaluation of harbors by a high level Task Force
- Streamlining of State/federal regulations and the regulatory process
- A State office to oversee harbors to assure that they meet minimum standards, (e.g. relative to training of harbor masters, funding level, provision of basic equipment, adequacy of harbor regulations, etc.)

Promotional and Education Programs

- Publicity and promotion regarding the importance of harbors
- Long-term educational programs regarding marine resources, coastal issues, harbor management and public policy
- Major conference on coastal issues
- An on-going coordinated State strategy for port and harbor development

o **Dredge Management**

State Planning Office staff prepared a report on dredge management in Maine as a result of a request in April from the Coastal Zone Environmental Impact Subcommittee of the Sea Grant Policy Advisory Committee. It was found that:

- (1) The basic recommendations from the most recent studies of dredge management in Maine, published in 1982, have not been implemented. Maine does not have an overall dredging plan or a process for ongoing assessment of the State's maintenance and improvement dredging needs. There is an apparent need for follow-up on the 1982 studies.
- (2) Priority needs as currently perceived by the DEP are: (a) further study of sediment contaminants and sediment classification, (b) study of alternative disposal methods for different sediment classifications, and (c) locating of additional ocean disposal sites.
- (3) Priority needs as currently perceived by the DOT are: (a) a resurvey of disposal sites and locating new sites, (b) review of the inventory of authorized dredge projects and (c) finding a way to streamline the permit process or guide applicants through it more expeditiously.
- (4) State agencies agree the present case-by-case handling of dredging projects works well, that there is no call for a State dredging plan, or setting of priorities between different harbors.

Recommended follow-up was for an informal meeting of key people concerned with dredging (representing DEP, DOT, DMR, the Army Corps, EPA, harbormasters, fishermen, and other commercial/industrial interests) to be convened by the Coastal and Sea Grant programs for further discussion of needs and available resources.

o **Action Plan for Revitalizing New England's Ports**

In April the New England Governors' Conference submitted a report on its New England Port Revitalization Project to each of the member governors. (Initiation of the project was described in Maine's previous Coastal Program progress report.) The NEGC report contains extensive summary data regarding New England port activity. An analysis of exports during the eleven month period ending November 30, 1984 indicated that New England ports attracted only 16% of the goods being exported from New England, despite proximity to Europe, the Near East, Africa and South America. Commodities and manufactured goods from Maine's 133 shippers went in 770 separate shipments to 21 ports across the country for export overseas. New England ports attracted 19% of the shipments originating in Maine, of which Portland accounted for just over 1 percent.

The report concludes that New England port operators must aggressively demonstrate to shippers that cost advantages and economies of scale will result by using local load ports. Ports can regain and possibly increase business by providing cost advantages and comprehensive marketing. The ongoing purpose of the NEGC project is to assist in that effort.

SECTION 7 -- Coastal Access Activities

Superior Court Justice William S. Broderick on July 31, 1985 dismissed portions of a suit against the State of Maine and the Town of Wells by fifty-four beachside property owners on grounds of sovereign immunity. The property owners had brought suit to reaffirm property rights to the low water mark at Moody Beach. Their deeds, dating back to 1888, indicate ownership to the low water line. Three counts of the five count suit related to this issue.

It was unclear to what extent Judge Broderick's decision would support public access for all beach uses, expanding traditional rights for fishing, fowling and navigation to include recreational rights in general.

The landowners' suit also challenged the legality of Town promotion of public access by using public funds to acquire rights of way, and contended that the plaintiffs are entitled to monetary damages because they have been deprived of property. These issues are still pending before the court.

Harbor access is a prime subject of design guidelines adopted by Portland's City Council. See "Portland's Waterfront", page 28 of this report. See also page 13.

SECTION 8 -- Permit Procedure Simplification

The proposal for a "Permit by Standard" (general permit) for the Coastal Wetlands Law received further review during the period but was not finalized. Legal review by the Attorney General's Office led to re-drafting of several sections.

Final public review of the general permit is expected this fall or winter.

SECTION 9 -- Activities Related to Protecting & Restoring Cultural Coastal Resources

o Preserving Town Character

On June 8, 1985 the Director of the State Planning Office addressed 200 participants in a conference in Kennebunkport, Maine on "Preserving Town Character". The conference looked at growth trends, tradition and change, growth management and techniques for protecting and preserving town character. Participants were challenged by the SPO director to articulate their own special sense of place, something not measurable by economists but none-the-less a vital economic resource. He urged use of available tools -- land use plans, land use ordinances, historic preservation ordinances -- but warned that legal tools review development projects one at a time, and that better understanding should be sought of the problem of the cumulative impact of development. He also stressed the importance of enlisting the private sector, citing joint public-private efforts behind creation of the Wells Estuarine Sanctuary (where local citizens raised over \$1 million) as a prime example.

Moody Beach suit's fallout could spread nationwide

By DONALD M. KREIS

WELLS (AP) — There's no boardwalk at Moody Beach — no roller coasters, hot dog stands or amusement piers. There's only sand and surf.

Moody Beach is also Bob Kirk's backyard. If it were up to him, he'd exclude the public. "People stay in the summer crowd," he said. "People come out there," said Kirk, 61, who retired to the Atlantic shore in Wells township after a career as an executive with AT&T, mostly in New Jersey.

All that he and his beachfront neighbors want is peace and quiet, Kirk said. A group of more than 60 seaside property owners has gone to court to demand that the beach be declared off limits to the public.

The Maine attorney general's office, the town of Wells, the National Resources Council of Maine and the Conservation Law Foundation in Massachusetts are taking Kirk's complaint seriously.

All have become parties in the suit. All maintain the public has had a right to enjoy the seashore since colonial times, even when the seashore happened to be private property.

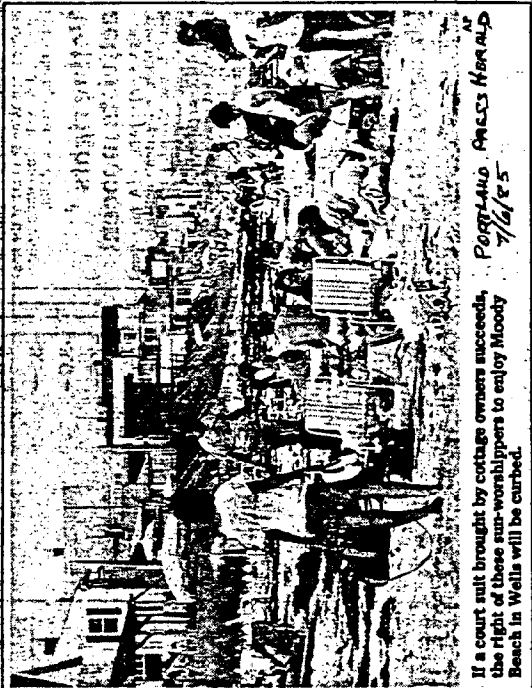
Maine Attorney General James E. Thorne agreed that Moody Beach, a mile-long strip about 28 miles north of the New Hampshire state line, attracts its share of summer crowds.

"People stay in the summer crowd," he said. "People come out there," said Kirk, 61, who retired to the Atlantic shore in Wells township after a career as an executive with AT&T, mostly in New Jersey.

All that he and his beachfront neighbors want is peace and quiet, Kirk said. A group of more than 60 seaside property owners has gone to court to demand that the beach be declared off limits to the public.

The Maine attorney general's office, the town of Wells, the National Resources Council of Maine and the Conservation Law Foundation in Massachusetts are taking Kirk's complaint seriously.

All have become parties in the suit. All maintain the public has had a right to enjoy the seashore since colonial times, even when the seashore happened to be private property.



If a court suit brought by cottage owners succeeds, property owners will be curbed. Beach in Wells will be curbed.

Public access to beach affirmed

By CHRISTINE KLUMKA
York County Bureau

WELLS — Superior Court Justice William S. Brodick yesterday dismissed Moody Beach property owners' suit against the state, thus protecting public access to Maine's scant supply of sandy beaches.

Brodick's decision protects public use of Maine's 36 miles of sandy beaches — 78 percent of which are privately owned.

While state and tourism officials applauded the landmark decision, Moody Beach residents said they would appeal Brodick's ruling to the state Supreme Court.

The attorney general's office repelled these people of a chance to get the (public access vs. private rights) question resolved.

Had the sovereign immunity argument failed, Attorney General James Thorne was ready to mount a lawsuit against the state's largest private employer.

Kathryn Wear, owner of the Cliff House and Motel in Ogunquit and chairman of the Maine Beach Commission, said her commission was preparing to submit a brief to the court supporting public access.

"From the point of view of the

private and quiet Wells the suit in March 1984, after the town of Wells posted illegal on the beach and sought to require private public access for all uses.

The suit was dismissed by a special justice from the state Legislature to have Brodick consider the issue of private rights vs. public access without the sovereign immunity factor.

Lawyers for the state's attorney general's office were unable to use sovereign immunity in this landmark decision. Without authority to sue, Brodick would have had to rule on the controversial and untarred area of where public access and private property intersected.

The state did not play its sovereign immunity card until June, more than a year after the suit was filed.

tourism industry, any other decision in this case would have been extremely detrimental for the state," Wear said. "There's no question that people come here for the beaches and lobster."

In the decision, Brodick also ruled that the town was not liable for sending taxpayers money to acquire rights of way to Moody Beach. Beachfront owners argued that taxpayers' money was spent illegally to support trespassing on their private property.

Wells Town Manager Fred Breslin said he was ecstatic with the

seven miles of that are publicly owned.

The legal arguments center on the Colonial Ordinance of 1641, a decree in the use of Moody Beach in the past three or four years," said Portland attorney Sidney St. F. Thaxter II, one of the lawyers who represent the plaintiffs.

"There must be some control and security," he said.

"We have animals out there that roam at large," Kirk said. "Motor vehicles drag racing... bicycles going up and down... people urinating and defecating out on the beach."

Wells Town Manager Fred Breslin said Wells officials have tried to cooperate with the Moody Beach residents to control the beach area. "We have a police patrol and an area campground and a place to stop depositing guests by the bus load."

And, he added, police patrols have been increased in the summer.

The legal suit has pitted the Moody Beach landowners, many of whom are summer residents who pay taxes but have no vote in town affairs, against the state, who don't own beachfront property.

The Moody Beach landowners are "ungrateful and stupid," said Michael Lubarsky, a maintenance man at the Midway Motel on nearby Route 1. "Any beach you go on there are a few rowdies."

Across the highway, Lucien with case, and have asked Justice William S. Brodick to dismiss the suit.

"This has the potential of putting an official line on over 3,000 miles of coastline," said Attorney General Thorne. "I'm confident that the state will prevail in this matter."

3 counts canceled in beach dispute

Lawsuit involves area in Wells

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o **Zoning & Development of Great Diamond Island**

The Portland City Council in June adopted Planning Board recommendations for zoning 190 acres of the long-abandoned Fort McKinley on Great Diamond Island in Casco Bay. The zoning will allow renovation of barracks and other existing fort buildings into 134 condominium units and help preserve historic values. The Fort is a certified rehabilitation on the National Register of Historic Places, tax advantages of which to the developer will assure renovations in keeping with its historic character.

o **Preserving the Character of the Waterfront**

Adoption of waterfront development guidelines by Portland's City Council will help assure preservation of historic values. Suggestions from Portland Landmarks, a citizen group, to strengthen the guidelines were incorporated in the draft submitted by the Planning Board for Council approval in January. (See "Portland's Waterfront," page 28 of this report.)

SECTION 10 -- Coastal Energy Impact Program Report

The status of projects under Maine's Coastal Energy Impact Program (CEIP) was fully reported in CEIP performance reports for the periods January 1 to March 31 and April 1 to June 30, 1985. Most projects are now either complete or nearing completion. Funds for Bangor's emergency boat launch were formally rescinded due to inability to obtain requisite property rights and permits.

SECTION 11 -- New Memoranda of Understanding

(None in this reporting period.)

SECTION 12 — Coordination & Administration of Federal Review Process

o Federal Consistency Handbook

Copies of the handbook were distributed and used to assist private and public agencies understand procedures for consistency review.

o Major Consistency Review Activities

Scarborough River Dredging: Review with local officials, state agencies, and the Army Corps alternatives for spoils disposal that best meet economic and environmental needs.

Status: Discussions still ongoing.

Belfast Beach: Review of Army Corps proposal to construct a sand beach at the Belfast City Park with stone groins at both ends.

Status: The Maine DEP, in its review for Water Quality Certification and consistency with the Wetlands Law determined the project was not consistent.

DOD/State Project Review Coordination: The Maine State Planning Office negotiated a Memorandum of Understanding with the Department of Defense regarding review of DOD projects for consistency with State and local policies.

Status: MOU signed.

Acadia National Park: Several Park activities were reviewed for consistency with State and local laws.

Status: Activities were determined not to require a federal consistency determination.

NOTE: The consistency log for the period is included in the Appendix to this report.

SECTION 13 — Public Participation Activities

o Coastweek '85

The State Planning Office is co-sponsoring COASTWEEK '85, together with Sea Grant and the Natural Resources Council of Maine, to draw attention to the unique cultural and natural heritage of the Maine coast. In May over thirty-four activities involving over twenty groups were solicited for Coastweek. On August 1, 1985 Governor Joseph E. Brennan issued a proclamation, proclaiming the week of October 6 to 12 as COASTWEEK throughout the State of Maine and urging all citizens to take cognizance of this event and to participate in its observance.

Highlights arranged for Coastweek include television appearances, other speaking engagements, a television program on island management and protection issues, a beach clean-up event titled "A Plague of Plastics", and a flight over the coast. For publicity, SPO and Sea Grant designed and printed a brochure describing all events, with three thousand copies to be distributed.

Curriculum suggestions to encourage school participation in Coastweek were mailed to sixth grade principals. The package contained a four-page fun marine quiz, activity suggestions, resource guides for audio-visual and special programs, Plague of Plastics information and the coastal management poster from the Coastal States Organization.

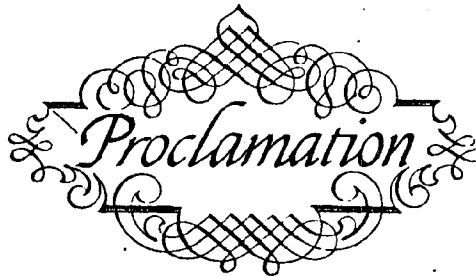
o Kennebec River Council

By-laws and incorporation of the Kennebec River Council were voted on April 27, 1985. The purpose of the Council is to promote the highest and best use of the Kennebec River through the reclamation, protection and enhancement of its natural, historical and recreational amenities through the cooperation and participation of the communities, citizens and interested parties in the Kennebec River watershed. An initial Council activity was the conducting of riverside workshops during the Kennebec Whatever Race Week on history and archeology of the Kennebec, sport and recreational fishing, boating, water quality, Swan Island, and sea run fisheries of the lower Kennebec.

o Public Information Bulletin

(See Section 1, Task 4.A.)

State of Maine



WHEREAS, the State of Maine has a varied coastline of rocky shores, sandy beaches, productive estuaries and salt marshes, urban ports and small harbors, tidal flats and thousands of islands; and

WHEREAS, the coast has provided us with a rich scenic, cultural, and historical heritage; and

WHEREAS, the natural resources of the coastal zone are among our most important economic resources; and

WHEREAS, the marine environment is one of the most valuable resources supporting an active fishing industry; and

WHEREAS, coastal landforms, especially barrier beaches, provide significant protection from coastal storms, flooding, and erosion; and

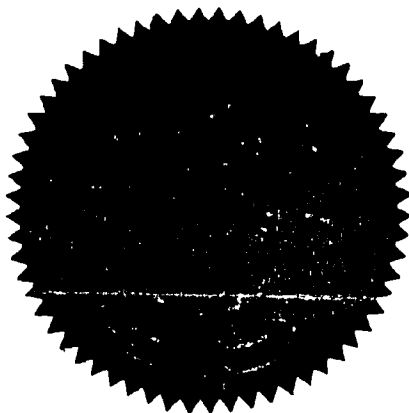
WHEREAS, we are strongly committed to the wise management of the coastline to ensure for all the residents that the environmental and economic value of the coastal zone will be sustained; and

WHEREAS, the coastline is also receiving nationwide recognition during the week of October 6 - 12, 1985 as a valuable but fragile resource;

NOW, THEREFORE, I, JOSEPH E. BRENNAN, Governor of the State of Maine, do hereby proclaim the week of October 6-12, 1985 as

COAST WEEK

throughout the State of Maine and urge all citizens to take cognizance of this event and to participate fittingly in its observance.



In testimony whereof, I have caused the Great Seal of the State to be hereunto affixed GIVEN under my hand at Augusta this first day of August in the Year of our Lord One Thousand Nine Hundred and Eighty-Five.

Joseph E. Brennan
JOSEPH E. BRENNAN
Governor

[Signature]

Secretary of State

SECTION 14 — New Publications Report

<u>Date</u>	<u>Title</u>	<u>Copies</u>	<u>Pages</u>
	Enforcement of Local Land Use Law Violations Using District Court Rule 80K		
January	Mahoosuc Mountains	25	
January	Black Tern Habitat	10	
January	Seven Unusual Plants of Maine	25	
February	Ground Water Report	50	26
February	Waterfalls	10	83
February	Handbook for Municipal Boards of Appeals	250	48
March	No. 5 Bog and Jack Pine Stand	15	41
March	Whitewater Rapids	20	163
March	Old-Growth Forest Stands in Maine	300	22
March	Federal Consistency Handbook	20	23
April	Minimum Shoreland Zoning Ordinance	200	15
April	Poverty in Maine Volume 1	3000	32
May	Coastal Priorities Statement	30	36
May	Handbook for Local Planning Boards	40	163
June	Advisory Bulletin No. 3	1200	12

SECTION 15 — LCP's

(Not applicable to Maine)

SECTION 16 — Changes to Coastal Zone Boundaries & Management Authority

o Routine Program Implementation

The majority of items in Maine's 1984 Routine Program Implementation submission were resolved by the end of the reporting period. Still outstanding was OCRM approval of (1) the nonsubstantive changes in the Marine Resources Law (Title 12, Sections 6171-6192); (2) the changes in the Protection and Improvement of Waters Act; and (3) the addition of the Submerged and Intertidal Lands Law. Formal notification of coastal communities and interested state and federal agencies of several Coastal Program core law changes was being held up pending final OCRM action on these last items in order to avoid the necessity of two notices. Approved items on which notice was delayed pertain to the Coastal Wetlands Law and regulations and the sand dune rules; the Hazardous Waste, Septage, & Solid Waste Management Act; solid waste management rules; hazardous waste management rules; and the Hazardous Matter Control Law.

SECTION 17 — Report on Changes in the State's Management of Coastal Resources and New Coastal Initiatives

o Coastal Priorities Statement

(See Section 1, Task 3.B of this report.)

o ARGO Maine

Associated Research on the Gulf of Maine (ARGO Maine) is a cooperative effort among Bigelow Laboratory, the Department of Marine Resources and the University of Maine to coordinate research in the Gulf of Maine. An advisory group comprised of representatives from these organizations and from the Maine Coastal Program, Department of Conservation and others is responsible for directing the association. At the end of the reporting period ARGO Maine was planning a three-day workshop in August to stimulate research interest in the Gulf, to review recent work, to identify research needed for policy decisions related to man's increasing impact on the Gulf, and to provide a framework within which research can be designed.

o Purchase of Great Duck Island

The Department of Inland Fisheries & Wildlife assured the protection of Great Duck Island with its purchase in April of a 10 percent undivided interest in the island, in a cooperative venture with The Nature Conservancy. Protection of Great Duck Island has been IF&W's top acquisition priority. A management lease on the department's interest will be given back to The Nature Conservancy, and IF&W will assist in the important decisions concerning the island's future.

- o **Coordination of a Consistent State Position in Federal Hydropower Licensing Proceedings**

On June 27, 1985 Governor Joseph E. Brennan issued an Executive Order providing for the coordination of a consistent State position in federal hydropower licensing proceedings. The order (No. 17 FY 84/85) was issued on the recommendation of the Land & Water Resources Council in recognition of federal directives regarding hydropower applications requiring consultation with a number of State agencies with management responsibilities for natural resources, historic preservation, public safety and energy policy. (A copy of the Executive Order is reproduced in the Appendix to this report.)

- o **Submerged Lands Policy Manual**

Comments from State agencies on the draft Policy Manual were incorporated in a new draft during the reporting period. Procedures required under the Administrative Procedures Act for its adoption were initiated with its submittal to the Secretary of State's Office.

- o **Legislative Changes**

Administration of the Shoreland Zoning Law and the Alteration of Rivers & Streams Law was transferred by the first regular session of the 112th Legislature to the Department of Environmental Protection from the State Planning office and the Department of Inland Fisheries & Wildlife, respectively. These changes will be submitted under routine program implementation procedures as Coastal Program core law changes.

Other significant legislative changes include the following:

- Waterfront Zoning. Under L.D. 985, An ACT Concerning Commercial Fishing and Maritime Activity Zones (Public Law Ch. 236), the Legislature authorized municipalities to create a commercial fishing and maritime activity zone within their shoreland zoning ordinances. In so doing, municipalities are directed to consider the number of commercial fishermen using the shorefront, availability of shorefront for commercial fishing, demands for shorefront property for other purposes, and access to the shore and availability of space appropriate for commercial fishing and maritime activities.
- Wetlands. (See Section 3 of this Progress Report.)
- Critical Areas. L.D. 997, Critical Areas Program Appropriations (Public Law Ch. 466) provides \$40,000 for 1986-87 to conduct statewide surveys to identify significant geological, botanical and zoological areas worthy of preservation and inclusion on the register of critical areas as mandated by the critical areas law.
- Maine Rivers Grants Program. L.D. 125, An ACT to Establish a Maine Rivers Grants Program (Public Law Ch. 105), creates a fund for making grants to local governmental or other agencies concerned with the protection of the State's outstanding rivers. The fund is to be capitalized by donations and proceeds from the sale of a Maine rivers decal or emblem.

- Ground Water. L.D. 1655 addresses the problem of ground water pollution by leaking underground oil storage tanks. The new law establishes a certification process for tank installers; establishes a ground water clean-up fund; requires registration of all existing and new tanks; requires tank installations over sand and gravel aquifers and near public and private water supplies to have secondary containment or a ground water monitoring system; and requires proper abandonment of tanks out of service for 12 months or more.

L.D. 961, An ACT to Implement the Recommendations of the Maine Land & Water Resources Council Ground Water Policy Committee (Public Law Ch. 479), extends authority to protect public water supplies by including ground water aquifer recharge areas under the jurisdiction of municipal land use regulatory powers. It also proposes a regulatory approach to the widespread ground water contamination problems associated with road salt and sand/salt storage piles, and provides for State financial assistance to municipalities for pollution abatement construction programs.

- Classification of Waters. L.D. 1503, An ACT to Amend the Classification System for Maine Waters and Change the Classification of Certain Waters, was held over to the next session of the Legislature by the Committee on Energy & Natural Resources. The bill was introduced late in the session and the committee considered its importance to warrant in-depth review without the time constraints of this session.

SECTION 18 — Major Coastal Issues

o **Boundary of Acadia National Park**

Most everyone wants to see a permanent boundary established for Acadia National Park, a clear limit to the park's growth which provides for a rational management unit. Prior to World War II the Park Service recognized the shortcomings of Acadia's jigsaw puzzle shape and became interested in consolidating and acquiring key natural areas not yet donated. Failure to reach agreement, however, is allowing development of areas to the detriment of the park. Disagreements have centered around the desire of towns to minimize the loss of their tax base and of developable land, the use of eminent domain for park acquisitions, the dedication of conservation easements by property owners on lands near the park, and payment for the services provided by the town to over four million park visitors annually. The issue of a permanent park boundary is addressed in legislation introduced by Senator George Mitchell, with the support of the rest of Maine's delegation.

o **The Future of Maine's Coastal Islands**

Increasing competition for coastal property, particularly in southern Maine, and the threat to traditional values caused by pressure for the development of islands such as Great Diamond Island in Casco Bay, were described in the previous progress report. The resolution of the zoning issue on Great Diamond is described in Section 9 of this report.

Taking a broader look at island issues, for most of the twentieth century, the history of Maine's islands has been one of population decline. Technological improvements have shifted the demand away from use of island resources or, in the case of fisheries, have allowed fishermen to live farther from the fishing grounds. Individuals and families have moved to the mainland in search of greater social and educational opportunities.

Frenchboro's current struggle to maintain itself as a community and as a way of life is illustrative. In 1910, some 197 people lived on the island, farming, raising sheep, selling pulpwood, tending herring weirs, and fishing for cod, haddock and lobster. Now there are only 41 adult year-round residents. The school, which once held up to 60 children this year had only four. A growing market for summer island homes has resulted in conversions from year-round to seasonal, a shortage of year-round homes, and their pricing out of the reach of year-round residents. Frenchboro has responded with an attempt to provide new housing and otherwise make the community more attractive to new families, with the assistance of a Community Development Block Grant from the State, but the future still remains uncertain.

Maine's island heritage is one of our great national treasures. It is on the islands that some of the deepest Yankee maritime traditions persist. The spectacular beauty of the islands goes hand in hand with diverse resources including nationally significant flora and fauna. But pressure for growth and development in Casco Bay and southern Maine are the leading edge of change. Sixty percent of the U.S. population lives within a day's drive of the Maine

coast, according to the Director of the Island Institute. The population of coastal counties is growing rapidly, and Acadia National Park with more than 4 million visitors was the second most heavily used national park in 1984.

Not including Mt. Desert Island and Acadia National Park, 95 percent of Maine's coastal island acreage is privately owned. Development is controlled by town zoning of varying quality and strength. The issue is one of balancing decisions regarding management of island resources and island access between the different constituencies with island interests. At stake is the preservation of irreplaceable natural resources, the continued economic viability of vulnerable year-round island communities, and the enjoyment of the islands by increasing numbers of visitors and seasonal residents.

o **The Wise Use of Port & Harbor Resources**

Port and harbor development issues were highlighted at a meeting of the Maine Economic Society in Portland on March 20, 1985. The focus of discussion was the conflict between water dependent uses and landside development of water enhanced uses. P.D. Merrill cited increasing harbor traffic, Portland's neglect of its Port Authority, and the need for zoning to assure space for water-related activities. David Bateman spoke of decreasing Boston port activities and the increase in development of water enhanced uses, saying that these pressures were moving up the coast to Portland and beyond. He cautioned that high waterfront taxes were forcing low-income uses off the waterfront, that regulating growth and development may preclude needed new tax base, and that zoning must be flexible.

John Ferland spoke of the need for better understanding of both sides and of the potential for waterfront development to create jobs. Simply reporting on waterfront happenings was a full-time job, he said. The issues discussed at the meeting were exemplified by two headlines in May: "Portland Waterfront, Fishermen Fight Back," in the Maine Times and "Can fishing boats and condos co-exist? Central Wharf developers think so," in Commercial Fisheries News (see clipping reproductions next page). See also the feature article in Advisory Bulletin No. 3 in the appendix to this report.

o **Coastal Priorities**

A Coastal Priorities Statement and ranking of twenty coastal issues by the Coastal Advisory Committee is described in Part I, Task 3.B of this report.

Maine News & Issues

PORTLAND WATERFRONT

Fishermen fight back

Fishermen are taking a major step to try to secure their place amid booming real estate development on the Portland waterfront. They are proposing to purchase and rehabilitate Hobson's Wharf to provide berthing for fishing vessels and to construct a building for fish processors and other marine-related businesses. Last week they received authorization from the Finance Authority of Maine (FAME) to finance the project with a \$1.9 million industrial revenue bond.

At a public hearing, proponents of the project said that unless new berthing facilities are provided, fishermen will be pushed off the waterfront by professionals' offices, shops, and condominiums. They said the Hobson's Wharf project symbolizes the determination by fishermen to keep the area a "working waterfront."

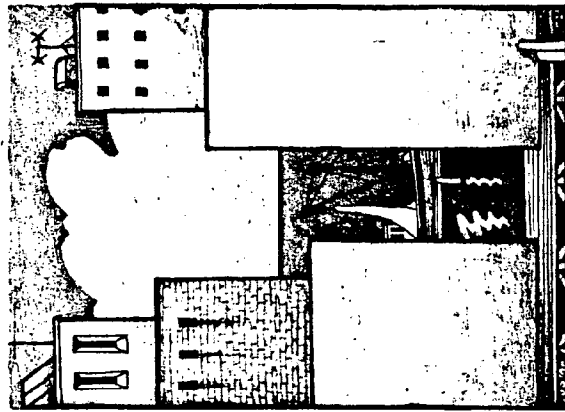
The only opponent to the Hobson's Wharf proposal was United Fish Company on Union Wharf. United Fish president James McGough said in a letter to FAME that a tax-exempt, below-market rate bond "would give an unfair advantage to the developer over the other fish processors and berthing facilities in Portland."

But Ed Bradley, attorney for the Hobson's Wharf group, said that without low-cost financing, the project would die because the fishermen can't afford conventional mortgage rates. It would have a ripple effect, he said, predicting that without the proposed facility, "fish processors won't be able to continue their work" because they too need to be on the waterfront.

The FAME board voted eight to zero to allow the bonds to be sold. Normally, the municipality involved would handle the issue but because the fishermen are also asking FAME to guarantee the financing, FAME will actually issue the bonds.

The requested state guarantee will be taken up at FAME's August 22 meeting. Key Bank, the lender for the Hobson's Wharf project, wants a guarantee on the financing because the equity investment the fishermen can afford is lower than usual. Since the wharf would be devoted exclusively to commercial fish operations, Key Bank reasons that it would be hard to resell in the event the project fails.

Presently, Hobson's Wharf is a dilapidated,



unused wharf adjacent to the Naval Reserve Station Pier. It is in the so-called W2 zone, which is principally dedicated to marine use. The proposal is to remove the old pier, build two finger piers 260 feet long and 80 feet apart and dredge the area along the entire length of the wharf. A 30,000-foot, two-story metal building would be constructed on the land end of the wharf for fishermen to work on their nets and gear. The second floor would be used as storage space or "break rooms," places where fishermen could relax between ships and workers could take coffee breaks. Bradley said "there is no upscale space for young professionals" in the plans for the building.

Steve Hassen, a member of the Greater Council of Governments and a member of the 1983 Harbor Commission which did a study on berthing, told the FAME board that the waterfront doesn't have enough berthing space. It started to disappear when Bath Iron Works moved to the eastern end near Munjoy Hill and DiMillo's Floating Restaurant

took over Long Wharf, he said. Berthing is also being lost on the Maine State Pier, which is turning over one side of the pier to Casco Bay Lines for ferry service to the Portland harbor islands. Another berthing pier, Central Wharf, is being converted to condominiums.

Hassen said the fishermen's only hope to counter the development pressure is for them to have a wharf they own and Hobson's is one of two that the harbor commission thought would be a feasible project. He said the new berthing would "create a demand for processors. It's important for economic stability. If the [fishermen] don't have a place to go, [processors] won't be here."

Bradley said that the project wouldn't be creating excess berthing capacity, as argued by United Fish. "We would be relocating existing businesses," he said, pointing out that the entire first floor of the marine building is already spoken for by companies currently located elsewhere on the waterfront. "It will maintain the status quo," he said.

Portland development director Clark Neely enthusiastically supported the project, as did Dick Gorton of Commercial Properties Inc., which owns Hobson's Wharf. He believes the project is so important that he has extended the fishermen's purchase option on the wharf twice.

Fisherman Keith Lane, a principal in the wharf, said "the issue is now survival. We are frightened by development in the harbor. We need security and are willing to put up the money ourselves," he said. "We need the benefit of low-cost money. The project will never develop without it. What we are proposing is essentially a public work."

In a related development, the Portland planning board has rejected a project on the international ferry terminal at the South Portland end of the waterfront toward South Portland. It would have created a project similar to that of Boston's Faneuil Hall, bringing more mixed development to the area.

Can fishing boats and condos co-exist? Central Wharf developers think so

PORTLAND, ME. - Residential condominiums are being proposed for Central Wharf, one of this city's busiest berthing areas for fishing boats.

The impact on fishermen is uncertain because city zoning laws prevent developers from displacing commercial vessels with housing projects. About 25 groundfishing and lobsterboats berth at Central Wharf.

Liberty Group of Portland bought the wharf in March from Jane Chee. The company plans 85 condominiums, 170 parking spaces and a marina.

If all approvals are received, demolition of existing buildings and the construction of new structures may begin this fall so the residences can be offered for sale next spring. David Cope, a partner in Liberty Group, said project details - such as design, cost of the living units and the number of marina slips - will evolve over the next several months. He and Chee declined to discuss the overall financial scope of the project. Chee said the project is intended to improve the dilapidated condition of Central Wharf, but not overwhelm neighboring properties or hurt commercial activity.

Chee, who will remain with Liberty Group as a project manager, said she foresees no problems joining uses on the property. She said the industry's sights, sounds, and smells define the waterfront's character and provide an attraction for residents. Housing became a reasonable project for Central Wharf because the property needs a complete renovation that would be feasible with the return gained from a housing use.

There's not a sizable fishing-only demand (for tenants) - especially with the fish pier coming on line - to amortize a total rehabilitation," Chee said.

She said many tenants have been

seeking other bases of operation because of the wharf's disrepair - broken pilings, gaps in the pier surface and the inefficient buildings.

What do the neighbors think?

Some tenants of Central and owners of neighboring properties support the project but are not sure how well housing and fishing boats will get along.

Neighboring property owners said the project is a sign of the times - the fishing industry is not growing enough for most people to justify keeping their real estate in a marine use.

Austin Harris, president of the Harris Co., Maine's largest wholesale marine distributor, said Chee "did all she could to keep it as a fishing activity. But it just wasn't in the cards."

One boat owner, who requested anonymity, said he would probably move anyway because construction activity would remove his shoreline storage space. He also doubted that housing and the vessels would co-exist because of noise, odors and the odd hours associated with the fishing industry.

He said moving would be difficult because few good berthing spaces exist elsewhere on the waterfront.

"It really puts us in a bind," he said.

But Brent "Hubba" Bradford, owner of the 74' *Mary Ann Bradford II*, expected to stay, based on his past business relationship with Chee.

"She's been so honest with us," he said. "I'm willing to go along."

Bradford said housing and vessels can co-exist as long as the project takes into account vessel storage space and the rights of vessels on the pier.

Another tenant, Port Quality

Company president John Bennett said when the company opened, it realized that Central Wharf would be a temporary location because of the dilapidated buildings.

One of Central Wharf's neighbors is Widgery Wharf, home for about 35 vessels, mostly lobsterboats. Patricia MacVane, one of Widgery's owners, said the Central Wharf condominiums would not hurt the fishing operations at Widgery. In fact, the condominiums may raise the value of Widgery, she said.

But MacVane predicted that the cost of Central Wharf's development would increase berthing charges at the point where the fishing vessels would be forced off Central Wharf anyway.

Chee said if berthing costs increase as part of the new development, they nonetheless will remain within the market rates of the rest of the harbor.

Condos need planning board approval

The project needs a variety of federal, state and local regulatory approvals.

At the meeting of the Portland Harbor Commissioners, one of Widgery's owners complained about a portion of the project that would extend the pier 150' into the harbor to accommodate berths for commercial and pleasure boats. The proposal would cramp turning space for boats berthed at Widgery. But lobsterman Bill Floyd, co-owner of the development, was designed according to "reasonable navigation standards," but Harbor Commissioner Ernie Goodwin said he will be looking for more space than what "reasonable standards require."

The strongest overseer of the project will be the Portland Planning Board. The city zoning laws for Central Wharf make housing a conditional use requiring Planning Board approval.

Two years ago Portland divided the waterfront into two zones. One zone protects marine operations from encroachment by non-marine development. The other zone, which includes Central Wharf, allows a variety of businesses. According to the zoning laws, housing in the zone is allowed in new buildings constructed after April 25, 1983, provided they do not displace existing fish boat berthing which could not reasonably locate elsewhere in Portland Harbor. Housing is prohibited in the marine zone.

The Central Wharf condominiums would be Portland's first housing project on a pier. It would join several other housing projects in the central waterfront area.

Liberty Group wants Chee to help with the development because of her status in the fishing industry and her knowledge of the waterfront. Indeed, she has been one of the waterfront's most respected property owners.

She operates Global Seafoods, a seafood brokerage. She is on the Portland Community Chamber of Commerce's Port Development Committee. She is a member of the board of directors of the Gulf of Maine Aquarium and recently was elected to the Cape Elizabeth Town Council.

She was married to Chongchai "Charles" Chee, who died two years ago. Her husband was the son of a Korean fisheries minister and descended from 11 generations of fishermen.

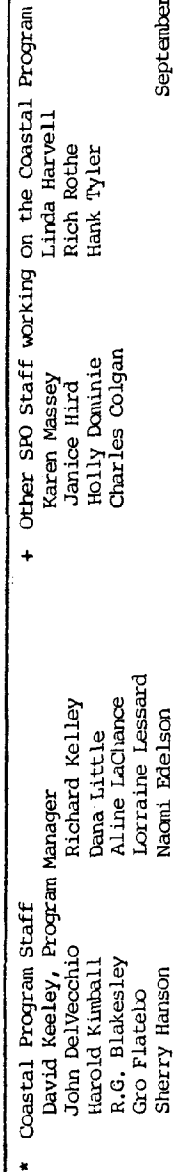
The Chees came to the Portland area in the 1970s and immediately became prominent in the local fishing community. Twice, Chongchai Chee proposed major fishing projects for Central Wharf.

John Ferland

SECTION 19 — Equal Opportunity Report

Three of the nine SPO professional staff positions funded by Coastal or CEIP funds are held by females; these are three of six positions fully funded with such funds. The two clerical positions are held by women.

State Planning Office Organizational Chart



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EXHIBITS

Coastal Advisory Committee
Minutes of Meeting, January 8, 1985

Summary of Action

1. Committee members reviewed their agency's coastal activity and coastal issues statement with the Committee. There was good discussion and exchange of information following each presentation. It was recognized that many agencies are addressing the same coastal issues from a different perspective (e.g., through regulation, planning, daily management, etc.) and we need to better coordinate our activities.
2. The SPO agreed to organize the agencies responses into a coastal priorities statement. A draft will be available in early February and it will serve as the basis for the CAC February meeting.
3. The Committee was briefed on the new U.S.- Canadian boundary and its effect on oil and gas activities and fisheries management; the 1985-86 coastal program; and a proposed research symposium on the Gulf of Maine.

Attendance

Members

George Jacobson
Spencer Apollonio
Dick Anderson
Hank Warren
John Walker

Alternates

Ken Anderson
Rob Elder

Others

Mark Sullivan
Rolly Dominie
Charlie Colgan
David Kealey
Al Hutchinson

Coastal Advisory Committee
Minutes of Meeting
January 8, 1985

- A. Call to order. The meeting was called to order by Charlie Colgan, Director of the SPO Policy Division, at 10:05 a.m. Charlie explained Dick Barringer was unable to attend and that he would chair the meeting in Dick's absence.
- B. Introductions. Introductions were made and the Committee welcomed George Jacobson, Acting Director of the Center for Marine Studies, as the University's representative. Alison Rieser, Director of the Marine Law Institute, will assist Jacobson as the University's alternate.
- C. Adoption of October 9, 1984 Minutes. The Committee adopted, without modification, the previous meeting's minutes.

D. Agenda

Discussion Items

1. Coastal Priorities Statement.

Charlie Colgan provided a brief overview of why the Committee is preparing a coastal priorities statement and explained how the Statement will assist in reauthorization of the Coastal Zone Management Act (CZMA) by Congress.

Hank Warren explained the DEP is heavily involved in the coastal area and identified three major activities for 1985: maintaining enforcement staffing levels, continuing to develop a stable state policy on sand dunes and beaches, and addressing the cumulative impact of coastal development on our coastal resources. Related to these activities were the possible shift of shoreland zoning responsibilities from the SPO to the DEP and a mapping program to assist the Board of Environmental Protection in making wise and uniform decisions on sand dunes/beaches.

Dick Anderson reported the DOC is very interested in developing a geobased information system that would organize the extensive natural resource data and mapping files each state agency has. Some discussion focused on the beach/sand dune data the Board has indicated they need and it was agreed this should be the first element of the overall system. Dick also indicated that improving coastal access should be a priority for 1985. He suggested this should include legislation to clarify the issues raised in the pending Wells Beach case and providing additional public access sites (e.g., parks, boat launches, etc.)

Spencer Apollonio explained the two most pressing issues are to coordinate research in the Gulf of Maine and the development of new fishing gear that will allow the State to effectively manage fish stocks. Concerning research in the Gulf of Maine Spencer explained that the University, the Bigelow Laboratory, and DRI are planning to hold a symposium in September.

Rob Elder reported the DOT is looking to complete their cargo terminal program and wants to begin a pier rehabilitation program. This would look at existing piers, identify what improvements are required, and document how the piers would be used. DOT is also interested in the engineering implications of sea level rise, coastal infrastructure and planning, and harbor management as it relates to competing uses along the waterfront.

John Walker reported on an informal RPC survey his staff performed that indicated growth management and development pressure are the most significant issues coastal communities must deal with. He stated there is a very real need to continue to build the capacity of communities to meet these issues head-on.

George Jacobson explained how the University created the Center for Marine Studies and that it involves the Sea Grant Program, the Darling Research Center, the Marine Law Institute, and the Migrating Fish Research Institute. He indicated the Sea Grant Program is doing very well and is one of the strongest Sea Grant Programs in the country. Some discussion focused on the Long Range Plan: A Framework for Research, Education and Advisory Service Activities which will be revised this year. It was agreed the CAC and the Sea Grant Program should work cooperatively on the Plan. At a latter discussion, Charlie Colgan and David Keeley agreed to serve as SPO representatives to advise the Sea Grant Program.

David Keeley explained the SPO thought the Coastal Program should focus on coastal development and its management implications. These include growth and land use controls, public access, natural resources protection, and waterfront development.

Al Hutchinson representing the non-game program in the IT&W said their priority is to complete the coastal marine wildlife inventories they began several years ago. Two major sections of the coast (e.g., Kittery to Casco Bay and Bucksport to Calais) need to be completed. He indicated there were very clear and broad management implications of this work. He stated that earlier work documented that 75% to 80% of Maine's coastal wildlife is being supported by only 25% of the habitat. There is a need to identify where these critical habitats are.

Information Items

2. Effects of the New U.S./Canadian boundary

Charlie Colgan and Spencer Apollonio spoke briefly about the new boundary and what was happening. Spencer indicated fleet access to those areas normally fished by the U.S. is essential to maintain current U.S. fleet size. He also discussed two proposals resulting from the World Court decision. The first is a counter-voicing entry proposal which is supported by some fishermen groups. The second is Governor Brennan's proposal to the New England Governors Conference that would provide for the cooperative development of North American markets.

3. 1985-86 Coastal Program

David Keeley explained Maine could receive \$1.6 million in June, 1985 for a one-year grant. The State will begin to assemble an application in March for submission in May. The Advisory Committee will play a key role in allocating funds at the State and local level.

The Committee was also told about a new part of Maine's Coastal Program (Section 306A of the CZMA) that will allow for the construction of waterfront parks, acquisition of land for public coastal access, and waterfront revitalization.

4. Bay of Fundy Tidal Power Project & Proposed Workshops.

David Keeley and Spencer Apollonio spoke briefly about two workshop/symposium proposals. Both are intended to coordinate research in the Gulf of Maine. Although the outcome of each was to be slightly different it was agreed to try and combine the efforts.

5. OCS oil & gas leasing.

Charlie Colgan explained to the Committee Lease Sale 82 was called off due in part to the World Court boundary decision and oil company disinterest in frontier areas.

6. Others.

Ken Anderson, Spencer Apollonio and Dick Anderson spoke about coastal access for 1985 and the funds available to improve it. Discussion focused on the gas tax, the Dingle-Johnson Expansion Act, LWON funds, and Section 306A of the CZMA. It was agreed we must coordinate the expenditure of these funds. The SPO will prepare a proposal for the Committee to consider at its next meeting.

John Walker raised the issue of ancillary development related to the State's port development effort and the need for a comprehensive development strategy. After the meeting John agreed to prepare a statement articulating this issue for the Committee to review.

Adjournment - The Committee adjourned at 11:55 a.m.

dk/20c

page 5 of 5

Coastal Advisory Committee

Minutes of Meeting, April 11, 1985

Summary of Action

- Committee members discussed their ranking of the twenty coastal issues in the Coastal Priorities Statement. Members then developed a consensus on the six most pressing coastal management issues including:
 - Incremental Development & Growth Management
 - Natural Resource Data Base
 - Technical Assistance, Public Education, & Enforcement
 - Economic Planning & Development
 - Public Access to the Shoreline
 - Marine Resource Management
- The State Planning Office requested comments on the Coastal Priorities Statement and agreed to revise it by April 22nd. It will then be printed and distributed to all members and other interested parties.
- The Committee was briefed on anticipated funding levels and the schedule for the 1985-86 coastal program, reauthorization of the Coastal Zone Management Act by Congress, coordination of coastal access funding, the 1985-86 local and regional grant programs, and Coastweek '85 activities.

Attendance

Members

Richard Barringer
John Walker

Alternates

Hollis McGlaufflin
Ken Spaulding
Ken Anderson
Rob Elder
Fern Estabrook

Others

Mark Sullivan
David Keeley
Holly Donnie
Gro Flatebo
John DeVecchio

State Planning Office
Regional Councils

Dept. of Environmental Protection
Dept. of Conservation
Dept. of Inland Fish & Wildlife
Dept. of Transportation
Dept. of Marine Resources

Land & Water Resources Council
State Planning Office
State Planning Office
State Planning Office
State Planning Office

Coastal Advisory Committee

Minutes of Meeting

April 11, 1985

- Call to Order. The meeting was called to order by Dick Barringer at 10:15 a.m.
- Adoption of January 8, 1985 Meeting Minutes. The Committee adopted, without modification, the previous meeting's minutes.
- Agenda

Discussion Items

1. Coastal Priorities Statement

David Keeley explained the purpose of the Coastal Priorities Statement is to bring together all priority coastal management and policy issues. The Statement, when completed in April, will serve to guide the Committee's decisions on the 1985-86 Coastal Program and provide a context of coastal management to other groups.

David provided an analysis of each member's ranking of the priorities listed in the Statement. These were:

Priority	# of Members	Page in Statement
Incremental Development & Growth Management	5	p. 21
Natural Resource Data Base	4	15
Technical Assistance & Enforcement	3	19
Marketing & Planning Marine Facilities	3	25
Long Range Economic Planning	3	26
Maine Coastal Act	3	17
Public Access	3	18
Marine Resources	3	29 & 31
- gear conflicts		
- boundary & better coordination	3	9
Hydrologic Resources		

Ken Spaulding explained the development of a natural resource data base (GIS) was a very high priority for the Department. Ken Anderson questioned the status of the Land & Water Resources Council deliberations on a GIS. He recalled DGP and DOC had a joint resolution with the Council on a GIS, that funds in the fall were available through U.S. Geological Survey, that a Data Management Subcommittee of the Council was responsible for coordinating a GIS, and that the MIDAS system established by the State failed due to a lack of State commitment. Mark Sullivan said he did not think the Council's work on a GIS had progressed beyond the discussions last fall.

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Committee members agreed natural resource data was spread throughout State, regional, and local governments and that there was a real need to coordinate this data. Some discussion focused on what data should go into a GIS but no decisions were made.

Holly Dominie explained the results of a April 2nd ad hoc meeting at the State Planning Office on the issue of cumulative impact of incremental development. Agencies at this meeting included SFO, DEP, NRCM, the regional councils, IF&W, and the Marine Law Institute.

Holly distributed a study proposal to assist the State in addressing the management of incremental development when it has adverse effects on natural and cultural resources. Considerable discussion ensued on just what cumulative impact was, what laws currently dealt with it, and the experiences of DEP in administering the laws. The Committee agreed cumulative impact was one element of growth management and that nearly all priorities in the Statement were fashioned by growth and development pressures.

Members were requested to review the study proposal and provide comments, if any, to Holly.

David Keeley and Hollis McLaughlin discussed different aspects of the technical assistance and enforcement priority. John Walker commented this was extremely important and that municipalities are at the front lines. Consequently, they must be provided with skills necessary to address the multitude of natural resource issues.

Rob Elder and John Walker briefly discussed marine facilities planning and long-range economic development. The Committee agreed these, as well as growth management, were very similar in many respects.

Ken Anderson explained developing a Maine Coastal Act was Inland Fish & Wildlife's highest priority. The Department recognized federal funding for the Program was going to be reduced and perhaps eliminated. At the same time the legislature has no official expression of interest in coastal management and few State funds are allocated for this purpose. The Committee agreed this was a long-term high priority issue that they needed to begin work on. Several members suggested getting the legislature to act on a resolve would be a first step.

Penn Estabrook explained there was a need for the Coastal Program to have an active role in marine resource management and that the Coastal Priorities Statement should reflect this. He indicated there was a very real need for coordinating management efforts in the Gulf of Maine.

Hydrologic resources, more specifically ground water and wetlands, were a concern to Rob Elder and others. This discussion lead back to the need for a GIS.

The committee then selected the top six most important coastal management issues. These included:

1. Cumulative impact of incremental development & growth management
2. Natural resource data base
3. Technical assistance, public education, and enforcement
4. Economic planning and development
5. Public access to the shoreline
6. Marine resource management

Information Items

2. Time schedule for 1985-86 Coastal Program

David Keeley distributed a handout that explained Maine is projected to receive \$1.6 million for the 85-86 grant program. Will submit an application to NOAA in late May, and expects to begin the Program in July, 1985.

3. Reauthorization of the Coastal Zone Management Act

David Keeley explained the House held reauthorization hearings on March 28 and April 2. He distributed a brochure prepared by the Coastal States Organization on reauthorization.

4. Local and Regional Program

John DelVecchio distributed a handout on the 1985-86 local and regional program.

5. Coordination of Coastal Access Funding

Gro Flatebo explained the SFO, DMR, IF&W, and DOC were going to meet in May to coordinate the allocation of funds distributed by the State for public access projects.

6. Coastweek 1985

Gro Flatebo distributed a handout on Coastweek 1985. It suggested the State make a commitment to Coastweek and that we begin to plan for it now.

Adjournment - The Committee adjourned at 12:25 p.m.

dk/5/09



STATE OF MAINE
EXECUTIVE DEPARTMENT
STATE PLANNING OFFICE

JOSEPH E. BRENNAN
GOVERNOR

RICHARD E. BARBRIDGE
DIRECTOR

ADVISORY BULLETIN

No. 3

July, 1985

This advisory bulletin is to inform you of planning-related issues and opportunities affecting Maine municipalities. Further information is available from Bob Blakeley or the key contact people indicated.

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EXHIBIT B
Section 1, Task 4A

REAUTHORIZATION OF THE COASTAL ZONE MANAGEMENT ACT

Congress is currently considering bills to continue the federal-state-local partnership in coastal management provided by the Coastal Zone Management Act. Both House and Senate committees have reported out bills reauthorizing the Act. Full Congressional action should occur this summer. For more information contact David Hesley at the SPO, 289-3261.

LOCAL GRANTS

o Planning Grants Available

The State Planning Office is accepting applications from Maine communities for Community Development and Coastal Program Planning Grants during July and early August.

The purpose of the Community Development Planning Grants is to support the development of local strategies addressing identified local community development opportunities. Local community development problems limit employment opportunities, adequate housing, or public facilities for low and moderate income people. All Community Development Planning Grant applications must be postmarked no later than Saturday, August 3, 1985.

Coastal Program Planning Grants are available to support high priority coastal planning and management projects in Maine's coastal communities. These federal funds may be used to support waterfront revitalization and development, management of coastal development, shoreland access and recreation, and resource management planning projects. All Coastal Program Planning Grant applications must be postmarked no later than Saturday, August 10, 1985.

A total of \$150,000 for Community Development Planning Grants, and \$200,000 for Coastal Program Planning Grants is available. A 20% local match is required, and all grants will be awarded on a competitive basis.

If you would like to learn more about either of these planning grant programs or receiving a funding application, please contact the State Planning Office at 289-3154. For assistance with the Community Development Planning Grants, you may also contact the Regional Technical Assistance Provider in your area.

o Community Revitalization Grants

On March 22nd the SPO received 44 applications totaling \$16.8 million for Community Revitalization Grants under the 1985 Community Development Block Grant Program. Awards for the \$4.5

GUEST FEATURE: PORTLAND WATERFRONT by John Ferland

John Ferland is a reporter for the Portland Evening Express. For the past 3 1/2 years he has been following developments along Portland's waterfront. The opinions expressed are his own and do not necessarily reflect those of the State Planning Office. --Ed.

A few years ago the idea of waterfront renewal in Portland was considered a joke.

Decades of government inaction and investor indifference helped turn the area into one of the most dilapidated sections of the city. Various interests struggled for a consensus about the waterfront's future, only to have study after study relegated to a shelf.

Today Portland's waterfront is one of the fastest-changing in the country. It is in the midst of \$117 million worth of public and private projects. Maine Savings Bank, which has financed much of Portland's citywide revitalization over the years, now considers the waterfront the "hot" part of Portland.

Portland is using several planning techniques to guide the transformation of its waterfront. Among them are aggressive pursuit of grants and creative financing techniques to minimize financial obligations by local taxpayers, the formation of public and private partnerships, and the initiation of projects and principles to enhance both the mixed use and marine aspects of the waterfront.

But the factor that has given waterfront planning its structure is zoning.

Waterfront zoning is the remains of a controversial development study unveiled in late 1981 by the American City Corp. of Columbia, Md. ACC is a subsidiary of the Rouse Co., probably the most famous waterfront development firm in the country. Rouse's work has included projects such as Boston's Faneuil Hall Marketplace and Baltimore's Harborplace.

--continued on page ten--

*** CRITICAL AREAS AWARDS ***

The 1985 Critical Area Award was presented to George Sayer of Anland and to the Coburn Land Trust of Portland, Maine. On May 22nd, the State Planning Office presented the award to both recipients. The award was made in recognition of the fact that Sayer voluntarily set aside two significant old-growth forest stands in Ardenwood County. The Coburn Land Trust made a major conservation gift of 1000 acres of Bog No. 5 and an associated jack pine stand as well as a conservation easement on 17,000 acres along the shore of Attean Pond near Jackman.

The focus of the Critical Areas Program this summer will be on unique alpine areas and sub-alpine forests on Egelov Mountain and the Hancock Range, patterned ferns and bogs, inland Great blue heron nesting areas, and selected rare plants.

million available are to be announced on May 24th. Competing projects include housing, downtown revitalization, public facilities, industrial parks, small business incubator buildings, community centers, and combinations of these elements.

A proposal to move up the 1986 Community Revitalization Grant competition so that awards could be made in the winter of 1986 has been given initial approval by the Community Development Advisory Committee. Earlier awards will give funded communities more opportunity to take advantage of the next construction season.

For more information about this program contact Mark Adelson at the State Planning Office (289-3154).

The Development Fund

Creation of housing and job opportunities for low and moderate income people is the aim of a \$750,000 Community Development Block Grant Program fund from which grants are awarded quarterly. These funds are to be used by cities, towns, plantations and counties for making loans to individual businesses, corporations or developers. Applications for the third round for awards this year are due at the SPO by July 13th, and for the fourth round by October 18, 1985. For further information call Alain Ouellette at the SPO (289-3154).

EPA Hazardous Waste Management Grants

The U.S. Environmental Protection Agency (EPA) has announced a grant program to fund innovative local and state hazardous waste management activities aimed at reducing the dependency on land disposal. Funds will be awarded to cities and counties for activities such as waste reduction, waste exchange, use of alternatives to land disposal, shared treatment and assistance to small quantity generators. For further information, contact Ms. Marty Madison, EPA (202) 382-2210.

LEGISLATIVE HIGHLIGHTS

LD 1299, An Act Relating to Septic System Permits, guarantees the right of a property owner to construct a sewage disposal system for which he has a valid permit, even though a neighbor installs a well within the required minimum setback distance before the system is physically installed, but after the permit is issued. Enacted as Public Law Chapter 135, signed by the Governor on May 2nd.

Three other bills affecting ground water stemming out of the work of the Land & Water Resources Council were considered this past session by the Joint Standing Committee on Energy and Natural Resources: LD 731 was held over in committee, LD 961 was enacted as Public Law Chapter 479, and LD 1406 was withdrawn.

LD 731, An Act to Impose Liability for Interference with Ground Water Use, establishes liability and provides for compensatory damages for any withdrawal or other use of ground water which causes unreasonable interference with the pre-existing use of ground water for reasonable household or domestic purposes. Reported out of committee with an "ought to pass" as amended, this bill was held over to the next session.

LD 961, An Act to Implement the Recommendations of the Maine Land & Water Resources Council Ground Water Policy Committee, extends authority to protect public water supplies by including ground water aquifer recharge areas under the jurisdiction of municipal land use regulatory powers. It also proposes a regulatory approach to the widespread ground water contamination problems associated with road salt and sand/salt storage piles, and provides for State financial assistance to municipalities for pollution abatement construction programs. This bill was enacted as Public Law Chapter 479.

LD 125, An Act to Establish a Maine Rivers Grants Program, has become Public Law 105. It creates a fund for making grants to local governmental or other agencies concerned with the protection of the state's outstanding rivers. The fund is to be capitalized by donations and proceeds from the sale of a Maine rivers decal or emblem.

LD 927, Critical Area Program Appropriations, provides \$40,000 for 1986-87 to conduct statewide surveys to identify significant geological, botanical and zoological areas worthy of preservation and inclusion on the register of critical areas as mandated by the critical areas law. This bill was enacted as Public Law 466, signed by the Governor on June 27th.

LD 838, An Act to Protect Freshwater Wetlands, regulates the alteration of wetlands that are 10 acres or more in extent, unforested, and not protected under existing environmental laws. It also provides for the delegation of permit-granting authority to a municipality at the municipality's request. This bill was enacted as Public Law 485, signed on June 28th by the Governor.

LD 1181, An Act to Strengthen State-Local Cooperation through Regional Councils, under consideration in the Local & County Government Committee, was held over until the Legislature next convenes. The bill would appropriate \$500,000 annually from the General Fund to support regional council and regional planning commission tasks, and require that regional planning commissions be composed of at least 50% elected officials in order to qualify for funding support.

LD 1200, An Act to Further Protect Significant and Outstanding Rivers and to Equalize their Treatment in Organized Municipalities and Plantations, was opposed by the Administration and was withdrawn. This act would have changed the land use controls contained in last year's nationally acclaimed Maine Rivers Act, and would have required substantial new changes to municipal shoreland zoning ordinances.

LD 1232, An Act to Amend the State's Zoning Laws, received a unanimous "ought to pass" from the Energy & Natural Resources Committee, after being redrafted. The Act as endorsed amends the Subdivision Law to reflect the process for obtaining utility hookups established in the Shoreland Zoning Law by the 1983 Rivers Act. The Act also makes it clear that the burden of proof that a property owner has received the requisite local permits rests with the property owner and not with the utility. This Act, replaced by LD 1514, was enacted as Public Law 206, signed by the Governor on May 24th.

ISSUES AND NEW INITIATIVES

o Coastal Management Priorities

In April the Coastal Advisory Committee of the Maine Land & Water Resources Council completed an assessment of the most significant resource management problems and opportunities in coastal Maine in 1985. Its Coastal Priorities Statement provides a framework to guide local, regional and state coastal management and development decisions.

The Statement identifies twenty high-priority issues. Of these, the Committee determined that the following six were the most significant:

1. Growth management and the effects of incremental development
2. Natural resource data management
3. Technical assistance, public education & enforcement
4. Economic planning & development
5. Public access to the shoreline
6. Marine resources development

Copies of the Coastal Priorities Statement are available from the State Planning Office. For further information contact David Keeley, 289-3261.

o Ground Water Initiatives

Several bills submitted to the 112th Legislature are the product of report of recommendations to Governor Joseph E. Brennan from the Land and Water Resources Council. Prepared by the Council's Ground Water Policy Review Committee, the report recommends a series of legal, regulatory and administrative actions. Some key recommendations are to:

- Establish a standing ground water committee of the Council by executive order of the Governor.
- Speed up mapping of state ground water systems through the Maine Geological Survey.
- Study the relationship between agricultural chemicals and ground water contamination.

- Enact legislation establishing a registration and reporting program for well drillers as a source of statewide ground water information.

- Assess risks to public health from various drinking water contaminants.

- Enact legislation to alleviate ground water contamination problems from road salt and sand/salt storage facilities.

- Draft legislation to establish liability for interference with an individual's right to ground water.

- Provide local technical assistance with water supply and source protection planning, protection of water quality, and decisions requiring hydrogeological information.

o Coastal Access --- The Wells Case

Concern about coastal access has been underscored by litigation over public access to Moody Beach in Wells. Fifty property owners are suing the State and the Town of Wells in an attempt to establish their right to bar public use of the intertidal area in front of their homes for recreation. Plaintiffs are asking the Court to affirm their rights to the beach to the low water mark, recognizing the rights of the public in the intertidal zone only for fishing, fowling, and navigation.

The Moody Beach case is expected to be a landmark case because it could force a ruling on public rights in the intertidal zone.

o Submerged Lands

A draft policy manual for the management of public submerged lands (including the bottoms of great ponds, tidal rivers and marine submerged lands from mean low water seaward to the international boundary) currently is under consideration by the Maine Bureau of Public Lands. Leases for the use of the lands are the responsibility of the Bureau.

The draft policy favors those uses which are most dependent on submerged lands (such as fish piers, marinas) and which contribute most directly to jobs and the development of renewable marine resources. Least desirable uses are those not dependent on the water and/or on submerged lands and which cause irreversible changes.

Publication of the policy manual for public review is expected this summer. For further information contact Hollis Tedford, Bureau of Public Lands, 289-3061.

Poverty in Maine

The number of poor in Maine increased by 10,000 people between 1970 and 1980. According to a newly-released State Planning Office report, the entire increase was primarily among employable adults (ages 18-64), rather than the elderly, handicapped and disabled, large families, and single parents with small children, those traditionally having difficulty providing for themselves. Maine is also home for a large number of "near poor", most of whom are employed in low wage jobs.

Unemployment rates in Maine are relatively low and job growth has been rapid. The report attributes the increasing poverty rate to low wages, highly seasonal employment and major increases in the cost of living caused by the rapid inflation of the 1970's. Over half of Maine's families have two or more workers in the labor force.

The SPO report examines social and economic conditions affecting the poverty rate and considers how Maine's population and economy have changed in recent years, and the effects of these changes for the remainder of the 1980's. Copies of the report, entitled Poverty in Maine, 1970-1980, Volume 1: Causes and Conditions, have been distributed to regional planning commissions and local community development officials. For more information contact Joyce Benson at the SPO, 289-3261.

Downtown Revitalization

Downtown revitalization is more than repaired sidewalks, new lights and shade trees. Downtown revitalization requires self-confident action and leadership by the private sector. A large private investment in one location, rather than numerous smaller ones, is a key to success. The infusion of federal dollars is decreasing. These were recurring themes during a two-day conference attended by over 100 people representing over sixty communities in Lewiston on May 6 and 7, sponsored by the State Planning Office and the Downtown Development & Management Corp. of Lewiston.

A bright spot for Maine communities, according to Leonard Dow of the SPO, is the possibility of the State's becoming part of the National Main Street Center Program, which could provide technical assistance and help in organizing. For further information on downtown revitalization, contact Leonard Dow at the State Planning Office, 289-3454.

UPDATES

Enforcement of Local Land Use Laws

Many local code enforcement officers and plumbing inspectors throughout the State recently participated in a series of workshops and examinations designed to certify them to issue summonses and prosecute land use law violators in District Court. Procedures for prosecuting these violators were established last summer in the Maine Supreme Court's Rule 80K, adopted pursuant to Public Law 1796, An Act Relating to Enforcement of Land Use Laws.

Rule 80K certification examinations have been offered concurrently with the workshops but also may be taken at a later date. A basic text prepared by the Maine Municipal Association is available to local officials, titled "Enforcement of Local Land Use Law Violations Using District Court Civil Rule 80K." Examinations are conducted by the Department of Human Services, Division of Health Engineering.

For more information contact the Division of Health Engineering at 289-3826, or Rich Rothe at the State Planning Office, 289-3154.

Sears Island Cargo Port

Site preparation at the 50-acre Sears Island Cargo Terminal site in Searsport is underway, and construction of the access road on the island was also begun this spring. The Maine Department of Transportation, in charge of the port's development, is working closely with local officials and overseeing all major contracting work.

Dredging at the port site began late last winter. By the end of June, three dredges will have removed 650,000 cubic yards of material. Construction on the cargo pier itself, which will cover more than four acres, is expected to begin later this summer.

The Maine Department of Transportation is working with the U.S. Coast Guard concerning issuance of a permit for the access road connecting the 900-acre Sears Island to the mainland. In April, Portland Superior Court Judge Edward Gignoux revoked an earlier Coast Guard permit for the access road.

*** PEOPLE ***

Mark Adelson appointed Community Development Program Manager

Richard E. Barringer has appointed Mark Adelson to be Community Development Manager within the SPO's Community Assistance Division, replacing Janet Hildreth. Adelson's appointment was announced in the previous Advisory Bulletin. Formerly Community Development Director for the Town of Farmington, Adelson has three years Mark has been instrumental to the success of numerous Community Development Block Grant programs throughout Maine as a contract administrator for the SPO.

In other staff changes, Sam Jones has been promoted to Manager of Management Information Systems in the Community Assistance Division. His position of Financial Specialist has been filled by Bob Williams. Previously, Bob was the Business Manager for the Baxter State Park Authority. He will be responsible for assisting local Community Development Block Grant programs with financial management systems and reviewing them for compliance with financial requirements.

PORTLAND WATERFRONT -- continued from page two

ACC proposed a five-year, \$65 million plan for offices, shops and condominiums. A business group formed to oppose the plan and protect the waterfront's commercial marine businesses.

After a tumultuous period of public debate about the appropriateness of ACC's ideas, Portland city officials agreed that the commercial character of the waterfront would be threatened by the uses predicted by ACC. Instead of endorsing ACC's specific project proposals, however, councilors approved a zoning plan in 1983 that would guide development.

Prior to the zoning change, most of the waterfront had been zoned to allow a variety of activities. The new zoning restricts such uses to four wharves opposite the trendy Old Port Exchange and the landward side of Commercial Street. The rest of the waterfront is in a protective maritime zone.

During the zoning debate some property owners argued that the maritime zone was too strict, precluding flexibility necessary to make property profitable. That seems to have been the case for at least one prominent property, but other parts of the zone have provided opportunities.

Some companies have opted to relocate to the Portland Fish Pier because they view it as safe from encroachment by non-marine development. Companies have invested about \$3 million in buildings and about a dozen vessels are renting berths at the pier. The zone has also been the site of a new \$1 million boat repair yard, a \$2.5 million relocation by a marine services company, and \$600,000 worth of building and structural improvements at one of the major marine-oriented piers.

In another instance, a group of fishermen are trying to buy a wharf because of non-marine development in the mixed use zone that is eliminating or changing berthing areas. A major project in the mixed use zone is an 85-unit condominium proposal at Central Wharf, where about 25 groundfishing and lobster boats berth. The mixed use zone prohibits displacing fishing vessels, but opinions are divided on the compatibility of boats and housing.

Despite its successes and promises, however, the maritime zone is under pressure to change.

The city council recently changed the text of the maritime zone to allow more types of businesses at publicly owned ferry terminals. (The intent was to have a new Casco Bay ferry terminal generate revenues from privately owned shops, offices and restaurant to ensure its financial success.)

Some developers and planning board members, believe the text change may set a precedent. To them, the strict maritime zone doesn't appear so strict anymore. A couple of major projects are in the waterfront's future and observers are watching with interest to see how the city handles zoning issues.

City Manager Tim Honeay makes an annual report to the city council on waterfront activities. The latest report, published in January, provides updates on 29 development categories and gives a property-by-property listing of improvements over the last few years. People may receive a copy by contacting the Portland Planning Department.

*** NEW PUBLICATIONS ***

Several new publications are now available without charge from the SPO (limit: 2 per municipality). Contact Beverly Gilcrest at SPO's Data Center, 289-3454.

1. Enforcement of Local Land Use Law Violations Using District Court Civil Rule 80R -- A handbook prepared by the Maine Municipal Association which describes how local land use violations may be prosecuted by local code enforcement officers in District Court. The handbook is the basis for a booklet for local land use code enforcement officers and the Department of Human Services for certification of code enforcement officers for this purpose.
2. Guide to Federal Consistency Under Maine's Coastal Program -- A revised handbook describing activities reviewed by the State for consistency with Coastal Program core laws (such as direct federal activities and federally-permitted or funded activities) and the review process.
3. Coastal Priorities Statement -- An assessment by the Coastal Advisory Committee of the Maine Land & Water Resources Council of the most significant resource management problems and opportunities in coastal Maine in 1985.
4. Poverty in Maine 1970-1980. Volume 1: Causes and Conditions -- A study of social and economic conditions and trends, one of a series of four volumes examining poverty in Maine. Volume 2 is a statistical abstract of census and other data concerning the conditions of poverty. Volumes 3 and 4 contain detailed statistics from the 1980 Census on social and economic conditions and housing on a community and regional basis.

This bulletin is funded in part by Maine's Coastal Program through a grant from the federal office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration.

WELLS NATIONAL ESTUARINE SANCTUARY



ADVISORY BULLETIN

No. 2

April, 1985

This Advisory Bulletin is to inform you of events occurring at the Wells National Estuarine Sanctuary. For further information, please contact Mort Mather, Landholm Trust, P.O. Box 1007, Wells, Maine 04090, or David Keeley, Maine State Planning Office, 184 State Street, State House Station # 38, Augusta, Maine 04333.

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The Wells National Estuarine Sanctuary was established to ensure resource protection and to provide for long-term estuarine research, education and interpretation in the Webhammet and Little River estuaries. The Sanctuary provides students, researchers, and the general public an opportunity to learn about natural and human processes within an estuarine area. It was established pursuant to Section 315 of the Coastal Zone Management Act of 1972 and is supported by the National Oceanic & Atmospheric Administration (NOAA), U.S. Fish and Wildlife Service, the State of Maine, and the Town of Wells.

The Sanctuary is comprised of approximately 1,500 acres of wetland and undeveloped upland in the Webhammet and Little River estuaries of southern Maine. The land within the Sanctuary is owned by three levels of government; all of which have entered into cooperative agreements for the joint management of their holdings as a National Estuarine Sanctuary.

Education and Research Activities

Botanist selected to perform Botanical Survey

The State Planning Office has hired a botanist to prepare a vegetation map of the Sanctuary and to develop species lists of the existing plant communities. The project is supported by the Department of Conservation and the Critical Areas Program.

Lissa Widoff will begin work in late May and collect data throughout the growing season. The project will produce important base line environmental information on the Sanctuary and will assist in implementing the Sanctuary Management Plan.

People interested in learning more about the survey should contact Gro Platebo at the Maine State Planning Office (207) 289-3261.

Consultants hired to help prepare Interpretive Plan

In early April, after carefully reviewing several excellent proposals, the team of Mitchell/Devan, Risk, Clough, and Terran Architects was selected to help prepare the Interpretive Plan for the Sanctuary. Their extensive experience in this type of work and enthusiasm will be a great help to the Sanctuary.

The consultants, working with a Sanctuary Steering Committee between May and September, will prepare the:

- Interpretive plan that identifies significant Sanctuary interpretive features and describes ways of presenting them to local schools, universities, researchers and the public can better understand and enjoy them;

- b) an access plan that describes how we can develop a trail system throughout the Sanctuary without jeopardizing its unique and fragile natural resources; and
- c) a facilities plan that describes how we can use the existing building and grounds for a variety of Sanctuary activities such as a visitors center, sanctuary managers residence, research laboratory, and auditorium.

Those people interested in learning more about the project should contact Owen Grumbine, Chairman of the Steering Committee at P.O. Box 1007, Wells, Maine 04090.

State Planning Office announces availability of Research Funding

In late-April the State Planning Office announced that funding was available from the National Oceanic & Atmospheric Administration (NOAA) to perform estuarine related research in the Sanctuary. A packet of materials containing a description of the eligible research activities and proposal guidelines was sent to estuarine researchers throughout New England. Researchers must submit proposals by June to the State Planning Office. These will be evaluated and forwarded to NOAA with recommendations for funding. NOAA expects to make awards this fall and research projects may begin in early 1966.

People interested in additional information should contact David Keeley at the Maine State Planning Office.



Renowned Estuarine Scientists to visit the Sanctuary

Two conferences of regional and national significance will use the Sanctuary this summer as a natural field laboratory. On June 17th the National Association of Wetland Managers will convene in Portland to discuss wetland management and protection. Then in late July the Estuarine Research Federation will hold its bi-annual meeting at the University of New Hampshire in Durham. This conference is expected to attract in excess of 800 estuarine researchers and scientists.

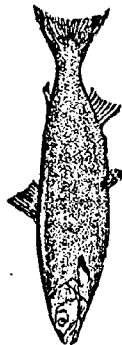
The two conferences will use the Sanctuary as a site for field trips to acquaint researchers with the Sanctuary, to explain the research opportunities it offers, and to exhibit its unique natural features.

Educational brochures to be printed in June

The State Planning Office completed the text for four educational brochures in April and expects to print them in June. The brochures include:

- What is an Estuary;
- Sand Beaches of the Sanctuary;
- Birds of the Sanctuary; and
- The Wells National Estuarine Sanctuary

The existence of the brochures helps to further the educational purposes of the Sanctuary and broaden the public's understanding of estuarine areas. The brochures will be available at the Sanctuary this summer.



Sanctuary Subcommittees are busy

The Education & Research subcommittee continues to meet on a monthly basis and is developing a proposal for a data search of scientific and cultural information pertaining to the Sanctuary. They have also assisted in selecting the interpretive consultant, coordinating the State Planning Office request for research proposals, and in commenting on the educational and research components of the Sanctuary Management Plan.

The Primary and Secondary Education subcommittee is currently surveying local teachers to determine how the Sanctuary can interact with local school systems and how the educational programs of the Sanctuary can be developed to complement local programs. The Subcommittee was successful in obtaining an intern for the summer to collect curriculum and teaching materials applicable to the Sanctuary.

The Building subcommittee received a small foundation grant to assist in the structural evaluation and to prepare drawings of the Laidholm Farm buildings to be acquired by the Town of Wells. In March they hired a consultant to work with them and they expect to complete this project this fall.

Sanctuary Administration

Departure of Refuge Manager Maury Mills

It is with regret we announce the departure of Refuge Manager Maury Mills. Maury was involved in establishing the Sanctuary in 1962, was of great assistance in beginning cooperative management of the Sanctuary, and will be greatly missed. We wish him well at the Moosehorn Wildlife Refuge in Calais.

The Service expects to have a new manager in several months. In the interim John Lortie will fill-in for Maury. He may be reached at the Refuge Headquarters.

Town of Wells prepares to hire Sanctuary Manager

The Sanctuary Manager Selection Committee completed a job description and announcement for the manager's position. We expect to advertise the position in May and hope to have a manager on site by July. This committee, as described in the Sanctuary Management Plan, is responsible for soliciting, interviewing, and recommending an individual to be hired to the Town Manager.

State Planning Office applies to NOAA for remainder of Acquisition Funds

In April, the National Oceanic & Atmospheric Administration (NOAA) notified the State Planning Office that the remainder of the funds for acquisition were available for Wells. We have submitted an application and expect a favorable response early this summer. This is a very important step towards completing land acquisition and starting on-site management.



NOAA provides final comments on Management Plan

In late March the National Oceanic & Atmospheric Administration provided its final comments on the Sanctuary Management Plan. The Sanctuary Advisory Committee has reviewed those comments and the comments were subsequently incorporated into the Plan. The State Planning Office is responsible for completing it and has sent a camera ready copy to NOAA for printing.

People interested in obtaining a copy of the Plan when completed should contact David Keeley at the Maine State Planning Office.

Laudholm Trust continues to raise funds

The third payment on the Phase II property was made to the Lords on April 24, bringing the total paid on the 100 acres and buildings to \$90,000. One more pre-payment of \$20,000 is due July 24th. The final payment of approximately \$1 million is to be made as soon as federal funds are available.

A grant of \$20,000 was awarded by the Laird Norton Foundation for trail development. These funds are available for the construction of a trail this summer as well as other related activities.

The Trust will have three interns working for it this summer. One is funded through a grant from the National Trust for Historic Preservation and Yankee Magazine, another through the University of New England, and a third through the Education Intern Program. Each will support work being carried out by the Sanctuary subcommittees.



Activities of the Wildlife Refuge

Refuge staff recently completed the preparation of the 1984 Annual Narrative Report; drafted a Fishing Plan for the Refuge, conducted routine wildlife surveys and implemented a black duck banding program. A total of 68 black ducks, 13 mallards, and 2 black duck cross mallard hybrids were captured and banded.

Routine migratory bird surveys of the Wells marshes were conducted on a weekly basis. Interesting observations included northern pintails in January and March; a common black-headed gull, a European species which has recently become more common along the northwestern Atlantic coast; and northern harriers (marsh hawks) were occasionally observed hunting over the saltmarshes. By late March, early spring migrants, such as the killdeer, American woodcock, red-winged blackbird, song sparrow and green-winged teal had begun returning to the Wells area.

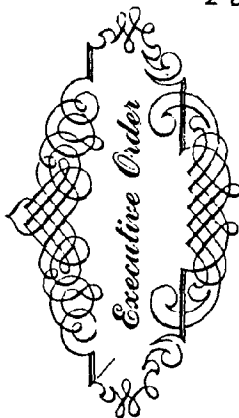


Drawings provided by D. D. Tyler. copyrighted.

EXHIBIT D
Section 12

CONSISTENCY LOG

<u>Issue/Activity</u>	<u>Date</u>	<u>Agency</u>	<u>Subject</u>
Sears Island	12/20/84	Corps of Engineers Ken Jackson	Status of Sears Island suit and COE permit condition necessary to meet before construction can begin.
Scarborough Project	12/22	Corps of Engineers N. Avtges	Called to discuss Scarborough navigation project and possibility of placing sand on Camp Ellis Beach.
Consistency	1/22/85	SPO/COE Joe Horowitz	Discussed information needed for Belfast beach project Consistency determination.
Coordination	1/23	SPO/COE Ken Jackson	Discussed meeting in Augusta regarding New Regional Office and review of S.P. General Permit.
Dept. of Defense M.O.U.	1/24	SPO/U.S. Air Force Dave Glass	Discussed final Memorandum of Understanding on State/DOD coordination.
Lighthouse facility	3/5	U.S. Coast Guard/ P.V. Kaselis	Discussed proposed maintenance of lighthouse facility in Lubec.
Consistency	3/6	DEP/SPO	Discussed proposed Coast Guard activity in Lubec.
Consistency	3/5	SPO/Acadia Nat'l Park Carroll Schell	Discussed proposed road and parking lot improvements planned in Park.
Consistency	3/8	SPO/Acadia Nat'l Park Carroll Schell	Meeting to review plans for road improvements and to discuss local and State review requirements.
Consistency	3/13/85	SPO/Town of Mt. Desert	Acadia Park road improvements.
Consistency	3/15	SPO/Acadia Nat'l Park	Call to C. Schell regarding consistency determination not needed.
Coordination	3/21	SPO/DEP	Meeting with Licensing and Enforcement Directors to discuss consistency review procedures.
Consistency	3/22	DMR/SPO/DEP/ and Army Corps	Meeting in Portland, Maine to discuss Corps' actions to address conditions imposed on Piscataqua River dredging project.
Coordination	3/27	New England/New York Coastal States and OCRM	Meeting in Boston to discuss consistency and Army Corps SPGP's and related consistency issues.
Coordination	3/27	SPO/COE	Phone conversation regarding beach erosion mitigation projects in Belfast and Rockland.
Consistency	4/3	SPO/DEP	Discussed setting up meeting with State agencies and Corps of Engineers regarding Belfast Beach Project.
Consistency	4/10		DEP concurrence with Ogunquit COE project.
Consistency/Coordination	4/17		Meeting in Rockland regarding South End Beach proposal also discussed Belfast.
Consistency	5/7	SPO/DOC	Spoke to Joe Kelley, state marine geologist, regarding Belfast City Park Beach.
Consistency	5/8	SPO/COE	Spoke to Tom Bruha regarding timing on consistency concurrence.
Consistency	5/8	SPO/BH2M Engineering Firm	Question regarding discharge into river.
Consistency	5/13	DEP/SPO	George Seel called about COE installation of underground fuel tank in Bangor.



OFFICE OF
THE GOVERNOR

NO. 11 FY 84/85
DATE June 27, 1985

PROVIDING FOR THE COORDINATION OF A CONSISTENT
STATE POSITION IN FEDERAL HYDROPOWER LICENSING PROCEEDINGS

WHEREAS, interest in developing the hydropower potential of
Maine's rivers has increased significantly in recent years; and

WHEREAS, the Legislature, through the 1983 Maine Waterway
Development and Conservation Act (38 MRS 630-636), has declared
that "hydropower justifies singular treatment"; and that "it is
the policy of the State to support and encourage the development
of hydropower projects by simplifying and clarifying requirements
for permits, while assuring reasonable protection of natural
resources and the public interest in use of the waters of the
State"; and

WHEREAS, the Maine Waterway Development and Conservation Act
consolidated State regulatory authority for hydropower
development into a single permit to be issued by either the Board
of Environmental Protection or the Land Use Regulation Commission
and action by the Board on water quality certification pursuant
to Section 401 of the Federal Clean Water Act; and

WHEREAS, most applicants for hydropower projects to be
located in the State must apply to the Federal Energy Regulatory
Commission (FERC) for a federal license or exemption; and

WHEREAS, various federal laws and regulations require
applicants for FERC preliminary permits, exemptions, and licenses
to consult with several State agencies with management
responsibilities for natural resources, historic preservation,
public safety, and energy policy; and require FERC to request
comments on hydropower development applications from these same
agencies; and

WHEREAS, the potential exists for conflict between federal
licensing decisions and the permitting decisions of the Board of
Environmental Protection and the Land Use Regulation Commission;
and

WHEREAS, effective State participation in FERC proceedings
demands that comments from State agencies be communicated in a
clear, consistent and timely fashion, and that the State secure
status as an official intervenor in these proceedings; and

WHEREAS, the Land and Water Resources Council, in accordance
with Executive Order #11, FY81/82, has established a Standing
Committee for coordinating the actions of State agencies and
developing a consistent State policy among them;

NOW, THEREFORE, I, Joseph E. Brennan, Governor of the State
of Maine, do hereby direct that:

1. A final decision by the Board of Environmental Protection or
the Land Use Regulation Commission issued in accordance with
the Maine Waterway Development and Conservation Act,
combined with action by the Board of Environmental
Protection on water quality certification of the project
pursuant to Section 401 of the Federal Clean Water Act,
shall represent the official position of the State of Maine
regarding the subject application;
2. The State's sole, official recommendations for any terms and
conditions upon the federal license shall be those contained
in the Board of Environmental Protection and the Land Use
Regulation Commission decisions, superseding all preliminary
recommendations by individual State agencies;
3. All State agency comments submitted subsequent to State
action on the subject project shall include a copy of the
decisions rendered by the State permitting agencies;
4. All State agency comments submitted prior to action on a
State permit shall advise FERC that the official position of
the State is that established through the decisions of the
Board of Environmental Protection and the Land Use
Regulation Commission; and
5. The Department of Environmental Protection and the Land Use
Regulation Commission shall have responsibility to
intervene, in a timely fashion, on the State's behalf, in
all FERC licensing proceedings for projects in Maine, and,
as appropriate, in selected FERC preliminary permit and
license exemption proceedings; and
6. Pursuant to this policy, the Land and Water Resources
Council's Standing Committee on FERC Coordination shall
monitor all State agency comments in FERC proceedings, and
provide for mediation by the Executive Secretary of any
disagreements among State agencies regarding comments
submitted to FERC or the applicant.

(This Executive Order supersedes Executive Order #11, FY81/82.)

Joseph E. Brennan
JOSEPH E. BRENNAN
GOVERNOR

United States Court of Appeals
For the First Circuit

No. 85-1098

SIERRA CLUB,
Plaintiff, Appellant,

v.

JOHN O. MARSH, JR., ET AL.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MAINE

(Hon. Edward T. Gignoux, Senior U.S. District Judge)

Before

Campbell, Chief Judge,

Bownes and Breyer, Circuit Judges.

Edward F. Lawson with whom Peter L. Koff and Koff and Lawson were on brief for appellant.
Kevin A. Gaynor, Assistant United States Attorney, with whom Cabanne Howard, Assistant Attorney General, and Richard S. Cohen, United States Attorney, were on brief for appellees.

August 9, 1985

BREYER, Circuit Judge. This case embodies an argument about whether a cargo port and a causeway that Maine plans to build at Sears Island will "significantly effect[] the environment." 42 U.S.C. § 4332(2)(C). Maine's Department of Transportation, the Federal Highway Administration, and the Army Corps of Engineers concluded that it would not; thus, they decided to fund, to grant permits for, and to proceed with, the project without preparing an Environmental Impact Statement ("EIS"). The Sierra Club sued the federal agencies, seeking to stop the project in the absence of an EIS. Sierra Club now appeals the federal district court's determination that the agencies' decision not to prepare an EIS was lawful. Having reviewed the administrative record, we disagree with the district court. In our view, the record reveals that the project will significantly affect the environment and the agencies' contrary conclusion lies outside the legally permissible bounds laid down by relevant statutes. 42 U.S.C. § 4332(2)(C); 5 U.S.C. § 706(2)(A). Hence, the agencies must prepare an EIS.

I

The legal framework in which this case arises is fairly simple. The National Environmental Policy Act of 1969, ("NEPA") says that federal agencies must prepare a detailed

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statement on the environmental impact of any proposed major federal action significantly affecting the environment." 42 U.S.C. § 4332(2)(C)(i). The federal Council on Environmental Quality ("CEQ") has issued detailed regulations and explanations of NEPA's statutory terms which tell federal agencies how to decide when an EIS is needed and how to go about preparing one. See 40 C.F.R. § 1500 et seq. (1984); Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (1981). The CEQ regulations permit federal agencies to make a preliminary "environmental assessment" ("EA") aimed at determining whether the environmental effects of a proposed action are "significant." 40 C.F.R. §§ 1501.3, 1501.4, 1508.9, 1508.27 (1984). According to these regulations, ~~the EA must~~ "concise document that briefly discusses the relevant issues and either reaches a conclusion that preparation of an EIS is necessary or concludes with a finding of no significant impact" (called, in environmental jargon, a "FONSI"). Id. §§ 1508.9, 1508.13.

In this case, the Corps of Engineers and the Federal Highway Administration prepared or adopted EA's and concluded with "FONSI's." They therefore granted necessary permits and funding for the Sears Island project without an EIS. The Sierra Club claims that these findings of "no significant

impact" were "arbitrary, capricious, an abuse of discretion," and therefore unlawful under the Administrative Procedure Act. 5 U.S.C. § 706(2)(A). The district court, after reviewing the fairly lengthy and complex administrative record, decided that the agencies' conclusions were sufficiently reasonable to be lawful. Our legal duty, strictly speaking, is to review this district court conclusion;

the purely legal issue that we face at the outset is what standard to apply when reviewing the district court. In part the issue involves the question of what standard courts normally should apply to the agency's decision. ~~As have~~ previously said that one challenging a decision not to prepare an EIS must show a "substantial possibility that agency action could significantly affect the quality of the human environment." Quinoner-Lopez v. Coco Laagoon Development Corp., 733 F.2d 1, 2 (1st Cir. 1984) (quoting Winnebago Tribe v. Ray, 621 F.2d 269, 271 (8th Cir.), cert. denied, 445 U.S. 836 (1980)). If the record reveals such a "substantial possibility" with sufficient clarity, the agency's decision (not to produce an EIS) violates NEPA. Depending upon the agency's reasons, a reviewing court might say that such an agency made a mistake interpreting NEPA or the CEQ regulations, or the court might say that the agency's "no significant impact" finding was simply "arbitrary, capricious, an abuse of

decisionmaking on the basis of a record created in the district court. See generally Nathanson, Probing the Mind of the Administrator: Hearing Variations and Standards of Judicial Review Under the Administrative Procedure Act and Other Federal Statutes, 75 Colum. L. Rev. 721 (1975). Under this arrangement, the courts of appeals would play a limited role, reviewing, for example, a district court's factual findings for "clear error." Because of the way in which the findings and characterization of facts affect one's judgment about the 'reasonableness' or 'arbitrariness' of agency behavior, appellate review of a finding about 'arbitrariness' might also have been limited. (Evolving practice, however, under special review statutes has led to courts of appeals normally reviewing the legality of agency decisionmaking on the basis of a record created in the agency. See, e.g., 47 U.S.C. § 402 (providing for court of appeals review of FCC decisions); 29 U.S.C. § 160(1) (same, NLRB); 15 U.S.C. § 77i (same, SEC). Courts of appeals thus apply, say, the APA's 'arbitrary and capricious' standard to the agency record directly, without the intervening set of findings of a district court, which in turn has reviewed the agency's findings.

Under these circumstances, a court of appeals review of a district court review of an administrative agency's record is an awkward legal animal. Are we to set aside such a district

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discretion," 5 U.S.C. § 706(2)(A). Often these questions cannot be easily separated one from the other. But whatever verbal formulation it applies, the court in a case like this must essentially look to see if the agency decision, in the context of the record, is too unreasonable's (given its statutory and factual context) for the law to permit it to stand. Quinonez-Lopez, 733 F.2d at 2 - 3 (citing National Wildlife Federation v. Appalachian Regional Commission, 677 F.2d 883, 889 (D.C. Cir. 1981); Committee for Auto Responsibility v. Solomon, 603 F.2d 992, 1002 (D.C. Cir. 1979), cert. denied, 445 U.S. 915 (1980)); see generally Gee v. Boyd, 53 U.S.L.W. 3756 (U.S. April 22, 1985) (White, J., dissenting from denial of certiorari); Shea, The Judicial Standard for Review of Environmental Impact Statement Threshold Decisions, 9 B.C. Envtl. Aff. L. Rev. 63 (1980).

This case poses the additional (and somewhat difficult) problem of determining what standard ~~the~~ an appellate court should apply to the district court's decision upholding the agency. The reason this matter is a little difficult is that administrative review as typically practiced by the federal courts differs from the expectation of those who framed the Administrative Procedure Act in an important respect. Initially, the Act's authors apparently believed that district courts would review the reasonableness of agency

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court decision only if it is "clearly erroneous"? Fed. R. Civ. P. 52(a). Or, are we to ignore the district court and simply conduct our own review of the administrative record? Other cases, containing what we have described as a "luxuriant jungle of differing review descriptions," Quinonez-Lopez v. Coco Lagoon Development Corp., 733 F.2d at 3, do not settle the matter. Compare Lange v. Brinegar, 625 F.2d 812, 815 (9th Cir. 1980) ("In determining whether the evidence was sufficient to establish [the need for an EIS] . . . , we are bound by the findings of the trial court unless they are clearly erroneous."), with Save Our Wetlands, Inc. v. Sands, 711 F.2d 634, 644 - 45 (5th Cir. 1983) (relying on district court trial testimony and administrative record in determining that agency acted reasonably in failing to require EIS), and Concerned Citizens on I-190 v. Secretary of Transportation, 641 F.2d 1, 3 (1st Cir. 1981) (court of appeals should review both agency's conclusions and those of the district court).

We believe our answer to this type of question should be practical. We should be more willing, or be less willing, to differ with a district court about the 'reasonableness' or 'arbitrariness' of an agency decision, depending upon the particular features of the particular case that seem to make a more independent, or a less independent, appellate court scrutiny of the administrative record appropriate. Where, for

example, the district court's judgment turns on matters of fact that it has determined, or upon evidence presented by witnesses in court, or even upon lengthy district court proceedings in which knowledgeable counsel explain the agency's decisionmaking process in detail, we will show appropriate hesitation to overturn that judgment. Cf. Fed. R. Civ. P. 52(a) ("due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses"); Anderson v. City of Besenmer, 53 U.S.L.W. 4314, 4316 - 17 (U.S. Mar. 19, 1985) ("clearly erroneous" standard applies to factfinding even when district court factfinding is based on "documentary evidence or inferences from other facts"). But, where the district court simply reviews a set of agency documents and, applying the same legal standard as we apply here, reaches a particular legal conclusion about the 'reasonableness' of an agency's action, we have greater legal freedom to differ with the district court's ultimate characterization of agency behavior.

We have before us a case in which we and the district court are to apply the same legal standard to the same agency record. The court made no independent findings of fact and heard no witnesses. The district court had somewhat greater opportunity than did we to explore the administrative record with the help of counsel; and it is more familiar than are we

with the geographical area and circumstances out of which this suit arises. But these latter, offsetting factors are not very weighty where, as here, the written administrative record is so complete. ~~On balance, we believe we should exercise a considerable degree of independence in reviewing the administrative record and deciding whether the desirability of KONSIS was legally proper.~~

II

A

The record shows that Sears Island is an undeveloped, wooded 940-acre island in upper Penobscot Bay. (See Appendix for maps of the island.) The island is connected to the mainland by a gravel bar exposed only at low tide. The mainland area adjacent to the island has been developed for industrial use: a chemical plant and a petroleum storage area sit on either side of the point leading to the gravel bar. Indeed, Searsport (where the island is located) is one of the busiest ports in Maine. Those interested in developing Sears Island for industrial purposes have suggested using it as a site for a nuclear-powered electric generating plant, a coal-fired power plant, a petroleum refinery, and an aluminum reduction plant. These proposals have received varying degrees of consideration, but each has ultimately been withdrawn. The most recent

proposal for Sears Island consists of three parts: (1) a 1,200-foot solid-fill causeway that would connect Sears Island to the mainland with a railroad line and a two-lane road; (2) a dry-cargo marine terminal designed principally for the shipping of lumber and agricultural products, containerized cargo, and, possibly at a later stage in the project, coal; and (3) an industrial park in an area adjacent to the cargo port. The precise nature of the industrial park is now uncertain, for the park's eventual shape depends on what businesses choose to locate there. The plans for the other two components, however, are definite, and the impact of those plans has been discussed in great detail by various federal agencies which have examined the proposal.

Maine voters and government agencies have shown considerable support for the Sears Island project. Maine voters have twice approved bond referenda to finance the state's share of costs for the the causeway and port. State agencies have recommended reconciling concerns about the environment with those about economic growth by concentrating industrial development in Maine within several selected coastal areas; these agencies have designated the Searsport area (and two other municipal areas in Maine) "for the 'most constraining' heavy industrial development" (Maine DOT EA, vol. 3, at 4). The town of Searsport has prepared "A Municipal Response Plan

for the Industrial Development of Sears Island," which predicts substantial economic benefits from the causeway/port/industrial park project but recommends that the town enact appropriate land use laws to control the level of industrial development. The town has recently enacted such laws and has zoned the island for industrial use. The town has also borrowed \$400,000 for its share of the cost of constructing the causeway.

B

The record also reveals a lengthy, complex, and controversial history underlying the creation of the EA's (and FONSI's) here at issue. Federal review of the Sears Island project began in 1981 when the Maine DOT circulated a preliminary study for construction of a causeway from the mainland to Sears Island. At least one federal agency, the Fish and Wildlife Service, said the study was too narrow; it said that any environmental study should include the effects of the proposed port facility and related industrial development as well. Maine DOT, however, prepared an EA that focused only on the causeway! The Federal Highway Administration adopted this EA as its own, 42 U.S.C. § 4332(2)(D), issued a FONSI, and approved federal funding for the causeway. At this point, at least four federal agencies

objected -- three 'environmental' agencies (the Fish and Wildlife Service, EPA, the National Marine Fisheries Service) and the Coast Guard. See 42 U.S.C. § 4332(2)(C) ("Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.") (emphasis added). These four agencies said that the EA was inadequate and that all three parts of the proposed development (causeway, port, and industrial development) should be considered together, in an EIS.

Maine DOT then prepared another EA, this time on the port facility alone! The Federal Highway Administration adopted this EA and then issued another FONSI. Again, the three federal environmental agencies objected, and this time the Commerce Department's Economic Development Administration joined them. Again, these federal 'commenting' agencies asked for an EIS; and the Economic Development Administration stated that it would not consider Maine's request for funding without a combined EIS on "the three major components of the project: causeway, port facility, and industrial park." Responding to this criticism, the Federal Highway Administration adopted a new document, prepared by Maine DOT, called an "Environmental Assessment Summary." The new document considered both causeway

and port, but it expressly disclaimed any need for consideration of "development on Sears Island outside of the current marine terminal project." On December 16, 1983 the Federal Highway Administration issued yet another FONSI for the causeway/port project.

On the same day, the Army Corps of Engineers (the agency responsible for issuing permits for the project) ~~released its own EA~~ in respect to port and causeway, and, on the basis of that EA, issued a FONSI. The three environmental agencies criticized the Corps' EA. The Corps responded with ~~a further Statement of Findings and Environmental Assessment,~~ and, after renewed criticism, issued a ~~"Supplement to Statement of Findings"~~. The Corps, like the Federal Highway Administration, concluded with a FONSI. Then, without preparing an EIS, it issued a permit allowing causeway and port construction to begin. At that point, the Sierra Club filed suit.

C

As this history indicates, we do not have before us the "brief" or "concise" EA of which the CEQ's regulations speak. 40 C.F.R. § 1508.9. Rather, we have an 'EA' consisting of at least seven documents containing 350 pages of text, plus numerous pages of diagrams, maps, and technical drawings. They

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include:

EA on causeway, (prepared by Maine DOT for Federal Highway Administration), as revised (Sept. 1982) -- 30 pages

EA on port facility (prepared by Maine DOT for Federal Highway Administration) (Aug. 1983) -- 138 pages, plus 61 pages of appendices and 34 pages of technical drawings

Summary EA on both causeway and port facility (prepared by Maine DOT for Federal Highway Administration) (Nov. 1983) -- 17 pages plus 29 pages of responses to various agencies' objections

Corps' first EA (Dec. 1983) -- 4 pages

Maine DOT study, (prepared at the request of the Corps) reevaluating the environmental effects of building the causeway (April 1984) -- 110 pages

Corps' statement of findings and EA (July 1984) -- 15 pages

Corps' supplement to statement of findings (Aug. 1984) -- 7 pages

The agencies claim these documents support one conclusion, namely that the Sears Island project will have no significant impact on the environment.

The very length and detail of these documents have posed something of a dilemma to the agencies, the parties, and the reviewing courts. On the one hand, one is tempted to argue that the very complexity of the documents shows that an EIS is needed. The EA's are far longer than the CEQ recommends,

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see Forty Most Asked Questions, supra, 46 Fed. Reg. at 18037 (calling on agencies "to limit EA's to not more than approximately 10 - 15 pages"), and significantly longer than the typical full-blown EIS, see 40 C.F.R. § 1502.7 (1984) (EIS should "normally be less than 150 pages and for proposals of unusual scope or complexity . . . less than 300 pages"). The CEQ has stated:

Agencies should avoid preparing lengthy EAs except in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of [CEQ regulations] and where it is extremely difficult to determine whether the proposal could have significant environmental effects. In most cases, however, a lengthy EA indicates that an EIS is needed.

40 Fed. Reg. at 18037 (emphasis added). In addition, the EA's reflect considerable disagreement among federal agencies over the documents' findings. Compare Quinonez-Lopez v. Coco Lagoon Development Corp., 733 F.2d at 3 (affirming agency's decision not to prepare EIS where five governmental agencies agreed that impact on affected area was of no ecological significance), with Silva v. Lynn, 482 F.2d 1282, 1285 - 86 (1st Cir. 1973) (finding EIS inadequate where proposal "drew heavy fire" from three federal agencies "with expertise . . . equal to or greater than that of [the lead agency]"; see also Grazing Fields Farm v. Goldschmidt, 626 F.2d 1068, 1071 & n.1 (1st Cir. 1980); 40 C.F.R. § 1508.27(b)(4) (in evaluating "significance" of

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project's impacts, agency should consider "the degree to which the effects [of the project] . . . are likely to be highly controversial"). To announce that these documents -- despite their length and complexity -- demonstrate no need for an EIS is rather like the mathematics teacher who, after filling three blackboards with equations, announces to the class, "You see, it is obvious."

On the other hand, one tends to recognize, as the appellees point out, that the lengthy documents reflect a thorough consideration of potential impact on the environment. Since these documents, at least arguably, already amount to an EIS in all but name, what is the practical point of requiring additional preparation of another document? This argument is well summarized in a Federal Highway Administration memorandum contained in the record, which says:

The critical issue is whether or not an EIS should be prepared. Several Federal agencies including, EPA, U.S. Fish & Wildlife, and the National Marine Fisheries feel that the project requires an EIS. . . . Thus, the Maine DOT and the [Federal Highway Administration] are faced with a decision. From a practical standpoint, there is nothing to gain from going with an EIS since there has been excellent coordination and exposure/consideration of environmental, social and economic issues. From a purely legal perspective, an EIS may be required per the CEQ regulations Section 1508.27, paragraphs (b)(1), (b)(6), and (b)(7), attached. Mr. [William] Richardson [the head of the Maine Division of Federal

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Highway Administration) is well aware of the critical issues of this project as well as CEQ requirements. Deep down, Bill feels that the public may be done a great injustice if the decision for an EIS is made. The processing would take an absolute minimum of 6 months if not more reasonably 9-12 months without any foreseeable benefits.

(A. 373 - 74 (emphasis added).)

After considering both of these arguments, we conclude that we should accept neither. We should not give conclusive weight, one way or the other, to the simple facts of EA length, complexity, and controversy. These facts do not by themselves show that the EAs' conclusion -- "no significant impact" -- is correct, nor do they show it is incorrect. At most they show the practical wisdom of CEQ's advice: the agencies would have saved time in the long run had they devoted their considerable effort to the production of an EIS, instead of the production of documents seeking to prove that an EIS is not needed. See Maryland-National Capital Park and Planning Commission v. U.S. Postal Service, 487 F.2d 1029, 1040 (D.C. Cir. 1973) ("an agency that relies on an 'assessment' to dispense with an impact statement may well run risks not warranted by any countervailing benefit"); Hanly v. Kleindienst, 471 F.2d 823, 836 (2d Cir. 1973).

Moreover, under NEPA and its implementing regulations, we cannot accept the EA's as a substitute for

an EIS -- despite the time, effort, and analysis that went into their production -- because an EA and an EIS serve very different purposes. An EA aims simply to identify (and assess the 'significance' of) potential impacts on the environment; it does not balance different kinds of positive and negative environmental effects, one against the other; nor does it weigh negative environmental impacts against a project's other objectives, such as, for example, economic development. This latter balancing job belongs to the officials who decide whether to approve the project; and (where there are 'significant effects') those officials should make the decision in light of an EIS. An EIS helps them make their decision by describing and evaluating the project's likely effects on the environment. The purpose of an EA is simply to help the agencies decide if an EIS is needed.

To treat an EA as if it were an EIS would confuse these different roles, to the point where neither the agency nor those outside it could be certain that the government fully recognized and took proper account of environmental effects in making a decision with a likely significant impact on the environment. For one thing, those outside the agency have less opportunity to comment on an EA than on an EIS. See 40 C.F.R. §§ 1503.1, 1506.6 (1984); Massachusetts v. Watt, 716 F.2d 946, 951 (1st Cir. 1983) and authorities cited there.

For another thing, those inside the agency might pay less attention to environmental effects when described in an EA than when described in an EIS. At the same time, if we assume that the EA's at issue here offer nearly as thorough an analysis as would an EIS, the agencies will not find it difficult to comply with the additional procedural EIS requirements that NEPA imposes. (Indeed, at oral argument, counsel for the appellees said that the agencies need take only one additional step to meet EIS requirements, namely to offer additional opportunity for public comment.)

For these reasons, we will not treat the EA's before us as if they were an EIS or as if they reflected an ultimate decision to proceed with the project. Relevant decisionmakers may well find that the project's economic good outweighs any environmental harm. But, at this point, we consider only the lawfulness of the agencies' finding that the project will have no significant impact on the environment. The legal issue, as we have said, is whether the record reveals that conclusion to be unreasonable, to the point where the decision not to prepare an EIS either violates NEPA or (what here comes to the same thing) is "arbitrary, capricious, an abuse of discretion." 5 U.S.C. § 706(2)(A).

III

A

The EA's before us concern the likely environmental effects of building the causeway and the port. Our reading of the record indicates that the major environmental bones of contention have included the following:

1. Clam flats. Building the causeway will eliminate 1.5 to 2 acres of clam flats; construction of the port will eliminate another 1.5 to 2 acres. Maine's DOT, however, will replace 2.14 acres of this habitat by seeding an area east of the causeway. And the Corps' permit for the port/causeway project requires that the state of Maine submit a plan for additional mitigation before proceeding with the project.

2. Lobsters, scallops, and other marine animals. Building the marine terminal will require dredging and filling 90 acres now inhabited by lobsters, scallops, and other marine animals. Thirty-five acres of this habitat will be permanently lost; the balance -- including scallop fishing grounds and lobster fishing grounds (with up to 500 lobster pots) -- will be dredged in order to create deep water access to the port, and therefore may be lost only temporarily. Maine's DOT, however, noted that many of the lobsters can move elsewhere and the scallop grounds are not very productive. Moreover, the Corps has conditioned its permit on Maine's preparing a

report on the need for (and, if necessary, a plan for) additional mitigation of these habitat losses.

3. Waterfowl. The appellants and several environmental agencies said the project would adversely affect certain birds by encroaching on their current habitat. Maine's DOT, after consulting with Maine wildlife agencies, concluded that it would not do so because the birds' winter feeding on the island is limited to areas that do not freeze, and the project will not deprive them of a significant amount of such habitat.

4. Seals. One of the federal environmental agencies argued that the project would drive seals from the area. Maine's DOT, however, concluded that the harbor seals are already accustomed to the shipping traffic and would not be significantly disturbed.

5. Upland habitat. The parties agree that the port terminal would eliminate at least 40 acres of wooded upland habitat which supports several kinds of mammals and birds (including foxes, white-tailed deer, Osprey, and Woodcock). Maine's DOT and the Corps concluded, however, that the loss was not significant because the 40 acres represents only 4 percent of the island's total 'upland habitat'; displaced animals could go elsewhere; and the area has an abundance of such resources.

6. Run-off. Several federal environmental agencies and the Corps noted that the 'run-off' of water contaminated by oil, grease, and toxic substances from the marine terminal could pollute water in the harbor. Consequently, the Corps included in its permit for the project the condition that the terminal include

facilities capable [of] preventing the discharge of sediment, grease and oil associated with storm drainage discharge to the satisfaction of the Division Engineer.

7. Tidal exchange. During each tidal cycle, approximately 22 million cubic feet of water crosses the gravel bar along which the state intends to build the causeway. The Corps has required Maine to include a 24-inch diameter culvert through the causeway to permit some tidal exchange between the two harbors that the causeway will separate. In light of this requirement, and the fact that the 22 million cubic feet of water represents only 3 percent of the total amount of tidal flow in and out of the two harbors, the Corps concluded that any impact on tidal exchange would not prove significant.

8. Dredging and 'spoil' disposal. Construction of the port will require the disposal of over 2 million cubic yards of dredged material (called 'spoils') -- 1.3 million in the initial phases of the project; 750,000 in the later stages. The Fish and Wildlife Service feared that Maine's plan to dump

the spoils at a special ocean dump site would destroy a "benthic community" -- organisms on which fish and other sea animals feed. The Corps concluded that this possibility was not environmentally significant because the dredged material would cover only 65 acres, the "communities" could reestablish themselves, and Maine agreed to consider other ways of disposing of some of the material.

Whether or not these environmental effects, when considered together, do, or do not, show a "significant impact" is arguable. We note that the federal agencies, including the project's agency sponsors, differ among themselves about the significance of some of these effects. The Corps' EA, for example, criticized Maine DOT's environmental assessment of the project, for (in the Corps' view) it did "not adequately address impacts" (A. 378). We also note that certain factual matters are in dispute. For example, the environmental agencies have argued that the Corps' estimate of the number of undersea acres that will be covered by the dredging spoils (first, 20 - 40 acres, then 65 acres) is too low; and, the record contains a Corps memo suggesting that dredged material may cover 194 undersea acres, not 65. Finally, we note that the Corps evidently believes that promises to mitigate certain environmental impacts in the future mean that these impacts

lack 'significance.' The CEO, however, has written:

Mitigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies . . . should not rely on the possibility of mitigation to avoid the EIS requirement.

If a proposal appears to have adverse effects which would be significant, and certain mitigation measures are then developed during the scoping or EA stages, the existence of such possible mitigation does not obviate the need for an EIS. . . . [Preparation of an EIS] is essential to ensure that the final decision is based on all the relevant factors and that the full NEPA process will result in enforceable mitigation measures through the Record of Decision.

Forty Most Asked Questions, supra, 46 Fed. Reg. 18028, 18038 (1981) (citations omitted) (emphasis in original). Regardless, we were only the above-mentioned impacts at issue, we doubt that we could say that the 'FONSI' conclusions of the Corps and the Federal Highway Administration were "arbitrary, capricious, an abuse of discretion." 5 U.S.C. § 706(2)(A).

B

~~the problems just noted become significant~~, however, when combined with a more serious omission by the Corps and the Federal Highway Administration -- their failure to consider.

Adequately the fact that building a port and causeway may lead to the further industrial development of Sears Island, and that further development will significantly affect the environment. The CEO says that agencies must take account of such "indirect effects," which it defines as those that are

caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

40 C.F.R. § 1508.8 (emphasis added). Of course, agencies need not consider highly speculative or indefinite impacts. See, e.g., Kleppe v. Sierra Club, 427 U.S. 390, 402 (1976). But, here the 'impacts' seem neither speculative nor indefinite.

Whether a particular set of impacts is definite enough to take into account, or too speculative to warrant consideration, reflects several different factors. With what confidence can one say that the impacts are likely to occur? Can one describe them 'now' with sufficient specificity to make their consideration useful? If the decisionmaker does not take them into account 'now,' will the decisionmaker be able to take account of them before the agency is so firmly committed to the project that further environmental knowledge, as a practical matter, will prove irrelevant to the government's

decision? See Massachusetts v. Watt, 716 F.2d at 952 - 53.

In this case, the record contains clear answers to these questions. And those answers show that ~~the agencies should have taken account of the secondary impacts.~~ First, the record makes it nearly impossible to doubt that building the causeway and port will lead to further development of Sears Island. Local planners have considered the port, causeway, and industrial park to be components of an integrated plan. The town of Searsport, for example, begins its "Municipal Response Plan" as follows:

The 517 acres comprising the southern half of Sears Island have become the focus of considerable attention over the last few years as efforts to develop both a major cargo port and an industrial park have crystallized.

This two part development package has emerged in response to identified needs both for cargo port development in Maine and for economic development in the Waldo County area.

(Emphasis added). This theme is echoed in several of the EA's prepared for the Sears Island project. Maine DOT's August 1983 EA, for example, projected further industrial development after construction of the cargo port:

Development of the cargo terminal will . . . act as the principal stimulus to further industrial development on the island itself. An estimated 350 acres on the island is expected to be made available by the present land owner (Bangor Investment Company (a subsidiary of Bangor & Aroostock Railway)). Central Maine Power already has a lease on an additional 423 acres. . . . Industries likely to be attracted to the island include those heavily dependent on port and rail facilities. . . . Several forest product and food industries are also expected to have facilities on the island, as well as suppliers of paper-making machinery and machinery components.

Industrial development, indirectly stimulated by constructing the cargo terminal, will generate increased revenues (for the town). . . . The eventual fiscal impact on the town will, of course, depend upon the degree and timing of the expected co-development of the island.

(A. 243, 248 (emphasis added).) Cf. Citizens for Responsible Area Growth v. Adams, 477 F. Supp. 994, 1001 - 02 (D.N.B. 1979) (comprehensive EIS required where history of project shows that community and various agencies considered the three parts of airport improvement project as related). Maine DOT says that Searsport has "actively pursued such development for the Island" (A. 354). And it pointed to this development as one of the important factors in its selection of Searsport as the site for the marine terminal:

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While development in Portland and other sites investigated would require less natural habitat destruction, development at these sites would not stimulate further industrial development to the extent that developing a cargo terminal on Sears Island would.

(A. 289.) See Chelsea Neighborhood Associations v. U.S. Postal Service, 516 F.2d 378, 388 (2d Cir. 1975) (construction of new housing was a "selling point" for proposed postal facility, so EIS must consider it); Sierra Club v. Sigler, 695 F.2d 957, 979 (5th Cir. 1983) (bulk cargo activities a "selling point" for oil project, so EIS must consider them); City of Davis v. Coleman, 521 F.2d 661, 676 - 77 (9th Cir. 1975) (EIS must include consideration of "growth-inducing effects" of proposed highway construction project, where those effects are the project's "raison d'etre"). Moreover, the record reveals that, after negotiations with town officials, ~~the owner of the lower half of the island has already agreed in principle to accept a four-fold increase in its real estate tax assessment from \$2,360/acre to \$10,000/acre in exchange for town financing of part of the causeway construction costs -- an increase that provides a powerful incentive to develop the land.~~

Second, the plans for further development are precise enough for an EIS usefully to take account them into account. The record contains, for example, a 35-page "Land Use Plan/Industrial Marketing Study" prepared for the owner of the

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southern half of the island, and the town's 50-page "Municipal Response Plan for the Industrial Development of Sears Island." These documents provide detailed descriptions of likely further development, including a plot plan of the proposed industrial park that shows measured lots of 15, 25, and 50 acres, and locations for railroad and secondary road loops (see Appendix). The reports analyze the physical characteristics of the lower half of the island, discuss the feasibility of construction at various sites on the island, and outline development options; they also discuss the likely impact of industrial development on employment, housing, medical services, municipal services, the environment, and so forth. Actual further development may not follow the precise course that these documents suggest, but the CEQ has developed practical methods for dealing with such "secondary impacts." It states:

[T]he agency is not required to engage in speculation But . . . it will often be possible to consider likely purchasers [of land] and the development trends in that area or similar areas in recent years The agency has the responsibility to make an informed judgment, and to estimate future impacts on that basis The agency cannot ignore these uncertain, but probable, effects of its decisions.

Forty Most Asked Questions, supra, 46 Fed. Reg. at 18031 (emphasis added). The 'land use' and 'response' plans are detailed enough for an EIS to describe the type of development

likely to occur, even if it is pointless to analyze precise details.

Third, once Maine completes the causeway and port, pressure to develop the rest of the island could well prove irreversible. There is some indication in the record that if the Sears Island terminal is built, there will probably not be another major port facility built in Maine for a long time, and whatever new shipping traffic and industrial development is created by the project will be funneled into the Searport area. See 40 C.F.R. 1508.27(b)(6) (in deciding whether an EIS is necessary, agency must consider the "degree to which an action may establish a precedent for future actions with significant effects") (emphasis added); cf. 42 U.S.C. § 4332(2)(C)(v) (EIS must consider "any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented"). Even if federal authorities were to have an opportunity to consider the environmental effects of the industrial park at a later time, that later consideration would be unlikely to offer the decisionmaker a meaningful choice about whether to proceed. See Massachusetts v. Watt, 716 F.2d at 952 - 53 (describing each step in proposed offshore leasing program as "a link in a chain of bureaucratic commitment that will become progressively harder to undo the longer it continues").

U.S. 390 at 402, where the Supreme Court wrote:

The appellees point to Kleppe v. Sierra Club, 427

Where no . . . plan exists, any attempt to produce an impact statement would be little more than . . . [an] estimate of potential development and attendant environmental consequences. There would be no factual predicate for the production of an environmental impact statement of the type envisioned by NEPA.

But Kleppe is not contrary to the CEQ or to our analysis here. In Kleppe, federal agencies had prepared EIS's for individual mining operations and for a national mining program; appellants had argued that certain federal agencies should have prepared an additional, separate EIS for regional mining activity in the Northern Great Plains. The Court pointed out that there was "no proposal for a regional plan or program of development." 427 U.S. at 404 (emphasis added). Thus, it saw a separate EIS as impractical and unnecessary. Here, plans and a proposal for the industrial park exist; we are not considering an additional EIS for the industrial park, but whether its likely construction should be taken into account in an EIS for the Sears Island project. And, we conclude that taking this aspect of the project into account, unlike the Kleppe EIS, is both practical and necessary.

Although Maine DOT says that likely industrial development fell outside the scope of its EA, the record shows

that each of the EA's discussed this development to some extent. Thus, in fairness to the agencies, we should not rest simply upon the fact that the Maine DOT says that it did not take full account of the industrial development; rather, we must go on to decide whether the consideration of industrial development that the EA's actually made was adequate -- i.e., could the agencies reasonably conclude that the project (including the likely further development) would have no significant impact on the environment?

We do not see how the agencies could reach such a conclusion given the town's report and other record items that show that industrial development of the island would add (even under the town's 160-acre, 'moderate development' scenario) 2,750 new jobs in a town with a population of under 2,500; that show increased traffic on Route 1 (the town's principal artery) by 30 - 71 percent; that show additional lost scallop beds and clam flats, more soil erosion and aesthetic harm, a need for additional waste disposal and water supply, an added threat to water quality, and (under the town's 300-acre, 'full development' scenario) a loss of at least 23 percent of the island's upland animal habitat.

We have read the agency EA's, searching for information that might allow a conclusion that these impacts are not significant. But we have not found it. We find the

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explanations offered by the agencies as to why these impacts are not significant unpersuasive. First, some of the EA's suggest that secondary impacts might be "mitigated." But, as we noted above, mitigation cannot, by itself, render impacts 'insignificant' unless the mitigation measures are "imposed by statute or regulation, or submitted . . . as part of the original proposal." 46 Fed. Reg. at 18038. Here, the agencies have not said what mitigation measures they have in mind with respect to the industrial park.

Second, some of the EA's point to the economic benefits of industrial development. The Corps' EA, for example, says that

The area is economically depressed and the benefits that would accrue from development of the island would outweigh any loss to wildlife or habitat.

(A. 413.) This type of argument, however, is not relevant to the question of the existence of significant environmental effects. It says that adverse effects (even if significant) are warranted -- a matter that must, under NEPA, be decided in light of an EIS. As the CED regulations make clear, "[a] significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial." 40 C.F.R. 1508.27(b)(1).

Third, the Corps' points to various land use regulations as a safeguard, noting that "[t]here is adequate

local, state and Federal regulations to prevent complete devastation of the island" (A. 413). Of course, the drafters of NEPA had more in mind than avoiding "complete devastation." The Corps also points to the fact that Searsport has itself zoned the island for industrial use -- a fact that it finds to be "evidence supporting a finding of no significant impact." Preservation Coalition Inc. v. Pierce, 667 F.2d 851, 861 (9th Cir. 1982). The cited case, however, rested on a finding that the zoning there (in Pierce) was consistent with the existing pattern of (urban) land use -- a use that the proposed urban renewal project would not have altered. The project before us, however, would radically alter existing land use. See 32 C.F.R. § 651.28(e) (1984) (requiring Corps to prepare EIS for projects "normally requiring EISs," such as "actions which may lead to significant change in land use" (emphasis added); 23 C.F.R. § 771.115(a)(3) (1984) (similar requirement for Federal Highway Administration).

Fourth, the Corps' EA dismisses the impact on 'upland habitat' as insignificant on the ground that there is adequate habitat elsewhere in the area. The force of this argument depends upon the meaning of the word "area." If the Corps means "elsewhere on Sears Island," its conclusion is weak. The EA's indicate that 'full development' of the southern half of the island will increase the amount of upland habitat 'taken'

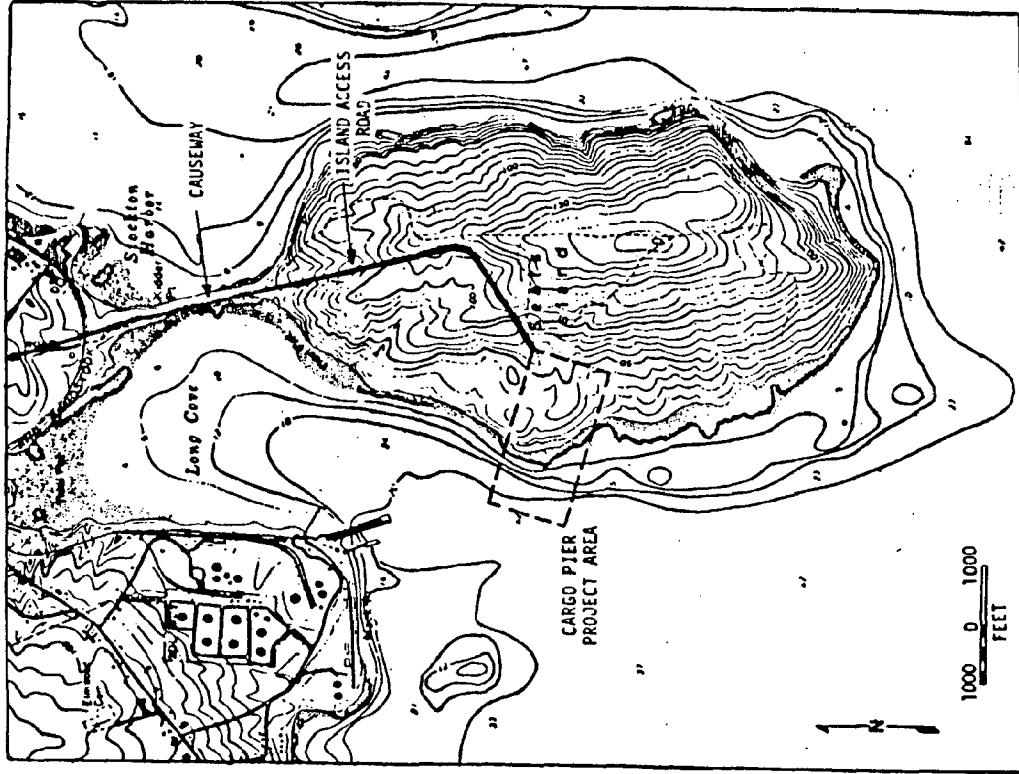
from 4 percent of the island to 23 percent. Since this latter figure is based on a calculation that counts as 'taken' only the land which is actually cleared for construction of buildings and parking lots, the percentage of 'upland habitat' that the development will render unsuitable for wildlife would likely be far higher. If the Corps means to include in the relevant "area" other land on the coast of Maine, its conclusion is more reasonable. Yet we doubt that the Corps can include so wide an area in its calculation. The CEQ's regulations state that "in the case of a site-specific action, significance [of environmental impacts] would usually depend upon the effects in the locale rather than in the world as a whole." 40 C.F.R. § 1508.27(a) (1984) (emphasis added). Here, the nature of the action, and the geographical character of Sears Island, suggest that the appropriate "locale" is Sears Island and its immediate surroundings.

Fifth, the Corps' EA concludes that because the secondary development being considered is "light dry industrial," "there should be no significant air or water quality impacts from this type of industrial operation" (A. 412). This conclusion, however, is not supported or explained, nor does the record indicate why this is so.

As we read the record, the relevant federal agencies' conclusions that the project would have no significant impact

rest not so much on their belief that the industrial park would not affect the environment, as upon their belief that they need not take account of the industrial park's effects. And, as we have indicated, we do not believe that NEPA permits the agencies here to ignore these impacts. See Scientists' Institute for Public Information v. AEC, 481 F.2d 1079, 1087 (D.C. Cir. 1973) (EIS required for overall project where individual parts of project are related logically or geographically); City of Rochester v. U.S. Postal Service, 541 F.2d 967, 972 (2d Cir. 1976) ("To permit noncomprehensive consideration of a project divisible into smaller parts, each of which taken alone does not have a significant impact but which taken as a whole has cumulative significant impact, would provide a clear loophole to NEPA."); Susquehanna Valley Alliance v. Three Mile Island, 619 F.2d 231, 240 (3d Cir. 1980) (same), cert. denied, 449 U.S. 1096 (1981); West Chicago v. U.S. Nuclear Regulatory Commission, 701 F.2d 632 (7th Cir. 1983) (illegal "piecemealing" or "segmentation" allows agency to avoid requirements of the Act); Alpine Lakes Protection Society v. Schlader, 518 F.2d 1089, 1090 (9th Cir. 1975) (per curiam) (such segmentation merits "close scrutiny to prevent the policies of NEPA from being nibbled away"); see generally W. Rodgers, Environmental Law § 7.9, at 787 - 92 (1977) ("NEPA discourages the cramped look that segmentation represents.").

APPENDIX

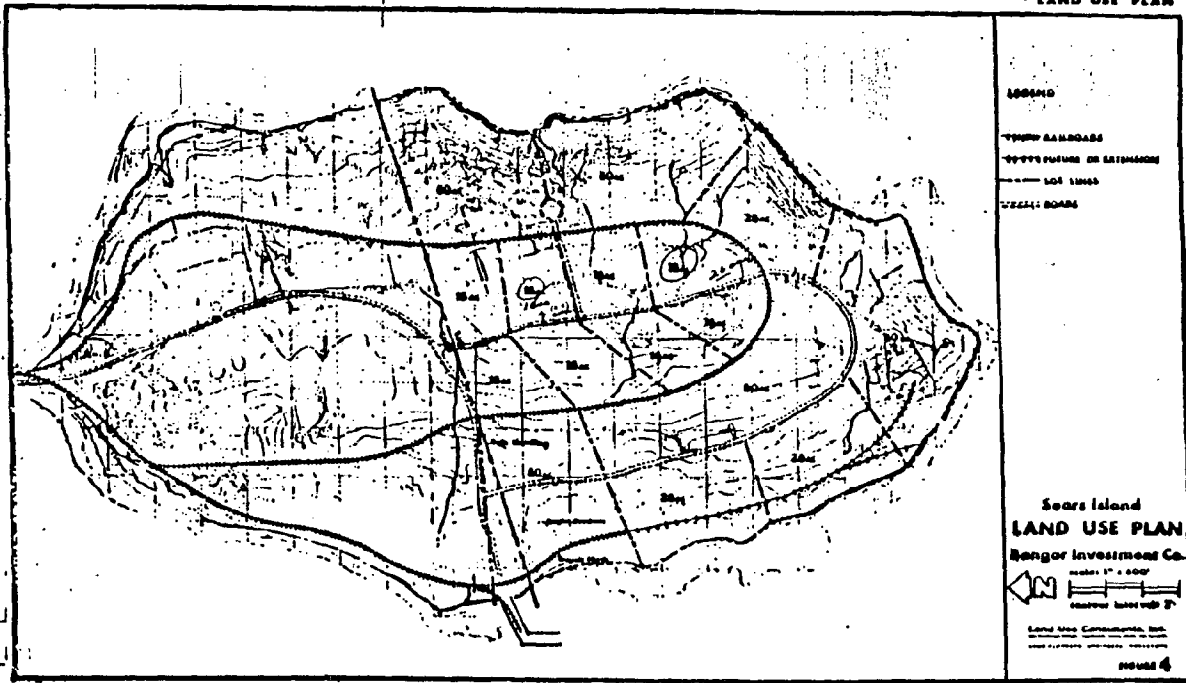


[From Maine DOT, "Environmental Assessment Summary" (August 1983)]

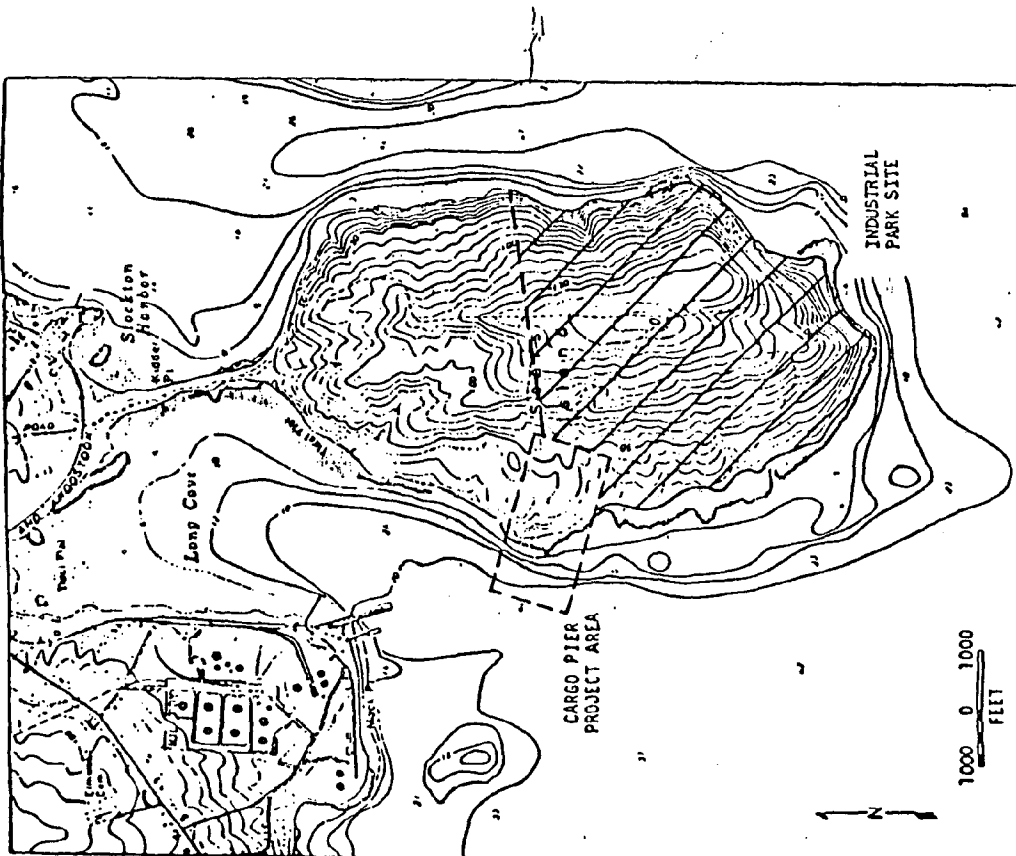
In sum, given the likely secondary effects of the Sears Island project and the other effects previously described, the record in this case cannot support a FONSI, and therefore an EIS must be prepared. We reach this conclusion not because preparation of an EIS is merely a technical requirement which, under NEPA and its implementing regulations, we must here enforce. Rather, this requirement reflects NEPA's underlying purpose in requiring agencies to determine and assess environmental effects in a systematic way, namely, having decisionmakers focus on these effects when they make major decisions. That is to say, the requirement flows not only from the letter, but also from the spirit, of NEPA.

The decision of the district court is vacated and the case remanded for proceedings consistent with this opinion.

[From "Sears Island
Land Use Plan/
Industrial Marketing
Study" (November
1980)]



Adm. Office, U.S. Court - Blanchard Press, Inc., Boston, Mass.



[From "A Municipal Response Plan for the
Industrial Development of Sears Island (June 1983)"]

