NEW HAMPSHIRE COASTAL PROGRAM OCEAN and HARBOR SEGMENT and DRAFT ENVIRONMENTAL IMPACT STATEMENT

COASTAL ZONE
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U.S. Department of Commerce
National Oceanic and
Atmospheric Administration
Office of Coastal Zone Management

February 1981

U.S. National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

UNITED STATES DEPARTMENT OF COMMERCE

DRAFT ENVIRONMENTAL IMPACT STATEMENT

AND THE

PROPOSED NEW HAMPSHIRE COASTAL PROGRAM OCEAN AND HARBOR SEGMENT

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DESIGNATION: Draft Environmental Impact Statement

TITLE: Proposed Federal Approval of the New Hampshire Coastal Program Ocean and Harbor Segment

ABSTRACT: The State of New Hampshire has submitted the Ocean and Harbor Segment of its Coastal Program to the Office of Coastal Zone Management for approval. Approval would allow program administrative grants to be awarded to the state, and would require that federal actions be consistent with the program. This document includes a copy of the program (Part II), which is a comprehensive management program for coastal land and water use activities. It consists of numerous policies on diverse management issues which are administered under existing state laws and is the culmination of several years of program development. The effect of these policies is to condition, restrict or prohibit various uses in parts of the coastal zone while encouraging development and other uses in other parts. The program will improve decision-making processes for determining appropriate coastal land and water uses in light of resource considerations and increase public awareness of coastal resources. It may result in some short-term economic impacts on coastal users but will lead to increased long-term protection of the state's coastal resources and improve the responsiveness of state programs.

Approval and implementation of the program will enhance governance of the state's coastal land and water areas and uses according to the coastal policies and standards contained in existing statutes, authorities and rules. Federal alternatives to program approval include delaying or denying approval, if certain requirements of the Coastal Zone Management Act have not been met. The state could modify parts of the program or withdraw their application for federal approval if either of the above federal alternatives result from circulation of this document.

APPLICANT: State of New Hampshire, Office of State Planning

LEAD AGENCY: U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

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Individuals receiving copies of the Draft Environmental Impact Statement will NOT automatically receive copies of the Final Environmental Impact Statement unless specifically requested, or unless they have commented on the Draft EIS.

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PART I:

OVERVIEW

SUMMARY OF THE NEW HAMPSHIRE COASTAL PROGRAM:

OCEAN AND HARBOR SEGMENT

A coastal program for New Hampshire has been developed based on a series of existing state laws, policies and regulations which provide for effective state management along the Atlantic Ocean portion of the New Hampshire coast. Seventeen state coastal policies provide the framework for state and federal agency actions, with 6 core state regulatory and management programs providing the day-to-day protection and management of coastal resources in these areas.

The purpose of the coastal program is to improve the administration of existing state laws in order to provide for the optimal use of New Hampshire's coastal resources. While many state agencies have been operating within the coast, this program is the first to coordinate activities among agencies. Federal coastal funds will be passed through to state and local agencies to improve their management of coastal resources and development.

The New Hampshire coastal program will be completed in two phases. The first phase, the Ocean and Harbor Segment, covers the Atlantic Ocean, the Hampton Estuary, and the Portsmouth Harbor portion of the New Hampshire coast. Approval of this phase is the subject of this program document and E.I.S. Phase two, completing the management program for the entire coast including all areas under tidal influence, will be developed over the next two years.

The boundaries of the first segment include all coastal waters to the seaward limits of state jurisdiction and all land along the state's Atlantic Ocean shoreline from Seabrook to the Portsmouth/Newington town line, extending inland 1000 feet or to the limits of the Wetlands Board jurisdiction over tidal waters, whichever is farther inland.

The 17 existing state coastal policies, upon which the coastal program relies, cover:

1. Protection of natural coastal resource areas: beaches, sand dunes, rocky shores, tidal wetlands, and marine species habitats;
2. Fisheries management to protect habitats and manage fisheries resources;
3. Protection of water quality and water supply sources;
4. Oil spill prevention and cleanup;
5. Control of erosion due to storms and development adjacent to coastal waters;
6. Flood hazard control to prevent the loss of life and property;
7. Air pollution control;
8. Public access and recreation areas on the coast;
9. Protection of historic and cultural resources;
10. Maintenance and development of ports, harbors, navigable channels, and state lands for water dependent activities such as boating, fishing, and ocean commerce;
11. Management of dredge and fill activities to protect coastal resources and maintain channels;
12. Management of offshore and onshore sand and gravel excavation;
13. Orderly siting of energy facilities;
14. Urban waterfront revitalization;
15. Public investments in sewer treatment facilities, water supply systems, and highways to promote orderly growth and protect resources;
16. Coordination of state activities in the coast; and
17. Marine research and education.

The New Hampshire coastal program relies exclusively on existing state laws, policies and agency regulations. Turn to Chapter 5 for a detailed explanation of state laws and programs in the coast.

A key aspect of the New Hampshire coastal program is coordination of agency actions in the coast. The Office of State Planning has overall responsibility for the implementation of the coastal program. Designated by the Governor as the lead agency, the Office of State Planning receives and distributes coastal program funds and coordinates all local, state and federal involvement in the program. The Office serves as the key contact for federal agencies on coastal issues and will conduct federal consistency reviews. The director of the Office of State Planning is designated, by statute, to serve as the chairman of the Council on Resources and Development. The Council, also by statute, is responsible for coordinating state policies and actions in the coast and resolving agency conflicts where necessary. (See Appendix A)

Local participation in the coastal program is voluntary. Communities may request both technical and financial assistance to address critical coastal management issues at the local level. An advisory committee will provide citizen input in the ongoing implementation of the coastal program. The committee will help set priorities for locally funded projects and provide links between local communities and the state on coastal issues.

CHANGES THE PROGRAM WILL MAKE

As the New Hampshire coastal program is based on existing state laws and regulations, implementation of the authorities of the state program precede federal approval and will continue to be administered as required by state statutes. Federal approval will strengthen and enhance the effectiveness of the authorities by providing funding to support better coordination and enforcement of the laws. The program will:

* integrate state policies, investments, funding and actions in the coast;
* increase enforcement capabilities of existing state programs which protect natural coastal resources; manage activities which affect coastal waters; provide public recreation, access, and water dependent facilities; enhance urban waterfronts; protect historic resources; and promote water dependent activities;
* coordinate state and federal agency actions in the coast and ensure consistency of federal projects with the state coastal program;
* improve technical assistance capabilities of state agencies to provide assistance to local communities in solving coastal problems;
* provide financial assistance to local communities to improve local management of coastal resources and development;
* address priority coastal issues such as dredging, commercial fishing, port operations, and growth management; and
* ensure public information and participation in state coastal management.

THE FEDERAL COASTAL ZONE MANAGEMENT ACT

In response to intense pressure, and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act of 1972 (CZMA) (P.L. 92-583). The Act authorizes a federal grant-in-aid program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) Assistant Administrator for Coastal Zone Management, who heads the Office of Coastal Zone Management (OCZM).

The CZMA was substantively amended on July 26, 1976 (P.L. 94-370) and on October 1, 1980 (P.L. 96-464). The Act and its amendments affirm a national interest in the effective protection and careful development of the coastal zone, by providing assistance and encouragement to coastal states (and U.S. territories) to voluntarily develop and implement management programs for their coastal areas. Financial assistance grants under Sections 305 for program development and 306 for program implementation were authorized by the CZMA to provide coastal states and territories with the means for achieving these objectives.

Broad guidelines and the basic requirements of the CZMA provide the necessary direction to states for developing their coastal management programs. The program development and approval provisions are contained in 15 CFR Part 923, revised and published March 28, 1979, in the Federal Register. In summary, the requirements for program approval are that a state develop a management program that:

1. Identifies and evaluates those coastal resources recognized in the Act that require management or protection by the state or territorial government;

2. Re-examines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

3. Determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. Uses and areas to be subject to management should be based on resource capability and suitability analyses, socio-economic considerations and public preferences;

4. Identifies the inland and seaward areas subject to the management program;

5. Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

6. Includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it.

In arriving at these substantive aspects of the management program, states are obliged to follow an open process which involves providing information to and considering the interests of, the general public, special interest groups, local governments, and regional, state, interstate, and federal agencies.

Section 303 of the CZMA provides guidance of specific national objectives that warrant full consideration during the implementation of approved state coastal management programs.

Section 305 of the CZMA authorizes a maximum of four annual grants to develop a coastal management program. After developing a management program, the state is then eligible for annual grants under Section 306 to implement its management program. If a program has deficiencies which need to be remedied or has not received approval by the time Section 305 program development grants have expired, a state may continue development of a federally approvable coastal management program using entirely state funding. However, new federal funding assistance for program development is no longer authorized by the 1980 CZMA amendments.

Section 306 requires states to devote increasing portions (up to 30 percent) of their grant funds to activities leading to significant improvements in achieving national coastal management objectives. Section 306(i) also authorizes the award of grants for preservation of important natural areas, public access and urban development. Section 306(A) encourages states to inventory coastal resources of national significance and develop standards to protect them.

Section 307 of the Act stipulates that federal agency activities shall be consistent, to the maximum extent practicable, with approved state management programs. Section 307 further provides for mediation by the Secretary of Commerce when a serious disagreement arises between a federal agency and a coastal state with respect to a federal consistency issue.

Section 308 of the CZMA contains provisions for grants and loans to coastal states to enable them to plan for and respond to onshore impacts resulting from coastal energy activities including grants to mitigate the coastal impacts of coal transportation and alternative ocean energy activities. To be eligible for assistance under Section 308, coastal states must be receiving Section 305 or 306 grants, or, in the Secretary's view, be developing a management program consistent with the policies and objectives contained in Section 303 of the CZMA.

Section 309 allows the Secretary to make grants to states to coordinate, study, plan, and implement interstate coastal management programs.

Section 310 allows the Secretary to conduct a program of research, study, and training to support state management programs. The Secretary may also make grants to states to carry out research studies and training required to support their programs.

Section 312 directs OCZM to evaluate the performance of state coastal management programs on a continuing basis.

Section 315 authorizes grants to states to acquire lands for access to beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value, and for the acquisition of islands for preservation, in addition to the estuarine sanctuary program to preserve a representative series of undisturbed estuarine areas for long-term scientific and educational purposes.

CROSS REFERENCE TO PROGRAM REQUIREMENTS (306)

How the New Hampshire Coastal Program Meets the Requirements of the Coastal Zone Management Act:

Requirements	Regulations	New Hampshire Coastal Program
Sec. 306(a), which includes the requirements of Sec. 305:		
305(b)(1): Boundaries	923.21-923.34	Chapter 2
305(b)(2): Uses subject to management	923.11	Chapter 3, Chapter 4, Figure 4-1, Chapter 8, Section F
305(b)(3): Areas of particular concern	923.21-923.23	Chapter 8, Section F
305(b)(4): Means of control	923.41	Chapter 3, Chapter 5
305(b)(5): Guidelines on priorities of uses	923.21	Chapter 3, Policies
305(b)(6): Organizational structure	923.46	Chapter 3, Chapter 5, Page 5-2
305(b)(7): Shorefront planning process	923.24	Chapter 8, Section D
305(b)(8): Energy facility planning process	923.13	Chapter 8, Section C
305(b)(9): Erosion planning process	923.25	Chapter 8, Section E
Sec. 306(c), which includes:		
306(c)(1): Notice; full participation; consistent with Sec. 303	923.3, 923,51 923.55, 923.58	Chapter 7
306(c)(2)(A): Plan coordination	923.56	Chapter 5, Pages 5-2, Chapter 7
306(c)(2)(B): Continuing consultation mechanisms	923.57	Chapter 7, Chapter 8, Section F
306(c)(3): Public hearings	923.58	Chapter 7, Chapter 8, Section F
306(c)(4): Gubernatorial review and approval	923.48	
306(c)(5): Designation of recipient agency	923.47	Chapter 5, Page 5-3
306(c)(6): Organization	923.46	Chapter 3, Chapter 5
306(c)(7): Authorities	923.41	Chapter 3, Chapter 5
306(c)(8): Adequate consideration of national interest	923.52	Chapter 8, Section A
306(c)(9): Areas for preservation/restoration	923.22	Chapter 8, Section F
Sec. 306(d), which includes:		
306(d)(1): Administer regulation, control development; resolve conflicts	923.41	Chapter 3, Policies, Chapter 4, Chapter 5, Page 5-2
306(d)(2): Powers of acquisition, if necessary	923.41	Chapter 5, Governor and Council
Sec. 306(e), which includes:		
306(e)(1): Technique of control	923.42, 923.44	Chapter 3, Policies, Chapter 5, Page 5-1
306(e)(2): Uses of regional benefit	923.12	Chapter 8, Section A
Sec. 307, which includes:		
307(b): Adequate consideration of federal agency views	923.51	Chapter 7, Chapter 8
307(f): Incorporation of air and water quality requirements	923.45	Chapter 3, Policy 3, Policy 7, Chapter 5, Pages 5-7, 5-16

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE ADMINISTRATOR

January 18, 1982

Dear Reviewer:

In accordance with the provisions of Section 102(2)(C) of the National Environmental Policy Act of 1969, we are enclosing for your review and consideration the draft environmental impact statement prepared by the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce, on the proposed New Hampshire Coastal Zone Management Program.

Any written comments or questions you may have should be submitted to the contact person identified below by March 8, 1982. Also, one copy of your comments should be sent to me in Room 5813, U.S. Department of Commerce, Washington, D.C. 20230.

CONTACT PERSON

Kathryn Cousins
Northeast Regional Manager
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235
Telephone: 202/634-4126

Thank you for your cooperation in this matter.

Sincerely,

Joyce Wood

Joyce M. T. Wood
Director
Office of Ecology and Conservation

Enclosures

A PUBLIC HEARING WILL BE HELD

on the New Hampshire Coastal Program Ocean and Harbor Segment and Draft Environmental Impact Statement on:

Tuesday, February 23, 1982, at 7:00 p.m.

Winnacunnet High School (Cafeteria)
Alumni Drive
Hampton, New Hampshire

(Directions: Take Park Avenue off from US1/Lafayette Road to Alumni Drive)

Comments or presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five minutes. No verbatim transcript of the hearing will be prepared, but the hearing staff will record and summarize the comments. All comments received at the hearing will be considered in the preparation of the Final Environmental Impact Statement.

PART II:

DESCRIPTION OF THE NEW HAMPSHIRE COASTAL PROGRAM: OCEAN AND HARBOR SEGMENT

CHAPTER 1

INTRODUCTION

Purpose

This document describes a draft coastal program for the Ocean and Harbor Segment of the New Hampshire coast. Through this document, the state intends to demonstrate that New Hampshire has complied with the federal coastal program approval requirements and has an approvable coastal program for the first phase, the Ocean and Harbor Segment of its coastal program, based on existing state laws, management programs and through improved state ownership and management of Atlantic coastal properties already owned by the State.

New Hampshire's use of the option to pursue federal approval for the Segment recognizes the fundamental adequacy of the state's coastal program in the Atlantic Ocean front, the Hampton Estuary and the Portsmouth Harbor portion of New Hampshire's coastal area.

This document constitutes the Ocean and Harbor Segment program submission to NOAA - OCZM. The second phase, completing the management program for the entire coastline of the state, will be developed over the next two years.

The New Hampshire coastal program has been fashioned from existing state law and, therefore, only decisions of statewide significance are made by state agencies. In the tradition of home rule, most decisions about what can and cannot occur in the coast are now, and will continue to be, made by local governments. Local participation in the program is voluntary. This approach recognizes the importance of local land use and development programs, but does not place additional requirements on those coastal communities choosing to participate in the program.

While many federal, state, and local agencies have been operating within the coast, this program is the first to coordinate activities among agencies. The critical value of the coastal program, as drafted, will be to provide the state with a coordinated program for balancing coastal resource protection and needed development.

Although existing state statutes and regulations address key coastal issues and provide direct state management over coastal resources and activities which could have a direct impact on coastal waters, no comprehensive approach has been taken heretofore to coordinate and integrate state management in the seacoast. Ample state coastal policies and regulations exist, but more effective management is needed.

Through an approved coastal program, the state will have the opportunity and an incentive to coordinate the management functions it now has in the seacoast. At a time when many state and federal programs are being cut back, the New Hampshire coastal program will be in a good position to integrate coastal management programs, reduce fragmentation, increase effective management practices, enhance utilization of state coastal properties, and focus funding on priority issues as described in Chapter 3.

With an approved program, New Hampshire will benefit by receiving federal funds for coastal management and will be able to exert consistency control over federal actions which affect New Hampshire's coast, such as oil and gas development on Georges Bank. This document reflects New Hampshire's interest and commitment to improving existing state and local capabilities to manage its coastal resources through federal coastal management funding.

The Coast

New Hampshire has only 18 miles of Atlantic shoreline and a total of 131 miles of tidal coastline. Most of the Atlantic shoreline is intensely developed and much is state owned. Public access to coastal waters is impressive with 78% of the Atlantic shoreline under public ownership. Furthermore, over 60% of the land within 1,000 feet of the Atlantic shoreline is public or managed by the state (38% privately developed, and the remaining 2% undeveloped). When tidal wetlands are added to this, state ownership or management jumps to 77%.

The New Hampshire coast is composed of three discrete types of areas: the Atlantic seacoast; the Portsmouth Harbor and Piscataqua River; and the tidal rivers and estuaries.

The Atlantic shoreline, with its attractive public beachfronts, rocky shores and harbors, is committed to development which enhances fishing and tourism, including extensive public access, state beaches, parks and piers, hotels/motels concentrated in the sewered Hampton Beach area, and cottages/single family development along the remaining unsewered shoreline. A key feature which limits inland development along the Atlantic coast is the extensive tidal wetland areas bordering Route 1-A. With development prohibited in these areas, significant natural habitat protection and open space areas are provided and the inland boundary for most coastal development is established. Similarly, the state owns or protects all beaches, rocky shores and remaining sand dunes. These natural features combined with state land holdings, ensure continued visual and physical access to Atlantic coastal waters, and act to balance the pressures for development with the public interest in access, resource protection, and a sustained quality environment.

The Portsmouth Harbor and Piscataqua River area provides another type of coastal experience. At the mouth of the Piscataqua River, Portsmouth, once a thriving seaport, is reemerging as a revitalized urban waterfront catering to a mixture of tourism and water dependent industry. State ownership of a commercial fish pier and a port terminal along the city's shoreline ensures that two key water dependent activities will remain a viable part of the Portsmouth waterfront, alongside the small shops, restaurants, and historic sites which characterize the waterfront. Further up the Piscataqua River, land along Newington's shoreline is fully committed to water dependent industries, energy facilities in particular. The channel maintained by the Corps of Engineers provides the state with its only harbor suitable for oceanborne commerce.

The remaining seacoast areas are inland tidal estuaries, dominated by two pristine estuarine systems: the Great Bay estuary and the Hampton-Seabrook estuary. These tidal areas are relatively undeveloped, with the exception of three historic urban waterfronts which are each involved in urban waterfront revitalization efforts: Exeter, Newmarket, and Dover. The undeveloped estuarine areas are protected as significant wildlife and marine species habitats. Establishment of an Estuarine Sanctuary in Great Bay would focus more public awareness on the unique and fragile nature of this estuarine system.

The Ocean and Harbor Segment described in this document will cover all of the Atlantic shoreline, the Piscataqua River up to the Newington Border, and the Hampton-Seabrook estuary.

Coastal Issues and Opportunities

Historically, the state has provided piecemeal legislation and programs to address individual coastal issues, such as public access, tidal wetlands protection, commercial fishing, harbor dredging, and the like. A careful review of existing state laws and regulations reveals that over 60 state statutes and 19 state agencies are involved in the protection of coastal resources, the management of state coastal properties and the regulation of activities which impact on coastal waters. Coastal issues and opportunities in New Hampshire are discussed below.

Coastal Resource Protection: Beginning in 1975, the state initiated a program to protect its wetlands, recognizing their importance and fragility and the pressures to fill and develop these areas. The law covers tidal and freshwater wetlands and estuaries, beaches, and rocky shores. In 1981, the Seabrook sand dunes were added to those resources protected by the Wetlands Board.

Marine species and habitats are protected by three state agencies under several state laws. As commercial and recreational fishing increases, state development and refinement of species management programs become essential. New Hampshire has long been concerned with protection of its state waters and over the years has strengthened its controls over water quality and supply. With population and economic growth in the seacoast, the maintenance of an adequate water supply is an ongoing concern. Intense development and redevelopment in the coast also raise water quality issues.

Public Access and Recreation: New Hampshire has more public access per mile on its Atlantic shoreline than perhaps any other coastal state in the nation. The state has acquired extensive shoreline for state coastal beaches and parks. Tourism is a major contributor to the economy of the seacoast and the state beaches and parks attract out-of-state visitors from Maine and Massachusetts as well as instate tourists. Optimum utilization of state coastal properties, parks and parking expansion, and the provision of bike-ways along state properties are issues which will persist as state beaches and parks become more crowded.

Water Dependent Activities: It is because New Hampshire has such a small coastline that the state has assumed responsibility for providing for certain water dependent activities, such as public recreation and access; commercial fishing piers, boat ramps, and moorings in each harbor; a state port authority terminal on the Piscataqua River channel; and a rational process for the siting of energy facilities. In addition, the state issues all permits for shoreline structures such as piers, docks, seawalls, riprap, etc. to ensure the water dependence of shoreline structures. The state's coastal harbors are extensively utilized for water dependent activities. Maintaining existing channels and ensuring adequate shoreline space for onshore energy facilities, fish piers, marinas, and other water dependent facilities are concerns which will only increase as residential, commercial, and industrial uses compete for a place along the shoreline.

Coastal Impacts: The state has been particularly concerned with protecting coastal waters from such impacts as oil spills, pollution discharges, hazardous waste, and erosion and sedimentation. Using Coastal Energy Impact Program funds, the state initiated an oil spill contingency program. In the 1981 legislative session, the state increased its tax on oil imports to more adequately pay for a state oil spill program. The development and maintenance of a state oil spill program provides a framework for ongoing state involvement in oil spill prevention.

The state's concern with maintaining water quality standards as the state becomes more urbanized has resulted in the adoption of erosion, sedimentation and discharge regulations which will continue to be amended, as necessary. State hazardous waste regulations were adopted in the 1981 legislative session.

Although shoreline erosion and coastal flooding occur in only certain areas, the state has been concerned with protecting against the loss of life and property from storms through non-structural measures such as beach renourishment and through structural measures such as maintenance of seawalls and stone revetments. Since 1972 the state has prohibited new development which might exacerbate flooding in tidal wetlands. Recent state and federal regulations prohibit sewer hookups for new structures built in floodplains or wetlands. Coastal storms and flooding will continue to occur in the seacoast and, in response, the state will pursue alternative measures to protect against the loss of life and property in coastal high hazard areas.

Historic Assets: New Hampshire recognizes the value of its historic resources. In the coast, the historic seaport of Portsmouth is well known for its many historic properties and sites. Other coastal communities also value and protect their historic districts. The state owns and maintains several historic properties in the coast. As the pressure for development and redevelopment in the coast continues, the state and coastal communities will be faced with difficult choices as to which historic properties to preserve and which to allow to be renovated or removed. In the 1981 legislative session the state amended its historic preservation law to more effectively address these issues.

Coastal Development: Although development is an issue on the coast, a few factors are critical. First, development pressures are greater on the Atlantic shoreline than in the estuarine areas. Second, most new development within 1000 feet of the shoreline is single-family residential or small scale commercial, industrial or multi-family construction. In the 2-year period, 1978-79, a total of 190 building permits were issued for structures within 1000 feet of tidal waters in the seacoast. Of these permits, 145 (76%) were for single-family dwellings.

Another important factor affecting development is the limited amount of privately owned undeveloped land on the Atlantic coast; approximately 118 acres within 1000 feet of the Atlantic shoreline, and the largest single parcel is less than 20 acres. There is no undeveloped land larger than a small lot in areas served by public sewers. Any major development would have to involve redevelopment. The state limits development based on minimum lot size standards for individual septic systems and wells.

In addition to protecting coastal resources and adverse impacts on coastal waters, state concern with development in the seacoast relates to major public service investments such as highways, sewage treatment facilities, and water supply systems because they involve state and federal funds and can have a significant impact on statewide development patterns.

Coastal Coordination: While comprehensive coastal legislation has not been forthcoming from the New Hampshire Legislature, the state has recognized the importance of improving interagency coordination. The Council on Resources and Development, established in 1963 as the state's only interagency

consultation body, was granted binding decision making authority over its members in the 1981 legislative session. The Council can now act to integrate state policies and priorities and resolve agency conflicts as they arise in the seacoast.

Past Seacoast Planning Efforts

The idea of coastal management is not new in the state. As early as 1927, the legislature created a commission to study the feasibility of development in Hampton-Seabrook marshes and recommend a remedy for coastal erosion. In 1941, the legislature directed the New Hampshire Planning and Development Commission to undertake a long-range plan for the development of the Great Bay region. In the early fifties, the regional effects of Pease Air Force Base were studied, a Portsmouth Harbor Advisory Committee was established, and the Planning and Development Commission continued its planning for the seacoast area. In the sixties a unified effort between the state, the University of New Hampshire, and residents of the seacoast area was conducted to develop a Seacoast Region Plan. During this time, further studies on the recreational potential of Great Bay were also made.

Beginning in 1971, the state planning office initiated a comprehensive program studying coastal area problems and alternative methods for managing coastal resources. The present program has received support from the federal Coastal Zone Management Act of 1972. This Act provides funds to enable states to develop comprehensive programs to protect, manage, and develop limited coastal resources for the maximum beneficial use of all the state's citizens. Between 1974 and 1981 New Hampshire worked to develop a coastal program acceptable to the Office of Coastal Zone Management. In October of 1980, when federal program development funds were no longer available, the state continued coastal planning efforts. Widespread public awareness and support for coastal management persists, despite failure to pass comprehensive coastal legislation in the 1977, 1979 and 1981 Legislative Sessions. The work of the Governor's Coastal Advisory Committee, appointed in 1979 to draft a coastal program to meet the needs of the state and the seacoast, was particularly instrumental in providing a forum for discussing coastal issues.

Current Approach

Following the defeat of 1981 Legislation (HB 423), the Office of State Planning reviewed concerns expressed about comprehensive coastal legislation and began exploring options with the Federal Office of Coastal Zone Management (OCZM), a component of the National Oceanic and Atmospheric Administration in the Department of Commerce, for developing an approvable coastal program relying on existing state statutes--an approach which would not require additional legislation. Based on a review of state statutes and regulations, the Office of State Planning drafted this coastal program approach, in cooperation with the affected state agencies and OCZM. The program has been widely circulated throughout the state for comments.

The coastal program for the Ocean and Harbor Segment is described in this document as follows:

Chapter 2 - Describes the boundaries for the Ocean and Harbor Segment.

Chapter 3 - Contains 17 existing state coastal policies and the implementation of these policies in the seacoast.

Chapter 4 - Explains how the program affects development activities and contains a list of existing state permits required for various activities in the coast.

Chapter 5 - Describes the key state agencies with management responsibilities in the coast and how program implementation will be coordinated.

Chapter 6 - Explains what the program means to local communities.

Chapter 7 - Describes past and future public participation involvement in the coastal program.

Chapter 8 - Contains a discussion of all the special requirements of the federal Coastal Zone Management Act and how New Hampshire meets these requirements under existing state laws.

Program Completion Process

A public review and comment process is being utilized to ensure that the New Hampshire coastal program reflects the interests of the state in balancing economic development and resource protection.

Affected state agencies have been involved throughout the development of this document. A summary of the draft New Hampshire Coastal Program was distributed to agencies, interested groups and the general public for review. A state public hearing was held on this draft program for the Ocean and Harbor Segment on November 18, 1981. Subsequent to the public hearing, the New Hampshire Coastal Program Document was submitted to the federal Office of Coastal Zone Management.

The Office of Coastal Zone Management has prepared this Draft Environmental Impact Statement (DEIS) for public distribution and will hold a federal public hearing to receive comments from federal agencies and persons interested in the New Hampshire coastal program.

Subsequent to this hearing and following a careful analysis of all comments, a revised document will be reviewed by the Governor. Upon approval by the Governor, the program will be submitted to the federal Office of Coastal Zone Management for publication and distribution as a Final Environmental Impact Statement.

The remaining portion of the New Hampshire coastal zone, the Great Bay and the Piscataqua River from Portsmouth to the General Sullivan Bridge, will be developed over the next two years, as further described in Chapter 8. Full opportunity for public participation will be provided, including a new DEIS and FEIS prior to federal approval.

CHAPTER 2

COASTAL BOUNDARIES: OCEAN AND HARBOR SEGMENT

The boundaries of New Hampshire's coastal program for the Ocean and Harbor Segment include:

- all oceanic waters to the seaward limits of the state's territorial sea (ie., 3 miles) and tidal waters up to the Portsmouth/Newington town line; all submerged lands under such waters; all islands; all intertidal areas; and all directly adjacent freshwater;

- all land along the Atlantic Ocean from the Massachusetts border on the south to the Maine border on the north and the New Hampshire shore of the Piscataqua River from its source at the Atlantic Ocean to the Portsmouth/Newington town line, extending inland from mean high water to either a horizontal distance of 1000' or to the limits of the Wetlands Board's jurisdiction for tidal wetlands, including rivers (except the Piscataqua) to the extent of tidal influence whichever is farther inland; (See map 2-1) and

- land owned or controlled by the federal government is, by law, excluded from the coastal zone, but subject to federal consistency provisions.

The inland boundaries were selected after a five year thorough analysis of alternative boundary options.

Upon a careful review of coastal impact areas and in response to public confusion about earlier boundary approaches which would have extended as far as 45 miles inland, the present boundary approach was selected.

These boundaries extend landward to cover all coastal resource areas, all major coastal issue areas, and all lands which could have a direct and significant impact on coastal waters as a result of their use. Note that maps which show the coastal boundaries in greater detail are on file at the Office of State Planning.

Alternative Boundaries

Earlier proposed boundary description for the state utilized a three zone approach: a) a primary zone where almost any land or water use could have a direct and significant impact on coastal waters; b) a secondary zone where some uses could have an impact on coastal water quality; and c) a tertiary zone where only a few large uses or use changes could have an indirect impact on coastal waters. The coastal area watersheds' boundaries were determined to encompass the largest area within which a use change would have an impact on coastal waters. The tertiary zone boundary was further refined by extending its inland limits to conform to adjacent inland municipal boundaries.

Further detailed analysis was made of those potential areas (including fragile ecosystems and various physical considerations relative to development in these areas) which might have a direct and significant impact upon coastal waters. Based upon this analysis, and relying upon the assumption that "the closer a use is to the coast the greater the impact on coastal waters," it was decided that the area within which activities would need to be regulated should have an inland boundary which would extend to a horizontal

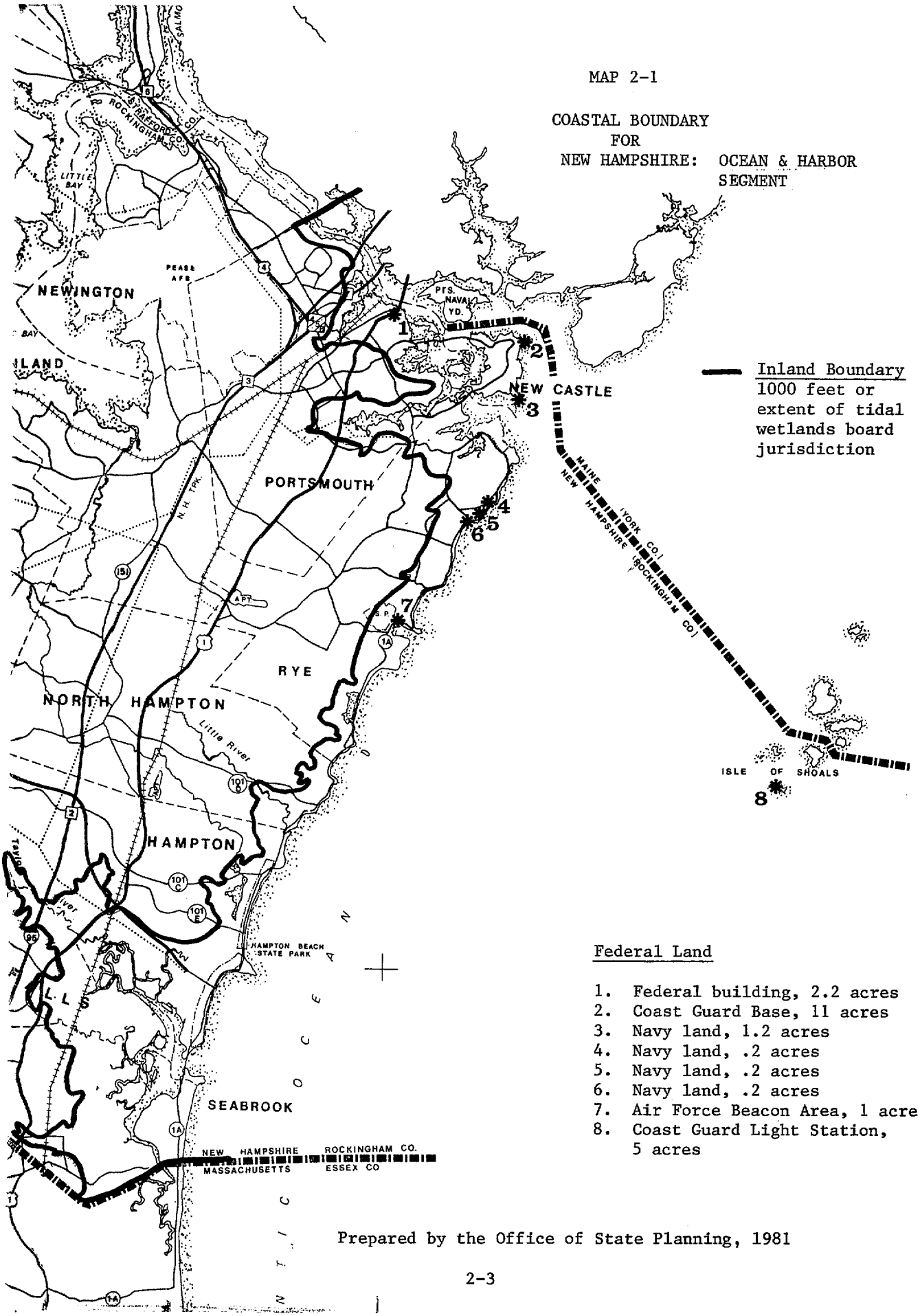
distance inland of 1,000 feet or the limits of Wetlands Board jurisdiction for tidal wetlands, whichever was farther inland, within the geographic area described above.

Interstate Consultation

During development of the coastal program, consultation on the coastal boundary and all other coastal issues has been ongoing among Maine, New Hampshire and Massachusetts as well as the other New England states. In particular, the New England Coastal Zone Task Force, which is affiliated with the New England Governor's Conference, enables the state program managers to discuss and coordinate boundary definitions. The State of Maine's management area is one municipality inland from coastal waters. Massachusetts' management area is specified as 100 feet inland of specific major roads, rail or other visible right-of-way. It has been determined through consultation that the proposed boundary is generally compatible with the Maine and Massachusetts boundaries for management purposes, especially where they interface.

MAP 2-1

COASTAL BOUNDARY
FOR
NEW HAMPSHIRE: OCEAN & HARBOR
SEGMENT



Inland Boundary
1000 feet or extent of tidal wetlands board jurisdiction

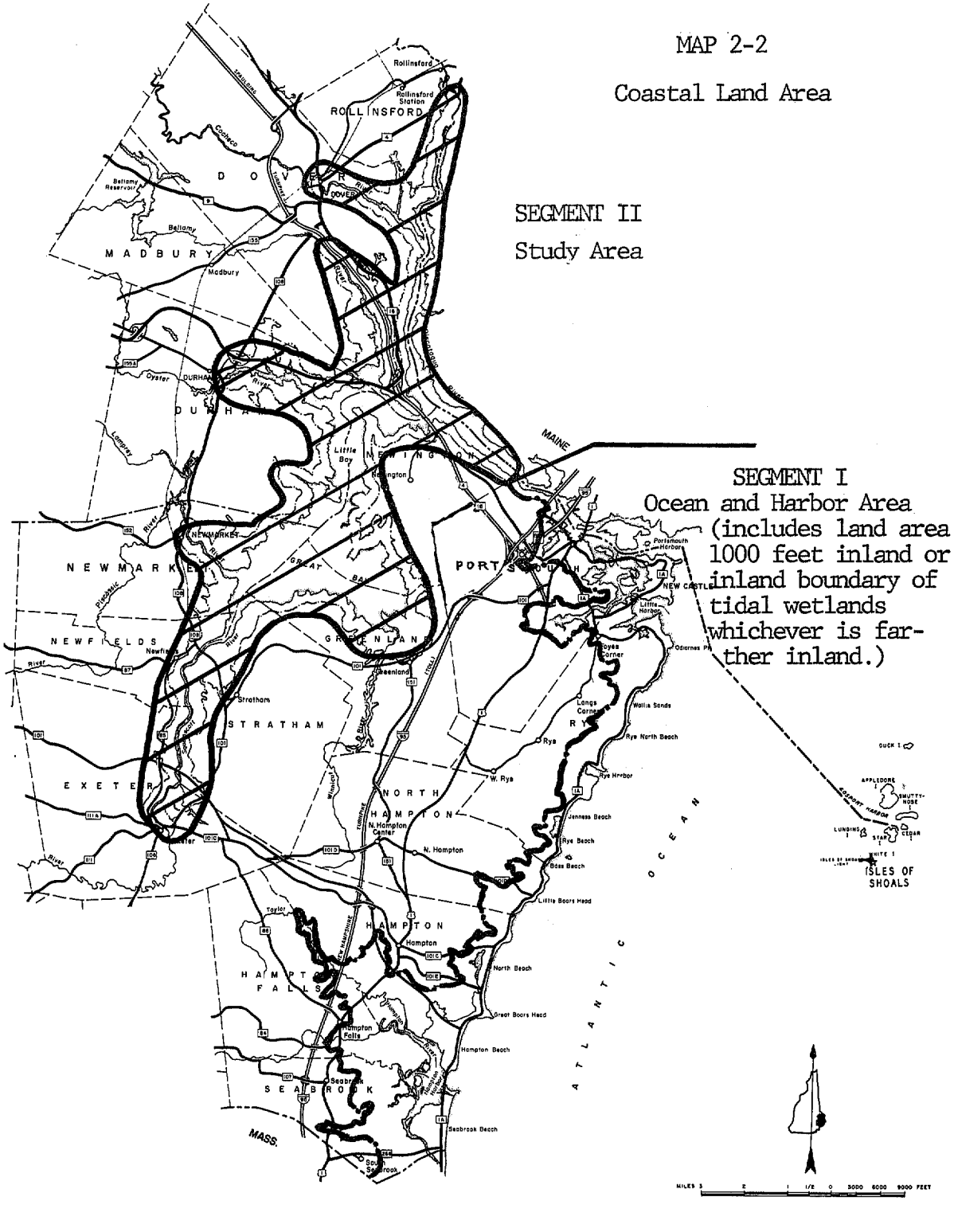
Federal Land

1. Federal building, 2.2 acres
2. Coast Guard Base, 11 acres
3. Navy land, 1.2 acres
4. Navy land, .2 acres
5. Navy land, .2 acres
6. Navy land, .2 acres
7. Air Force Beacon Area, 1 acre
8. Coast Guard Light Station, 5 acres

Prepared by the Office of State Planning, 1981

MAP 2-2

Coastal Land Area



Prepared by the Office of State Planning, 1981

CHAPTER 3

COASTAL POLICIES AND AUTHORITIES

The policies presented in this Chapter constitute the policies of the New Hampshire State Coastal Program. These policies, drawn from existing state law, provide a basis for state agency decisions in the coast. State agencies are responsible for enforcing these policies in accordance with state statutes and regulations adopted thereto.

Together these policies reflect state priorities and provide consistent guidelines for coordinated state agency action in the seacoast, aimed at balancing development with resource protection. State and federal agency actions must be consistent with these policies. The implementation of these policies through existing state regulatory programs is discussed after each policy, along with a focus section which describes how coastal program funds can be used to further these state policy objectives. Also see Part I for a discussion of the CZMA related to funding. An index to the New Hampshire Coastal Program policies is provided below.

Coastal Policy	Subject Area
1	NATURAL RESOURCE AREAS
2	FISHERIES MANAGEMENT
3	WATER QUALITY
4	OIL SPILL PREVENTION
5	EROSION CONTROLS
6	FLOOD HAZARD CONTROLS
7	AIR POLLUTION CONTROLS
8	RECREATION AND PUBLIC ACCESS
9	HISTORIC AND CULTURAL RESOURCES
10	PORTS, HARBORS, AND WATER DEPENDENT USES
11	DREDGING AND DREDGE DISPOSAL
12	OFFSHORE/ONSHORE SAND AND GRAVEL
13	ENERGY FACILITIES SITING
14	URBAN WATERFRONTS
15	PUBLIC INVESTMENTS
16	COASTAL COORDINATION
17	MARINE RESEARCH AND EDUCATION

NATURAL RESOURCE AREAS

Natural resource areas along the coast are extremely vulnerable to man's intrusions. In contrast with other New England states, New Hampshire's coast consists predominantly of tidal wetlands and an estuarine system, behind sand beaches interspersed with rocky outcroppings. These resource areas, when developed or degraded, can no longer maintain their natural functions. As a result, storm protection, flood prevention, and marine species habitats are lost.

Until recently, filling and development of coastal wetland areas occurred unchecked. In some places, sand dunes were flattened and development extended to the dry sands and to the rocky shores. The state now recognizes the value of, and actively protects, tidal wetlands and other coastal resource areas. Continued regulation and monitoring is necessary. Through the state beach and park system, most beaches are protected and remain open to the public.

Policy 1 NATURAL RESOURCE AREAS

Protect and preserve the submerged lands under tidal and fresh waters and wetlands of the state (both saltwater and freshwater) from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for finfish, crustacea, shellfish and wildlife of significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate groundwater levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels, and will otherwise adversely affect the interest of the general public (RSA*483-A:1-b).

In addition to the purposes stated in RSA 483-A:1-b, the following criteria without limitation will be used as appropriate to determine whether to approve or disapprove applications.

1. The type of freshwater wetland area:

   Wetlands can be divided into three general types: bogs, marshes, and swamps. Although each type is an area valued for its environmental qualities, the Wetlands Board has the greatest interest in preserving bogs, then in preserving marshes and then swamps. In addition to the inherent value of each of these wetland types, the priority system is based upon the rarity and long time in formation of the bog and marsh environment.

*RSA - Revised Statutes Annotated

2. The location of the freshwater area;

   a) One value of a wetland area is related to its location with respect to other wetlands and surface waters. In general a wetland which is unique in a vicinity will be more valuable to that area than one which is surrounded by many other similar wetlands.

   b) The size and location of the subject wetland in respect to the entire drainage basin which will signify its importance in the holding of floodwaters and sediments and the removal of contaminants.

3. The Board will preserve the integrity of the saltmarshes because of their proven productivity and past encroachments. No project will be allowed that intrudes by itself into the marsh. Projects considered for approval will be those located at the fringe or edge where previous projects define a line of encroachment and/or vital needs of the applicant can be proven.

4. Impact on plants, fish and wildlife will be considered, as all wetlands serve as a source of food or habitat. The extent of utilization by fish, waterfowl, and wildlife is one indication of the value of the wetland. The Board recognizes that this activity can be seasonal. The Board can also consider areas which supply food and habitat for rare and endangered species.

5. The impact of the proposed project on public commerce and recreation with special attention to those projects in or over public waters where boating is possible.

6. The extent to which a project interferes with the aesthetic interests of the general area.

7. The impact upon abutting owners pursuant to RSA 483-A:4-a, III.

8. The size of a new beach will be limited to a fraction of the frontage of the applicant.

9. In the event that a project seeks to advance an interest of the general public including, but not limited to streambank improvement, safety, roadway improvement, recreational improvements, the Board shall consider such benefits of the project.

10. The impact of proposed projects on quantity or quality of water located in watersheds or waters that are public water supplies.

Criteria for design and construction of shoreline structures include the following:

- all structures shall be constructed so as to ensure safe navigation, to minimize alterations in prevailing currents, to minimize the reduction of water area available for public use, to avoid changes in subsurface conditions that would be deleterious to fish and wildlife habitat, and to avoid changes in water movements that might cause erosion to abutting properties. Structures shall be allowed only for water dependent

purposes such as wharves, docks, piers, breakwaters and boathouses, and not for the transfer of any activities usually associated with land to structures over the waters, i.e. sunbathing, picnicking, etc. (RSA 483-A, Rules and Regulations)

IMPLEMENTATION

New Hampshire's Atlantic Coast is characterized by its unique and significant natural resource areas. The coastal program relies primarily on the state Wetlands Board for protection of beaches, sand dunes, rocky shores, tidal wetlands and marine species habitats. Any activity in or adjacent to coastal waters or within these resource areas is regulated by the Wetlands Board.

BEACHES - New Hampshire has 10.2 miles of Atlantic beachfront. All wet sand beach is owned by the state and open to the public for recreation. All significant dry sand beach is owned by the state (6.4 miles) or local governments, (3.7 miles) and managed as public beach recreation areas. (See Policy 8 for a discussion of state recreation areas). Any activity on beaches are subject to Wetlands Board regulations. Beach renourishment and erosion control is practiced on Hampton Beach. (See Policy 5 for a discussion of erosion control).

SAND DUNES - Three discrete sand dune areas remain in the seacoast: the Hampton Beach State Park dunes are state owned and managed; the Seabrook foredunes are privately owned but regulated by both the state Wetlands Board and local zoning which prohibits erection of any structures on beaches (Zone 4) and designates this area exclusively for recreational use; the Seabrook back dunes are privately owned but also subject to Wetlands Board protection. CZM funds were used to have the back dunes appraised for public purchase.

ROCKY SHORES - Along the Atlantic coast are several segments of rocky shore outcroppings. Most are quite narrow, limited to the intertidal zone and then rising sharply to meet the coast road, Rte 1-A. All rocky shores extending from the submerged lands to mean high tide, including the intertidal zone are state owned and any activity on the rockyshore is subject to the permitting authority of the Wetlands Board. Only two rocky outcroppings are large enough to support any construction activity. Great Boars Head in Hampton is a tombolo that is fully developed to the edge of the rocky shore where it drops off to the sea. Odiorne Point is part of the Odiorne State Park which is maintained in its natural state. Any subsurface disposal system in such areas require a Water Supply and Pollution Control permit.

TIDAL WETLANDS - New Hampshire has approximately 6,600 acres of tidal wetlands in both public and private ownership. Adequate protection of this resource is provided by the state Wetlands Board. As discussed above, any activity in a tidal wetland requires permit approval from the Wetlands Board. Activities include excavation, filling, dredging or construction of any structures. Policy guidelines mandate the "maximum degree of protection and preservation of our natural environment" (RSA 483-A:1-b). The New Hampshire Supreme Court, in the case of Sibson vs. State of New Hampshire, validated the state's right to regulate marshland under police powers in order to control private actions to prevent public harm. The Court also eliminated the taking issue by stating that no compensation was necessary (115 N.H. 124, 336 A.2d, 239 (1975)).

MARINE SPECIES HABITATS - The coastal wetlands and the estuaries of Hampton and Great Bay provide productive habitat for fish, plant and wildlife including waterfowl and shorebirds. The Wetlands Board regulates activities in wetlands to protect the value of these habitats, in accordance with the policy and criteria noted above. Support for habitat and wetlands protection is also provided through the protection of endangered and threatened species administered under the authorities of the Department of Fish and Game.

Key State Authorities

Public Ownership of Coastal Lands (See Figure 3-1 for a list of public lands)

RSA 12-A Department of Resources and Economic Development, Division of Parks

RSA 483-A Wetlands Board Permit

RSA 149:8-a Water Supply and Pollution Control Commission, Dredging and Significant Alteration of Terrain Permit

RSA 212-A Fish and Game Department, Endangered Species Conservation Act

Natural Resource Protection Focus

The coastal program will support the ongoing efforts of the Wetlands Board and seacoast communities to improve their identification, study and protection of natural coastal resource areas such as tidal wetlands, beaches, sand dunes, and rocky shores. Particular attention will be given to improving permitting, enforcement and the review and refinement of the Wetlands Board regulatory program. Coordination with local and state agencies will also be stressed. Unique natural resource areas, such as critical wildlife habitats or prime wetlands, will be considered for preservation or restoration through the program.

FISHERIES MANAGEMENT

The commercial fishing industry in New Hampshire has expanded in recent years, in conjunction with improved fishery support facilities. Recreational fishing is also on the increase, placing future pressures on certain fish species. Development of species management programs by the state and regulation of fishing activities help ensure the continued viability of this industry. The importance of fish habitats is recognized by the state and protected by several state regulatory agencies. The integration of species management plans into a comprehensive living marine resources strategy is needed.

The likelihood of accidental contamination of the water and damage to fishery resources and equipment increases as the industrialization of the port area continues. New Hampshire is actively involved in an oil spill prevention program. Statutes provide for reimbursement of affected parties if accidental contamination should occur.

Policy 2 FISHERIES MANAGEMENT

The fish resources of the state shall be controlled, managed, restored, conserved and regulated (RSA 206:10). Reimbursements shall be made for damage to fish, other aquatic life, or their habitats caused by contaminants discharged into the coastal waters of the state (RSA 211:71). Regulate and promote both recreational and commercial marine fishing in the saltwaters of the state (RSA 211:65).

Habitats and reproduction areas for plants and fish and sources of nutrients for finfish, crustacea, and shellfish shall be protected and preserved to provide for continuation of commerce, recreation, and the aesthetic enjoyment of the public. Any excavation, dredging, filling, or construction within these habitats shall be allowed only after the adverse effects on these areas has been adequately addressed (RSA 483-A:1-b).

Use state lands, including lands held in coastal estuaries, to create and maintain game refuges, to propagate fish, game, fur-bearing animals and marine species, and to conduct research, enforcement, and the administration of fish and game programs. (RSA 212:10)

Cooperate with federal and state agencies to protect, propagate and preserve fish, game, fur-bearing animals and marine species in the state, including habitat protection in coastal estuaries. (RSA 206:23)

Aquaculture operations shall be compatible with existing natural resources and present or potential public uses of the area (RSA 211:62-e).
Surface and tidal waters of the state are classified and managed to maintain and promote fish life, fishing, and the growing or taking of shellfish for human consumption (RSA 149:3)

IMPLEMENTATION

The management of marine fisheries is administered through the laws, regulations and programs of the Fish and Game Department. Certain regulations governing the management of some species, such as the minimum allowable size for lobsters, is contained directly in state legislation and it is the responsibility of the Fish and Game Department to enforce these legislated regulations. A Marine Fisheries Division is established within the Department. Policy and program recommendations for shore fisheries are made to the Fish and Game Commission by the Advisory Committee on Shore Fisheries. The Department owns and operates properties used for fish spawning and access.

Protection of fish, plant and wildlife habitats on submerged lands in wetlands and other habitats is an explicit purpose of the authority of the Wetlands Board, as discussed above under Policy 1. Protection of surface waters for fishing and other activities is the responsibility of the Water Supply and Pollution Control Commission, see Policy 3.

Aquacultural activities are controlled by the Fish and Game Department through a license issued by the director of the Department. The license application requires sufficient information to determine the compatibility of the project with existing natural resources and with present or potential uses of the area. Conditions for the license include requiring safeguards to protect established runs of anadromous fish and to guard against release into state waters of any fish that might be diseased.

Commercial fishing is managed primarily through the Fish and Game Department. The state promotes the commercial fishing industry through ownership of commercial fish piers. See Policy 10 on water dependent uses.

Key State Authorities

RSA 206 Fish and Game Commission
RSA 207:48-54 Fish and Game, Collecting Seaweed
RSA 211 Fish and Game, Fish, Shellfish, Lobster, and Crab Regulations and Licenses
:17b-70 Saltwater Laws
:18 Lobster and Crab License
:62-e Aquaculture Permit
:65-74 Marine Fisheries Division
:75 Marine Species Regulations
RSA 212 Fish and Game, Acquisition of Land, State Fish and Game Refuges and Regulations
RSA 214 Fish and Game, Hunting, Fishing and Trapping Licenses
RSA 483-A Wetlands Board Permit
RSA 149:3 Water Supply and Pollution Control Commission, NPDES Permits

Fisheries Management Focus

The coastal program will continue to support the Fish and Game Department efforts to inventory and develop baseline data on marine species habitats, to protect fish and wildlife habitats, to identify and preserve endangered species, and to develop a comprehensive living marine resources strategy for coastal New Hampshire. The coastal program will provide the interagency coordination needed to further these efforts.

WATER QUALITY

Water quality and quantity have become critical issues in the seacoast region of the state. There is a need to ensure quality of known water sources and to guard against the alteration of aquifer recharge areas.

Erosion and siltation resulting from development once caused significant degredation of water sources. Required construction practices now ensure against this. Increased demand on water supply sources and for sewage disposal facilities have triggered further regulations, both for on-site disposal systems and for treatment facilities by state and federal agencies. Hazardous waste management is a coastal, as well as, statewide issue. Its generation, treatment and disposal in the seacoast can affect coastal resources, most importantly water.

Policy 3 WATER QUALITY

Water supply sources shall be protected and sources of groundwater pollution shall be abated, to satisfy the provisions of state law or applicable federal law, whichever is more stringent (RSA 149:3-a).

Groundwaters of the state shall be potentially usable as water supplies. Protection shall be afforded by issuance of permits to discharge or dispose of any wastes which may significantly and adversely affect the groundwaters of the state (RSA 149:8, III, (a), Rules and Regulations WS 410.02).

Protect surface and groundwater from degradation resulting from any activity which significantly alters the terrain or impedes or alters natural runoff on the border of surface water of the state (RSA 149:8-a).

Control runoff, erosion and sedimentation from coastal activities to protect the quality of coastal waters and tidal wetlands and marine productivity. Approve coastal activities that could directly or cumulatively create an adverse impact on coastal waters only if adequate measures are taken to prevent degradation of water quality and to promote infiltration. Runoff that contains pollutants and contaminants shall be treated or contained to the greatest extent practicable. Activities shall be managed in accordance with RSA 149:3, 149:8 and 149:8-a. Minimize erosion from construction by: retaining, protecting and supplementing natural vegetation where possible; disturbing only those areas needed for construction; applying permanent vegetation after construction; accommodating increased erosion and sedimentation on site; and diverting off-site surface water from or safely through the site (RSA 149).

Protect and preserve submerged lands under tidal and fresh waters to ensure adequate groundwater levels (RSA 483-A:1-b).

Provide for the improvement, enlargement or new installation of systems of sewerage and sewage treatment facilities, as required, to ensure adequate protection of the surface waters of the state (RSA 148:23, 148:23-a).

Assure sustainable on-site sewage disposal, with minimum lot sizes based on soil types, slope, use, distance from surface waters, and other design and construction standards (RSA 149-E).

Drinking water supplies from groundwater aquifers shall be protected by restricting land use and prohibiting all activity detrimental to water quality and quantity within the protective radii based upon the average daily demand on the system as required under RSA 148 and RSA 149-E, WS 1000 regulations.

IMPLEMENTATION

The lead agency in New Hampshire to protect the quality of coastal waters, as well as ground and surface waters of the state, is the Water Supply and Pollution Control Commission. Activities in or adjacent to any state waters also require permit approval of the Wetlands Board. The Department of Resources and Economic Development (DRED), under its Division of Forests and Lands, manages slash lumber so as to conserve the amount and quality of ground water (RSA 224:44-C).

WSPCC is responsible for the protection of sources of water and ice and has authority to require improvements in all public water supplies, to approve construction plans for such systems, to require improvements in or installation of sewage disposal facilities and to approve plans and specifications for such systems (RSA 148). WSPCC is directed to study future domestic water supply requirements, provide long-range planning to provide for needs, promulgate and enforce drinking water standards and approve construction or alteration of public water systems (RSA 148-A). Control over water pollution and disposal of wastes is also a WSPCC function, including the classification and enforcement of surface water classifications. The Commission sets standards of design and construction for sewerage and waste treatment facilities and issues permits for any sewage or wastes discharged into surface or groundwaters (RSA 149). WSPCC protects water quality from dredging, excavation or construction that alters the terrain or impedes or alters natural runoff (149:8-a). Review and approval of subdivision and sewage disposal systems to assure sustainable on-site sewage disposal is also required. WSPCC approves plans for on-site disposal systems with minimum lot size based on use and soil types (RSA 149-E). WSPCC also shall control the design, construction, and operation of wells used for discharged waste material, as required under the EPA underground injection control (UIC) program.

Comprehensive management regulations of the Water Supply and Pollution Control Commission include:

- permits for discharge of any sewage or wastes to surface or ground water. Applies to industrial, municipal, and privately owned facilities and agricultural operations;

- permits for any dredging, excavation, or construction that alters the characteristics of the terrain, impedes runoff, or creates unnatural runoff;

- permit approval of plans for public domestic water supply;

- permit approval of highway construction that transverses watershed of any lake or pond used for storage of public drinking water;

- studies to determine adequate future supplies for domestic water requirements;

- standards for design and construction of sewerage and sewage or waste water treatment facilities;

- permits for any proposal to subdivide land into lots of less than five acres to assure that each lot in the subdivision can sustain on-site sewage disposal; and

- permit approval of plans and specifications for design and construction of on-site sewage disposal systems.

The lead agency for hazardous waste management is the Bureau of Solid Waste. The Bureau reviews and approves/disapproves applications for permits for all hazardous waste facilities. The Bureau is also responsible for implementation of the state's hazardous waste program.

Key State and Federal Authorities

RSA 148:22 WSPCC Power to Require Improvements to Public Water Supply Systems
RSA 148:23 WSPCC Power to Require Improvements in Sewerage Treatment Facilities
RSA 148:23-a WSPCC Powers to Require Installation of Sewerage Disposal Facilities
RSA 148:25 WSPCC Water Supply System Permits
RSA 148-A WSPCC Drinking Water Standards and Public Water Supply System Permits
RSA 148-B:2, IV WSPCC Regulations for Water Supply Systems
RSA 148-B:6 WSPCC Construction or Alteration of Water Supply System
RSA 149:3-a WSPCC NPDES Permits, Joint Federal-State Permit Program
RSA 149:4, V WSPCC Installation of Sewerage Disposal Design Plan Approval Permits
RSA 149:4, IX WSPCC Design Standards and Wastewater Treatment System Permits
RSA 149:4 WSPCC Discharge Permit for Connections to Wastewater Treatment Systems
RSA 149:8, III(a) WSPCC Groundwater Discharge Permits
RSA 149:8-a WSPCC Dredging and Significant Alteration of Terrain Permits
RSA 149-E WSPCC Subdivision Permits
RSA 149-E WSPCC Subsurface Wastewater Disposal Permits
RSA 483-A Wetlands Board Permit
RSA 224:44-a and c Department of Resources and Economic Development, Slash Lumber
RSA 147-A Bureau of Solid Waste, Hazardous Waste Facility Permits
EPA Clean Water Act
EPA Safe Water Drinking Act (424 U.S.C. 300h-3)

(WSPCC - Water Supply and Pollution Control Commission)

(EPA) - Environmental Protection Agency)

Water Quality Focus

The coastal program will provide assistance to the Water Supply and Pollution Control Commission for their ongoing monitoring and permitting of developments which effect water quality in the coast, including assessments of the impacts of development on coastal waters.

OIL SPILL PREVENTION

Recently, New Hampshire's Portsmouth Harbor has seen increased use by water dependent industries, particularly petroleum related firms. Currently, ninety percent of the cargo passing through the port is petroleum-related products. Potential for a spill has increased accordingly. Consequences of a major spill are compounded because of the unusual geography and tidal action of the area.

New Hampshire provides for responsible oil handling procedures and spill prevention; and, when necessary, effective clean-up procedures. To facilitate quick response, responsibility of all parties is being formalized in an oil spill contingency plan.

Policy 4 OIL SPILL PREVENTION

Provide procedures to expedite the cleanup of oil spillage that will ultimately seep into public water of the state, resulting in damage to vegetation, marine, animal, and bird life (RSA 146-A:1).

Assess damages based on the value of fish and other aquatic life or wildlife or their habitat destroyed by contaminants unlawfully discharged into inland and coastal waters of the state (RSA 211:72).

IMPLEMENTATION

The U.S. Coast Guard, under the Clean Water Act, is responsible for supervising the cleanup of any oil spill in coastal waters. It oversees Maine and New Hampshire operations when a spill occurs in Portsmouth harbor.

In New Hampshire, the Water Supply and Pollution Control Commission (WSPCC) has primary responsibility in prevention, management and clean-up of oil spills. WSPCC regulates oil handling facilities and vessels and oil spill cleanup, including terminal operations, transfer procedures, general safety provisions, oil spill reporting, containment and cleanup, and terminal licensing. As of 1979, WSPCC has licensed oil handlers and collects fees which go to a state-wide oil pollution control fund. This fund pays for a state oil spill control program, currently being developed. Using Coastal Energy Impact Funds from the Office of State Planning, WSPCC is developing an oil spill contingency program for Portsmouth Harbor to be incorporated into the statewide plan. Assessment of damages is the responsibility of Fish and Game Department. Disposal of oily debris is the responsibility of the Bureau of Solid Waste.

Key State and Federal Authorities

RSA 146-A Water Supply and Pollution Control Commission Oil Spill Regulations
- Oil Terminal Facilities License
- Waste Oil Collection License
- Oil Spill Contingency Plan

RSA 211:71 to 74 Fish and Game Damage Assessment

RSA 147-L Solid Waste Management Plan

U.S. Coast Guard, Section 311 Clean Water Act

Oil Spill Prevention Focus

The coastal program, through coastal energy impact funds, will continue to support state oil spill and prevention activities. This includes such programs as the state oil spill contingency program, efforts to inventory coastal resources to establish their value for use in assessing damages in case of oil spills, and the state disposal of oily debris project.

EROSION CONTROLS

Significant beach erosion occurs in only a few areas along New Hampshire's coast, and these beaches are periodically renourished in conjunction with the Hampton Harbor channel maintenance dredging projects. Ongoing repair and maintenance of state seawalls, riprap and other shoreline structures is essential for the continued protection of public and private investments along the coast.

With development pressures along the shoreline, strict state erosion and sedimentation control regulations are essential to protect water quality and prevent serious erosion through the alteration of terrain. Since state Route 1-A borders the ocean along most of the coastline, state highway maintenance is an essential part of the erosion control program in the coast.

Policy 5 EROSION CONTROLS

Effective means shall be investigated and devised to prevent erosion on the shores of the coastal waters of the state by waves and currents (RSA 217:1). Purchase, planting and maintenance of trees and shrubs shall be carried out to prevent soil erosion (RSA 229:6).

Corrective projects shall be taken to restore damaged beach areas resulting from coastal erosion on Hampton Beach between Great Boar's Head and Hampton River (RSA 216-B:1).

Protect and preserve the tidal wetlands to prevent adverse effects on stream channels and their ability to handle runoff and to prevent the silting of open water channels (483-A:1-b).

Protect surface and groundwater from degradation resulting from any activity which significantly alters the terrain, affects runoff or causes erosion or sedimentation along surface waters of the state (RSA 149:8-a).

IMPLEMENTATION

Shoreline erosion is a problem of limited scope on New Hampshire's seacoast. Beach and dune erosion is corrected by periodic renourishment from channel dredging. In the harbors, jetties were built by the U.S. Army Corps of Engineers to increase harbor safety.

In Hampton Harbor, the jetties have stopped erosion, in that they have contained the channel that serves the Hampton estuaries. Also, the jetties are generally credited with significant natural accretion to Seabrook Beach just to their south, with sand supplied by the southward littoral drift.

Some of this sand apparently also contributes to irregular periodic shoaling within the channel itself. It is this sand which is dredged and used to renourish Hampton and North Beaches.

Riprap, revetments, bulkheads, and seawalls border shoreline erosion areas to protect property. The Department of Resources and Economic Development is responsible for the operation and management of parking facilities and seawalls from North Beach to the mouth of the Hampton River. The Department of Public Works and Highways has primary responsibility for addressing shoreline erosion problems in connection with Route 1-A on the coast. Any shoreline erosion control structure, such as a bulkhead or seawall, requires a permit from the Wetlands Board and the U.S. Army Corps of Engineers.

Runoff from development activities in coastal areas can cause substantial impact on the marine environment--streambank erosion; degradation of water quality through introduction of suspended solids, nutrients or toxic pollutants; and increased coastal flooding from higher volumes of discharge. The volume of runoff is governed primarily by such characteristics as land slope, soil type, and vegetative cover. As the percentage of impervious surfaces such as roofs, streets, and parking lots increases relative to total land area, the amount of runoff increases proportionately. The Water Supply and Pollution Control Commission (WSPCC) manages erosion and sedimentation through rules, regulations, standards, criteria, procedures, and permits for any earth-moving activity which could alter terrain and cause erosion and sedimentation. WSPCC also reviews plans and proposals, investigates violations, and initiates enforcement procedures.

Key State Authorities

RSA 216 Department of Resources and Economic Development, operation and maintenance of seawalls and parking facilities.

RSA 216-B Hampton Channel and Beach Erosion Control - Authorizes the Department of Public Works and Highways to cooperate with the U.S. Army Corps of Engineers and other agencies of the U.S. Government for the purpose of improving navigation in Hampton Harbor Channel, and restoring damaged beach areas in Hampton resulting from coastal erosion. The Division of Parks is responsible for supervision of the beach replenishment project.

RSA 217 Shore and Beach Preservation and Development - Department of Public Works and Highways is authorized to cooperate with the U.S. Army Corps of Engineers and submits, as part of its annual report to the Governor and Council, a study of shore erosion and prevention methods.

RSA 229:6 Department of Public Works and Highways - Planting to prevent soil erosion in connection with construction, restoration, or maintenance of highways.

RSA 149:8-a WSPCC Dredging and Significant Alteration of Terrain Permit.

RSA 483-A, Wetlands Board Permit.

Erosion Control Focus

The coastal program will support state efforts to prevent erosion and sedimentation caused by development, through the Water Supply and Pollution Control Commission dredging and alteration of terrain permit program. The study of existing erosion control devices to prevent further shoreline erosion, as permitted through the Wetlands Board, will also be eligible for assistance through the coastal program. Likewise, the replacement of any major shoreline erosion control structure, such as a seawall destroyed as a result of an exceptional storm, could be studied using coastal funds.

FLOOD HAZARD CONTROLS

The nature of the coastal areas is such that parts of it are subject to periodic flooding from ocean storms. Most flooding occurs in undeveloped tidal wetland areas where it is absorbed without adverse effects. Much of the land immediately along the shore is owned and managed by the state for recreation, transportation and water dependent uses. These uses involve a minimal amount of development, thus ensuring against the loss of life and property.

Where development has occurred, protection is provided by structural measures maintained by the state; seawalls or riprap; or by the remaining sand dunes system which is under the protection of the Wetlands Board

Policy 6 FLOOD HAZARD CONTROLS

Ensure and maintain the natural ability of tidal and freshwater wetland flood hazard areas to absorb flood water and silt and to act as flood water storage areas and buffers for protecting uplands. Decrease general flood damage, by prohibiting construction of habitable structures in tidal and freshwater wetland areas where such development exacerbates flood conditions. (RSA 483-A:1-b)

Prohibit construction of on-site waste disposal systems within the 50-year frequency flood limit. (RSA 149-E, Rules and Regulations)

Where construction in the floodplain is necessary, state buildings must be designed to resist or overcome the anticipated flood condition in conformance with the minimum standards of the Building Officials and Code Administrators (BOCA) International Basic Building Code and the National Flood Insurance Program, in order to protect against the loss of life and property (RSA 155-A).

Prohibit hookup to public wastewater disposal systems of future construction in coastal wetlands and floodplain areas. (RSA 149, WSPCC)

Utilize the beaches and sand dunes as natural barriers to flooding and promote beach renourishment after storms as non-structural measures for protecting against the loss of life and property (RSA 216-B; RSA 217; RSA 483-A).

Maintain and repair existing state seawalls, riprap and other structural measures along Route 1-A for public safety purposes, to maintain the state highway and recreation areas, and to protect existing development and properties in the area. (State Capital Budget Policy for DRED and DPW&H).

Ensure that construction projects in the coast are in compliance with Executive Order 11988, to avoid adverse impacts associated with the occupancy and modification of floodplains and to avoid support of floodplain development where there

is a practicable alternative. Take actions to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial value served by floodplains. (RSA 4:12 d-e Cooperative Agreement No. EMW-K-0183 between FEMA and OSP 9/80).

IMPLEMENTATION

New Hampshire has 8,200 acres of tidal flood hazard area, defined as the 100 year floodplain, within the coastal high hazard areas (velocity zones). This high hazard area extends along the Atlantic shore from Seabrook to New Castle. Protection against the loss of life and property due to flooding from coastal storms is provided through several state management practices.

The overwhelming majority of land in the flood hazard area on New Hampshire's Atlantic coast is protected from development because it is located in tidal or freshwater wetlands where the state Wetlands Board controls development. Public beaches, recreation areas, and other state properties make up the balance of the Atlantic shoreline, with less than 10 acres of undeveloped but developable land remaining.

Development in New Hampshire's coastal flood hazard and tidal wetland areas occurred prior to the creation of the state Wetland Board. Since its creation, the Wetlands Board has systematically denied requests for fill to increase developable lots within these developed areas. In addition, new development within the sewered areas of Hampton and New Castle, cannot be located in the floodplain, further prohibiting development in flood hazard areas outside tidal wetlands jurisdiction.

Also, Water Supply and Pollution Control Commission prohibits on-site disposal systems within the 50-year floodplain, further restricting redevelopment in developed areas outside the Wetlands Board jurisdiction. Cumulatively, these management practices effectively restrict future development and redevelopment in coastal flood hazard areas.

The state is also involved in protecting against the loss of life and property in developed coastal hazard areas. Route 1-A, a state road, runs along the Atlantic coastline and, in some areas, is located in the floodplain. The state also owns most of the immediate shoreline, which it manages as public beaches, parks, recreation areas, access areas, or fish piers. In order to protect this public investment, the state is involved in beach renourishment after storms as non-structural shoreline protection measure and maintains seawalls, riprap and other structural measures along Route 1-A for public safety purposes to keep the roadway open and to protect public and private investments in the developed areas.

The Office of State Planning is the state coordination agency for the National Flood Insurance Program and reviews all publicly assisted development in the floodplain for compliance with Executive Order 11988. When it is necessary to build state structures in the floodplain, OSP ensures consistency with the design and construction standards of the National Flood Insurance Program (NFIP). OSP also provides assistance to seacoast communities, all of whom are enrolled in the flood insurance program.

The state Civil Defense Office is the lead agency in emergency response and the state hazard mitigation program, which acts to minimize loss of life and property during and after storm disasters. The Office of State Planning also participates in this effort through the floodplain management program.

Key State Authorities

RSA 483-A Wetlands Board Permit

RSA 149:8-a Water Supply and Pollution Control Commission - Dredging and Significant Alteration of Terrain Permit

RSA 149-E Water Supply and Pollution Control Commission, Subsurface Wastewater Disposal Permit

RSA 149-E Water Supply and Pollution Control Commission and EPA Region I Policy on Public Sewer Hookups under Executive Order 11990 and 11988

RSA 12-A Department of Resources and Economic Development Maintenance of State Parks and Seawalls

RSA 216-B Governor and Council - Hampton Harbor Channel and Beach Erosion Control

RSA 217 Public Works and Highways - Shore and Beach Preservation

RSA 229 Public Works and Highways - Maintenance of State Highways and Seawalls

RSA 4:12 d-e Office of State Planning, State Coordination Agency for NFIP (Cooperative Agreement No. EMW-K-0183, FEMA/OSP)

RSA 155-A:1 Construction and Inspection of Public Buildings

RSA 107 Civil Defense Office, Emergency Response and Hazard Mitigation Program (FEMA 6930 DR-AL)

Flood Hazard Control Focus

Because the seacoast is subject to periodic flooding as a result of coastal storms, the coastal program will work with the state floodplain management program to make technical and financial assistance available to the state and seacoast communities for floodplain management to minimize the loss of life and property in these areas. The coastal program will also work with the Civil Defense Office to study evacuation plans for coastal storms, where appropriate.

AIR POLLUTION CONTROLS

New Hampshire's seacoast has no major sources of air pollution. Air quality standards are satisfactorily maintained through state regulations. Two oil fired electrical generating stations, an oil processing facility and several oil storage facilities are located in, or adjacent to, the coast. A coal-fired gasohol plant has been proposed. Pollutants discharged from these or any new facilities will be adequately regulated through the State Implementation Plan and permit system.

Policy 7 AIR POLLUTION CONTROLS

A reasonable degree of purity of the air resources of the state shall be achieved and maintained to promote public health, prevent injury to human, plant and animal life, foster comfort and convenience of the people, and promote the economic and social development of the state and facilitate the enjoyment of natural attractions (RSA 125-C:1).

Establish a statewide permit system for construction and operation of new stationary sources of air pollution to ensure that the ambient air pollution level, established by the New Hampshire State Implementation Plan pursuant to the Clean Air Act, as amended, is not exceeded (RSA 125-C:6, XIV).

IMPLEMENTATION

New Hampshire's air quality is adequately ensured by the Air Resources Agency which regulates the prevention and control of air pollution and issues emission permits. It is the policy of the state through this agency to maintain a reasonable degree of purity and to promote the public health and welfare. This policy is carried out by means of the State Implementation Plan for Air Quality. All development actions must conform to the state and federal permit requirements for the discharge of substances into the air.

Key State Authorities

RSA 125-C Air Quality Permits
EPA Clean Air Act (P.L. 9595)

Air Pollution Control Focus

Where facilities in the seacoast can cause air pollution problems, such as the conversion of the Shiller Power Plant from oil to coal, coastal energy impact funds can be used to study the impacts of such activities on the coastal environment and assess effective pollution control devices to address the problems.

RECREATION & PUBLIC ACCESS

Despite New Hampshire's extremely limited shoreline, public access to the water for recreation is not a significant problem. An extensive and well-run state park system includes numerous seacoast properties: family beaches, fishing piers, historic sites, and recreation areas. Municipally owned properties add to this resource. Balancing the proper and optimal use of these various areas is a continuing concern. Parking facilities, however, pose a major and, in some places, critical restriction to access.

Policy 8 RECREATION & PUBLIC ACCESS

Preserve and develop unusual scenic, scientific, historical and recreational areas and facilities within the state; develop these areas and facilities for public recreational, educational, scientific and related uses; expand facilities within the present system of state parks, historical sites, wayside areas and scientific areas, to thus achieve and derive maximum benefits from increase in the value of such facilities as tourist attractions in relation to the growing needs of our residents. (RSA 216-A)

Provide adequate new recreational facilities in the seacoast by sponsoring and encouraging others to sponsor acquisition of open space land and development of needed facilities. Acquisition of inholding land should continue as necessary and appropriate at any existing state recreation facility. State agencies should develop use management and acquisition plans for the optimal use of state recreation resources. (New Hampshire Outdoor Recreation Plan, SCORP)

Set maximum use and development limits for recreation and resource areas to avoid damage to their inherent qualities. Prepare management and development plans for existing state owned recreation facilities, especially parks. Coordinate planning activities of appropriate federal, state, and local agencies. Maintain and where appropriate enhance public access to coastal waters. (New Hampshire Outdoor Recreation Plan)

Provide for acquisition or retention of a right-of-way to any body of water with potential for recreational use in the event the state acquires or disposes of any land or easement adjacent to such body of water (RSA 258-B).

Upon petition, and determination of need, a highway from any existing highway to any public water shall be laid out as may be required (RSA 235:1).

IMPLEMENTATION

New Hampshire provides extensive public access along its very limited Atlantic coast, with 78% of the immediate shoreline under public ownership. All major

beaches are publicly owned by the state or coastal towns, and the state Department of Resources and Economic Development manages several state coastal parks, fish piers and historic properties. Tourism is a major contributor to the economy of the seacoast, and thus state beaches and parks attract out-of-state visitors including Maine and Massachusetts residents, as well as instate tourists. (See Figure 3-1 for a list of public lands along the Atlantic Coast.)

Public parking along the coast is provided by the Department of Resources and Economic Development and the Department of Public Works and Highways, as well as coastal communities. There are already 54 public rights-of-way from the coastal road 1-A to the Atlantic Ocean along the 18 mile stretch of shorefront. The state Right-of-Way Board is responsible for providing for the acquisition or retention of rights-of-way to any body of water on land that is being acquired or disposed of by any state agency.

The Department of Resources and Economic Development has the authority to acquire coastal properties and land adjacent to existing state parks to protect and/or expand the state park system, as does the Department of Public Works and Highways for public use, roadside parks and highways. The Governor and Council has also exercised its authority to acquire and layout highways to public waters.

Ongoing recreation planning is the responsibility of the Outdoor Recreation Program within the Office of State Planning. All state and federally funded or sponsored recreation activities are reviewed by the Office of State Planning for consistency with the State Outdoor Recreation Plan.

Key State Authorities

Public ownership of coastal lands
Public Access Rights-of-Way to Coastal Waters
RSA 12-A Department of Resources and Economic Development, Division of State Parks
RSA 216:3 Department of Resources and Economic Development, Operation of Beach Parking Facilities
RSA 216-A Department of Resources and Economic Development, Expansion of State Parks System
RSA 4:12 Office of State Planning, State Outdoor Recreation Program
RSA 235 Governor and Council, Layout of Highways to Public Waters
RSA 258-B Right-of-Way Board
RSA 228 and 229 Department of Public Works and Highways, Acquisition Authority

Recreation and Public Access Focus

Because of the demand for recreation and public access on the coast, the coastal program will support the optimal utilization of state parks and beaches through assisting state agencies and seacoast communities in the development of long-range management plans for the public shorefront properties and facilities. Where the boundaries of public lands need to be delineated or where public access rights-of-way to coastal waters requires a title search, actions to ensure and enhance public access and recreation will be eligible for coastal funds. In cases where public recreation or access to the coast was displaced by shoreline energy facilities, coastal energy impact funds can be used to replace lost recreation facilities such as recreational boat docks.

FIGURE

3-1

PUBLIC LANDS
ATLANTIC SHORELINE

Beaches, Parks, Recreation Areas

B 1 Seabrook Back Beach (S-DPWH)
B 2 Beckman's Point Beach Area (S-DPWH)
B 3 Hampton Beach State Park (S-DRED)
B 4 Cottage Beach (L-Hampton)
B 5 Hampton Main Beach (S-DRED)
B 6 Hampton North Beach (S-DRED)
B 7 Stimson Park Beach Area (L-Hampton)
B 8 Plaice Cove Beach Area (L-Hampton)
B 9 Plaice Cove Beach (L-Hampton)
B 10 North Hampton State Beach (Pope's Beach) (S-DRED)
B 11 Little Boar's Head (S-DRED)
B 12 Fox Hill Beach Area (S-DRED)
B 13 Bass Beach and Rye Ledges (S-DRED)
B 14 Sawyer's (Rye) Beach (L-Rye/S-DRED)
B 15 Jenness State Beach (S-DRED)
B 16 Rye Harbor State Park (S-DRED)
B 17 Foss Beach (L-Rye/S-DRED)
B 18 Rye North Beach (S-DRED)
B 19 Concord Point Beach Area (S-DRED)
B 20 Wallis Sands Beach Area (S-DRED)
B 21 Wallis Sands Beach State Park (S-DRED)
B 22 Rocky Beach-Pulpit Rock (S-DRED)
B 23 Odiorne Point State Park (S-DRED)
B 24 Fort Stark Historic Area (S-DRED)
B 25 Great Island Common (L-New Castle)
B 26 Fort Constitution Historic Site (S-DRED)
B 27 Wentworth-Coolidge Mansion Historic Site (S-DRED)
B 28 Pierce's and Four Tree Islands (L-Portsmouth)
B 29 Prescott Park (L-Portsmouth)
B 30 Playground (L-Portsmouth

Fishing, Boating, Commerce

C 1 Seabrook Town Dock (L-Seabrook)
C 2 Public Service Co. Service Dock (S-DPWH)
C 3 Hampton State Fish Pier (S-DRED)
C 4 Rye Harbor State Fish Pier (S-DRED)
C 5 Coast Guard Station, White Island, Rye (F-Coast Guard)
C 6 Coast Guard Station, New Castle (F-Coast Guard)
C 7 New Castle Town Landing (L-New Castle)
C 8 Pierce's Island Boat Ramp (L-Portsmouth)
C 9 Portsmouth State Fish Pier (S-DRED)
C 10 State Port Authority Cargo Terminal (S-Port Authority)

Resource Protction Areas

R 1 Wetlands Area (L-Hampton)
R 2 Rye Harbor Reservation and Wetlands Areas (S-DRED)
R 3 Wetlands Area (L-Rye Conservation Comm.)
R 4 Leach's and Clampit Islands (S-DRED)
R 5 State Urban Forestry Center (S-DRED)

Other Public Lands

P 1 State Parking Lot (S-DRED)
P 2 State Parking Lot (S-DRED)
P 3 Vacant Land (L-New Castle)
P 4 Vacant Land (L-New Castle)
P 5 Cemetery (L-New Castle)
P 6 High School (L-Portsmouth)
P 7 Vacant Land (L-Portsmouth)
P 8 Elementary School (L-Portmouth)

L Local Ownership
S State Ownership
F Federal Ownership
DPWH Department of Public Works and Highways
DRED Department of Resources and Economic Development

FIGURE 3-1

PUBLIC LANDS
ATLANTIC COAST (MAP)

Source: Office of State Planning 8/81

HISTORIC & CULTURAL RESOURCES

As one of the oldest settled areas in the state, the seacoast region has several sites of historical significance. Most historic sites are concentrated in the Portsmouth area. Of particular importance is the Portsmouth Historic District, which encompasses the city's urban waterfront.

There are thirty-four historic properties or districts in the coast which have been placed on the National Register of Historic Places: thirty-one are located in Portsmouth, two in Rye, and one in New Castle. Many historic properties are privately or publicly owned and preserved. The state owns and manages seven historic properties on the coast, under the state Historic Preservation Office.

Policy 9 HISTORIC & CULTURAL RESOURCES

Promote the use and conservation of the historical, archeological, architectural and cultural heritage of the state for the education, inspiration, pleasure and enrichment of its citizens; review any federal or state undertaking which may affect historic resources and require alternative undertakings or measures to mitigate adverse impacts where necessary to ensure the protection and preservation of historic resources. (RSA 227-C:5 and 15;I); Provide for the preservation and interpretation of state historic resources. Insure proper protection, investigation, interpretation and management of state historic resources. (RSA 227-C).

Preserve and develop unusual scenic, scientific, historical and recreational areas and facilities and develop these areas and facilities for public recreation, scientific and related purposes. (RSA 271-A:1, DRED)

The preservation of structures and places of historic and architectural value is hereby declared to be a public purpose. The heritage of the municipality will be safeguarded by (a) preserving a district in the municipality which reflects elements of its cultural, social, economic, political and architectural history; (b) conserving property values in such district; (c) promoting the use of an historic district for the education, pleasure and welfare of the citizens of the municipality. Under this enabling legislation, any city or town shall have the authority to establish historic districts (RSA 31:89).

IMPLEMENTATION

Historic sites or districts are designated through:

1. placement on the National Register of Historic Places;
2. state acquisition of historic properties; and
3. creation of historic districts by local governments.

Currently designated historic areas in the New Hampshire seacoast are provided in Figure 3-2.

The State Historic Preservation Office (HPO) is the key state agency responsible for historic preservation in New Hampshire. The State Historic Preservation Office and the State Historic Preservation Review Board approve nominations to the National Register of Historic Places. The HPO reviews any federal or federally assisted undertaking for consistency with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470). Federal projects reviewed and deemed not to cause significant negative impacts on the historic qualities of national register or national register eligible sites or districts shall be issued a certificate of consistency by the HPO.

In addition, any state licensed, assisted or contracted projects, activities, or programs must be submitted to HPO for determination of the effects of such undertakings on historic resources. HPO reviews these projects to determine their impact on historic resources and may recommend or require alternative undertakings or measures to mitigate adverse effects where necessary, in order to ensure the preservation of historic resources. In conducting this review, HPO refers to the current list of designated historic properties and may also conduct field investigations to identify and protect any historic resource discovered on the site.

The HPO is also responsible for a statewide inventory of historic properties and for the management of the state's historic properties. Both the HPO and the Office of State Planning provide technical assistance to communities on historic preservation.

Of particular importance in the coast is the Portsmouth historic area. The City of Portsmouth protects its coastal historic resources through a Historic District Ordinance, adopted in accordance with RSA 31:89. The District extends along the urbanized Portsmouth harbor waterfront, including much of the city's central business district. Historic port warehouses, now commercial shops and restaurants, and historic residences, many now tourist attractions, dominate this port and harbor waterfront. Thirty-one buildings and areas within this district have been placed on the National Register of Historic Places. Together local, state and federal historic regulations effectively manage private and public development which may affect the historic resources of the coast (See Appendix C for Historic Preservation Regulations).

Key State and Federal Authorities

RSA 227-C Department of Resources and Economic Development - Historic Preservation Office and Permits
RSA 12-A Department of Resources and Economic Development - State Historic Properties
RSA 21:89 Local Historic District Zoning
RSA 4:12 Office of State Planning - Community Planning Assistance
National Historic Preservation Act, Section 101 (b)(4)
National Register of Historic Properties, Section 106
Executive Order 11593, May 13, 1971, Section 1(3) and 2(b)
National Environmental Policy Act (NEPA)

Historic and Cultural Resources Focus

The coastal program will assist the State Historic Preservation Office and seacoast communities in the protection of historic resources, particularly the Portsmouth Historic District. The program will focus attention on the implementation of HPO regulations and operating procedures with other state agencies, under the recently amended state historic preservation law. In addition, the program can be used to help identify funding sources to restore and enhance valuable historic sites and structures.

FIGURE 3-2

SIGNIFICANT HISTORIC DISTRICTS/SITES IN THE COAST

Local Historic Districts

Portsmouth Historic Districts

State Historic Sites and Properties

New Castle - Fort Constitution, Fort Stark
Portsmouth - Wentworth-Coolidge Mansion
Rye - Isles of Shoals, Atlantic Cable and Sunken Forest, Odiorne's Point

National Register (as of January 1, 1980) (NHL) National Historic Landmarks

New Castle - Fort Constitution
Portsmouth -

Samuel Beck House
Benedict House
Jeremiah Hart House
John Hart House
Phoebe Hart House
Hart-Rice House
Richard Jackson House, (NHL)
John Paul Jones House, (NHL)
Gov. John Langdon Mansion, (NHL)
Larkin-Rice House
Macpheadris-Warner House, (NHL)
Moffatt-Ladd House, (NHL)
James Neal House
New Hampshire Bank Building
Nutter-Rymes House
Old North Cemetery
Daniel Pinkham House
Portsmouth Athenaeum
Portsmouth Public Library
George Rogers House
Rundlet-May House
St. John's Church
Shapley Town House
Henry Sherburne House
Simeon P. Smith House
South Parish/South Unitarian Universalist Church
Stawbery Banke Historic District
Wentworth-Coolidge Mansion
Gov. John Wentworth House
Wentworth-Gardner House (NHL)/ Tobias Lear House
Whidden-Ward House

Rye - Isles of Shoals, The Parsons Homestead

PORTS, HARBORS, and WATER DEPENDENT USES

A limited shoreline and a high demand for ocean access by all types of users characterize New Hampshire's coastline. Suitable sites for water dependent industrial activity are limited to the Portsmouth Harbor/Piscataqua River area. There are very few developable sites remaining here. Other water dependent activities, such as marinas and commercial fish piers, are accommodated in all harbors along the coast, with a high percentage of the land in the harbors state owned and managed to encourage water dependent uses. Extensive recreational areas are also provided through the state park system. Balancing the competing demand for water dependent uses along the state's limited shoreline will remain an issue in the seacoast.

Policy 10 PORTS, HARBORS, and WATER DEPENDENT USES

Maintain and develop the ports, harbors and navigable tidal waters of the state in order to foster and stimulate commerce and the shipment of freight through the state's ports; assist shipping and commercial and industrial interests that may depend on the sea for transport of products; encourage the establishment of accommodations for the boat traveller, the area boaters, the pleasure fishermen and others who pass up and down our coastline; and aid in the development of salt water fisheries and associated industries (RSA 271-A:2).

Preserve and regulate navigation in coastal waters, through assigned moorings (RSA 271-A:8).

In order to accommodate the need for commercial fishing, recreational boating, port operations, public recreation, and other water dependent activities, allow only water dependent activities on state properties in Portsmouth Harbor, Rye Harbor and Hampton-Seabrook Harbor, at the State Port Authority Terminal and the State Fish Piers. Maintain state recreation areas along the coast for public recreation and access. (RSA 12-A, RSA 271-A)

Use the three state commercial fish piers along the seacoast for commercial fishing vessels only and for the promotion of commercial fishing (RSA 12-A, DRED, Rule under Chapter RES-C 300 to 302, Bureau of Marine Services).

To preserve the integrity of the surface waters of the state, structures shall be allowed only for the purposes of boating, i.e., wharves, docks, piers, breakwaters, retaining walls and boathouses. Any permitted water dependent shoreline structure shall be constructed so as to ensure safe navigation and minimize alterations in prevailing currents. The use of seasonal docks is the preferred mode of construction. For permanent structures the following priorities have been established as methods of construction:

1. use of pilings
2. crib-type supports or piers

3. special designs, such as caissons, concrete piers, or prefabricated cofferdams.

Unless specifically permitted, no structure shall be built nearer than 10 feet from the abutting property line (RSA 483-A).

IMPLEMENTATION

New Hampshire has only one seaport - the Port of Portsmouth with its State Port Authority Terminal and properties. Private terminals and piers along the Piscataqua River form a distinct waterfront industrial district serving water dependent industries.

There are six navigable harbor channels in the seacoast: Portsmouth Harbor, New Castle-Back Channel, Little Harbor, Sagamore Creek, Rye Harbor and Hampton-Seabrook Harbor. All the channels except Portsmouth harbor, which also serves major water dependent industries, are used exclusively for recreational boating and commercial fishing. Only the Hampton harbor entrance channel and the Portsmouth harbor-Piscataqua River channel are periodically dredged by the U.S. Army Corps of Engineers.

New Hampshire already accommodates extensive water dependent development along its limited shoreline. 80% of the shore in the seacoast harbors is devoted to water dependent activities. Furthermore 60% of the harbor area is owned by the state and dedicated exclusively to water dependent activities:

Harbor Shoreline

60% Public
- 60% Hampton-Seabrook Harbor
- 80% Rye Harbor
- 40% Portsmouth Harbor

80% Developed for Water Dependent Uses
- 84% Hampton-Seabrook Harbor
- 80% Rye Harbor
- 80% Portsmouth Harbor

20% Developed as residential or undevelopable

For the purpose of the state coastal program, a water dependent use is an activity or facility which requires direct access to or location in, coastal waters. Water dependent uses include: marinas; commercial fishing facilities; recreational boating facilities; fish processing plants; waterfront port and dock facilities; shipyards; water based recreation; navigational aids; basins and channels; industrial uses dependent upon water borne transportation or requiring large volumes of cooling or process water, which cannot reasonably be located or operated at an inland site; and uses which provide general public access to coastal waters. Water related facilities which benefit from their proximity to coastal waters due to the nature of their operation or function are also important coastal uses. Such facilities include beach and yacht clubs; boat rentals and sales; restaurants, motels, automobile parking when necessary to a water related uses; coastal resorts and other commercial activities serving coastal recreation or marine commerce.

Under the coastal program priority is given to water dependent activities through existing facilities and state regulations. The state has extensive land holdings along the Atlantic coast. Activities on these properties are strictly controlled by state agencies. Primary uses of these properties include recreation and public access, commercial fishing and recreational boating, research and protection of resources, and port operations.

The State Port Authority is the lead agency in port operations and development. A 12 acre State Port Authority Terminal in Portsmouth is dedicated exclusively to promoting commercial shipping and other port and water dependent activities. The Port Authority also regulates port captains, pilots, harbor masters, vessel traffic, coastal navigational safety, and issues permits for boat moorings. The Port Authority's responsibility covers all navigable tidal waters.

See Policy 11 for a discussion of dredging and dredge disposal.

The State Department of Resources and Economic Development (DRED) owns and operates three commercial fish piers and boat launch ramps, one in each seacoast harbor, for the purpose of promoting commercial fishing. Outside the harbors, the state owns extensive shoreline access, beaches, parks and recreation areas which further ensure the accommodation of water dependent activities on the New Hampshire coast. DRED manages the state parks and beaches for recreational use and public access to coastal waters.

The Wetlands Board allows only water dependent structures along the shoreline. As indicated in the policy statement above, to protect the surface water of the state, only structures serving boating needs are permitted i.e. wharves, docks, piers and breakwaters. The City of Portsmouth also zones for waterfront business and for industry on the Portsmouth Channel.

Key State and Federal Authorities

Public ownership of coastal land
RSA 12-A, Department of Resources and Economic Development - Division of State Parks and Bureau of Marine Services
RSA 271-A, Port Authority Mooring Permits and Management of Terminal
RSA 483-A, Wetlands Board Permits for shoreline structures
U.S. Army Corps of Engineers, Section 404 Permits, Clean Water Act and Section 10 Permits, Rivers and Harbors Act of 1899

Ports, Harbors and Water Dependent Uses Focus

The coastal program will provide assistance to state agencies which provide water dependent facilities, including plans for port and harbor facilities to meet future demand for port facilities, recreational boating, and state commercial fish pier facilities. Coastal funds will also be available for state and local long-range planning for water dependent facilities along the shoreline. Port marketing and long-range planning for the best utilization of state port facilities and lands will be encouraged. The State Wetlands Board permit program for shoreline structures will also be eligible for funding, as will state dredge and dredge disposal permitting and planning for appropriate disposal areas. Coastal energy impact funds can be used to plan for the onshore impacts of offshore oil and gas development and other coastal energy facilities.

DREDGING & DREDGE DISPOSAL

State and federal dredging operations are largely limited to periodic harbor channel maintenance projects. Shoaling in navigable channels occurs in all harbors. Dredging is an expensive and environmentally sensitive issue. Proper management of dredging activities and disposal of spoils is a continuing concern, as are sources of funding for maintenance dredging of channels.

Policy 11 DREDGING & DREDGE DISPOSAL

Any dredging and filling in coastal and tidal waters shall be permitted only if it will not adversely affect the value of such areas as regulated in RSA 483-A (RSA 382-A:1-b).

Projects shall be undertaken to improve navigation in the entrance to Hampton Harbor and the back channels of Portsmouth Harbor (RSAs 216-B and 216-C).

Maintain and develop the ports, harbors and navigable tidal rivers of the state. (RSA 271-A).

IMPLEMENTATION

The state Wetlands Board has extensive permit authority over any filling, dredging, excavation and construction activities in the waters and wetlands of the state. Permits are conditional to minimize the impact of environmentally sensitive areas, as required in Policy 1.

The Water Supply and Pollution Control Commission also issues joint permits with the Wetlands Board for dredging activities in coastal waters in order to protect water quality. See Policy 3.

The state Port Authority, the Department of Resources and Economic Development and the Department of Public Works and Highways are jointly responsible for working with the Corps of Engineers on harbor channel maintenance projects. All funding authorization for state harbor channel dredging is subject to state legislative action and Governor and Council approval.

The state Port Authority also works with the Corps of Engineers on redesignating offshore dredge disposal areas and in coordinating onshore disposal sites for private port industry dredge and fill projects.

Maintenance dredging of the navigable channels to ensure access for fishing, boating and oceanborne commerce is primarily a financial concern. In Hampton Harbor, sand which accumulates in the channel has been dredged, as necessary, and used for beach renourishment. In Portsmouth harbor, dredge material has been disposed on upland sites. The Office of State Planning is completing a dredge management project for the seacoast which will identify land side disposal options.

Key State and Federal Authorities

RSA 149:8-a WSPCC Dredging and Signficant Alteration of Terrain Permit

RSA 483-A Wetlands Board Permit

RSA 271 Dumping in harbors prohibited

RSA 271-A Port Authority - Regulates vessel traffic and coastal navigational safety, issues mooring permits.

RSA 216-B Hampton Harbor Channel jointly maintained by State and Corps of Engineers

RSA 216-C Back Channel of Portsmouth dredged by Corps (as was Rye Harbor, Sagamore Creek, Little Harbor, Hampton Harbor, and Portsmouth Harbor)

U.S. Army Corps of Engineers Section 404 Permits, Clean Water Act and Section 10 Permits, Rivers and Harbors Act 1899.

Dredging and Dredge Disposal Focus

The coastal program will continue to support state efforts to determine appropriate areas for the disposal of dredge materials, as a result of channel dredging and the development of harbor facilities. The coastal program will work with state and federal agencies to coordinate and expedite the permit process, while also addressing environmental concerns.

OFFSHORE/ONSHORE SAND & GRAVEL

No sand and gravel mining operations are being conducted at this time in the New Hampshire coast. Offshore deposits, where identified, are not economically feasible to excavate. There are no identified deposits onshore in the coast. However, the state recognizes that any offshore mining operations could disrupt beach renourishment cycles and fish habitats, causing significant environmental impacts. Elsewhere, onshore sites are often elements of an aquifer recharge system. Should sand and gravel mining become economically feasible in the coast, such operations would be adequately regulated under existing state statutes.

Policy 12 OFFSHORE/ONSHORE SAND & GRAVEL

Any excavation, fill, or removal from the submerged lands under tidal and fresh waters of the state shall be carried out so as to protect and preserve such submerged lands from despoliation and so as not to adversely affect the value of such areas as regulated under RSA 483-A. Any onshore sand and gravel excavation must include reasonable operating procedures and must meet minimum standards for restoration. Onshore sand and gravel projects are prohibited when within 50 feet of a disapproving abutter, when the issuance of a permit would be unduly hazardous or injurious to the public welfare, where the excavation would substantially damage a known aquifer, or where other required state permits have not first been issued (RSA 155-E).

IMPLEMENTATION

Any excavation involving the removal of sand and gravel from submerged lands (below mean high tide) is subject to a state Wetlands Board permit. The removal of onshore sand and gravel, lying in or adjacent to any waters of the state, also comes under the jurisdiction of the Wetlands Board. In addition, commercial excavations of earth from onshore areas must receive a permit from the local town, city or county. Said permit sets the standards for operation of sand and gravel removal as to aquifer protection and restoration requirements.

The Water Supply and Pollution Control Commission, to protect the quality of surface and ground water, reviews and accepts, where sufficient, local excavation permit applications under RSA 155-E as meeting the state RSA 149:8-a Alteration of Terrain permit requirements. The state provides a joint application procedure under RSA 155-E, RSA 149:8-a and RSA 483-A. Should an excavation project be proposed in the coast, coastal funds could be used to assess the impact of such proposed activities on coastal resources.

Key State Authorities

RSA 483-A Wetlands Board Dredge and Fill Permit

RSA 149:8-a WSPCC, Dredging and Significant Alteration of Terrain Permit

RSA 155-E Local Regulation of Excavation

ENERGY FACILITIES SITING

In response to current and projected energy demands, an ever-increasing number of energy related industries are choosing to locate in New Hampshire's coastal region. Already, several oil terminals, a refinery, an LPG plant and three electrical facilities are located along the Piscataqua River. A gasohol plant is proposed for that area and a nuclear facility is under construction at the southern end of the coast. The potential impacts of these facilities are extensive: land use concerns; adverse impacts on the marine environment; water and air quality degradation; changes in fish habitats and activity; and ocean transport questions. New Hampshire addresses this complex situation through two site evaluation committees which bring together all concerned parties.

Policy 13 ENERGY FACILITIES SITING

The siting of energy facilities has a significant impact on the welfare of the population, the location of industry and economic growth of the state, and the use of natural resources and environment of the state; the public interest requires that it is essential to maintain a balance between the environment and the need for new energy facilities. The construction and operation of energy facilities shall be treated as a significant aspect of land use planning in which all environmental, economic and technical issues are resolved in an integrated fashion. In siting energy facilities, the state has a broad responsibility to provide both economic and environmental protection for its coastal and estuarine waters and the adjoining land areas.

To ensure the public interest in the siting of energy facilities, the state shall provide a counsel for the public to represent the public and its interest in protecting the quality of the environment and in the assurance of an adequate supply of energy.

In considering applications for permits, the state must consider available alternatives and the environmental impact of the site, and must find that the proposed site and facility will not unduly interfere with the orderly development of the region and will not have an unreasonably adverse impact on aesthetics, historic sites, coastal and estuarine waters, air and water quality, the natural environment and the public health and safety; and the state shall fully review and consider all environmental values and other relevant factors bearing on whether the objectives of RSA 162-F and RSA 162-H would be best served by the issuance of the permit. (RSA 162-F:1, RSA 162-H:1)

New Hampshire shall accommodate the exploration, development and production of Outer Continental Shelf (OCS) oil and gas resources while minimizing the adverse effects of these activities on the coastal and marine environment. Of particular concern will be adverse impacts on biological resources, water quality and other uses of the marine environment including fishing and ocean transportation. (OSP Policy)

IMPLEMENTATION

All energy facilities are regulated by the state through two energy facility siting committees, the Bulk Power Supply Facility Site Evaluation Committee and the Energy Facility Site Evaluation Committee. For a description of how these committees function see Chapter 8, C. Energy Facilities Planning Process.

Concerning offshore oil and gas development, New Hampshire is affected by OCS oil and gas activities occurring on Georges Bank as regulated by the Department of the Interior and the Environmental Protection Agency. The New Hampshire Office of State Planning is responsible for reviewing, under federal consistency procedures, OCS oil and gas activities to ensure that adequate safeguards of fishery and other resources are maintained. OSP serves as the review agency for New Hampshire on OCS issues and regularly advises the Governor's Office on OCS policy.

Key State and Federal Authorities

RSA 371, Public Utilities Commission

RSA 162-F, Energy Facilities Siting Permit

RSA 162-H, Energy Facilities Siting Permit

RSA 4:12-d, Office of State Planning - Governor appointed agency to OCS Policy Advisory Board.

Clean Water Act, NPDES Permits

OCS Lands Act Amendments of 1978

Section 307, Coastal Zone Management Act of 1972, as amended.

Energy Facilities Siting Focus

The coastal program will coordinate with the coastal energy impact program to provide technical assistance and funds for special studies to meet New Hampshire's energy needs, through the development of energy resources in the coast, consistent with the coastal management program. Coastal funds can be used by state agencies and affected seacoast communities to assess the suitability of sites for energy facilities, and manage their impacts in a planned and environmentally responsible manner.

URBAN WATERFRONTS

Revitalization of urban areas is a primary objective of several federal and state programs. The City of Portsmouth is the only seacoast community with an urban waterfront area. It has conducted extensive revitalization work, including improved visual and physical access to the water; reuse of abandoned buildings; and revitalization of the urban center, resulting in a more concentrated development pattern and better utilization of resources.

Policy 14 URBAN WATERFRONTS

In distributing federal grants and aid programs under the authorities of the Office of State Planning, the following policies shall apply: (OSP Policy, Governor's Growth Report and House Concurrent Resolution #7).

- Support the economic viability of the state's existing downtown areas.

- Promote concentrated, energy efficient land development patterns in developed areas. Revitalize existing centers, including historic buildings and areas. In order to assist in revitalization and reuse of existing centers, give priority for state and federal expenditures for land and facilities in such centers.

- Promote intensive development and redevelopment where there are existing water and sewer connections.

- Maximize use of state capital investment to revitalize deteriorated urban areas, particularly public and private investments in housing, utilities, institutions, commercial centers and industrial facilities. Coordinate and complement local and federal program which stimulate private investment.

- Preserve and strengthen existing concentrations of retail and service activities. Encourage restoration and reuse of abandoned or underutilized industrial and commercial structures.

Deteriorated urban areas should be revitalized. State capital investment should make maximum use of existing public and private investments in housing, utilities, institutions, commercial centers and industrial facilities and should be coordinated with and complement local and federal programs which stimulate private investment (House Concurrent Resolution #7).

Local, county, and state governments should plan for sound diversified economic development which will produce needed tax revenues and help distribute the tax burden. Existing concentrations of retail and service activities should be preserved and strengthened. Restoration and reuse of abandoned or underutilized industrial and commercial structures should be encouraged (House Concurrent Resolution #7).

IMPLEMENTATION

Portsmouth is the only urban waterfront community in the coast and is actively involved in urban waterfront revitalization projects. Portsmouth has received financial and technical assistance from the government for waterfront revitalization including an Urban Waterfront Grant from the Coastal Zone Management Program. The state promotes urban revitalization through the Office of State Planning policies, programs, funding for projects, and A-95 review of community development and other federal grants.

Key State Authorities

RSA 4:12-d Office of State Planning Technical and Financial Assistance Programs: Economic Development; Coastal Zone Management/CEIP; CD grants.

Urban Waterfronts Focus

The Portsmouth urban waterfront is a valuable asset to the New Hampshire seacoast. The coastal program has, in the past, funded studies of specific sites which contributed to waterfront revitalization. The program will continue to make assistance available to the City of Portsmouth for urban waterfront revitalization projects to promote the long-term viability of this historic urban waterfront area.

PUBLIC INVESTMENTS

Public investments have far-reaching effects on development and the protection of resources in the coast. The presence or absence of central water and sewer facilities and highways influence the location and intensity of future development. Federal and state investment policies, which recognize the need to protect coastal wetlands and minimize the loss of life and property due to coastal storms and flooding, are essential for the long-term economic and environmental viability of the seacoast. State Route 1-A, for example, provides essential arterial access along the coast. Its expansion potential is limited, however, due to its proximity to the ocean and tidal wetlands.

Policy 15 PUBLIC INVESTMENTS

Wastewater Systems

Sewage treatment facilities shall not be overloaded. State certification of capacity in pipes and the plant is required before any public or private hookup to an existing system is allowed. (RSA 149-E, W.S. 222.16)

Private sewage treatment facilities discharging to surface waters are generally not allowed. Privately developed domestic wastewater treatment facilities can be built if the municipality agrees to assume ownership and operation of the facility (WSPCC Policy, RSA 149, RSA 149-E).

Federal and state funded wastewater treatment facilities shall not be used to foster or to serve new or future development in coastal wetlands and floodplains. Sewer design and construction approvals shall be issued in conformance with Executive Order 11988 and Executive Order 11990. Replacement or expansion of sewer lines and wastewater treatment facilities shall be allowed solely to solve pollution abatement problems or to serve existing areas which are two-thirds developed. Federal or state funds shall not be used to extend sewer lines into undeveloped areas. (RSA 149:4 IX, RSA 149-B:1)

Subsurface Disposal Systems

As a condition of subdivision or building on any parcel of land, state approval for any subsurface on-site disposal system is required. In issuing permits, the following policies apply:

- Prohibit any new septic system in the 50-year floodplain. (RSA 149-E)
- Prohibit any new septic system less than 75 feet from any surface water.
- Assure to the greatest extent possible that each lot in a subdivision can sustain on-site sewage disposal indefinitely, unless municipal sewerage is imminent, to maintain the same intensity of development, and so that the purpose of RSA 149-E (protect water quality) can be maintained. (W.S. 1004.A, WS1007.03 under RSA 149-E).

- Restrict or condition permits in subdivisions and individual sewage disposal systems in the seacoast using minimum lot sizes based on soil, slope, use, ledge, natural resources, erosion, location, distance from coastal waters and adjacent property lines, minimum of 20,000 square feet of disposal area, maximum of 2000 gallons per acre per day with best soil conditions, maximum septic tank system of 10,000 gallons per day on at least five acres. (RSA 149-E, Criteria)

- Where no public water and sewer system exists, major developments must have sufficient land area to accommodate on-site disposal systems. (Under RSA 149-E, Criteria: 25 room motel requires 3-6 acres; 50 room motel requires 6-12 acres; 100 room motel requires 12-24 acres)

Water Supply Systems

Any public water supply system or enlargement of an existing water supply system requires an approval permit from the WSPCC. (RSA 148:25) Any new construction, addition or alteration involving the source, treatment, distribution or storage of water in any public water system requires an approval permit from the Commission. Rules and regulations governing construction or alterations of public water systems must ensure the protection of the public health and adequate sources of water supply (RSA 148-B:6). Any community or non-community water supply system which has at least 15 service connection or regularly serves an average of at least 25 individuals daily at least 60 days out of the year, is a public water supply system and requires a state permit (RSA 148:25, RSA 148-B:2, VI and B:6, and RSA 148:24a, regulation 102.9).

Regulate water supply systems to ensure adequate sources of water supply. Where water supply is inadequate, improvement or expansion of the water supply system may be required or a moratorium may be placed on additional hookups to the system. Any municipalities required by the state to alter or enlarge their water system may issue bonds or notes in accordance with RSA 33:5-a. State funds shall not be used to construct public water supply systems. (148-B:6, RSA 148:22, RSA 33:5-a and WSPCC Policy).

Where a proposed subdivision will be served by a public water system, water supply approval must be obtained prior to final approval of the subdivision (RSA 149-E, Criteria).

Design and treatment of water distribution systems for all public water supplies shall be in accordance with the practices and standards set forth in the current edition, as amended from time to time, of "Recommended Standards for Water Works," committee report of the Great Lakes - Upper Mississippi River Board of State Sanitary Engineers and published by Health Education Service, P.O. Box 7283, Albany, New York, 12224. All public water supply systems must also meet the design criteria established by WSPCC under RSA 148. (RSA, Ws 600-699, 900-999 and Ws 00221.10).

Water and Sewer

Concentrate intensive development and redevelopment in areas served by existing water and sewer facilities. Prohibit the use of federal or state funds to extend public sewers into undeveloped areas, except where extension of such

services is required to handle existing pollution problems. Encourage less intensive development in areas served by individual on-site sewage disposal systems on minimum lot sizes for single family from 20,000 square feet to 57,000 square feet depending on soil, slope and other factors. (RSA 148, 149, 149-E).

Highways

No public highway, access road, or private way shall be constructed so as to traverse any watershed tributary to a lake, pond, or reservoir used for the storage of public drinking water without first obtaining the approval of the Water Supply and Pollution Control Commission (RSA 148:25-a Highway Construction).

Any proposed state highway activity within the jurisdiction of the Wetlands Board shall require a wetlands permit. Public works projects which will have a minimal impact are defined as: drainage outlets, small bridges and culverts for stream or wetland crossing and shoulder widening. Both minor and major projects must be undertaken in accordance with the rules and regulations adopted under RSA 483-A so as not to impede water flow, or cause flooding or encroach upon wetlands. (RSA 483-A, Rules and Regulations).

Route 1-A has one project scheduled in the State Highway Department's 5 Year Construction Program i.e. a bicycle lane in accordance with the Shared Roadway Bike Lake Plan. There are no other federal aid projects programmed for Route 1-A in the current 5 Year Program. Maintenance and safety improvement to route 1-A shall be made in accordance with Department of Public Works and Highway policy and priorities, as necessary, to serve the needs of the traveling public (RSA 228, RSA 232).

Any new access drive or roadway to a state highway requires a written permit from the Commissioner of Public Works and Highways or his agent. Any development which would have a significant impact on the use of a state highway by the traveling public may, in addition, require improvement to the highway itself and all costs of construction and maintenance of accesses, and any associated highway improvement necessitated by such developments, shall be borne by the developers. All design and construction of driveways and other accesses to state highways, including necessary drainage facilities, shall be in accordance with policies and procedures promulgated by the Department of Public Works and Highways. (RSA 249:17).

IMPLEMENTATION

The Water Supply and Pollution Control Commission (WSPCC) has primary responsibility for regulating wastewater treatment systems, water supply systems, and subsurface disposal facilities. The WSPCC regulates construction and operation of any such public facilities as well as new hookups to such systems.

There are only two state approved municipal sewer and wastewater treatment systems on New Hampshire's Atlantic coast: one in Hampton and another in the New Castle-Portsmouth area. The New Castle-Portsmouth facility (1.5 Million gallons per day) is operating at capacity and the Hampton Beach Facility (3.5 million gallons per day) is operating at 2.5 mgpd during the peak season.

As indicated in the Policy statement above, it is state policy to use existing wastewater treatment facilities to serve developed areas only and state certification of capacity in pipes and plant hookup prohibit overloading of the system. (WS 222.16). Furthermore, EPA Policy prohibits hookups from future construction in wetlands and floodplain areas.

The State Water Supply and Pollution Control Commission allows publicly funded sewer line and facility expansions only to solve pollution problems in developed areas, and prohibits public expenditures to serve new development. The state does not allow privately owned and operated treatment facilities. Private funds could be used to pay for sewer lines and expanded treatment facilities capacity. However, all such investments must be publicly accepted, owned and operated, once built. (No such private investments have been made in the seacoast to date.)

WSPCC has identified developed areas on the Atlantic coastline where, for pollution abatement, public sewer lines should be extended and served by the Hampton treatment system. The areas under study include: North Seabrook Beach, North Hampton Beach, and two developed areas in Rye which are causing pollution problems. Should sewer lines be extended to these areas, the policy would be to serve only the existing developed areas and to restrict sewer line capacity to prohibit new development hookups. Only these identified areas on the Atlantic coast would be publicly funded for sewer lines. All other areas must be served by on-site disposal systems, regulated in accordance with RSA 149:8, III (a) and RSA 149-E, WS 1004.

Because of the unique nature of the New Hampshire Atlantic coastline, where only two areas are sewered and federal or state funded sewers cannot be extended to serve undeveloped areas, future development is effectively limited to on-site disposal treatment systems with required sizes for subdivisions based on soil, slope, and drainage criteria.

Management of the state's water supplies is the responsibility of both the Water Supply and Pollution Control Commission and the Water Resources Board. Although the state does not limit municipal water supply systems, it does not provide state funds for this purpose. The primary interest of WSPCC is the protection of water quality and water supply sources. All areas along the Atlantic coast are served by public water supply systems.

The Water Resources Board is responsible for construction, maintenance and operation of dams, reservoirs and other projects for distribution and utilization. It is authorized to conduct studies of surface and groundwater conditions and supplies in the state and is charged with coordinating efforts towards solving the water supply problems of the seacoast.

The major coastal road in New Hampshire is Route 1-A which runs north-south in close proximity to the sea. State Route 1-A serves as a major arterial along the Atlantic coast. The character of 1-A shall be maintained, with road improvements made as necessary. The expansion potential of 1-A is limited due to its proximity to the Atlantic Ocean and tidal wetlands. Approximately one half mile inland, Route 1 and Interstate Route 95 also run north-south. State highways are under the management and jurisdiction of the Department of Public Works and Highways (DPW&H) and major improvements are subject to federal environmental assessments EIA/4 (f) and must be contained in the State Highway Improvement Plan. The Department issues state driveway access

permits for any access onto a state highway based on safety standards. Permits are generally issued by the division engineer. Any major project also requires review by the state engineers. The Department is also responsible for all state bridges. No bridge improvements are scheduled in the coast. Any bridge construction or improvement also requires a Wetlands Board Permit.

State agency investments in water, sewer and highways must also comply with state policies 1 through 14 and applicable state permits, such as the Wetlands Board Permits and the Historic Preservation Permits.

The Governor's office is responsible for formulating and submitting the biennial state capital budget to the legislature. As required under RSA 9 and the Manual of Procedures, the Comptroller submits to the Governor a summary of biennial requests from state agencies for capital investments. The Office of State Planning reviews the capital budget requests for impact on and consistency with state plans and policies, including state coastal policies, and transmits its recommendations to the Governor. OSP review covers both the 2-year capital budget requests and the 6-year capital improvement programs of state agencies. The Governor then meets and reviews the capital budget options with the Advisory Committee on the capital budget and state agency departments. Projects selected by the Governor for inclusion in the budget are transmitted to the Department of Public Works and Highways for schematic drawings and cost estimates. Subsequent to additional public hearings, the Governor submits the capital budget to the Legislature for their deliberation and enactment.

Key State and Federal Authorities

RSA 9 Governor State Capital Budget

RSA 148:22 WSPCC Power to Require Improvements to Public Water Supply Systems

RSA 148:23 WSPCC Power to Require Improvements in Sewerage Treatment Facilities

RSA 148:23-a WSPCC Powers to Require Installation of Sewerage Disposal Facilities

RSA 148:25 WSPCC Water Supply System Permits

RSA 148-B:2, VI WSPCC Regulations for Water Supply Systems

RSA 148-B:6 WSPCC Construction or Alteration of Water Supply System Permits

RSA 149:3-a WSPCC NPDES Permits, Joint Federal-State Permit Program

RSA 149:4,V WSPCC Installation of Sewerage Disposal Design Plan Approval Permits

RSA 149:4, IX WSPCC Design Standards and Wastewater Treatment System Permits

RSA 149:8, III(a) WSPCC Groundwater Discharge Permits

RSA 149:8-a WSPCC Dredging and Significant Alteration of Terrain Permits

RSA 149-E WSPCC Subdivision Permits

RSA 149-E WSPCC Subsurface Wastewater Disposal Permits

RSA 482 WRB Dams and Flowage

RSA 481 WRB State Dams, Reservoirs and Other Water Conservation Projects

RSA 229 DPWH State Highway Improvement Plan and Authority to Acquire Land

RSA 231 DPWH Construct and Maintain Class I Highways and Bridges

RSA 232 DPWH Powers to Layout Highways

RSA 249:17 DPWH Driveway Access Permits

EPA Sewer Extension Policy

EPA NPDES Permits

*WSPCC - Water Supply and Pollution Control Commission

*WRB - Water Resources Board

*DPWH - Department of Public Works and Highways

*EPA - Environmental Protection Agency

Public Investments Focus

Because of the impact of public investments on resources and future development, the coastal program will coordinate state investment and policy decision in the coast. Assistance will be available to state agencies and seacoast communities to anticipate capital investment needs for public infrastructure and to evaluate the impacts of such investments on local growth management objectives. Where necessary, the coastal program will assist the Water Supply and Pollution Control Commission water and sewer planning and regulatory programs.

COASTAL COORDINATION

The need to coordinate government regulations and activities in the seacoast is becoming more important, as pressures for development increase and the public funding for protecting coastal resources and managing development diminishes. The state has begun to recognize theneed to integrate the actions of single purpose agencies to establish unified state policies. The key to effective coastal management in New Hampshire is coordination between agencies responsible for managing resources and development in the coast.

Policy 16 COASTAL COORDINATION

The Office of State Planning shall serve as the Governor's liaison with local, regional, county, state and federal agencies and shall serve as the lead agency for the state's coastal program. (Executive Order 79-4)

The Council on Resources and Development shall work as a unifying, coordinating unit on matters dealing with resource management, growth, and development. Its function will also be to make sure that one agency's actions are not in conflict with anothers' in this area. The Council on Resources and Economic Development shall consult upon common problems in the field of natural resources and their development; negotiate with, and obtain information from, any federal or state agency concerned with any of the council's problems, reports, recommendations or studies; recommendations adopted by a majority vote of the council shall be binding on affected agencies which have membership in the council unless the recommendations are in conflict with existing laws or rules. (Executive Order 79-4 and RSA 162-C)

State agencies shall cooperate with one another and with the federal government in matters pertaining to their statutory responsibilities within the coast. (RSA 4, 12-A, 125-C, 162-C, 425, 229, 206, 271-A)

IMPLEMENTATION

The Office of State Planning has served as the lead agency throughout the development of the state's coastal program. During program implementation, OSP will continue to serve as the lead agency in coordinating coastal management. However, the coastal program relies directly on state regulatory agencies for the day-to-day management of resources and development in the coast. Where problems occur between state agencies in the coast, the Council on Resources and Development is responsible for resolving conflicts. See Chapter 5 for a detailed discussion on program implementation and coordination.

Key State Authorities

RSA 4:12 Office of State Planning

RSA 162-C Council on Resources and Development

Executive Order 79-4

Coastal Coordination Focus

Since the key to effective coastal management in New Hampshire is coordination at all levels of government, the coastal program will devote considerable effort to improve state and local relations in the coast, to provide public education and participation in the coastal program, to coordinate state programs and permit processes, and to establish a central location for information about state permitting and local programs in the coast. A primary objective will be to coordinate state agency programs and policies, and to review federal agency actions which affect the coast.

MARINE RESEARCH AND EDUCATION

Effective Coastal management in New Hampshire can be enhanced by increasing public understanding of the importance of the oceans and the coastal regions, their processes, and their contained resources. The density of coastal population, the geographical compactness, and the maritime heritage in New Hampshire gives a special importance to ocean and marine issues. Marine resources -- a major fishery, oil and gas deposits in the outer continental shelf, marine transportation, marine recreation, coastal industry and tourism -- all affect the economy and quality of life in the state and region. Research and educational programs which provide trained manpower to enhance this understanding of the oceans and coastal environment have become a vital endeavor in our nation, and more particularly to New Hampshire.

Policy 17 MARINE RESEARCH AND EDUCATION

Establish and maintain an academic base of excellence in marine-related educational, research and service activities within New Hampshire. The objectives are: 1) to provide unique educational opportunities in marine-related fields of activity; 2) to acquire knowledge and information necessary for the judicious use and management of the marine environments and associated land areas comprising the New Hampshire and New England coastal zones; 3) to acquire knowledge and expertise in specific areas of marine-related activity which are of interest to New Hampshire, the region and nation; 4) to provide sources of marine-related information and advice for residents, agencies of the state, regional and local governmental entities, and industrial interests; and 5) to provide an atmosphere conducive to the development of marine activity within New Hampshire. (Chapter 376, Laws of 1973, Analytic Statement for the Marine Research and Development Program)

Conduct research, enforcement, and the administration of fish and game programs. (RSA 212:10)

Study domestic water supply needs and requirements. Consult with and give advice to municipalities on domestic water supply matters. Undertake long-range planning and studies relating to the purity of drinking water in the state (RSA 148-A, RSA 148-B:7).

Study and investigate all problems connected with the pollution of the surface waters or ground waters of the state. Establish, equip and operate suitable laboratories and other facilities to carryout the state water pollution and waste disposal regulation under RSA 149. Scientifically measure and monitor residual pesticides in the waters and the aquatic resources in the waters of the state (RSA 149:4, II, VIII, XII).

Conduct research programs dedicated to the development and improvement of prevention and clean-up measures concerning oil discharge and oil spillage, as part of the New Hampshire oil pollution control fund (RSA 146-A:11, VI, (a)).

IMPLEMENTATION

Substantial capabilities for engaging in marine research and for offering educational programs of significance to New Hampshire exist within the University System of New Hampshire, particularly the Marine Program at the University of New Hampshire, and within certain state agencies.

In 1973 the State established the Marine Research and Development Program at the University of New Hampshire. This program, referred to as the UNH Marine Program, provides marine teaching, research, and public service programs and facilities through the University's academic departments, and through specialized programs and facilities. Further, marine programs in research and education exist through the Marine Studies Program of the New Hampshire College and University Council, of which all State supported Higher Educational Institutions are members.

The National Sea Grant College Program, which supports research, teaching, and marine public service programs, was created by the U.S. Congress to encourage careful development and wise use of ocean resources. As a Sea Grant College, UNH is committed to providing information to those who must make crucial decisions about the future of our marine resources.

Undergraduate and graduate programs are the core of marine education at UNH, but teaching efforts also extend beyond the campus, especially through marine extension and public education services that connect the University's resources with the needs of the general public. School children, seacoast residents, marine-related businesses and industries, people concerned about the environment, and legislators are among the groups served.

Marine activities at UNH are enhanced by a remarkable span of natural laboratories which exist within minutes of the University campus at Durham -- the Great Bay estuary, the open ocean, tidal rivers, and freshwater lakes. Research facilities exist in all of these settings. The oldest is the Shoals Marine Laboratory on one of the Isles of Shoals, ten miles off the coast. Established as a field station in 1928, it is now operated by UNH in cooperation with Cornell University. The newest facility, now being planned, will face the ocean on the Revolutionary War site of Fort Stark in New Castle. The specialized research and education facilities which can provide a resource for coastal program activities, include:

- Jackson Estuarine Laboratory
- Diamond Island Ocean Engineering Station
- Fort Stark Laboratory
- Shoals Marine Laboratory
- Marine Program Building, including the Marine Resource Center
- Ocean Processes Analysis Laboratory

- Marine Systems Engineering Laboratory
- Complex Systems Research Center
- Odiorne Point Nature Center
- Research Vessels and shore support facilities
- Numerous on-campus specialized laboratories and facilities.

The key state agencies which conduct research activities relevant to the coast include the Fish and Game Department and the Water Supply and Pollution Control Commission. Other agencies which have sponsored or administered research activities in the coast include the Office of State Planning, the Department of Resources and Economic Development, the Port Authority and the Department of Public Works and Highways.

Key State Authorities

Chapter 376, Laws of 1973, Appropriations Budget established the University of New Hampshire Marine Research and Development Program

RSA 212 Fish and Game Research

RSA 146-A WSPCC Oil Spill Program

RSA 148-A WSPCC Future Supplies of Water for Domestic Use Research

RSA 148-B:7 WSPCC Safe Drinking Water Research

RSA 149:4, II, VIII, XII WSPCC Water Pollution and Disposal of Waste Research

(WSPCC - Water Supply and Pollution Control Commission)

Marine Research and Education Focus

The coastal program is substantially enhanced by high quality marine research and educational activities, conducted by existing state units, organizations, and agencies. Their research activities provide the technical, scientific, economic, and societal data and understandings essential to sound policy and decision-making. Their educational programs provide the qualified manpower and increased public awareness regarding marine issues needed by the state and local governmental units to carry out the intent of the coastal program. Therefore, the coastal program will work closely with and draw upon, where appropriate, the existing marine research, education, and related public service programs within the State of New Hampshire.

In particular, the UNH Marine Program and the state coastal management program are complementary. The coastal program recognizes the asset which the Marine Program provides New Hampshire in marine research, education and advisory service. Special attention will be given to coordinating the state coastal management program activities with UNH Marine projects, to avoid duplication and to maximize the use of limited funds for ocean and coastal programs.

CHAPTER 4

HOW THE PROGRAM AFFECTS DEVELOPMENT ACTIVITIES IN THE COAST

While the previous chapter describes existing state coastal policies, this chapter describes the impact of these policies on future development in the coast. The New Hampshire coastal program does not include new laws or increase the present number of state or local permits required for development activities. Rather, the program seeks to improve the administration of existing laws which, when effectively and consistently administered in coordination with applicable public funding and investment programs, will provide for the optimal use of New Hampshire's coastal resources. Because the program is based on existing regulatory laws, development activities will basically be subject to the same growth limitations and development potentials as now apply. What this means is that:

- state coastal resource areas including beaches, sand dunes, rocky shores, coastal waters, tidal wetlands and marine species habitats are environmentally sensitive areas which shall continue to be protected through the State Wetlands Board permit, Fish and Game Department regulations, and Water Supply and Pollution Control permits.

- state lands on the coast devoted to recreation, commercial fishing, boating and port operations shall continue to serve the public in providing public access to coastal waters for water dependent activities.

- development which affects a state historic resource may be conditioned to minimize adverse impacts on the historic site, under the Historic Preservation office permit process.

- developed urban areas in the coast served by public water and sewer may be capable of accommodating high density development or redevelopment, consistent with Water Supply and Pollution Control regulations and local zoning.

- moderately developed areas on the coast served by public water, where sewer extension are imminent for pollution abatement, may be capable of accommodating moderate density development, consistent with Water Supply and Pollution Control regulations and local zoning.

- sparsely developed areas served by public water may be capable of accommodating low to moderate density development, consistent with Water Supply and Pollution Control regulations and local zoning.

- undeveloped coastal properties may be capable of accommodating low to moderate density development dependent on proximity to coastal resources, soil suitability, availability of public roads and services, consistent with State Water Supply and Pollution Control regulations, Wetlands Board permits, driveway access permits, and local zoning.

- State Route 1-A serves as a major arterial along the Atlantic coast. The character of 1-A shall be maintained, with road improvements made as necessary. The proximity of 1-A to the Atlantic Ocean and tidal wetlands limits the expansion potential of this highway. For this reason, significant changes in land use requiring major expansions to route 1-A are not

anticipated.

- major development or redevelopment in the coast can place demands on public services such as roads, water, sewer, parking and recreation. State agency review and approval of such major activities shall consider the increased demands placed on public investments.

Development will not otherwise be affected providing existing local, state, and federal requirements are met. For example, airports require approval from the state Aeronautics Commission (RSA 422). Docks, wharves and pier structures require Wetlands Board permits. Energy facilities need to obtain approval from the state Facilities Siting Committee. Whether an area otherwise meeting the above conditions is used for single family homes, high rise apartments, commerce or industry will continue to be decided by local governments.

To further explain existing state regulations which affect development in the coast see Figure 4-1 for a list of state permits required for specified development activities.

FIGURE 4-1

ACTIVITIES REQUIRING STATE PERMITS UNDER EXISTING STATE LAW

	ACTIVITIES	PERMIT REQUIRED	STATUTORY AUTHORITY
1.	All activities in tidal wetlands, freshwater wetlands, tidal flood hazard areas, beaches, sand dunes, rocky shores, and coastal waters including; - all dredge and fill, - all structures and construction - all channel dredging - all shoreline erosion mitigation, rip rap, bulk heads, seawalls, beach renourishment - all docks, piers, wharves.	Wetlands Board Permit Water Supply and Pollution Control - Dredging and Significant Alteration of Terrain Permit	RSA 483-A RSA 149:8-a
2.	All construction activities in or alteration of freshwater wetlands and water courses.	Wetlands Board Permit Water Supply and Pollution Control - Alteration of Terrain Permit	RSA 483-A RSA 149:8-a
3.	All dams and reservoirs.	Water Resources Board	RSA 481, 482
4.	All activities that emit pollutants which significantly affect air quality.	Air Quality Permit	RSA 125-C
5.	All activities that discharge pollutants into coastal and state waters.	Water Supply and Pollution Control - NPDES Permit	RSA 149:8, III(a)
6.	All solid waste disposal sites, disposal of oily debris, and hazardous waste operator permits.	Bureau of Solid Waste Permit	RSA 147-L RSA 147-A:4
7.	All sewer lines and sewerage treatment facilities.	Water Supply and Pollution Control Commission Wastewater Facilities, Design, Treatment, and Improvement Permits	RSA 148, 149
8.	All connections to public sewer systems (if greater than 50 population equivalent, 5000 gallons per day, or 10 lbs BOD per day).	Water Supply and Pollution Control Commission - Discharge Permit for connection to public sewer systems.	RSA 149

FIGURE 4-1 (Continued)

ACTIVITIES REQUIRING STATE PERMITS UNDER EXISTING STATE LAW

	ACTIVITIES	PERMIT REQUIRED	STATUTORY AUTHORITY
9.	All on-site disposal systems.	Water Supply and Pollution Control Commission - Subsurface Wastewater Disposal Permit	RSA 149-E
10.	All public water supply systems.	Water Supply and Pollution Control Commission - Water Supply System Permit	RSA 148:25
11.	All subdivisions on septic systems.	Water Supply and Pollution Control Commission - Subdivision Permit	RSA 149-E
12.	All energy facilities.	Public Utilities Commission	RSA 371
		Bulk Power Supply Facility Site Evaluation Committee Permit	RSA 162-F
		Energy Facilities Site Evaluation Permit	RSA 162-H
13.	All airports.	Aeronautics Commission Approval	RSA 422
14.	All railroads.	Public Works and Highways - Transportation Division	RSA 228:53
15.	All highways and driveways.	Public Works and Highways - Layout of Highways Approval	RSA 232
		Driveway Access Permit	RSA 249:17
16.	All off-premise outdoor advertising devices adjacent to federal aid primary highways.	Public Works and Highways - Outdoor Advertising Device Permit	RSA 249-A
17.	All junkyards, including sanitary landfills, adjacent to federal aid primary highways.	Public Works and Highways - Junkyard Licenses	RSA 249-B
18.	All channel navigation anchorage and boating.	Port Authority - Mooring permits, anchorages, pilots, harbor masters	RSA 271-A

FIGURE 4-1 (Continued)

ACTIVITIES REQUIRING STATE PERMITS UNDER EXISTING STATE LAW

	ACTIVITIES	PERMIT REQUIRED	STATUTORY AUTHORITY
19.	All recreational fishing for clams, oysters, salmon, smelt, and trout; all nonresident commercial finfishing; and all lobster and crab harvesting.	Fish and Game License	RSA 211, 212, 214

CHAPTER 5

COASTAL PROGRAM COORDINATION AND IMPLEMENTATION

Local decisions about what can and cannot occur in the coast will still be made by local governments. Decisions of statewide significance will continue to be made by state agencies. The coastal policies and issues described in Chapter 3, which also covers the policy issues under the federal Coastal Zone Management Act, are contained in existing state laws and will continue to direct state agency actions in the coast. (See Chapter 8 for further discussion of uses of regional benefit.) While many state agencies have been operating within the coast, this program is the first to coordinate activities among agencies. This chapter describes the method by which the coastal program will be implemented and coordinated.

It should be noted that any private developer and all public agencies proposing any activity in the New Hampshire coast is required to adhere to all applicable existing state laws. No state agencies are exempt from compliance with existing state coastal laws. For example, the Department of Public Works and Highways submits applications for shoreline activities to the Wetlands Board for approval, as does the State Port Authority for pier and land expansions into wetlands. Likewise, any state agency activity which affects water quality must receive permit approval from the Water Supply and Pollution Control Commission under applicable state laws. Federal activities will also be subject to these laws, as described further in Chapter 8.

Reliance on Existing State Laws

The New Hampshire coastal program is based on a series of existing state laws, policies, and regulations which provide effective state management and coordination of critical coastal resources and significant impacts on coastal waters.

Seventeen state coastal policies, contained in Chapter 3, provide the framework for state and federal agency actions in the coast. The coastal program relies primarily on 6 core state regulatory and management programs, as follows:

RSA 483-A — Under the Fill and Dredge in Wetlands Act, the Wetlands Board manages any activity within state coastal waters, submerged lands, fresh and tidal wetlands up to 3½ feet above mean high tide. Jurisdiction includes all critical coastal resources: beaches and sand dunes, coastal waters and estuaries, rocky shores, marine habitats, and tidal wetlands. Through the issuance of permits for dredging, filling, or erection of structures, the Wetlands Board effectively protects coastal resources, prohibits any non-coastal dependent activity along the shoreline, and manages the development impact on coastal waters from erosion and flooding.

RSA 148, RSA 149 — Under the Water Supply and Pollution Control Law, any activity in the coast which could have an adverse impact on state surface, ground or coastal waters is managed. Through the issuance of

permits, erosion, sedimentation, and runoff in coastal waters is managed and water quality protected. Development adjacent to coastal waters is regulated through the issuance of permits for sewage disposal and water supply facilities.

RSA 211
RSA 212
RSA 214 — The Fish and Game Department manages fish, shellfish, lobster, crab and other marine species through legislative actions, as well as, rules adopted by the Department.

RSA 162-F
RSA 162-H — Under the state Energy Facilities Siting Laws, the state has direct control over the siting of energy facilities in the coast.

RSA 12-A — The Department of Resources and Economic Development manages the state park system including coastal beaches and parks, parking facilities, and historic sites. Together with the state fish piers, state properties cover 78% of the Atlantic shoreline.

RSA 271-A — The state Port Authority regulates moorings, habor masters, port captains and pilots, vessel traffic, and manages the state port terminal.

In addition to these core programs, there are over sixty state statutes which give nineteen state agencies planning, development, and regulatory authority within the coast. Figure 5-1 summarizes the authorities and responsibilities of these state agencies, as they relate to the coastal program. All state agencies are responsible for taking actions consistent with existing state coastal policies contained in Chapter 3. This includes any planning, permitting, licensing, funding, acquisition, or other state agency activity undertaken in the coast. Figure 5-2 summarizes existing state statutes which are applicable in the seacoast.

Program Coordination and Conflict Resolution

The key to effective coastal management in New Hampshire is coordination between agencies responsible for managing resources and development in the coast through laws and programs discussed above and in Chapter 3.

The coastal program provides the state with the framework and resources necessary to resolve coastal issues which require interagency cooperation. Dredged material disposal, fisheries habitat protection, port and harbor development, public access, parking, beach and park development are just a few examples of complex coastal issues which involve action by more than one agency.

The primary means to coordinate and unify state agency activities in the coast is through the Office of State Planning and the Council on Resources and Economic Development. The Office of State Planning is the designated lead agency for Section 306 implementation of the New Hampshire coastal program. The Office of State Planning has been responsible for preparing a coastal program based on existing laws and procedures. Because the program is based on laws and regulations distributed among several agencies, the basic role of the Office of State Planning will be to coordinate the implementation of the program with all federal, state and local agencies. Although the program relies on existing state authorities, voluntary local participation in the program will be encouraged by the Office of State Planning.

OSP will receive and administer program funds under Section 306 of the CZM Act; assist state and local agencies in developing projects fundable under the 306 and 308/315 grants; meet with the state and federal agencies to discuss coastal problems and negotiate solutions; provide staff support to CORD on coastal planning and policy issues including recommendations for interagency conflict resolution; coordinate and monitor implementations of existing state policies and program objectives through existing intergovernmental coordination procedures such as A-95 review, the Administrative Procedures Act (RSA 541-A) and CORD; make federal consistency determinations; ensure national interest consideration and provide national interest information as needed; and provide public and local participation in the coastal program.

The Council on Resources and Development (CORD), an interagency board created under RSA 162-C, is responsible for coordinating actions and resolving conflicts between state agencies in addressing resource management, growth and development issues. The duties of the council include consulting on common problems in the field of natural resources and their development; consulting and negotiating with any federal or state agency concerned with the council's problems, studies, or reports; conducting studies and recommending changes to effectively coordinate the work of member agencies; and resolving differences or conflicts concerning water management or supply which result from the work of any agency represented on the council. Recommendations for effective coordination adopted by a majority of the council are binding on the affected agency. If investigation by the council indicates conflict between the laws and rules of member agencies, recommendations shall be submitted to Governor and Council or the General Court.

The council is comprised of 11 members, representing various agencies. It includes the Commissioner of Agriculture, the Commissioner of Education, the Director of Fish and Game Department, the Commissioner of the Public Works and Highways, a representative from the Water Supply and Pollution Control Commission, the Chairman of the Water Resources Board*, the Commissioner of the Department of Resources and Economic Development, the Director of the Division of Economic Development, the Directors of the Division of Forests and Lands and the Division of Parks, and the Director of the Office of State Planning who serves as permanent chairman.

Members serve ex-officio and any member's term of office terminates when that official ceases to be a member of the state agency he represents. The council meets at least quarterly, but may meet more often when advisable. The chairman of the council may convene CORD as necessary, and provides an agenda to each member at least 7 days prior to any meeting.

CORD shall serve as an effective vehicle for coordinating coastal management in New Hampshire, given that over 50% of the land on the Atlantic coast is owned and managed by state agencies and that all coastal resources and significant impacts are subject to state agency regulations. As the interagency council on coastal issues, CORD shall coordinate state agency actions in the seacoast and resolve, where necessary, any conflicts between state agencies concerning coastal issues and policy disputes. Any time a conflict arises

*He also serves as chairman of the Wetlands Board

which cannot be resolved informally through interagency coordination, the council may conduct a formal review of the issues. The conflict resolution mechanism will be employed, for example, where competing state policies are at issue, where agencies disagree on funding or enforcement of certain programs, or where actions by one agency impinge upon the statutory responsibilities of another agency. The general operating procedures of the Council on Resources and Development, under RSA 162-C, are provided in Appendix A, along with a resolution adopted by the Council in support of the New Hampshire Coastal Program.

The Council on Resources and Development can act on issues raised by its members or other agencies. For example, the council can review, at the request of the Port Authority or a member, the Port Authority's recreational boating study, port expansion plans or other port issues which affect the state, even though the Port Authority is not a member of the council. Coordination between state agencies in New Hampshire is also accomplished by the overlapping membership and state agency representation on the Council and other key state regulatory boards. In the case of the Energy Siting Committees, eight of the twelve siting committee members also sit on the Council. All agencies represented on the Wetlands Board also serve on the Council. In these ways, the Council on Resources and Development can provide coordination and consistent state agency actions in addressing coastal issues affecting state agencies and the state's interest in the seacoast.

Program Funding

A major incentive provided to states by Congress under the Coastal Zone Management Act has been financial assistance. This assistance has been available to states since 1975 on a voluntary basis, both to develop and to implement a state coastal management program. The assistance provides an incentive to states to look at their coastline and develop a program to manage this area in a coordinated and comprehensive fashion.

The federal Coastal Zone Management Act provides for assistance in a variety of areas. Each of the major types of assistance are summarized as follows:

Program Development (Section 305) - Congress authorized funds for states to develop coastal management programs. This funding was authorized through 1979 and Congress recently chose not to extend funding authorization for program development. New Hampshire received funding under this provision of the Act between 1974 and 1980.

Program Administration (Section 306) - After a state has developed a program which meets its needs and is consistent with the requirements of the federal act, it is eligible to apply for funds to implement its program. Congress has appropriated $33 million for FY 82 and FY 83. The annual amount of funding available under Section 306 will be determined through a yearly grant application process. It is estimated that New Hampshire could receive approximately $600,000 per year under Section 306. The funding will vary based upon the number of states participating in the program, and the amount of funding appropriated by Congress.

Federal CZM funds which are allocated to New Hampshire must be matched at a federal to state ratio of 4:1. This matching share can be comprised of either cash or in-kind services. If the state were to receive $600,000 from OCZM, it would have to contribute in cash and/or in kind services. The matching share requirement will have to be met by the Office of State Planning and state, regional or local agencies receiving pass-through funds. Eligible uses if these are further discussed below.

Resource Management Improvement (Section 306 A) - As a part of its recent reauthorization of the Coastal Zone Management Act, Congress established a new section to provide financial assistance for (1) acquisition of public access to beach and shoreline areas, (2) the redevelopment of deteriorating and underutilized urban waterfronts and ports in designated geographic areas of particular concern (GAPC), and (3) preservation and restoration projects in designated areas for preservation and restoration (APR). Section 306(a) funds will be allocated as a portion of the 306 funds or as authorized by Congress.

Coastal Energy Impact Program (CEIP) (Section 308) - Congress authorized CEIP funds in 1978 to meet the needs associated with energy development in coastal states. New Hampshire has received planning, formula, and OCS participation grants under Section 308 to address a range of local and state coastal energy development problems. In making satisfactory progress towards program approval and continuing after program approval, New Hampshire can expect to receive additional CEIP funds with distribution based on a formula currently being developed by OCZM.

Estuarine Sanctuaries and Island Preservation (Section 315) - This section of the Act is geared to the acquisition, development and operation of estuarine sanctuaries and island preservation. New Hampshire has recently been awarded a preacquisition planning grant to develop a management program for an estuarine sanctuary in Great Bay.

In general, a state must be participating in the federal CZM program (i.e. program development or administration) in order to receive funds under any of these sections. This requirement is particularly important since the continued funding of both state and local CEIP projects is dependent upon the eventual approval and implementation of New Hampshire's coastal program. While the Office of State Planning is the recipient of 306 funds, the CZMA allows, and the state coastal program intends to, pass through of funds to state and local government agencies for program implementation.

Eligible Activities Under 306 and 306A Funding:

The activities which are eligible for funding will be based upon both federal and state program objectives. The recent reauthorization of the federal act brought about a number of changes related to federal funding. First, Congress authorized substantially increased funds for construction and acquisition projects under Section 306A of the Act. Grants which meet the federal regulations for this section may be used for 1) land acquisition, 2) low cost construction projects, 3) urban waterfront and port rehabilitation projects, 4) engineering and design studies and 5) educational and management costs. Second, Congress required that coastal states expend an increasing proportion of each Section 306 grant to meet national coastal management objectives. These objectives are:

1. the protection of natural resources,
2. the management of development to minimize loss of life and property,
3. priority consideration for the siting of coastal dependent facilities,
4. provision of public access to coastal areas,
5. redevelopment of deteriorating urban waterfronts and ports,
6. the coordination and simplification of decision-making procedures,
7. continued consultation and coordination with federal agencies,
8. continued public participation in coastal management decision-making, and
9. assistance and support for the management and conservation of living marine resources.

It appears that many of the national coastal management concerns are also New Hampshire concerns and, therefore, will be routinely addressed in the state program. Consequently, program funds will be utilized to implement the state coastal policies and priorities through existing agency programs. Coastal funding, under Section 306, will be used as follows:

- to increase the implementation and enforcement capabilities of existing state programs which protect natural coastal resources, manage activities which affect coastal resources, provide public recreation, access and water dependent facilities, enhance urban waterfronts, protect historic resources, and promote water dependent activities;

- to coordinate state agency actions in the coast through CORD and OSP, including coordination of state investment decisions, refinement of coastal policies and priorities, and further development of procedures to coordinate agency actions and resolve conflicts;

- to coordinate state and federal agency actions in the coast, with priority given to state implemenation of the federal consistency provision of the CZMA;

- to improve local government capabilities in addressing coastal management issues (See Chapter 6); and

- to ensure public information and participation in coastal management through the support of a citizens advisory committee and an active public information and technical assistance program.

It should be noted that these are only some of the key types of activities which could receive funding. While these federal funds can be utilized for implementing existing state programs, these funds cannot be substituted for current state funding. Specific priorities for actual project selection shall be established on a yearly basis by Office of State Planning in consultation with the Council on Resources and Development, state and local agencies, and a coastal advisory committee.

FIGURE 5-1

SUMMARY OF STATE AGENCIES AND AUTHORITIES

KEY	AGENCY
AC	Aeronautics Commission
ARC	Air Resources Commission
AG	Attorney General
BSW	Bureau of Solid Waste
CDA	Civil Defense Agency
CORD	Council on Resources and Development
DA	Department of Agriculture Pesticides Control Board (PCB) State Conservation Committee (SCC)
DPWH	Department of Public Works and Highways
DRED	Department of Resources and Economic Development
F&G	Fish and Game Department
G&C	Governor and Council
IDA	Industrial Development Authority
OSP	Office of State Planning
PA	Port Authority
PUC	Public Utilities Commission Energy Siting Committees
RWB	Right-of-Way Board
WRB	Water Resources Board
WSPCC	Water Supply and Pollution Control Commission
WB	Wetlands Board

Aeronautics Commission (AC) - established under RSA 422. The five member commission appointed by Governor and Council, is comprised of three members not directly connected with aviation and two who are directly connected with aviation. The Commission appoints a director who administers the provisions of the statute and all state laws relative to aeronautics.

The Commission provides planning and technical assistance to cities, towns, and others interested in establishing airports; encourages and supports the development and/or improvement of existing airports through planning and technical assistance as appropriate; assists in the improvement of airports in the National Airport System through requests for federal and state funds; encourages, supports, and regulates all aspects of air commerce through flight safety programs, improvements to airports and air navigation aids, airport inspection, and participation in proceedings before the Civil Aeronautics Board; and conducts investigations of aircraft accidents and of violations of aviation laws/regulations in liaison with federal authorities.

The Commission is also empowered, RSA 422-B, to regulate the location, height and identification of structures and the use of land, as required, to maintain, in a reasonably unobstructed condition, the air traffic pattern area of any public airport in the state.

Air Resources Commission (ARC) - established under RSA 125-C is composed of 9 members, representing the steam power generating industry; the fuels industry; manufacturing; municipal government; and five who represent the public interest, one of whom is a licensed practicing physician and one who represents the field of recreation. All members are appointed by Governor and Council for five year terms. The Commission nominates the agency director for confirmation by Governor and Council.

The Air Resources Commission has responsibility to adopt, amend, or repeal rules for the prevention, control, and abatement of air pollution. The Air Resources Agency is responsible for implementing and enforcing the statutes and all rules and regulations adopted by the Commission. A statewide permit system for construction and operation of new stationary sources of air pollution ensures that the ambient air pollution level is not exceeded. The basis for the air pollution control program is the State Implementation Plan (SIP), which is a federally approved document describing how the state will meet federal air quality standards.

The director of the Air Resources Agency serves on both the bulk power supply site evaluation committee, RSA 162-F, and the energy facility evaluation committee, RSA 162-H. These committees issue permits for the siting and operation of electrical generating facilities and other energy facilities.

Attorney General (AG) - an environmental protection division was established, RSA 7:18-a, in the Office of Attorney General with the following duties and functions: enforce statutes pertaining to environmental protection, control, and preservation; counsel state agencies and commissioners with responsibility over environmental concerns; exercise the common law powers of the Attorney General in protecting the environment; and bring public nuisance and other actions in superior court, in the name of the state, upon complaint by private citizens, when, in the opinion of the attorney general, the activity or activities complained of may have a substantial impact upon the environment of the state.

Cooperation from other state agencies in any investigation or prosecution is required under the statute whenever the environmental protection division deems it necessary.

The Attorney General must be notified of any petition to the public utilities commission for construction of pipelines or transmission facilities over, under, or across any public waters in the state.

The environmental protection division serves as counsel for the public under provisions of both RSA 162-F and 162-H, relating to rating and construction of power plants and energy facilities. The role of counsel is to represent the public interest in protecting the environment and assuring an adequate supply of electric power and energy.

Bureau of Solid Waste Management (BSW) - established by RSA 147-A and RSA 149-L is within the Department of Health and Welfare. Chief of the bureau is a civil service position, under the direction of the Director of Public Health Services.

The Bureau has primary responsiblity for solid waste under RSA 147-L and hazardous waste under RSA 147-A.

The Bureau reviews and approves/disapproves applications for permits for all solid and hazardous waste facilities. The Bureau is responsible for developing and implementing both solid and hazardous waste programs for the entire State.

In addition, the director of the Division of Public Health Services serves on the Pesticide Control Board, RSA 149-D, that has jurisdiction over proper application of pesticides to safeguard public health and protect coastal as well as inland water.

Civil Defense Agency (CDA) - is created by RSA 107. The director is appointed by the Governor to serve during his pleasure. The Civil Defense Agency is the lead agency for the state's hazard mitigation program, for disaster preparedness planning, and coordinates the response of state, local and federal agencies, in response to and recovery from a disaster or emergency situation.

Council on Resources and Development (CORD) - established by RSA 162-C, is an interagency council composed of eleven members: commissioner, Department of Agriculture; commissioner, Department of Education; director, Fish and Game Department; commissioner, Public Works and Highways; executive director Water Supply and Pollution Control Commission; chairman, Water Resources Board; commissioner, Department of Resources and Economic Development (DRED); within DRED, directors of the division of economic development, forests and lands, and parks; and director, Office of State Planning who serves as chairman.

The duties of CORD include consulting on common problems in the field of natural resources and their development; consulting and negotiating with any federal or state agency concerned with the council's problems, studies, or reports; conducting studies and recommending changes to effectively coordinate the work of member agencies; and resolving differences or conflicts concerning

water management or supply which result from the work of any agency represented on the council. Recommendations for effective coordination adopted by a majority of council are binding on the affected agency. If investigation by the council indicates conflict between the laws and rules of member agencies, recommendations shall be submitted to the Governor and Council or to the General Court.

Department of Agriculture (DA) - established by RSA 425, is under the direction of a commissioner who is appointed for a five-year term by the Governor and Council. The commissioner is advised by a ten member Agricultural Advisory Board, also appointed by the Governor and Council for five year terms.

The objective of the department is to promote agriculture of the state. The Soil Conservation Act which is implemented by the department, develops a yearly state soil conservation plan and conducts research relating to the conservation and development of the soil, water and related natural resources, and conducts needed improvements and preventive or control measures.

In addition, the commissioner serves on the following boards:

Council on Resources and Development (CORD), RSA 162-C; and

Pesticides Control Board, RSA 149-D.

Pesticides Control Board (PCB) - established by RSA 149-D, consists of the commissioner of the Department of Agriculture, the director of the Division of Public Health Services or his designated alternate, the director of the Division of Resources Development, the director of the Fish and Game Department, or the chief of game management and research, the state entomologist, the executive director of the Water Supply and Pollution Control Commission, and 4 members appointed for 3 year terms by Governor and Council. The Governor's appointees include a member of the general public; an ecologist; one person from nominations submitted by the New Hampshire Horticultural Society; and one person from nominations by the New Hampshire Arborists Association. The executive director of the WSPCC acts as executive secretary; administrative activities are the responsibility of the Department of Agriculture; staff support is provided by both these departments.

The purpose of the Board is to safeguard public health and welfare and public assets in the soils, waters, forests, wildlife, and other natural resources of the state by ensuring proper application of chemical pesticides. The Board is authorized to adopt regulations prescribing conditions for commercial application of pesticides and to issue annual permits to commercial applicators who must provide proof of their competence and qualifications.

State Conservation Committee (SCC) RSA 430-B - consists of nine members including the director of the cooperative extension service, director of the agricultural field station, commissioner of agriculture, commissioner of DRED, and five members representing the state's ten counties. The members are appointed for four year terms by Governor and Council. The SCC provides assistance to conservation districts within the state in the area of watershed planning and development, soil and water conservation problems, resource conservation and development, outdoor recreational development, and overall land use planning. The committee furnishes soil surveys for planning the best use of the land.

Department of Public Works and Highways (DPWH) - established by RSA 228:2, is under the direction of a commissioner who is appointed for a five-year term by the Governor, with the advice and consent of the Council. The department consists of divisions of engineering, business and administration, planning, and transportation.

The primary responsibility of the department is to construct, maintain, and operate the state's highways, toll-roads, and bridges and to assist the towns in their road and bridge programs.

Through issuance of permits based on established specifications, the department regulates location and design of driveways and approaches to highways under state jurisdiction, RSA 249:17. The department also regulates activities adjacent to state highways such as outdoor advertising, RSA 249-A, and junkyards, RSA 249-B.

RSA's 216-B and 216-C authorize the Department to administer the contracts and provide direction and supervision for construction projects undertaken in cooperation with the Corps of Engineers. These projects are directed toward improvement of the back channels of Portsmouth Harbor for small boating and the entrance to Hampton Harbor, together with a corrective project to restore damaged beach areas resulting from coastal erosion on Hampton Beach between Great Boar's Head and Hampton river.

The Department is also responsible, under RSA 217, for reporting recommendations to the Governor and Council on studies dealing with effective means of preventing erosion of the shores of the coastal waters of the state by waves and currents.

The transportation division, within DPWH, has jurisdiction in matters pertaining to rail property and mass transportation. Authority rests with the commissioner to acquire rail properties of any railroad within the state for continued operation in furtherance of the public interest, and to lease the properties for continued operation. The commissioner is empowered to study adequacy of public mass transportation within the state and take action to provide or improve facilities when feasible.

In addition, the commissioner serves on the following boards:

Council on Resources and Development, RSA 162-C;

Right-of-Way Board which makes recommendations to the Governor and Council concerning acquisition or retention of rights-of-way to any body of water having potential for recreational use, RSA 258-B; and
Wetlands Board which acts on applications to dredge, fill, or construct in, or adjacent to, any waters of the state, including tidal waters, RSA 483-A.

Department of Resources and Economic Development (DRED) - established by RSA 12-A, is under the direction of a commissioner and consists of (1) the Division of Forests and Lands, (2) the Division of Parks and (3) the Division of Economic Development, which includes subdivisions of development and promotion. The commissioner is advised by a commission consisting of eight members, seven appointed by Governor and Council, representing specified interests; the other is the commissioner of Public Works and Highways or his designated representative.

The department's primary responsibilities are planning, protection and management of the state's land and water resources including forests, parks, recreation areas, historic and cultural areas, soils and other natural resources; and the provision of policies, programs, and personnel in the field of economic development.

The parks division is charged with planning, development, maintenance, and operation of the state park system as well as beaches, parking facilities, state properties, and historical sites located in the coastal area, RSA 216. RSA 216-A vests DRED with responsibility for preparing plans to achieve an orderly and progressive expansion of the state park system, including historic, recreational, scenic, and scientific sites.

The Bureau of Marine Services, within the commissioner's office, is charged with operation of three state fish piers in coastal harbors. Also within the commissioner's office is the Historic Preservation Office, RSA 227-C, which is responsible for historical, architectural and archaeological research and information programs and for nominations to the national register of historic places. The forestry division is responsible for programs on forest fires, reforestation, disease control, state forests and nurseries, forest districts, and timber harvesting.

In addition, the department is represented on the following boards:

Council on Resources and Development - the directors of each of the three divisions of DRED serve on this Council, RSA 162-C;

Wetlands Board, RSA 483-A;

Port Authority - commissioner is an ex-officio member, RSA 271-A;

Bulk Power Supply Site Evaluation Committee, RSA 162-F; and

Energy Facility Evaluation Committee, RSA 162-H.

Fish and Game Department (F&G) - established under RSA 206, is run by a commission consisting of eleven members representing the ten counties and one member who is a resident of one coastal municipality: Portsmouth, Seabrook, Rye, Hamton, North Hampton or New Castle. All members are appointed by Governor and Council for five years. The coastal commission member must have a general knowledge of all crustacean and bivalves in coastal waters and saltwater fishing in general. The commission appoints the executive director of the Fish and Game Department, who also serves a five year term. The executive director is charged with control of all departmental activities and makes and enforces all regulations necessary to manage fish and game resources.

An Advisory Committee on Shore Fisheries, consisting of five members appointed by Governor and Council, recommends to the Fish and Game Commission programs and policies regarding shore fisheries.

The Department is charged with the protection, conservation, and restoration of fish and wildlife resources of the state. The division with most activities relative to the coastal area is the Division of Marine and Inland Fisheries. This division is responsible for the management and promotion of recreational and commercial marine fishing, including saltwater fish, lobsters, crabs, oysters, clams and clam worms and anadromous fish such as smelts, alewives, and salmon. Fish and Game manages marine resources through legislative actions and rules adopted by the Department which govern mesh sizes, type of gear and fishing methods, species size, and time of day or year for taking of species.

Fish and Game is responsible for the issuance of permits for aquaculture and for the assessment of damage to fish and other aquatic life or wildlife and/or their habitats by the unlawful discharge of contaminants into inland or coastal waters. Fish and Game conservation officers enforce all laws and regulations and make arrests for violation of fish and game laws. The Department administers parcels of state-owned land in the coastal area and throughout the state.

In addition, the executive director serves on the following boards:

Council on Resources and Development, RSA 162-C;

Right-of-Way Board, RSA 258-B;

Wetlands Board, RSA 483-A; and

Bulk Power Supply Site and Energy Facility Evaluation Committees, RSA 162-F and 162-H

Governor and Council (G&C) - New Hampshire's unique system of shared authority was established by royal edict in 1680 and continued in the 1784 Constitution. The Executive Council, five members elected from each of five geographic council districts, and the Governor have veto authority over one another's decisions primarily in regard to appointments and approval of contracts. The Council confirms the appointment of a coordinator for federal funds and must approve application by the executive branch for the use of federal funds.

Under RSA's 216-B and 216-C, the Governor and Council have responsibility for cooperating with the U.S. Army Corps of Engineers in projects to improve navigation and correct beach erosion in the Hampton harbor channel and the back channels in Portsmouth. RSA 217 requires an annual report from the Department of Public Works and Highways to the Governor and Council outlining recommendations on effective means of preventing erosion of the shores of the coastal waters by waves and currents.

Petitions for the laying out of highways to any public water in the state must be acted upon by the Governor and Council, according to provisions in RSA 235.

The Governor, under RSA 9, is responsible for formulating and submitting the biennial state budget to the legislature.

Industrial Development Authority (IDA) - created by RSA 162-A is an agency of the state and is a body corporate and politic. The Corporation is managed by a nine member board of directors who are appointed by Governor and Council for three year terms. The Authority acts to encourage orderly economic development by providing financial backing of industrial and recreational construction, the acquisition and expansion of such facilities and support for local development corporations in the acquisition of land for industrial parks.

The Authority may guarantee first mortgage loans made by banks to eligible manufacturing and recreational industries in New Hampshire. This legally permits the banks to provide 100% financing to companies because up to one-half of the loan may be guaranteed.

In addition, the Authority may issue tax-exempt industrial revenue bonds to credit-worthy companies of up to $5 million to provide 100% of cost of acquisition, and/or construction and equipping of facilities to be used for manufacturing, warehousing, research and development and corporate headquarters. Industrial development pollution control bonds can also be issued, with no dollar limitation, for pollution control facilities.

Office of State Planning (OSP) - established by RSA 12 and transferred to the Executive Department by RSA 4:12-d, administers and supervises divisions of state and regional planning and the office of economic development. The director, appointed by the Governor, serves as liaison between the Executive Department and various regional and federal organizations and agencies.

The agency reviews, inventories, classifies, and analyzes all functional planning programs carried out by state agencies, conducts research for statewide land use planning including housing, economic development, and water resources; develops physical and socioeconomic data inventories and analysis; and is responsible for coordination and provision of technical assistance to New Hampshire's regional planning commissions, counties, and municipalities.

Office of State Planning serves as the coordination agency for coastal zone management, including the coastal energy impact program and Outer Continental Shelf participation; the floodplain management program; houses the Coordinator of Federal Funds and the A-95 Clearinghouse functions; conducts the state Outdoor Recreation Planning (SCORP) function for the Department of Resources and Economic Development (RSA 12-A:18), under a memorandum of Agreement; and reviews the Biennial State Capital Budget for consistency with state policies.

The director of the Office of State Planning acts as chairman of CORD, RSA 162-C, and serves on the following boards:

Bulk Power Supply and Energy Facility Evaluation Committees, RSA 162-F and 162-H;

Wetlands Board, RSA 483-A; and

Water Supply and Pollution Control Commission, RSA 149.

Port Authority (PA) - established under RSA 271-A, consists of eight members, six appointed by Governor and Council and two ex-officio: the commissioner of the Department of Resources and Economic Development (DRED) and the mayor of the City of Portsmouth. A full-time director carries out the administrative activities of the Port Authority. The Authority, in cooperation with DRED, has a broad mandate to plan, develop, maintain, and use the state's ports, harbors, and navigable tidal waters, including air navigation and land transportation facilities within a 15 mile radius of headquarters in Portsmouth. Its jurisdiction covers such diverse activities as commercial fishing and shipping, recreational boating, and the development of salt water fisheries. The Port Authority is authorized to conduct business transactions that promote commercial shipping; contract with a port terminal operator to handle cargo and business transacted through the state pier and facilities in Portsmouth; appoint pilots and harbor masters; establish a foreign trade zone and free port areas; and acquire land for port operations. Through adopted rules and regulations the Authority governs port captains, pilots and pilotage, harbor masters and harbors, moorings, vessel traffic, and coastal navigational safety requirements.

Under RSA 107:8-a, the Port Authority is responsible for initiating measures to prevent and protect against contamination of the seacoast area by oil or other matter discharged from seagoing vessels recognizing that, under RSA 149, the Water Supply and Pollution Control Commission has primary jurisdiction in regard to protection of water quality.

Public Utilities Commission (PUC) - established under RSA 363, consists of three members appointed by Governor and Council for 6 year terms. One member is designated chairman by Governor and Council.

The Commission is charged with carrying out public utilities laws under Title XXXIV, RSA's 362-382. This involves the general supervision of all public utilities and the plants owned, operated, or controlled by these utilities. The Commission is concerned with maintaining adequate service to the public and maintaining the financial stability of the utilities and has the authority to condemn land and exempt utilities from local zoning if necessary for the public welfare. The Electric Power Plant, Transmission Sitings and Construction Procedure, RSA 162-F, requires the PUC to develop guidelines for the preparation of long range plans for the general location, size, and type of all bulk power facilities to be owned or operated over the next 10 years.

The Chairman of the PUC serves on both the Bulk Power Supply Site Evaluation Committee, RSA 162-F, and the Energy Facility Evaluation Committee, RSA 162-H.

Energy Siting Committees - State law establishes two siting committees to evaluate energy facilities. These committees -- the Bulk Power Supply Facility Site Evaluation Committee, RSA 162-F and the Energy Facility Site Evaluation Committee, RSA 162-H, -- are composed of the same members: the executive director and the chief aquatic biologist of the Water Supply and Pollution Control Commission (WSPCC); the commissioner of the Departmemt of Resources and Economic Development (DRED), and within DRED, the directors of the Division of Parks and the Division of Forests and Lands; the director of Fish and Game Department (F&G); the director of the Office of State Planning (OSP); the chairman of the Water Resources Board; the director of the

Radiation Control Commission; the director of the Air Resources Agency, the commissioner of Health and Welfare; and the chairman and the chief engineer of the Public Utilities Commission. The executive director of the WSPCC serves as chairman.

The purpose of these committees is to represent the state in the selection and utilization of sites for energy facilities by issuing permits for facility construction and operation. The committees represent a one-stop permit procedure where one application is submitted to cover all the permits required by state agencies. All state agency permits must be issued or disapproved within 7 months. The committees have 14 months to issue a permit for energy facilities except for an electrical generating facility where 16 months are allowed. The committee cannot approve an energy facility if all other permits are not granted.

Right-of-Way Board (RWB) - established under RSA 258-B, investigates any transaction by state agencies or departments involving acquisition or disposal of land or easements which lead to or is adjacent to a body of water with potential for recreational use. The board makes recommendations for acquisition or retention of any suitable rights-of-way for action by the Governor and Council. The Board consists of the director of the Division of Parks (DRED), director of Fish and Game Department, chairman of the Water Resources Board, and the commissioner of Public Works and Highways or their designees.

Water Resources Board (WRB) - established under RSA 481, is a five member board all of whom are appointed by the Governor and Council. Only the chairman is a full-time salaried employee. The board is involved in a broad spectrum of water resource activities, including the construction, operation, and maintenance of dams, reservoirs and other water projects for distribution and utilization, and the establishment and maintenance of stream flow gauging stations to provide data for water supply planning. Under three session laws, the Water Resources Board also has water resource responsibilities. Chapter 256 of the laws of 1975 directs the Board to coordinate efforts towards solving the water supply problems of the Seacoast area, giving them the specific task of updating a water supply study of southeastern New Hampshire. This request, in conjunction with other state agencies, resulted in the 1976 Southeast New Hampshire Water Supply Study and the Southeast New Hampshire Water Resources Study now underway by the Corps of Engineers.

Chapter 332 of the Law of 1965 gives the towns of Durham, Epping, Lee, Newmarket, and Raymond exclusive rights to the Lamprey River and its tributaries for public water supply purposes. The Water Resources Board is charged with enforcing the provisions of the law.

Chapter 376 of the Laws of 1955 is the source of authority for the Board's involvement in groundwater investigations. The law authorizes and directs the Board to conduct surveys and investigations of the state's groundwater resources, and to enter into agreements with the U.S. Geological Survey to help in carrying out these duties. The groundwater availability maps that have been prepared for the state's major river basins by the U.S. Geological Survey's Water Resources Division are a cooperative arrangement with the Water Resources Board. These maps are the most comprehensive groundwater mapping effort done on a statewide basis, and are a valuable tool in water supply planning.

Members of the Water Resources Board serve on the Wetlands Board, RSA 482-A.

The chairman of the Water Resources Board serves on the right-of-way board, RSA 258-B.

Water Supply and Pollution Control Commission (WSPCC) - under RSA 149, is the agency with primary responsibility for the administration and enforcement of laws relating to water supply, water pollution and water quality standards for surface and ground waters in the state.

The Water Supply and Pollution Control Commission consists of 13 members appointed by the Governor with the consent of the Council. The appointees are the chairman; a vice-chairman who represents the public; five members-at-large, representing industrial, recreational, agricultural and municipal water supply interests; and officials from state agencies concerned with public health, fish and game, parks, planning, water resources, and public safety.

Authorities and responsibilities of the Commission include:

review and approval of plans for new or modified water supply systems;

review and approval for any proposed installation or improvement of a public sewage treatment facility and may require that a municipality construct public sewers if existing facilities do not adequately protect public health or prevent pollution of surface waters;

protect and maintain the quality of state waters, based on a classification system, by means of a permit system for discharge of any sewage or waste into surface or ground waters;

review and approval of any plans for subdivision of land or construction of on-site waste disposal system on any lot or subdivision, based on minimum lot sizes and characteristics;

review and approval of any proposal to dredge, excavate, place fill, or undertake construction in or near surface waters or any proposal that might significantly alter the terrain so as to redirect or create new run-off; and

jurisdiction over cleanup operations whenever an oil discharge or spillage has or will pollute the public waters.

Other responsibilities of WSPCC include:

long range planning for sources of water where increased industrial and population growth is anticipated; approval of public highway or access road construction across any watershed or reservoir used for storage of public drinking water; adoption and enforcement of plumbing rules and regulations for all areas having a public water supply; issuance of licenses for operation of camps designed for vacation or recreational uses; and permit authority over any artificial swimming pool or bathing place open to the public and operated as a business venture.

In addition, WSPCC is represented on the following boards with jurisdiction in the coastal area:

The executive director and the chief aquatic biologist serve on the bulk power supply facility site evaluation committee and the energy facility evaluation committee, RSA's 162-F and 162-H. The director is chairman of both of these committees;

The executive director serves on the Council on Resources and Development, RSA 162-C; and

The executive director and the chief aquatic biologist serve on the Wetlands Board, RSA 483-A.

Wetlands Board (WB) - established under RSA 483-A, consists of seventeen members: three representatives from Fish and Game, two from Water Supply and Pollution Control Commission, one each from Public Safety, Public Works and Highways, Resources and Economic Development, and State Planning, the five members of the Water Resources Board, and three gubernatorial appointments: one from a municipal conservation commission, an elected municipal official, and a representative from a conservation district.

The Wetlands Board is charged with regulating any excavation or dredge and fill of any area adjacent to, or in, state waters, which are defined to include tidal wetlands and the sand dunes remaining in Seabrook. The Board has rule making authority and regulations to guide permit procedures and decisions.

FIGURE 5-2

SUMMARY OF STATE STATUTES

This figure summarizes all state statutes that comprise the New Hampshire Coastal Program: the coordinating agencies, the key regulatory agencies and programs, and other management agencies. Federal activities will also be subject to these laws, as described further in Chapter 8, beginning on page 8-7.

	AGENCY OR PROGRAM DESCRIPTION	AUTHORIZING STATUTES
A.	COORDINATING AGENCIES	
	1. Council on Resources and Development, an interagency board, is responsible for coordinating actions and resolving conflicts between state agencies in addressing resource management, growth and development issues. The Council is authorized to consult on common problems in the field of natural resources and their development; consult and negotiate with any federal or state agency concerned with the council's problems, studies, or reports; conduct studies and recommend changes to effectively coordinate the work of member agencies; and resolve differences or conflicts concerning water management or supply which result from the work of any agency represented on the council. The eleven members of the council represent various resource related state agencies. Recommendations for effective coordination adopted by a majority of the council are binding on the affected agency.	RSA *162-C
	2. The Office of State Planning is responsible for developing a statewide land use plan and related resource planning. Office of State Planning serves as the coordination agency for coastal zone management, including the coastal energy impact program and Outer Continental Shelf participation; the floodplain management program; houses the Coordinator of Federal Funds and the A-95 Clearinghouse functions; conducts the state Outdoor Recreation Planning (SCORP) function for the Department of Resources and Economic Development (RSA 12-A:18), under a memorandum of Agreement; and reviews the Biennial State Capital Budget for consistency with state policies.	RSA 4:12 d-e 12:1 155-A:1
B.	KEY REGULATORY AGENCIES AND PROGRAMS	
	1. Fill and Dredge in Wetlands Act authorizes the Wetlands Board to manage any activity within state coastal waters, submerged lands, fresh and tidal wetlands up to 3½ feet above mean high tide. Jurisdiction includes all critical coastal resources: beaches and sand dunes,	RSA *483-A

*See Appendices for copies of these laws.

AGENCY OR PROGRAM DESCRIPTION	AUTHORIZING STATUTES
coastal waters and estuaries, rocky shores, marine habitats, and tidal wetlands. Permit approval is required for any activity: dredging, filling, or erection of structures. Non-coastal dependent activities along the shoreline are prohibited. Regulations adopted by the Board contain additional management criteria for identifying wetlands and permitting activities.	and regulations
2. Water Supply and Pollution Control Law gives the Water Supply and Pollution Control Commission authority to manage any activity in the coast which could have an adverse impact on state surface ground or coastal waters. Through the issuance of permits, erosion, sedimentation, and runoff in coastal waters is managed and water quality protected. Development adjacent to coastal waters is regulated through the issuance of permits for water supply and sewage disposal facilities including sewer lines, treatment facilities, connections to public sewer, on-site disposal and subdivisions on septic systems.	RSA 146-A 148 148-A 148-B 149 149-E and regulations
3. Fish and Game Department manages fish, shellfish, lobster, crab and other marine species through licensing procedures, legislative actions, and rules adopted by the Department which govern mesh sizes, type of gear, fishing methods, species size and time of day or year for taking of species. The Division of Marine and Inland Fisheries is responsible for the management and promotion of recreational and commercial marine fishing. The Department is responsible for aquaculture permits and for assessing damages to fish, aquatic life, wildlife and habitats resulting from unlawful discharge of contaminants into waters. Several state owned land parcels are administered by the Department.	RSA 206 207 211 212 212-A 214 and regulations
4. Department of Resources and Economic Development is established and charged with the responsibilities of planning, protection and management of the state's land and water resources including forests, parks, recreation areas, historic and cultural areas, soils and other natural resources; and the provision of policies, programs, and personnel in the field of economic development. Management of the state park system including coastal beaches and parks, parking facilities, state properties and historic sites is the responsibility of the parks division and the Department is charged with planning for the orderly expansion of the state park system. Together with state fish piers, state properties cover 78% of the Atlantic shoreline. Within DRED, the Bureau of Marine Services operates three state fish piers in coastal harbors, and the Historic Preservation Office reviews all federal and state activities to protect historic resources.	RSA 12-A 216 216-A 224:44-a and c *227-C and regulations

	AGENCY OR PROGRAM DESCRIPTION	AUTHORIZING STATUTES
	5. The State Port Authority is established with a broad mandate to plan, develop, maintain and use, in cooperation with DRED, the state's ports, harbors and navigable tidal waters. Commercial fishing and shipping, recreational boating, and the development of saltwater fishing are within its jurisdiction. Through adopted rules and regulations the Authority governs port captains, pilots and pilotage, harbor masters and harbors, moorings, vessel traffic, and coastal navigational safety requirements. It is authorized to acquire land for port operations and to establish a foreign trade zone and free port areas.	RSA 271 *271-A and regulations
	6. Energy Facilities Siting Laws establish two Energy Facilities Siting Committees which have direct control in the siting of energy facilities by issuing permits for facility construction and operation. The Committees, inter-agency boards with representatives from various state agencies, constitute a one-stop permit procedure for state energy facility permits.	RSA *162-F *162-H and regulations
C.	OTHER MANAGEMENT AGENCIES 1. The Aeronautics Commission regulates all aspects of air commerce; provides planning and technical assistance in the development of airports; and is empowered to regulate the location, height and identification of structures and the use of the land to maintain an unobstructed air traffic pattern within public airport areas.	RSA 422
	2. The Air Resources Agency is responsible for the operation, control and abatement of air pollution through rules adopted by the Commission; and issues permits for the construction and operation of new stationary sources of air pollution.	RSA 125-C
	3. The Bureau of Solid Waste regulates through statute and adopted regulations, all solid waste disposal sites, hazardous waste disposal facilities, and disposal of oily debris.	RSA 147-A 147-L
	4. The Department of Public Works and Highways regulates and issues permits for the location and design of driveways and approaches to state highways and railroads. It regulates activities adjacent to state highways such as outdoor advertising and junkyards, including sanitary landfills. The Department cooperates with the Corps of Engineers in channel and harbor improvements and corrective projects for coastal erosion.	RSA 217 228 229 232 249 249-A 249-B and regulations

AGENCY OR PROGRAM DESCRIPTION	AUTHORIZING STATUTES
5. The Governor and Executive Council must approve the laying out of highways to any public water and requires an annual report from the DPWH recommending effective means of preventing erosion. The Governor formulates and submits to the legislature the biennial state budget.	RSA 9 216-B 216-C 235
6. The Public Utilities Commission is responsible for developing long-range plans for the general location, type and size of all bulk power facilities over a ten year period and has the authority to condemn land and exempt utilities from local zoning if necessary for public welfare.	RSA 371 and regulations
7. The Right-of-Way Board makes recommendations to the Governor and Council for the acquisition or retention of rights-of-way to water bodies with potential recreational use.	RSA 258-B
8. The Water Resources Board has regulatory authority over the construction and operation of dams, reservoirs and other water projects for distribution and utilization. The Board is authorized to coordinate efforts toward solving the water supply problems of the seacoast and conducting groundwater surveys.	RSA 481 482 and regulations
9. The Civil Defense Agency is the lead agency for the states' hazard mitigation program and coordinates emergency response in disaster situations.	RSA 107

CHAPTER 6

WHAT THIS PROGRAM MEANS TO LOCAL COMMUNITIES

Local participation in the New Hampshire coastal program is voluntary. The program does not include new laws or increase the present number of state or local permits required for private development activities. As long as statewide interests are managed, development decisions and community character will be determined by local governments.

Coastal communities can choose to participate in the program by requesting financial and technical assistance. Technical assistance will be available to local communities to aid in site specific problem solving including short-term scientific, environmental and planning studies. Assistance will be provided only upon request of the local community. Technical assistance can be used to address such problems as coastal wetlands management, park, recreation and dock facilities siting, public access, water quality, erosion, historic preservation, natural areas preservation and restoration, and coastal land use planning problems. The state coastal program shall rely on the expertise of existing state agencies for this technical assistance, and shall utilize coastal funds to augment state agency staff capability where necessary.

Coastal communities may participate in the program by applying for financial assistance from the coastal program to improve their capabilities in addressing local coastal management issues. Local government activities eligible for funding include such projects as coastal resource protection, planning and management, public access and recreation planning, management of development in high hazard areas, shoreline zoning, waterfront renewal and redevelopment planning, coastal growth management, and historic preservation.

Coastal Energy Impact Grants will also be available for coastal communities impacted by the siting of coastal energy facilities. Since the program is being developed in two segments, only those communities in Segment 1 will be eligible to apply for 306 grants at this time. However, any coastal community impacted by the siting of a coastal energy facility may apply for CEIP funds.

COASTAL COMMUNITIES

Segment I	Segment II
Seabrook	Newington
Hampton Falls	Greenland
Hampton	Stratham
North Hampton	Exeter
Rye	Newfields
New Castle	Newmarket
Portsmouth	Durham
	Madbury
	Dover
	Rollinsford

Through an advisory committee, local communities will have a direct input into the formation of the on-going state coastal program. The committee will help set the priorities where coastal funding should be directed on the local levels, as well as establish coordination links between local communities and state and federal agencies.

CHAPTER 7

PUBLIC INVOLVEMENT AND PROGRAM COORDINATION

Past Citizen Participation

The basic requirements for public participation have been met during the development of the New Hampshire Coastal Program. Since 1975, the state has provided opportunities for participation by affected local, regional, state and federal units of government, interest groups, and the general public in the development of the coastal program.

Some examples of these public information and participation activities that have been coordinated by the New Hampshire Office of State Planning are:

- Meetings, conferences, and workshops held to inform and educate the public and to seek public comments. These occurred during the course of six years and through the process of three legislative sessions, during each of which one or more bills were submitted for legislative action.

- The media were extensively utilized to develop public awareness. Newspaper articles, press releases, film and slide show presentations, radio and television appearances, and informational handouts were just some of the techniques employed in this effort.

- State and federal agency input was solicited during program development as alternative draft legislation and program proposals were formulated.

- A bi-monthly newsletter, "Coastal Soundings," mailed to over six hundred coastal residents, and local, state, and federal officials, provided information on program development, articles of coastal interest, and a calendar of coastal meetings and events.

- A brochure, "New Hampshire's Coastal Program," was published in August 1980, and widely distributed throughout the state.

- A Coastal Advisory Committee, composed of twenty-two members representing a variety of coastal interests and communities, was appointed by the Governor in 1979. The Committee held fourteen public work sessions over a five month period as it drafted a bill designed to reflect and balance the diverse needs and concerns of the coastal area. The committee then presented its coastal program proposal at six public information meetings, soliciting comments and making revisions where necessary.

- The Office of State Planning provided staff assistance for the CAC and worked with the Committee to involve as many citizens as possible in the program development process. The coastal program staff met with selectmen and planning boards in many of the seventeen coastal municipalities to directly inform them of the program's elements and to seek their comments.

- Legislative contact was maintained by CAC members and coastal staff after coastal legislation (H.B. 423) was formally submitted to the 1981 session of the General Court. Coastal staff assisted the CAC in coordinating testimony in behalf of the bill before a joint House/Senate hearing.

Passage in the House was by voice vote; the Senate declined to pass the bill in spite of considerable support voiced at the hearing and in letters to the respective legislative committee chairmen.

- Following the defeat of HB 423, the Office of State Planning reviewed those concerns expressed during the hearing process: state authority in the coastal area is already sufficient, no more is needed; implementation of a federal program is of questionable benefit in the face of pending reduction of federal funds; a balanced and better coordinated program for resource protection and reasonable development is essential in the limited coastal area. Based on an assessment of these concerns, state statutes and regulations were reviewed to determine whether New Hampshire has the basis for an approvable program under existing authority. A program using current authority was developed by the Office of State Planning, in cooperation with the affected state agencies, and the Office of Coastal Zone Management, and widely distributed for comment throughout the state.

Future Citizen Participation

Considerable time and interest has already been expended by New Hampshire citizens in the process of shaping a program uniquely suited to the geographic and political situations of the state. Continued public involvement will be necessary to carry out an effective coastal program.

An advisory committee will be utilized to provide an opportunity to continue this function. The committee will serve as a forum for discussing coastal issues of local and statewide concern. It will provide a clearinghouse for the collection and dissemination of coastal program information and ideas. The committee will provide citizen input on state actions as they relate to the implementation of the New Hampshire coastal program.

The Council on Resources and Development (CORD), an existing state agency board, composed of eleven members representing eight state agencies, shall provide coastal program coordination among state agencies. The Council shall obtain information from state and federal agencies as necessary, and consult on common problems and issues in order to coordinate and integrate policies, priorities and funding in the coast.

The Office of State Planning will continue to function as the lead agency in providing on-going information links between local, state and federal agencies.

Federal Government Participation

Beginning in April 1975, and continuing to the present, OSP has contacted fifty-five federal agencies and requested information regarding agency missions and comments on the developing New Hampshire program. Copies of the "Coastal Sounding" newsletter has been sent to these agencies as part of the continued effort to provide up-to-date information. Responses have been received from forty-seven federal agencies. These comments have been duly acknowledged and the program adjusted, where deemed appropriate. Federal contacts will be a continuing part of the New Hampshire Coastal Program.

CHAPTER 8

SPECIAL REQUIREMENTS

A. PUBLIC INTEREST FACILITIES AND RESOURCES

Uses of Regional Benefit

In New Hampshire, authority to prevent the arbitrary exclusion of uses of regional benefit includes:

- Exemption of state and federal activities from local zoning: while state statutes are silent as to the applicability of local zoning to state conducted activities, case law clearly exempts state activities from local zoning. Federal activities are also exempt from local zoning.

- Eminent Domain: RSA 4:29 empowers the Governor and Executive Council to acquire, on behalf of the state, either by purchase or other means (including eminent domain), any real estate within the state which is necessary for any military purpose, public parks, public buildings, or any other public improvement purposes in the name of the state. The procedures for taking land will be in accordance with RSA 498-A, the Eminent Domain Procedures Act.

- Public Utilities Procedures: Planning Enabling Legislation RSA 31:62 provides for the exemption from adherence to local zoning of structures used or to be used by public utilities, after a public hearing, if the Public Utilities Commission decides that the situation of the structure is necessary for the convenience or welfare of the public. Hearings will be in accordance with RSA 365. Public utilities can also acquire land through condemnation procedures established under RSA 371.

The following activities are uses of regional benefit which cannot be arbitrarily excluded under New Hampshire state laws:

1. Electrical generating facilities of more than 50 megawatts (RSA 371, RSA 31:62).
2. Electrical high voltage transmission lines in excess of 100 kilovolts (RSA 271, RSA 31:62).
3. Public utility pipelines (oil and gas) RSA 371 and RSA 31:62).
4. Regional waste treatment plants (RSA 149:B-la, State Activity).
5. State beaches and parks (RSA 4:30 State Activity).
6. Highways (RSA 232, State Activity).
7. Public port facilities (RSA 271-A:13, State Activity).
8. Land for propogation of fish and game (RSA 212:2, State Activity).
9. Defense and Coast Guard Installations (Federal Activity).

National Interest Facilities and Resources

The federal Coastal Zone Management Act contains provisions which require that the national interest in certain resources and activities be considered in the development and implementation of state coastal zone management programs.

Articulation of the national interest is the responsibility of the federal government. The Congress and the Executive Branch, through legislation and executive orders and programs, express and represent the interest of the entire nation. Federal agencies, therefore, generate national interest information for consideration by the states.

For this reason, beginning in April, 1975, and continuing to the present, OSP has contacted 55 federal agencies and requested information regarding agency missions and perceptions of the national interest in New Hampshire's coastal area. (See Figure 8-1 for a list of federal agencies contacted). On a periodic basis, OSP has sent information on the coastal program to these agencies and asked for comments. Proposed legislation, lists of federal lands, and the Section 305(d) draft program document were just some of the information sent to federal agencies. Furthermore, federal agencies have been periodically kept up-to-date through mailings of a coastal newsletter. OSP has received responses from 47 federal agencies.

New Hampshire recognizes that certain activities are in the national interest and seeks to assure that there is a balance between protection and development by giving full consideration for siting, in the coastal area, of all facilities of national interest and requiring that environmental concerns be fully considered as well.

The following sources were used to develop national interest information.

- Federal laws and legislation
- Presidential policy statements and executive orders
- Federal agency consultation
- Plans, reports, and studies from federal, state, or inter-state agencies

Facilities and resources in the coast which are in the national interest are discussed below:

Facilities in the National Interest:

a) National Defense Facilities - New Hampshire accommodates several national defense facilities in or affecting the coastal area - Pease Air Force Base, New Castle Coast Guard Station and the Portsmouth Naval Shipyard. However, any new or expanded national defense facility can be located anywhere by eminent domain authority of the U.S. Department of Defense. The regulation of those activities listed in this document shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistently with all regulations to the maximum extent practicable.

b) Energy Facilities - Given the size of the State's coastline, New Hampshire already accommodates the national interest in the siting of energy facilities in the seacoast: six facilities for oil product transfer, storage, and distribution; three electric generating plants; one LPG facility; one oil refinery; and one nuclear power plant. Along the three mile shoreline of the only deep water channel which can accommodate water-borne commerce, over 2 miles are owned and developed for water dependent energy industries.

Due to the state's limited shoreline and the extent of existing energy facilities, only coastal dependent energy facilities will be in the national interest. (An oil refinery, for example, is not coastal dependent.)

The state has a one-stop permit process for all energy facilities and is required to consider the public interest in all such sitings. RSA 162-F:9 and RSA 162-H:11 requires the appointment of a counsel for the public to represent the public and its interests in protecting the quality of the environment and in the assurance of an adequate electric power supply. These laws further require that environmental and other relevant factors be reviewed when determining whether objectives of the law are best served by issuance of a permit.

c) Recreation - The national interest in recreation facilities in New Hampshire was determined through review of the Nationwide Outdoor Recreation Plan, the Historic Preservation Act, the Land and Water Conservation Fund Act, and the New Hampshire Statewide Comprehensive Outdoor Recreation Plan. Some of the major objectives identified through this review include the recognition that recreation should be an equal among competing uses of the coastal area; high quality recreational opportunities should be provided to all citizens while protecting the coastal environment; and public recreation opportunities should be increased in high density areas.

In New Hampshire's seacoast, recreation constitutes a major industry and opportunity. Public beaches, state parks, and public mooring areas all provide recreational opportunities for New Hampshire citizens and out-of-state visitors. New Hampshire meets the national interest in recreation through:

-- direct state ownership and management of coastal parks and recreation areas (See Figure 3-1 in Chapter 3 for a list of state lands).

-- acquisition and eminent domain authority to expand or acquire recreation areas. (RSA 216-A)

The New Hampshire program relies on the recreation policies of the State Comprehensive Outdoor Recreation Plan (SCORP) and its planning process to provide continuing consideration of the national interest in recreation. The salient policies in the plan are provided in Chapter 3, Policy 8.

d) Transportation - National interest in transportation is determined through the review of the Department of Transportation Act, the Railway Safety Act, and the Coast Guard, Primary Duties (14USC). The major objective in transportation is to provide fast, safe, efficient, and convenient access via one or more modes of transportation for the movement of goods, people and services to, from, and through the coastal region.

In New Hampshire, the Portsmouth Harbor channel and Interstate 95 are transportation corridors in the national interest and are protected by public interest over-ride statutes or direct federal control:

-- The Portsmouth-Piscataqua River channel is maintained by the Corps of Engineers as a navigable channel for water dependent industries. The Corps provides a public notice to OSP on all major projects proposed in the state. Review and comment by OSP through the Corps public notice and comment procedures shall constitute intergovernment coordination and national interest consideration.

-- Interstate 95 is maintained by the state and U.S. Department of Transportation. Expansion and eminent domain authorities are covered under RSA's 120, 229, 232, 233, and 256-C. Any major highway expansion or construction is subject to extensive public review procedure:

- federal EIS review process;
- State Action Plan review process.

Resources in the National Interest:

e) Water and Air - the coastal program incorporates, by reference, the requirements of the Clean Air and Clean Water Acts. These standards will be maintained or achieved through issuance of state and federal air emission and waste water discharge permits.

f) Wetlands - The national interest for the protection of wetlands is contained in Section 404 of the federal Water Pollution Control Act, the National Environmental Policy Act of 1969, and the May 24, 1977, Executive Order #11990 on the Protection of Wetlands. The New Hampshire program recognizes the importance of wetlands for habitat and food sources, for waterfowl and aquatic life, and other natural functions. Existing state law (RSA 483-A) already provides state policies and a permit program for the protection of wetlands. National interest consideration in wetlands is met through this permit process.

g) Living Marine Resources - Existing federal legislation and studies clearly demonstrate the national interest in conserving, enhancing, and managing commercial fishing, strengthening the contribution of marine resources to recreation, and developing and protecting marine resources and wildlife habitats. Existing state policies and regulations provide for the protection of living marine species and habitats. Through a joint project, the New Hampshire Department of Fish and Game and the Office of State Planning will be developing a state Comprehensive Commercial Fisheries Strategy (CCFS), which will provide comprehensive and continuing coordination of the national interest in these resources.

Continued Consideration of the National Interest:

Continued consideration of the national interest in facilities and resources identified above will be assured during program implementation as follows:

The Office of State Planning has been designated by the Governor as the lead agency for the coastal program and is responsible for ensuring adequate consideration of the national interest.

OSP shall ensure continuing consideration of the national interest by providing national interest information during public interest proceedings, through A-95 review, and other permit, plan review and coordination proceedings:

a) National Defense Facilities - OSP will be notified of any consistency determinations made by appropriate Department of Defense agency thru the A-95 review process. OSP will coordinate items of national interest consideration with the appropriate Department of Defense agency contact.

b) Energy Facilities - Under RSA 162-F:1 and RSA 162-H:1, the New Hampshire Legislature requires a public interest finding to balance environmental protection and the need for energy. This public interest finding, as incorporated in the New Hampshire coastal program, speaks to and constitutes the continued consideration of the national interest in the planning for, and siting of, energy facilities in the coast, as required under Section 306 (e)(2) of the Federal Coastal Zone Management Act.

Based on its geographical location, New Hampshire has traditionally considered national and regional energy needs in making its siting decisions. With the state's utilities participating in the New England Power Pool, shared energy supply with surrounding states is an ongoing fact. In recognition of this fact, state law under RSA 162-F:4 requires the identification of all tentative sites within the state for power supply in relation to the location of existing plants and tentative sites planned or announced by utilities within a two hundred mile radius. Further, in the final determination of need for a specific facility and in the subsequent permit order under the bulk power facilities siting process, the economies of scale available by building a large plant to meet state and regional energy demand is fully considered in the siting decision.

c) Recreation - New Hampshire provides continued consideration of recreation in the coast through the planning and managment of existing parks and through the purchase of additional areas. OSP will be notified through the SCORP and A-95 review of all such proposed activities.

d) Transportation - Any proposed activity in a navigable channel is subject to a Corps of Engineers permit based on public notification and review. OSP receives such notifications and will coordinate directly with the Corps on any national interest considerations.

Any expansion of Interstate 95 is subject to extensive review and public input review under the State Highway Action Plan and the federal EIS/4 (f) evaluation regulations, during which the public interest must considered. OSP is notified of all such proceedings.

e) Resources in the National Interest - The national interest in water, air, wetlands and living marine resources is considered through the existing state or federal water quality, air quality or wetlands permit process. Issuance or denial of a permit constitutes adequate consideration of the national interest.

FIGURE 8-1

FEDERAL AGENCIES CONTACTED DURING COASTAL PROGRAM DEVELOPMENT

Department of Agriculture

- Office of Intergovernmental Affairs
- Soil Conservation Service
- National Forest Service

Department of Commerce

- Economic Development Administration
- National Marine Fisheries Service
- Office of Minority Business Enterprises

Department of Defense

- Air Force - Assistant Secretary for Installations
- Air Force - Eastern Region Civil Engineering
- Air Force - Pease Air Force
- Army Corps of Engineers - New England Division
- Defense Civil Preparedness Agency
- U.S. Navy - Office of the Secretary
- U.S. Navy - Naval Facilities Engineering Command
- U.S. Navy - Portmsouth Naval Shipyard

Department of Health and Human Services

- Office of the Regional Administrator
- HUD Regional Office

Department of the Interior

- Northeast Region Office
- Office of OCS Program Coordination
- New York OCS Office, BLM
- Bureau of Mines
- U.S. Fish and Wildlife, Office of Biological Service
- U.S. Fish and Wildlife, Concord-Regional Office
- U.S. Geological Survey, Conservation Division
- U.S. Geological Survey, Water Resources Division
- National Park Service

Department of Justice

- Pollution Control Section

Department of Transportation

- Coast Guard - 1st District
- Federal Aviation Administration
- Federal Highway Administration
- Federal Railroad Administration
- Maritime Administration
- Urban Mass Trasportation Administration

Department of Energy

- Office of Regional Administrator
- Federal Energy Regulatory Commission

Environmental Protection Agency

- Region 1 Office

Federal Emergeny Management Agency

- Flood Insurance Program

Federal Regional Council

- New England Region

Federal Maritime Commission

- Atlantic District Office

General Services Administration

- Operational Planning Staff

Nuclear Regulatory Commission

- Office of State Programs

B. FEDERAL CONSISTENCY

In addition to state and local government, federal agencies also play a significant role in New Hampshire's coast. In recognition of this fact, the federal Coastal Zone Management Act provides for the review of federal activities in a state's coastal area to ensure that they are being conducted in a manner consistent with the state's approved management program. These activities are:

- Federally conducted or supported activities, including development projects. These must be consistent to the maximum extent practicable;

- Federal licenses and permits;

- OCS plans; and

- Federal assistance to state and local government.

The Office of State Planning (OSP) is the lead agency for issuing all federal consistency determinations in New Hampshire. OSP will also ensure that state agencies and local governments have the opportunity to participate in federal consistency reviews. If New Hampshire determines that an activity will be inconsistent with the management program, OSP will work with the federal agency and other interested parties to determine how the activity, project, or plan can be consistent with the approved management program.

The basis for all consistency reviews of federal actions are the enforceable policies and laws of the New Hampshire Coastal Program as contained in existing state laws and procedures and as provided in Chapters 3 & 4 of this document. OSP intends to carry out the federal consistency provisions without causing burdensome responsibilities on applicants and federal agencies. In this regard, OSP will use, to the maximum extent possible, information required by existing federal regulations such as environmental impact statements, environmental assessments, permit applications and grant applications. This information, however, must include the necessary information outlined in the National Oceanic and Atmospheric Administration (NOAA) federal consistency regulations. In addition to federal activities conducted within the defined coastal boundaries described in Chapter 2, actions on excluded federal lands, on the Outer Continental Shelf and inland areas in close proximity to the coastal boundary may be subject to consistency review. The need for a consistency review is based on the extent to which the activities impact the coastal zone.

Federally Conducted or Supported Activities

Federal agencies are responsible for determining whether federal activities directly affect the coastal zone and whether they are consistent to the maximum extent practicable with the state's approved program. Federal activities outside the coastal boundary are also subject to this federal agency review.

Consistency review determinations made by federal agencies for activities directly affecting the coastal zone will be submitted to OSP as the designated coastal agency. The federal activities listed in Part I of Figure 8-2 are likely to require a federal consistency determination. Unlisted activities will be monitored through the A-95 review process. In those cases where a consistency determination and review is needed for any unlisted activities, OSP will notify the federal agency and the Office of Coastal Zone Management in accordance with produce specified in NOAA regulations.

Federal agencies are required to notify the state of proposed activities that will directly affect the coastal zone and must provide OSP with a consistency determination at the earliest practicable time in the planning of the activity, preferably when the analysis of alternatives is still ongoing. In any case, the consistency determination must be provided to OSP no later than 90 days before final approval of the activity. Federal agencies may use existing mechanisms such as OMB Circular A-95 and NEPA environmental review processes to satisfy the notification requirements.

If a federal agency determines that an activity does not directly affect the coastal zone, and thus a consistency determination is not needed, the agency must notify OSP at least 90 days before final approval of the activity setting forth the reasons for its negative determination.

Upon receipt of a consistency determination from a federal agency, OSP will review the determination and inform the federal agency of its agreement or disagreement with the consistency determination within 45 days. If needed, OSP may request a one time extension of 15 days. The consistency determination will be based upon the enforceable program policies as described in Chapter 3.

In the event OSP is in disagreement with a federal agency's consistency determination, OSP will inform the agency of its reasons for disagreement, supporting information, and alternatives, which, if adopted, would make the activity consistent with the coastal program.

Federally Licensed and Permitted Activities

Applicants for federal licenses or permits for activities affecting land or water use in the coastal zone or for renewals or amendments to such licenses or permits shall provide the permitting agency with a certification that the proposed activity is consistent with the state coastal program.

Federal agencies may not issue a license or permit if the state objects to the applicant's consistency certification unless the U.S. Secretary of Commerce finds that a proposal is consistent with the purpose of the federal

Coastal Zone Management Act or is necessary in the interest of national security. Licenses and permits subject to consistency review are listed in Part II of Figure 8-2. In addition, OSP will continue to monitor other federal licenses and permits and, if necessary, will notify the federal agency, the applicant, and the Assistant Administrator of NOAA within 30 days of notification that an unlisted license or permit will be subject to a consistency review.

At the same time an application for a license or permit is submitted to a federal agency, the applicant shall transmit a copy of the application and the consistency certification to OSP. Where there is one or more similar state permits or licenses for the project, issuance of all relevant permits shall constitute state concurrence with the consistency certification. In the absence of an applicable license or permit, OSP shall make the consistency determination based on the state's enforceable coastal policies, regulations and procedures. OSP will make a decision or notify the applicant within 3 months, as provided in NOAA regulations. In no case can the consistency review take more than 6 months.

In order to ensure public input, public notice will be given for any license or permit being reviewed for consistency. For activities which are subject to a similar state permit, OSP will use the applicable agency's notification process. Should this or other reasonable forms of public notification not be available or if the nature of the permit being applied for is of sufficient interest, OSP will carry out the public notice.

When OSP objects to a consistency certification, it will notify, in writing, the applicant, the federal agency and the Assistant Administrator of NOAA. The notification will describe how the proposed activity is inconsistent and alternatives, if any, which would make the activity consistent.

OCS Plans

Plans for the exploration, development and production of Outer Continental Shelf (OCS) resources and all associated license and permits for activities which affect the coastal zone will be evaluated for consistency with New Hampshire's coastal program in accordance with the NOAA federal consistency regulations. The review will be coordinated by OSP and based on the enforceable policies and standards of the state's coastal program. As in the previous section, OSP will ensure all the public notice necessary for review of the OCS plans.

OSP will process all OCS plans as soon as reasonably possible. The maximum review period as established by federal regulations is three months following commencement of state review, with an additional three month period available to the state upon notification to the appropriate parties of the status of the review and the basis for further delay. Total review time cannot exceed six months. In the event that the state objects to a consistency certification for an OCS plan, the federal agency may not approve the plan or issue any license or permit for activities described in detail in the plan unless the U.S. Secretary of Commerce finds that the proposal meets the objectives of the federal Coastal Zone Management Act or is necessary in the interest of national security.

Federal Assistance to State and Local Government

As the A-95 review agency, OSP will receive all applications for federal assistance. All state or local government applications for projects affecting the coastal zone including planning, design, construction, alteration or expansion of physical development projects will be subject to a consistency review and the applicant must certify consistency with the policies of the program. This certification must be contained in the A-95 Review Notification or another process, if A-95 does not exist.

Within the time limits provided for A-95 review, OSP, as the state clearinghouse, will notify the appropriate federal agencies and applicants of any objections to proposed projects. The objection will describe how the proposed project is inconsistent with enforceable policies and shall recommend alternative measures, if any, which would make the project consistent. Applicants will also be notified of appeal procedures under NOAA regulations.

FIGURE 8-2

FEDERAL ACTIVITIES SUBJECT TO CONSISTENCY REVIEW
UNDER THE NEW HAMPSHIRE COASTAL PROGRAM

PART I. FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS LIKELY TO DIRECTLY AFFECT THE COASTAL ZONE

Department of Commerce/National Marine Fisheries Service

- Fisheries management proposals

Department of Defense/Army Corps of Engineers

- Proposed projects, authorizations for dredging, channel works, breakwaters, other navigation works, erosion control structures, reservoirs, dams, beach nourishment, and other public works projects.

Department of Defense/Air Force, Army and Navy

- Location, acquisition, and design of new or enlarged defense installations. Actions conducted on federal lands with potential impact on non-federal coastal land and water including construction or expansion of buildings or acquisition of land.

Department of the Interior/Bureau of Land Management

- OCS-lease sale activities -- selection of tracts, lease sale stipulations, operating orders, geological and geophysical permits, etc.

Department of the Interior/Fish and Wildlife Services

- Acquisition and management including master plans of National Wildlife Refuges.

Department of the Interior/National Park Service

- Acquisition and management including master plans of national parks and seashores.

Department of Transportation/Coast Guard

- Location, design, and acquisition of new or enlarged installations.

Department of Transportation/Federal Aviation Administration

- Construction, maintenance, and demolition of federal aids to navigation.

General Services Administration

- Disposal of surplus federal land, property acquisition and building construction.

PART II. FEDERALLY LICENSED AND PERMITTED ACTIVITIES

Department of Defense/Army Corps of Engineers

- Section 10 permit; Rivers and Harbors Act of 1899

FIGURE 8-2 (CONTINUED)

PART II. FEDERALLY LICENSED AND PERMITTED ACTIVITIES (CONTINUED)

Department of Defense/Army Corps of Engineers (Continued)

- Section 9 & 10 permits; Rivers and Harbors Act of 1899
- Section 404 permit; Clean Water Act and amendments
- Section 103 permit, Marine Protection Research and Sanctuaries Act of 1972.

Department of Energy/Federal Energy Regulatory Commission

- License for non-federal hydroelectric projects; Section 4(e), Federal Power Act.
- Abandonment of gas pipeline; Section 7, Natural Gas Act.
- Certificates authorizing construction, or operation of or facilities for transportation or storage of natural gas; Section 7, Natural Gas Act.

Department of Energy/Economic Regulatory Administration

- Options and orders for permission for delivery of imported LNG.

Department of the Interior/Bureau of Land Management and USGS

- OCS Permits for Exploration and Development Plans, etc.
- Permit for pipeline rights-of-way for oil and gas transmission on Outer Continental Shelf.

Department of Transportation/Coast Guard

- License for the construction and operation of deepwater ports; Deepwater Port Act of 1974.
- Permit for construction or modification of bridge structures across navigable waters of the Unites States.

Department of Transportation/Federal Aviation Administration

- Permit and license for the construction, operation, or alteration of airports.

Environmental Protection Agency

- National Pollution Discharge Elimination System (NPDES) permit; Section 402 & 403, Federal Water Pollution Control Act.
- Ocean dumping permit (exercised jointly with Army Corps of Engineers)

Nuclear Regulatory Commission

- Permit and license required for the construction and operation of nuclear plant.

C. ENERGY FACILITY PLANNING PROCESS

A variety of energy facilities are already located along New Hampshire's limited coastline: six facilities for oil product transfer, storage, and distribution; three electric generating plants; one LPG facility; one oil refinery; and one nuclear power plant. Section 305(B)(8) of the Coastal Zone Management Act of 1972, as amended, requires the New Hampshire Coastal Program to contain an energy facility planning process for any future proposals. An efficient, balanced, and enforceable energy facility planning process is in effect through the use of two existing energy facility siting laws, RSA's 162-F and 162-H. These laws establish two energy facility site evaluation committees composed of identical members from nine state agencies, which represent the state in the selection and utilization of sites for energy facilities.

CZMA sets certain minimum requirements that a state's energy facility planning process must meet. These requirements and how the New Hampshire process meets them are discussed below.

Identification of energy facilities which are likely to locate in, or which may significantly affect, a state's coastal area

RSA 162-F identifies electric generating stations and transmission lines as being subject to the law, including all bulk power supply facilities such as nuclear, coal, oil, and hydroelectric generating stations. RSA 162-H covers any industrial structure used substantially to extract, manufacture, or refine sources of energy, such as oil refineries, liquified natural gas processing plants and coal conversion plants; and any ancillary facilities used in transporting or storing raw materials or products of such industrial structures such as onshore and offshore loading and unloading facilities, pipelines, and storage tanks. These definitions are sufficiently comprehensive to cover any energy facility that would locate in New Hampshire's coast.

Procedures for assessing the suitability of sites

RSA 162-F, the law that governs the siting of electric generating facilities, establishes the following site suitability procedures:

- Approval by Public Utilities Commission (PUC) and the site evaluation committee of a five-year plan for utilities that includes proposed sites for generation facilities and general areas for transmission lines; plan must include how adverse impacts caused by planned sites and facilities will be lessened.

- Certificate of approval for site and facility requested from PUC: site must be on five-year plan, application must contain information needed to satisfy the permit requirements of all state agencies, and the application must be received two years prior to construction.

- Joint hearings held by PUC, site evaluation committee, and other state agencies with permit authority.

- Within fourteen months, the site evaluation committee, having considered available alternatives and environmental impact of facility, must approve or disapprove the site, except that the committee cannot approve a portion

of the development which has been disapproved by a state agency. In approving the site, the committee must find that the construction of the facility:

1) will not unduly interfere with the orderly development of the region,

2) is required to meet present and future demand for electric power,

3) will not adversely affect system stablility and reliability and economic factors, and

4) will not have an unreasonably adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and the public health and safety.

- After approval of the sites by the site evaluation committee, the PUC has up to sixteen months from date of application to issue or deny the certificate of site and facility and may attach any terms or conditions which are supplied to it by the committee or other state agencies. Monitoring and enforcement of the provisions of the certificate is by the PUC.

Under RSA 162-H, the law that governs energy facilities other than power plants, the following site suitability procedures are used:

- Permit application received by energy facility siting committee; must contain all information required by other state agencies with corollary permit authority. Application must contain description of type and size of each major part of facility; identify both first choice and other choice for site of each part of facility; describe environmental impact of each part of facility, describe proposals to study and ameliorate environmental problems, and describe applicant's financial, technical, and managerial capability.

- Joint hearings are held on application by siting committee and any other agency with permit authority.

- Within fourteen months from date of application, the committee must approve or disapprove the application except that it cannot approve a portion of the application which has been lawfully disapproved by a state agency. In approving the facility, the committee must find:

  1) the facility will not unduly interfere with the orderly development of the region and will not have an unreasonable environmental, aesthetic, or public impact; and

  2) the applicant has adequate financial, technical, and managerial ability to construct and operate the facility.

The committee may attach any term or condition it deems necessary to the permit and is authorized to enforce compliance with permit.

Public utilities can be exempt from local zoning by the Public Utilities Commission, under RSA 31:62. All other energy facilities are subject to local zoning. In the case of oil refineries, optional local siting is permitted under RSA 31:109 for towns and under RSA 47:27 for cities.

Articulation and identification of enforceable state policies, authorities, and techniques for managing energy facilities and their impacts

State energy facility siting laws, RSA's 162-F and 162-H, provide general policy guidance for the siting of energy facilities. In general, state policy is to review the merits of each proposal and ensure that the facility does not cause an unreasonable environmental, aesthetic, or public impact. For the state's energy facility siting policy statement see Policy 13 in Chapter 3.

Identification of how interested and affected public and private parties may be involved in the planning process

The opportunity for participation by interested and affected public and private parties is mandated under the existing energy facility siting laws. State agency involvement is required through the participation of the following state agencies on the siting committees:

*Executive Director, Water Supply and Pollution Control Commission
Chief Aquatic Biologist, Water Supply and Pollution Control Commission
*Commissioner, Department of Resources and Economic Development
*Director, Fish and Game
*Director, Office of State Planning
*Chairman, Water Resources Board
Director, Radiation Control Agency
Director, Air Pollution Control Commission
Commissioner, Department of Health and Welfare
*Director, Division of Parks (DRED)
*Director, Division of Resources (DRED)
Chairman, Public Utilities Commission
Chief Engineer, Public Utilities Commission

*These state agencies are also represented on CORD, the coordinating state agency for problems in the field of natural resources and development.

Any of these agencies or other state agencies, which have permit authority over a part of the facility being reviewed, must issue that permit or the facility cannot be built.

Public and private involvement in the decision-making process on energy facility siting is also encouraged in the following areas:

- Under RSA 162-F, hearings are held by the site evaluation committee on any site to be included in a utility's five-year plan. Five-year plans must document the utility's effort to involve environmental and land use agencies in the planning process and all plans and demand projections are filed with the PUC and available to interested groups upon request.

- Under both RSA 162-F and RSA 162-H, all certificate and permit applications are subject to public hearings held by the siting committee, the first one must occur no later than sixty (60) days after the date of application. The first hearing is informational and all subsequent hearings are adversary proceedings. All information presented to the committee is available for public inspection.

- Under both laws, a counsel for the public is appointed to represent the public in seeking to assure an adequate supply of energy and protection of the environment. The counsel has the same rights or privileges of an attorney representing a party in a formal action.

- All decisions of the siting committees are reviewable subject to state law.

D. SHOREFRONT ACCESS AND PROTECTION PLANNING

Under Section 305(b)(7) of the Coastal Zone Management Act of 1972, as amended, states are required to develop a shorefront access and protection planning process. The New Hampshire Coastal Program will use existing state laws to meet the following federal requirements:

A procedure for assessing public areas requiring access or protection

All areas along the shorefront in public ownership or commonly used by the public without fee or restriction have been identified and evaluated for their access or protection needs. The areas identified include beaches and dunes, rocky shores, and other areas that provide public access to the shorefront. A special study has recently been conducted to analyze public mooring and launching areas. All areas identified under this evaluation have been mapped. The evaluation included the present use and ownership of the area, the recreational, ecological or historical value of the area, the existing capacity of the area to accommodate people and/or parking, and the future demand for the area. The following conclusions can be drawn from these evaluations:

- There is additional beach capacity at many of the public shorefront areas; the availability of parking and traffic congestion are the major impediments to increased use of these areas.

- The rights of the public to use certain beaches need to be clearly established and, if public, access to these areas should be protected.

- There is a need for the provision of additional public moorings for recreational boating in the harbor areas.

The assessment of public shorefront areas points out where the coastal program will have to concentrate its efforts in protecting and promoting access in order to ensure that New Hampshire's residents and visitors can enjoy a diversity of recreational, historical, cultural, and aesthetic pursuits.

A definition of the term "beach" and an identification of public areas meeting that definition

For the purposes of this program, "beach" is defined as the zone of unconsolidated material extending landward from mean low water to the place where there is a change in material or physiographic form or to the line of permanent vegetation. The beach is further divided into two important components. The dry sand beach portion is the area lying between mean high tide and the seaward edge of permanent vegetation, sand dunes, seacliff, or seawall. The wet sand portion is the intertidal area. The mean high tide mark is generally considered to be the point where ownership changes. Under state case law, the intertidal area belongs to the public, subject to reasonable use by the abutting owner.

New Hampshire has 10.0 miles of wet sand beach and 10.2 miles of dry sand beach along the Atlantic Ocean. (.2 miles of dry sand beach abuts a rocky intertidal area). Of the dry sands area, 9.4 miles is available for use by the public without fee or restriction. Not all is necessarily publicly owned, but public use is historic in nature, use is not impeded, and it is generally felt that the public has prescriptive rights to these areas. See Figure 3-1 Policy 8 in Chapter 3 for a listing of beaches that provide public access.

Identification and description of enforceable policies, legal authorities, funding programs and other techniques that will be used to provide shorefront access and protection

Existing state authority provides the basis to ensure that the quality of public access is maintained and to work towards solutions for the problems that do exist under the access issue.

1. Policies - See Chapter 3, Policies 1, 5, and 8 for a detailed discussion of the policies that underly this authority.

2. Legal - New Hampshire has the following legal means to maintain and enhance access to public shorefront areas:

- public ownership under state law of all tidelands, submerged lands, and navigable waters.

- recourse through the courts to reassert state authority over public access areas that are being encroached upon. The state, through the doctrine of prescription, has the ability to enforce the public right to use private land that has been continuously used by the public over a period of years.

- local ordinances and enforcement of flood insurance regulations can be used to provide additional parking or preferential parking for buses and car poolers to ease the parking problem.

3. Funding - Four sources of funds that can be used for shorefront access and protection are:

- Section 306 Coastal Zone Management funds can be used to research the legal basis for asserting public rights to the shorefront.

- Section 308(b) Coastal Energy Impact Program funds can be used to replace recreational shorefront, including access, which has been lost as a result of coastal energy activities.

- HCRS 50% matching funds can be used to acquire and improve shorefront areas including new boat launching areas and parking at recreational sites.

- the state Fish and Game Department is eligible for Dingle-Johnson 50% matching funds for the purchase of wildlife and hunting areas and access points.

Taken together the above mechanisms will enable New Hampshire to maintain the use of public shorefront areas and increase use of the shorefront through the acquisition of parking and additional recreational areas.

E. SHORELINE EROSION/MITIGATION PLANNING

Under Section 305(b)(9) of the Coastal Zone Management Act of 1972, as amended, state coastal programs must develop a shoreline erosion/mitigation planning process. To meet this requirement the New Hampshire program will use existing state statutes and agency regulations to meet the following federal requirements.

A method for assessing the effects of shoreline erosion and alternatives to control erosion areas.

New Hampshire's tidal shorefront was assessed for the effects of erosion. This assessment included: comprehensive review of the available literature to identify information pertinent to New Hampshire; analysis of Army Corps of Engineers' data on shoreline change to obtain historical trends on erosion and accretion in the seacoast; comprehensive field reconnaissance, but no actual monitoring, of the area; and interviews with coastal residents and experts in the field of erosion processes, which were then checked with the available written information.

The information gathered was synthesized and the following areas were identified for additional attention:

- areas of significant and potentially critical erosion or accretion;
- areas of dynamic activity but little net change;
- areas where stabilization measures are presently working; and
- areas where stabilization measures are causing unintended impact.

Specific locations identified as experiencing shoreline change include:

Seabrook Beach - The southern arm of Hampton-Seabrook barrier system, this beach contains the last remaining large dunes in the seacoast. The system is experiencing erosion from the numerous trails that exist through the dunes and result in the destruction of beach grass that would normally stabilize the dunes. The resulting depressions result in more frequent breaching of the dune system and the removal of sand by wind and wave transport.

Hampton Harbor Inlet - Natural breach in Hampton-Seabrook Barrier System, which provides an area for tidal circulation. The inlet would normally move north and south in response to fluctuations in the longshore current. The stabilization of the inlet by two jetties results in the longshore current depositing its sediment within the Harbor, which results in rapid shoaling and the need for frequent dredging.

Hampton Main Beach - Barrier bar extending from Great Boars Head using sand from the natural erosion of Great Boars Head. As a result of the stabilization of Great Boars Head and the destruction of the natural dunes, no material is available to replace sand that is removed.

Boars Head - An unconsolidated glacial deposit subject to large scale erosion. Erection of continuous riprap revetment to protect houses and property has resulted in the virtual cessation of erosion with a resulting lack of material for nourishment of bordering beaches.

Hampton North Beach - Barrier beach between two headlands, that previously supplied material for beach. Stabilization of headlands and erection of continuous bulkheads and seawalls system has ended the natural recession of the beach and resulted in beach starvation, causing excessive erosion.

Straws Point - Low lying glacial headland that is subject to extensive natural erosion.

Varrel's Point - Glacial headland that is almost totally eroded. Stone revetment has been placed on point to anchor to the shore the south jetty which protects Rye Harbor.

Rye Harbor - Ragged Neck is an unconsolidated glacial deposit that forms the natural protection of the Harbor. Extensive use of the Harbor has resulted in installation of protective devices and the stabilization of Ragged Neck by riprap. Configuration of the jetties directs southeast swells into the Harbor, causing erosion through the breakup of the north shoreline.

Foss Beach - Closed barrier system with material supplied by longshore currents from erosion of the headlands. Severe erosion is caused due to riprap on Ragged Neck that limits supply of sand, limited flow sediment from north of beach, and an artificial shingle ridge to protect the adjacent road and limit recession.

All Other Shoreline Areas - While these previously identified areas of shoreline change are of primary interest in the management of the effects of eroision, it must be recognized that shoreline erosion may also occur in any location from improper construction techniques. This type of erosion is usually a one time event that is assessed and managed under existing permit authorities on a case by case basis. Competent professional personnel should be available for the review of construction activities which may effect shoreline change.

In assessing and evaluating the issue of erosion, the state considered both shoreline and estuarine bank erosion and whether it was natural or manmade. The impacts of mitigation on existing uses and natural processes were also considered, as was whether erosion is regularly occurring, cyclical or a one time event.

For those areas identified as experiencing shoreline change, a more extensive evaluation was made of the causes and effects of the problem. A range of alternatives to solve these problems were identified in response to specific goals. Based on the available techniques for managing the problem in each specific area, the benefits and impact of each alternative were identified. Where applicable both structural solution (i.e., bulkheads, seawalls, revetments, jetties and groins) and non-structural solutions (i.e., beach nurishment, revegetation of dunes and land use controls) were considered. In all cases, the alternatives considered for the specific areas included the pending need for erosion control and the cost for each solution. It is clear from the analysis that erosion, even in areas experiencing shoreline change, is not a critical

issue in the seacoast. Furthermore, all management options have costs and benefits. Any decision to proceed with the management of erosion and the selection of an erosion control alternative can only proceed on a site specific basis, upon evidence that erosion in the identified location has become a critical problem.

Techniques to manage the effects of erosion

"Assessment, Impact and Control of Shoreline Change Along New Hampshire's Tidal Shoreline," the comprehensive study discussed above clearly indicated that erosion and accretion problems are limited to only certain areas along the New Hampshire shoreline and will be neither a high priority nor an expensive aspect of the coastal program. The study identified the extent and location of the specific problems and described and assessed the existing management techniques. The information in the report will provide the basis for site specific proposals that might be required for any future activity at these locations. In the event of exceptional and unusual natural occurrences, 306 funds could be used for more detailed analysis.

To manage the effects of shoreline changes and ensure that new erosion problems do not occur, the coastal program shall coordinate with and utilize the agencies and authorities listed under Policy 5, Chapter 3.

Two state permits will be especially effective for ongoing development and construction activities that might occur along the coast. Under RSA 149:8-a, the state Water Supply and Pollution Control Commission has responsibility for protecting surface and groundwater from degredation. A permit is required for any activity that would significantly alter the terrain or affect runoff or cause erosion or sedimentation along the surface waters of the state.

A permit must be issued by the state Wetlands Board for any dredge or fill activities in the tidal wetlands. Conditions attached to such permits prevent adverse effects on stream channels and their ability to handle runoff and prevent silting of open water channels.

The Department of Public Works and Highways has a major role in the control of coastal erosion through a variety of programs and activities. State Route 1-A borders the ocean along much of the Atlantic shoreline, placing great emphasis on the effectiveness of the Department's maintenance program. Purchase, planting, and maintenance of trees and shrubs by the Highway Department to prevent soil erosion are specifically required by RSA 229. Corrective projects to restore damaged beach areas resulting from coastal erosion on Hampton Beach between Great Boar's Head and Hampton River are handled jointly by the Department of Public Works and Highways and the Department of Resources and Economic Development, with technical assistance from the U.S. Army Corps of Engineers.

On an ongoing basis, the Department is responsible for investigating and devising effective means to prevent erosion by waves and currents.

This combination of existing state policies and regulations deal with the important, although very limited, immediate and long-term erosion problems along the New Hampshire coast.

F. OTHER SPECIAL MANAGEMENT CONSIDERATIONS

Geographic Areas of Particular Concern

The federal Coastal Zone Management Act recognizes that there are certain areas in the coast which provide unique coastal-related values and require special management attention. Section 305(b)(3) of the CZMA requires that each coastal state include in its management program "an inventory and designation of areas of particular concern within the coastal zone." While no specific management techniques are required for these areas, sufficient authority must exist and other techniques be used to protect these resources and encourage uses for which they are best suited.

New Hampshire's approach to the designation and management of areas of particular concern takes into account both the physical nature of the coast and the state's approach to coastal management. The primary objective for designating areas of particular concern is to focus public attention on certain significant areas that are distinguished by their unique coastal-related values including their economic and ecological importance.

The initial inventory of potential areas of particular concern was completed by the Strafford-Rockingham Regional Council during the early stage of program development. Further evaluation of these resource areas, conducted by the coastal program staff working with the Coastal Advisory Committee, resulted in the designation of the following areas of particular concern for inclusion in the New Hampshire Coastal Program:

- tidal wetlands
- beaches and sand dunes
- rocky shores
- marine species habitats
- port of Portsmouth

These resource areas, managed by state agencies in accordance with state law, are described in policies 1, 2, 8 and 10 in Chapter 3. A summary of state management authorities, policies and use guidelines for activities in each resource area is provided below.

Tidal wetlands are managed under RSA 483-A to preserve the integrity of the salt marsh because of their proven productivity and past encroachment. High priorities are protection and preservation. Low priorities are any despoliation, unregulated alteration, habitat destruction, alteration of groundwater and stream channels and natural flood absorption areas, and any other uses which otherwise adversely affect the interest of the general public in tidal wetlands.

Beach and Sand Dunes are managed under RSA 483-A and RSA 216-A to protect their value as public recreation and erosion control areas. The beaches are under public ownership, with highest priority given to public sunbathing, swimming, and recreation, beach maintenance and beach renourishment. Sand removal and beach destruction are of low priority. The few remaining sand dunes are managed with high priority given to preservation and passive recreation. Low priority is given to structures or any activities which would further destroy these dunes areas.

Rocky shores are managed under RSA 482-A to protect the marine habitat of the intertidal zone. The rocky shores serve as natural storm barriers and provide passive recreation areas. Low priority is given to structures and any other activities which destroy the value of rocky shores as marine habitats, storm barriers and public ocean vistas.

Marine Species Habitats are managed under RSAs 483-A, 211, 212, and 212-A. The state controls, manages, restores, conserves and regulates fish resources. Finfish, crustacea and shellfish are protected and preserved. Low priority is given to any excavation, dredging, filling or construction which adversely affects fish and plant habitats.

Port of Portsmouth is maintained and developed, under RSA 271-A, as the only state ocean port terminal with access and facilities to accomodate port operations and other water dependent activities. Shoreline structures are regulated under RSA 483-A. High priority is given to shipping, ocean commerce and water dependent activities, including port expansion to serve these activities. Low priority is given to all other activities. Port activities will be consistent with existing state coastal policies as described in Chapters 3 and 5.

Areas for Preservation and Restoration

Certain Areas of Particular Concern that have special features, such as rare or interesting flora and fauna, unusual geological formation, or significant value to wildlife, may require preservation and restoration.

Based on extensive studies that have been conducted over the past six years, the Office of State Planning thus developed the following criteria and procedures to be utilized in the designation process:

Criteria: a) Must be one of the natural resource areas specified in Policy 1, Chapter 3: wetlands, beaches, sand dunes, rocky shores, or marine species habitats; b) Must have conservation, recreation, ecological, or aesthetic value which require preservation or restoration; c) Must be degraded or threatened with development; d) Must be either acquirable by a state agency or regulated by state statute.

Procedure: a) Solicitation of potential candidates from state and local interests; b) Review of candidates by Office of State Planning; c) Public comment on proposed candidates; d) Presentation of candidates to CORD and appropriate agencies with authority to acquire areas or to require preservation or restoration; e) The designations will act as a guide for programs, funded or unfunded, which are designed to develop, preserve, or restore these areas.

Segmented Program Approval

As provided in the Coastal Zone Management Act of 1972, as amended, Section 306(h), New Hampshire is applying for program approval in two segments. This approach is justified because the Atlantic Ocean shoreline and Portsmouth Harbor are in need of the immediate attention that can be devoted to them as a result of segmented approval. There are important state owned properties in the Ocean and Harbor Segment, specifically the State owned port facility in Portsmouth and various state parks. Some state properties are underutilized, others face immediate development pressures. All need long-term management plans. The approval of this Segment would allow such vital work to begin immediately. There is also the need to adequately staff the two provisions of the program - The CORD binding authorities and the historic preservation policies. As these authorities were newly created by the legislature in the

1980 term, their immediate smooth functioning through funding, will enable them to become firmly established. The coastal program funds could be utilized, as necessary, to assist this effort.

New Hampshire's Coastal Program and Draft Environmental Impact Statement will be widely circulated for review and comment and the required federal public hearing will be held. Issuance of the Final Environmental Impact Statement, which will contain any revisions required by the review, comment, and hearing process, will mark the completion of the development of segment one.

Over the next two years New Hampshire is committed to exploring steps necessary to develop segment two for other affected environmental areas under tidal influence. This second segment will include the remaining portion of the New Hampshire shoreline of the Piscataqua River from the Portsmouth-Newington boundary to the General Sullivan Bridge, extending inland to the limits of tidal flow throughout Great and Little Bays and to the dams on the Salmon Falls, Cocheco, Bellamy, Osyster, Lamprey, Squamscott, and Winnicut Rivers.

The affected environment of the second segement varies from the highly industrialized Piscataqua River shoreline to the quiet reaches of the tidal rivers and the tidal mud flats of Great Bay. The New Hampshire side of the Piscataqua River is already highly developed and is almost entirely devoted to water dependent and energy related industries. Along this short stretch of shoreline are located an electrical generating station, a bulk storage area, an ocean wire and cable manufacturing plant, a fish processing facility, a liquid propane gas storage and distribution plant, and four petroleum storage and distribution facilities.

The Great Bay Estuary complex contains over 11,000 acres of tidewater and over a 100 miles of shoreline. The total drainage area is approximately 930 square miles, two thirds of which is located within New Hampshire. The tidal waters of the estuary enter and leave via the Piscataqua River. The tides are uniformly semidiurnal and they cause considerable fluctuations of water transparency, temperature, salinity and current speed. Tidal currents are conspicuous in the estuary, such as at the narrow channel opposite Dover Point, Furber Straits, and the lower Piscataqua, where currents of 5-6 knots and higher are evident. The greatest fluctuations of hydrographic conditions are present towards the head of the estuary. Great Bay proper is a large tidal mud flat causing a wide range of temperatures daily and seasonally due to the shallow depth. There are important sport fisheries for striped bass, smelt, and bait fish in the Great Bay Estuary System. Populations of the soft-shell clam occur in Great Bay and there is a small sports fishery for the american oyster. The extensive tidal flats of the system provide valuable feeding areas for thousands of waterfowl during fall and spring migrations of ducks and geese.

The Office of State Planning will, as part of their ongoing agency responsibilities and budget, explore various methods to develop the second segment of the program. Two projects currently underway will contribute substantial background information for the second segment, even before the start of the first year of the process to extend the program to the remaining tidal areas. The Comprehensive Commercial Fisheries Strategy, to be developed under a grant from the National Marine Fisheries Service, will contain goals, objectives, and implementation strategies to guide state and federal interests and funding decisions related to the development of New Hampshire's commercial fisheries.

The strategy is to be adopted as state policy. The second project is to study the Great Bay estuarine system. It focuses on Great and Little Bays, the tidal rivers,and the surrounding land areas. The existing land uses in the estuary will be identified, as will current and potential development pressures and mechanisms that could be invoked to balance the stresses that might lead to degradation of the system. An estuarine sanctuary in any part of Great Bay would, if established, provide additional management capability for this portion of the second segment.

Utilizing a process of broad public and state agency participation, the first year of developing segment two will be devoted to identifying a range of alternative options that could reasonably be expected to provide an adequate basis for completion of the state's coastal program.

The second year of segment development will center on selecting the suitable alternative to effectively carry out the objectives of the New Hampshire Coastal Program. The remainder of the time will focus on designing the management approaches required to effectively implement this program, and the federal approval process.

The first segment is based entirely on existing state laws. The remaining segment may also rely on current statutory authority. However, amendments to statutes may be indicated during the course of discussions with the agencies involved. The Office of State Planning will assist these agencies in exploring the event and practicality of such changes. In many instances, based on the adequacy of existing statutes, the indicated objectives may well be achieved simply by adoption of policies, development of agency management plans, or changes in agency rules. OSP will continue its assistance of other state agencies in identifying those policies, management plans, and regulations that will more effectively carry out current responsibilities and enhance implementation of the long-range plans.

This procedure will result in completion of segment two, submission to OCZM for review, and the ultimate goal of an approved program encompassing the entire New Hampshire coast.

Changing the Coastal Program

The last five years of coastal planning in New Hampshire have amply demonstrated the dynamic nature of the issues and opportunities that confront the limited coast. Beach access, siting of energy facilities, wetlands protection, and flood hazard management have been of major importance. Increased attention is being drawn to use of coastal areas for alternate energy sources and emphasis on the effective use of the state's only port and deepwater channel. Recommendations for changes in the program, as new issues evolve, may come from citizens, advisory committees, agencies and government officials, the legislature, or the governor. The federal Coastal Zone Management Act recognizes the importance of change and flexibility and provides mechanisms for refinement and amendments of approved coastal programs.

Changes can be considered and proposed, if deemed necessary, in the course of drafting a program for the remaining coastal areas of the state, and integrating the boundaries, policies, and management system with those of the Ocean and Harbor Segment. Beyond that point, any major changes deemed appropriate to maintain a responsive and manageable coastal program will be submitted to OCZM for their review and approval before they are incorporated as amendments to New Hampshire's coastal program.

Consultation with federal agencies will be a continuing part of any proposal to amend or change the program. In addition, federal agencies would have the opportunity to review an Environmental Impact Statement if significant changes are made to the coastal program.

PART II (APPENDICES):

COASTAL PLAN APPENDICES

A Council on Resources and Development Law, Resolution and Procedures

B Wetlands Board Law , Regulations and Legal Analysis of RSA 483-A

C Historic Preservation Law and Draft Regulations

D State Port Authority Laws

E Energy Facilities Siting Laws

CHAPTER 162-C

COUNCIL ON RESOURCES AND DEVELOPMENT

162-C:1 Council Established.
162-C:2 Duties of the Council.
162-C:3 Tenure of Members.
162-C:4 Organization and Meetings.

162-C:1 Council Established. There shall be a council on resources and development composed of 11 members as follows: commissioner of the department of agriculture; commissioner of the department of education; director of the fish and game commission; commissioner of the department of public works and highways; the technical secretary of the water pollution commission; chairman of the water resources board; commissioner of the department of resources and economic development; director of the division of economic development; director of the division of resources; director of the division of parks; the director of state planning.

HISTORY

Source. 1963, 301:1. 1965, 212:1, eff. July 1, 1965.

Amendments—1965. Identified official member of each department and increased membership to 11 by adding director of state planning.

162-C:2 Responsibilities. The Council shall:

I. Consult upon common problems in the field of natural resources and their development;

II. Consult with, negotiate with, and obtain information from, any federal or state agency concerned with any of the council's problems, reports, recommendations or studies;

III. Make biennial reports and recommendations, as may be desirable, to the governor and council;

IV. Make studies and recommendations concerning changes to effectively coordinate the work of the agencies which have membership in the council; Recommendations adopted by a majority vote of the council shall be binding on the affected agencies which have membership in the council, unless the recommendations are in conflict with existing laws or rules; and

V. Resolve differences or conflicts concerning water management and supply which result from the work of any agency represented on the council in developing a plan or program affecting water allocation. The council shall investigate; if possible, resolve the problem; and if appropriate, submit its recommendations to the governor and council or to the general court. If investigation by the council shows that the laws and rules of an agency represented on the council are in conflict with those of another agency, the council shall submit a report with recommendations to the governor and council or to the general court.

HISTORY

Source. 1963, 301:2. 1965, 212:2. 1973, 140:7, eff. Jan. 1, 1974.

Amendments—1973. Provided for submission of report on a biennial basis.

—1965. Added "or state" after federal.

162-C:3 Tenure of Members. Members shall serve without compensation, and any member's term of office shall terminate when he ceases to be a member of the state agency he represents.

HISTORY

Source. 1963, 301:3. 1965, 212:3, eff. July 1, 1965.

Amendments—1965. Deleted provisions relating to appointment of members and filling of vacancies.

162-C:4 **Organization and Meetings.** The first meeting of the council shall be held no later than 30 days after the passage of this act at the call of the commissioner of the department of resources and economic development who shall be the chairman of said first meeting. Thereafter the council shall meet no less often than once in every 3 months but may meet more often if it deems it advisable. The chairmanship of the council shall remain permanently with the director of state planning, and it shall be his responsibility to prepare and have delivered at least 7 days before every meeting of the council an agenda for said meeting.

HISTORY

Source. 1963, 301:4. 1965, 212:4, eff. July 1, 1965.

Amendments—1965. Deleted provisions for rotating chairmanship and made director of state planning permanent chairman.

162-C:5 Staff. The council may employ staff needed to carry out its responsibilities.

new hampshire council on resources and development

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BE IT RESOLVED that the Council on Resources and Development, having reviewed the New Hampshire Coastal Program Document, accepts the document as an accurate description of state agency regulations and programs in the seacoast.

BE IT FURTHER RESOLVED that the Council agrees to coordinate the implementation of the New Hampshire Coastal Program consistent with existing state laws and procedures as contained in the coastal program document by:

1. Consulting on coastal issues and undertaking joint problem-solving ventures to address coastal issues;

2. Coordinating actions of state agencies in the coast and reviewing, at the request of the Office of State Planning, state activities which could significantly affect resources or public investments in the coast; and

3. Acting to resolve conflicts between state agencies in the coast, where necessary, and recommending to the Governor state policy positions on coastal issues where appropriate and necessary.

ADOPTED BY THE COUNCIL ON RESOURCES AND DEVELOPMENT OCTOBER 1, 1981

Peter F. Piattoni
Secretary

APPENDIX A

COUNCIL ON RESOURCES AND DEVELOPMENT

General Operating Procedures of the Council on Resources and Development

Resolution on the New Hampshire Coastal Program

- -

The general operating procedures of the Council on Resources and Development, under RSA 162-C, are provided below:

PURPOSE:

The Council on Resources and Development (CORD) is an interagency board which meets to consult on common state agency problems and to take actions, as necessary, to address state resource and development issues. The purpose of CORD is to:

* consult on common problems;
* coordinate state agency actions:
* recommend unified state policy; and
* resolve conflicts between state agencies where necessary.

MEETINGS:

The Council meet at least quarterly, but will meet more frequently if so requested by any state agency on call of Chairman or the Governor.

ACTIVITIES:

The Council meets to discuss and resolve resource issues raised by its members or another state agency. Activities most likely to be brought before CORD for interagency review and conflict resolution, where necessary, include:

1. disposal of surplus lands and state land acquisition;
2. leasing of low-head hydro facilities;
3. state agency plans, programs, and projects;
4. state construction proposals;
5. state policy issues requireing recommended unified state policy decisions;
6. state actions which may significantly affect public investments or state resources, or which requires the coordination between several state agencies; and
7. cooperative studies and state actions which require interagency cooperation, coordination or agreements.
8. federal actions having significant impact on the state (e.g. RARE II).

VOTES:

The Council generally meets and takes actions based on a consensus of the members. Where an action of CORD will be binding on all member agencies, a majority vote of the members present and voting is required.

CONFLICT
RESOLUTION:

The Council procedures for resolving conflicts between agencies are as follows:

1. CORD receives a request from a member or any state agency to hear and resolve a state agency objection or conflict or to take action on a state issue;
2. The chairman of CORD places the request on the quarterly meeting agenda or schedules a special meeting of CORD to hear the request:
3. CORD meets, hears the request, reviews any staff papers on the issue, and takes appropriate actions consistent with state policies and regulations;
4. A copy of the CORD decision is retained in the files. Additional copies are transmitted to other agencies upon request.

The Council on Resources and Development, at its October 1, 1981 meeting, adopted a resolution in support of the New Hampshire Coastal Program and agreed to work with the Office of State Planning in implementing the program. The resolution which was adopted by the Council reads as follows:

"Be it resolved that the Council on Resources and Development, having reviewed the New Hampshire Coastal Program Document, accepts the document as an accurate description of state agency regulations and programs in the seacoast.

Be it further resolved that the Council, agrees to coordinate the implementation of the New Hampshire Coastal Program, consistent with existing state laws and procedures as contained in the coastal program document, by:

1. Consulting on coastal issues and undertaking joint problem-solving ventures to address coastal issues;
2. Coordinating actions of state agencies in the coast and reviewing, at the request of the Office of State Planning, state activities which coulc significantly affect resources or public investments in the coast; and
3. Acting to resolve conflicts between state agencies in the coast, where necessary, and recommending to the Governor state policy positions on coastal issues where appropriate and necessary.

APPENDIX B

CHAPTER 483-A

FILL AND DREDGE IN WETLANDS

483-A:1 Excavating and Dredging.
483-A:1-a Definition.
483-A:1-b Finding of Public Purpose.
483-A:1-c Establishment of Wetlands Board.
483-A:1-d Gifts, Grants or Donations
483-A:2 Hearing.
483-A:2-a Notice to Abutters.
483-A:3 Powers of Wetlands Board.
483-A:4 Rehearings and Appeals, Damages.
483-A:4-a Administrative Provisions.
483-A:4-b Posting of Permits and Reports of Violations.
483-A:5 Penalty.
483-A:6 Civil Penalty.
483-A:7 Local Option; Prime Wetlands.

Change of name. 1977, 419:1, eff. Sept. 3, 1977, changed the title of this chapter from "Tidal Waters" to "Dredge and Fill in Wetlands".

—1978. Amended chapter heading by substituting "Fill and Dredge in Wetlands" for "Dredge and Fill in Wetlands".

ANNOTATIONS

Library references

State regulation of marshlands, 17 N.H.B.J. 68 (Dec. 1975).

483-A:1 Excavating and Dredging Permit; Certain Exemptions.

I. No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without written notice of his intention to construct, excavate, remove, fill or dredge to the wetlands board. Said notice shall be sent by registered mail to the wetlands board at least 30 days prior to such constructing, excavating, removing, filling or dredging with a detailed plan drawn to scale of the proposed project. At the time of filing with the wetlands board, said person shall also file 3 copies of said notice, with a detailed plan, if a major project, but accompanied with a map showing the exact location of the proposed project with the town or city clerk. The town or city clerk shall forthwith send a copy of the said notice to the selectmen, mayor or city manager, the municipal planning board, if any, and the municipal conservation commission, if any, and may require an administrative fee not to exceed $2. The copies of said notice shall be made reasonably accessible to the public.

II. The replacement or repair of existing structures in or adjacent to any waters of the state which does not involve excavation, removal, filling or dredging in any waters or of any bank, flat, marsh or swamp is exempt from the provisions of this chapter.

Source. 1967, 215:1. 1969, 387:1. 1973, 346:1. 1978, 53:2. 1979, 392:3, eff. Aug. 22, 1979.

Amendments—1969. Substituted "any" for "tidal" waters and provided for notice to the water resources board rather than the New Hampshire Port Authority.

—1973. Provided for filing copies of notice with town clerk.

—1978. Paragraph I: Designated existing section as par. I and added provisions which related to the construction of any structures in or on any bank; required map showing exact location of proposed project, with a detailed plan, if a major project, with filed copies of notice to city or town clerk; provided for administrative fee and accessibility of copies of notice to the public.

Paragraph II: Added.

—1979. Changed the name of "water resources board" to "wetlands board".

Transfer of functions. 1969, 387:5, provided: "The New Hampshire port authority shall transfer all its records compiled in connection with proceedings held under the provisions of RSA 483-A to the water resources board as soon as possible following the effective date of this act [July 2, 1969]. It shall be the duty of the water resources board to supervise the litigation of all legal actions commenced by or against the New Hampshire port authority prior to the effective date of this act under the provisions of RSA 483-A. All proposals filed pursuant to the provisions of RSA 483-A:1 pending before the New Hampshire port authority on the effective date of this act shall be transferred to the water resources board for decision."

Establishment of special board. 1969, 387:6, as amended by 1971, 329:1 was repealed by 1979, 392:4, I, eff. Aug. 22, 1979.

—Donations. 1971, 329:2, relative to gifts to the special board, was repealed by 1979, 392:4, III, eff. Aug. 22, 1979.

ANNOTATIONS

Library references

Wetlands legislation in New Hampshire, 18 N.H.B.J. 265 (June 1977).

1. Applicability

Chapter did not apply to marshland on landward side of salt meadow; consequently, order of New Hampshire Port Authority denying owner of marshland permission to fill it was null and void for lack of jurisdiction. Sibson v. State (1969) 110 NH 8, 259 A2d 397.

2. Purpose

This chapter was intended by the Legislature to be an exercise of its dominant servitude over tidal waters and to apply only to land in or contiguous to land of littoral owners. Sibson v. State (1969) 110 NH 8, 259 A2d 397.

3. Generally

The rights of littoral owners on public waters are always subject to the paramount right of the State to control them reasonably and in the interests of navigation, fishing, and other public purposes; the rights of these owners are burdened with a servitude in favor of the State which comes into operation when the State properly exercises its power to control, regulate, and utilize such waters. Sibson v. State (1969) 110 NH 8, 259 A2d 397.

4. Tidal waters

A body or stream of water cannot be considered as tidal merely because, under unusual circumstances, the level of the water is affected by the tide, nor is the amount of salt in the water material. Sibson v. State (1969) 110 NH 8, 259 A2d 397.

Marshland subject to tides did not come within purview of this chapter as construed in Sibson v. State (1969) 110 NH 8, 259 A2d 397; Pic-N-Pay, Inc. (1969) 110 NH 16, 259 A2d 659.

5. Piers and docks

The Special Board did not have jurisdiction to authorize erection of piers and docking facilities for approximately thirty boats along shoreline of lake, and its order allowing the erection was invalid. Hilton v. Special Board (1971) 111 NH 293, 284 A2d 917.

6. Beach permits

Permit granted by the Special Board to create a beach along shore of lake would not result in acquisition of land from the public waters and could be considered by the Special Board to be a minor improvement of the shoreline within their jurisdiction to grant. Hilton v. Special Board (1971) 111 NH 293, 284 A2d 917.

7. Eminent domain

Denial of permit to fill four acre salt marsh, plaintiffs' having filled and put a house on two of the original six acres, was a valid exercise of the police power proscribing future activities which would be harmful to the public and there was thus no taking under the eminent domain clause. Sibson v. State (1975) 115 NH 124, 336 A2d 239.

483-A:1-a [New] Definition. Without limiting section 1, the waters and adjacent areas within this state to which this chapter applies are defined as follows:

I. Wherever the tide ebbs and flows, it shall apply to all lands submerged or flowed by mean high tide as locally determined, and, in addition, to those areas which border on tidal waters, such as, but not limited to banks, bogs, salt marsh, swamps, meadows, flats or other lowlands subject to tidal action (including those areas now or formerly connected to tidal waters), whose surface is at an elevation not exceeding 3-½ feet above local mean high tide and upon which grow or are capable of growing some, but not necessarily all, of the following: Salt meadow grass (Spartina patens), spike grass (Distichlis spicata), black grass (Juncus gerardi), saltmarsh grass also known as cordgrass (Spartina alterniflora), saltworts (Salicornia spp.), Sea Lavender (Limonium carolinianum), saltmarsh bulrushes (Scirpus maritimus, var. fernaldii and Scirpus paludosus var. atlanticus), sand spurrey (Spergularia marina and Spergularia canadensis), high-tide bush (Iva frutescens), spike rush (Eleocharis parvula and Eleocharis halophila), chairmaker's rush (Scirpus americana), bent grass (Argostis palustris),

coast-blite (Suaeda spp.), orach (Atriplex patula), arrow-grass (Triglochin maritima) and seaside goldenrod (Solidago sempervirens) and any sand dune or vegetation thereon in the Town of Seabrook; providing, however, any homeowner in said town may remove sand which blows or drifts on the porch, patio or steps of the homeowner's dwelling. "Sand dunes as used in this paragraph, shall mean a hill or ridge of sand piled up by the wind and commonly found on the seacoast. The occurrence and extent of stalmarsh peat at the undisturbed surface shall be evidence of the extent of jurisdiction hereunder within a saltmarsh. [Amended 1977, 517:1, eff. July 15, 1977]

II. Wherever fresh water flows or stands and in all areas above tidal waters not included in paragraph I of this section, it shall apply (in addition to great ponds or lakes of ten acres or more in natural area as provided for in RSA 482: 41-e to 41-i and RSA 488-A), to those portions of great ponds or lakes created by the raising of the water level of the same whether by public or private structure, and to all surface waters of the state as defined in RSA 149: 1 which contain fresh water including the portion of any bank or shore which borders such surface waters, and to any swamp or bog subject to periodical flooding by fresh water including the surrounding shore.

III. "Mean high tide" as used in this section shall be determined according to the published tables and standards of the United States Coast and Geodetic Survey, adjusted to the locality from such tables.

Source. 1970, 22: 1. 1977, 517: 1, eff. July 15, 1977.

Amendments—1977. Paragraph I: Prohibited the removal of sand or vegetation in certain areas in the town of Seabrook and defined sand dune as used within the paragraph.

ANNOTATIONS

1. Particular lands

Land owned by defendants which was adjacent to tidal water and which was filled by them was not within control of state, where master found the land to be bordering tidal water and subject to tidal action and at elevation not exceeding three and one-half feet above mean high tide, but denied two separate requests of state that he find that the burdened land, prior to placement of fill, grew or was capable of growing certain statutorily specified vegetation. State v. McCarthy (1977) 117 NH 799, 379 A2d 1251.

483-A: 1-b [New] Finding of Public Purpose. It is found to be for the public good and welfare of this state to protect and preserve its submerged lands under tidal and fresh waters and its wetlands, (both saltwater and freshwater), as herein defined, from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for finfish, crustacea, shellfish and wildlife of significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate ground water levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels, and will otherwise adversely affect the interests of the general public.

Source. 1970, 22: 1, eff. May 4, 1970.

483-A: 1-c Establishment of Wetlands Board.

I. There is hereby established a wetlands board for the purpose of carrying out the provisions of law conferring upon the water resources board authority to decide matters relative to resources of the state, including but not limited to excavating, dredging and filling waters of the state. The wetlands board shall be composed of the members of the water resources board, or their designees, and the following:

(a) Three members of the public appointed by the governor and council for a term of 3 years and until a successor is chosen: one who is a member of a municipal conservation commission at the time of appointment; one who is an elected municipal official at the time of appointment; and one who is a member of a soil or water conservation district at the time of appointment; provided, however, that the initial appointments shall be for one, 2 and 3 years respectively. The 3 members appointed under this subparagraph shall be entitled to such per diem and expenses as may be authorized by the governor and council.

(b) The following officials, or their respective designees: the executive director of the fish and game commission, the fish and game marine biologist, the biologist for fisheries, the commissioner of the department of safety, the commissioner of the department of public works and highways, the executive director of the water supply and pollution control commission, the chief aquatic biologist of the water supply and pollution control commission, the director of the office of state planning, and the commissioner of the department of resources and economic development. Said appointees and officials shall have voting rights as members of this wetlands board. Provided, however, that nothing herein shall be construed as affecting other duties of the water resources board with reference to dams, water levels and administration of the department.

II. The water resources board shall provide necessary administrative assistance for the wetlands board established under this section, but shall be fairly assisted by the cooperating state agencies on the board.

Source. 1979, 392: 1, eff. Aug. 22, 1979.

Transfer of funds, personnel, etc. 1979, 392: 2, eff. Aug. 22, 1979, provided: "All of the powers, functions, duties, personnel, records and property of the special board established pursuant to Laws of 1969, 387: 6 as amended by 1971, 329: 1 together with all monies appropriated to said board or available to said board from any source are hereby transferred to the wetlands board established by RSA 483-A: 1-c [this section]. The transfer herein provided for shall not eliminate any existing position within the classified service unless such position shall be vacant or, if filled, its incumbent has been transferred to an equivalent or higher paid position of like tenure. No permanent classified employee in the state service on the effective date of this act [Aug. 22, 1979] shall be required to take an examination to remain in his position."

483-A: 1-d Gifts, Grants or Donations. The wetlands board is authorized to solicit and receive any gifts, grants or donations made for the efforts of the wetlands board as established by RSA 483-A: 1-c and to disburse and administer the same through the water resources board.

Source. 1979, 392: 1, eff. Aug. 22, 1979.

483-A: 2 Hearing. The board shall hold a public hearing on said proposals, in accordance with regulations promulgated by the board, within 60 days of the receipt of said notice, and shall notify by mail the person intending to do such excavating, removing, filling, dredging or altering, the selectmen or the proper city official of the municipality involved, the planning board, if any, the municipal conservation commission, if any, and members of the board.

Source. 1967, 215: 1; 147: 14. 1969, 387: 2. 1979, 392: 3, eff. Aug. 22, 1979; 431: 1, eff. Aug. 22, 1979.

Amendments—1969. Substituted "water resources board" for "New Hampshire Port Authority".

—1979. Chapter 392 changed the name of "water resources board" to "wetlands board".

Chapter 431 amended section generally.

483-A: 2-a Notice to Abutters. Like notice shall be seasonably mailed to all known abutting landowners, supplemented by reasonable notice by newspaper publications to those unknown, as may be ordered by the wetlands board.

Source. 1970, 22: 2. 1979, 392: 3, eff. Aug. 22, 1979.

Amendments—1979. Changed the name of "water resources board" to "wetlands board".

483-A: 3 Powers of Wetlands Board.

I. The wetlands board may deny the petition, or may require the installation of bulkheads, barriers, proper retention and/or containment structures to prevent subsequent fill runoff back into waters or other protective measures.

II. For the purpose of performing the duties under RSA 483-A it shall be lawful for the board, its agents or employees to enter upon any lands in the state.

Source. 1967, 215: 1. 1969, 387: 3. 1977, 419: 2. 1979, 392: 3, eff. Aug. 22, 1979.

Amendments—1969. Amended section generally.

—1977. Paragraph I: Designated existing section as par. I and deleted the word "tidal" preceding the words "waters or other protective measures".

Paragraph II: Added.

—1979. Changed the name of "water resources board" to "wetlands board".

483-A: 4 Rehearings and Appeals; Damages.

I. Any party to or participating in the action or proceedings before the board may apply for a rehearing and may appeal to the superior court for the county where the land in question is located, under the same procedure as is provided for appeals in RSA 31: 74–87, inclusive. Each appeal shall contain a careful description of the land involved in the board's decision. Service of the appeal shall be made on any member of the board and the superior court shall have the same jurisdiction to dispose of such appeals as is provided in the above cited sections governing appeals.

II. If, upon appeal of the landowner, the superior court determines that the decision appealed from so exceeds the bounds of the police power as to constitute the equivalent of a taking without compensation and that the land as so regulated meets the public purpose standards of this chapter, and if such ruling is affirmed on appeal or becomes the law of the trial by failure of the state to appeal, the superior court shall then proceed to the assessment of the landowner's damages. Unless the board, at this stage, consents to the reversal or modification of its decision by the superior court, that court shall first determine all questions of land title, after notice to all persons interested in the land including notice by publication to any unknown owners, and then shall assess the damages of the landowner or landowners, proceeding as provided in RSA 482: 25–28, inclusive, and RSA 481: 10, II and III, and may enter judgment against the state accordingly. The interest acquired by the state by virtue of such proceedings shall be a perpetual negative easement that the privately-owned land or interest therein described in the proceedings shall not thereafter be excavated, removed, filled, dredged, canalized or ditched, subject to any such reasonable reservations to the landowner, as the board may have stipulated to, prior to the assessment of damages. The state may, in the alternative, purchase the land or interest therein in fee simple, or other acceptable title, or subject to acceptable reservations and exceptions, by agreement with the land-

owner. To satisfy any judgment or purchase agreement hereunder, the governor and council, in their discretion, may draw their warrant on the marine fisheries fund, the fish and game fund, any other available appropriation therefor, or on any money in the treasury not otherwise appropriated, or any combination thereof, as they may determine to be just and reasonable, or, in the alternative, they may certify a judgment to the next session of the general court for the passage of an appropriation of money sufficient to satisfy the same. The board may, in the name of the state, accept gifts of land or interests therein for the purposes of this chapter.

III. The use of the marine fisheries fund or the fish and game fund, under paragraph II, shall require a finding that the expenditure will be of substantial benefit to marine fisheries or to fish and wildlife, as the case may be, and the governor and council shall request the prior opinion of the fish and game commission in each such case.

IV. In the event a permit is granted with respect to any activity proposed to be undertaken in or adjacent to a prime wetland as mapped, designated and filed pursuant to RSA 483-A:7, the conservation commission or municipal executive body may appeal said decision to the superior court in the manner set forth in paragraph I of this section. The filing of a motion for rehearing with the board pursuant to RSA 31:74 shall automatically stay the effectiveness of the board's decision relating to said prime wetland. Said stay shall remain in force until a decision on the motion for rehearing has been issued by the board. [Added 1979, 431:2, eff. Aug. 22, 1979.]

Source. 1967, 215:1. 1969, 387:4. 1970, 22:3. 1979, 431:2, eff. Aug. 22, 1979.

Amendments—1969. Substituted "water resources board" for "New Hampshire Port Authority".

—1970. Amended section generally.

—1979. Paragraph IV: Added.

ANNOTATIONS

1. Lakes

Superior court did not have jurisdiction under this section to entertain appeal from decision of special board and the governor and council denying permit to dredge lake bed, for consideration of the language of this section and RSA 473-A:1 and reasons for enacting this section show that legislature intended to restrict zoning appeals procedures to this chapter alone and did not intend that this chapter should apply to lake bed dredging. Yoffe v. Special Board, Chapter 387 (1973) 113 NH 169, 304 A2d 876.

2. Review

Decision of state special board can be overturned only if it is found to be unlawful, unreasonable or unjust. Town of Hampton v. Special Board of New Hampshire (1976) 116 NH 644, 365 A2d 741.

Where town wanted to fill three-quarter acre of saltmarsh to gain access to make repairs to a sewer and repairs to existing sewer had been made during the past twelve years and area to be filled contained special kind of grass which was most highly productive source of carbon energy and filling of the area would destroy forever the productivity of marsh and its life, all this was sufficient to sustain finding that state special board's denial of town's application was not unlawful, unreasonable or unjust. Town of Hampton v. Special Board of New Hampshire (1976) 116 NH 644, 365 A2d 741.

483-A:4-a Administrative Provisions.

I. The board may adopt reasonable rules and regulations to govern its proceedings and otherwise to carry out the purposes of this chapter. The requirement of public hearing RSA 483-A:2 may not apply to such minor projects and to such minor improvements of the shoreline of those waters subject to the jurisdiction of this chapter as the board may by reasonable general regulation provide; and as to such projects, initial review authority may be delegated to a subcommittee or the staff of the board. [Amended 1978, 53:4. 1979, 431:3, eff. Aug. 22, 1979.]

II. The word "person" as it appears in sections 1 and 2 shall mean any person, firm, partnership, association, corporation, company, organization

or legal entity of any kind including municipal corporations, governmental departments and agencies, or subdivisions thereof.

III. Decisions of the board hereunder shall be consistent with the purposes of this chapter as set forth in section 1-b above. Before granting a permit hereunder, the board may require reasonable proof of ownership by a private landowner-applicant. Decisions of the board may contain reasonable conditions designed to protect the public good. No permit to dredge or fill shall be granted if it shall infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.

IV. Upon written notification to the board by a municipal conservation commission that it intends to investigate any notice received by it pursuant to RSA 483-A: 1, the board shall suspend action upon such notice and shall not make its decision on the notice of a minor project nor hold a hearing on it, if a major project, until it has received and acknowledged receipt of a written report from said commission, or until 40 days from the date of filing with the town or city clerk of said notice, whichever occurs earlier, subject to an extension as permitted by the board. In connection with any local investigation, a conservation commission may hold a public informational meeting or a public hearing, the record of which shall be made a part of the record of the board. In the event a conservation commission makes a recommendation to the board in its report, the board shall specifically consider such recommendation and shall make written findings with respect to each issue raised therein which is contrary to the decision of the board. If notification by a local conservation commission, pursuant to this paragraph, is not received by the board within 10 days following the date the notice is filed with the municipal clerk, the board shall not suspend its normal action, but shall proceed as if no notification has been made. [Added 1973, 346: 3. Amended 1978, 53: 4. 1979, 431: 4, eff. Aug. 22, 1979.]

V. The board shall, within 180 days of the effective date of this act, adopt regulations establishing criteria for approval and disapproval of applications under this chapter and with respect to all other substantive duties imposed by this chapter. Such regulations and any subsequent regulations shall be adopted only after 2 public hearings, notice of which shall be published at least 30 days in advance in a newspaper or newspapers of general circulation in the state, which notice shall include a brief description of the substance of such regulations. The board shall make written findings of fact in support of all decisions made on applications involving projects other than minor projects and improvements as defined pursuant to RSA 483-A: 4-a. [Added 1978, 53: 5, eff. Sept. 4, 1978.]

VI. The board shall not grant a permit with respect to any activity proposed to be undertaken in or adjacent to an area mapped, designated and filed as a prime wetland pursuant to RSA 483-A: 7 unless the board first notifies the selectmen or city council, the planning board, if any, and the conservation commission, if any, in the municipality within which the wetlands lies, either in whole or in part, of its decision. Any such permit shall not be issued unless the board is able, specifically, to find on the basis of clear and convincing evidence in the record of the proceedings, and after public hearing, that the proposed activity, either alone or in conjunction with other human activity, will not impair any of the values set forth in RSA 483-A: 1-b. This paragraph shall not be construed

so as to relieve the board of its statutory obligations under this chapter to protect wetlands not so mapped and designated. [Added 1979, 431: 5, eff. Aug. 22, 1979.]

VII. Notwithstanding any regulations promulgated by the board defining minor projects, a series of minor projects undertaken by a single developer or several developers over a period of 5 years or less, when considered in the aggregate, amount to a major project in the opinion of the board; all such related projects shall be subject to a public hearing as provided in RSA 483-A: 2. A series of minor projects shall be considered in the aggregate if they abut or if a part of an overall scheme of development or are otherwise consistent parts of an eventual whole. [Added 1979, 431: 5, eff. Aug. 22, 1979.]

Source. 1970, 22: 3. 1973, 346: 3. 1978, 53: 4, 5. 1979, 431: 3–5, eff. Aug. 22, 1979.

References in text. Effective date of this act referred to in par. V is Sept. 4, 1978.

Amendments—1973. Paragraph IV: Added.

—1978. Paragraph I: Substituted "RSA 483-A: 2" for "section 2" and "authority may be delegated to a subcommittee or the staff of the board" for "full authority may be delegated to the water resources board".

Paragraph IV: Added provisions which provide that the municipal conservation commission may request an additional 7 days.

Paragraph V: Added.

—1979. Paragraph I: Provided initial review authority may be delegated.

Paragraph IV: Amended generally.

Paragraphs VI, VII: Added.

Assistance. 1970, 22: 4, relative to assistance to the special board, was repealed by 1979, 392: 4, II, eff. Aug. 22, 1979.

483-A: 4-b Posting of Permits and Reports of Violations. Project approval by the board shall be in the form of a permit, a copy of which the applicant shall post in a secured manner in a prominent place at the site of the approved project. The board shall mail a copy of such permit by certified mail to the selectmen or city council of the town or city where the project is located. Any person proceeding without a posted permit shall be in violation of this chapter. All state, county and local law enforcement officers are directed to be watchful for violations of the provisions of this chapter and to report all suspected violations to the board.

Source. 1970, 22: 3. 1973, 346: 2. 1975, 55: 1, eff. June 6, 1975.

Amendments—1973. Amended section generally.

—1975. Added second sentence.

483-A: 5 Penalty. Whoever violates any provision of this chapter, whether or not he is the owner of the land in question, shall be liable for the removal of fill, spoil or structure placed in violation hereof and shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. The superior court shall have jurisdiction in equity to restrain a continuing violation of this chapter.

Source. 1967, 215: 1. 1973, 529: 119. 1977, 419: 3, eff. Sept. 3, 1977.

Amendments—1973. Amended generally to conform provisions to new criminal code.

—1977. Added the phrase, in the first sentence, "whether or not he is the owner of the land in question".

483-A: 6 Civil Penalty. Failure, neglect or refusal to obey a lawful order of the wetlands board issued relative to activities regulated or prohibited by this chapter, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by this chapter shall be deemed violations of this chapter. The court may, upon separate petition of the attorney general, or in connection with a petition for equity relief, levy upon any person who violates any provision of this chapter, whether or not he is the owner of the land in question, a civil penalty in an amount not to exceed $5,000. The proceeds of any civil penalty levied pursuant to this chapter shall either be utilized by the wetlands board for the restoration of the area affected by the violation, or placed, when deemed appropriate by the board, in a nonlapsing fund held by the treasurer, and which may be expended by the board, subject to the approval of the governor and council, for the purpose of research and investigation relative to wetlands.

Source. 1973, 342: 1. 1977, 419: 4. 1979, 392: 3, eff. Aug. 22, 1979.

Amendments—1977. In the second sentence added the phrase "whether or not he is the owner of the land in question".

—1979. Changed the name of "water resources board" to "wetlands board".

483-A: 7 Local Option; Prime Wetlands.

I. Any municipality, by its conservation commission, or in the absence of a conservation commission, the planning board, or in the absence of a planning board, the selectmen or city council, may undertake to designate, map and document prime wetlands lying within its boundaries, or if such areas lie only partly within its boundaries, then that portion lying therein. For the purposes of this chapter, "prime wetlands" shall mean any areas falling within the jurisdictional definitions of RSA 483-A: 1 and 1-a that possess one or more of the values set forth in RSA 483-A: 1-b, and that, because of their size, unspoiled character, fragile condition or other relevant factors, make them of substantial significance. Such maps or designations, or both, shall be in such form and to such scale, and shall be based upon such criteria as are established by the board through regulations promulgated in the manner set forth in RSA 483-A: 4-a, I.

II. Any municipal conservation commission or that local body which has mapped and designated prime wetlands in accordance with paragraph I may, after approval by any town or city council meeting, file such maps and designations with the board, which shall accept and maintain them and provide public access thereto during regular business hours. The procedure for acceptance by the local legislative body of any prime wetland designations as provided in paragraph I shall be the same as set forth in RSA 31: 63 or 31: 63-a as the case may be.

Source. 1979, 431: 6, eff. Aug. 22, 1979.

APPENDIX B

STATE OF NEW HAMPSHIRE SPECIAL BOARD

37 PLEASANT STREET
CONCORD, NEW HAMPSHIRE 03301

RULES AND REGULATIONS

STATUTORY AUTHORITY: RSA 483-A:4-a I and V

Purpose. In addition to the purpose stated in RSA 483-A:1b, the Special Board declares that the purpose of these rules shall be to afford the maximum degree of protection to and preservation of those elements of our natural environment which have been found to be vital to the public good and welfare while at the same time allowing individual landowners as great a degree of freedom in the use and enjoyment of their land as is consistent with this public purpose.

Chapter Definitions. The words and phrases used in these rules shall mean and be construed as follows, except where a different meaning is clearly intended from the context:

(a) "Freshwater Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(b) "Saltwater Wetlands" defined in RSA 483-A:1-2.

(c) "Intermittent Streams" means those streams that flow for sufficient times of year to develop and maintain a defined channel but may not flow during dry portions of the year.

(d) "Drainage Swales" means areas where waters flow during runoffs to such a limited extent as not to create a defined channel or maintain wetland vegetation.

(e) "Bank" means that transitional zone immediately adjacent to the edge of the water defined by shelving, erosion, or where a vegetation line may be defined that indicates a change from upland to wetland.

(f) "Abuttors" means any person who owns property adjacent to the property on which the project will take place. (This does not include those across a public road.)

(g) "Major Projects" means a project of such size and scope that has the potential to create a significant impact on the wetlands or waters of the state.

(h) "Minor Projects" means a project of small size and scope that has the potential of minor impact upon the wetlands or waters of the state.

(i) "Minimal Impact Projects" means those minor projects which by virtue of their size and nature are likely to have only a negligible impact by themselves, or the aggregate, and may represent the ordinary rights or privileges of property owner

(j) "Applicant" means any natural or any other person owning land on which the project is to occur or, if not the owner, a governmental entity or contractor thereof assuming responsibility for such activity.

(k) "Minor Improvements of the Shoreline" means those projects, without limitations, which are identified as minimum impact projects.

PROCEDURE TO APPLY

1. Applications shall be made on forms authorized by the Special Board or copy thereof.

2. Four copies must be completed.

3. At the time of filing, the applicant shall notify in writing all abuttors that he has filed applications to dredge, fill or construct a structure in waters and/or wetlands. Signature on application is certification to the Board of compliance with this regulation. This notification is not required for logging operations, projects in utility right-of-way, or public highway construction.

4. All four copies are to be presented to the town/city clerk of the municipality where the proposed project is located. All four copies are to be signed and dated by the town/city clerk. The clerk will retain three copies pursuant to RSA 483-A:1. The fourth copy is to be sent, by the applicant, to the Special Board with all additional required information. (Refer to Paragraph #5.)

   A. If a major project, one drawing of the project prepared to scale or so dimensioned as to clearly define the project shall be filed with the town/city clerk.

5. Additional Data - Along with the application submitted to the Special Board, the applicant shall supply at least the following information.

   A. A sketch or a map showing the property of the applicant, the location of the project on the property, and the location of properties of abuttors.

   B. One drawing of the project prepared to scale or so dimensioned as to be clearly defined.

   C. Board may request additional data after review of the application.

   D. If a major project, photograph(s) depicting area(s) are to be submitted.

PROCEDURE FOR CONSIDERATION

Major Projects shall be heard at a public hearing and shall be field inspected.

Exception: Projects which come under and are heard under RSA 162-F and RSA 162-H and those federal, state, and municipal projects which have filed an environmental impact statement and for which public hearing(s) have been held which have taken testimony on the effects on waters and wetlands of the state may be exempted by the majority vote of the board. If major project is exempt based on issued Environmental Impact Statement or previous environmental testimony, such statement or testimony shall be considered by the Board.

Minor Projects will be considered at regularly scheduled meetings of the Special Board. They may be subject to field inspection and/or public hearing and all written comments will be considered.

Minimum Impact Projects will be reviewed by a staff engineer, to be designated by the Special Board, who will make recommendations to the Special Board at regularly scheduled meetings.

IDENTIFICATION OF APPLICATIONS

1. The secretary shall initiate and maintain a file on each application. This file shall be maintained for a minimum of four (4) years.

MEETINGS OF THE SPECIAL BOARD

1. The Special Board will normally meet once each week on a day to be set by the Board. At these meetings, the Board shall evaluate applications, act upon minor proposals, and schedule appropriate action on major proposals.

2. A quorum shall be defined as eight statutory members or their designees.

3. Voting shall be by majority of members present.

4. No application shall be acted upon until at least seven days have elapsed from the time of filing with the town/city clerk.

5. Agenda will be prepared under the direction of the Chairman which shall include all applications received 48 hours ahead of the scheduled meeting which meet the seven day requirement. The agenda shall present by arrangement the proposal classifications of major projects, minor projects, and minimum impact projects.

6. Applications shall be acted upon only in convened meetings. This shall prohibit the use of telephone polls or written polls except when, in the determination of the Chairman, an emergency exists.

7. Any Board member may request additional information from an applicant or may request a field investigation at any time.

8. For minor proposals, the Board may issue, deny, or issue with qualifications, a permit to the applicant. A subsequent request by the applicant for a public hearing shall be granted and a request by any other party for a public hearing shall be considered.

9. Applicants making proposals deemed major under RSA 482:41-e or any proposals under RSA 488-A shall be notified that they must petition Governor and Council. (In Great Ponds.)

10. For minimum impact projects, the Board shall review the recommendations of the staff engineer and take appropriate action.

CRITERIA FOR DETERMINATION OF PROJECT IMPACT

MAJOR PROJECTS - Are those projects which meet any one or more of the following criteria.

1. Fill or dredge in the saltwater wetlands.

2. Fill or dredge of an area in excess of 20,000 square feet in freshwater wetlands or if it impacts an area more than 20% of contiguous wetlands.

3. Fill or dredge to construct subdivision of more than three lots. Except those projects limited to the construction of culverts.

4. Construction of or increase in size of any community docking system or marina.

5. A number of associated projects may be considered in total and deemed major by majority vote of the Board.

6. Those projects voted to a public hearing after consideration of the proposed projects at a regular session of the Special Board.

MINOR PROJECTS - All those that are not major.

MINIMUM IMPACT PROJECTS - Are those minor projects which do not exceed any of the following criteria:

1. Seasonal docks in lakes over 1000 acres that are not wider than six feet nor thirty feet in length that are erected perpendicular to the shore and are so located so as not to be closer than ten feet to an abutting property line or the imaginary extension thereof into the water.

2. Seasonal docks in lakes under 1000 acres that are not wider than four feet nor longer than twenty feet that are erected perpendicular to the shore and are so located as not to be closer than ten feet to an abutting property line or the imaginary extension thereof.

3. Repair or replacement of retaining walls at the original locations. If the wall is to be re-faced, such additional width is not to exceed six inches.

4. The repair of any currently serviceable structure, using like materials, in or adjacent to the waters of the state that will not increase any pre-existing overall length, width, or heights.

5. Replenishments of beach areas limited to less than twenty cubic yards of sand.

6. Fill in swamps that does not exceed 3000 square feet and does not affect more than five percent of the impacted wetlands.

7. Removal of rocks from waters of the state to improve safety that does not exceed twenty cubic yards of rocks and with the condition that the removed rocks be placed behind the high water mark or in the lake with at least ten feet of water over the deposited rocks.

8. Fill, dredge, and the installation of bridge or culvert to construct vehicular access to an isolated piece of property for the owners private use. To be limited to those projects which involve the crossing of swales,

intermittent streams and/or wetlands not exceeding fifty feet measured along the proposed accessway.

9. Projects to construct temporary crossings of brooks, streams, or rivers to enable the transportation of forest products or the reconstruction and maintenance of utility pipes or lines and which will be subsequently removed.

10. Dug ponds of less than one acre of water area that do not involve any work in a marsh, bog, or stream.

11. Public Works Projects

A. Drainage Outlets

No fill or riprap material shall be taken from the stream bed except that which must necessarily be removed to seat the drainage outlet. Fill placed for bedding and backfilling of drainage outlet shall be clean and from an upland source. Fill for this purpose shall not exceed 25 cubic yards. At the outlet the finished slopes shall be seeded or an end wall structure of riprap, concrete, or masonary constructed, depending on the site conditions. In all cases, such installations shall not create an impoundment that will impede the normal flow of water or cause flooding.

B. Small Bridges and Culverts for Stream or Wetland Crossings

This section is applicable to the construction of small bridges, culverts, and box culverts associated with minor roadway relocations and upgradings. Fill will be allowed for the construction and backfilling of abutments, wingwalls, and piers for bridges and bedding and backfilling of culverts, and shall not exceed 500 cubic yards for each crossing. In all cases, such installations shall not interfere with navigation nor create an impoundment that will impede the normal flow of water or cause flooding. Culverts and box culverts will be aligned with the direction of stream flow and at or slightly below existing stream bottom in order not to impede the passage of fish.

Where an existing bridge has no piers in the waterway, no new piers will be allowed but an existing center pier may be supplanted. Cofferdams, temporary stream diversions, and minor stream bank stabilization will be allowed to the extent that they are necessary to carry out projects authorized undder this permit. On completion, material from a cofferdam shall be removed from the stream and spread in an upland area and vegetated. Diversion channels shall be treated in the manner most beneficial to the waterway. The waterway shall be returned to a viable water course.

In no case shall the work alter more than 400 feet of shoreline. The total shall be the sum of the length of the altered banks on both sides of the watercourse excluding the bridge width.

C. Shoulder Widening

The intent of this section is to authorize work in connection with upgrading of existing roadways.

Projects to be considered for authorization under this section are those which will require no more than average of Three (3) cubic yards of fill per linear foot of existing roadway. The fill shall be so placed that it does not encroach upon the wetland or waterway beyond a point of 10 feet out from the point where the existing slope and the surface of the wetland meet. In computing the cubic yards of fill for the allowable average, the linear feet of the water crossing shall be subtracted from the overall length of the project.

D. Special Conditions

1. That the construction which is done meets best management practices.

2. Excavated material associated with the activities listed above which is disposed of in such a manner that it could drain into surrounding wetlands or streams shall be so placed that at least 70 percent of the resultant drainings will return to the excavated area and not be released to surrounding wetlands or streams, unless a settling basin is used prior to returning water to stream.

3. The construction will not alter more than 3000 square feet or five percent (5%) of a wetland area, whichever is smaller, in addition to cubic yardage limits previously described.

4. The surrounding waterway and wetlands will be returned to normal grade and condition after construction is completed. The disturbed areas are to be graded and revegetated to approximate their original condition.

CRITERIA FOR APPROVAL OR DISAPPROVAL

In addition to the purposes stated in RSA 483-A:1-b, the following criteria without limitation will be used as appropriate to determine whether to approve or disapprove applications.

1. The type of freshwater wetland area:

Wetlands can be divided into three general types bogs, marshes, and swamps. Although each type is an area valued for its environmental qualities, the Board has the greatest interest in preserving bogs, then in preserving marshes and then swamps. In addition to the inherent value of each of these wetland types, the priority system is based upon the rarity and long time in formation of the bog and marsh environment.

2. The location of the freshwater area;

a) One value of a wetland area is related to its location with respect to other wetlands and surface waters. In general a wetland which is unique in a vicinity will be more valuable to that area than one which is surrounded by many other similar wetlands.

b) The size and location of the subject wetland in respect to the entire drainage basin which will signify its importance in the holding of floodwaters and sediments and the removal of contaminants.

3. The Board will preserve the integrity of the saltmarshes because of their proven productivity and past encroachments. No project will be allowed that intrudes by itself into the marsh. Projects considered for approval will be those located at the fringe or edge where previous projects define a line of encroachment and/or vital needs of the applicant can be proven.

4. Impact on plants, fish and wildlife will be considered as all wetlands serve as a source of food or habitat. The extent of utilization by fish, waterfowl, and wildlife is one indication of the value of the wetland. The Board recognizes that this activity can be seasonal. The Board can also consider areas which supply food and habitat for rare and endangered species.

5. The impact of the proposed project on public commerce and recreation with special attention to those projects in or over public waters where boating is possible.

6. The extent to which a project interferes with the aesthetic interests of the general area.

7. The impact upon abutting owners pursuant to RSA 483-A:4 III.

8. The size of a new beach will be limited to a fraction of the frontage of the applicant.

9. In the event that a project seeks to advance an interest of the general public including, but not limited to streambank improvement, safety, roadway improvement, recreational improvements, the Board shall consider such benefits to the project.

10. The impact of proposed projects on quantity or quality of water located in watersheds or waters that are public water supplies.

PUBLIC HEARINGS

1. Purpose

   This section prescribes the policy, practice, and procedure to be followed by the Special Board in the conduct of public hearings conducted in the evaluation of a proposed permit action.

2. Definitions

   (a) Public hearing means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed permit action and which affords to the public the opportunity to present their views, opinions, and information.

   (b) Permit action, as used herein, means the review of an application for a permit pursuant to RSA 483-A or the review of a petition for recommendation under RSA 482:41-f or RSA 488-A:2.

3. General Policies

(a) For major projects, a public hearing shall be held in connection with the consideration of a permit application. A public hearing may be held on any project when it is proposed to modify or revoke a permit.

(b) For minor projects, any person may request, in writing, that a public hearing be held to consider the material matters in issue in the permit application. Requests for a public hearing under this paragraph shall be granted, unless the Special Board determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing. The Special Board will make such a determination in writing, and communicate the reasons therefore to all requesting parties.

(c) All hearings shall be held in Concord, New Hampshire unless otherwise voted by the Board.

4. Presiding officer

The Chairman of the Special Board shall normally be the presiding officer. When the Chairman is unable to serve, he shall designate a member of the Special Board or his designee to be presiding officer.

5. Representation

At the public hearing, any person may appear on his own behalf, and may be presented by counsel, or by other representatives.

CONDUCT OF HEARINGS

A. Hearings shall be conducted in an orderly and expeditious manner. An person shall be permitted to submit oral or written statements concerning the subject matter of the hearing, to call witnesses who may present oral statements, and to present recommendations as to an appropriate decision. Any person may present wirtten statements for the hearing file prior to the time the hearing file is closed to public submissions. The presiding officer shall afford participants an opportunity for a second appearance after all have been heard for the first time.

B. The presiding officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of appearances.

C. Cross-examination of witnesses shall not be permitted.

D. All public hearings shall be recorded. Transcripts of public hearings will be made only at the request of the Board's legal counsel.

E. All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion by the presiding officer for reasons of duplication be received in evidence and shall constitute a part of the hearing file.

F. At any hearing, the presiding officer shall make an opening statement reading the application, the Finding of Public Purpose, Notice of Hearing, pertinent statutes, and outline the purpose of the hearing and prescribe the general procedures to be followed.

G. The Special Board shall allow a period of 10 days after the close of the public hearing for submission of written comments. After such time has expired, unless such period is extended by the presiding officer for good cause, the hearing file shall be closed to additional public written comments.

H. In appropriate cases, the Special Board may participate in joint public hearings with other State agencies, provided the procedures of those hearings mee t the requirements of this regulation. In those cases in which the other State agency is required to allow cross-examination in its public hearings, the Special Board may still participate in the joint hearing, but shall not require cross-examination as part of their participation.

I. The procedures in subparagraphs (F) and (G) of this Section may be waived by the Special Board in appropriate cases.

J. Filing of date of the Public Hearing.

1. All evidence introduced at the public hearing and before the record is closed, shall be made part of the administrative record of the permit action. The Special Board shall fully consider the matters discussed at the public hearing and submitted for the record in arriving at their initial decision or recommendation and shall address, in their decision or recommendation, all substantial and valid issues.

K. Power of presiding officer

The presiding officer shall have the following powers:

(a) To regulate the course of hearing including the order of all sessions and the scheduling thereof, after the initial session, and the recessing, reconvening, and adjournment thereof.

(b) To take any other action necessary or appropriate to the discharge of of the duties vested in him consistent with the statutory authority under which the Special Board functions.

L. Public Notice

(a) For hearings under RSA 483-A, public notices shall provide for a period of not less than ten (10) days following the date of public notices

during which time interested parties may prepare themselves for the hearing. Notice shall be given to all abutting land owners, elected municipal officials, municipal conservation commission, if any, the councilor, the senator and representative of the district where the project is located. All members of the Special Board and the Environmental Division of the Attorney General's office shall also be notified. A notice of the public hearing will be sent to newspapers of general circulation throughout the state, as well as those in the town or city. Notice shall be sent to all persons requesting a hearing.

(b) For hearings to dredge or fill the beds of great ponds notice shall be by the procedure defined in RSA 482:41f or RSA 488-A:2

(c) The notices of either (a) or (b) above shall contain time and place of hearing; the legal authority and jurisdition under which the hearing is held; a general description and location of the proposed project and location of and availability of plans and specifications.

CRITERIA FOR DESIGN AND CONSTRUCTION OF SHORELINE STRUCTURES

The following criteria for the Special Board's review of applications for wharves, docks, piers, breakwaters, retaining walls, canopies, and boathouses are hereby extablished:

1. Purpose - The purpose of these criteria is to protect the best interests of the State of New Hampshire through the establishment of approved locations and minimum requirements of design and construction of wharves, piers, docks, floats, breakwaters, retaining walls, canopies, and boathouses as to prevent unreasonable encroachment on the surface waters of the state.

2. Policy - In preserving the integrity of the surface waters of the State, it is the policy of this Board that all structures shall be constructed so as to insure safe navigation, minimize alterations in prevailing currents, to minimize the reduction of water area available for public use, to avoid changes in subsurface conditions that would be deleterious to fish and wildlife habitat, and to avoid changes in water movements that might cause erosion to abutting propertis. Structures shall be allowed only for the purposes of boating and not for the transfer of any activities usually associated with land to structures over the waters, i.e. sunbathing, picnicking, etc.

3. Definitions

A. Wharves, docks, piers, and floats are structures intended for the mooring of waterborn craft and/or the docking of same for the discharge and loading of passengers, freight, and other goods.

B. Breakwaters are structures intended to protect sections of shoreline which may be used by the public or private individuals, or for the protection of docks, wharves, or anchorage areas against erosion or damage from wind driven currents. Said structures are extended into the surface waters of the State to interrupt the force of currents.

C. Retaining Walls are structures constructed parallel and adjacent to shorelines to prevent erosion.

D. Boathouses are wharves, docks, or piers designed for the docking and mooring of water-borne craft over which a permanent structure has been erected for the sheltering of a boat or other water-borne craft from the sun and weather. The use of this structure is for seasonal or year-round housing or covering for water-borne craft.

E. Canopies are seasonal structures having no side walls erected over a dock for the sheltering of a water-borne craft.

Design and Construction

A. Seasonal Docks - The Special Board hereby designates the use of seasonal docks as the preferred mode of construction. Seasonal docks, once permitted, require no further action unless there is a change in size, location, or configuration.

B. Permanent Wharves, Piers, and Docks

a) First priority: The Special Board hereby designates the use of piling as the preferredmethod for construction of permanent structures because this method offers the best preservation of and least disturbance to the basic environmental considerations enumerated in Policy above. All applications will indicate that reasonable investigations have been undertaken to determine the impossibility of driving piling before alternate construction methods will be approved. Such investigations may include, but not be limited to, trial driving by commercial equipment, probings and experience in construction of adjacent wharves or docks. The minimum spacing for pile bents shall be 12 feet center to center and, generally speaking, the decks to be constructed thereon shall not exceed 6 feet in width except by special approval of the Board. The total length of any proposed wharf, dock, or pier measured from the existing shoreline toward the water body, in addition to the environmental considerations in Policy above, shall be subject to express review and recommendations of the Department of Safety.

b) Second Priority: Where it has been established to the satisfaction of the Board that piling cannot be used, crib-type supports or piers may be approved. The maximum size of piers for water depths of up to 6 feet shall be 6 feet long by 6 feet wide and of such height as is necessary to support the wharf above the water level. The crib itself may be of timber, prefabricated concrete, or other approved members securely fastened together and of such size and spacing as necessary to completely contain the stone ballast or other approved fill material. The side dimensions of cribs may be increased one foot for every additional foot of water depth above 6 feet. The minimum spacing between cribs shall be 12 feet.

c) Third Priority: Special designs such as caissons, concrete piers, or prefabricated cofferdams are considered to be of a highly specialized nature and will be considered on an individual basis by the Board. However, the criteria for spacing and other dimensions will be the same as for the first and second priority construction types.

C. Breakwaters - Breakwaters may be approved to be constructed of stone, concrete, wood, or other approved materials consistent with the individual construction conditions of each site. Applications will be considered, recommended to Governor & Council under RSA 482:41-e or approved by the Board on an individual basis.

D. Canopies - As a general policy, canopies of a temporary nature shall be those constructed so as not to obstruct views from adjacent property or interfere with boating or swimming safety. Canopies shall also be designed, constructed, and maintained in such manner that they will be retracted or dismantled and removed from locations in surface waters during seasons of non-use.

E. Permanent Boathouse - Will not be approved unless located over dredge inlets within the properties of the individuals concerned, when such construction does not protrude beyond an existing shoreline and the project is at least 10 feet from the abuttor's boundary.

F. General - Unless otherwise determined by the Board, no structure shall be built nearer than 10 feet from the abutting property line or the imaginary extension thereof over the water. All structures constructed under these criteria shall be maintained in a manner satisfactory to the Board. Maintenance will be such that the structure shall conform to reasonable safety and aesthetic standards. Failure to so maintain will be cause for removal of the entire structure.

RULE CHANGE

A petition shall be submitted in writing to the Chairman of the Special Board for the promulgation, amendment, or repeal of any rule setting forth a detailed presentation of the change requested along with substantiating arguments. Such petition shall be printed or typed, and legible. The petition shall be signed by the petitioner and he shall include his address or an address at which he can receive correspondence. The Board shall respond in accordance with RSA 541-A:6.

Declaratory Ruling as Follows:

1. Any person may apply to the Chairman for a Declaratory Ruling as to the applicability of any statute pertaining to the Special Board or any rule of the Special Board to any activity of the applicant in accordance with the following procedures:

   (a) Any applicant for a Declaratory Ruling shall submit in writing a detailed request for a Declaratory Ruling setting forth the statute or rule of which the applicability is questioned, the interest of the applicant and the activity in question. Such applications shall be printed or typed, and legible.

(b) The application shall be signed by the applicant and he shall include his address or an address at which he can receive correspondence.

2. Within ten (10) working days, the Special Board shall prepare a written ruling providing a response to the request and the reasons for the response, unless it is determined by the Board that an answer to the question necessitates referral of the matter to the Attorney General, in which case the Chairman shall provide his ruling within five (5) days of receipt of an opinion or other response of the Attorney General. Referrals to the Attorney General shall be made no later than five (5) working days following receipt of an application under this regulation.

3. In the event the Special Board determines that any application provides insufficient information upon which to make the requested ruling, or is otherwise defective or inadequate it shall within five (5) days return the application to the applicant with a statement indicating the nature of the deficiencies.

LEGAL ANALYSIS OF RSA 483-A

I. Introduction

This legal analysis of the recent administrative interpretations of New Hampshire's Fill and Dredge in Wetlands Act (RSA 483-A) (the Act) was prepared by the federal office of Coastal Zone Management in cooperation with the State to provide additional guidance in determining whether future implementation of this crucial element of the New Hampshire Coastal Program will be sufficiently predictable to meet federal criteria absent additional definitions and regulations. After reviewing the Act and the leading case upholding the constitutionality of the Act (Section II) and the Wetlands Board's regulations and procedures (Section III), this document presents an analysis, following an in depth investigation, of the permit reviews conducted recently. This analysis demonstrates that the standards in the Act are adequately specific and provide sufficient predictability to satisfy the requirements of the Coastal Zone Management Act.

II. The Act

A. Coverage

RSA 483-A requires that any person desiring to "excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh or swamp in or adjacent to any waters or wetlands of the state" must first obtain a permit from the Wetlands Board.(1) Adjacent areas include all lands submerged or flowed by mean high tide and those areas which border tidal waters (such as salt marsh) whose surface is at an elevation not exceeding 3-1/2 feet above local mean high tide and upon which are capable of growing some, but not all, of sixteen types of wetlands vegetation enumerated in RSA 483-A: 1-a, and any sand dunes in the Town of Seabrook. The occurance and extent of saltmarsh peat at the undisturbed surface is also evidence of the extent of state jurisdiction within a saltmarsh. (It is important to note that the boundaries of the coastal program for the first segment extend inland from mean high water to either a horizontal distance of 1000' or to the limits of the Wetlands Board's jurisdiction for tidal wetlands, whichever is farthest inland. In most cases, the Board's jurisdiction extends further than 1000'.)

(1) The Wetlands Board (formerly known as the Special Board) has 17 members: the 5 members of the Water Resources Board, 3 representatives from Fish and Game, 2 from Water Supply and Pollution Control, 1 each from Public Safety, Public Works and Highways, Resources and Economic Development, and State Planning; 3 representatives are appointed by the governor from a municipal conservation commission, a conservation district and an elected municipal official.

The key section, known as the Public Purpose section, (RSA 483-A:1-b) states that it is for the public good and welfare of the state "...to protect and preserve its submerged lands under tidal and fresh waters and its wetlands (both saltwater and freshwater)...from despoilation and unregulated alteration..." Such protection and preservation is necessary because despoilation or unregulated alteration will cause the following:

1) adversely affect the value of such areas as sources of nutrients for finfish, crustacea, shellfish and wildlife of significant value,

2) damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance,

3) eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public;

4) inadequate ground water levels,

5) adversely affect stream channels and their ability to handle the runoff of waters,

6) disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels.

7) and will otherwise adversely affect the interest of the general public (RSA 483-A: 1-b).

The applicant has the burden of showing that the proposed project will not cause the adverse effects set forth in the statute.

B. Judicial Interpretation

In Sibson v. State (115 N.H. 124, 336 A.2d 239 (1975)) the New Hampshire Supreme Court upheld broad authority in the State to control and restrict the filling of wetlands pursuant to its police power. The case involved the owner of a six acre tract of saltmarsh in Rye who sought a permit from the Wetlands Board to fill 4 acres. The owner had originally purchased the land for $18,500 and legally filled 2 acres as that portion of the land was not subject to RSA 483-A. The filled land was later sold for $75,000 and owner then applied for a permit to fill the remainder. The Wetlands Board denied the permit and the Superior Court upheld the denial on the grounds that the four acres were part of a valuable ecological asset of the seacoast area and that the proposed fill "would do irreparable damage to an already dangeriously diminished and irreplaceable natural asset." (Id. at 126.)

On appeal to the Supreme Court the plaintiffs argued that the denial rendered their saltmarsh economically useless and therefore amounted to a taking for which compensation was required. Plaintiffs relied on a theory promulgated by Justice Holmes in Pennsylvania Coal v. Mahon 260 U.S. 393 (1922) that compensation is due a landowner when a regulation destroys all or substantially all of the value of the property affected or denies to the owners all of its beneficial use. Finding that the Holmes' rule is imprecise and difficult to apply, the New Hampshire Supreme Court adopted a different approach. "[I]f the action of the State is a valid exercise of the police power proscribing activities that could harm the public, then there is no taking under the eminent domain clause. It is only when the state action appropriates property for the public use at the expense of the property owner that compensation is due" (Id. at 127-128, citations omitted.) Thus since denial of the permit to fill in wetlands was a valid exercise of the police power, the Court held that there was no taking for which compensation was required.

The Sibson case is significant because the Court upheld the state's right to regulate marshland under the Fill and Dredge Act to prevent public harm. Furthermore, this decision underscores the State's commitment to wetlands protection and preservation. It is now well established in New Hampshire that a landowner has no absolute right to change the essential character of his land so as to use it for a purpose for which it was unsuited in its natural state and which causes public harm.

III. Regulations

A. Criteria

Pursuant to RSA 483-A:4a, the Board adopted regulations establishing criteria for approval and disapproval of applications. The regulations state that in addition to the purposes stated in RSA 483-A:1-b, specific criteria will be used as appropriate to determine whether to approve or disapprove applications. The criteria are as follows:

1. The type of freshwater wetland area.

2. The location of the freshwater area.

3. The Board will preserve the integrity of the saltmarshes because of their proved productivity and past encroachments. No project will be allowed that intrudes by itself into the marsh. Projects considered for approval will be those located at the fringe or edge where previous projects define a line of encroachment and/or vital needs of the applicant can be proven.

4. Impact on plants, fish and wildlife will be considered as all wetlands serve as a source of food or habitat. The extent of utilization by fish, waterfowl, and wildlife is one indication of the value of the wetland. The Board recognizes that this activity can be seasonal. The Board can also consider areas which supply food habitat for rare and endangered species.

5. The impact of the proposed project on public commerce and recreation with special attention to those projects in or over public waters where boating is possible.

6. The extent to which a project interferes with the aesthetic interest of the general area.

7. The impact upon abutting owners pursuant to RSA 483-A:4 III.

8. The size of a new beach will be limited to a fraction of the frontage of the applicant.

9. In the event that a project seeks to advance an interest of the general public including, but not limited to streambank improvement, safety, roadway improvement, recreational improvements, the Board shall consider such benefits to the project.

10. The impact of proposed projects on quantity or quality of water located in watersheds or waters that a public water supplies.

(Source: New Hampshire Special Board, Rules and Regulations)

B. Project Classification

The regulations adopted by the Board categorize projects subject to the Act as "major" or "minor". Any filling or dredging in saltwater wetlands is considered a major project and there are no waivers or exemptions. Other major projects are: work involving more than 20,000 square feet of area or area or affecting more than 20% of a freshwater wetland; and work involving the subdivision of more than 3 lots. In addition, a series of minor projects within the same wetland must be considered as major and other projects can be voted to be major at the regulatory meetings of the Board.

Permits for all major projects must include a public hearing and field inspection. Minor projects may be subject to field inspection and public hearing.

Certain minor projects are known as "minimum impact" projects and are reviewed simply by a staff engineer who then

makes a recommendation to the Board. Such projects include certain types of seasonal docks, repair of retaining walls and existing structures, beach replenishment of less than 20 cubic yards, fill of less than 3,000 square feet in area of affecting less than 5% of a wetland.

C. Application and Hearing Procedure

The application form to fill, dredge or construct in the wetlands solicits certain general information such as a description of the location and the size of the project, the reasons for the project, a list of abutting owners and whether the project is major or minor.

If a hearing is held, any person may submit oral or written statements concerning the subject matter, call witnesses, and present recommendations to the Board. At its regular meetings the Board considers all written comments submitted by local officials, abuttors, conservation commissions and other concerned parties. Written comments will be received by the Board up to 10 days after the close of the hearing. Any party to the action before the Board may apply for a rehearing and may appeal to the Superior Court for the county where the land in question is located.

IV. Administrative History

A. Interpretation of Criteria

It must be pointed out that the Board is required to evaluate applications according to the purposes set forth in RSA A:1-b noted above. In addition, the Board can, where appropriate, evaluate projects based on the criteria set forth in the regulations (as set out above). Since each criterion is not called into question in cases involving tidal wetlands, there is no need to analyze the Board's interpretation of all the criteria listed in the regulations. The following discussion is limited to the three criteria applicable to tidal wetlands.

1. "The Board will preserve the integrity of the saltmarshes because of their proven productivity and past encroachments. No project will be allowed that intrudes by itself into the march. Projects considered for approval will be those located at the fringe or edge where previous projects define a line of encroachment and/or vital needs of the applicant can be proven."

As discussed below, the Board has emphasized protection and preservation of salt marsh area even when "vital" (e.g. economic) needs of the applicant may have been asserted. The Board's recent actions demonstrate that it has not read "vital needs" to

mean economic interests of the applicant but has denied projects simply because they would intrude into a salt marsh.

Case History

a. Subsequent to the Board's denial of two applictions to fill in salt marsh for an aquaculture farm and for a condominium, the same party filed a new application to fill in a portion of the same area for the purpose of building a motel. The Board denied the application because the area is unaltered saltmarsh.

On petition for rehearing the Board reconsidered its original decision and allowed placement of fill in a modified manner. Modified fill was allowed because the Board found that a part of the area in question was filled land and therefore its value was degraded as compared to the unaltered salt marsh. Thus, the applicant was allowed to fill but only to the line of encroachment. (T-355, 11-13-80.)

b. In another recent case, applicant sought a permit to fill approximately 1,000 cubic yards of salt marsh for a picnic area for motel guests. The Board originally denied the application and on rehearing affirmed the denial based on its findings that the area in question is salt marsh and any fill would destroy the productivity of the marsh and its effectiveness as a pollution filter. (D-543, 5-19-81.)

c. In another action (G-556, 8-12-81) the Board denied an application to place 300 cubic yards of fill in a salt marsh. The denial was based on the finding that the proposed fill would encroach on the buffer strip to the tidal flow and the fill would project beyond the imaginary line connecting existing fills in the neighborhood thereby causing aesthetic disruption.

2. "Impact on plants, fish and wildlife will be considered as all wetlands serve as a source of food or habitat. The extent of utilization by fish, waterfowl and wildlife is one indication of the value of the wetland. The Board recognizes that this activity can be seasonal. The Board can also consider areas which supply food and habitat for rare and endangered species."

This criterion is usually not called into question in cases involving tidal wetlands. Nonetheless, two major cases demonstrate that the Board has used this criterion to deny permits to fill in tidal and freshwater areas when the areas provide habitat for wildlife.

Case History

a. In a recent major case, a developer applied for a permit to place 15,000 cubic yards of fill material on a fresh water wetland for the purpose of constructing condominium units. There

was some question as to whether the area is salt or fresh water as it was originally classified salt marsh but recent environmental assessments have disputed this classification. The Board did not make a determinaiton as to whether the area is salt or fresh water but denied the application based on its finding that the area provides habitat for wildlife. On petition for rehearing, the Board reaffirmed its previous denial. (D-842, 7-8-81.)

b. In another case, applicant sought to fill 1100 cubic yards adjacent to salt marsh for the purpose of constructing a beach home. The Board denied the application based on its finding that the area is delicate salt marsh containing spartina paten and spartina alterniflora as well as other salt marsh flora and fauna. The area also serves as an area of absorption, nutrient production and wildlife habitat. This decision was upheld on rehearing. (C-689, 5-23-79.)

3. "The extent to which a project interferes with the aesthetic interests of the general area."

In general, this criterion is not called into question in tidal wetlands. However, to indicate how the "aesthetic interest" consideration has been applied, two recent cases are instructive.

Case History

a. In W-642, (2-19-81) the Board approved a dock construction project. The configuration of the dock included a permanent section to be installed on the existing cement foundation and a floating section. The Board required that the floating section be aligned parallel to the shore so as to reduce aesthetic impact.

b. In another case (P-670, 12-2-80) applicant sought a permit to construct a canopy over existing docks to provide cover for antique boats. The Board originally denied the permit based on aesthetic grounds (the cover would obstruct abutting owners' view.) The Board later approved a modified plan with the condition that the cover must be removed from locations in surface waters during seasons of non-use.

B. Summary of Recent Board Actions

The results of a study recently performed by the State are helpful to gain a better understanding the Board's permit process. All applications within tidal wetlands for a 1-1/2 year period (1978 and the first half of 1979) were reviewed in detail. The information collected was analyzed to identify the types of projects proposed and the permit actions taken by the Wetlands Board.

During this period, 71 applications for projects in saltwater areas were brought before the Wetlands Board. The types of projects and permits decisions are summarized as follows:

Type of Project	Total	Approved	Approved with conditions/ modifications	Denied
Storm Repairs on rip-rap, seawalls, etc.	26	18	8	-
New Erosion control rip-rap, seawalls, etc.	9	2	7	-
Public road work, drainage, bikeways, beach maintenance, sewer lines, etc.	14	7	7	-
Dredging	4	4	-	-
Filling	7	-	2	5
Wharves	4	2	2	-
Boat dock/ramp	1	1	-	-
Utilities	2	2	-	-
Public experimental projects Fish & Game spawning & mosquito control	4	4	-	-
TOTAL	71	40	26	5

These cases provide a representative sample of the types of projects subject to the permit requirements of the law, except that they may include more storm repair projects than normal, as a result of the Blizzard of 1978.

As indicated above, the Board approved all but 5 of the applications, although 26 of the projects were approved with conditions or modifications.

Analysis of Approvals

Of the 40 applications approved as submitted, 75% were routine public and private storm repairs, maintenance of shoreline structures, and other small erosion control projects. The remaining 25% were public channel dredging projects, very small private dredge and fill for docks/wharves and other minor public projects. Approval of all but a few of these projects were routine, since they did not adversely affect tidal wetlands

and, therefore, did not call into question criteria the Board uses in conditioning or denying permits.

Analysis of Denials

A careful review of the cases reveal that only 7 applications for new fill were requested and none of these projects involved a significant amount of fill. Nonetheless, the Board denied 5 of the 7 applications.

Of the 5 applications denied by the Board during this period, 4 involved filling in the saltmarsh and were denied in the grounds that they would cause adverse impacts on the tidal marsh and the wildlife habitat. The other denial involved filling along the shore for the purpose of landscaping and would unnecessarily destroy wetland.

Of the 26 applications which were approved with conditions or modifications, the types of conditions placed in the projects are summarized as follows:

Approved Conditions

11	Prohibited further extension into the marsh (i.e. beyond intrusion line).
6	Prohibited dredging & filling in spring and fall to mininimize turbidity affecting migrating fish
1	Specified placement of a culvert and forbade crossing wetlands with machinery
2	Required use of fractured ledge
1	Required revised drainage plans for runoff to protect marsh
2	Required modification of public sewer to minimize impact on marsh
1	Approval of private waterline based on equipment modifications when no alternate route possible
1	Required verification that marsh was freshwater, not tidal, and that project was already within encroachment area
1	Required replacement of house foundation closer to road to minimize impact on marsh.

V. Conclusion

This analysis demonstrates that in all cases the Board acts to preserve the value and integrity of the unaltered tidal wetland. No permits have been isssued in the last three years allowing fill in these areas. All decisions relied primarily on the specific language in the Act rather than the criteria outlined in the regulations. Although the regulations do not specifically define "vital need" of the applicant, the Board has systematically interpreted this criteria to disallow any fill even when economic interests have been present.

It should be noted that the jurisdiction of the Wetlands Board covers all wetlands, fresh and tidal, and most applications involve fresh water. Criteria established in the regulations are primarily directed at fresh water cases. The case analysis presented in this document supports the conclusion that the Board relies more heavily on the specific language in the Act rather than on the criteria in the regulations for tidal wetlands management. Because the language of the Act is all encompassing, the Board has prohibited, without exception, the filling of unaltered salt marsh.

APPENDIX C

CHAPTER 227-C

STATE HISTORIC PRESERVATION OFFICE

227-C:1 Purpose.
227-C:2 Definitions.
227-C:3 Establishment of State Historic Preservation Office.
227-C:4 Administration.
227-C:5 Powers and Duties of State Historic Preservation Office.
227-C:5-a Rulemaking Authority.
227-C:6 Establishment of a State Historic Preservation Review Board.
227-C:7 Powers and Duties of the Board.
227-C:8 Organization.
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Preservation of State Historic Resources
227-C:10-a Purpose.
227-C:11 Definitions.
227-C:12 State Title to Historic Resources on State Lands and Under State Waters.
227-C:13 Permits Issued for State Lands and Waters.
227-C:14 Division and Disposal of Historic Resources.
227-C:15 Directive for Cooperation in the Protection of Historic Resources.
227-C:16 Avocational Archeological Training and Certification.
227-C:17 Confidentiality of Archeological Site Location Information.
227-C:18 Penalties.
227-C:19 Exemptions and Limitations.

227-C:1 Purpose. The legislature of New Hampshire has determined that the historical, archeological, architectural and cultural heritage of New Hampshire is among the most important environmental assets of the state and that the rapid social and economic development of contemporary society threatens the remaining vestiges of this heritage; therefore, it is hereby declared to be public policy and in the public interest of this state to engage in a comprehensive program of historic preservation to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of the citizens of New Hampshire.

HISTORY

Source. 1974, 32:1, eff. July 1, 1974.

227-C:2 Definitions. As used in this chapter, the following words and terms shall have the following meanings unless a contrary meaning shall appear in the context:

I. "Historic property" shall mean any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of this state, its communities, or the nation.

II. "Historic preservation" shall mean the research, excavation, protection, restoration and rehabilitation of buildings, structures, objects, districts, areas and sites significant in the history, architecture, archeology, or culture of this state, its communities, or the nation.

III. "Office" shall mean the state historic preservation office, department of resources and economic development.

IV. "Board" shall mean the state historic preservation review board.

V. "State historic preservation officer" shall mean the appointed member from the department of resources and economic development.

VI . "Commissioner" shall mean the commissioner of the department of resources and economic development, or the commissioner's designee.

VII . "State archeologist" shall mean the member of the professional staff designated by the director of the office with the approval of the commissioner and state historic preservation officer to develop, supervise and coordinate activities necessary to discharge and integrate the powers and duties of the office in the field of archeology as mandated by federal and state laws and procedures.

HISTORY

Source. 1974, 32:1, eff. July 1, 1974.

227-C:3 **Establishment of State Historic Preservation Office.** There is hereby established within the department of resources and economic development a state historic preservation office, to be under the supervision of the state historic preservation officer who shall be appointed by the governor and council from personnel in the department of resources and economic development. This appointee shall be the only state historic preservation officer and shall serve at the pleasure of the governor and council.

HISTORY

Source. 1974, 32:1, eff. July 1, 1974.

227-C:4 **Administration.**

I. The director of the office shall be a classified state employee appointed by the state historic preservation officer. The director shall be selected on the basis of professional competence and shall receive compensation commensurate with salaries in the other New England states as determined by the state department of personnel.

II. The director, subject to the approval of the state historic preservation officer, shall conduct any relations with the representatives of the federal government and the respective states with regard to matters of historic preservation.

III. The director, subject to the approval of the state historic preservation officer, may employ such professional personnel as required, subject to the personnel laws of the state and within budgetary limitations.

IV. Consultants, as required, subject to budgetary limitations, may be employed by the director, with the approval of the state historic preservation officer.

V. With the approval of the commissioner and state historic preservation officer, the director may organize councils to assist the office as necessary, such as, but not limited to, an advisory archeological council of professional archeologists and representatives of professional and amateur societies. All members of the councils shall serve without compensation.

VI. The director may employ or otherwise engage certified avocational archeologists to assist in the performance of field investigations under the direct supervision of the office, or those authorized by the commissioner, and to assist in information exchange and historic preservation with towns and communities, subject to personnel laws, budgetary limitations, grant restrictions, and approval of the commissioner.

HISTORY

Source. 1974, 32: 1, eff. July 1, 1974.

227-C: 5 Powers and Duties of the State Historic Preservation Office. The state historic preservation office shall have the following powers and duties, to be carried out at the direction of the state historic preservation officer, including but not limited to:

I. Undertake a statewide survey to identify and document historic properties, including all those owned by the state, its agencies and political subdivisions.

II. Prepare the state's historic preservation plan with the assistance of the state historical commission and the office of comprehensive planning, and review that plan annually and revise it accordingly.

III. Undertake the procedures necessary to qualify the state for participation in sources of federal aid for historic preservation purposes and disburse such aid as is available.

IV. Provide information on historic properties within the state to the agencies of the federal, state, regional and local governments and, where appropriate, to private individuals and organizations.

V. Cooperate with federal, state, regional and local government agencies in the planning and conduct of specific undertakings affecting historic properties and preservation objectives and in overall land use planning.

VI. Coordinate the activities of regional and local government agencies in accordance with the state plan and programs for historic preservation.

VII. Provide technical and financial assistance to regional and local government agencies and private individuals and organizations involved in historic preservation activities.

VIII. Stimulate public interest in historic preservation in cooperation with other state, regional and local agencies and with other private individuals and organizations.

IX. Develop an on-going program of historical, architectural and archeological research and development to include continuing surveys, excavation, scientific recording, interpretation and publication of the state's historical, architectural, archeological and cultural resources. A reasonable charge may be made for publications.

X. Provide technical review and comment relative to the commissioner's powers and duties in the preservation of state historic resources pursuant to 227-C:12-15.

XI. Pursuant to federal laws and procedures, accept federal grants-in-aid for historic preservation in the name of the state and use these in accordance with the annual state historic preservation plan for staffing, survey and planning functions, and acquisition and development of historic properties, including the necessary expenditures to implement a permit program, training and certification of avocational archeologists, and field investigations of state historic resources.

XII. Accept moneys for historic preservation from public and private sources in the name of the state and to utilize these as conditioned by the appropriation, award, grant or donation, or, if the moneys are unencumbered, to supplement other funding to implement the annual state historic preservation plan.

227-C:5-a Rulemaking Authority. The office shall adopt rules, pursuant to RSA 541-A, relative to:

I. Categories of field investigations that may yield or alter historic resources;

II. Qualification criteria for professional and avocational archeologists for all established categories of field investigations;

III. The issuance, revocation, suspension, and extension of permits;

IV. Standards for the conduct of field investigations;

V. Terms of a permit issued under this chapter;

VI. The division of historic resources recovered from a permitted field investigation consistent with the provisions of RSA 227-C:14;

VII. Procedures for the conduct of hearings consistent with the requirements of due process; and

VIII. The powers and duties of the commissioner in the preservation of state historic resources pursuant to RSA 227-C:12-15.

History

Source. 1974, 32:1, eff. July 1, 1974.

227-C: 6 Establishment of a State Historic Preservation Review Board. There is hereby established a state historic preservation review board which shall be the only state historic preservation board. The membership of the board shall consist of the governor, or his designee; the director of the state historic preservation office, who shall be non-voting members; and 9 members of the public appointed by the governor and council, at least 3 of whom shall be qualified in the field of architecture, history and archeology; and the others shall be qualified in other fields including but not limited to law, real estate, planning, architectural history and historic preservation. The public members shall serve a term of 5 years; however, on the initial appointment, 3 shall be appointed for 2 years, 2 appointed for 3 years, 2 appointed for 4 years, and 2 appointed for 5 years. Each shall serve until his successor is appointed and qualified. Any vacancy shall be filled for the unexpired term.

History

Source. 1974, 32:1, eff. July 1, 1974.

227-C: 7 Powers and Duties of the Board. The board shall have the power and duty to:

I. Approve nominations to the national register of historic places.

II. Review and recommend the approval of the state survey of historic properties undertaken in accordance with the provisions of this chapter.

III. Review and approve the contents of the state historic preservation plan developed pursuant to the provisions of this chapter.

IV. Review and recommend application by the office for federal and other available funds.

V. Review and recommend the removal of properties from the national register.

VI. Otherwise act in an advisory capacity to the state historic preservation office and the state historic preservation officer.

HISTORY

Source. 1974, 32: 1, eff. July 1, 1974.

227-C: 8 Organization. The board shall elect a chairman and vice-chairman and establish such rules of procedure as it deems necessary.

HISTORY

Source. 1974, 32: 1, eff. July 1, 1974.

227-C: 9 Board's Expenses. All members of the board shall serve without compensation but may receive reimbursement for necessary travel and subsistence expenses incurred by them in the performance of the duties of the board.

HISTORY

Source. 1974, 32: 1, eff. July 1, 1974.

Preservation of State Historic Resources

227-C:10-a Purpose. It is in the public interest to provide for the preservation and interpretation of historic resources for the benefit of the citizens of this state and nation. In order to insure proper protection, investigation, interpretation and management of historic resources which are public property by virtue of having been found on, in or beneath lands and waters owned or controlled by the state, its agencies, departments, commissions or institutions, it is in the public interest that a single department be designated to hold title, as trustee for the state and its people, to all historic resources on, in or beneath such lands and waters, and to develop such rules and procedures as necessary for their proper protection, investigation, interpretation and management.

227-C:1' Definitions. As used in this subdivision:

I. "Field investigation" means the search for, indentification of, and evaluation of historic resources, and the study of the traces of human culture at any land or underwater historic property, by means of inspection, surveying, digging, excavating, or removing surface or subsurface objects, or going onto a site with that intent;

II. "Historic resource" means:

(a) Any historic property, as defined in RSA 227-C:2, I which has been listed in the National Register of Historic Places, or has been determined by the keeper of the register to be eligible for the National Register using the criteria for evaluation in 36 CFR 60.6;

(b) Any object, or group of objects, located in or associated with an historic property;

(c) Skeletal remains of humans that would not be subject to the provisions of RSA 611-A and fall under the provisions of RSA 227-C:14, VI; skeletal remains of other vertebrate animals; and other fossils within a cultural context that constitutes, or may constitute, the whole or part of an historic property;

(d) Any object, or group of objects, and the district, area, or site they define, which may yield significant data but whose value and significance has yet to be determined by the board;

(e) Any significant data that can be used to answer research questions about an historic property, and events and processes of the human past, provided by the fields or archeology, history, architecture and such supplemental sciences as ethnography, paleoecology, and related sciences.

227-C:12 State Title to Historic Resources On State Lands and Under State Waters. The state, acting through the commissioner, reserves to itself title of ownership of all historic resources on or from:

I. Lands owned or controlled by the state, its agencies, departments, commissions, institutions or political subdivisions;

II. The bottom of navigable waters in the state, great ponds and 3 miles seaward from the New Hampshire shore in the territorial tidal waters of the state.

227-C:13 Permits Issued for State Lands and Waters.

I. To assure proper protection, investigation, interpretation and management of historic resources, and the continued availability of historic resources for scientific study by qualified persons, agencies or institutions, the state, acting through the commmissioner, reserves to itself the exclusive right and privilege to conduct, or cause to be conducted, field investigations of historic resources that involve the alteration of the surface or subsurface of the resource and removal of any surface or subsurface objects.

II. The office shall establish categories of field investigations that may yield or alter historic resources and qualification criteria for professional and avocational archeologists for all categories of field investigations.

III. For purposes of determining proper persons to whom permits may be issued, the original discoveror of a previously unrecorded historic resource shall be conclusively presumed to be an appropriate person to actively participate in all phases of subsequent field investigations and shall be eligible to receive a permit under the rules adopted by the office.

IV. Upon a recommendation by the office, the commissioner shall issue a permit to any person, agency or institution to have submitted an application to conduct field investigations in accordance with the rules adopted by the office. When the office denies a permit, it shall issue a written statement describing the deficiencies in the permit application and the reasons for the denial.

V. The board may conduct hearings upon receiving written complaint from any person, including a board member, concerning the issuance, denial of issuance, revocation, suspension, extension, or refusal of extension of any permit issued under this chapter.

227-C:14 Division and Disposition of Historic Resources.

I. The commissioner shall be the technical custodian of all state historic resources, and the office shall make arrangements for:

(a) The division of historic resources recovered from a permitted field investigation between state and private custody;

(b) The disposition of the state portion in an appropriate institution of the state as close to the place of origin as possible;

(c) A preservation agreement for the portion released for private custody; and

(d) Any temporary loan of the historic resources to qualified persons or institutions in or out of state.

II. The permittee shall be required under the terms of the permit to preserve, conserve and restore, as necessary, any historic resources, and to catalogue and record as specified by the office.

III. The office shall adopt rules, pursuant to RSA 541-A, relative to the fair and equitable division of historic resources recovered from a permitted field investigation, provided that:

(a) Custody of isolated finds from the surface of state lands, or the bottom of state waters, is granted to the discoveror when these are brought to the office, or its designee, for identification and evaluation of context;

(b) Assurances are made that the original discoveror of a previously unrecorded historic resource receive custody of 25 percent of the recovered material from subsequent field investigations of that resource in which he actively participates;

(c) The formula for the division of the recovered materials shall be based on the percentage of private and public capital invested in a permitted field investigation, with no less than 25 percent being retained by the state, no more than 75 percent released for private custody, and the respective state and private shares above 25 percent being determined by the ratio of public to private investment.

(d) The division of the recovered materials shall be made by the drawing of an appropriate number of equal lots by the permittee, with the arrangement into the necessary number of equal lots being the responsibility of the permittee.

IV. Private custody of historic resources shall be governed by a preservation agreement with the state. The preservation agreement shall be in perpetuity unless otherwise rescinded or limited to a period of time by the office and shall specify:

(a) The catalogue numbers and description of the historic resources;

(b) The responsibility of the custodian to guard and protect such materials against loss, theft, destruction, damage or deterioration;

(c) A requirement that the materials be available for reasonably convenient study by qualified persons, agencies and institutions;

(d) A provision for the bequest of the materials upon settlement of the estate;

(e) The custodian's liability to obtain written consent from the commissioner for sale, auction, gift or trade of the collection; and

(f) That physical possession of such materials shall revert to the state if the office and commissioner concur in the opinion that the designated custodian is not properly caring for such materials or is not keeping them available for reasonably convenient study as required.

V. In considering the disposition of the state share of recovered materials:

(a) An appropriate institution for disposition is one with laboratory facilities where recovered objects may be cleaned, restored and preserved, or one willing to contract with another institution for these services, with secure and fire-protected space of sufficient size for orderly storage and protection of objects, records, photographs and other historic resources, and with a staff capable of caring for the material and making it available to qualified persons or institutions upon a recommendation of the office and request by the commissioner.

(b) The right and privilege of final disposition shall be granted the municipality of origin when that municipaltiy requests the historic resources through its local museum, library, historical society, school, or other institution which qualifies as an appropriate institution.

(c) Notwithstanding its right and privilege of final disposition, the right and privilege of initial display or use of the historic resources for other public education activities shall be granted the municipality of origin when that municipality, through its local museum, library, historical society, school, or other institution, agrees to provide secure and fire-protected facilities for storage and exhibit.

VI. Human skeletal remains which qualify as historic resources shall be fully documented before final disposition. Documentation shall include, as a minimum: a physical description of the remains, (such as age at death, sex, metrical data, and pathologies); age of the burial; and cultural association. Human skeletal remains which are subject to

reinterment under the provisions of RSA 289 shall be accordingly interred, but those that are not, including prehistoric remains, may be released for reinterment to those who are able to establish the closest ethnic relationship to the remains.

VII. Appropriate records of all historic resources shall be maintained by the office.

227-C:15 Directive for Cooperation in the Protection of Historic Resources.

I. All state agencies, departments, commissions, and institutions shall fully cooperate with the office in the location, identification, evaluation and management of historic resources, and to that end shall inform the office with appropriate information on all state licensed, assisted, or contracted projects, activities, or programs so that the office may determine the effect of such undertakings on historic resources.

II. Upon a recommendation of the office that historic resources may be adversely affected, the commissioner shall conduct, or cause to be conducted, the necessary field investigations, subject to personnel and budgetary limitations. State agencies, departments, commissions, and institutions are authorized and encouraged to expend project funds or appropriated moneys for these field investigations.

III. When preparing to sell or transfer real property under its jurisdiction that is expected to have historic resources, or is known to have historic resources, the state, its agencies, departments, commissions, institutions and political subdivisions shall, upon a recommendation of the office and commissioner:

(a) Condition the sale or transfer upon such covenants, deed restrictions, or other contractual arrangements as will protect the historic resources for future generations;

(b) Reserve such property from sale or transfer, provided that the reservation of such lands from sale or transfer may be confined to the actual location of the historic resources;

(c) Defer sale or transfer of such property for the purpose of conducting field investigations, including salvage mitigation if necessary, and until the lands are released for sale or transfer by the commissioner after consultation with the office.

227-C:16 Avocational Archeological Training and Certification. The office shall provide a means for training nonprofessional persons in technical archeological skills and shall acknowledge the achievement of those who have reached prescribed levels of proficiency in various aspects of archeology. Such individuals shall be encouraged to participate in field investigations authorized by the commissioner and supervised by the office. Certification is not to be misconstrued as an authorization to collect or excavate without a permit.

227-C:17 Confidentiality of Archeological Site Location Information. Information which may identify the location of any archeological site on state land, or under state waters, shall be treated with confidentiality so as to protect the resource from unauthorized field investigations and vandalism. Toward this end, state agencies, departments, commissions, institutions and political subdivisions, permittees and private landowners with preservation and conservation agreements, shall consult with the office before any disclosure of information to insure that the disclosure would not create a risk to the historic resource or that it is done in a manner to minimize the risk. Such information is exempt from all laws providing rights to public access. Disclosure for the public record for tax assessment, transfer, sale or other consideration of the property shall receive careful consideration to minimize the risk to the resource.

227-C:18 Penalties.

I. Any person who, with the purpose of defrauding anyone or with the knowledge that he is facilitating a fraud to be perpetrated by anyone, makes or alters any object so that it appears to have value because of antiquity, rarity, source or authorship which it does not possess, shall be guilty of a misdemeanor and shall forfeit to the state the equivalent in dollars of profits made by the sale of the fraudulent objects.

II. Notwithstanding the provisions of RSA Title LXII, any person who knowingly appropriates, excavates, sells, purchases, exchanges, offers for sale, transports, receives, destroys, or in any manner alters any historic resource located on state land, under state waters, or removed from same, except in the course of activities pursued under the authority of a permit or preservation agreement, or as exempted in RSA 227-C:14, III(a), shall be guilty of a misdemeanor punishable by a fine not exceeding $1,000 or by imprisonment for a period not to exceed 6 months, or both, and shall forfeit to the state all materials appropriated and reimburse the state for restoration of a defaced or destroyed property.

227-C:19 Exemptions and Limitations.

I. Notwithstanding any provision of this subdivision to the contrary, any person who, prior to the effective date of this subdivision, has acquired historic resources from state lands or waters which include items commonly known as antiques, may continue to possess or market such items as antiques.

II. Treasure hunting with metal detectors and dowsing rods is exempted from the restrictions of this subdivision on the following lands owned or controlled by the state, its agencies, departments, commissions, and institutions, unless an historic resource on such land has been recorded and restrictions are posted:

(a) Beaches;

(b) Athletic fields;

(c) School grounds;

(d) Perimeters of cemeteries;

(e) Unpaved roads;

(f) Within 25 feet of picnic tables and park pavilions; and

(g) Currently used dumps.

III. No power is conferred by this subdivision upon any official, commission, or other agency of state or local government to close any body of water or portion thereof, or access thereto, on a temporary or permanent basis, to recreational diving, recreational or commercial fishing, scallop dragging, recreational or commercial boating, or lobstering.

IV. Paper documents; photographic positives and negatives; microforms, including microfilms, microfiche, microcard, and microprint; and reel to reel, cassette, or cartridge tape recordings and magnetic tapes of information storage which qualify as historic resources under RSA 227-C:11, II, other than documentation of a field investigation, are exempt from the provisions of RSA 227-C:14. The responsibility to preserve, arrange, index, and allow access to these historic resources shall remain with the department of state, division of records managment and archives.

APPENDIX C

STATE HISTORIC RESOURCES REVIEW PROCEDURES ADMINISTERED BY THE NEW HAMPSHIRE HISTORIC PRESERVATION OFFICE UNDER RSA 227-C:15

State Law, RSA 227-C:15, as amended by the 1981 legislative session, directs all state agencies to cooperate in the protection of historic resources and requires that the Historic Preservation Office review all state licensed, assisted, or contracted projects, activities or programs to determine the effect of such undertakings on historic resources.

In order for the Preservation Office to make an accurate and prompt evaluation of potential impacts of proposed state actions on historic resources, the review procedures of the Preservation Office under RSA 227-C:15 are established as follows:

1. Notices of all proposed state actions shall be submitted to the Preservation Office for their review and initial determination as to whether such proposed actions are located in or may affect historic resources. To facilitate this review, all notices should contain the name, address and telephone number of the project sponsor and a brief description of the proposed project (location, site characteristics, proposed action, and purpose) or a draft copy of the application to the grantor agency.

2. The Preservation Office shall screen all projects and make one of three initial determinations:

   -Finding of "No Effect"

   -"Further Review Required"

   -Finding of "Adverse Effect."

   A. Finding of No Effect. Where the Preservation Office finds that the proposed state action is not located in or will not effect a historic resource, a finding of "no effect" will be made; the affected state agency will be notified and the project may proceed.

   B. Further Review Required. Where the Preservation Office finds that the proposed state action is located in or may have a significant effect on historic resources in the project area, the affected agency shall be notified that "further review is required" and shall be requested to submit or make available:

      1) a topographical map showing the location of the proposed project in an area context (a photocopy of the relevant portion of a USGS quadrangle map is preferred);

2) A larger-scale map, diagram, or site plan, showing the project and site in relationship to the immediate setting; the drawing should indicate compass orientation, contours, general soil types, distance to surface water, proximity to roads, and location of existing structures, stone walls, specialized uses such as earlier dump sites, roads, trails, etc.;

3) a very brief description of the current uses of the site; former uses, with approximate dates (if known); and the type of any past disturbance or alteration of the site, such as fillings, grading, excavation, paving, cultivation, demolition of structures (if known);

4) Photographs, where available, of the site and its immediate setting (adjoining buildings, sites, and agricultural, residential, commercial or industrial uses, or open space, which might be affected by the proposed project); clear Polaroid-type snapshots are adequate;

5) If the project is for new construction, sketch plans and elevations should be submitted; if the project involves rehabilitation, snapshots of the portions of the structure/s where rehabilitation or demolition is to occur should be provided in addition to the plans and elevations. Rehabilitation work should be in accordance with "The Secretary of the Interior's Standards" and the "NHSHPO Recommendations for Building Rehabilitation."

6) Agencies should clearly mark any items which should be returned to the sponsor or the funding agency when the review is complete.

The Preservation Office may conduct a field investigation, where necessary, to determine the presence of historic resources and to evaluate the potential adverse effects of the proposed state action on historic resources in the project area. Subsequent to further review, the Preservation Office will notify the affected agency of a finding of "no effect" or a finding of "adverse effect."

C. Finding of Adverse Effect. Where the Preservation Office finds that the proposed state action will have an adverse effect, the appropriate state agency will be notified and the Preservation Office will negotiate alternatives or modifications to avoid, mitigate, or minimize the adverse effects of such state actions on historic resources.

3. The Preservation Office shall review all proposed state actions and the project areas affected by such projects, in accordance with the following criteria:

National Register of Historic Places Criteria for Evaluation (36 CRF 60.6)- These criteria shall be used to identify historic districts, sites, buildings, structures, and objects that are worthy of protection and are located within the proposed project area.

National Historic Preservation Act Criteria of Effect and Adverse Effect (36 CFR 800)- These criteria shall be used to determine the effect or adverse effect of a proposed state action on the historical, architectural, archeological or cultural value, quality or characteristics of an identified historic resource. An effect occurs when an undertaking changes the integrity

of location, design, setting, materials, workmanship, feeling, or association of the property that contributes to its significance as a historic resource.

National Historic Preservation Act Preservation Survey "Location and Identification Study"(36 CFR 66.1,9)- These criteria shall be used in conducting field investigations to locate historic resources, evaluate the significance of such resources, and assess the probable effects of state actions on such resources.

Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (36 CFR 1208)- These standards and guidelines shall be used in determining whether a state building should be rehabilitated and, if so, the techniques, treatments, and methods of rehabilitation.

Recommendations for Building Rehabilitation contained in publications of the Technical Preservation Services Division of the U.S. Department of Interior and other technical building conservation series listed in the State of New Hampshire Historic Preservation Office handout. These historic building rehabilitation techniques for masonry cleaning, restoration specifications, exterior siding materials, and the like, shall be used in the restoration or rehabilitation of state historic buildings.

4. In cases of unresolved disputes between the Preservation Office and the affected agency concerning the protection of a historic resource, the Preservation Office shall request the Council on Resources and Development to resolve such conflicts.

MEMORANDUM OF AGREEMENT
BETWEEN
OFFICE OF STATE PLANNING
WATER SUPPLY AND POLLUTION CONTROL COMMISSION AND
HISTORIC PRESERVATION OFFICE, DEPARTMENT OF RESOURCES AND
ECONOMIC DEVELOPMENT

SUBJECT: HISTORIC RESOURCES PROTECTION IN PORTSMOUTH HISTORIC AREA

THIS AGREEMENT, made and entered into this _____ day of _____, one thousand nine hundred and eighty-two by and between the New Hampshire Office of State Planning (hereinafter referred to as OSP) and the New Hampshire Water Supply and Pollution Control Commission (hereinafter referred to as WSPCC), and Historic Preservation Office in the Department of Resources and Economic Development (hereinafter referred to as HPO).

I. Should a development be proposed which requires a sewer hookup under RSA 149 in the Portsmouth Historic Area, as shown on Attachment A, the WSPCC agrees to transmit a copy of the permit application to the HPO.

II. The HPO agrees to review any such permit application referred by the WSPCC for its impact on historic resources in the Portsmouth Historic area for consistency with RSA 227-C, criteria of the City of Portsmouth Historic District, and applicable federal criteria under the National Historic Preservation Act.

III. The HPO further agrees to, within 20 days of receiving the referral, provide the WSPCC and the Portsmouth Historic District Commission with a determination of effect on historic resources;

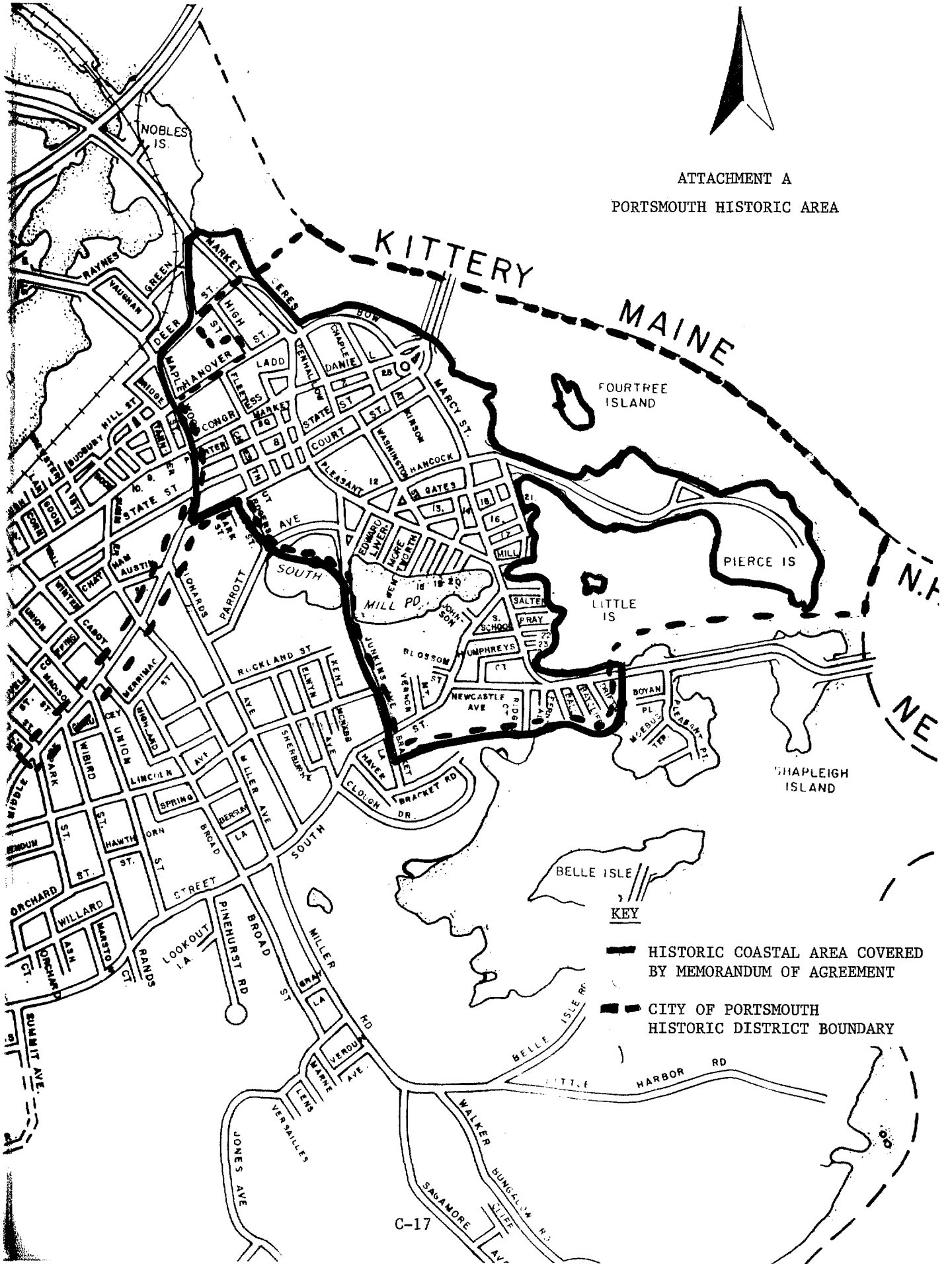
a) should HPO make a finding of no affect, no additional action will be required;

b) should HPO make a finding of adverse affect, HPO and WSPCC agree to meet and determine how to address the concerns;

c) should HPO and WSPCC be unable to resolve historic resource issues, WSPCC, HPO and OSP agree to bring the issue before the Council on Resources and Development for resolution, in order to protect the historic value of resources in this area.

IV. The OSP agrees to provide coastal program funds and technical assistance to the WSPCC and the HPO, as available and necessary, to ensure that the coastal historic resource areas are protected.

OSP Director	WSPCC, Executive Director	DRED, Commissioner


ATTACHMENT A
PORTSMOUTH HISTORIC AREA
KITTERY
MAINE
N.H
NE
NOBLES IS.
FOURTREE ISLAND
PIERCE IS
LITTLE IS
SHAPLEIGH ISLAND
BELLE ISLE
KEY
HISTORIC COASTAL AREA COVERED BY MEMORANDUM OF AGREEMENT
CITY OF PORTSMOUTH HISTORIC DISTRICT BOUNDARY
MARKET ST.
HIGH ST.
DEER ST.
RAYNES
GREEN
VAUGHAN
MAPLE
HANOVER
CONGR
LADD
FLEETWOOD
MARKET SQ
STATE ST.
COURT
PLEASANT
WASHINGTON
HANCOCK
GATES
MARCY ST.
DANIEL
CHAPEL
KENNARD
BOW
MILL
MILL PD.
SOUTH
EDWARD LIVERMORE
JOHNSON
SALTER
PRAY
S. SCHOOL
HUMPHREYS
BLOSSOM
JUNKINS AVE
NEWCASTLE AVE
BOYAN PL.
MIDDLE
STATE ST.
PARK ST.
ROGERS AVE
LEONARDS
PARROTT
AUSTIN
CHAT
WINTER
UNION
CABOT
EFINS
CO. MADISON
MERRIMAC
HIGHLAND
CITY UNION
WIBIRD
PARK
LINCOLN AVE
SPRING
BERLIN
SHERBURNE
MILLER AVE
KENT
ELWYN
WENTWORTH
VERNON
LAFAYETTE
CLOUGH DR.
BRACKET RD
RUCKLAND ST
BENDUM
ORCHARD ST.
WILLARD
ASH
MARSTON
ORCHARD CT.
HAWTHORN
BROAD
LOOKOUT LA.
RANDS
PINEHURST RD
SUMMIT AVE.
BRAY
VERDUN AVE
MARNE
VERSAILLES
JONES AVE
WALKER
BUNGALOW RD
SAGAMORE
BELLE ISLE RD
LITTLE HARBOR RD

CHAPTER 271-A

NEW HAMPSHIRE STATE PORT AUTHORITY

271-A:1 Authority Established.
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271-A:3 Powers and Duties.
271-A:4 Rules and Regulations.
271-A:5 Pilots.
271-A:6 Authority of Pilot.
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271-A:7-a Pilots Required.
271-A:8 Harbor Masters.
271-A:8-a Power of Arrest.
271-A:9 Penalty.
271-A:10 Definition.
271-A:11 Authorization to Establish Foreign Trade Zones and Free Port Areas.
271-A:12 Severability.
271-A:13 Acquisition of Land.
271-A:14 Improvements.
271-A:15 Reservation of Authority of Towns.
271-A:16 Prohibition of Certain Activities.
271-A:17 Payment in Lieu of Taxes

271-A:1 Authority Established.

I. There shall be a New Hampshire State Port Authority, consisting of and governed by a board of 8 members, 6 of whom shall be appointed by the governor, with the advice and consent of the council. At least 3 of said appointive members shall be residents of the cities and towns of the seacoast region or tidal waters and at least one appointive member shall be a commercial fisherman engaged in that industry on the seacoast, and each shall serve for a term of 5 years. Said members shall serve until their successors are appointed and qualified. Any vacancy occurring in the membership of the appointive members shall be filled by the governor and council for the unexpired term. In addition to the 6 appointive members, the commissioner of the department of resources and economic development and the mayor of the city of Portsmouth shall be, by virtue of their offices, members of the board.

II. The board shall elect one of its members as a chairman, one as a vice-chairman and one as a secretary-treasurer. The members of the board shall receive no compensation for their services; but their reasonable expenses, incurred in the performance of their duties, shall be paid by the state. The board shall have the right to adopt a common seal and to alter same, and to establish bylaws and regulations for the management of its affairs within the meaning of this chapter and the laws of the state. The board shall have its principal place of business in Portsmouth, New Hampshire.

HISTORY

Source. 1957, 262:1. 1963, 181:1. 1973, 429:1. 1975, 51:1, eff. May 26, 1975.

Amendments—1975. Divided section into paragraphs I and II and added the Mayor of Portsmouth to the port authority's membership.

—1973. Increased membership of board.

—1963. Changed "executive director of the planning and development commission" to "commissioner of the department of resources and economic development" and "executive secretary of the seacoast regional development association" to "president of the seacoast regional development association" and added provision that their membership is for liaison purposes only.

Transfer of functions. Abolishment of planning and development commission, transfer of functions, etc., by 1961, 223:3, see RSA 12-A:7.

271-A:2 Purposes. The New Hampshire state port authority, in cooperation with the department of resources and economic development, shall:

I. Plan for the maintenance and development of the ports, harbors and navigable tidal rivers of the state of New Hampshire from the head of navigation to the seaward limits within the jurisdiction of the state, in order to foster and stimulate commerce and the shipment of freight through the state's ports and, as an agency of the state, to assist shipping, and commercial and industrial interests that may depend on the sea for transport of products, including such interests as may be desirous of locating in tidewater areas of the state; as well as to encourage the establishment of accommodations for the boat traveller, the area boat owners, the pleasure fishermen, and others who pass up and down our coast line or in its tributaries;

II. Aid in the development of salt water fisheries and associated industries;

III. Cooperate with any agencies or departments of the federal government in planning the maintenance, development and use of the state ports, harbors, and navigable tidal rivers.

IV. Plan, develop, maintain, use and operate air navigation and land transportation facilities within a 15 mile radius of the port authority headquarters at Portsmouth. Cooperate with departments, agencies or commissions of the federal, state or local governments and accept grants, aids or services from such agencies in the carrying out of this purpose. Such authorization relating to air navigation and land transportation facilities shall include and be governed by all other provisions of this chapter.

HISTORY

Source. 1957, 262:1. 1963, 181:2. 1965, 278:1, eff. Sept. 4, 1965.

Amendments—1965. Paragraph IV: Added.

—1963. Changed reference from "state planning and development commission" to "department of resources and economic development."

Transfer of functions. Abolishment of planning and development commission, transfer of functions, etc., by 1961, 223:3, see RSA 12-A:7.

271-A:3 Powers and Duties. In order to enable it to carry out the purposes hereof, the authority shall:

I. Have the authority to make all necessary arrangements with other port authorities of other states and federal departments and agencies for the interchange of business, and for such other purposes as will facilitate and increase the commerce of the ports, harbors, and tidal navigable rivers of the state;

II. Establish offices for the transaction of its business at such places as, in the opinion of the authority, shall be advisable and necessary in carrying out the purpose hereof;

III. Be authorized and empowered to appoint and compensate harbor masters at Hampton, Rye, New Castle, Portsmouth, Seabrook and Newington who will enforce the directives of the authority, such as the placement of moorings, the assignment of anchorage areas and the movement of traffic. The authority may appoint an assistant harbor master at any such place to assist the harbor master of such place in carrying out his duties;

IV. Be authorized and empowered to contract with and secure the services of a port terminal operating firm, subject to approval of governor and council, for the purpose of having such firm operate a part or all of the

facilities of the authority, including piers, wharves, warehouses, parking and storage areas, or other facilities owned or leased by the authority, with such operating firm having the exclusive right to operate the business of a port terminal operator and stevedore, including but not limited to the handling of cargo, the collection of fees from wharfage and dockage and other marine terminal operations, the maintenance and security of the premises, and the promotion, encouragement and solicitation of business for such port facility or facilities; such contract with an operating firm shall include the following provisions:

(a) said firm shall file with the authority for its approval a tariff clearly defining the terms "wharfage" and "dockage" and the charges to be made therefor,

(b) the amount of minimum payments per year satisfactory to the authority to be paid to it for the exclusive right to operate upon the marine terminal, as described in the contract, the business of a port terminal operator and stevedore,

(c) the amount retained by said firm from all fees for which it is accountable, said amount being a percentage to cover administrative costs of collection,

(d) said firm to supply a ship's manifest for every vessel using said facilities,

(e) said firm to provide a performance bond in an amount and form acceptable to the authority, as well as insurance in amounts acceptable to the authority for fire and extended coverage, public liability, property damage, and other risks as required by the authority, the insurance company or companies to be licensed to do business in New Hampshire and to be acceptable to the authority,

(f) said firm to file quarterly reports with the authority indicating the amount of all fees for which it is accountable to the authority, the amounts collected and the amounts retained, with a certified audit prepared by a certified public accountant submitted annually,

(g) such other appropriate provisions which in the opinion of the attorney general will carry out the intent of this section and best protect the interest of the authority and of the state.

HISTORY

Source. 1957, 262:1. 1963, 181:3. 1969, 367:12. 1975, 185:1, eff. Aug. 1, 1975.

Amendments—1975. Paragraph III: Added "Seabrook" and added second sentence.

—1969. Paragraph IV: Added.

Transfer of functions. Abolishment of planning and development commission, transfer of functions, etc., by 1961, 223:3, see RSA 12-A:7.

ANNOTATIONS

1. Municipal ordinances

City zoning ordinance purporting to prohibit junkyards in industrial sections except on special exception did not apply to private corporation performing state functions under lease arrangement with New Hampshire State Port Authority, in which corporation stored piles of scrap metal as part of its operations as port terminal operating firm, in absence of statute giving city power to subject state to its zoning ordinance requirements. City of Portsmouth v. John T. Clark & Son, Inc. (1977) 117 NH 797, 378 A2d 1383.

271-A: 4 Rules and Regulations. Said authority may make such ordinances, rules and regulations touching port captains, pilots and pilotage, harbors and harbor masters, for the harbors of the state as it may deem proper and from time to time may modify, rescind or alter the same. Said rules and regulations shall have the force and effect of law. Said authority shall fix the fees of pilotage and a table of such fees shall be attached to the commission of each pilot. The fees as previously established and in force at the effective date of this chapter shall continue until the authority shall otherwise order.

Source. 1957, 262: 1. 1977, 600: 10, I. 1978, 22: 1, eff. June 22, 1978.

Amendments—1977. Added exception which provided mooring permits shall be set by the Commissioner of Resources and Economic Development.

—1978. Repealed exception from last sentence which read "except that mooring permits shall be set by the commissioner of resources and economic development pursuant to RSA 12-A: 2-a".

Note on Legislative Intent. In the opinion of the Director of Legislative Services, it was the manifest intention of the General Court in passing Senate Bill 13 to reinstate the law relative to the jurisdiction of harbor masters over the issuance of mooring permits to the way it was prior to the enactment of 1977, 600: 10. RSA 271-A: 4 is set out above as it was prior to the enactment of 1977, 600: 10.

271-A: 5 Pilots. The authority may prescribe the qualifications of pilots, and from time to time appoint and commission, under its hand and seal, as many pilots as it may judge necessary, and remove the same at pleasure; and it shall take from them such security, by bond or otherwise, as it may deem proper.

HISTORY

Source. CS 128: 1. 1852, 1285: 1. GS 104: 3. GL 114: 3. PS 120: 3. PL 152: 3. RL 182: 3. 1950, 5, part 16: 1. RSA 221: 2. 1957, 262: 1, eff. as of Sept. 1, 1957.

271-A: 6 Authority of Pilot. Any pilot appointed by the authority who has given security for the faithful discharge of his duties, may take charge of any vessel, except pleasure or fishing vessels, or a vessel of 150 registered or enrolled tons and under and shall pilot such vessel into and out of the river and harbor of the Piscataqua, first showing to the master thereof his appointment if requested.

HISTORY

Source. 1859, 2220: 1. GS 104: 5. GL 114: 5. PS 120: 5. PL 153: 5. RL 182: 5. 1950, 5, part 16: 1. 1951, 203: 10. RSA 271: 4. 1957, 262: 1. 1969, 350: 2, eff. Aug. 29, 1969.

Amendments—1969. Amended section generally.

271-A: 7 Fee on Offer.

[Repealed 1969, 350: 4, eff. Aug. 29, 1969.]

This section provided for piloting of one's own vessel, provided half the fee is paid to a pilot who offers his services, and was derived from 1859, 2220: 2; GS 104: 6; 1874, 1: 2; GL 114: 6; 1887, 39: 1; PS 120: 6; PL 153: 6; RL 182: 6; RSA 271: 5; 1956, 262: 1.

ANNOTATIONS PRIOR TO REPEAL

Library references

Penalty for failure to take pilot. 19 ALR 205; 13 ALR 835.

1. Fee where service declined

The payment of half the fee when the offered service is declined is required, not

as a penalty, but for the special purpose of encouraging the constant and active pursuit of an occupation considered essential to a general and extensive commerce. Cook v. Curtis (1878) 58 NH 507.

271-A: 7-a Pilots Required. All vessels (except pleasure or fishing vessels, or vessels of 150 registered or enrolled tons or under, and U.S. flag coastwise vessels with a Federal pilot aboard) are required to be piloted by a pilot appointed by the authority into and out of the Piscataqua River and harbor from a point designated by the authority.

HISTORY

Source. 1969, 350: 3. 1971, 69: 1. 1975, 49: 1, eff. May 26, 1975.

Amendments—1975. Substituted "designated by the authority" for a specific location and reference to U.S. flag vessels with pilots.

—1971. Rephrased.

271-A: 8 Harbor Masters. The harbor masters appointed by the authority shall have authority, under the supervision of the authority, to oversee the harbor for which he was appointed master, to preserve and regulate navigation within said waters, to assign moorings, require the same to be kept in safe condition, to require the removal of vessels if necessity or an emergency arises, and to inquire into and prosecute all offenses occurring within his jurisdiction and to perform such duties and enforce such regulations as the authority shall prescribe.

HISTORY

Source. 1957, 262: 1, eff. as of Sept. 1, 1957.

271-A: 8-a Power of Arrest. The harbor masters appointed by the authority shall have authority to make arrests for offenses, under the provisions of this chapter, as other peace officers are authorized to do.

HISTORY

Source. 1959, 138: 1, eff. June 4, 1959.

271-A: 9 Penalty. Whoever violates any of the rules or regulations of the authority promulgated under the authority of RSA 271-A, or refuses or neglects to obey the lawful and reasonable orders of a harbor master, or resists him in the execution of his duties, shall be guilty of a misdemeanor. All fines collected under the provisions of this section shall be forwarded to the port authority.

HISTORY

Source. 1957, 262: 1. 1973, 531: 93. 1975, 49: 2, eff. May 26, 1975.

Amendments—1975. Substituted "misdemeanor" for "violation" and deleted provision that port authority apply fines to harbor masters' salaries.

—1973. Amended generally to conform provisions to new criminal code.

271-A: 10 Definition. The word "vessel" as used in this chapter shall include boats of all sizes propelled by sail, machinery or hand, scows, dredgers, shellfish cars and craft of every kind.

HISTORY

Source. 1939, 220:1. RL 182:12. RSA 271:11. 1957, 262:1, eff. as of Sept. 1, 1957.

271-A:11 Authorization to Establish Foreign Trade Zones and Free Port Areas.

I. Said authority shall be and hereby is authorized to make application to the Secretary of Commerce of the United States for the purpose of establishing, operating and maintaining foreign-trade zones in the area herein described, under the Act of Congress passed at the second session of the 73rd Congress, providing for the establishment, operation and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes.

II. Said authority shall have full power and authority to select and describe the location of the zone for which application to establish may be made and to make such rules and regulations concerning the operation, maintenance and policing of same as may be necessary to comply with the Act of Congress creating said foreign-trade zones, or as may be necessary to comply with such rules and regulations, made in accordance with the Acts of Congress, relating to foreign-trade zones.

III. Said authority shall have full power and authority to lease the right and/or erect, maintain and operate any structures or buildings or enclosures as may be necessary or proper for the establishing and operating any such foreign-trade zones that might be established in the area herein described under and by virtue of said act of the second session of the 73rd Congress.

IV. The authority hereby granted to said New Hampshire State Port Authority confers on said port authority the right and duty to do all things necessary and proper to carry into effect the establishing, maintaining and operating of foreign-trade zones within the area herein described to comply in full with the provisions of said Act of Congress, and all regulations that might be made thereunder.

V. The New Hampshire State Port Authority shall have the power and the duty to establish an area in and around the ports, harbors, and navigable tidal rivers of the state of New Hampshire wherein personal property in transit shall be exempt from the provisions of the stock-in-trade tax and such other taxes and customs as are normally levied in a port of entry. For the purpose of this section personal property in transit through the areas established by the port authority is defined as follows: goods, wares, and merchandise which is (1) moving in interstate or international commerce through or over the areas hereinbefore established, or (2) which was consigned to a warehouse, public or private, within the state, from outside the state of New Hampshire, whether specified when transportation begins or afterward. Such property shall not be deprived of exemption because while in the warehouse the property is assembled, bound, joined, processed, dis-

assembled, divided, cut, broken in bulk, relabeled or repackaged. The exemption granted shall be liberally construed to effect the purposes of this chapter. Provided, however, that the warehouse in which said goods, wares or merchandise be stored be not owned, in whole or in part, by either the consignee or consignor.

HISTORY

Source. 1957, 262:1, eff. as of Sept. 1, 1957.

References in text. The Act of Congress, referred to in this section, is act of June 18, 1934, ch. 590, 48 Stat. 998 and is classified to 19 U.S.C. § 81a et seq.

271-A:12 Severability. If any provision of this chapter shall be held invalid the remainder of the chapter shall not be affected thereby.

HISTORY

Source. 1957, 262:1, eff. as of Sept. 1, 1957.

271-A:13 Acquisition of Land. The authority, with the approval of the governor and council, may, in the name of the state, purchase, lease or otherwise acquire lands or interests in land, including options, on, near or adjacent to the tidal waters of the state suitable for construction, establishing and maintaining thereon piers, wharves, warehouses or other facilities useful and necessary in the encouragement and development of commercial navigation. Before making any such purchase or acquisition, the authority shall submit to the governor and council a detailed description of the land or interests therein to be acquired, together with a statement of the purposes for which the property is suited and the cost of acquisition and estimated cost of development, as well as such other information as the governor and council shall require. The authority, with the approval of the governor and council, may accept gifts of land; and may in like manner accept and apply to the purchase of land or the development thereof, contributions, gifts or aid in any form made or given for the purpose by any person, firm or corporation, or by any municipality or by the United States, and may execute instruments necessary to qualify for such contributions, gifts or aid.

HISTORY

Source. 1959, 287:1, eff. Sept. 17, 1959.

Self-liquidating. 1959, 287:6, provided:

"287:6 Limitations. Notwithstanding any other provisions of RSA 271-A:13 and 14, as hereinbefore inserted the governor and council shall not authorize the construction of piers, wharves, warehouses or other facilities until they have substantial evidence that such construction will be self-liquidating. For the purpose of engineering and promotional services the port authority is authorized to expend a sum not to exceed twenty thousand dollars. Said sum shall be a charge upon the appropriation made by section 2."

Reports. 1959, 287:7, provided:

"287:7 Biennial Report. The authority shall make a biennial report to the legislature setting forth in detail the operations and transactions conducted by it pursuant to this act [chapter]."

271-A:14 Improvements. The authority, with the approval of the governor and council as to the nature and specifications of the intended

project and the cost thereof, may undertake the improvement of any land acquired by it, by the construction thereon of piers, wharves, warehouses or other facilities as specified in RSA 271-A: 13. Any such improvement shall, insofar as possible, be self-liquidating; and the authority shall charge just and reasonable fees for the use thereof. All revenue received from such fees shall be accounted for separately, and, after the deduction therefrom of the cost of operating such project, shall be applied to the amortization of obligations issued for the construction of such improvements under the provisions of this chapter.

HISTORY

Source. 1959, 287: 1, eff. Sept. 17, 1959.

Self-liquidating. See note set out under RSA 271-A: 13.

Reports. See note set out under RSA 271-A: 13.

271-A: 15 Reservation of Authority of Towns. All towns and cities within the confines of which there are ports, harbors or navigable tide rivers of the state which are subject to the jurisdiction of the authority shall retain all the powers of such town or city relative to such ports, harbors and navigable tide rivers and the lands abutting the same so long as the authority has not by positive action or definite rule or regulation pre-empted the jurisdiction hereof.

HISTORY

Source. 1972, 21: 1, eff. May 14, 1972.

ANNOTATIONS

1. Preemptions

New Hampshire State Port Authority, by positive action, preempted city zoning ordinance in accordance with this section when it leased portion of land it owned within city to private corporation to secure its services as a port terminal operating firm. City of Portsmouth v. John T. Clark & Son, Inc. (1977) 117 NH 797, 378 A2d 1383.

271-A: 16 Prohibition of Certain Activities. Notwithstanding any other provisions of this chapter, the N.H. Port Authority shall not before July 1, 1975 exercise its authority to construct, own, lease, operate or take any other action with respect to any pipe-line, pumping station, on-shore or off-shore loading facility, bulk storage or transmission facility or processing plant connected directly or indirectly with the processing of oil or liquefied natural gas or liquefied petroleum gases without first obtaining the approval of the fiscal committee of the general court and the governor and council.

HISTORY

Source. 1974, 50: 8, eff. April 9, 1974.

271-A: 17 Payments in Lieu of Taxes. The property of the authority is declared to be public property and shall be exempt from all taxes and special assessments of the state or any political subdivision thereof; provided that in lieu of such taxes the authority shall make payments to the city of Portsmouth in the amount of $30,000 annually for the tax year commencing April 1, 1975, and each subsequent tax year for highway maintenance, fire protection or other services.

Source. 1977, 600: 84, eff. Oct. 26, 1977.

ANNOTATIONS

1. Moot issues

In light of newly enacted legislation providing that property of New Hampshire State Port Authority is public property and shall be exempt from all taxes and special assessments of state or any political subdivision thereof, and appropriating $120,000 for payments in lieu of taxes to city, question whether city could sell property belonging to port authority at tax sale to satisfy claim for taxes did not need to be answered. State v. City of Portsmouth (1977) 117 NH 936, 379 A2d 1262.

NEW HAMPSHIRE
STATE PORT AUTHORITY

RULES AND REGULATIONS
PERTAINING TO
HARBORS AND
TIDAL WATERS OF THE
STATE OF NEW HAMPSHIRE

555 Market St., Portsmouth, N.H.
Effective May 1, 1958
Amended October 17, 1963
Amended August 16, 1971
Amended March 2, 1976
Amended May 4, 1979

The original of the permit will be delivered to the applicant, the second copy will be retained by the Port Authority office, and the third copy sent to the Harbor Master. Applicant for mooring permit must first exhibit to the person issuing the mooring permit a receipt indicating he has paid all resident taxes for the preceding year. The permit holder's name and mooring permit number must be attached to physical mooring in letters 2" in size for proper identification. Said information also to be on the mooring permit.

Holders of mooring permits will notify the Port Authority when the boat for which the permit has been issued has been sold, or otherwise disposed of or the mooring is no longer required.

At the same time, the permit will be returned to the Port Authority. Failure to return the permit will result in automatic cancellation of the permit.

In the assignment of moorings, the Harbor Master shall, insofar as the same may be done consistently with these Rules and Regulations and with due regard for the safety of other vessels and of navigation, give consideration to the choice of the applicant.

Owners of waterfront property will be given preference in the assignment of a mooring in water adjacent to their property whenever possible.

II. Adequate Moorings. All existing moorings, and all moorings hereinafter to be set, shall be of sufficient size to hold the vessel with which it is used. Mooring lines and chains shall be of sufficient length and strength and properly rigged to secure such vessel. The

RULES AND REGULATIONS
Pertaining to Harbors and Tidal Waters of New Hampshire

The word Harbor Master hereinafter referred to shall include Assistant Harbor Masters.

I. Assignment of Moorings. Application for a new mooring permit may be made in accordance with the regulations.

No mooring shall be set within the tidal waters and/or harbors of New Hampshire without prior permission of the Harbor Master. Any person desiring to establish a mooring in these harbors or to relocate an existing mooring, shall apply for permission to the appropriate Harbor Master. The Harbor Master shall thereupon assign a location, if available for such mooring, and shall advise the applicant concerning the requirements of these Rules and Regulations.

A mooring permit in triplicate will be prepared by the Port Authority office. The permit will list the applicant's name, date issued, type of boat - commercial or pleasure, registration number, name of boat if documented, weight of mooring block, and geographic location. A mooring permit fee of $15 per year, renewable annually, will be charged for residents and non-resident real estate taxpayers in New Hampshire. A fee of $100 per year, renewable annually, will be charged all other non-residents. The permit period to be for one year from April 1 through March 31 of the following year and will be non-transferable. Payment due no later than May 30. In the event of non-payment of permit fees by that date, the mooring site will be forfeited and reassigned by the Harbor Master.

Harbor Master will inspect each mooring at the time of its placement, and subsequently every year or at the discretion of the Harbor Master. The Harbor Master may at any time inspect any mooring or mooring lines to determine compliance with this paragraph, provided, however, that except in the case of emergency, he shall notify the owner of his intention to inspect such mooring and request the presence of said owner during the inspection. Any costs of inspection shall be borne by the owner of the mooring.

III. Vessels Moored so as to impede Navigation or to Endanger Other Vessels. All moorings, whether now existing or hereinafter set, shall be so located or relocated that the vessels secured thereby will not impede navigation within the harbor, nor endanger other vessels moored therein. If the Harbor Master shall find that any vessel is so moored as to impede navigation or to endanger other vessels, he may require that the owner of the mooring, or of the vessel secured thereby, take such steps, whether by shortening the scope of the mooring lines, or by the use of additional mooring and mooring lines, as will prevent such impeding of navigation or endangering other vessels; or in the alternative, he may order that the mooring be removed and reestablished in the manner prescribed in Paragraph I of these Rules and Regulations. A Harbor Master may require the removal or relocation of any mooring which would preclude rights of property owner. In the case of removal, or relocation, of a mooring for this reason, all expense of moving or relocating will be borne by the property owner.

Any person ordered to remove his mooring by the Harbor Master, acting under this paragraph, shall remove the same within forty-eight hours after the receipt of such order;

provided, however, that if the Harbor Master shall find that an emergency exists requiring immediate action in order to prevent injury to life or damage to property, the Harbor Master may cause said mooring or any vessel attached thereto, to be removed and relocated or remoored. Any expense involved shall be borne by the owner of the mooring or vessel. Any sunken or partly sunken vessel shall be repaired within forty-eight hours or removed from the mooring.

IV. Moorings. All moorings shall be approved buoys and must be visible at all times. Spar and log buoys are prohibited at the discretion of the Harbor Master. Mooring buoys will be removed and/or sunk when vacated for the season. All Moorings must be approved by the Harbor Master. All moorings must show owner's identification, first and second initial and last name with no less than two inch letters.

V. Moving or Interference with Moorings Belonging to Another. Except by direction of the Harbor Master, acting in an emergency, as provided in Paragraph III of these Rules and Regulations, no person shall move or interfere with any mooring or vessel in this harbor except with the permission of the owner thereof or the Harbor Master.

VI. Buoys Other Than for Mooring Vessels. No buoy of this type shall be placed in channels. Neither shall such buoys be placed less than three vessel lengths from a mooring buoy for that vessel. The Harbor Master is hereby authorized, in the interest of public safety, to require the removal of any buoys.

VII. Anchorage. Vessels shall be anchored in the harbor in such places or areas as the Harbor Master shall direct. The Harbor Master

may at any time order any vessel at anchor to change position when, in his opinion, such vessel is so anchored as to impede navigation or to endanger other vessels.

VIII. Public Wharves & Public Landings. The public wharves and landings shall be used only for loading and unloading. Vessels will not remain moored to the wharf or landing for a period longer than reasonably necessary for this purpose. No person shall dive from or swim within 100 feet of said wharves and landings.

IX. Private Wharves and Landings. No vessel shall tie up to or make use of a private wharf or landing place except in case of emergency or with the permission of the owner.

X. Speed of Vessels, Reckless Operations, Intoxication, Etc. Vessels shall be operated at such rate of speed and in such a manner as not to endanger other craft or persons. In special anchorage areas, narrow channels, and congested mooring areas, the speed of all boats shall be reduced to headway speed. For the purpose of these regulations, headway speed is the slowest speed that a power boat may be operated and maintain steerage way.

No person shall operate upon the waters of this state any vessel so that the lives or safety of others might be endangered. No person shall, while under the influence of intoxicating liquor or any narcotic or habit producing drug, operate any such vessel upon any tidal waters of New Hampshire. The Harbor Master is authorized, in the interest of public safety, to cause the arrest of persons in violation of the foregoing. Such violation shall be reported to the Coast Guard.

Muffling devices. No boat or outboard motor shall be operated on the tidal waters of this state unless the same is provided with an adequate muffling device, or in case of outboard motors, a muffler intact as supplied by the manufacturer, So-called "racing mufflers" shall not be considered as complying with the law except when the boat or outboard motor is engaged in an authorized race, When sailing vessels are moored or at anchor, ropes and halyards should be secured in such a fashion that they do not make noise or become obnoxious to area residents. Vessels moored shall not have harpoons or other objects protruding beyond the length of the boat.

XI. Age of Operators Limited. No power boat, other than a boat under sail shall be operated by any person under 12 years of age unless under supervision of an adult present on vessel itself.

XII. Vessels Towing Water Skiers and Aquaplanes, Etc. There shall be no water-skiing in congested mooring areas, special anchorage areas, or in the main ship channels during the movement of vessels. A vessel towing water skiers must keep at least 150 feet distance from other boats, rafts, floats, a line of floats outlining swimming areas, or the shore, except when approaching or leaving other boats, rafts, floats, or the shore.

No person shall operate a vessel while towing water skiers, aquaplanes, or similar devices unless there is present in said vessel in addition to the vessel operator another person 12 years of age or over in a position to observe and assist the person or appurtenance being towed. No person shall be towed on water skis or other appurtenance unless said person is wearing a life jacket or ski belt, except in connection with authorized water carnivals and exhibi-

itions. No person shall bow ride with feet overhanging the side of the boat. The operator of such a vessel will be held responsible for compliance with the navigating rules for both the vessel and the person or appurtenance being towed.

Except in connection with water carnivals, and exhibitions authorized by the Harbor Master, no such activity may be conducted during the period between ½ hour after sunset and ½ hour before sunrise.

XIII. Water Ski Jumps. No person shall locate for use on the navigable tidal waters of this state, a water ski jump without first obtaining the approval of the Port Authority.

XIV. Skin Diving. Any person engaging in diving shall display a diver's flag having one diagonal white stripe on a red background placed at, or near, the point of submergence. While diver is submerged, there will be an attendent in a boat or on the shore at or near the point of submergence. The diver's flag shall be displayed only when there are divers in the water, and divers will surface only at the flag location. The flag shall mean that a diver is down, and requests 100 feet of clearance. All boats will reduce their speed to headway speed when approaching and passing such a flag. However, flying the flag confers no special rights or privileges, and all divers must continuously maintain utmost caution with respect to surface traffic.

XV. Aircraft. Aircraft shall be governed by the Rules and Regulations of the New Hampshire Aeronautics Commission. Excepting they shall observe the same mooring and anchorage rules and regulations that apply to vessels.

XVI. Disposal of Waste and Refuse. Disposal of waste, refuse, petroleum and tar products,

and material of any kind into the harbor and tidal waters of New Hampshire is prohibited and subject to penalty as stated in Chapter 271-A:9. Disposal shall be deemed to mean the actual act of disposing of or leaving any of the above mentioned material below the high water mark. See Federal Rivers and Harbors Act of March 3, 1899 and Federal Oil Pollution Act 1924.

XVII. Effect of Rules and Regulations of Harbor master. The attention of all concerned is invited to Chapter 271-A of the Laws of New Hampshire, which reads in part as follows:

"Penalty. Whoever violates any of the rules or regulations of the authority promulgated under the authority of this chapter, or refuses or neglects to obey the lawful and reasonable orders of a harbor-master, or resists him in the execution of his duties, shall be fined not more than fifty dollars."

"Warning. Harbor Masters are authorized to issue a written warning for any infraction of these rules and regulations, which in their judgment, does not warrant the issuance of a Summons. Warnings will be made out in triplicate by the Harbor Master. The original will be delivered to the violator, the second copy sent to the office of the Port Authority, and the third copy retained by the Harbor Master. The warning will contain the name of the violator, nature of the offense, date and time, special circumstances, and geographic location."

"Summons. In cases where such action is warranted, a Harbor Master may issue a summons upon a person, ordering him to

appear at court on a day specified. The summons will be in the form prescribed by the State of New Hampshire. A copy shall be sent to the office of the Port Authority, and a copy retained by the Harbor Master concerned."

XVIII. Definition. The word "vessel" as used in this chapter shall include boats of all sizes propelled by sail, machinery or hand, scows, dredges, shellfish cars, lobster and crab cars and craft of every kind.

XIX. Effective Date. May 4, 1979.

XX. Exceptions. Nothing herein shall be deemed to apply to vessels operated by Governmental agencies.

XXI. Federal Regulations. Nothing herein shall be considered as conflicting with Federal Laws applicable to the coastal waters and tidal rivers and harbors of the State.

CHAPTER 271-A
HARBOR MASTERS

271-A:8 Harbor-Masters. The harbor masters appointed by the Authority shall have authority, under the supervision of the Authority, to oversee the harbor for which he was appointed master, to preserve and regulate the same to be kept in safe condition, to require the removal of vessels, if necessity or an emergency arises, and to inquire into and prosecute all offenses occurring within his jurisdiction and to perform such duties and enforce such regulations as the authority shall prescribe.

271-A:8-a Power of Arrest. The harbor master appointed by the Authority shall have authority to make arrests for offenses under the provisions of this chapter as other peace officers are authorized to do.

Appointment. Each Harbor Master shall be appointed for a term of one year, his qualifications and salary to be determined by the Authority.

Duties. Harbor-Masters shall enforce the rules and regulations pertaining to harbors and tidal waters of New Hampshire as promulgated by the Authority and cooperate with other Governmental agencies in enforcing their regulations. They shall keep such records as the Authority may require and shall perform such other duties as the Authority may prescribe. They shall assist each other when requested to do so.

Termination. A harbor master's appointment may be rescinded by the Authority at any time for cause.

Jurisdiction of Harbor Masters

PORTSMOUTH AREA. That portion of Portsmouth Harbor lying within Little Harbor, Sagamore Creek, the Piscataqua River (within the boundaries of the State of New Hampshire) to the Atlantic Terminal Sales Corp. and seaward to a line from Odiorne's Point to Flashing Buoy No. 2, and that portion of tidal waters lying within the boundaries of the State of New Hampshire.

GREAT BAY AREA. All navigable tidal waters within the boundaries of the State of New Hampshire from the Atlantic Terminal Sales Corp. to waters of Great Bay adjacent to the Towns of Dover, Durham, Newmarket, Newfields, Exeter, Stratham, Greenland, and Newington.

RYE AREA. Rye Harbor, including a channel 100 feet in width from the entrance of Rye Harbor seaward to Whistle Buoy 18, and

that portion of tidal waters lying within the boundaries of the State of New Hampshire.

HAMPTON AREA. Hampton Harbor, including the waters of Hampton River and seaward from the Hampton-Seabrook Bridge to an area from Gong Buoy No. 4 to Old Cellar Rock to Red Beacon on the North Jetty at the entrance to Hampton Harbor, and that portion of tidal waters lying within the boundaries of the State of New Hampshire.

SEABROOK AREA. Seabrook Harbor, including the waters of the Blackwater River, and that portion of tidal waters lying within the boundaries of the State of New Hampshire.

CHAPTER 162-F

ELECTRIC POWER PLANT, TRANSMISSION SITING AND CONSTRUCTION PROCEDURE

162-F: 1	Declaration of Purpose.	162-F: 7	Public Hearing; Studies; Rules.
162-F: 1-a	Oil Refineries. [Repealed.]	162-F: 8	Findings.
162-F: 2	Definitions.	162-F: 9	Counsel for the Public.
162-F: 3	Site Evaluation Committee.	162-F: 10	Review.
162-F: 4	Plans.	162-F: 11	Separability.
162-F: 5	Review; Hearing.	162-F: 12	Revocation; Suspension.
162-F: 6	Prohibition.	162-F: 13	Penalties.

HISTORY

Amendments—1974. 1974, 39: 1 amended chapter heading by deleting reference to oil refinery.

162-F: 1 Declaration of Purpose. The legislature finds that the present and predicted growth in electric power demands in the state of New Hampshire requires the development of a procedure for the selection and utilization of sites for generating facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites and the routing of associated transmission lines will have a significant impact upon the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. The legislature, accordingly, finds that the public interest requires that it is essential to maintain a balance between the environment and the need for new power sources; that electric power supplies must be constructed on a timely basis; that in order to avoid undue delay in construction of needed facilities and to provide full and timely considerations of environmental consequences, all electric entities in the state should be required to engage in adequate long-range planning and provide full and complete disclosure to the public of such plans; that a certifying body be established for the preconstruction review of bulk power supply facility sites and all related bulk power supply facilities; that the siting of bulk power plants and high-voltage transmission lines should be treated as a significant aspect of land-use planning in which all environmental, economic and technical issues should be resolved in an integrated fashion; that existing laws do not provide an adequate procedure for the coordination of reviews to assure protection of environmental values and certifying the construction, operation or maintenance of bulk power supply facilities so as to assure the state an adequate and reliable supply of electric power in conformance with sound environmental utilization; and that existing laws do not provide adequate public voice in the decision on the location of bulk power supply facilities at a specific site. The legislature, therefore, hereby establishes a procedure for the planning, siting and construction of bulk power supply facilities.

HISTORY

Source. 1971, 357: 1, eff. date, see note set out below.

Effective date. 1971, 357:4 provided: "[This act shall take effect June 25, 1971 except that as it affects transmission lines it shall take effect September 23, 1971.]"

CROSS REFERENCES

Eminent domain, see RSA 371.

ANNOTATIONS

1. Agency interaction

This chapter does not diminish the duties of the water supply and pollution control commission; rather, one of the explicit legislative purposes of this chapter is the resolution of environmental, economic and technical issues in an integrated fashion, and its structure and language presume continued participation and coordinated decision-making by state agencies having particular expertise. Society for the Protection of N.H. Forests v. Site Evaluation Committee (1975) 115 NH 163, 337 A2d 778.

Site evaluation committee and water supply and pollution control commission each had separate but coordinated functions in the authorization of the siting of nuclear electricity generating facility and it could not be said that the former subdelegated to the latter its responsibility regarding the facility's impact on water quality. Society for the Protection of N.H. Forests v. Site Evaluation Committee (1975) 115 NH 163, 337 A2d 778.

162-F: 1-a Oil Refineries.

[Repealed 1974, 39: 2, eff. April 5, 1974, superseded by RSA 162-H.]

Former section 162-F: 1-a relative to oil refineries was derived from 1973, 587: 2.

162-F: 2 Definitions.

I. "Bulk power supply facilities" means:

(a) Electric generating station equipment and associated facilities designed for or capable of operation at a capacity of 50 megawatts or more;

(b) An electric transmission line of a design rating of 100 kilovolts or more, associated with a generating facility outlined in (a), over a route not already occupied by a transmission line or lines;

(c) An electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length over a route not already occupied by a transmission line or electric transmission lines of a design rating in excess of 100 kilovolts which the site evaluation committee or commission determines should require a certificate because of a substantial environmental impact.

II. "Site evaluation committee" means the bulk power supply site evaluation committee established by this chapter.

III. "Commission" means the New Hampshire public utilities commission.

IV. "Person" means any individual, group, firm, partnership, corporation, cooperative, municipal, political subdivision, government agency, or other organization.

V. The words "public utility" or "utility" means any electric utility engaged in the production, distribution, sale, delivery or furnishing of electricity, including municipalities, cooperatives, regulated electric companies, agencies or any combination thereof.

VI. "Commencement of construction" means any clearing of the land, excavation or other substantial action that would adversely affect the natural environment of the site or the route but does not include land surveying, optioning or acquiring land, rights in land; changes desirable for the temporary use of the land for public recreational uses; necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.

HISTORY

Source. 1971, 357:1, eff. date, see note set out under RSA 162-F:1.

162-F:3 Site Evaluation Committee. The bulk power supply facility site evaluation committee shall consist of the executive director and the chief aquatic biologist of the water supply and pollution control commission, the commissioner of the department of resources and economic development, the director of fish and game, the director of the office of planning, the chairman of the water resources board, the director of the radiation control agency, the executive secretary of the air pollution control commission, the commissioner of the department of health and welfare, the director of the division of parks, the director of the division of resources, the chairman of the public utilities commission and the chief engineer of the public utilities commission. The director of water supply and pollution control commission shall be chairman of the committee. Provided that in the event there is created an agency or department whose function is the protection and preservation of the environment of the state, then the director of that agency shall be the chairman of the committee.

HISTORY

Source. 1971, 357:1. 1973, 587:3, eff. Amendments—1973. Reenacted section. Sept. 4, 1973.

162-F:4 Plans. Each utility shall prepare annually its long-range plans for bulk power supply facilities pursuant to guidelines established by the public utilities commission within 90 days after enactment hereof provided that such guidelines shall be approved by the site evaluation committee which may make such modifications as it may deem necessary within the purposes of this chapter. These plans may be part of a regional plan and shall:

I. Describe the general location, size and type of all bulk power supply facilities to be owned or operated by such utility and whose construction is projected to commence during the ensuing 10 years or during such longer period, but not to exceed a total of 15 years, as the commission may determine to be necessary, together with an identification of all existing facilities to be removed from utility service through such period or upon completion of construction of such bulk power supply facilities.

II. Identify the location of tentative sites for the construction of future

power plants as defined in RSA 162-F: 2, I, including an inventory of sites for all plants on which construction may be commenced in the succeeding 5 years, and the general location of the routes of transmission lines as defined in RSA 162-F: 2, I and indicate the relationship of the planned sites, routes, and facilities thereon to the environment.

II-a. Identify the location of tentative sites for the construction of future power plants as defined in RSA 162-F: 2, I, including an inventory of sites for all plants on which construction may be commenced in the succeeding 5 years, and the general location of the routes of transmission lines as defined in RSA 162-F: 2, I and indicate the relationship of the planned sites, routes, and facilities thereon to the environmental values and describe generally how potential adverse effects on such values will be lessened. Such sites shall be indicated in relation to the location of existing plants and tentative sites planned or announced by utilities within a 200 mile radius of the site.

III. Reflect and describe such utility's efforts to involve environmental protection and land-use planning agencies in their planning process so as to identify environmental problems at the earliest possible stage in the planning process.

IV. Supply such additional information as the site evaluation committee, upon the advice of interested state and federal agencies, may from time to time prescribe to carry out the purposes of this chapter.

V. Each utility shall give initial public notice of its plans referred to in paragraph I by filing annually a copy of such plans, together with its projections of demand for electricity that the facilities would meet, with the public utilities commission and with such other affected state and local governmental authorities and citizens' environmental protection and resource planning groups requesting such plans.

HISTORY

Source. 1971, 357: 1, eff. date, see note set out under RSA 162-F: 1.

162-F: 5 Review; Hearing. Upon receipt of plans referred to in RSA 162-F: 4, I, the public utilities commission shall notify the site evaluation committee which shall:

I. Review and comment on the long-range plans and make information contained therein readily available to the general public and interested state and local governmental entities;

II. Compile and publish a description of the proposed power plant sites and general locations of transmission line routes within the state as identified in the long-range plans, identifying the location of such sites and the possible year when construction is expected to commence and to make such information readily available to the public, to each newspaper regularly circulated within the area affected by the proposed site, and to interested state and local governmental entities. The duties imposed by this para-

graph may be delegated to the public utilities commission, and all documents filed under this chapter shall be held in the offices of the public utilities commission;

III. After public notice, conduct within 90 days of the date of filing a public hearing with respect to any proposed power plant site identified 5 years in advance of construction and decide whether or not any such sites should be approved for inclusion within the utility's 5 year inventory of sites. The basis for such decision shall be whether or not the construction of any plant at the proposed site would unduly impair important environmental values, and the decision shall be rendered within 6 months of the date the site is identified. Provided, however, a hearing shall not be held with respect to a site approved by the site evaluation committee pursuant to this chapter.

HISTORY

Source. 1971, 357:1, eff. date, see note set out under RSA 162-F:1.

162-F:6 Prohibition.

I. After the effective date of this chapter, no electric utility shall commence to construct any bulk power supply facility within the state unless it has obtained a certificate of site and facility, with respect to those facilities, issued by the public utilities commission. Such facilities shall be constructed, operated and maintained in accordance with the terms of the certificate. Provided, however, that for 4 years from the effective date of this chapter, for good cause shown, all requirements in regard to scheduling of applications, hearings, approvals, and issuing of certificates may be shortened to allow commencement of construction to assure in-service dates for bulk power facilities which are needed to meet projected demands for electricity. No certificate is required for bulk power facilities already under construction or in operation on said effective date, but such certificates are required for sizable additions thereto as defined by the commission.

II. All applications for a certificate of site and facility shall be filed with the commission not less than 2 years prior to the planned date of commencement of construction of the facilities affected and such plans may be subject to reasonable modification during the period of review. As a prerequisite to such filing except for good cause shown, the electric utility shall have complied with the provisions of RSA 162-F:4; and with respect to power plants and transmission line routes, except for good cause shown, shall have complied with the requirement that the site selected is from among those sites in the electric utility's 5-year inventory of sites approved by the site evaluation committee and that it will utilize the general transmission line routes identified in its long-range plans. Provided, however, that any applicant filing an application for a certificate of site and facility within the 5 years of the effective date of this chapter shall be exempt with respect to the site applied for from RSA 162-F:4, and that the site be selected from the applicant's 5-year inventory of sites.

HISTORY

Source. 1971, 357:1, eff. date, see note set out under RSA 162-F:1.

162-F:7 Public Hearing; Studies; Rules. Upon receipt of an application for a certificate of site and facility, pursuant to RSA 162-F:6, the site evaluation committee and the commission shall hold a joint public hearing in the county in which the proposed facility is to be located within 60 days and shall publish a public notice not less than 21 days before said hearing in each newspaper having a regular circulation in the affected area describing the location of the proposed facilities.

I. Such public hearing shall be a joint hearing with such other agencies as have jurisdiction over the subject matter and be deemed to satisfy all initial requirements for public hearings under statutes requiring permits relative to environmental impact. The initial session of the joint hearing within the county of the site location shall be for public information on the proposed facilities with the applicant presenting the information to the site committee and to the public and with only site committee members asking questions for clarification of the development. Subsequent sessions of the hearing shall be in the nature of adversary proceedings. The site evaluation committee and the commission shall hold the initial public hearing in the county in which the proposed facility is to be located. Every fourth subsequent public hearing on an application shall be held in the county in which the proposed facility is to be located and all other hearings may be held in Concord, New Hampshire, provided there is adequate notice as to the time and place of the hearing.

II. The site evaluation committee and the commission shall consider and weigh all evidence presented at public hearings and shall consider and weigh written information and reports submitted to it by members of the public before, during, and subsequent to public hearings. The committee and the commission shall grant free access to records and reports in its files to members of the public during normal working hours and shall permit copies of such records and reports to be made by interested members of the public at their expense.

III. The site evaluation committee and the commission shall require such information from applicant utilities as it deems necessary to accompany applications for certificates of site and facility and to assist the conduct of hearings and any investigation or studies as it may undertake.

IV. No additional application shall be required of an applicant to satisfy the permit application requirements of individual agencies and departments of the state, and applications shall contain sufficient information to satisfy the requirements of individual agencies and departments having jurisdiction over the proposed construction.

V. The site evaluation committee and the commission shall jointly conduct such reasonable studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter and may employ a

consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicants in such amount as may be approved by the commission.

VI. The site evaluation committee and the commission shall jointly issue such rules and regulations, after public notice and hearing, as may from time to time be required to carry out the provisions of this chapter.

VII. EXEMPTION. For a period of 4 years from the effective date of this chapter bulk power supply facilities owned or owned upon amortization by a municipality and located entirely within the geographical limits of the municipality shall be exempt from the provisions of this chapter.

HISTORY

Source. 1971, 357:1. 1973, 587:4, 5, eff. Sept. 4, 1973.

Amendments—1973. Opening paragraph: Provided for hearing within 60 days.

Paragraph I: Amended generally.

Paragraph V: Provided for employment of legal counsel and other staff personnel.

ANNOTATIONS

1. Due process

Where intervenors opposing nuclear power plant near ocean were not present when key issue was heard, but an anti-pollution group "held down the fort" for them during that part of the hearing and power company was ordered to circulate a complete memorandum on the issue to all parties and all parties were allowed to respond by written interrogatories, there was no due process violation. Society for the Protection of N.H. Forests v. Site Evaluation Committee (1975) 115 NH 163, 337 A2d 778.

2. Agency interaction

Site evaluation committee and water supply and pollution control commission each had separate but coordinated functions in the authorization of the siting of nuclear electricity generating facility and it could not be said that the former subdelegated to the latter its responsibility regarding the facility's impact on water quality. Society for the Protection of N.H. Forests v. Site Evaluation Committee (1975) 115 NH 163, 337 A2d 778.

162-F:8 Findings.

I. The site evaluation committee, after having considered available alternatives and the environmental impact of the site or route, must find that the site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies and will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment, and the public health and safety, and shall send its findings to the commission within 14 months of the filing of an application for a certificate of site and facility. The commission shall issue or deny a certificate and shall be bound by the findings of the site evaluation committee. In its decision, the commission must find that the construction of the facility:

(a) Will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies;

(b) Is required to meet the present and future demand for electric power;

(c) Will not adversely affect system stability and reliability and economic factors; and

(d) Will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment, and the public health and safety.

II. Findings by the site evaluation committee to the public utilities commission shall be made after a vote of the committee. A majority vote of the committee shall be conclusive on all questions of siting, land use, air and water quality. The commission shall grant a certificate only after it has reasonable assurance that all applicable state standards and requirements shall be met by the applicant and that the commission shall incorporate in its certificate such lawful terms as may be supplied to it by the site evaluation committee and those state agencies having permit or license granting responsibilities under state law.

III. In the consideration of applications for certificates of site and facility, the site evaluation committee and the commission shall assure full public review and adequate consideration of all environmental values and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the certificate. The site evaluation committee and the commission may consult with interested regional agencies and agencies of border states in the issuance of such certificates.

IV. A certificate of site and facility shall either be issued or denied by the commission within 16 months of the date of the application being submitted and may contain such reasonable terms and conditions as it deems necessary and may provide for such reasonable monitoring procedures as may be necessary. Such certificates, when issued, shall be final and subject only to judicial review.

HISTORY

Source. 1971, 357:1. 1973, 587:6, 7, eff. Sept. 4, 1973.

Amendments—1973. Paragraph I: Provided for submission of findings within 14 months of filing of application.

Paragraph IV: Reduced time for issuance or denial of certificate to 16 months.

ANNOTATIONS

1. Water

Site evaluation committee has no statutory power to regulate how water quality is to be maintained. Society for the Protection of N.H. Forests v. Site Evaluation Committee (1975) 115 NH 163, 337 A2d 778.

2. Nature of findings

Where site evaluation committee was required by this chapter to make complex factual determinations as well as general discretionary findings, the law demanded that the findings be more specific than a mere recitation of conclusions and basic finding on the issues were necessary, and findings couched in the language of this section were inadequate. Society for the Protection of N.H. Forests v. Site Evaluation Committee (1975) 115 NH 163, 337 A2d 778.

162-F:9 Counsel for the Public. After the commission has received an application, filed pursuant to RSA 162-F:6 hereof, the attorney general shall appoint an assistant attorney general as a counsel for the public. The counsel shall represent the public and its interests in protecting the quality of the environment and in the assurance of an adequate electric power supply for the duration of the certification proceedings and until such time as the certification is issued or denied. He shall be accorded all the rights, privileges and responsibilities of an attorney representing a party in a formal action. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with other provisions of this chapter.

HISTORY

Source. 1971, 357:1, eff. date, see note set out under RSA 162-F:1.

162-F:10 Review. Decisions of the site evaluation committee and the commission shall be reviewed pursuant to RSA 541.

HISTORY

Source. 1971, 357:1, eff. date, see note set out under RSA 162-F:1.

162-F:11 Separability. If any provision or clause of this chapter, or application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end, the provisions of this chapter are declared to be severable. Each section of this chapter shall be separable from all other sections hereof and the nullification of any section of this chapter shall have no effect upon the remaining sections of this chapter.

HISTORY

Source. 1971, 357:1, eff. date, see note set out under RSA 162-F:1.

162-F:12 Revocation; Suspension. Any certificate granted hereunder may be revoked or suspended:

I. For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant.

II. For failure to comply with the terms or conditions of the certificate.

III. For violation of the provisions of this chapter, regulations issued thereunder, or order of the commission.

HISTORY

Source. 1971, 357:1, eff. date, see note set out under RSA 162-F:1.

162-F:13 Penalties.

I. The superior court in term time or on vacation may enjoin any act in violation of this chapter.

II. Any construction or operation of bulk power facilities in violation of this chapter, or in material violation of the terms of a certificate issued hereunder, may result in the assessment of damages not to exceed $10,000 for each day of such violation.

III. Whoever commits any wilful violation of any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

HISTORY

Source. 1971, 357:1. 1973, 529:30, eff. at 11:59 P.M., Oct. 31, 1973.

Amendments—1973. Amended generally to conform provisions to new criminal code.

ANNOTATIONS

Library references

Validity of state statutory provision permitting administrative agency to impose monetary penalties for violation of environmental pollution statute. 81 ALR3d 1258.

CHAPTER 162-H

ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATIONS

162-H: 1	Declaration of Purpose.	162-H: 9	Findings.
162-H: 2	Definitions.	162-H: 10	Permit Deadline.
162-H: 3	Energy Facility Evaluation Committee.	162-H: 11	Counsel for the Public.
		162-H: 12	Judicial Review.
162-H: 4	State Permits.	162-H: 13	Enforcement.
162-H: 5	Powers of the Committee.	162-H: 14	Penalties.
162-H: 6	Application for Permit.	162-H: 15	Separability.
162-H: 7	Disclosure of Ownership.	162-H: 16	Records.
162-H: 8	Public Hearing; Rules.		

162-H: 1 Declaration of Purpose. The legislature recognizes that the selection of sites for energy facilities will have a significant impact upon the welfare of the population, the economic growth of the state and the environment of the state. The legislature, accordingly, finds that the public interest requires that it is essential to maintain a balance between the environment and the possible need for new energy facilities in New Hampshire; that undue delay in construction of any needed facilities be avoided; that the state insure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic and technical issues are resolved in an integrated fashion; and that existing laws do not provide adequate public review and control over the construction and operation of energy facilities. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring and enforcement of compliance in the planning, siting, construction and operation of energy facilities. The legislature also recognizes that it has a broad responsibility to provide both economic and environmental protection for its coastal and estuarine waters and the adjoining land areas. The legislature therefore declares it to be its policy that any offshore facility other than pipelines shall be located so as to at least comply with the policies and guidelines of the Federal Environmental Protection Agency; and that this policy may be relaxed only if it is shown by clear and convincing evidence that there are compelling technological or economic reasons for doing so, that no feasible alternative exists, and that there will be no substantial environmental risk.

HISTORY

Source. 1974, 39: 3, eff. April 5, 1974.

162-H: 2 Definitions.

I. "Commencement of construction" means any clearing of the land, excavation or other substantial action that would adversely affect the natural environmental of the site of the proposed energy facility, but does not include land surveying, optioning or acquiring land or rights in land, changes desirable for the temporary use of the land for public recreational uses, or necessary borings to determine foundation conditions or other

preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.

II. "Committee" means the energy facility evaluation committee established by this chapter.

III. "Energy" means power derived from a natural resource, including, but not limited to, oil, coal, and gas.

IV. "Energy facility" means any industrial structure, other than bulk power supply facilities as defined in RSA 162-F: 2, that may be used substantially to extract, manufacture, or refine sources of energy, and means also such ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure; without limiting the generality of the foregoing, such industrial structures include oil refineries, plants for processing liquefied natural gas, and plants for coal conversion; further without limiting the generality of the foregoing, such ancillary facilities include onshore and offshore loading and unloading facilities, pipelines, and storage tanks.

V. "Person" means any individual, group, firm, partnership, corporation, cooperative, municipality, political subdivision, government agency or other organization.

HISTORY

Source. 1974, 39: 3, eff. April 5, 1974.

162-H: 3 Energy Facility Evaluation Committee. The energy facility evaluation committee shall consist of the members of the bulk power supply facility site evaluation committee established by RSA 162-F: 3.

HISTORY

Source. 1974, 39: 3, eff. April 5, 1974.

162-H: 4 State Permits.

I. No person may commence construction of an energy facility in this state or operate such a facility without a permit from the energy facility evaluation committee. Such a permit may not be transferred or assigned without the approval of the committee.

II. The committee shall incorporate in any permit issued hereunder such terms and conditions as may be specified to the committee by any of such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any permit hereunder if any of such other state agencies denies authorization for the proposed activity over which it has jurisdiction. The denial of any such authorization shall be based on the record and explained in reasonable detail by the denying agency. Notwithstanding any other provision of law, the application required by RSA 162-H: 6 shall be in lieu of all applications

otherwise requirable by any of such other state agencies. Further notwithstanding any other provision of law, the hearing conducted under RSA 162-H: 8 shall be a joint hearing with such other state agencies and shall be in lieu of all hearings otherwise requirable by any of such other state agencies; provided, however, if any of such other state agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under this chapter; provided further, however, the ability or inability of any of such other state agencies so to join shall not affect the composition of the committee under RSA 162-H: 3 nor the ability of any member of the committee to act in accordance with this chapter. Subject to RSA 162-H: 6, III, but notwithstanding any other provision of law, each of such other state agencies shall make and submit to the committee a final decision on such parts of the application as relate to its jurisdiction not later than 7 months after it has received a copy of such parts in accordance with RSA 162-H: 6, I. Notwithstanding any other provision of this section or this chapter, each of such other state agencies shall retain all of its powers and duties of enforcement.

HISTORY

Source. 1974, 39: 3, eff. April 5, 1974.

162-H: 5 Powers of the Committee.

I. The committee shall hold hearings as required by this chapter and such additional hearings as it deems necessary and appropriate.

II. The committee shall have the authority and responsibility for:

(a) The issuance of any permit hereunder;

(b) The determination of the terms and conditions of any permit issued hereunder, subject to RSA 162-H: 4;

(c) The monitoring of the construction and operation of any energy facility granted a permit hereunder; and

(d) The enforcement of the terms and conditions of any permit issued hereunder.

III. The committee may delegate the authority to monitor the construction or operation of any energy facility granted a permit hereunder to such state agency or official represented on the committee as it deems appropriate, but, subject to RSA 162-H: 4, it may not delegate the authority to hold hearings, issue permits, determine the terms and conditions of a permit, or enforce a permit. Any authorized representative or delegate of the committee shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the permit. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the permit-holder as are relevant to the terms or conditions of the permit.

HISTORY

Source. 1974, 39: 3, eff. April 5, 1974.

162-H: 6 Application for Permit.

I. Each application hereunder shall contain sufficient information to satisfy the application requirements of each of such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility. Upon receipt of an application, the committee shall immediately make copies thereof, the cost of which making shall be borne by the applicant, and shall immediately forward to each of such other state agencies a copy of such parts of the application as are relevant to its jurisdiction. Upon receipt of such a copy, each of such other state agencies shall immediately conduct a preliminary review thereof to ascertain if the application contains sufficient information for its purposes. If the application does not contain sufficient information for the purposes of any of such other state agencies, that agency shall, in writing, immediately notify the committee of that fact and specify what information the applicant must supply; thereupon the committee shall provide the applicant with a copy of such notification and specification. Notwithstanding any other provision of law, for purposes of the time limitations imposed by RSA 162-H: 10 on the committee and by RSA 162-H: 4 on such other state agencies, any application made hereunder shall be deemed not received either by the committee or by any of such other state agencies if the applicant is seasonably notified that it has not supplied sufficient information for any of such other state agencies in accordance with this paragraph.

II. An application hereunder shall also:

(a) Describe in reasonable detail the type and size of each major part of the proposed facility;

(b) Identify both the first choice and any other choice for the site of each major part of the proposed facility;

(c) Describe in reasonable detail the impact of each major part of the proposed facility on the environment of each site proposed, whether as first choice or as any other choice, for such part;

(d) Describe in reasonable detail the applicant's proposals for studying and solving environmental problems;

(e) Describe in reasonable detail the applicant's financial, technical, and managerial capability for construction and operation of the proposed facility;

(f) Provide such additional information as the committee may require to carry out the purposes of this chapter.

Upon receipt of such an application, the committee shall immediately conduct a preliminary review thereof to ascertain if it contains sufficient information in accordance with this paragraph. If the application does not contain such sufficient information, the committee shall, in writing, immediately notify the applicant of that fact and specify what information

the applicant must supply. Notwithstanding any other provision of law, for purposes of the time limitations imposed by RSA 162-H: 10 on the committee and by RSA 162-H: 4 on other state agencies, any application made hereunder shall be deemed not received either by the committee or by any of such other state agencies if the applicant is seasonably notified that it has not supplied sufficient information in accordance with this paragraph.

III. An application hereunder, in any of its aspects, may be reasonably modified before and during the period of hearings with the consent of the committee; provided, however, if any of such other state agencies as have jurisdiction, under state or federal law, to regulate the subject matter of such modification has already made a decision in accordance with RSA 162-H: 4, it may alter such decision in reasonable response to such modification; provided further, however, if to allow reasonable inquiry into such modification, the committee or any of such other state agencies needs time in addition to that provided for it by this chapter, it may take as much additional time as is necessary, but no more additional time than is necessary, to allow such reasonable inquiry.

HISTORY

Source. 1974, 39: 3, eff. April 5, 1974.

162-H: 7 Disclosure of Ownership.

I. Any application for a permit shall be signed and sworn to by the person or executive officer of the association or corporation making such application and shall contain the following information:

(a) Full name and address of the person, association or corporation;

(b) If an association, the names and residences of the members of the association;

(c) If a corporation, the name of the state under which it is incorporated with its principal place of business and the names and addresses of its directors, officers and stockholders;

(d) The location or locations where an applicant is to conduct its business;

(e) A statement of assets and liabilities of the applicant and other relevant financial information of such applicant.

II. Within 4 months after the close of each fiscal year of the applicant, it shall file with the committee a statement either that there has been no substantial change in any of the information in the application or a description of any such changes as have occurred.

HISTORY

Source. 1974, 39: 3, eff. April 5, 1974.

162-H: 8 Public Hearing; Rules.

I. Within 60 days after receipt of an application under RSA 162-H: 6, the committee shall commence a public hearing on such application. The

committee shall determine which part of the proposed facility is the principal part and shall conduct the first session of such public hearing in the county in which the principal part is proposed to be located. Not less than 21 days before such first session, the committee shall give public notice thereof and, within such notice, shall describe the proposed facility and the proposed sites for each major part thereof. The committee shall publish such notice in each newspaper having a general circulation in the affected area. Such first session shall be for public information on the proposed facility. The applicant shall present information to the committee and the public, but only committee members shall be permitted to ask questions of the applicant. Subsequent sessions of the hearing shall be in the nature of adversary proceedings. Every fourth subsequent session shall be held in such county; all other subsequent sessions may be held either in such county or in Concord, New Hampshire. The committee shall give adequate public notice of the time and place of each subsequent session. The committee shall consider and weigh all evidence presented at each session of the public hearing and any other material ancillary thereto.

II. The committee shall grant free access to records and reports in its files to members of the public during normal working hours and shall permit copies of such records and reports to be made by interested members of the public at their expense.

III. The committee may require such information from the applicant and state agencies and officials as it deems necessary to assist it in the conduct of hearings and in making any investigation or studies it may undertake and in the determination of the terms and conditions of any permit under consideration. The committee shall conduct such reasonable studies and investigations as it deems necessary or appropriate to carry out the purposes of this chapter and may employ consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicant in such amount as may be approved by the committee.

IV. The committee shall issue rules and regulations as may from time to time be required to carry out the provisions of this chapter.

HISTORY

Source. 1974, 39:3, eff. April 5, 1974.

162-H:9 Findings.

I. In order for the committee to issue a permit hereunder consistent with the provisions of RSA 162-H:1, it must find the following:

(a) the proposed site and facility will not unduly interfere with the orderly development of the region and will not have an unreasonably adverse impact on aesthetics, historic sites, coastal and estuarine waters, air and water quality, the natural environment and the public health and safety; and

(b) the applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the permit.

II. Findings by the committee shall be based on the record and shall be made by a majority vote of a full committee, whether or not the full committee is present for voting.

III. In the consideration of applications for permits, the committee shall fully review and consider all environmental values and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the permit. The committee may consult with interested regional agencies and agencies of border states in the issuance of such permits.

HISTORY

Source. 1974, 39: 3, eff. April 5, 1974.

162-H: 10 Permit Deadline. Subject to RSA 162-H: 6, III, a permit shall be either issued or denied by the committee within 14 months of the date of its receipt of the application and may contain such reasonable terms and conditions as it deems necessary and may provide for such reasonable monitoring procedures as may be necessary. Such determinations, when made, shall be final and in writing and subject only to the provisions of this chapter.

HISTORY

Source. 1974, 39: 3, eff. April 5, 1974.

162-H: 11 Counsel for the Public.

I. After the committee has received an application, in accordance with RSA 162-H: 6, the attorney general shall appoint an assistant attorney general as a counsel for the public. The counsel shall represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy. The counsel shall be accorded all the rights, privileges, and responsibilities of an attorney representing a party in a formal action.

II. This section shall not be construed to prevent any person from being heard or represented by counsel; provided, however, the committee may compel consolidation of representation for such persons as have, in the committee's reasonable judgment, substantially identical interests.

HISTORY

Source. 1974, 39: 3, eff. April 5, 1974.

162-H: 12 Judicial Review. Decisions made pursuant to this chapter by the energy facility evaluation committee or by any other state agency shall be reviewable in accordance with RSA 541.

HISTORY

Source. 1974, 39: 3, eff. April 5, 1974.

162-H:13 Enforcement.

I. Whenever the committee determines that any term or condition of any permit issued hereunder is being violated, it shall, in writing, notify the person holding such permit of the specific violation and order such person immediately to terminate such violation. If, 15 days after receipt of such order, such person has failed or neglected to terminate such violation, the committee may suspend such person's permit; provided, however, except for emergencies, prior to any such suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing thereon.

II. The committee may suspend a persons's permit if the committee determines that such person has made a material misrepresentation in its application or in the supplemental or additional statements of fact or studies required of the applicant, or if the committee determines that such person has violated the provisions of this chapter or regulations issued hereunder; provided, however, except for emergencies, prior to any such suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing thereon.

III. The committee may revoke any permit that is suspended hereunder after the person holding such suspended permit has been given at least 90 days' written notice of the committee's consideration of revocation and of its reasons therefor and has been provided opportunity for a full hearing thereon.

History

Source. 1974, 39:3, eff. April 5, 1974.

162-H:14 Penalties.

I. The superior court in term time or in vacation may enjoin any act in violation of this chapter.

II. Any construction or operation of energy facilities in violation of this chapter, or in material violation of the terms of a permit issued hereunder, may result in an assessment by the superior court of civil damages not to exceed $10,000 for each day of such violation.

III. Whoever commits any wilful violation of any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

History

Source. 1974, 39:3, eff. April 5, 1974.

162-H:15 Separability. If any provision or clause of this chapter, or application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end, the provisions of this chapter are declared to be severable.

Each section of this chapter shall be separable from all other sections hereof and the nullification of any section of this chapter shall have no effect upon the remaining sections of this chapter.

HISTORY

Source. 1974, 39:3, eff. April 5, 1974.

162-H:16 Records. Complete verbatim records shall be kept by the committee of all hearings, and records of all other actions, proceedings and correspondence of the committee shall be maintained, all of which records shall be open to public inspection as provided for under RSA 91-A.

HISTORY

Source. 1974, 39:3, eff. April 5, 1974.

PART III:

ALTERNATIVES TO THE PROPOSED ACTION

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ALTERNATIVES TO THE PROPOSED ACTION

All alternatives to the proposed action, approving the New Hampshire Coastal Program Ocean and Harbor Segment, involves a decision to delay or deny approval. Delay or denial of approval could be based on failure of the New Hampshire Program to meet any one of the requirements of the CZMA. In approving a CZM Program, affirmative findings must be made by the Assistant Administrator for Coastal Zone Managment on more than twenty requirements.

Development of the New Hampshire Coastal Program has involved several years of work effort and alternative approaches, has been controversial at times, and has required the resolution of several issues, some of which could have resulted in program deficiencies with respect to the requirements of the CZMA. During development of the current Ocean and Harbor Segment approach, areas of potential deficiences were identified. Following revisions to the program by New Hampshire, the Assistant Administrator for Coastal Zone Management has made a preliminary determination that any such deficiencies have been addressed and that New Hampshire has met the requirements for program approval under Section 306 of the CZMA.

However, in order to elicit public and agency comment and assure that the Assistant Administrator's initial determination is correct, this section identifies issue areas where there may be possible deficiencies and considers the alternatives of delaying or denying approval based upon each issue area.

The general impacts of delay or denial of approval of the New Hampshire Program, regardless of the reason for delay or denial, are as follows:

1. Loss of Federal Funds to Administer the Program - Under Section 306, new Hampshire would receive approximately $600,000 per year to administer its coastal management program. The loss of Federal Section 306 funds would result in the inability of the State to provide adequate staffing and administrative support to coordinate and evaluate coastal actions, implement state coastal programs, address priority issues, and assure that government agencies coordinate and operate consistently with coastal policies. State technical assistance to local governments, essential for the development of a more effective coastal management program, would also be curtailed due to limited funds. Local governments would also be without the pass-through funds necessary to address local coastal resource issues. To deny approval of this program would also make it difficult for the State to coordinate and expedited resolution of interagency conflicts and establish unified state policies for state investments and actions in the coast. Denial of approval would also jeopardize the eligibility of the State to receive Coastal Energy Impact Program (CEIP) funds pursuant to Section 308 of the CZMA.

2. Loss of consistency of federal actions with the program -- Approval of New Hampshire's Program would mean federal actions in or affecting the coastal area would have to be consistent with the state program under section 307(c) of the CZMA. Loss of Federal consistency with the State's coastal program would have significant and adverse effects on the resources of the state's coastal area.

FEDERAL ALTERNATIVES

Alternative 1: The Assistant Administrator could delay or deny approval if the scope of the program (authorities and policies) is not sufficient to meet the federal requirements.

Section 302 and 303 of the Coastal Zone Management act prescribe a wide scope of resources, impacts and uses which must be managed in a state coastal management program. The New Hampshire program is based on existing state laws, policies and regulations which, together, should provide adequate management of coastal resources and impacts including wetlands, beaches and dunes, rocky shores, marine species, historic sites and water quality. Should the scope of the existing laws and regulations be insufficient to meet Federal requirements based on concerns raised as a result of review of this document, the Assistant Administrator could deny or delay approval until new laws or regulations increasing the scope of the program authorities and/or their specificity are adopted.

- In response to such actions, the state could adopt new laws or regulations remedying the deficiencies, or withdraw application for Federal approval of the New Hampshire Coastal Program.

Alternative 2: The Assistant Administrator could delay or deny approval if the State is not adequately organized to implement the Management Program.

State agencies and programs in New Hampshire are placed under the review and supervision of the Governor and Executive Council. Key resource agencies are also members of the Council on Resources and Development; an interagency body, chaired by the Director of the Office of State Planning, responsible for coordinating state agency actions and resolving conflicts where necessary. Historically, however, state agencies have administered their respective and sometimes joint responsibilities in a separate and uncoordinated manner, resulting in piecemeal state policy and decisionmaking for coastal resourse use. Coordination and organization of state agencies is a major objective of the New Hampshire Coastal Program.

The program, as developed, is to be implemented primarily at the state level, while coordinating pertinent activities, administrative processes, and desision making at all levels of government. As such the program relies on state laws, policies, regulations and agency programs for program implementation and enforcement, and upon the Office of State Planning and the Council on Resources and Development for directing program administration, coordination and conflict resolution.

It is the goal of this program to improve and enhance present state level coastal resource protection and decision making through the coordination of agency actions and the development and implementation of more effective government of all levels. Weakness or gaps in the organizational structure could cause a loss in the approved program status and its accompanying funding under all sections of the CZMA and federal consistency.

- In response to such actions, the state could strengthen the organizational structure of the program as developed to ensure effective implementation of the New Hampshire Coastal Program; develop a coastal program using a different management scheme; or withdraw the application for Federal approval of the New Hampshire Coastal Program.

Alternative 3: The Assistant Administrator could delay or deny approval if the Segment could not be unified with the entire State program.

This alternative would encompass a finding that a delay in Segment approval was necessary until it was unified into the entire State program, so that all necessary authorities were in place. The Assistant Administrator could find that the Ocean and Harbor Segment could not be unified into the entire State program due to a lack of adequate authorities outside the Segment area.

The Coastal Zone Management Act allows for segmented approval "so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs." It is the opinion of the Assistant Administrator that there are important state owned properties in the Ocean and Harbor Segment, specifically the State owned port facilitiy in Portsmouth and various state parks, that are either underutilized or under development pressures that are most urgently in need of long-term development plans. The approval of this Segment would allow such vital work to begin immediately. There is also the need to adequately staff the two new provisions of the program - The CORD binding authorities and the historic preservation policies. As these authorities were created by the legislature in the 1980 term, their immediate smooth functioning through funding, will enable them to become firmly established. Coastal program funds could be utilized, as necessary, to facilitate this process.

The CZMA regulations state four requirements that the Segment must include. First, a geographical area on both sides of the coastal land/water interface must be included. This segment contains all the state territorial waters and land at least 1,000 feet inland. Secondly, a timetable and budget for timely completion of the remaining segment must be submitted to the Office of Coastal Zone Management. A discussion of the segmented approval process is included in Chapter 8 of the program document. As there are no more Section 305 Federal funds for program development, the Office of State Planning will use state and other sources of funding to develop the second segment. The second segment is scheduled for submittal to the Federal OCZM in summer of 1983. The objective is to develop a unified program for approval by the spring of 1984. Third, the management boundary for the entire coastal zone throughout the state must be a part of the segment submitted. The map on page 2-4 shows the entire state boundary. Finally documentation of how the CZMA regulations are met in the segment must be provided. The chart on page 5 indicates how these regulations are met.

PART IV:

AFFECTED ENVIRONMENT

PART IV

DESCRIPTION OF THE AFFECTED ENVIRONMENT

The environment to be affected by the New Hampshire Coastal Program Ocean and Harbor Segment consists of both natural and man-made components.

Natural Environment

The New Hampshire seacoast is a part of the arcadian biogeographic region. It is influenced by two river basins, the Piscataqua and coastal river basins, which drain into the Atlantic Ocean. The Atlantic shoreline is composed of beaches behind which are formed embayments with well-developed tidal mud flats and marsh systems. The shoreline is interspersed with rocky outcrops of primarily unconsolidated glacial material which provide the sand and silt material for nourishment of the beach areas.

The coastal waters of New Hampshire are influenced both by tidal flow and by the presence of the Gulf of Maine. Net circulation flow is to the south during most of the year with some variability due to storms and other irregular phenomenon. Water salinity is stable except near the rivers where there is a significant inflow of fresh water. Water temperatures vary from 36° F in the winter to 66°F in summer. Air temperatures vary between an average of 33° F in January and an average of 69°F in July.

The land area covered by the coastal program under this segement includes almost 12,000 acres. The segment extends inland 1000 feet or to the limits of tidal wetlands. A significant portion of this land area, roughly 65%, consists of natural resource areas. The dominant natural resource areas include tidal wetlands, beaches, dunes and rocky shores. These areas are predominantly undeveloped and either publicly owned or managed through the Wetlands Board.

Tidal wetlands cover approximately 6,600 acres or half of the entire coastal impact area. The marsh system consists of perennial grass of the Spartina genus. They are found in low energy environments which drain slowly as a result of tidal influence. The Hampton-Seabrook marsh system is the largest pristine marsh area within the coastal segment. It contains clam beds and provides significant nutrients to the coastal ecosystem. Tidal wetlands establish the inland boundary for coastal development along the state's highly developed barrier islands. Prior to the 1960's, tidal wetlands were unprotected and subject to development. The state now recognizes the value of tidal wetlands as natural habitats for fish and wildlife and protects such areas for spawning, habitats, and nutrient sources.

Of New Hampshire's 18 mile Atlantic coastline, 57% is beachfront. Virtually all of this beachfront is accessible for public recreation and enjoyment. Less than 1/10 mile is privately owned. Many of the larger beaches, particularly those with nearby parking and other facilities are heavily used. Smaller beaches are less widely used due to limited available parking. Chronic beach erosion occurs in only one place, the northern end of Hampton Beach. This is periodically alleviated with sand from the maintenance dredging operations in the Hampton Harbor channel. The beaches provide significant recreational opportunity to residents and non-residents alike, and are a major summer tourist attraction which bolsters the seacoast economy.

Undeveloped sand dunes are found only in the southern portion of the seacoast where three discrete areas remain in the towns of Seabrook and Hampton: the Hampton Beach State Park foredunes which are owned and managed by the state; the foredunes along Seabrook beach which are privately owned but regulated by the Wetlands Board and the town; and the Seabrook back dunes, a large undeveloped complex adjacent to the marsh, which is also privately owned and subject to state and local regulations. The foredunes provide protection from wave damage from coastal storm flooding. The back dunes also absorb coastal waters during periods of flooding. Since most of the sand dune areas along New Hampshire's coast have been destroyed through development, the retention of these few remaining natural dune areas are of particular importance.

New Hampshire has 8200 acres of coastal flood hazard areas. A significant portion of these flood hazard areas are coterminous with tidal wetland areas, where floodwaters are absorbed and slowly released with minimal damage to surrounding areas. Generally, coastal towns can withstand periodic flooding of storms with minimal damage. Larger, more infrequent storms, like the 1978 blizzard, can cause more widespread damage. This type of winter storm, a "nor'-easter", is more likely to occur here than is a hurricane. High winds and storm surge are associated with these winter storms. Five of the seven coastal towns in the segment have coastal high hazard areas, making them vulnerable to more damage from high velocity waters and storm surge. Fortunately, much of the land along the immediate shoreline is publicly owned and used for recreation, thus minimizing property loss. A system of seawalls provides protection to other sections of the coast and, often, buildings are located landward of the coastal road, away from the water. Although, by its nature, New Hampshire's coast is not highly vulnerable to storm damage, the coastal and flood insurance programs seek to minimize the loss of life and property. Several sections of rocky shore outcropping, roughly 32 acres, occur along New Hampshire's coast. They are largely in the intertidal area or rise quite steeply to meet the coastal road. In the intertidal and subtidal zones, rocky shores provide a habitat for shellfish and plant life and protect upland areas from damage and erosion by absorbing the impact of waves. At points where the shore meets the coastal road, spectacular scenic vistas are provided.

The estuarine and close inshore waters along the New Hampshire coastline are of vital importance to fisheries and wildlife. The marshes of Seabrook and Hampton provide ideal habitats for many species of migratory waterfowl with black ducks and mallards, the most important species, present almost year-round. The area also provides a resting place for congregations of ducks and geese migrating north in the spring and south in the fall. This area is a critical habitat for many species of small shore birds and the larger herons. Many mammals also inhabit the marsh, including raccoons, mink, otter, muskrats and deer. The greatest importance of the saltmarsh is to the production of fisheries by supplying needed nutrients. Soft-shell clams and blue mussels live in the intertidal zone and many species of young fin-fish owe their continued existence to the richness of the estuaries and saltmarsh creeks. Lobsters, crabs and other crustaceans also depend upon these shallow, protected areas for their start in life.

The near-shore coastal waters are also very important to fisheries and wildlife in the state. Diving ducks such as buffleheads, scaup and goldeneyes are found here, as are the so-called "coots" scoters, eiders and old squaws. Terns, gulls, cormorants and other sea birds depend primarily on this area for their existence. Seals and occasional porpoises are mammals inhabiting this area.

The near shore area with depths of 100 feet or less supports most of New Hampshire's lobster fishery. A large majority of lobster traps are set on or near the hard bottoms within five miles of shore. Some lobstering by draggers and deep sea pots occurs in offshore areas.

Commercial fishing, with certain limitations, is carried out for flounders, cod and other groundfish, herring, menhaden and mackerel. It is safe to say that within our limited state jurisdiction every bit of inshore water is of vital importance to fisheries interests.

The offshore coastal waters are important to New Hampshire fisheries even though many of these areas are presently outside the legal jurisdiction of the state. Shrimp, groundfish, mackerel and herring support important commercial fisheries. Giant bluefin tuna are the quarry of both recreational big game fishermen and commercial harpooners.

The party boats, which in late years have depended primarily on mackerel fishing to attract customers, find inshore waters most profitable although the recent explosion of the bluefish population along New Hampshire's coast may push the mackerel and several other species further out to sea. The party boat industry is an important factor in the use of certain marine fin-fish. Annual catches on these boats probably exceed several million pounds of mackerel, cod, pollack, haddock, cusk, and other groundfish. The sport fishery occurs in inshore waters as well as in the estuary and parent streams. Recreational fishing for flounders, cod, haddock and other ground fish, striped bass and bluefish occurs. Other species harvested, in addition to the above commercial and recreational catches, include: softshell clam, clamworm, green crab, cancer crab, northern shrimp, smelt, hake, pollock, sand launce, cusk and halibut.

New Hampshire's coastal waters are generally of the highest quality - Class A. They can be utilized for swimming purposes and the taking of clams and shellfish for human consumption. Clam flats in the Hampton-Seabrook estuary are closed only during periods of red tide or to maintain adequate population levels to protect against the over-exploitation of the limited resource. Major point sources of pollution discharge into coastal waters have been corrected through public sewerage treatment facilities. The State now regulates subsurface disposal and sewage disposal to protect and maintain surface and groundwater quality in the coast.

In Portsmouth Harbor, the high quality of water is maintained partly as a result of the intense flushing action of the Piscataqua River. A high percentage of the cargo passing through the port is petroleum-related. Although much of it is bound for facilities further upriver in Newington, care must be taken for the difficult navigation through the channel. The majority of petroleum activities are offloading operations which do not require ballasting discharges into the harbor waters. Oil spills have occurred in the river in the past. Due to the tidal action, most spills have been carried inland, into Great Bay and Little Bay. To date, no oil spills have occurred which have affected New Hampshire's beaches. Future oil spills may impact the beaches due to the continuing role of Portsmouth Harbor as a major oil port.

Man-Made Environment

The Ocean and Harbor Segment of the New Hampshire coastal program is found in Rockingham County. The segment is within the borders of seven municipalities: Seabrook, Hampton Falls, Hampton, North Hampton, Rye, New Castle and Portsmouth. These seven municipalities have a combined 1980 population of 53,905 which represents a 14% increase from the 1970 population of 46,352. The factors supporting population growth during this period include the proximity of the seacoast to the Boston, Massachusetts metropolitan area and the attractiveness of southern New Hampshire as an area of commercial and industrial expansion. In addition, seasonal population within the seacoast is very high with population tripling during peak summer days, due to the fact that the seacoast is a major tourist destination.

Recreation and tourism is centered on the Atlantic shoreline with Hampton Beach a focus of commercial activity and a heavy influx of seasonal residents. Along the Atlantic, 78% of the shoreline is publicly owned and managed for recreational use. Public access to the water is excellent for swimming, boating, fishing, clamming and sightseeing. Over ten miles of public beaches line the coast.

Boat moorings are available in the harbor areas and are regulated by the Port Authority. Existing spaces at moorings and slips number 1,253 and increased demand is forecasted. Trailered boats can be launched at a number of public launch sites. Large party fishing boats leave daily from each harbor for recreational fishing and fishermen often utilize the bridges over the many tidal rivers and creeks. The taking of soft-shell clams is strictly recreational. Licenses are issued only to state residents and a limit is set for daily harvest per person. Approximately 15,000 licenses are issued annually. Sightseeing excursions to the Isles of Shoals, seven miles offshore, are operated by a private company in Portsmouth Harbor. Whalewatching tours to Jeffrey's Ledge, 50 miles offshore, have been increasing in popularity, and run during the spring and fall whale migration periods.

Commercial fishing is a small but significant portion of the seacoast economy. It is supported by three commercial fish piers owned and operated by the state, located in the three harbors. Prior to the establishment of these piers, local fishermen landed their catch in neighboring states. The three piers receive heavy use and Portsmouth, with ice and berthing facilities, has reached capacity. Lobstering and ground-fishing are the major activities and the product is sold either locally or through the Portsmouth or Newburyport (Massachusetts) Fishing Cooperative.

The Port of Portsmouth is the only deep draft channel in New Hampshire which accommodates oceanborne commerce. Water dependent industrial activities are limited to Portsmouth Harbor and the Piscataqua River. Along the river in Portsmouth are two bulk cargo docks, a petroleum distribution facility, two electrical generating stations, a tugboat operation, the state fish pier and the New Hampshire State Port Authority cargo terminal. Other petroleum terminals and a liquified petroleum gas facility are located farther up the river in Newington. Ninety percent of the cargo passing through the port of Portsmouth are petroleum-

related products. The State Port Authority promotes commercial and industrial uses of the harbor and regulates navigation and moorings. Periodic dredging of the harbor and river channel is conducted. Waterfront land in this area is entirely developed, 80% for water dependent uses, both commercial and industrial.

Concentrated along Portsmouth's urbanized harbor waterfront is the historic district which includes sections of the central business district. Historic warehouses and residences are now commercial shops and tourist attractions. Within this district, thirty-one buildings and areas have been placed on the National Register of Historic Places. The revival of this area was the impetus behind the revitalization of the entire city into a very attractive place to live and visit. Portsmouth has the only locally established historic district within the segment.

Elsewhere on the coast, three other sites have been included on the National Register: in New Castle, Fort Constitution is a Revoluntionary War fort maintained by the state parks system; and in Rye, a residential homestead and the Isles of Shoals are listed on the Register. The Isles of Shoals is a cluster of rocky islands seven miles offshore with an historic hotel and other buildings. Sightseeing and nature groups visit daily. The state, through the state park system, maintains several historic sites and properties along the coast.

Over the last six years, the State of New Hampshire has conducted numerous studies and surveys of the coastal environment. For those persons interested in particular aspects of the coast, they may request information from the Office of State Planning, 2½ Beacon Street, Concord, New Hampshire, 03301, telephone: (603) 271-2155.

A selected bibliography of information on file at the Office of State Planning is listed on the following pages. For a description of the affected environment of Segment two refer to Chapter 8, Segmented Program Approval on page 8-22.

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Current Data on Coastal Zone Planning Area
Economic Base Data
Economic Impact of Certain Shoreline Users on the N. H. Coastal Zone
Economic Impact of Recreation on the New Hampshire Coastal Zone
Existing and Potential Conflicts Over Land and Water Uses in New Hampshire and Coastal Zone
Inventory of Historic Areas and Sites
Inventory of Land Uses
Inventory of State and Federal Property in the Coastal Zone
Physical Data - Marine and Estuarine Waters and Climate
Public Access to Beaches and Shoreline
Recommendations of S.E.N.H. Regional Planning Commission on Port Authority Expansion Proposals
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Socioeconomic Profile of User's of Coastal Recreation Facilities
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Concept of "Carrying Capacity" as Applied to Potential Uses of the New Hampshire Coastal Zone: Conclusions on Feasibility of Such an Application
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Comparison of Recommended Standards for Use of Areas of Particular Concern with Municipal Ordinances in Effect as of March 31, 1976
Inventory and Designation of Geographic Areas of Particular Concern
Public Actions to Bring Areas of Particular Concern Under Purview of a Management Program
Use Constraints for Areas of Particular Concern
Use Constraints to be Applied to Areas of Particular Concern

PUBLIC PARTICIPATION AND INTERGOVERNMENTAL COORDINATION

Biographical Sketches of Individuals Representing Identified Organizations
HUD/OCZM Interagency Demonstration Project
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II. GREGOR McGREGOR, LEGAL CONSULTANT TO OSP

LEGAL AUTHORITIES

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Areas of Particular Concern
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PART V:

ENVIRONMENTAL CONSEQUENCES

PART V

ENVIRONMENTAL CONSEQUENCES

Introduction

This part of the environmental impact statement examines the environmental, economic and institutional consequences of federal approval of the New Hampshire Coastal Program. Such an analysis is valuable because it indicates any general changes that will take place in the coastal area, as a result of federal approval of the program. It cannot predict, however, specific effects likely to be felt by particular individuals or at particular locations.

Environmental Impact Statements are traditionally prepared for individual projects and examine the impacts of one defined action on an immediate and defined area. A state coastal program covers a diverse area of land and water, and the impacts of the program vary from one location to another depending on the type of particular activity taking place or proposed. The consequences of all these activities of the program can only be discussed, therefore, in general terms since the number of combinations of possible individual actions is far too great to consider.

The specific action for which impacts have been analyzed is federal approval (and subsequent federal funding) and implementation of New Hampshire's coastal program. This section examines the effects of federal approval on the environment, including both direct effects such as preservation, conservation, and development of particular areas, and indirect effects, such as growth-inducing and economic impacts. In addition, the institutional effects are examined. These include increased cooperation between federal, state and local agencies and coordinated decision-making at the state level.

Direct Effects of Federal Approval

New Hampshire's coastal program could be implemented as a state program, unencumbered by the requirements of the Coastal Zone Management Act. Participation in the federal program, however, and a federally approved management program offers several advantages to the state including a more comprehensive and effective program.

1. Federal Funding

Upon approval of New Hampshire's program, the state will be eligible to receive approximately $600,000 under Section 306 of the CZMA and other forms of financial assistance. This financial assistance will increase resource management capabilities and decision making and provide for refinement and better coordination of existing management systems in the coastal area. The grants will also be used to help administer, enforce and improve state agency responsibilities under the coastal program. Program funds would also be available to expand public awareness of coastal issues and gain a better understanding of resource utilization questions that might not otherwise be addressed.

Program approval will also continue New Hampshire's participation in the coastal energy impact program and enable state and local agencies to continue to plan for and deal with the impacts of energy facilities.

2. Federal Consistency

Approval of the New Hampshire management program will have implications for federal agencies conducting activities which affect the coastal zone. The federal consistency provisions of the Coastal Zone Management Act (Section 307) require that direct federal activities and development projects that signifi-cantly affect" the coastal area must be conducted in a manner that is "consistent to the maximum extent practicable" with New Hampshire's approved management program. Also, federally licensed and permitted activities, fed-derally licensed and permitted activities detailed in OCS plans, and federal assistance to state and local governments must be certified by the state as being consistent with the management program before the license, permit, or grant can be approved by the federal agency.

Once a consistency determination has been made, the federal agency is free to decide the application in question. It is important to note that an affirma-tive consistency determination by the state does not guarantee federal approval of the project, license or assistance application. The proposed action may still be rejected on the basis of criteria contained in the National Environ-mental Policy Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, or other national policy statements containing federal criteria which are more stringent than the requirements of the state's management pro-gram. Since in all instances the more stringent environmental regulation will apply, NEPA's objective to administer federal programs in a manner which maintains the quality of the environment is more than adequately fulfilled.

While the federal consistency requirement will place an additional adminis-trative burden upon the state, this new responsibility will enhance the state's ability to manage coastal resources. The consistency process will provide for more coordinated and comprehensive resource management and has the potential to reduce the fragmented, single-purpose, and sometimes conflicting nature of federal activities affecting the coastal area.

3. National Interest

Federal approval of New Hampshire's management program will signify the inclu-sion of an adequate procedure in the management program for considering national interest when siting facilities and protecting resources of greater than local concern. The national interest provisions of the management program indicate a conscious effort on the part of the state to deal with national concerns during program development and implementation.

The National Interest provision has two impacts. It ensures that a state has a process and a program that does not prohibit or exclude any use or activity dependent on the coastal area, and it leads to more deliberate and less frag-mented decision-making concerning the siting of facilities in the coast.

Indirect Effect of Federal Approval

The proposed coastal program is based on established state statutory authorities and regulatory and management programs. Federal approval of the New Hampshire coastal program will not create sudden changes. Rather, state and local government initiatives in coastal management will accelerate under this program. Furthermore, the laws which form the core authority of the coastal program will become more effective and better coordinated. Federal approval is a major step toward improving and preserving New Hampshire coastal amenities and to achieving admin-istrative improvements.

The approval of the New Hampshire Coastal Program is not expected to cause adverse environmental impacts. It has been developed in accordance with the objectives of the federal Coastal Zone Management Act which emphasizes the protection of environmental values.

New Hampshire's program aims towards reconciling the competing demands for environmental protection and economic development. Thus, economic quality and growth are essential if the program is to achieve its objectives. Generally, the program will not add negative socio-economic impacts beyond those currently caused by existing programs. Coastal management will support actions which both conserve valuable natural resources and accomodate the needs of an expanding population and economy. In achieving this balance, some coastal program actions may lead to environmental, economic, or social trade-offs.

To understand the impacts of federal program approval, the probable impact of the New Hampshire Coastal Program on the natural, socio-economic and institutional environment is examined below. Because the coastal program will be implemented over a period of years within a fluctuating economic, social and institutional environment, it is impossible to determine and describe discrete impacts that will result from the implementation of the program. Thus the discussion which follows will highlight impacts in general terms only.

1. Environmental Impacts

Coordinating management of coastal resources in accordance with the New Hamsphire coastal program policies and its core authorities will minimize many of the detrimental effects that may be associated with coastal development. The coastal program policies seek to protect coastal resources and manage the impacts of development on coastal resources.

State natural resource policies protect tidal wetlands, beaches and sand dunes, rocky shores, coastal waters and marine species. The program will improve the capabilities of existing resource management agencies in protecting natural resources where development threatens their value as fish and wildlife habitats, productive ecosystems, natural flood and erosion buffer areas, and public recreation and access areas.

Other state policies manage the impacts of development on coastal resources to further protect and enhance the environmental quality of the coastal area. State policies related to water quality seek to; protect water supply sources; to minimize the risk of oil spills; and to provide effective cleanup procedures. Flood hazard and erosion control policies manage development to minimize the loss of life and property in coastal flooding and erosion areas. Dredge and fill policies seek to protect wetlands and minimize the adverse impacts of channel dredging and dredge spoils disposal activities. State policies on historic resources seek to protect the value of identified historic areas and minimize or mitigate adverse impacts resulting from development in such areas.

Coastal use policies manage such activities as boating, fishing, shoreline structures, ports and harbors, energy facilities, and public investments. These policies manage activities based on; their value as water dependent activities; their impact on coastal resources; and the nature and location of existing development on the coast. Policies related to public investments in water and

sewer lines prohibit such extensions into wetlands and floodplains, except to eliminate existing sources of pollution, and promote concentrated development in areas already served by water and sewer. Policies on water dependent facilities seek to accomodate such uses, but also minimize the adverse impacts of such activities on coastal resources.

Increased coordination of environmental management authorities will ensure more consistent protection of natural resources. Several agency programs, such as wetlands dredge and fill permitting, water quality permitting, saltwater fisheries protection, and state coastal lands management, deal with resource problems which are closely related. Assistance by the New Hampshire Coastal Program with monitoring, administration and agency coordination will create more efficient governmental decisionmaking in coastal resource protection.

Beneficial environmental impacts which can be expected to occur as a result of the integrated management of state coastal policies through program implementation include:

- protection of natural resource areas as fish and wildlife habitats, refuges, productive ecosystems, natural flood and erosion buffer areas;

- protection of water quality and quantity in the coast;

- minimization of loss of life and property due to coastal floods, storms, and erosion;

- maintenance and/or improvement of existing air quality in the coast; and

- concentration of future growth outside sensitive natural resource areas and, where not water dependent development, away from the shoreline.

2. Socio-Economic Impacts

Coastal management requires a balance between: conservation of irreplaceable natural resources; the needs for coastal recreation, public access, waterfront redevelopment, water dependent industry and commerce; and the demand for jobs, housing and shopping which an expanding population and healthy economy put on the coastal area.

To achieve the environmental benefits of coastal management may require shifting social and economic priorities in the coast and may result in trade-offs between public and private coastal actions. While some actions in the coast may result in net gains or losses for the public or for the local economy, it is anticipated that the following socio-economic benefits will result from the coastal program:

- improved recreational access and educational opportunities along the coast;

- increased property values and land transactions;

- increased opportunities for coastal industries and commerce, especially commercial fishing and marine commerce;

- reduced expenditures for construction and maintenance of public investments, particularly flood and erosion control measures, disaster relief expenditures, and public utilities; and

- decreased government expenditures and operating costs for coastal regulatory programs.

Concerning public access and recreation, implementation of the New Hampshire Coastal Program should result in more opportunities for public use and enjoyment of the coastline in a manner which is consistent with sound resource conservation practices and the constitutionally protected rights of private property owners. Recreation policies will encourage the expansion, development, redevelopment and efficient utilization of state owned recreational facilities within the coast. They encourage the retention and expansion of mooring spaces for recreational boating. Maintenance and enhancement of productive estuarine resources will ensure sufficient stock for sport fishing, while protection of other sensitive resources will ensure the availability of areas for open space, scenic enjoyment, and scientific and educational purposes. The program will assist state and local efforts to increase coastal access, particularly parking needs.

Few adverse impacts are foreseen as a result of public access and recreation initiatives of the program. However, designation of access areas may lead to increased use in such areas, which may reduce privacy. Also, overuse of some shoreline areas may degrade the recreational resources and increase public costs to maintain beaches, parks, parking, and other support facilities.

Concerning land values, managing coastal resources in accordance with state coastal policies may enhance the desirability and value of some coastal properties and reduce the value of others. Upland areas within coastal areas that have high development capability and potential may increase in value. Sensitive lands that are subject to development restrictions may undergo an initial decline in value only to increase again over time as all land values continue their upward trend. Future technological innovations could also result in increased land values if the innovations provide for increased levels of development on sensitive resources while still maintaining the basic integrity of the resources.

The economic impact of coastal management may also be felt outside the coastal area. Regulation of coastal resources could reduce overall amounts of new development and growth within the coastal area, and thereby shift development and growth (and possibly adverse impacts associated with growth) to non-coastal areas. Under such circumstances, land values of competitive non-coastal properties could experience an increase in value.

With respect to industry and commerce, the coastal program may provide direct or indirect benefits to major coastal industries, especially the commercial fishing industry . Preservation and restoration of tidal wetlands and estuaries should provide long-term benefits to the commercial fishing and shellfish industry since these productive areas are critical to the food chain and provide spawning, nursery, and feeding grounds for finfish and shellfish. Benefits should also accrue to the fishing industry as a result of dredging policies which emphasize environmentally sound dredging and disposal techniques and policies which encourage and facilitate use of the shorefront for water dependent activities including uses related to commerical and recreational fishing. State policies relative to fisheries also seek to upgrade state facilities serving the commercial fishing industry, and encourage management of the state's fisheries in a manner which ensures sustained productivity and economic viability.

Marine commerce should also benefit from implementation of coastal management. Maintenance dredging, permitted by the coastal policies, may enhance the

capacity of navigational channels to provide for efficient transportation of commercial and recreational waterborne traffic. Marine commerce should also benefit from policies which encourage development, reuse, and redevelopment of existing port, harbor, and developed shorefront for water dependent uses.

New Hampshire's only urban waterfront is ripe for redevelopment opportunities for increased public use and commercial diversity, as well as historic preservation and restoration. Assistance to redevelopment efforts by the coastal program will reduce conflicts over the use of historic properties on the waterfront and increase the attractiveness and use of waterfront properties for residents and tourists. Costs associated with redevelopment of the historic urban waterfront may include overuse and loss of privacy, jeopardizing the character of the waterfront area, increased costs of development due to restricted uses, and limitations on uses to those which are not incompatible with historic waterfront values of the area.

Policies on flood and erosion control may have fiscal impacts. Reliance upon non-structural solutions to flood and erosion control, should lead to reduced public and private expenditures for construction and maintenance of flood and erosion control measures. In addition, policies for coastal hazard areas should also lead to reduced expenditures for protective structures since development in coastal hazard areas is discouraged and consideration of flooding in the planning process is encouraged and facilitated. Adequate planning for coastal hazards should serve to reduce future public expenditures for disaster relief following catastrophic coastal storms.

The reuse and redevelopment of urban shoreline areas encourages more efficient use of existing infrastructure and lowers government expenditures by avoiding costs required to extend public services to undeveloped areas. Transportation policies with their emphasis upon maintenance and improvement of existing highways may have positive cost implications as well. As development is redirected from unsuitable to suitable areas, sewage related water quality problems should decline as should public and private expenditures to correct these problems.

3. Institutional Impacts

In assessing the institutional impacts of the New Hampshire Coastal Program, the following facts warrant consideration. New Hampshire's program has been carefully designed to work through existing regulatory programs, primarily at the state level; no changes in regulatory jurisdiction are required and no new permits will be required. The program incorporates, directly, existing state coastal policies which apply to state agency programs on resource protection, management of development, and public investments.

Implementation of the program will affect the relationships and responsibilities of federal, state, and local governments. Because the coastal program rests on existing laws and rules, cooperation among all levels of government is required if the coastal program is to succeed. Some new insitituional linkages will be forged to more adequately coordinate resource management and integrate state policy decisions: the Office of State Planning will coordinate all levels of government on coastal managements issues and the Council on Resources and Development will coordinate critical state agency actions and management programs in the coast.

Concerning impacts upon federal agencies, as described in the section entitled "Direct Effects of Federal Approval," federal agencies conducting activities directly affecting the coastal area must, to the maximum extent practicable, be consistent with the New Hampshire coastal program. In addition, federal agencies must coordinate their permit and licensing actions with state permit actions or the reviews of appropriate state agencies. The program will use the consistency provisions of the federal CZMA in an positive way and will not add additional organizational layers of review or attempt to block actions, but will try to bring about earlier and more effective consultation with federal agencies.

Generally, existing procedures carried out under OMB Circular A-95 and the National Environmental Policy Act will be enhanced under the New Hampshire Coastal Program consistency processes. However, adjustments to the new consistency processes may cause some temporary delays, but in the long run, coastal related regulatory and management decisions should be made with better coordination among state and federal agencies.

Coastal program impacts upon state agencies should be primarily beneficial. Although changes in state reglatory authorities are not required, improved monitoring, enforcement and administration of state resource management programs and improved coordination among agencies is anticipated. To fully implement state coastal policies and programs, agencies must cooperate and coordinate their activities.

State agency actions under coastal program funding will facilitate coastal resource protection, add predictability and consistency to state coastal permit decisions, coordinate state government activities, plans, and development projects relative to the coastal area, and improve coordination among all levels of government. In fulfilling their responsibilities under the coastal program, state agencies are not expected to incur any significant fiscal impacts. Any staffing burdens will be mitigated by anticipated federal coastal funds.

The Council on Resources and Development is responsible for coordinating state agency actions and resolving conflicts between state agencies in addressing resource management, growth and development issues. By resolution at its October 1, 1981 meeting, the Council affirmed its coordination and conflict resolution role in the coastal program. The Council will serve as an effective institutional mechanism focusing state agency attention on coastal issues, coordinating agency actions and resolving resource conflicts.

The Office of State Planning will coordinate the implementation of the state coastal program with all federal, state and local agencies. OSP will administer federal coastal funding to state and local agencies, as well as, coordinate and monitor implementation of existing state policies through state and federal programs. Together, the Council on Resources and Development and the Office of State Planning will improve coastal management and coordination.

To assess impacts upon local agencies, it should be noted that local participation in the coastal program is voluntary. Therefore, impacts upon municipal regulatory agencies should be non-existant or beneficial. Positive impacts

should include improved local management of coastal resources and development, as a result of financial and technical assistance through the coastal program. Public and local government participation in the activities of the program will continue. A coastal advisory committee will provide communication links between local communities and the state on coastal issues and ensure local participation in decisions effecting the coastal environmental, economic and social resources.

The coastal program will improve management and coordination, and will ensure public participation in coastal decisions. It is anticipated that the overall program costs to coordinate existing authorities, regulations and programs will reduce the long term costs of such operations. More effective administration of natural resource protection measures will yield the following benefits:

- more consistent administration of programs;
- comprehensive rather than single-purpose planning and management;
- reduction or resolution of conflicts between governmental agencies; and
- improvement of public understanding and compliance because of greater predictability, clarity and consistency in public programs.

Possible Conflicts between the Proposed Action and the Objectives of Federal, Regional, State, and Local Land Use Plans, Policies, and Controls for the Area Concerned.

During program development, an extensive program of consultation and coordination was carried out. Government agencies at all levels, coastal interest groups, and the general public were consulted so as to ensure compatibility between the program and existing federal, state, and local land use plans, policies, and controls applicable to the coastal area. (For complete discussion, see Chapter 7, "Public Involvement and Program Coordination").

In addition to the procedures described in Chapter 7, the Office of State Planning maintained membership on the New England-New York Coastal Zone Task Force; established informal working relationships with individuals in the Maine and Massachusetts coastal programs; and was designated as the A-95 clearinghouse. The result of this extensive coordination effort has been to establish the contacts necessary to identify and resolve conflicts between the objectives of the New Hampshire coastal program and the objectives of federal, state, and local regulatory plan and programs.

To ensure adequate coordination during implementation, New Hampshire's coastal program will continue to utilize an advisory committee as a forum for discussion of local concerns. The Council on Resources and Development (CORD), an existing state agency, will ensure coordination and integration of policies and priorities among state agencies involved in coastal areas and concerns. New Hampshire recognizes the need for continued consultation with federal agencies early in the federal deicision-making process, as part of the CZMA requirement that all federal grant programs, permits, detailed permits in OCS plans, and federal development projects affecting the coastal area must be consistent with the state program.

PART VI:

LIST OF AGENCIES, ORGANIZATIONS, AND PERSONS RECEIVING DOCUMENT

PART VI

LIST OF AGENCIES, OR ORGANIZATIONS, AND PERSONS RECEIVING DOCUMENTS

Federal Agencies

Advisory Council on Historic Preservation
Department of Agriculture
Department of Commerce
Department of Defense
Department of Energy
Department of Health & Human Services
Department of Housing & Urban Development
Department of Interior
Department of Justice
Department of Labor
Department of Transportation - U.S. Coast Guard
Environmental Protection Agency
Federal Energy Regulatory Commission
General Services Administration
Marine Mammal Commission
Nuclear Regulatory Commission
Federal Emergency Management Agency

National Interest Groups

American Association of Port Authorities
American Bar Association
American Bureau of Shipping
American Fisheries Society
American Gas Association
American Hotel and Motel Association
American Industrial Development Council
American Institute of Architects
American Institute of Merchant Shipping
American Institute of Planners
American Littoral Society
American Mining Congress
American Oceanic Organization
American Petroleum Institute
American Planners Association
American Shore and Beach Preservation Association
American Society of Civil Engineers
American Society of Landscape Architects, Inc.
American Water Resources Association
American Waterways Operators
Amoco Production Company
Ashland Oil, Inc.
Association of Oil Pipe Lines
Atlantic Coast Shellfish Council
Atlantic Richfield Company
Atlantic States Marine Fisheries Commission
Barrier Islands Coalition
Boating Industry Association
Center for Law and Social Policy
Center for Natural Areas
Center for Urban Affairs
Center for Urban and Regional Resources
Chamber of Commerce of the United States
Chevron U.S.A., Inc.
Cities Service Company
City Service Oil Company
Coastal States Organization
Conservation Foundation
Continental Oil Company
Council of State Governments
Council of State Planning Agencies
The Cousteau Society
Environmental Policy Center
Environmental Defense Fund, Inc.
Environmental Law Institute
EXXON Company, U.S.A.
Friends of the Earth
Getty Oil Company
Gulf Energy and Minerals, U.S.
Gulf Oil Company
Gulf Refining Company
Gulf South Atlantic Fisheries Development Foundation
Independent Petroleum Association of America
Industrial Union of Marine & Shipbuilding Workers of America
Institute for the Human Environment
Institute for Marine Studies
Interstate Natural Gas Association of America
Izaak Walton League
League of Conservation Voters
League of Women Voters Education Fund
Marathon Oil Company
Marine Technology Society
Mobil Oil Corporation
Mobil Exploration & Producing, Inc.
Murphy Oil Company
National Association of Conservation Districts
National Association of Counties
National Association of Engine & Boat Manufacturers
National Association of Realtors
National Association of State Boating Law Administrators
National Association of State Park Directors
National Audubon Society
National Boating Federation
National Coalition For Marine Conservation, Inc.
National Commission on Marine Policy
National Conference of State Legislatures
National Environmental Development Association
New England Governor's Conference
New England/New York Coastal Zone Task Force
New England Regional Fisheries Management Council
Rice University Center for Community Design and Dev.
Shell Oil Company
Shellfish Institute of North America
Shipbuilders Council of America

National Interest Groups (cont.)

Sierra Club
Skelly Oil Company
Southern California Gas Company
Sport Fishing Institute
Standard Oil Company of Ohio
Sun Company, Inc.
Tenneco Oil Company
Texaco, Inc.
Union Oil Company of California
U.S. Conference of Mayors
Water Pollution Control Federation
Water Transport Association
Western Oil and Gas Association
Wildlife Management Institute
The Wildlife Society
World Dredging Association

Congressional

Honorable Gordon Humphrey
Honorable Warren Rudman
Honorable Norman D'Amours
Honorable Judd Gregg

State Officials and Agencies

Governor Hugh J. Gallen
Councilor Dudley W. Dudley
Senator Robert F. Preston
Senator James R. Splaine
Representative Charles H. Felch, Sr.
Representative Daniel Gretsch
Representative Beverly Hollingworth
Representative Ednapearl F. Parr
Representative Roberta C. Pevear
Representative John R. Walker
Representative Louisa K. Woodman
Representative William P. Cahill
Representative Franklin G. Wolfsen
Representative John L. Appel, Jr.
Representative Elizabeth A. Greene
Representative Richard S. Lockhart
Representative Lea Aeschliman
Representative Clayton F. Osborn
Representative John W. Camuso
Representative John E. Splaine
Representative Mary E. Cotton
Representative John W. Hynes
Representative Joseph A. MacDonald
Representative Thomas P. Connors, Sr.
Representative Jack LoFranco
Representative Elaine S. Krasker
Representative Christopher W. Wood
Representative Laura Pantelakos
Representative Robert P. Read, Jr.
Representative Arnold Wight, Jr.
Senator Robert Monier
Senator George Wiggins
Senator George E. Freese, Jr.
Senator Vance R. Kelly
Senator Leo Lessard

Environmental Groups

Association of Conservation Commissions
New Hampshire Audubon Society
New Hampshire Audubon Society, Seacoast Chapter
Clamshell Alliance
Seacoast Anti-Pollution League
Environmental Coalition
Society for the Protection of New Hampshire Forests

Public Interest Groups

League of Women Voters of New Hampshire
League of Women Voters, Portsmouth Chapter
League of Women Voters, Exeter Chapter
Center on New Hampshire's Future
New Hampshire Municipal Association

Private Sector

American Society of Civil Engineers, N.H. Section
Atlantic Terminal Company Petroleum, Inc.
Business and Industry Association
Coastal Chamber of Commerce
Dorchester Sea-3 Products, Inc.
Granite State Minerals, Inc.
National Gypsum Company
New Hampshire Charterboat Operators
New Hampshire Commercial Fisherman's Association
New Hampshire Petroleum Council
News Media
Northeast Petroleum Corp. of N.H.
Portsmouth Chamber of Commerce
Portsmouth Fisherman's Cooperative
Portsmouth Harbor Oil Spill Committee
Portsmouth Navigation
Propeller Club of the U.S., Portsmouth
Public Service Company of New Hampshire
Seacoast Realtors Association
Sprague Energy
Viking Queen Cruises

Libraries, Universities, Colleges

State Library
Lane Memorial Library, Hampton
Hampton Falls Public Library
New Castle Public Library
Portsmouth Public Library
North Hampton Public Library
Rye Public Library
Brown Library, Seabrook
Dimond Library, UNH
University of New Hampshire Sea Grant Program
UNH Marine Program
Jackson Estuarine Laboratory, UNH
UNH Cooperative Extension Service
University of Maine Sea Grant Program
University of Maine, Marine Law Center
Keene State College
Plymouth State College
St. Anselm College

State Agencies

Department of Agriculture
Department of Education
Fish and Game Department
Department of Public Works and Highways
Water Supply and Pollution Control Commission
Water Resources Board/Wetlands Board
Department of Resources and Economic Development (DRED)
Division of Economic Development, DRED
Division of Forests and Lands, DRED
Division of Parks, DRED
Port Authority
Public Utilities Commission
Aeronautics Commission
Air Resources Agency
Bureau of Solid Waste
Civil Defense Agency
Council on Energy
Attorney General
Governor's Office Staff
Soil Conservation Service
Other State Coastal Programs

Local and Regional Governments

Affected Municipalities (Boards of Selectmen, Mayors and Councils, Planning Boards and Departments, and Conservation Commissions)
- Hampton
- Hampton Falls
- New Castle
- North Hampton
- Portsmouth
- Rye
- Seabrook

Board of Rockingham County Commissioners
Strafford-Rockingham Regional Planning Commission
Southeastern New Hampshire Regional Planning Commissions
Strafford Regional Planning Commission

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Malcom Chase
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PART VII

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