

FEDERAL COORDINATION



CASCO BAY PLAN

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Coordinating with Federal Programs

Federal Consistency Review

The *Casco Bay Plan* will require extensive coordination among local, state, and federal programs. The federal consistency process can further this coordination by allowing state and local governments to review federal assistance programs to ensure they are consistent with state and local actions.

Many federal programs entail such a review process, including the National Estuary Program, the Coastal Zone Management Act, and the nonpoint-source program. In addition, a government-wide consistency requirement was established in 1982, creating a centralized process by which state and local governments comment on certain applications for federal assistance before they are implemented. The federal government must either resolve the issues raised or explain why they did not.

Consistency review provides two benefits to the Casco Bay Estuary Project. First, it ensures that federal agencies will not promote or conduct activities that are inconsistent with the goals, objectives, and actions of the *Casco Bay Plan*. Second, the review enables the Casco Bay Estuary Project to work to ensure federal programs in Maine support implementation of the *Casco Bay Plan* and to gather appropriate data on activities.

The consistency review process is not regulatory and the following strategy was selected because it presents the least intrusive alternative to meet the statutory requirements under Section 320 of the Clean Water Act.

Conducting Federal Consistency Reviews

The Federal Office of Management and Budget lists almost 500 programs that states can review, and Maine has chosen to re-

view all the eligible programs. The Maine State Planning Office coordinates this review, sending out a monthly summary of federal grants and actions to state and local government agencies, and forwarding comments to the appropriate federal agency.

Under Section 320 of the Clean Water Act, National Estuary Projects must conduct a consistency review. Estuary projects review any program appearing in the Catalog of Federal Domestic Assistance, which lists 1,370 federal programs administered by 52 agencies.

For the Casco Bay Estuary Project, this review entails two parts:

- A one-time review to identify and attempt to resolve possible inconsistencies between *Casco Bay Plan* goals and objectives and existing federal or federally assisted programs
- Development of a procedure for identifying and resolving inconsistencies between the *Casco Bay Plan* and future federal activities

Meeting Consistency Review Requirements

The initial survey of programs in the category of domestic assistance identified 72 programs that could be inconsistent with the *Casco Bay Plan* (see Table 10-1). When the 72 programs were reviewed to determine if they were consistent with the goals, objectives, and actions of the *Casco Bay Plan*, no inconsistencies were found. This is not surprising given the cooperative approach taken by the Casco Bay Estuary Project, which ensured that the *Plan* was developed with and reviewed by many agencies responsible for these programs. In fact, numerous federal programs could potentially support the goals, objectives, and actions of the *Plan*; therefore, successful implementation will depend on coordinating with the agencies that administer these programs.

To ensure that the federal programs remain consistent with the *Casco Bay Plan*, an ongoing review process must be established. The Casco Bay Estuary Project will request that the Maine State Planning Office send the monthly summary of federal activities to the staff member, who will review these reports and respond with comments. Staff will also contact federal agencies that might support implementing the *Plan*.

Of these 72 programs, six are not part of the state review process and will be treated under a separate review process. Five of them are U.S. Department of Agriculture programs supporting farmers and landowners. To ensure consistency with the five U.S. Department of Agriculture programs, the Casco Bay Estuary Project will coordinate directly with the local office of the Natural Resource Conservation Service and Consolidated Farm Services and review its annual work plan. This process, which continues the coordination that occurred during development of the *Casco Bay Plan*, will be formalized in a Memorandum of Agreement between the Casco Bay Estuary Project and federal Natural Resource Conservation Service and Consolidated Farm Services offices in Maine. Federal consistency will continue to be coordinated by the Maine State Plan-

ning Office.

The sixth program is the U.S. Environmental Protection Agency's construction grants program that historically funded municipal wastewater treatment plants. Since Congress is no longer funding this program, it does not require a separate review mechanism. If Congress again provides grants to communities under this authority, a review mechanism would need to be established.

The Casco Bay Plan and the Maine Coastal Program

Like the National Estuary Program, the Coastal Zone Management Act has a federal consistency requirement. Federal actions occurring in or affecting the coastal zone must be consistent with the enforceable policies of a state's coastal zone management program. In 1978, Maine established a coastal program and therefore has the authority to perform consistency reviews. In 1988, the National Oceanic and Atmospheric Administration and U.S. Environmental Protection Agency signed a memorandum of understanding outlining the expected relationship between the National Estuary Program and the Coastal Zone Management Program. Two parts of this document affect the relationship between the *Casco Bay Plan* and the Maine Coastal Program. The first is that the *Casco Bay Plan* will be submitted to the coastal program for a consistency review; the second is that the *Plan* should become part of the state's coastal program.

The *Casco Bay Plan* will be submitted to the Maine Coastal Program for a voluntary review. (Because the *Plan* is not considered a direct federal action, it does not require this review; however, actions taken by federal agencies to implement the *Plan* could be direct actions and would require review.) Since the Maine State Planning Office is represented on the Casco Bay Estuary Project Management Committee, it has already worked closely with Casco Bay staff to develop the *Plan*. The *Casco Bay Plan* will be incorporated into the Maine Coastal Program. This will help ensure institutional permanence for the *Plan* and support from federal coastal zone management to support implementation of the actions.

The *Casco Bay Plan* can be incorporated into the Maine Coastal Program by including the goals and objectives of the *Plan* as advisory policies to the Coastal Program. Since they do not affect the enforceable policies or constitute a significant change to the Maine Coastal Program, they will not require formal amendment of the program.

By incorporating the goals and objectives of the *Casco Bay Plan* into the Maine

Coastal Program, the Maine State Planning Office would ensure that the *Plan* is incorporated into existing coastal protection efforts.

Endangered Species Act and National Historic Preservation Act Reviews

National Historic Preservation Act

Pursuant to Section 106 of the National Historic Preservation Act, U.S. Environmental Protection Agency Region I has had discussions with the Maine State Historic Preservation Officer, whose functions fall under the jurisdiction of the Maine Historic Preservation Commission. Under Section 106 of the National Historic Preservation Act, federal agencies must take into account the effects of proposed federal or federally assisted undertakings on historic properties included in, or eligible for inclusion in, the National Register of Historic Places. The National Historic Preservation Act and its implementing regulations (36 CFR Part 800) also generally provide for the federal agency or its designee to consult with the State Historic Preservation Office and, as applicable, with the Advisory Council on Historic Preservation on such undertakings. In addition, applicable state historic preservation laws and regulations must be complied with.

The U.S. Environmental Protection Agency believes that due to the nature of the activities contemplated under the *Casco Bay Plan* (i.e., public education, technical assistance, regulatory/enforcement, planning and assessment, and monitoring actions), the *Plan* will have no effect on historic properties within its scope. The State Historic Preservation Office shares this view.

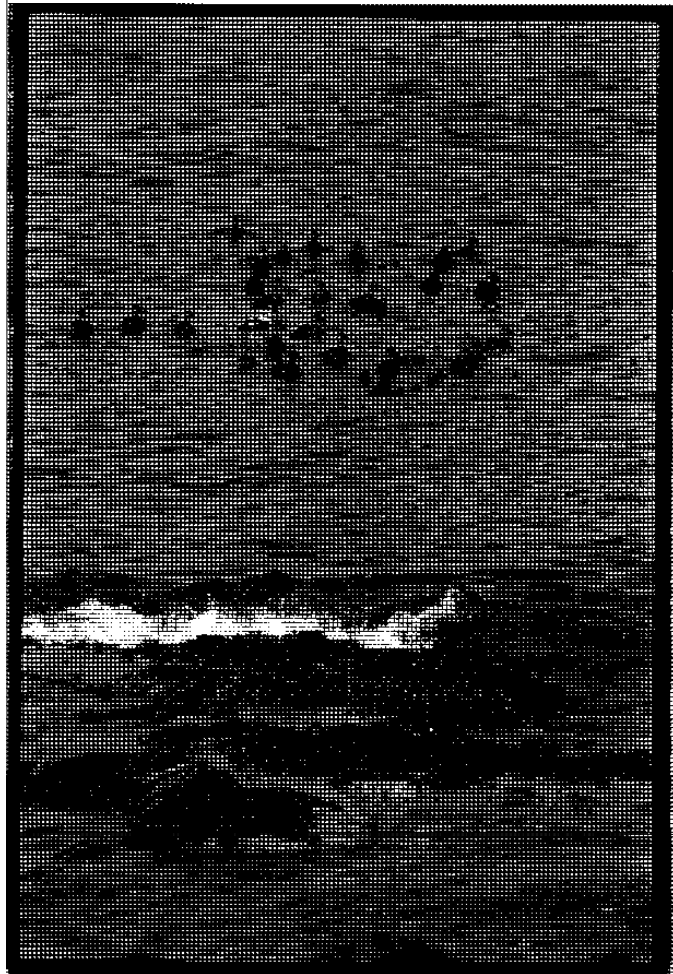
Insofar as project implementation activities are concerned, it shall be the policy of the *Casco Bay Plan* that, if any federal agency implements, funds, or approves actions contemplated under this *Plan*, it shall, in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, notify the State Historic Preservation Office. In addition, if any such activities would result in effects on historic properties under this *Plan*, the federal agency shall complete Section 106 consultation prior to initiating the activity. Moreover, all entities implementing activities under the *Plan* must satisfy any applicable requirements to consult with the State Historic Preservation Office under state law.

Endangered Species Act

In addition to working with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the development of the *Plan*, the U.S. Environmental Protection Agency has also sought information from U.S. Fish and

Wildlife and National Marine Fisheries Service regarding the presence of federally listed threatened or endangered species in the vicinity of Casco Bay. National Marine Fisheries Service has responded that the endangered shortnose sturgeon is present in the estuarine complex of the Sheepscot, Kennebec, and Androscoggin rivers. The U.S. Fish and Wildlife Service has responded that the endangered roseate tern, the threatened bald eagle, and the threatened piping plover are present in the vicinity of the bay. The presence of these species is also discussed in Chapter 4 of this *Plan*.

Pursuant to Section 7 of the Endangered Species Act, if any federal agency authorizes, funds, or carries out an action contemplated by the *Plan* that may affect federally listed threatened or endangered species (or the designated critical habitat of such species), the federal agency must consult with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service to ensure appropriate protections are in place. In addition, federal agencies must “conference” with the Services, as appropriate under Section 7, to ensure federal activities consider potential jeopardy to species that have been proposed for listing under the Endangered Species Act but whose listing has not yet been finalized.



**Programs Potentially Inconsistent with the
Casco Bay Plan**

Table 10-1

NOTES

