

**A REVIEW OF THE EFFECTIVENESS OF THE  
MAINE COASTAL PLAN IN MEETING THE  
STATE'S PUBLIC ACCESS AND WORKING WATERFRONT  
POLICY GOALS**

A Report from the  
Land and Water Resources Council

to the  
Joint Standing Committee on Marine Resources  
and  
Joint Standing Committee on Natural Resources  
of the  
121<sup>st</sup> Maine Legislature,  
First Regular Session

Maine State Planning Office  
December 2002

# EXECUTIVE SUMMARY

## Introduction

Legislation passed by the 120<sup>th</sup> Legislature (PL2001 c.595) directed the Land and Water Resources Council (LWRC) to review the effectiveness of the State's approved Coastal Management Plan in meeting the State's public access and working waterfront policy goals as established in the Maine Revised Statutes. In conducting this review, the Council was directed to (1) "explore state and local jurisdiction and authority", (2) consider the "development of incentives for municipalities to improve coastal access", (3) consider the "development of incentives for municipalities to conserve working waterfront lands for water-dependent uses", and (4) discuss the "development of performance indicators to allow for ongoing measurement of progress".

## Findings

1. The State's Coastal Plan is implemented through a well-established program, the Maine Coastal Program at the State Planning Office. Implementation of the Coastal Plan is carried out by a network of participating state agencies and other partners through laws and regulations, partnerships and funding assistance. The Coastal Program's efforts to conserve public access and working waterfronts are dependent on cooperative relationships with state and federal agencies, regional organizations, municipalities, and various non-profit groups and organizations. Most importantly, however, the success of the Maine Coastal Program in meeting state access and waterfront policy goals depends on sound state/municipal relationships, and a balancing of state objectives with the particular needs of Maine's coastal communities.
2. Municipal efforts to protect, enhance, and improve public access to the coast are supported by the Coastal Program and partner agencies through a variety of outreach efforts, educational programs, technical assistance services and materials, and grants and other financial assistance. The LWRC finds that implementation of the Maine Coastal Plan should be further strengthened and targeted to help municipalities address public access and working waterfront issues. More vigorous implementation of the current Coastal Program strategies is needed and should be provided through public information and educational programs and materials, municipal outreach efforts to encourage good projects, coordination of access programs, grants, and financial assistance to support local projects. Additional targeting of state efforts, linked with municipal comprehensive planning or waterfront/harbor planning processes, will increase the effectiveness of the coastal program at the municipal level.
3. The Council finds that the major issue (within the control of state and local governments) confronting commercial fishermen and water-dependent users is the problem of rising property taxes that increase the financial difficulty of retaining and maintaining working waterfront facilities. This is a critical issue that needs to be

addressed by the Maine Legislature, and should be included as an important element of any discussion of property tax reforms. This is an issue outside the purview of the State's Coastal Management Program, but critical to the future of Maine's working waterfronts.

4. The threat of loss of access for commercial fisheries is a widespread and persistent problem, driven by broad economic and demographic influences related to development pressures that increase the competition for choice waterfront property. The loss of commercial access takes several forms, and varies from community to community, which adds to the complexity of tracking changes and formulating effective public policy. Coastal fishing communities are well aware of the problem, generally expecting it to worsen, and are working to combat the trends, while accommodating a variety of community needs.
5. Coastal communities are vitally interested in learning more about the tools and techniques that can be used to help maintain and enhance their working waterfronts. Effective responses at the local level may include municipal ownership of existing facilities, support for commercial businesses providing commercial fishing services, and appropriate support for owners of private facilities used by commercial fishermen.
6. Coastal fishing communities have a variety of needs in maintaining and enhancing their working waterfronts. Needs that range from repair and upkeep of marine facilities, to managing waterfront activities, to expanding existing facilities and providing new sites and facilities. Municipalities have come to depend on the State's Small Harbor Improvement Program (SHIP) and other grant programs to help provide crucial financial support for local projects.
7. Incentives to help municipalities meet state policy goals are best provided in the form of technical and financial assistance that helps communities respond to access problems and needs at the local level where actions can be crafted to fit local conditions.
8. Availability of data on the coast-wide status and trends in commercial fishing facilities and usage continues to be problematic, but improvements in the way information is collected are planned by the newly formed interagency Coastal Water Access Working Group.

## **Recommendations**

A series of recommendations for improving and expanding the Maine Coastal Program to improve coastal access to assure the viability of working waterfronts is presented in this report to the Legislature.

1. Create a new **working waterfront initiative at the Maine Coastal Program** to provide better support for municipal waterfront conservation and infrastructure development. This initiative should including the following components:

- An **information and education program for municipalities** including workshops and website resources on: harnessing public and private waterfront investment; accessing grant programs; using tools like Tax Increment Financing (TIF); transfer of development rights (TDR), cooperative ownership, and revolving loan funds; and using community planning to achieve waterfront development goals.
  - A **new delivery system for municipal technical assistance** using field-based staff from other organizations such as the University of Maine Sea Grant Marine Extension Team (along with other partners). Field staff would be trained to assist coastal communities with issues concerning land use planning, environmental protection and management, coastal access, recreational tourism, and use conflicts.
  - **Proactive support for local (water access) project development.** Working in close cooperation with the Land for Maine's Future staff, and other state and federal funding programs, provide a single point of contact at the Maine Coastal Program for coastal towns to obtain information on the boating access fund and other opportunities for recreational and commercial access projects.
2. Use the newly formed, interagency **Coastal Water Access Working Group** to improve the coordination of state investment programs for water access and coastal infrastructure.
- Integrate grant programs and other sources of financial assistance for municipal projects to **develop multi-use sites** that serve a range of coastal needs.
  - Charge the Coastal Water Access Working Group with the task of **documenting the health of working waterfronts and tracking changes** over time.
3. Provide financial and in-kind staff support (federal Coastal Zone Management funds and staff) for the **development of new ideas** for waterfront investment and conservation.
- Along with a coalition of interested parties, support the work of Coastal Enterprises Inc. to **expand the Portland Working Waterfront Loan Program** to additional harbors along the coast.
  - **Support the formation of a new non-profit corporation, a *Commercial Fishing Heritage Trust***, charged with purchasing development rights on key waterfront parcels to assure continued use of the land for commercial fisheries and water-dependent uses.

In addition to the recommendations suggested above concerning the modification of programs administered through the Maine Coastal Program, the Land and Water Resources Council also recommended other public policy responses to address the problems associated with diminishing access for water-dependent uses.

- The tax burden on coastal property and on waterfront land is a critical issue that negatively impacts the ability to sustain waterfront businesses and results in displacement of fishermen and other long-time coastal residents from waterfront lands. This issue that needs to be addressed by the Maine Legislature, and should be included as an important element of any discussion of property tax reforms.
  
- A coalition of political leaders, commercial fishing interests, municipalities, and others concerned with finding effective solutions to preserve and enhance working waterfronts should be encouraged to form a working waterfront group to work on creating effective public and private sector actions.

# A REVIEW OF THE EFFECTIVENESS OF THE MAINE COASTAL PLAN IN MEETING THE STATE'S PUBLIC ACCESS AND WORKING WATERFRONT POLICY GOALS

## I. Introduction

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Legislation passed by the 120<sup>th</sup> Legislature (PL2001 c.595) directed the Land and Water Resources Council<sup>1</sup> (LWRC) to review the effectiveness of the State's approved coastal management plan in meeting the State's public access and working waterfront policy goals as established in the Maine Revised Statutes. In conducting this review, the Council was specifically directed to (1) "explore state and local jurisdiction and authority", (2) consider the "development of incentives for municipalities to improve coastal access", (3) consider the "development of incentives for municipalities to conserve working waterfront lands for water dependent uses", and (4) discuss the "development of performance indicators to allow for ongoing measurement of progress". This document fulfills the obligation of the LWRC to report back to the Legislature by December 15, 2002 on its findings and recommendations. No new legislation is being introduced or recommended as part of this report.

In evaluating working waterfront and public access efforts, the Council considered two areas of state policy and related programs that are often interrelated, but tend to be treated separately in government programs. "Public access" can refer to a wide variety of public access needs to coastal resources for scenic, conservation, recreational, and boating purposes. Since the impetus for this report grew from a broad concern for the loss of access to waterfront lands and conversion of facilities required for commercial fishing, greater emphasis in the report is placed on issues related to commercial water access.

## II. Background

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The charge to review the effectiveness of the state's coastal plan is a direct outcome of a 2001 Legislative study committee that explored the loss of commercial waterfront access and other economic development issues affecting commercial fishing. This committee's report<sup>2</sup> was delivered to the Legislature in December of 2001, and included an extensive list of

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<sup>1</sup> The Maine Legislature established the Council in 1993 to advise the Governor, the Legislature, and State agencies in the formulation of State policy regarding natural resources management to achieve State environmental, social, and economic objectives. The Legislature has conferred on the Council, originally established by Executive Order, broad authority to consider natural resources issues of statewide significance and to counsel the Governor and Legislature on policy options for management and protection of natural resources. See 5 M.R.S.A. §3331, sub-§2.

<sup>2</sup> *Final Report of the Committee to Study the Loss of Commercial Fishing Waterfront Access and Other Economic Development Issues Affecting Commercial Fishing*, December 2001. Can also be downloaded from the web at <http://www.maine.gov/legis/opla/comfish.PDF>

potential actions and activities that could be undertaken to protect and enhance commercial fisheries.

During its tenure, the Legislative study committee documented an array of state requirements, guidance, policy direction, model programs, funding assistance, and incentives managed by several state agencies intended to affect the preservation of working waterfronts and provision of public access. Yet due to the complexities of land valuation and property taxation, gentrification along some waterfronts, development pressure, market prices for waterfront lands, decline in fisheries, difficulty in maintaining waterfront infrastructure, and other factors, state programs seemed to not be resulting in success on the ground.

The Legislative directive acknowledged that Maine's Coastal Plan is implemented by the Maine Coastal Program (at the State Planning Office) through a variety of partnerships and shared authority with local municipalities, and that much of the success in meeting coastwide public policy goals ultimately depends on the quality of municipal decision-making. Thus, the Legislature asked the Council to explore whether the existing balance of state and local jurisdiction and authority, particularly in the area of land use authority, was adequate to achieve state policy goals. Understanding that additional state regulations are not always the best approach to achieving success at the local level, the Legislature also asked the Council to consider ways to encourage or provide incentives to municipalities to help them improve coastal access and conserve working waterfronts lands for water-dependent uses.

Lastly, the Legislature recognized the need for additional data to measure development trends along the coastline and to better measure the success of the Coastal Plan in fulfilling the State's policy goals and directed the Council to look at the development of performance indicators. With multiple state agencies responsible for various programs intended to affect the provision of coastal access and conservation of working waterfronts, joint performance indicators could help managers refine programs and direct public resources for optimum results.

In general, this evaluation by the LWRC was intended to provide more specific information about additional ways that state programs could more effectively increase the amount of coastal access available to the public and to effectively preserve the extent and nature of Maine's working waterfronts.

### **III. Methodology**

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The development of this report involved two phases described below:

**Phase 1** – Since the success of efforts to conserve working waterfronts and provide public access is largely dependent on municipal efforts, a field survey of coastal communities was commissioned. The Maine Coastal Program (MCP) at the State Planning Office (SPO) engaged the services of Coastal Enterprises Inc. (CEI), a non-profit economic development corporation headquartered in Wiscasset, Maine, to conduct a survey of coastal fishing

communities in Maine.<sup>3</sup> The 25 communities chosen for the survey were considered to be representative of the array of commercial fishing centers found along the coast from Kittery to Eastport. The purposes of the survey were to: (1) document the status of working waterfronts and the present and future threats of change or loss; (2) identify municipal and technical needs for dealing with problems; and (3) make recommendations regarding the best ways of monitoring changes and trends in the future. The study was conducted by interviewing knowledgeable people in each selected community.

**Phase 2** – The findings of the CEI report were used to inform the next part of the analysis, a determination of the effectiveness of the implementation of the Coastal Plan. In the absence of established performance indicators, the LWRC’s evaluation was based a review of certain key interim (or output) measures of the program’s effectiveness. While output measures are not direct measures of increased waterfront access or increased conservation of miles of working waterfront shoreline, they are a valid measure of the program’s efforts towards these outcomes. An “effectiveness rating” (a “✓” for “effective”, and a “✓-“ for “improvement needed”) was established for each of the following criteria listed below. Where needed, suggestions were made to increase program effectiveness.

- Availability of data to track problems and measure success along the waterfront
- Effectiveness of inter-agency coordination for water access
- Staffing available for liaison with towns on water access projects
- Funding available and funding secured for local coastal access projects
- Effectiveness of local comprehensive planning and local land use regulations in conserving working waterfronts
- Availability of technical assistance to towns for community planning. Quality and availability of guidance, educational materials and programs for waterfront conservation
- Regulatory environment for working waterfronts

The determination of the effectiveness of the program and the recommendations for improved programming were developed through MCP/SPO staff discussions with other agencies, program partners, and towns, and meetings with the Land and Water Resources Council. Additionally, feedback was sought from a small advisory group convened by Coastal Enterprises, Inc. A list of advisory committee members is included in Appendix C of this report.

## **IV. Findings**

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These findings are presented in two parts. The first part provides an overview of the results of the field survey of fishing communities. The full results of the CEI survey are included in Appendix A. The second part presents findings related to the effectiveness of the Maine Coastal Program.

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<sup>3</sup> *Preserving Commercial Fishing Access: A Study of Working Waterfronts in 25 Maine Communities*. Can also be downloaded from the web at [http://www.maine.gov/mcp/online\\_resources/ftp.html](http://www.maine.gov/mcp/online_resources/ftp.html)



## **1. Field Survey of Working Waterfronts in 25 Maine Towns**

### **a. Ownership of commercial access areas**

Commercial fishing access in Maine is provided in a variety of ways – at publicly owned facilities, privately-owned commercial piers and through arrangements at other privately-owned wharves. Sites that are publicly owned are the most protected from conversion to non water-dependent uses, yet only 25% of commercial fishing access in the towns surveyed is provided at publicly owned facilities (municipal piers, fish piers, and public boat ramps). Seventy-five percent (75%) of commercial access occurs at privately-owned facilities, thirty-five percent (35%) of commercial access is provided by privately-owned businesses (cooperatives, commercial piers, etc.), and forty percent (40%) of commercial access via other is private property, where the property owner makes access available to other fishermen by lease or other arrangement.

In 2002 at the time of the field survey, there were 11,462 berthing spaces, mooring, slips, and tie-ups available in the harbors of the 25 towns surveyed. Of this number, 42% were used by commercial boats and 58% by recreational boats. For individual towns the percentage of commercial vs. recreational use varies. In the majority of the surveyed towns (15 out of 25) there were more recreational boats than commercial boats. In 10 of the 25 towns, commercial fishing boats comprised 50% of the boats in the harbor.

### **b. Status of commercial access**

Sixty-four percent (64%) of the 25 towns surveyed indicated that commercial fishing access is a problem now, and 80% of the towns surveyed are planning to address this issue. The loss of commercial fishing access is due to many factors, which adds to the complexity of tracking changes and formulating effective public policy. The survey identified a number of ways that commercial access is diminishing:

- ❖ Landowners have posted and closed off private lands and contested the public rights to access traditionally used walkways. This type of loss has impacted clam and worm diggers.
- ❖ Fishermen rely on often-tenuous lease or use arrangements with private pier and wharf owners.
- ❖ Fishermen often compete for use of public facilities, especially those with limited parking and equipment storage space.
- ❖ Working wharves have been converted to “more desirable” residential and recreational uses or to other commercial uses.

### **c. Anticipated trends in the availability of commercial access**

Threats to established commercial access facilities and sites are real, persistent, and pervasive. The surveyed communities identified a list of problems:

- ❖ There is intense development pressure to convert waterfront lands and facilities for non-water dependent uses.
- ❖ As fishing families sell waterfront facilities, more commercial operators use public piers, increasing pressure on these facilities.
- ❖ The use of public wharves must balance and serve both commercial and recreational use, which can lead to conflicts.
- ❖ Limited parking, combined with increased use by tourists, can intensify potential conflicts.
- ❖ In some areas with heavy recreational boating use, only limited numbers of moorings are available.
- ❖ Boats are getting larger (both commercial and recreational), and these vessels require more berthing and mooring space.
- ❖ Coastal towns face increased costs for legal challenges over access rights.
- ❖ Sales of higher value properties trigger revaluation of all properties which often leads to higher taxes on waterfront land.
- ❖ Wharves require costly upkeep; the struggle to keep pace with maintenance is often a challenge to running a viable business operation.
- ❖ Individual fishermen often cannot afford inflated market price for waterfront property to retain it in commercial use. Municipalities cannot find affordable waterfront properties to create additional public use areas.

#### **d. Vulnerability rating for communities surveyed**

A vulnerability index was constructed to indicate the municipalities' susceptibility to change and loss of commercial fishing access on the communities' working waterfronts. The index postulates that towns with the following characteristics are less vulnerable to losing access sites and facilities:

- ❖ Commercial fishing access is a priority among town officials,
- ❖ Strong ordinances & regulations are in place to protect waterfronts from conversion to non water-dependent uses,
- ❖ Less than average development pressure exists, as measured by population and housing increases, lower tax values per acre, and lower tax cost per acre,
- ❖ A dedicated fish pier exists for commercial use,
- ❖ A significant number of community members are employed in the fishing industry.
- ❖ Eight communities out of the 25 are considered highly vulnerable to conversion of water-dependent uses, twelve communities are considered moderately vulnerable and five towns are considered to less vulnerable to property conversions.

**e. Needs expressed by municipalities surveyed**

The surveyed communities consistently identified property tax relief, availability of funding, and planning assistance as the top actions needed to help relieve pressures on working waterfronts.

**2. Effectiveness of the Maine Coastal Plan in Achieving State Policy Goals**

The Maine Coastal Plan guides a variety of activities in Maine’s coastal zone aimed at fulfilling the State’s coastal policy goals, including the improvement of public access to the coast and the maintenance and enhancement of working waterfronts.

The Coastal Plan is implemented through a well established program, the Maine Coastal Program (housed in the State Planning Office). This “networked program” relies on relationships with state and federal agencies, regional organizations, municipalities, and various groups and organizations. The effectiveness of the Coastal Plan in achieving coastal access policy goals depends in great measure on these working relationships.

As described in the section of methodology, the following aspects of the program’s effectiveness are discussed in this evaluation, and an “effectiveness rating” and suggestions for improvement are provided:

- Availability of data to track problems and measure success along the waterfront
- Effectiveness of inter-agency coordination for water access
- Staffing available for liaison with towns on water access projects
- Funding available and funding secured for local coastal access projects
- Effectiveness of local comprehensive planning and local land use regulations in conserving working waterfronts
- Availability of technical assistance to towns for community planning
- Quality and availability of guidance, educational materials and programs for waterfront conservation
- Regulatory environment for working waterfronts

 **a. Availability of data to track problems and measure success along the waterfront**

The ability of agencies to measure the success (over time) of public programs and policies aimed at conserving working waterfronts is hampered by a continued lack of comprehensive, comparable data on coast-wide status and trends in the number of commercial access facilities and their use. Existing inventories of coastal facilities sponsored by the Maine Department of Transportation provide good information about the existence of marine facilities and changes over time, but they do not provide a complete picture of the use of facilities for commercial fisheries.

*Measures to Improve Effectiveness –*

- Institute Regular Reporting on Progress in Meeting Access Goals. In 2002, the Maine Legislature directed the State Planning Office and the Maine Department of Marine Resources to establish and provide staff support to an interagency Coastal Water Access Working Group, for the purposes of addressing data needs, coordinating water access programs, and reporting to the Legislature on the status of coastal water access. The establishment of the Coastal Water Access Working Group provides an opportunity to update and refine coastal facility and commercial access use data, and provides a mechanism to report on the status of working waterfronts to the Legislature and public.
- Include Additional Parameters in Inventories of Marine Facilities. CEI recommends tracking the number of berthing, mooring, slips, and tie-ups available in harbors, and determining the percentage of use by commercial vs. recreational boats. To track how water access is provided for commercial fishermen, CEI recommends tracking the amount of access provided by public facilities, that provided by commercial facilities and access provided at other privately-owned (frequently residential) facilities. The interagency Water Access Group discussed above will update the coastal facilities inventory, adding new data categories that will provide a measure of change in commercial and recreational capacity and usage over time.
- Increase Communication with Harbormasters. Harbormasters have the most up to date and detailed knowledge about the community waterfronts. Opportunities for interaction for Harbormasters are available through the Maine Association of Harbormasters and their annual meeting.
- Establish Formal Performance Measures for Coastal Access and Conservation of Working Waterfronts. NOAA is currently developing a framework for result-based management using performance indicators. This framework will be an effective tool to help provide information on local, regional, and national trends and issues affecting the coast. It will assist coastal managers in improving the internal management of their programs and showcase the accomplishments and the potential needs for specific state programs. In 2003, the SPO will begin the design of performance measures for the Maine Coastal Program.

**b. Effectiveness of inter-agency coordination for water access**

State agencies that fund water access projects and those that have an interest in water access have a new vehicle for collaboration in the new Coastal Water Access Working Group mentioned above. The group provides a mechanism to continue to leverage grants and other financial resources to support local access projects. The Group is already working to improve and formalize cooperation by sharing information, enhancing lines of communication, developing a program data base, coordinating activities, and working together to assist with grant proposal review and project selection. The Maine Coastal Program provides staff support to the Working Group and will continue to provide federal resources for the group's needs.

*Measures to Improve Effectiveness –*

None suggested at this time.



**c. Staffing available for liaison with towns on water access projects**

During the summer of 2002, the Maine Coastal Program redesigned and filled a staff position that had remained vacant for approximately a year and a half. This full-time position assists the Land for Maine's Future program with coastal water access projects, leads the working waterfront initiative and manages a new outreach program to work directly with coastal towns and non profit corporations to secure funding for coastal access projects. This position also provides staff support to the interagency Water Access Working Group.

Another staff planner at the Coastal Program manages the Right-of-Way Discovery Grant program mentioned in the next section of this report.

While this level of staffing might seem meager given the size of the Maine coastline and the need for assistance expressed by municipalities, this level of effort is sustainable given current levels of federal funding available through federal Coastal Zone Management funds. The position at the State Planning Office also complements positions in other agencies that attend to public access on a statewide basis (DOC and IF&W) and on marine infrastructure projects (MDOT). Although this concerted effort at the Maine Coastal Program is fairly new, it is expected to result in the development of new and improved water access sites and facilities that will accommodate both recreational and commercial users.

*Measures to Improve Effectiveness –*

None suggested at this time.



**d. Funding available and funding secured for local coastal access projects**

While the Maine Coastal Program devoted significant federal funds during the 1980's for public access through the Waterfront Action Grant Program, resources were diverted beginning in the early 1990's to help bridge a gap created by budget cuts at other state agencies with responsibilities for management of coastal resources. Currently, any funding provided for coastal acquisition or access development comes from the Coastal Program's base funding, which also supports the core activities of the program. During the three years from 2000 to 2002, MCP supported only three local coastal access projects – in Stonington, Calais and Gardiner. Another project in Calais is planned in 2003. In each case, MCP was able to provide only a small grant to assist the town in meeting their matching requirement for larger grants.

In addition to the occasional projects using discretionary funds, the Coastal Program runs a mini-grant program that helps municipalities document legal interests in historic rights of way to the coast. This program, although small, has helped many towns secure public rights to important coastal access points.

In the field survey conducted by Coastal Enterprises Inc., municipal representatives identified expanded parking, repairs to piers and float systems, dredging, expansion of existing piers and wharves, new parking areas, and land acquisition for new access sites as their top needs for public waterfront improvements. While supply of available funding cannot keep pace with the need for assistance with public access and improvements to access facilities, there are existing programs operated by partner state agencies that address each of the priority needs expressed by municipalities.

Of the various funding programs for acquisition and access improvements, the Small Harbor Improvement Program (SHIP) is of particular importance to municipalities with significant commercial fisheries. CEI's field work documented that 92% of the towns surveyed have taken advantage of SHIP funds. To date, \$2.5 million dollars in SHIP funding was approved as part of the 1995 general transportation bond, and \$1.5 million was approved in the 2001 transportation bond package. Coastal Program staff has assisted the Department of Transportation with the publicity for SHIP grants, recruitment for projects, and review and selection of projects.

*Measures to Improve Effectiveness –*

- ❑ Continue SHIP funding and rethink the state's approach to small harbors. The 2001 Legislative Study Committee to Study the Loss of Commercial Fishing Access cited the demand for SHIP funds and recommended that the Small Harbor Improvement Program be included in the bond package as a standard item in each biennial budget at the level of \$3 million. At the time of submittal of this report, MDOT was still finalizing its request for the 2004-2005 biennial budget. While the SHIP program represents significant support for the state's small harbors, the state's primary area of focus has been on investment in Maine's three primary ports at Portland, Searsport and Eastport, according to the "three-port strategy." The Department of Transportation has signaled its intentions to revisit the twenty-five year old "three port" policy during the tenure of the next administration.
- ❑ Assist in the Development of New Funding Sources. When opportunities arise for municipalities to act on a waterfront land or facility acquisition opportunity, towns may be hamstrung by the lack of immediate funds to take timely action. Grant programs are usually offered on an annual or periodic basis and may be out of phase with the immediate opportunity, or the project may not fit well with the purposes of the available funding source. Facing these circumstances, municipalities have expressed an interest in the availability of a revolving fund or other short-term, quick turn-around financing option. Two ideas to meet this need are discussed below.
  - *Municipal Access Fund.* Several island and coastal communities recently identified the need for a coastal "credit union" that could provide the short-term "bridge" financing towns might need from time to time to take advantage of opportunities to meet waterfront access needs.
  - *Working Waterfront Loan Fund.* Currently a working waterfront loan fund is operating on Portland's waterfront. Capitalized with funds from Bath Iron Works, and managed by Coastal Enterprises Inc., loan funds are available to credit-worthy

private pier and wharf operators and long-term leaseholders that service cargo and marine service operations, commercial fishing, aquaculture, boat repair and boat building. The funds can be used for dredging, pier maintenance and expansion, including repair of pilings, bulkheads and environmental improvements. The current fund is limited to businesses located on piers along the City of Portland's working waterfront, but with additional funding, the program could be expanded to other coastal communities. In the survey of coastal communities, CEI found a large number of towns expressed an interest in learning more about a low interest loan fund. When asked to identify improvements that would assist and support privately-owned facilities, the towns listed tax relief and low interest loans, followed by investments in repairing wharves and floats, dredging, and land acquisition.

To expand the revolving loan fund to other coastal communities the fund will need additional capitalization. One potential source of funds to capitalize an expanded program is funding through the Economic Development Administration (EDA). The Maine Department of Marine Resources reported that in a currently pending EDA grant application, funds are included for CEI to provide information/education, technical business planning advice, and access to funding resources to commercial fishing enterprises. Expansion of the existing loan fund would extend these services to a broader business base.

- Provide Technical Assistance to Towns to Establish Waterfront Tax Increment Financing Districts. Tax Increment Financing (TIF) can be applied to working waterfronts. It is a tool available to towns for creatively focusing public infrastructure investments to improve the operation and success of local participating businesses in the district. The City of Portland currently has a TIF district in place that provides public infrastructure needed to maintain the operation of commercial piers and wharfs along the waterfront.

**e. Effectiveness of local comprehensive planning and local land use regulations in conserving working waterfronts**

The existence of an approved municipal comprehensive plan deemed to be consistent with the goals established in Maine's Comprehensive Planning and Land Use Regulation Act does not, by itself, guarantee the existence of waterfront access, nor does it guarantee the implementation of a sound strategy for conservation of a town's working waterfront. Eighty-four percent (84%) of the towns surveyed by CEI have a comprehensive plan in place, and 72% employ the use of zoning to control and regulate land uses. Only 24% of the surveyed towns have created an exclusive or "water dependent use only zone." Exclusive zones, by prohibiting land uses other than those that are water-dependent limit, the conversion of waterfront properties to residential and other non water-dependent uses. This scheme of zoning is perhaps best suited to waterfronts where a critical mass of healthy businesses are present and where there is a positive future outlook for water-dependent commerce. Exclusive zoning in smaller communities with less stable waterfronts could limit flexibility needed by waterfront landowners to respond to changing conditions in the marine-related economy.

While there are mechanisms available to the state legislature to amend the Mandatory Shoreland Zoning Law (one of the NOAA-approved enforceable policies of Maine’s Coastal Program) to mandate more restrictive zoning along working waterfronts, this approach is not considered politically feasible at this time. Likewise, the Legislature could consider adoption of a new statute to designate prime sites for water-dependent uses as state areas of critical concern with associated additional planning and regulatory requirements, but again, this approach is not considered feasible at this time.

Municipal efforts to protect, enhance, and improve public access to the coast are supported through a variety of outreach efforts, educational programs, technical assistance services and materials, and grants and other financial assistance. More vigorous implementation of the current Coastal Program strategies through public information and educational programs and materials, municipal outreach efforts to encourage good projects, coordination of access programs, grants, and financial assistance to support local projects will go a long way towards encouraging and supporting local actions to improve public access goals.

The Council also noted that the interests of state water access programs sometimes conflict with local interests, making it difficult to site boat access facilities. In cases where local opposition to a proposed boat launch site develops, the locally approved, “state-certified”, consistent comprehensive plans and land use ordinances are sometimes used in attempts to block a State project. The Council noted that it might be desirable to seek additional clarification and exemption for highway and boat access projects. No action is planned, but the conflict between state and local objectives was noted.

The Land and Water Resources Council recommends an expanded program of planning assistance to coastal municipalities in lieu of changes to state regulations. Most of the communities surveyed for this report listed planning assistance as one of their top needs for responding to the threats of loss of public and commercial waterfront access.

*Measures to Improve Effectiveness –*

- ❑ **Improve Assistance to Coastal Towns for Comprehensive Planning.** Under the requirements of the Comprehensive Planning and Land Use Regulation Act, coastal towns must consider marine and coastal resources and water access issues during the development of local comprehensive plans, and develop implementation strategies to meet local and state goals.

The Coastal Program provides a variety of planning guides and technical assistance to communities, often delivered through the comprehensive planning process. Over the years the Coastal Program has produced or supported the production of planning materials and informational documents designed to help communities deal with a variety water access and working waterfront issues, including model ordinances, harbor planning guidance and model plans, pier and dock ordinances, etc. However, guidance documents available to towns for coastal planning are in need of revision and additional training assistance for agency partners and local/regional planners is needed. Marine resource data provided to towns for the marine resource section of local plans should be continually updated.



Technical assistance to towns during the comprehensive planning process is currently provided by the State Planning Office, Regional Planning Commissions, local planners and planning consultants. Specific technical assistance on working waterfront and coastal access should be provided to communities at appropriate points in the planning process. To further this objective, a new partnership is being formed with the University of Maine Sea Grant Marine Extension Team to assemble a field assistance team to respond directly on an “as-needed basis” to coastal communities’ needs for assistance with coastal protection and management, coastal access, recreational tourism, and use conflicts.

Targeting of help to those communities that are developing comprehensive plans and/or waterfront/harbor plans, and to towns with current coastal access opportunities will increase the effectiveness of the Coastal Program’s technical assistance efforts.

- Provide Additional Incentives to Improve Comprehensive Plans. While many towns produce good comprehensive plans, they often do not include a cohesive waterfront plan for conservation of deep water access for marine-dependent businesses and often do not identify specific short and long term needs for coastal public access sites. State law already requires many state financial assistance programs to offer preferences (for the award of grants and funding) to communities that have consistent, locally adopted comprehensive plans. At the suggestion of the 2001 Legislative Study Committee, a system of bonus points was used for scoring the last round of proposals for SHIP grants. Continued use of this practice is under review for its effectiveness and use in the next round of grants. A similar system has also been worked into the Department of Conservation’s award of Shore and Harbor Management Grants. Strengthening preferences for award of grants to towns that have a sound, specific and action-oriented waterfront plan will ensure that the state grants work to maximize the realization of state policy goals.
  
- Encourage Towns to Use Non-regulatory Approaches to Conservation of Working Waterfronts. The dilemmas associated with conservation of working waterfronts share some commonalities with attempts conserve farmland. In both cases the resource is in limited supply (deep water access in the case of waterfronts, and prime agricultural soil in the case of farmland), and the property owner may not be in favor of additional regulations which limit the use of the land (to marine-dependent uses or farming). In both scenarios, the shorefront parcel or the acreage of rolling fields in many cases represents the owners’ opportunity for retirement. Two tools commonly used to conserve high value natural resources and farmland hold promise for use in conserving working waterfronts in Maine. As described below, both tools provide incentives for landowner participation, since they afford the landowner the opportunity to get monetary compensation in exchange for preservation of properties in water-dependent use.
  - *Purchase of Development Rights.* Purchasing development rights is a way to assure long-term conservation of shorefront lands. Using this tool, rights to develop waterfront property are assigned a value and the property owner is provided monetary compensation in exchange for the right to further develop the property. Purchase of development rights, which is less than full fee ownership, also allows the buyer to prohibit the development of land and facilities and to maintain existing uses. In this

case, purchase of development rights from a working waterfront business could protect the availability of the property for commercial fishing access, and an arrangement could be made to allow the continued operation of a water-dependent business on the property.

A Commercial Fishing Heritage Trust, modeled on farmland preservation trusts, organized as a private non-profit land trust, could be formed to purchase vulnerable waterfront lands and facilities and/or development rights, hold title to property and development rights, and lease back use rights to towns or businesses. A next step for possible creation of this type of entity would be development of a business plan and research into capitalization issues.

- *Transfer of Development Rights.* Transfer of Development Rights (TDR), while not widely used in Maine, offers the opportunity for a coastal community to set up a mechanism for trading development rights away from waterfront parcels to lots in the town's inland growth areas. The development of a statewide TDR program is one of several items on the agenda of the Community Preservation Advisory Committee established by the Legislature in 2002. This is a broad-based group assembled to help guide the implementation of Smart Growth programs. The work of this committee may provide a good forum for the discussion of TDR programs, including tailoring any new program to meet coastal community and waterfront needs. The Maine Coastal Program should support this work.

- Increase educational programs for towns and property owners. Communities surveyed during preparation of this report were interested in learning about an array of planning tools and techniques, including the purchase of access rights or deeded access, a water access tools, and transfer of development rights. The Coastal Program should deliver these educational sessions through community dialogues and other local forums and develop working waterfront and coastal access resource information for the Maine Coastal Program website.

#### **f. State regulatory environment for working waterfronts**

Commercial fishermen have expressed frustration about the expense associated with construction of new piers and wharves, and questioned whether Maine's regulatory process unreasonably increases this cost. New docks and major repairs to existing piers and wharves are subject to review and approval by the Department of Environmental Protection under the terms of the Natural Resources Protection Act (NRPA). Smaller facilities are considered in the streamlined Permit-by-Rule process and larger facilities must undergo full review under the NRPA. State licensing staff and the Board of Environmental Protection generally consider that sites with all-tide access are needed for most working waterfront operations and that such sites are limited along Maine's coast. The fact that proposed new commercial piers and wharves often service multiple commercial operators is also viewed as favorable. Siting of new docks and expansion of existing docks has sometimes been controversial in recent years and objections have focused on scenic and aesthetic issues. At the time of submittal of this report, DEP staff had drafted new rules for evaluating scenic and aesthetic impacts under the NRPA that should minimize appeals by neighboring property owners, while minimizing impacts to views.

While the Submerged Lands Program is not technically a regulatory program, in leasing publicly-owned submerged lands for private use, the statute provides for reduced rental fees for commercial fishing uses and other facilities offering berthing and slip space for commercial fishing interests. In addition, the approval criteria require that new projects be reviewed to insure that they will not unreasonably diminish the availability of existing services, facilities, and access necessary for commercial marine activities.

Given that effective administration of sound coastal environmental laws is a foundation of Maine's approved coastal management program and public concern with the nature and pace of development on Maine's coast is increasing, no further streamlining of regulatory processes is suggested at this time.

*Measures to Improve Effectiveness –*

None suggested at this time.

## **V. Other Public Policy Issues**

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A number of factors outside the purview of the Coastal Plan have a significant impact on the problems and issues confronting coastal communities. The future viability of the fishing industry, and economic and demographic trends in coastal communities are two such influences. This section of the report presents discussion on one additional factor beyond the control of state environmental protection and land use planning efforts, that ultimately influences the effectiveness of the Coastal Plan – property taxation.

Property taxation is a critical factor influencing the ability of fishermen and commercial fishing related businesses, and water dependent users to retain a presence on the waterfront. Driven by market conditions and unrelenting development pressures, the demand for limited waterfront property and facilities increases property values, which in turn factors through the property tax system resulting in significantly increasing property tax bills. Concerns about property taxation are widespread across the state, are the focus of several referendum campaigns, and will most likely be taken up in the new legislative session. A number of proposals and ideas are being debated, and may well provide the basis for legislative actions. It is important that commercial fishermen's concerns and needs be taken into account in fashioning any changes to the states taxation system.

From the survey of coastal communities, CEI reports that taking action to relieve the pressures of rising property taxes is the number one action identified by communities that would assist them in retain commercial fishing enterprises and facilities. Coastal municipalities see property tax relief as the number one effort that needs to be taken to help keep working waterfronts viable. Controlling or limiting the rapid increases in waterfront property values is seen as a positive measure in maintaining the affordability of waterfront properties for commercial fisheries uses.

In November 2002, Maine voters narrowly turned down a constitutional amendment that would have allowed the Legislature to create a preferential tax category for land used for

commercial fishing activities based on the current use of that property. The issues and concerns surrounding rising property values and taxes have not abated over the ensuing two years. Renewed efforts to impose a tax cap, the creation of a select advisory committee to study ways to reform the state's tax structure to take pressure off of the property tax and new proposals such as the Land Bank idea put forward by Chebeague islanders to create a long term ownership category are aimed at helping coastal property owners retain their land and preserve existing uses and conditions.

It is expected that the next Legislature will take a hard look at the state's tax structure with an eye to relieving over-reliance on the property tax at the local level. The costs and benefits of current use treatment of waterfront commercial fishing lands needs to be factored into any proposal to maintain preferential tax categories.

As in the past, The State Planning Office/Coastal Program will work to provide the information and perspective needed to understand the pros and cons of property tax proposals designed to maintain and enhance working waterfronts. In its information and analysis role, the SPO/MCP can provide information about the impacts of specific proposals, can host discussion forums, and can assure that a coastal perspective is provided during discussions.

## **VI. Conclusions**

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Loss of access for commercial fisheries is a widespread and persistent problem, driven by broad economic and demographic influences that increase the competition for choice waterfront property. The loss of commercial access takes several forms, and varies from community to community, which adds to the complexity of tracking changes and formulating effective public policy. Coastal fishing communities are well aware of the problem, generally expect it to worsen, and are working to combat the trends, while accommodating a variety of community needs. In short, most coastal towns are extremely interested in this issue, would welcome additional help in the form of technical and financial assistance from the state, and are vitally interested in learning more about the tools and techniques that can be used to help maintain and enhance their working waterfronts.

The State's Coastal Plan is implemented through a mixture of mandates, partnerships, and assistance programs that attempt to balance local "home rule" authority with the State's policy objectives. Although it is not desirable to increase the state's regulatory authority over waterfront land use, technical assistance, incentives and funding programs offered to municipalities by the state should be further refined and targeted to help municipalities address public access and working waterfront issues. Assistance to help municipalities meet state policy goals is best provided in the form of technical and financial assistance that helps communities respond to access problems and needs at the local level where actions can be crafted to fit local conditions.

The incentives identified in this report, both to encourage communities to do better planning for waterfronts, and to encourage property owners to participate in non-regulatory approaches to conservation, will require additional financial resources. State grant programs

such as the Small Harbor Improvement Program are vitally important to fishing communities. Given the current condition of the state's budget, new sources of funding and new mechanisms for raising funds for purchase of water access will be needed. Ideas for municipal use of Tax Increment Financing districts along the waterfront, expansion of revolving loan funds and creation of a Commercial Fishing Heritage Trust are discussed in the report.

Due to the lack of established performance goals and measures, it proved difficult to evaluate the effectiveness of the implementation of Maine's Coastal Plan in providing public access and conserving working waterfronts. Instead an evaluation of "output" or level of effort for several aspects of the Coastal Program revealed that some efforts are adequate, while changes and improvements in other areas would no doubt make the program more effective in meeting state policy goals. These recommendations are detailed in the body of this report.

It is desirable to establish performance indicators for public access, waterfront vitality and other topics that comprise effective coastal management. Several state agencies are involved in both public access and waterfront operations and could partner with the State Planning Office to jointly set goals, establish measures and evaluate performance over time. Maine can mirror federal efforts to develop performance measures and the new inter-agency work group on coastal access would be well suited to track progress over time.

The Council finds that the major issue confronting commercial fishermen and water dependent users is outside the purview of state environmental protection and land use planning programs – the problem of rising property taxes that increase the financial difficulty of retaining and maintaining working waterfront facilities. This is a critical issue that needs to be addressed by the Maine Legislature, and should be included as an important element of any discussion of property tax reforms.

In addition to policy responses and new programming at the state level, conservation of Maine's remaining working waterfronts will require the participation the attention of the private sector. A coalition of political leaders, commercial fishing interests, municipalities, and others concerned with finding effective solutions to preserve and enhance working waterfronts should be encouraged to form a working waterfront group to work on creating effective public and private sector actions.

## APPENDICES

Appendix A (attached) –

*Preserving Commercial Fishing Access: A Study of Working Waterfronts in 25 Maine Communities*, prepared by Coastal Enterprises Inc. for the State Planning Office, Maine Coastal Program, December 2002. If Appendix A is not attached, a copy can be downloaded from the Maine Coastal Program web site:

[http://www.maine.gov/mcp/online\\_resources/ftp.html](http://www.maine.gov/mcp/online_resources/ftp.html)

Appendix B –

Coastal Water Access Working Group Legislative Charge and Membership

Appendix C –

Municipal Participants

Appendix D –

Advisory Group

## APPENDIX B

### Coastal Water Access Working Group Legislative Charge and Membership

In legislation passed by the 120<sup>th</sup> Legislature (PL 2001, c.595) the State Planning Office and the Department of Marine Resources, within existing budgeted resources, are directed to convene a working group of staff from all state agencies that deal with coastal water access issues to share data, program activities and areas for collaboration on coastal water access issues. Each agency is to identify the coastal water access data that the agency has, the coastal water access data that the agency needs and potential funding sources for the collection of the needed data. Other stakeholders may be included as appropriate.

The State Planning Office and the Department of Marine Resources are further directed to submit a report of the working group's activities, including how the agencies can work cooperatively to make creative use of available funds to address both recreational and commercial access needs and to optimize projects that are multi-use in nature to the joint standing committee of the Legislature having jurisdiction over marine resources matters by January 15th of every odd-numbered year (beginning in 2003).

#### **Membership**

Membership is comprised of agencies with direct coastal access programs and water access related responsibilities, including:

- Maine Department of Conservation, Boat Facilities Program - George Powell
- Maine Department of Conservation, Bureau of Parks and Lands - Herb Hartman
- Maine Department of Conservation, Submerged Lands Program - Dan Prichard
- Maine Department of Economic & Community Development, Community Development Programs - Orman Whitcomb
- Maine Department of Inland Fisheries & Wildlife, Access Acquisition and Facilities Program - Bob Williams
- Maine Department of Marine Resources, commercial access concerns and issues - Sue Inches
- Maine Department of Transportation, Harbors and Port Facilities program - Kevin Rousseau
- Maine Department of Transportation, Planning Division - Carl Croce
- Maine State Planning Office, Maine Coastal Program and Land for Maine's Future Program - Jim Connors

## APPENDIX C

### Towns Involved in CEI Survey

Addison  
Bath  
Biddeford  
Boothbay Harbor  
Bremen  
Bristol  
Eastport  
Freeport  
Friendship

Harpswell  
Islesboro  
Jonesport  
Kennebunkport  
Kittery  
Machiasport  
Phippsburg  
Portland

Rockland  
Searsport  
Saint George  
Southwest Harbor  
Stonington  
Swans Island  
Vinalhaven  
Winter Harbor



## **APPENDIX D**

### **Advisory Group**

Advisors for this project include:

- Yvette Alexander, Maine Fishermen's Wives Association
- Jim Connors, SPO/Maine Coastal Program and Land for Maine's Future Program
- David Etnier, Maine State Legislature
- Sue Inches, Maine Department of Marine Resources
- Kathleen Leyden, SPO/Maine Coastal Program
- Benjamin Neal, Island Institute
- Steve Train, Commercial fisherman