

## ***Public Access: Assessment***

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### **Section 309 Programmatic Objectives**

- I. *Improve public access through regulatory, statutory, and legal systems.*
- II. *Acquire, improve, and maintain public access sites to meet current and future demand through the use of innovative funding and acquisition techniques.*
- II. *Develop or enhance a Coastal Public Access Management Plan which takes into account the provision of public access to all users of coastal areas of recreational, historical, aesthetic, ecological, and cultural value.*
- IV. *Minimize potential adverse impacts of public access on coastal resources and private property rights through appropriate protection measures.*

### **Resource Characterization**

*Extent and Trends in Providing Public Access (publicly owned or accessible).*

1. *Provide a qualitative and quantitative description of the current status of public access in your jurisdiction. Also, identify any ongoing or planned efforts to develop quantitative measures to assess your progress in managing this issue area.*

Maine has a long coast that stretches some 5,300 miles when all of its bays and tidal rivers are factored in along with 4,613 islands that are an acre or more in size. While most of the Maine coast is privately owned, for generations residents and visitors have enjoyed a tradition of unhindered passage over private lands to access tidal waters. This tradition is being lost as coastal land becomes increasingly used for residential and commercial development. With a diminishing amount of coastal land available for a range of activities – such as commercial and recreational fishing, hunting, clamming, hiking, wildlife-watching, and boating – the importance of securing public access has risen substantially in recent years.

Public access to the coast occurs in several forms including scenic or visual access from public roads and lands, physical access over public and private conserved lands to the shore, and a range of water access sites and facilities for recreational and commercial activities. Active land conservation efforts by towns, state and federal agencies is one way public access is being created. State boating facilities programs coupled with local town efforts are preserving and improving public access for recreational boating, fishing, and hunting activities. Working access to the coast is being addressed through local planning, a new current use taxation program, the activities of the Working Waterfront Coalition and a new pilot working waterfront acquisition program.

### **Public Access and the Public Trust Doctrine in Maine**

Maine is one of a handful of coastal states whose intertidal areas may be privately owned. Although it has more than 5,300 miles of coastline, Maine has less than 40 miles of sand beaches, mostly in the southwestern, more populated area of the State. In 1989, Maine's highest court ruled that the remaining public rights in the intertidal zone are limited to those under a "public easement" for "fishing, fowling and navigation", as provided under a pre-statehood colonial ordinance that evolved into pertinent state common law. *Bell v. Town of Wells*, 557 A.2d 168, 169 (Me. 1989). In reaching its decision, the Court

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declared a 1985 state law, the Public Trust in Intertidal Land Act (“Public Trust Act”), 12 MRSA ch. 202-A, which construed public rights in the State’s intertidal zone more expansively and consistently with modern views on the nature and scope of public rights under the Public Trust Doctrine as defined in other states, an unconstitutional taking absent provision for compensation to private landowners for acquisition of public rights other than those under the “public easement.” *See id.*, p. 177-79. The law remains on the books and, in light of the Court’s decision, unimplemented.

The public use and economic value of the State’s beaches and other intertidal areas continue to grow. Demographic changes and changing land uses may threaten existing public uses of intertidal areas for commercial and recreational purposes not clearly within the scope of “fishing, fowling and navigation.” In addition, these same factors may threaten public access to intertidal areas and thus frustrate exercise of historic public access to these areas. In contrast, the Commonwealth of Massachusetts’ public trust doctrine as applied to the intertidal zone stems from the same colonial ordinance as Maine’s, but it appears that Massachusetts law may construe the nature and extent of public rights in the intertidal area somewhat more expansively. A review and revision, as appropriate, of the legislative policies underlying the State’s Public Trust Act could be a means to secure broader public rights important to Maine people now and in the future.

#### Land Conservation Efforts

The state has in place several effective programs to acquire land for public use and enjoyment, and has made significant progress in recent years to secure access to the water and to protect important land along the coast. Many organizations including local land trusts are active in the state, oftentimes working together to acquire land for public purposes. Year by year, acreage is being protected by the U.S. Fish and Wildlife Service and is added to the state’s three national wildlife refuges. According to the Conservation Lands Inventory, Maine has 71,009 acres of federally owned conservation land in the coastal zone. The Maine Department of Inland Fisheries and Wildlife (DIFW) and the Maine Department of Conservation (DOC) have acquired lands and added them to their wildlife management areas, state parks and reserve lands. Currently, there are 80,757 acres of state owned conserved lands in the coastal zone. Two statewide nonprofit conservation organizations, The Nature Conservancy (Maine Chapter) and the Maine Coast Heritage Trust, have also worked to acquire spectacular properties on the mainland and on islands (many parcels have been transferred to State ownership). According to the Maine Coast Heritage Trust, since 1970, over 121,000 acres of coastal lands have been preserved, including 258 entire islands. Over the past 10 years, many land trusts have been established in coastal communities, so that as of 2005 there were 59 local and regional land trusts active in the coastal zone.

The rate of coastal land acquisitions for conservation and water access has been dramatically increased by the Land for Maine’s Future Program (LMF). Since it LMF was established in 1987, Maine voters have authorized the expenditure of \$85 million in public bonds for public land purchases. In 2005 voters authorized an additional \$12 million for land conservation purchases, including a \$2 million set aside for protecting working waterfront properties. Since its inception, the Land for Maine’s Future Program has assisted in the acquisition of more than 189,900 acres of conservation lands of state, regional, and local significance, with an additional 51,000 acres protected through conservation easements. In the state’s coastal zone, LMF funding has supported 75 land acquisitions totaling 25,293 acres. Coastal acquisitions range from small boat launch sites to long stretches of undeveloped coastal headlands.

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Water Access Programs

While Maine is making progress in protecting land for general recreation, conservation, and wildlife habitat, there are unfilled needs. This is particularly true for boat access for recreational and commercial fishermen. Along the entire coast, there are now 85 state-owned or assisted tidal, public boat access sites (up from 74 in the last assessment). This averages out to one state site for every 54 miles of mainland shoreline. These sites occur in 62 (up six from 56) of Maine's 139 coastal municipalities. According to the DOC – which is responsible for developing and maintaining most of these sites in cooperation with the towns – there is about \$1.2 million available each year for boat access site acquisition, development and refurbishment, and this is not enough to meet all the needs. Additional water access sites for recreation and commercial fishing are provided by municipalities..

*Identifying Water Access Needs and Priorities.* The statewide *Strategic Plan for Providing Boating and Fishing Access to the Waters of the State* was last updated in 1995. The Department of Conservation (DOC) is currently leading an effort to revise and update the strategic access plan through a stakeholder's process to identify access needs to great ponds, rivers and streams, and coastal waters. In 2000, a report on *Coastal Water Access Priority Areas for Boating and Fishing* was prepared by the Department of Marine Resources (DMR) and the Maine Coastal Program (MCP) that broadly identified first, second, and other priority level access needs along the coast. This work has provided weight for projects to obtain public funding in the priority areas. However, the existence of a willing seller and the opportunity to purchase land for public access lands have been equally influential in expanding public access to coastal waters.

*The Maine Coast Protection Initiative.* This initiative was launched in 2003 (scheduled to conclude in 2007) to increase the pace and quality of coastal land conservation by improving the ability of land trusts to strategically conserve high priority habitats, public access, and scenic and cultural resources in their service areas. Through this initiative, land trusts are assisted with conservation planning to identify priority areas or resources for proactive conservation efforts, including high priority needs, such as public water access. An implementation grant to the Island Institute is supporting a coastwide inventory of public access sites and private commercial fishing sites and facilities, which will be the basis of a public access data layer in Maine's GIS database. Additional analysis is planned to identify and prioritize access needs for inclusion in local conservation plans.

*Small Harbor Improvement Program (SHIP)* Established by a bond in 1995, the SHIP, which is run by Maine's Department of Transportation (DOT), has funded dozens of waterfront access and harbor improvement projects. SHIP received funding in 2003, 2004, and 2005 to continue public investment in coastal communities through a competitive grants program. New public funding in 2006 ensures that this program will continue to support marine infrastructure improvements.

Performance Indicators:

*Coastal Zone Management Performance Measurement System (CZMPMS).* In 2001, NOAA was charged by Congress to develop a suite of indicators with which to measure the effectiveness of the Coastal Zone Management Program. The Maine Coastal Program volunteered to take part in the pilot phase of indicator development during which NOAA worked through many of the issues encountered in the establishment of the CZMPMS. In December, 2004, MCP issued its final report on this pilot phase, *Maine Coastal Indicators: National Coastal Management Performance Measurement System Pilot Project*. Currently, MCP is populating the public access and governance indicator databases.

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2. Briefly characterize the demand for coastal public access within the coastal zone, and the process for periodically assessing public demand.

The ability to gain access to coastal waters continues to be a persistent and critical issue for residents and visitors alike. This is particularly true in periods of strong economic growth when coastal land development and the loss of land for public access occur at a more rapid pace.

A 2002 survey of 25 coastal fishing communities conducted for the Maine Coastal Program by Coastal Enterprises, Inc. found that 64 percent of respondents viewed the loss of public and working access as a major community concern, and 80% of the towns contemplated efforts to address the issue.

Clearly, public access to Maine's coastal waters is an issue that will not go away, particularly for the state's coastal waters, which support both recreational *and* commercial users. In fact, the need to address the issue will only become more pressing. Below are indicators of the need for public access:

- *Population and Tourism Growth* – Almost half of the state's population lives in coastal towns. From 1990 to 2000 the population of coastal towns grew 6% from 512,060 to 540,754. Coastal population is expected to increase another 9% by the year 2015. In 2000, over 74% of the total state population lived in coastal counties, a 6.5% increase over 1990.

The Maine coast is also the major draw for visitors. According to the Maine Office of Tourism visitors made 9.4 million overnight trips to Maine in 1999, with 46% of these trips to the southern Maine coast and 37% to Greater Portland/Casco Bay. Areas that consistently receive a large number of visitors include the southern coast and Mt. Desert Island. While tourism growth fluctuates with national economic conditions, the Tourism Office expects that the number of visitors to the coast will rise over time.

- *Growth in Recreational Activities* – The recreational use of coastal waters is still strong. According to the Marine Recreational Fisheries Statistics Survey (2004), conducted by the Maine Department of Marine Resources and the National Marine Fisheries Service, the number of saltwater anglers in Maine dropped slightly from 308,200 (142,204 were Maine residents) in 2001 to 287,435 (132,248 were Maine residents) in 2004. These numbers fluctuate yearly, depending on the weather and fishing interest, but sports fishermen remain substantial users of water access facilities.

Maine's long coastline and many islands continue to be an attraction for resident and nonresident kayak and canoe paddlers. A recent study found that there were approximately 54,000 kayaking clients enjoying the services of sea kayaking guides. The number of paddlers accessing the coast via the Maine Island Trail has increased slightly over the past 4-5 years, while membership in the Maine Island Trail Association has increased by 18% from 3,400 members in 1999 to 4000 in 2005.

Statewide Comprehensive Outdoor Recreation Plan (SCORP): The state receives federal matching funds from the federal Land and Water Conservation Fund program for acquisition and development of public outdoor recreation areas and facilities and for statewide outdoor recreation planning. Every 5 years the state must submit an updated SCORP for approval by the National Park Service to be eligible for this funding. The SCORP inventories the supply and demand for outdoor recreation areas on a comprehensive statewide basis. Therefore, it is not possible to discern from this document the supply and demand for outdoor recreation in Maine's coastal zone. However, the most recent SCORP (2003) includes a strategy to "intensify the search for

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lands that can be purchased to provide boating and coastal access, especially in the southern coastal area.”

- *Commercial Fishing* – Commercial fishing continues to be a mainstay of the coastal economy. In 2004, the total number of licensed fishermen was 16,200 and the total value of landings was approximately \$405 million (Department of Marine Resources).
- In 2002, the Maine Coastal Program contracted with Coastal Enterprises Inc (CEI). to conduct an in-depth survey of 25 communities along the coast to document the status of working waterfronts. The survey found that 75% of the fishing access was gained over privately-owned sites and facilities, and 25% over publicly owned facilities. Further, 40% of the working access over private facilities utilizes residential property, an arrangement that can be very volatile.
- *Boat Registrations* – While the number of registered boats in Maine fluctuates each year with the economy and the weather, registrations from 2001 through 2004 remained fairly constant between 126,000 and 128,000 recreational and commercial craft. An estimated 30% of these boaters use both inland and coastal waters.
- *Commercial and Recreational Boat Anchorage and Berthing Facilities* – In a 2004 tracking survey of the 25 coastal communities surveyed in 2002, CEI found that the number of anchorages, berthings, slips and tie-ups that support commercial fishing and recreational boating increased by 6% between 2002 and 2003.

1. *Identify any significant impediments to providing adequate access, including conflicts with other resource management objectives.*

- Sources of funding for land acquisition remain limited and represent a significant impediment to providing adequate access. This past year, Land for Maine’s Future (LMF) program received proposals for 20 million dollars worth of land acquisition projects. However, LMF only had \$10 million in available funds.
- In the face of the increasing demands for waterfront properties, reliance on the traditional custom of passage over private lands to gain access to state waters is no longer an effective policy to ensure widespread public access to the coast. The public has relatively limited rights to travel over private property to access the shore based on public trust rights in the intertidal zone which are restricted to three narrowly defined activities - fishing, fowling, and navigation. In addition, provision of public access is not required by state permits for development projects. Towns do, however, have some influence through subdivision review and approvals to protect existing access and perhaps gain some additional access ways, at least for residents in the planned subdivision.
- *Land Costs* – Rising land values along the coast are making it more difficult for the state and other to acquire land for the public benefit. Coastal land values are appreciating at rates of 12% per year (based on LMF experience with property appraisals), reducing the effectiveness of acquisition programs, which often cannot compete with the market because they must purchase property at or below appraised fair market value.
- *Access Opportunities* – The opportunities for acquiring land for public access, especially in high priority areas, is limited by the number of suitable sites and timing of property coming up for sale.

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- Lack of Community Support – Sometimes adjoining land owners and/or towns oppose the planned development of a public boat or pedestrian access sites, which can pose major problems for access development. While most people support increased water access, sometimes they oppose it if it is in proximity to their homes and businesses, or they feel it is being thrust upon them.

## 4. Table depicting access type, extent and changes since last assessment.

<b>Access Type</b>	<b>Extent (# of sites and/or # of miles or acres)</b>	<b>Last Assessment</b>
State/County/Local Parks	State Parks/Reserve Lands: 47,931 acres Municipal Parks: no data available	45,328 acres no data available
Public Beaches	135 beaches	135 beaches
Public Boat Ramps	85 state facilities	74 state facilities
Scenic Vistas	23 MDOT roadside turnouts and rest areas	20 areas/turnouts
State/Local Designated Rights-of-Way	no data available	no data available
Fishing Piers	130 estimated	130 estimated
Coastal Trails	no statewide data available	no data available
Disabled Access	15 developed state parks and historic sites 4 public beaches	15 state parks
Boardwalks/Walkways	7 municipalities	7 municipalities
Dune Walkovers	no statewide information available	no data available
% of Public Beaches with Water Quality Monitoring and Public Notice	90% of ocean sand beaches	no data available
Number of Beach Closures due to Water Quality Concerns	0.98 closures per day, 2.72 advisories per mile of monitored beach (2005 data, 100 day swimming season)	no data available
Number of Existing Public Access Sites that have been Enhanced	15 enhanced since 2001 by ME Dept of Conservation	no data available
Other	National Wildlife Refuges: 25,167 National Park: 48,000 acres National Estuarine Reserve: 1,600 acres State Wildlife Management Areas: 28,579 acres	23,949 acres* 46,600 acres 1,600 acres 27,082 acres*

Source and Date of Data

State/county/local parks – *Conservation Lands Inventory*, State Planning Office, 1997 (State information); Public beaches – *Coastal Public Access in Maine* report, Maine Coastal Program, 1990 (local information); Public boat ramps – State ramps: State Sponsored and Assisted Boat Access Sites database, DOC Boating Facilities Program, 2004. (Note: Those sites identified as “State” sites are those that are State owned and managed or are those owned by municipalities but developed with State assistance. Scenic vistas – Department of Transportation database, 2005. (Note: There is no comprehensive inventory of scenic vistas. Those mentioned here are turnouts on State roads in coastal communities maintained by the DOT. Over the past two decades, local land trusts have been the entities that have protected scenic areas in coastal communities, but no comprehensive inventory of these exists.); Rights-of-way – No statewide data available; Fishing piers – *Maine Port Facilities Inventory and Analysis*, Developed for the State by Southern Maine Economic Development District and Eastern Maine Development Corporation for DMR and DOT, 1999. (Note: Piers and wharves are often used interchangeably, so this number reflects both types of marine infrastructure.); Coastal trails – *Conservation Lands Inventory*, State Planning Office, 1997; Disabled access – DOC Bureau of Parks and Lands, personal correspondence, Fall 2000; Boardwalks/walkways – Personal correspondence with Coastal Program staff, December 2001; Other – *Conservation Lands Inventory*, State Planning Office,

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1997. (Note: NERR site encompasses 1,100 acres of U.S. Wildlife Refuge land.) Number of enhanced public access sites – DOC pers. comm 2006.

\* These 2001 values are different than they appeared in the last assessment. 2001 values have been updated since the last assessment through the use of GIS which is more accurate than the method previously used to calculate acreages.

5. Does the state have a public access guide or website?

The Maine Coastal Program website includes a page called “Getting to the Shore” which contains information and links relevant to the policy aspects of public access. Resources include a slide show entitled *Who Owns the Beaches: Private Ownership and the Public Trust Doctrine in Maine*, as well as information on the Coastal Program’s Right-of-Way Discovery Grants Program. Additionally, there is a Land for Maine’s Future page, accessed from the State Planning Office website, which provides information about the LMF program along with descriptions and locations of LMF acquisitions. In addition, The Department of Conservation website contains a guide to state parks.

**Management Characterization**

For each of the management categories below, identify significant changes since the last assessment. For categories with changes:

- Summarize the change
- Specify whether it was a 309, 306A, or other CZM driven change and specify funding source
- Characterize the effect of the changes in terms of both program outputs and outcomes

<u>Management Category</u>	<u>Changes Since Last Assessment</u>	<u>Funding</u>
statutory, regulatory or legal system	none	
acquisition programs	significant	state
comprehensive access planning	significant	section 306
operation and maintenance programs	none	
innovative funding techniques	significant	state
public education and outreach	moderate	306 and state
beach monitoring programs	significant	EPA
other	none	

Acquisition Programs

*Land for Maine’s Future Program.* This State program was created in 1987 when Maine voters approved a \$35 million bond to acquire lands for conservation, recreation, and farmland protection of statewide significance. The LMF Program received additional support in the fall of 1999 when voters approved a \$50 million bond to acquire lands of statewide, regional, and local significance. Then again in the fall of 2005, Maine voters approved another \$12 million for the LMF program, including a \$2 million set aside to preserve working waterfront access properties. The fund is managed by an 11-member Board, and the Program is coordinated by the State Planning Office (SPO). Two of the Board’s high priority areas for acquisition include undeveloped coastal lands and land that will provide water access for boating and fishing. The LMF program provides a significant boost to increasing public access to the coast for a wide range of activities. Funding comes from a bond, which will be retired using State general fund revenues.

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*Coastal Estuarine Land Conservation Program (CELCP)* With NOAA financial assistance, a State CELCP Plan was prepared to guide the state's process for identifying priority estuarine conservation projects for nomination to NOAA in a potential, future competitive grants program. In the meantime, the Maine Coastal Program, the designated state lead agency, has actively supported three CELCP projects that have received earmark appropriations from Congress, plus two project nominations for FY 07 consideration. Future CELCP projects will be evaluated and nominated for federal funding through the process established by this plan.

Comprehensive Access Planning

*Right-of-Way Discovery Grants (CZMA Section 306 funding)*. The Maine Coastal Program continues to provide small grants (up to \$2,500) to coastal towns to research and re-establish public access rights to the coast. This modest program continues to evolve and be a critical resource for coastal towns confronted with the need to clarify and re-establish public access rights to the shore.

*Coastal Water Access Working Group*. In 2002 a Bill (LD 2118) enacted by the Maine Legislature to implement the recommendations of the Committee to Study the Loss of Commercial Fishing Waterfront Access and Other Economic Development Issues Affecting Commercial Fishing, directed the State Planning Office and the Department of Marine Resources to convene a working group of staff from all state agencies that deal with coastal water access. The purpose of the working group is to share data and program activities and find areas for collaboration. This committee meets periodically in conjunction with the MDOT Recreational Access committee to review water access project plans and opportunities for coastal and inland waters of the state. Inter-agency program coordination is fostered through this mechanism, but each agency works to fulfill its particular program objectives.

*Water Access Surveys*: In 2002, the Maine Coastal Program contracted with Coastal Enterprises Inc (CEI) to conduct an in-depth survey of 25 communities along the coast documenting the status of working waterfronts. The survey found that 75% of the fishing access was gained over privately owned sites and facilities and 25% over publicly owned facilities. Further 40% of the working access over private facilities utilizes residential property, an arrangement that can be very volatile.

Innovative Funding Techniques

*Shore and Harbor Management Fund*. As part of its expansion on the Kennebec River, Bath Iron Works – a shipbuilding company – purchased submerged lands from the State amounting to \$1.5 million. These funds were placed into an interest bearing account managed by the Submerged Lands Program at DOC, under the guidance of the Submerged Lands Program Advisory Board, composed of private sector, municipal, and state officials. The Advisory Board elected to disperse capital and interest from this fund through existing established programs to be distributed as grants through the Small Harbor Improvement Program at the Maine Department of Transportation, and as Shore and Harbor Planning Grants from the Maine Coastal Program. These funds are supporting a variety of harbor planning and improvement activities underway through 2006.

*Working Waterfront Access Pilot Program*. Passage of the \$12 million LMF bond in November 2005 established a unique working waterfront protection program, funded by a \$2 million set-aside for projects that protect strategically significant working waterfront properties. Financial grants up to 50% of the acquisition costs for the property will be available to private businesses, cooperatives, municipalities, organizations qualified to hold conservation easements under Maine law, or other qualified organizations for projects that will provide for permanent access use by commercial fisheries businesses. The Department of Marine Resources will administer the pilot program in conjunction with the Land for

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Maine's Future Board. The State Planning Office and Maine Department of Transportation will provide assistance. To aid in the development of the program the Commissioner of DMR will organize a Review Panel to advise on the operation of the program, including evaluating and recommending applicants for participation in the program. A call for proposals will likely occur by spring or early summer 2006, with projects being chosen late that same year.

*Current Use Taxation.* Maine voters approved an amendment to the State Constitution which permits waterfront land that is used for or that supports commercial fishing activities to be assessed based on the land's current use. The amendment was enacted in order to encourage the preservation of working waterfront land and prevent the conversion of working waterfront land to other uses as the results of economic pressures caused by the assessment of that land for purposes of property taxation at values incompatible with its use as working waterfront land. Assessed values can be reduced up to 50% if the property is permanently protected through deed restrictions. As of the drafting of this report, the bill had been reported out of committee with a recommendation that it be approved by the full Legislature.

*The Maine Outdoor Heritage Fund.* MOHF was created in the mid-1990s to conserve Maine's special places and provide opportunities for the public to enjoy them. Some of the program's funds, which are derived from special lottery tickets, help fund the acquisition of public lands for conservation, public access, and outdoor recreation. Public access is an important part of the mission of MOHF, which awards grants to agencies or organizations working to provide or protect public access to Maine's shoreline. Grants are awarded twice a year on a competitive basis.

#### Public Education and Outreach

*Harbor Managers Handbook.* Harbor Management: A Legal Guide for Harbormasters and Coastal Officials was recently updated and will be further updated through the efforts of the Maine Harbor Masters Association. The MCP supported updates in the past.

*Working Waterfront Initiative.* In addition to actively participating with and supporting the Working Waterfront Coalition, the MCP created new web pages on the program's official website that feature information about harbor planning activities, access to SPO/MCP publications, and technical and financial resources.

*Maine Beaches Conference.* Public access to beaches, intertidal rights, and working access to the coast were topics at the 2005 conference. Access to and use of Maine beaches continues to be a key public issue for coastal residents.

*Land for Maine's Future website.* This site, which is linked from the State Planning Office website, provides information about the LMF program along with descriptions and locations of LMF acquisitions.

#### Beach water quality monitoring and/or pollution source identification

In 2001, the Maine Coastal Program Maine received an EPA grant to support the development of a coastal swimming beach monitoring and notification program. The Maine Healthy Beaches Program (MHBP) is designed to work with local municipalities or the management entity of a public swimming area to maintain a healthy and safe swimming environment. The Program sets up a quality assured structure to monitor the water quality and provide the management entity credible grounds for posting a health advisory. The Program currently has 42 beaches and 18 municipalities/State Parks as partners.

Approximately 90% of Maine's sandy beaches are monitored for bacteria as part of the MHBP. For the 2005 swimming season, Maine experienced 98 total days with either a posting of an advisory or closure at a public swimming area. This correlates to 2.72 advisories per mile and 0.98 advisories per day (100 day

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swim season). These high figures were due to persistent closures at several locations that are currently still under investigation.

As part of the support to local beach managers participating in the Program, Maine has been exploring the idea of developing advanced techniques to determine the source of contamination at Maine's public swimming areas. Currently, the methods employed involve conducting additional monitoring, sanitary septic inspections, agricultural operation inspections and through watershed sanitary surveys. Maine lacks the ability to rapidly and cost effectively determine the origin of contamination when other methods fail to reveal the potential sources. Working with the USEPA Region 1, the MHBP is exploring the development of rapid quantitative polymerase chain reaction (QPCR) testing or other methods that permit the identification of a source.

Impediments to healthy beach programs include the following issues: a) Maine is lacking a state mandate to monitor public swimming beaches for water quality; b) there is limited staff to implement the program; c) little or no coordination for monitoring freshwater beaches; d) limited locations which can be used to analyze water samples; and f) limited funding support.

**Conclusions:**

*1. Identify priority needs or major gaps in addressing the programmatic objectives for this enhancement area that could be addressed through a 309 strategy.*

- Coastal lands are being developed quickly and actively in many areas, therefore, the State could take a more proactive role in identifying potential sites and working with towns, realtors, developers and local conservation groups on public access land acquisition efforts. State and conservation organizations work to identify priority acquisition needs in order to be better prepared to take advantage of opportunities as they arise. A more proactive effort requires additional resources and efforts and may encounter increased resistance from land owners and municipal officials over perceived heavy handed tactics and insensitive actions if they do not act in concert with the local community. The State of Maine does not currently have an up-to-date conservation lands and public access database. Data is held in many different agencies and programs. There is no mechanism in place to gather and house this data. An up-to-date and well-maintained Public Access and Conservation Lands Inventory is essential to guide the efficient use of resources to insure adequate public access within the coastal zone. This data gap also makes it difficult to accurately report on the public access indicator for the National Coastal Management Performance Measurement System.
- While there are several statewide programs that address recreational boater and angler access needs, none exists to identify or acquire public water access sites that are important to commercial fishing and other water dependent users. Over time, private wharves, piers, and boat launches where commercial fishing has traditionally occurred have been converted to private residential use or commercial activities. This has put increasing commercial pressure on existing public water access sites. While this issue is not the responsibility of any one agency or board, the State should develop a strategy to meet the specific needs of commercial fishermen. The development of a new public investment program to preserve working access, approved by voters and funded by bond funds in the Fall of 2005 creates a pilot program aimed at protecting waterfront lands and facilities, capacity, and services needed to support commercial fisheries businesses. Continued funding of the SHIP program will assist municipalities with marine infrastructure improvements.

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- Public Access Program Effectiveness – The State has taken a number of steps to encourage and improve inter-program coordination to leverage funds and program effectiveness toward high priority access needs and opportunities, but more could be done to achieve real project coordination and collaboration. There is a need to renew/intensify efforts through existing arrangements to increase coordination, and these efforts should be guided by updated priorities.
- In the face of the increasing demands for waterfront properties, reliance on the traditional custom of passage over private lands to gain access to state waters is not an effective policy to ensure widespread public access to the shore. There is a need for more public access sites and facilities to meet public needs, a clarification of public trust rights in intertidal lands, and a need to work more closely with program partners to acquire priority lands that will provide boating access for recreation and commercial marine activities.

2. *What priority was this area previously and what priority is it now for developing a 309 strategy and allocating 309 funding and why?*

Promoting public access to the shoreline, maintaining the scenic beauty and character of the coast, and expanding the opportunities for outdoor recreation are key elements of the State’s coastal policy goals. Continued loss of traditional access, competition for limited coastal lands for public uses and working access, and widespread public concerns for preserving adequate access to the coast keeps public access needs as a high priority for the Maine Coastal Program.

Last Assessment	This Assessment
High <u>  X  </u>	High <u>  X  </u>
Medium	Medium
Low	Low

## ***Public Access: Strategy***

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A fairly well developed infrastructure of public and private non-profit agencies and organizations is in place and is making progress in securing, enhancing, and expanding public access to the Maine coast. Greater emphasis on prioritizing access needs and more attention to coordination and collaboration across programs will yield greater results. These efforts will be bolstered by updated and new GIS based inventories and data bases, as well as a renewed analysis of access needs and prioritization efforts. Finally, public access issues can be advanced by government policy initiatives aimed at redefining the State's interest in access to beaches, use of intertidal lands, and a public hazards and storm loss reduction program.

### **Strategies to be funded by CZMA Section 309 monies:**

Create products and conduct studies that make the public aware of coastal water access issues and current opportunities, which may lead to a change in recognized public trust rights in the intertidal zone.

**1. Comprehensive Geographic Information System (GIS) Database:** MCP will partner with other agencies to develop a complete and up-to-date GIS layer of public access sites and conserved lands. One aspect of this database will be a water access data layer incorporating new inventory data being collected by the Island Institute. An online and hard copy version of the atlas will be developed.

This strategy addresses the CZM Performance Measurement System by developing a means to quantify, characterize and track changes in the extent and type of public access points on the Maine coast. This comprehensive database will also include data from other indicators such as Coastal Wetlands, Coastal Hazards and Coastal Habitats.

MCP will work with state agencies to identify existing data and data gaps, develop a format for this GIS application, and develop a process for regularly updating the data. Please note that this strategy is also referenced in the Wetlands and the Cumulative and Secondary Impacts strategies.

- a) *Program Change:* With better baseline data and a mechanism to update and maintain these data streams, the MCP program will be able to identify and develop more effective policies and programs that address public access needs.
- b) *What is the anticipated effect of the program change?:* This program change is expected to improve MCP's ability to assess public access needs and to use that information to identify potential public access sites. Also, having one common database that includes projects from multiple agencies will improve agency coordination on public access issues and allow agencies to identify gaps in addressing public access needs.
- c) *Why is this activity the most appropriate means for addressing this issue:* Effective programs and policies must be based on accurate resource assessment and management characterization. GIS provides a powerful tool to maintain accurate data, assess the interrelationship of data layers, and undertake analysis of those interrelationships.

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d) *Workplan:* .

FY06-FY 07: assess current conserved lands and public access data and develop database structure; develop interagency agreements and mechanism to update database on an annual basis.

FY 08-FY 09: undertake data research and begin populating database

FY 09-FY 10: complete data acquisition; develop on-line data viewer, develop atlas.

e) *Summary of costs:*

FY 06	\$50,000
FY 07	\$95,000
FY 08	\$25,000
FY 09	\$15,000
FY 10	\$10,000

f) *Likelihood of Success*: High. The technology to accomplish this type of interagency project has matured to point where the likelihood of success for such as an undertaking is very high.

**2. Acquisition of Storm-Damaged and At-Risk Properties from willing sellers.** As discussed in more detail in the Coastal Hazards section of this assessment, the February 2006 report, *Protecting Maine's Beaches for the Future - A Proposal to Create an Integrated Beach Management Program*, proposes the creation of a willing-seller acquisition program along Maine's beaches. In 2006 and 2007, the Coastal Program will be conducting an assessment to establish focus areas for this program and through the activities listed under Strategy 1 of the Coastal Hazards section, will be working to develop this initiative.

### **3. Review and develop recommendations on policy options to secure public rights in the intertidal zone.**

- a) *Program Change*: This strategy will help MCP chart a course towards potentially increasing the geographic area in which the public has rights along the coast
- b) *Discuss the anticipated effect of the program change*: This program change could result in increased opportunities for commercial and recreational use of the state's coastal resources by the public.
- c) *Describe why the activity is the most appropriate means to address this issue*  

In 1989, Maine's highest court ruled that public rights in the State's intertidal zone are limited to "fishing, fowling and navigation" for commercial and recreational purposes. In so ruling, the court declared unconstitutional a state law that interpreted public rights in the intertidal zone more broadly under Public Trust Doctrine principles. Public access to the coast for use of coastal beaches and other intertidal areas continues to be an issue which may reasonably be assumed to become more acute as pressures on coastal

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resources increase. Assurance of a firm understanding of the law in this area, including any subsequent interpretations or applications of comparable law and policy in Massachusetts and possibly other jurisdictions, is needed to guide development of options under current law or potentially revised law or policy for addressing public access needs in intertidal areas.

## d) Workplan:

- In consultation with the Maine Attorney General's Office, undertake a review of pertinent Maine law, including principally the Public Trust in Intertidal Land Act, the Court's Moody Beach decisions and subsequent Maine case law, and the law of other coastal states, particularly that of Massachusetts and others that recognize private ownership of intertidal areas, to clarify the nature and scope of public rights in Maine's intertidal and beach areas. Timeline: FY 06
- Coastal staff at SPO will develop a menu of policy options for securing public rights in intertidal and beach areas of importance now and for the future, potentially involving the dissemination of information to educate state and local decision-makers and the public about the nature and scope of public rights in the intertidal zone, land use acquisition through new or existing state programs, and enactment of pertinent legislation. Timeline: Year 1 through year 2.

e) Summary of costs: FY 06: \$4,000

f) Likelihood of Success: Unknown

**Strategies to be funded by CZMA Section 306 monies:**

Continue, and increase, Maine Coastal Program efforts with state agencies, municipalities, and non profits that work on coastal water access:

- Provide support to the Land for Maine's Future Program on a wide range of water access projects, including the acquisition of land for boat access sites and seaside parks, trails, and scenic areas; assist with policy and planning development that facilitates the acquisition of coastal lands for public access, such as the Maine Coast Protection Initiative. The MCP provides a .5 FTE contribution as a current effort in the 306 program area and needs to keep up this level of support.
- Continue to assist DOT with the SHIP by serving on the grant review committee; and on the Public and Recreational Access to Water Crossings Committee; and provide project coordination services through the Coastal Water Access Working Group to link highway projects with DOC, IF&W, municipalities, land trusts, and access advocates.
- Work with LMF, DOC, DMR, DOT, municipalities, and land trusts to develop a program to proactively identify sites suitable for coastal water access. The following steps are recommended: 1) Appoint or hire a state staff person (s), or hire a contractor, to work proactively on public water access sites; 2) identify towns and groups that are interested in creating or improving public access sites; 3) determine the availability of suitable land and the most appropriate type of access (boat launch, carry-in, bank fishing); 4) create and maintain a database of information on current State owned or assisted boat access sites; and 5) seek

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cooperating entities that will agree to become title holders and managers of public water access sites.

- Track the progress and monitor the effectiveness of the Working Waterfront Access Pilot Program
- Needs Assessment - Support efforts of DOC and IF&W to update the State's access priority report, informed by the results of a user survey and needs assessment.

**Strategies to be supported by USEPA BEACH ACT funding through the Maine Healthy Beaches Program.**

- Assess structure and function of current program to determine if the needs can be met with the current capacity
- Develop policies to best identify roles and responsibilities for Program partners to fill when a threat to public health is identified
- Build structure to house the MHB at an appropriate agency that can best address the public health threats
- Develop a statewide quality assured program that protects public health at all of Maine's beaches
- Develop funding mechanism to support MHB in the event that federal funding is no longer available, including funds to support the investigation of pollution sources.