

MAINE¹

State Authority for Marine Protection

Summary of State Authority

Maine has authorized its Department of Marine Resources to undertake various activities to protect the marine environment. The Department’s primary area-based protections are accomplished through the creation of Conservation Areas, where takings of specific species are restricted. The state has created other notable area-based protections through two types of federal-state partnerships: No Discharge Areas and the Wells National Estuarine Research Reserve. The state Department of Environmental Protection may also prohibit all discharges in “areas of ecological importance.”

| | Fisheries Management | Wells National Estuarine Research Reserve | No Discharge Areas | Areas of Ecological Importance |
|------------------------------------|---|--|--|---|
| Legal requirement | General fisheries authority that allows area-based management of specific species and limited take of marine life | Protects Wells National Estuarine Research Reserve | Allows designation of No Discharge Areas | Water classification scheme prohibiting all discharges in certain areas |
| Citation ² | ME. REV. STAT. ANN. tit. 12 § 6171 (1977) | Memorandum of Understanding Between National Oceanic and Atmospheric Administration Administrator & Governor of Maine (1984) | 74 Fed. Reg. 12,848–49 (Mar. 25, 2009). | ME. REV. STAT. ANN. tit. 38 § 464 (1985). |
| Designation authority | Maine Department of Marine Resources | National Oceanic and Atmospheric Administration | U.S. Environmental Protection Agency (after petition by DEP) | Maine Department of Environmental Protection |
| Management & enforcement authority | Maine Department of Marine Resources | Reserve Management Authority | Maine Department of Environmental Protection | Maine Department of Environmental Protection |
| Jurisdiction & boundaries | All state waters | Specifically designated estuarine lands | All state waters, where needed | All state waters |
| Prohibited uses | Maine Department of Marine Resources has authority to develop | Property-specific restrictions with the Reserve | Discharge of boat sewage | Discharges of pollutants |

¹ This state chapter is part of a 23-state assessment of state and local authority for marine protection. It should be read in conjunction with the Executive Summary, Introduction and Methodology Chapters in order to fully understand the scope and approach. Other chapters are available at www.eli-ocean.org/mpa.

² The citation date provided is the earliest date of enactment and does not reflect subsequent amendments unless otherwise noted. The enactment date is meant to inform the reader of how long the protection authority has existed.

| | Fisheries Management | Wells National Estuarine Research Reserve | No Discharge Areas | Areas of Ecological Importance |
|----------------|---|--|--------------------|--------------------------------|
| | rules related to use | | | |
| Permitted uses | Maine Department of Marine Resources may prohibit uses except by permit | Recreational uses, such as fishing and boating | None specified | None specified |

The state of Maine’s jurisdiction over its coastal waters extends three nautical miles seaward.³ Maine owns all submerged land seaward of the low-water mark or 1,650 feet seaward from the high-tide line, whichever is further landward, to the three-mile limit.⁴

Fisheries Management

Maine’s Department of Marine Resources (“MDMR”) has broad authority to regulate “to promote the conservation and propagation of marine organisms.”⁵ MDMR is empowered to restrict uses and takings of specific species in certain areas for marine conservation.⁶ The MDMR Commissioner’s regulations may limit the taking of marine organisms by one or more of the following: time, method, number, weight, length, and/or location.⁷

The Commissioner uses area-based protections to safeguard marine species through the creation of specified conservation or management areas.⁸ Protections granted under this authority use a species-specific approach to regulate harvesting operations. For example, MDMR designated four seed mussel conservation areas where mussel harvesting is prohibited without a permit: Harrington River, Jordan River, Narraguagus Bay, and the West Bay.⁹ In the Taunton Bay Management Area, “It is unlawful to take or possess by drag any marine organism except mussels . . . except that dragging may occur in this area on aquaculture leases.”¹⁰ The MDMR Commissioner is also responsible for identifying areas as closed to the commercial harvest of rockweed within the Cobscook Bay Rockweed Management Area.¹¹

The MDMR Commissioner may also adopt state management plans or policies for the conservation or regulation of marine organisms.¹² Management Plans may include area-based restrictions for groups of species, such as groundfish.¹³

³ See Submerged Lands Act of 1953, 43 U.S.C. §§ 1301–1315.

⁴ ME. REV. STAT. ANN. tit. 12 § 6001(6) (“Coastal waters’ means all waters of the State within the rise and fall of the tide out to the limits of the exclusive economic zone as shown on the most recently published Federal Government nautical chart, but it does not include areas above any fishway or dam when the fishway or dam is the dividing line between tidewater and fresh water.”)

⁵ ME. REV. STAT. ANN. tit. 12 § 6171 [(1977) § 6171].

⁶ *Id.*

⁷ *Id.* § 6171(2).

⁸ ME. REV. STAT. ANN. tit. 12 § 6171.

⁹ 13-188-12 ME. CODE R. § 6(B).

¹⁰ 13-188-90 ME. CODE R. § 20.

¹¹ *Id.* § 6803-C.

¹² ME. REV. STAT. ANN. tit. 12 § 6171 (1977).

¹³ 13-188-36 ME. CODE R. § 1.

Maine has also closed marine areas to commercial harvesting operations through legislation. For example, the state prohibits fishing for or taking elvers within 150 feet of any part of a dam with a fishway or within 150 feet of a fishway, within 50 feet of a licensed alewife trap, and within the middle third of a river, stream, brook or other watercourse within the coastal waters of the State.¹⁴

Wells National Estuarine Research Reserve

In 1984, the Wells Reserve was designated a National Estuarine Research Reserve (“NERR”).¹⁵ Like other NERRs, the Wells Research Reserve is federal-state partnership that operates under the auspices of the National Oceanic and Atmospheric Administration (“NOAA”) within the authority of the Coastal Zone Management Act (“CZMA”). NOAA provides funding, national guidance, and technical assistance, but each reserve is managed by a lead state agency.

Administrative oversight for Wells is vested in Maine’s Reserve Management Authority (“RMA”).¹⁶ The RMA has jurisdiction over the establishment and coordination of stewardship policies for the Reserve. Local, state, and federal laws govern use and management of the Reserve’s natural resources. Recreational fishing and clamming is allowed in the Reserve.

Portions of the Wells NERR are owned by different local, state and federal entities, including the Maine Department of Conservation; U.S. Fish and Wildlife Service/Rachel Carson National Wildlife Refuge; the Town of Wells; the RMA; and the Department of Conservation, which owns all of the Reserve’s submerged lands.

No Discharge Areas

The Maine Department of Environmental Protection (“DEP”) collaborated with the U.S. Environmental Protection Agency (“EPA”) to designate No Discharge Areas (“NDAs”) in Maine.¹⁷ The Clean Water Act allows states to prohibit all boat sewage discharges by creating NDAs if the state provides evidence to EPA that its coastal waters require greater protection than current legal protections afford. The discharge of all boat sewage, including raw sewage and sewage treated by an approved marine sanitation device is prohibited in these areas. NDAs do not restrict the discharge of gray water.

Maine has several NDAs, including Boothbay Harbor, Camden, Casco Bay, Cranberry Isles, Kennebunk, Kennebunkport, Mount Desert, Owls Head, Rockland, Rockport, Southwest Harbor, Tremont, and Wells.¹⁸

Areas of Ecological Importance

Maine DEP has issued a water classification system that recognizes areas of ecological importance, but only water discharges are addressed under this designation.¹⁹ Marine water quality is classified

¹⁴ *Id.* § 6575-C.

¹⁵ WELLS RESERVE, WELLS NATIONAL ESTUARINE RESEARCH RESERVE MANAGEMENT PLAN 2007–2012 (2006) http://nerrs.noaa.gov/Doc/PDF/Reserve/WEL_MgmtPlan.pdf (last visited Dec. 16, 2013).

¹⁶ See 94-335-1 ME. CODE R.

¹⁷ See, e.g., Maine Sanitation Device Standard; Notice of Determination, 74 Fed. Reg. 12,848–49 (Mar. 25, 2009).

¹⁸ Env’tl. Prot. Agency, No Discharge Areas in Maine, <http://www.epa.gov/region1/eco/nodiscrg/me.html> (last visited Mar. 4, 2013) (page contains links to the relevant Federal Register pages).

¹⁹ ME. REV. STAT. ANN. tit. 38 § 464 (1985).

according to its quality (SA, SB, or SC), and various restrictions are placed on discharges according to their impacts. Waters with superior natural resources are classified as SA, where no direct discharges are allowed. Unimpaired waters are classified as SB, where discharges that do not cause adverse impacts to estuarine and marine life are allowed. Finally, discharges are allowed into SC waters as long as the structure and function of the area’s ecological system is maintained.

Evaluation of State Authorities²⁰

| FACTORS | Fisheries Management | Wells NERR | No Discharge Areas | Areas of Ecological Importance |
|---|--|---|--|--|
| Legal Regime | Regulatory ★★★★★ | Regulatory ★★★★★ | Regulatory ★★★★★ | Regulatory ★★★★★ |
| Ocean Jurisdiction | All marine waters ★★★★★ | Estuarine ★★ | All marine waters ★★★★★ | All marine waters ★★★★★ |
| Durability | Indeterminate ★★ | In-perpetuity ★★★★★ | Indeterminate ★★ | Indeterminate ★★ |
| Consistency | Authorizes year-round protection ★★★★★ | Authorizes year-round protection ★★★★★ | Mandates year-round protection ★★★★★ | Mandates year-round protection ★★★★★ |
| Habitat | Habitat protection goal ★★★★★ | Habitat protection goal ★★★★★ | Byproduct is habitat protection ★★ | Byproduct is habitat protection ★★ |
| Sector | Authorizes single-sector protection ★ | Authorizes multi-sector protection ★★★★★ | Mandates multi-sector protection ★★★★★ | Mandates multi-sector protection ★★★★★ |
| Enforcement | Grants MDMR authority to enforce chapter & arrest offenders or issue citations ★★★★★ | RMA is authorized to contact local, state, or federal law enforcement officials regarding enforcement of its rules. ★★★★★ | Some MPA-specific enforcement ★★ | Some MPA-specific enforcement ★★ |
| Extent (Scope) | Multi-site, potential expansion ★★★★★ | Single site, expansion possible ★★★★★ | Multi-site, potential expansion ★★★★★ | Multi-site, potential expansion ★★★★★ |
| Process for designation or expansion | No MPA-specific public process ★★ | No MPA-specific public process ★★ | No MPA-specific public process ★★ | No MPA-specific public process ★★ |

²⁰ For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

Local Authority for Marine Protection

Summary of Local Authorities

Maine grants local government limited authority to protect marine habitat. Municipalities may pass shoreland zoning ordinances or ordinances that assert management control over local shellfish populations. Maine has also created various species-specific advisory councils, including Lobster Management Zone Councils, which provide for different forms of local management over the state’s fisheries.

| | Shellfish Conservation Programs | Lobster Management Zones | Mandatory Shoreland Zoning Act | Advisory Councils |
|---|---|---|--|---|
| Legal requirement | Municipal regulatory control over shellfish management | Local lobster management measures | Land use planning policies | Authorizes species-specific advisory councils to recommend regulations to MDMR. Rules generally may not be adopted or amended without advice and consent of the DMR advisory council. |
| Citation²¹ | ME. REV. STAT. ANN. tit. 12 § 6671 (1997) | ME. REV. STAT. ANN. tit. 12 § 6446 (1995) | ME. REV. STAT. ANN. tit. 38 §§ 435–449 (1987) | ME. REV. STAT. ANN. tit. 5 § 12004-I (57-A, B, C, E, F, G, 58) (2001); ME. REV. STAT. ANN. tit. 12 § 6191 (2011). |
| Designation authority | Local governments | Maine Department of Marine Resources | Local governments | Maine Department of Marine Resources |
| Management & enforcement authority | Local governments and shellfish conservation committees | Maine Department of Marine Resources and Lobster Management Zone Councils | Local governments | Maine Department of Marine Resources |
| Jurisdiction & boundaries | Estuaries, coastal lands, beaches and dunes, ocean resources | Maine Department of Marine Resources defined seven Lobster Management Zones | Within 250 feet of the normal high-water line of saltwater bodies and within 250 feet of the upland edge of coastal wetlands | Species-specific advisory councils have jurisdiction over their particular species. The DMR advisory council has jurisdiction over all state waters. |
| Prohibited uses | Local governments have authority to develop ordinances related to use | Lobster management councils have authority to develop rules related to use | None specified | Species-specific advisory councils have authority to recommend prohibitions to Maine Department of Marine Resources. Rules |

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| | | | | |
|-----------------------|----------------|--------------------|----------------|---|
| | | | | generally may not be adopted or amended without advice and consent of the DMR advisory council. |
| Permitted uses | None specified | Lobster harvesting | None specified | None specified |

Shellfish Conservation Programs

Maine grants municipalities the authority to implement shellfish conservation programs.²² Local governments that wish to assert control over their shellfish populations “must actively and vigorously pursue a shellfish management program.”²³ A municipality may appoint or elect a shellfish conservation committee to assist the local government in executing its responsibilities.

Municipalities may also manage their intertidal shellfish resources by adopting and enforcing town shellfish conservation ordinances.²⁴ Shellfish conservation ordinances may:

- (1) Regulate or prohibit the possession of shellfish;
- (2) Fix the amount of shellfish that may be taken;
- (3) Provide for protection from shellfish predators;
- (4) Authorize the municipal officials to open and close flats under specified conditions;
- and
- (5) Specify areas of the intertidal zone in which the dragging of mussels may be limited to the degree necessary to support a municipal shellfish conservation program.²⁵

MDMR must ensure that municipalities that assume management responsibility over local shellfish resources do so in a manner consistent with the state's goals of conservation and balancing the use of ocean resources.²⁶ MDMR regulations list various conservation measures municipalities may employ, including “licensing, limiting the number of shellfish harvesters, restricting the time . . . and area where harvesting is permitted, limiting the minimum size of shellfish taken . . . protecting the resource from predators by fencing, trapping or other means and controlling competing species.”²⁷

Lobster Management Zones

Lobster Management Zones provide another species-specific example of local authority to protect the marine environment.²⁸ MDMR has established lobster fishing limitations in seven coastal areas, labeled Zones A to G.²⁹ Each Zone has its own council, with members who are democratically elected by local fishermen.³⁰ The zone councils have authority to implement different management measures, including: (1) limits on the number of traps per fisherman; (2) limits on the number of traps on a trawl; (3) limits on

²² ME. REV. STAT. ANN. tit. 12 § 6671 (1997).

²³ 13-188-7 ME. CODE R. § 30.

²⁴ ME. REV. STAT. ANN. tit. 12 § 6671; 13-188-7 ME. CODE R.

²⁵ *Id.* § 6671(3)(A). Additionally, municipalities that have established shellfish conservation programs may issue shellfish aquaculture permits in the intertidal zone to the extreme low water mark. *Id.* § 6673.

²⁶ 13-188-7 ME. CODE R.

²⁷ 13-188-7 ME. CODE R. § 20(1)(B).

²⁸ ME. REV. STAT. ANN. tit. 12 § 6446 (1995).

²⁹ 13-188-25 ME. CODE R. § 94.

³⁰ ME. REV. STAT. ANN. tit. 12 § 6447; 13-188-25 ME. CODE R. §§ 93–94.

days and times when fishing is allowed; and (4) the authority to survey a zone and make recommendations regarding the entry/exit ratio for the issuance of new licenses.³¹ Any limitation the council proposes must be stricter than the current law.³²

One area-based provision of MDMR's fisheries regulations addresses lobster harvesting off the Island of Criehaven. It states that the waters around the island "shall be closed or opened to lobster fishing whenever a majority of the lobster fishermen at Criehaven so petition the Commissioner."³³

Mandatory Shoreland Zoning Act

Maine's Mandatory Shoreland Zoning Act governs local zoning of coastal areas and is administered by local governments, with oversight provided by DEP and the Board of Environmental Protection.³⁴ Shoreland areas are subject to zoning if they are within 250 feet of the normal high-water line of great ponds rivers, or saltwater bodies; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams.³⁵ The statute requires shoreland zoning ordinances to be consistent with Maine's Coastal Management Policies.³⁶ Maine enacted the Act for purposes including "protect[ion of] fish spawning grounds, aquatic life, bird and other wildlife habitat."³⁷

Under the Act, municipalities may also adopt zoning ordinances to establish commercial fishing and maritime activity zones along the shoreline to promote commercial fishing and maritime activities.³⁸ This authority is primarily used to promote fisheries development. A separate statute prohibits local governments from enacting ordinances, laws, or rules that regulate the trapping or fishing of any specific species of fish.³⁹

³¹ 13-188-25 ME. CODE R. § 93.

³² *Id.* § 93(B)(1)(d).

³³ *Id.* § 1.

³⁴ ME. REV. STAT. ANN. tit. 38 §§ 435–449 (1987); 06-096-1000 ME. CODE R.

³⁵ ME. REV. STAT. ANN. tit. 38 § 435.

³⁶ ME. REV. STAT. ANN. tit. 38 §§ 1801.

³⁷ ME. REV. STAT. ANN. tit. 38 § 435.

³⁸ ME. REV. STAT. ANN. tit. 38 § 448. In creating that zone, the municipality must consider the following:

1. Utilization. The number of commercial fishermen and the utilization of the shoreland area;
2. Availability. The availability of shoreland area for commercial fishing;
3. Demand for property. The demands for shoreland property for commercial and residential purposes not related to commercial fishing or maritime activity; and
4. Access. Access to the shore and availability of space appropriate for commercial fishing and maritime activities.

Id. "Commercial fishing activities" and "maritime activities" are defined separately:

2. Commercial fishing activities. "Commercial fishing activities" means activities directly related to commercial fishing and those commercial activities commonly associated with or supportive of commercial fishing, such as the manufacture or sale of ice, bait and nets, and the sale, manufacture, installation or repair of boats, engines and other equipment commonly used on boats [. . .]
8. Maritime activities. "Maritime activities" means the construction, repair, storage, loading and unloading of boats, chandlery and other commercial activities designed and intended to facilitate maritime trade.

Id. § 436-A.

³⁹ ME. REV. STAT. ANN. tit. 12 § 13201. P.L. 2013 ch. 231 amends Shoreland Zoning Act provisions regarding commercial fishing and maritime zones.

The Department of Inland Fisheries and Wildlife drafted a model ordinance to help municipalities create Critical Overlay Zones, which protect the habitat of species appearing on state or federal lists of endangered or threatened species.⁴⁰ Municipalities, including Limington, have enacted the ordinance to impose additional permitting requirements on development activities in the Critical Overlay Zones.⁴¹

Advisory Councils

Maine has established various species-specific advisory councils to provide additional opportunity for local input into the state’s fisheries management decisions. For example, the Sea Urchin Zone Council makes recommendations to the MDMR Commissioner regarding harvest operations.⁴² The council consists of 15 members; the sea urchin industry elects seven members who represent different harvest zones, and the MDMR Commissioner appoints eight members.⁴³ The council only serves in an advisory capacity.⁴⁴ The Department of Marine Resources also has a more general advisory council with ex officio members from several of the fishery sector-based councils.⁴⁵ The advisory council’s duties include an advice and consent role for agency rulemaking.⁴⁶

Evaluation of Local Authorities

| FACTORS | Shellfish Conservation Programs | Lobster Management Zones | Mandatory Shoreland Zoning Act | Advisory Councils |
|---------------------------|---|---|--|---|
| Legal Regime | Regulatory ★★★★★ | Regulatory ★★★★★ | Planning ★★★ | Council recommends regulations to MDMR ★ |
| Ocean Jurisdiction | Estuarine ★★ | Subset of marine waters ★★★★★ | Beach, tidal only ★ | Subset of marine waters ★★★★★ |
| Durability | Indeterminate ★★ | Indeterminate ★★ | Indeterminate ★★ | Indeterminate ★★ |
| Consistency | ★★★★ Authorizes year-round protection | ★★★★ Authorizes year-round protection | ★★★★ Authorizes year-round protection | ★★★★ Authorizes year-round protection |
| Habitat | ★★★ Byproduct is habitat protection | ★★★ Byproduct is habitat protection | ★★★★ Habitat protection goal | ★★★ Byproduct is habitat protection |
| Sector | ★ Authorizes single-sector protection | ★ Authorizes single-sector protection | ★★★★ Authorizes multi-sector protection | ★ Authorizes single-sector protection |
| Enforcement | ★★★★★ Grants municipal warden authority to enforce chapter & arrest offenders or issue citations | ★★★★★ Grants MDMR authority to enforce chapter & arrest offenders or issue citations | ★ No MPA-specific enforcement | Not enforced (council only makes recommendations) |

⁴⁰ http://landuse.law.pace.edu/landuse/documents/laws/reg1/Reg1_ME_Limington_CriticalOverlay.doc.

⁴¹ Limington, Maine, Zoning Ordinance Art. 10 §§ 1–5.

⁴² ME. REV. STAT. ANN. tit. 5 § 12004-I(57-B) (2001).

⁴³ ME. REV. STAT. ANN. tit. 12 § 6749-X.

⁴⁴ *Id.* § 6749-X(3).

⁴⁵ ME. REV. STAT. ANN. tit. 12 § 6024.

⁴⁶ ME. REV. STAT. ANN. tit. 12 § 6191.

| FACTORS | Shellfish Conservation Programs | Lobster Management Zones | Mandatory Shoreland Zoning Act | Advisory Councils |
|-----------------------|--|---|---|---|
| Extent (scope) | Multi-site, <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> potential expansion | Multi-site, no <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> expansion mechanism | Shoreland-by-shoreland, local <input type="checkbox"/> <input checked="" type="checkbox"/> management | Only authorizes Council to recommend to MDMR to protect marine areas |
| Process for expansion | No MPA-specific <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> public process | No MPA-specific <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> public process | No MPA-specific <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> public process | No MPA-specific <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> public process |