



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

July 2, 2004

Mr. John King
Chief, Coastal Programs Division
NOAA, Office of Ocean & Coastal Resource Management
1305 East-West Highway, SSMC4
Silver Springs, MD 20910

Dear Mr. King:

The New Hampshire Coastal Program submits this Routine Program Change (RPC) for your approval under Section 306 of the Federal Coastal Zone Management Act.

A legislative action in 2004 for reorganization of various elements of state government in NH is the reason for this RPC. The RPC was developed using 15 C.F.R. § 923.84 and the 1996 OCRM guidance document. We consider this program change to be "routine" and not a program amendment. An electronic copy of the text and appendices has been sent to Masi Okasaki.

Brian Mazerski, federal consistency coordinator, is the point of contact for this RPC. He coordinated it with OCRM staff before submission. You can reach him at (603) 271-8811, if there are any questions.

My bureau is pleased to have the Coastal Program staff on board. We are doing all that we can to make their transition as seamless as possible.

Sincerely,

Paul M. Currier, P.E., Administrator
Watershed Management Bureau

Enclosure:

1. NHCP RPC 2004
2. Text of Senate Bill 534
3. Public Notice for RPC

NEW HAMPSHIRE COASTAL PROGRAM

ROUTINE PROGRAM CHANGE (RPC)

The New Hampshire Coastal Program (NHCP), formerly of the Office of Energy and Planning, currently in the Department of Environmental Services (DES) – following a state government reorganization under Senate Bill 534 in spring 2004, formally submits to the Office of Ocean and Coastal Resource Management (OCRM) a Routine Program Change to the NHCP to incorporate the reorganization. The change, with effects in the “authorities and organization” and “coordination, public involvement and national interest” categories, is not substantial as defined by 15 C.F.R. § 923.80(d).

All personnel, staff positions, documents, equipment, and funding (grants, etc) for the NH Coastal Program have been transferred to DES effective 1 July 2004. Except for the disruption caused by a July '04 relocation of the coastal office from downtown Portsmouth to a DES facility on the Pease International Tradeport (still in Portsmouth), the NHCP will continue to perform its mission as before. The NHCP remains a networked entity based upon the same core regulatory and management programs. There is no change to permitting practices (e.g. Wetlands). The difference is that the Department of Environmental Services (in lieu of the Office of Energy and Planning, formerly the Office of State Planning) will now have the overall responsibility for implementation of the Coastal Program. Under DES, the NHCP will continue to receive and distribute coastal program funds and will continue to coordinate all local, state, and federal involvement in the program. The NHCP will remain as the key contact for federal agencies on coastal issues and will conduct federal consistency reviews.

The current boundaries (inland: municipal boundary of 17 coastal communities from 2004 program amendment; seaward: 3 nautical mile limit) remain unchanged. There is no change in designation of federally excluded land. Revised Statutes Annotated (RSA) and administrative rules (for enforcement) are unchanged, there were some bureaucratic revisions (the reorganization) generated by Chapter 257 of Senate Bill 534, signed into law by the governor in June. Specific RSA text changes will be submitted in the NHCP's next biannual RPC following the 2004 legislative year. There are no changes to the sixteen NHCP policies; the DES assumes overall responsibility for the implementation of the NHCP. There is no change to the relationship of the NHCP with local communities. The NHCP will maintain the same level of public involvement as in the past. With the transfer of currently assigned NHCP staff, the change will be relatively seamless.

As with most organizational changes, the biggest impact of this reorganization is administrative in nature and is the notification of all correspondents, state and federal entities, and the public. A public notice has been prepared (see Attachment) and published in two state newspapers on 24 June 2004.

1. IDENTIFICATION OF CHANGE:

The full text of Senate Bill 534 is provided as an Appendix to this document. Applicable sections (to the NH Coastal Program) are colored blue and in bold print. As stated in the introduction, this global change of the NHCP's implementing authority to the Department of Environmental Services (in lieu of the Office of Energy and Planning) will not affect the day-to-day operation of the Coastal Program. The same tasks (federal consistency, grant management, etc) will be performed, but "under new management" as a result of NH's governmental reorganization mandated by the legislation signed into law on 15 June 2004.

See Page S-2 of the 1988 Final Environmental Impact Statement for the specific portion of the management program affected by this change.

With the reorganization, plans are in work to relocate the Coastal Program from its current office in downtown Portsmouth to the following address at Pease International Tradeport:

New Hampshire Coastal Program
Department of Environmental Services/Watershed Management Bureau
50 International Drive
Pease International Tradeport
Portsmouth, NH 03801
Phone (603) number to be determined

In DES, the Coastal Program will be assigned to the Watershed Management Bureau:

Paul Currier, P.E. Administrator
DES Watershed Management Bureau
29 Hazen Drive/P.O. Box 95
Concord, NH 03302-0095
Phone (603) 271-3289

The Watershed Management Bureau is assigned under the Water Division:

Harry Stewart, Director
DES Division of Water
29 Hazen Drive/P.O. Box 95
Concord, NH 03302-0095
Phone (603) 271-3308

Ultimately, the Commissioner of DES is the senior official for NHCP implementation:

Michael P. Nolin, Commissioner
Department of Environmental Services
29 Hazen Drive/P.O. Box 95
Concord, NH 03302-0095

Phone (603) 271-3503

The NHCP's web site will remain a distinct identifiable program in the NH information technology system. NHCP Staff will receive updated phone listings and e-mail addresses due to the reorganization. Staff contacts will notify the appropriate level NOAA personnel with those changes.

2. ANALYSIS/EXPLANATION OF WHY THIS CHANGE IS NOT SUBSTANTIAL:

a. There are no changes to "Uses Subject to Management" (15 C.F.R. Part 923, Subpart B):

(1) The RPC does not introduce any change to definition of permissible land uses and water uses within the coastal zone which have a direct and significant effect on how these uses will be managed. The Commissioner (or Assistant) of DES is a member of the Council on Resources and Development (CORD). Though the NHCP may have had easier access to the CORD Chairman (Director of the Office of Energy and Planning) before the reorganization, the fact that the DES Commissioner is a full member affords similar representation on any land use issues. Federal Consistency reviews of and grants management of land use items are unchanged.

(2) The Reorganization introduces no change to energy facility siting. Under NH's Energy Facility Site Evaluation Committee (EFSEC) procedures, the NH Coastal Program will, through the DES Commissioner, remain part of the planning process for energy facilities to be located in, or which may significantly affect, the NH Coastal Zone.

(3) There are no changes to local land use and water use regulations within the coastal zone. NHCP policies dealing with "use" are unaffected by the nature of this routine change. Many of the basic statutory and administrative rules references in this area already fall under the mantra of the Department of Environmental Services. The net result is no unreasonable restriction or exclusion of land and water uses of regional benefit.

(4) The RPC does not impact "the inventory and designation of areas that contain one or more coastal resources of national significance; and the enforceable policies to protect such resources." As previously stated, NHCP policies do not change and retain their enforcement references for protection of such areas.

b. There are no changes to "Special Management Areas" (15 C.F.R. Part 923, Subpart C):

(1) The designation of areas of particular concern within the coastal zone remains as before. Management of areas of concern will retain the same processes prior to this reorganization.

(2) The broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority, are unchanged. NHCP policies are unaltered.

(3) Enforceable policies (e.g. NHCP Policies numbered 1 and 7) relating to the protection of and access to beaches and other public coastal areas remain the same. The term "beach" is defined in Wetlands rules (Wt 101.05), which continues to be part of the enforcement mechanism for the NHCP.

(4) The NHCP retains a strong planning process to assess the effects/control of shoreline erosion, as well as a staunch restoration program. Through RSA's and administrative rules dealing with wetlands, NHCP continues to treat wetlands as a core area – unchanged by the reorganization.

(5) Likewise, NHCP's procedures to designate special areas for the purpose of preservation or restoration for their conservation, recreational, ecological, historical or esthetic values are the same after 1 July 2004. NHCP Policies numbered 5, 6 and 15 apply.

c. There is no change to the present "Boundaries" (15 C.F.R. Part 923, Subpart D) of the NHCP. The Program Amendment that NOAA finalized in January 2004 set the inland boundary at the municipal limit of the following 17 municipalities: Dover, Durham, Exeter, Greenland, Hampton, Hampton Falls, Madbury, New Castle, Newfields, Newington, Newmarket, North Hampton, Portsmouth, Rollinsford, Rye, Seabrook, and Stratham. The NHCP's seaward boundary remains at three nautical miles.

d. There are changes to "Authorities and Organization" (15 C.F.R. Part 923, Subpart E) resultant from the reorganization, but they are not substantial.

(1) NHCP enforceable policies (numbered 1 to 16) are not amended in any way by the reorganization. All statutes/administrative rules which provide the enforcement mechanisms for said policies are unchanged.

(2) The organizational structure to implement the (coastal) management program has been changed, but it is of minimal impact. Formerly, the Director of the Office of Energy and Planning was charged with implementation of the NHCP. There was an OEP accounting function to track grant monies and the assigned NHCP staff filled the planning functions, to include federal consistency. The NHCP staff, with all its inherent responsibilities, has been transferred to DES (See Appendix for text of legislation) and will continue implementation as before – only with a different supervisory structure. Assigned staff will not be levied with duties that would detract them from carrying out the mission of the NHCP. DES has the administrative capability to monitor and evaluate the management of NH's coastal resources, to make periodic reports to NOAA/OCRM, and to present evidence of adherence to the management program (CZMA, Section 312). The Commissioner of DES, as one of the Governor's Executive Department heads, is a peer of the OEP Director – with

similar access to key government councils and committees (CORD, EFSEC, etc), so the NHCP planners will have similar opportunities for input to the state planning process. Thus, the transfer to DES is not a substantial change for the NHCP.

(3) The designated single State agency to receive and administer grants for implementing the NHCP will change from OEP to DES. The DES has an "Administrative Services Unit" (ASU) which is staffed with personnel to receive incoming grants monies from NOAA (and others) and issue payments to grantees (municipalities, non-profits, etc) as determined by NHCP staff. Day-to-day administration of the NHCP grant program will be a collaborative process between NHCP staff and the ASU, as it was before with the business office in the OEP. The change is not substantial – only in form (DES versus OEP), but not in function. Since the NHCP distributes grant monies to other sections of DES (i.e. Wetlands Bureau), some subordinate level transfers of funds from the NHCP will be within DES, while others to outside entities (municipalities) will be processed in a similar fashion to the previous system. The ASU and the NHCP will make the appropriate notice to the NOAA grants administrator. This change is not substantial.

(4) The State's authority for management of the coastal zone in accordance with the management program (with all inherent authorities: land/water use regulations, land acquisition, etc) is unchanged. Statutory and administrative rule references to implement the NHCP are the same; thus existing authorities can and will be used to implement the full range of policies and management techniques in the NHCP. The NHCP remains a networked program. As in the Office of Energy and Planning, the NHCP in the DES will rely on sister agencies (Wetlands Bureau, Fish and Game Department, etc) to carry out necessary enforcement actions and for assistance in review of federal consistency determinations. The network aspect itself will not change; the change will be in the administrative relationship between agencies. The organizational change will require eventual revision of five memoranda of agreement from the 1988 FEIS (CORD, Appendix A; Historical Resources, Appendix C [pages C-9, C-10]; Transportation, Appendix D [page D-1]; and Water Supply/Pollution Control, Appendix E. The first four MOAs will be written with the DES (in place of OEP) as Coastal Program implementation authority. For the last MOA, since both the Coastal Program and the Waste Management Division are in the DES, some internal agreement is envisioned. The overall change is not substantial because it will not effect operation of the NHCP.

(5) The NHCP's techniques for control of land and water uses within the coastal zone will not change [see 2. a. (1) and (3) above].

(6) The State's mechanism to ensure that all State agencies will adhere to the program is fundamentally the same. A difference in supervision of the implementing agency is the only change. All networked agencies have been accustomed to the practices of the NHCP since its inception. Thus, sister agencies understand the importance of the NHCP in regulating federal activity in the NH coastal zone and assist the program in its mission/goals. Occasionally a sister agency may miss a

suspense date, but communications and follow-up can generally resolve such minor issues. The change in supervision of the NHCP is not an issue in this matter.

(7) The enforceable policies and mechanisms to implement NH's Coastal Nonpoint Pollution Control Program (6217) will not change. NHCP Policy numbers 8 and 11 apply and remain the same. These policies and associated references are adequate for implementation of NH's coastal nonpoint program.

In summary, regarding Authorities and Organization, there are changes to these aspects of the NHCP, but the changes are not substantial.

e. There are changes to "Coordination, Public Involvement and National Interest" (15 C.F.R. Part 923, Subpart F) resultant from the reorganization, but they are not substantial.

(1) The mechanism for continuing consultation and coordination between NH's Coastal Program and local governments, interstate agencies, regional agencies, and area-wide agencies within the coastal zone will change slightly due to the realignment of the NHCP under DES. As indicated in paragraph 2.d.(4) above, some memoranda of agreement will have to be updated to reflect the NHCP's new implementing agency. Currently active consistency determination files which were sent to NHCP will receive their final determinations under the cover of DES (in place of OEP) letterhead. Routine coastal program business such as grant payments to municipalities and regional planning commissions will have an "ID" change (to DES). Through notice to regional state contacts and others with whom NHCP regularly corresponds, all parties will be made aware of the transition. As previously stated, the NHCP under DES will retain its present staff to perform the same basic functions and services as it has done for years. The education of all correspondents with the NHCP's new contact information (address, phone/fax numbers, e-mail addresses) will take some time and effort; there will likely be some minor disruption of communications occasionally, but the changes are manageable and are not substantial.

(2) The NHCP's consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance, will remain the same. NHCP's core policies and references will be unchanged and currently make provisions for items of regional or national significance. As noted in the previous paragraph, the only change is the basic contact information. Projects such as the siting of energy facilities have committees that include the DES Commissioner who has similar status as the Director of OEP.

(3) The NHCP's procedures for public participation in permitting processes, consistency determinations, and other decisions will not change. The same public notice requirements for permits, consistency reviews, and other actions will be followed with the NHCP in DES. The only change will be for the NHCP to advise its correspondents (state, federal, local) of the new contact information.

(4) The NHCP's federal consistency procedures will not change. The system is networked within New Hampshire government and will remain so, albeit with new parent agency identification.

In summary, regarding Coordination, Public Involvement and National Interest, there are changes to these aspects of the NHCP, but the changes are not substantial.

3. Supporting References to Senate Bill 534.

All the text in the Appendix was derived from the NH Laws On-Line web site:

www.gencourt.state.nh.us/rsa/html/indexes/

Appendix: Text of Senate Bill 534

Attachment: Public Notices – 2 each from 24 Jun 04