

# MAINE STATE LEGISLATURE

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# **Land and Water Resources Council**

## **2005 Annual Report**

to

**Governor John Elias Baldacci**

**and the**

**Joint Standing Committee on Natural Resources  
of the**

**122<sup>nd</sup> Maine Legislature,  
Second Regular Session**

January 2006

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Maine Coastal Program

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# INTRODUCTION

The Land and Water Resources Council (“Council”) submits this annual report to the Governor and the Maine Legislature's Joint Standing Committee on Natural Resources in accordance with 5 M.R.S.A. §3331, sub-§4. This report describes the Council's activities in 2005 and notes activities that the Council anticipates in 2006.

In 1993, the Maine Legislature established the Council 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 Council is established 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. 5 M.R.S.A. §3331, sub-§2. The Council's agenda includes matters assigned to it by the Legislature or the Governor, as well as projects initiated at the request of a state agency or by the Council itself.

## COUNCIL MATTERS IN 2005

### Bay Management

PL 2003 c. 660, Part B (LD 1857) directs the Council to undertake a two-year study “to explore and document potential new and innovative concepts for the management of Maine’s embayments.” This study requirement was an element of legislation stemming from a prior study on aquaculture regulation. The law requires the Council to submit a final report by January 15, 2007 to the Legislature’s Joint Standing Committee on Marine Resources. Federal Coastal Zone Management Act funds are supporting the study effort which began in the fall of 2004. The main purposes of the study are to explore the concept of bay management as a tool for planning and management of uses of near shore embayments and the potential role of local government in such planning and management, and to identify a menu of bay management options for consideration by the Legislature.

DMR and SPO are jointly leading an interagency staff work group which, with the assistance of a neutral, third party project steering committee made up of eight public members<sup>[1]</sup> with expertise in relevant fields, is carrying out the study at the Council’s direction. DMR has created a website (<http://www.state.me.us/dmr/baystudy/baystudy.htm>) to help provide timely information on the study.

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<sup>[1]</sup> The steering committee members are: Paul Anderson, *Director, Maine Sea Grant*; Kathleen Billings, *Chair, Soft Shell Clam Advisory Council, Town of Stonington*; Heather Deese, *PhD Candidate, University of Maine*; Dewitt John, *Director of Environmental Studies, Bowdoin College*; Evan Richert, *Program Director, Gulf of Maine Census on Marine Life*; Jim Salisbury, *Retired CEO, Supreme Alaska Seafoods*; David Schmanska, *Harbormaster, St. George*; Barbara Vickery, *Director of Conservation Programs, ME Chapter of the Nature Conservancy*

### *Overview of work in 2004*

At its June 2004 meeting, the Council reviewed and approved the work plan for the study. In September 2004 meeting, the Council reviewed and approved a detailed public participation plan. In 2004, the Council also reviewed and approved a request for proposals (RFP) for two pilot bay management demonstration projects, in accordance with the study legislation. Proposals submitted by the Friends of Taunton Bay and the Quebec Labrador Foundation/The Muscongus Bay Project Committee were selected for funding. Each was awarded a \$20,000 grant for bay management pilot projects in Taunton Bay (at the head of Frenchman Bay, including Hog and Egypt Bays) and Muscongus Bay (including the Medomak River estuary and Georges River estuary), respectively.

### *Summary of work in 2005*

There was continued progress on this initiative in 2005. In accordance with the public participation plan, in the winter and spring of 2005 staff held an initial round of public meetings in five locations along the coast. The meetings were designed both to provide information about the project and to gather ideas about bay management. Comments and suggestions provided at these meetings are summarized on DMR's bay management website. Staff identified several major categories of issues, problems, and interests expressed at the public meetings as well as several underlying, core problems that are the source of the more specific problems identified. *See* Appendices A and B.

In addition to efforts related to the public participation plan, staff has outlined and researched several specific topics regarding the current framework of laws and policies affecting Maine's embayments, including current law regarding interlocal agreements and municipal roles under several state natural resources laws. Staff has continued to investigate and document approaches to bay management in other jurisdictions, as well as other natural resources management efforts as potential sources of ideas applicable to Maine. In addition, staff has researched other tools which have been suggested to be of potential use for bay management, including alternative dispute resolution.

Based on its analysis of comments and suggestions received at the initial round of public meetings, and in light of research conducted to date, DMR and SPO staff arrived at several "findings to-date" to help guide and direct study efforts in 2006. *See* Appendix C. Briefly summarized, those interim findings are the following:

- There is no one problem for bay management to address and the specific mix of problems is unique to each specific area or bay. Moreover, it is fully expected that the problems faced by an area will continue to evolve, and that bay management should be structured to anticipate, to the degree possible, future needs.

- The specific issues and problems identified at the public meetings are symptoms that are caused or perpetuated by larger, core problems. Bay management options should focus on addressing these core problems.
- In light of the diverse mix of changing issues that the State's coastal areas face, the work of the bay management project should focus on creation of a process through which unique subsets of problems along the coast could be better addressed.
- Analysis to date suggests that specific improvements could be made within the existing management system to address many of the issues while a larger, system-wide approach may be needed to address the large range of identified problems and underlying core problems in ways well adapted to the unique mix of problems relevant to a specific bay.
- Effective "bay management", whether through improvements to existing governance tools or creation of others, should, to the greatest extent possible, ensure that:
  - Science is incorporated into decisions;
  - Local input is incorporated into decisions;
  - Emerging uses, technologies, and trends are addressed;
  - The scale of management matches the scale of the issue;
  - The larger Public Trust interest is considered and protected; and
  - Cumulative impacts are taken into account;
  - Resources are adequately protected;
  - User conflicts are adequately addressed; and
  - The economic viability of coastal uses is maintained.

At its December 2005 meeting, the Council endorsed these preliminary findings for the purpose of guiding refinement of work plans for 2006, including plans for additional public meetings. With advice and assistance from the Steering Committee, provided at its November 2005 meeting, as well as direction from the Council at its December 8, 2005, staff is refining work plans and public participation plans for 2006 in light of these interim conclusions. A second round of public meetings will be held in 2006 to explore ideas regarding governance options to address the issues, concerns, and values identified in the initial phase of the study.

The two pilot projects also made noteworthy progress in 2005. The Taunton Bay group has created five subcommittees, each with its own accomplishments: 1) Indicators, 2) Outreach, 3) Economic Assessment, 4) Mapping, and 5) Governance. Of particular note is a "Town Meeting" that was organized by the Outreach subcommittee to bring together diverse stakeholder groups. In addition, the Taunton Bay project organized a meeting with a range of state agency representatives, the Departments of Marine Resources, Inland Fisheries and Wildlife, Conservation and Environmental Protection, and the State Planning Office, to establish communication and learn how state agency



personnel who have not been involved with the pilot projects to date might utilize the information that the project could provide.

A major focus of the Muscongus Bay group's efforts has been to conduct a series of roundtable discussions, in which residents have been invited to discuss their ties to this coastal region and share their thoughts and concerns about uses and management of the bay. This project is also currently engaged in a "use-mapping" exercise, has conducted a mail survey, and will be holding a public forum event.

With the assistance of the steering committee, staff is currently developing criteria for evaluation of the pilot projects to facilitate use of insights gained through the pilots in developing and assessing bay management options.

The bay management study will remain a priority for the Council in 2006.

### **Interagency Task Force on Invasive Plants and Nuisance Species**

38 MRSA §1871 establishes the Interagency Task Force on Invasive Plants and Nuisance Species (task force) to advise the Council on matters pertaining to research, control and eradication of invasive aquatic plants and nuisance species and authorizes the task force to present recommendations to the Council. In 2002, the task force developed and the Council approved an action plan to protect the State's inland waters from invasive aquatic plants and nuisance species in accordance with 38 MRSA §1872. Following federal approval of the action plan as the State's invasive species management plan, federal funds received from the United States Fish and Wildlife Service as well as state funds have supported state efforts, led by DEP and DIFW, to build capability to respond rapidly to aquatic invasive species issues.

The task force continued to meet in 2004 to facilitate implementation of the action plan but did not have occasion to present further recommendations to the Council.

At the Council's direction, SPO convened an interagency meeting among state agency staff working on invasive species issues to identify potential gaps in state efforts and to discuss issues and opportunities for further coordination and related improvement of state efforts in this area, including potentially establishment of an all-media, all-taxa state invasive species council. This group included Roy Bouchard and John McPhedran, DEP; Pete Thayer and Linda Mercer, DMR; Peter Borque, DIFW; Ann Gibbs, Department of Agriculture; Molly Dockerty, DOC; Bob LaRoche, MDOT; and Dave Struble, DOC/Maine Forest Service. There was general consensus regarding the following basic gaps in state invasive species efforts:

- baseline data regarding the marine environment and wetlands, in particular;

- identification and clarification of vectors (sources) of invasive species, increased knowledge regarding which might be useful in prioritizing and coordinating efforts;
- resources (staff positions as well as funding) needed to maintain and expand existing efforts; and
- capacity for outreach to educate and enlist the help of citizen scientists and volunteers as an efficient means to supplement and expand in-state efforts. Meeting participants also noted an increase in questions and concerns from the public regarding invasive species issues. DEP and DMR staff explained that LD 667 from the first regular session of the 122<sup>nd</sup> Legislature directed their agencies to address issues regarding invasive species vectors and related topics. DEP and DMR are scheduled to submit their report to the Legislature in February 2006 and further discussion of these issues in the Legislature is anticipated.

There was also general consensus among meeting participants that creation of an all-media, all-taxa state invasive species council, particularly in the absence of additional resources to organize and administer it, did not seem to be a priority or promising means to address the identified gaps. The Council generally endorsed the interagency group's suggestion that it use *ad hoc* technical groups (organized by state staff) to address specific issues of concern to multiple agencies as needed and hold an informal annual interagency meeting to help ensure necessary communications and identify any policy issues to present to the Council or other decision makers. Moreover, there was general consensus that outreach to educate and enlist the help of citizen scientists and volunteers may be an efficient and effective strategy given scarce resources. DIFW offered to coordinate agency efforts to explore how existing state public service announcements and related education and outreach efforts (particularly TV ads) might be improved to better inform and enlist public involvement. DIFW's interest in this efforts stems in part from recognition that the agency lacks capacity to address invasive species issues it now faces.

### **Casco Bay Estuary Plan**

The Casco Bay Estuary Project is one of 28 federally funded national estuary projects. In accordance with the Casco Bay Estuary Plan, the action plan that forms the foundation for and guides the Project's work, the Project has successfully partnered with the State in addressing regional stormwater and other issues. In 2005, the Project began to revise and update the 10-year old Casco Bay Estuary Plan and, as part of that process, to identify opportunities for working together with state agencies on mutual priorities. In particular, there is interest in identifying opportunities for the approximately \$500,000 in state match necessary to secure federal funding for this on-going effort. Karen Young, executive director of the Project met with the Council to request reaffirmation of the State's support for the Project. In 1995, the Council endorsed the Plan, which specified a number of ways in which state natural resources agencies could work cooperatively on implementation.

The Council unanimously agreed in concept to continue to work cooperatively with the Project and, to that end, directed its staff to work with Ms. Young to develop draft language stating the Council's continuing support, with reference to identified action items on which one or more state agencies will collaborate with the CBEP, for consideration at a subsequent Council meeting. As part of the plan revision process, Ms. Young met with a number of agencies in 2005 to discuss potential cooperative efforts. The Council anticipates action in the first half of 2006 on the CBEP's proposal for continuing state support.

### **Land Use Mediation Program**

5 MRSA §3331, sub-§5 requires the Council to submit a biennial report on the Land Use Mediation Program established by 5 MRSA §3341. The Council's 2005 report is attached. *See Appendix C.*

### **Lakes Heritage Trust Fund**

5 MRSA §3331, sub-§6 authorizes the Council to manage the Lakes Heritage Trust Fund and requires the Council to include in its annual report "an accounting of all donations to and expenditures from" the Fund. In 2004, the Fund received no donated or other funds and the Council made no expenditures from the Fund.

### **Interagency Coordination**

In 2003, the Council adjusted its meeting schedule (moving from monthly to quarterly meetings) and approach to agenda setting in an effort to clarify and coordinate its role in relation to the Energy Resources Council and other forums for discussion among the State's natural resources agency commissioners. In particular, the Council resolved to use the commissioners' cabinet-level discussions to identify issues that are ripe for consideration by the Council and to help guide Council actions on matters assigned to the Council by the Legislature or Governor, as well as other matters which may benefit from inter-agency coordination but may not require the active involvement of the Council.

This approach has proven an efficient and effective means for ensuring timely communication among agency decision makers and resulting action on natural resources policy issues. In addition, sub-cabinet level discussions among state natural resources agencies have been a useful forum for identifying issues that involve multiple state agencies with potentially conflicting missions or mandates that are of interest to stakeholders outside of state government and thus may necessitate and benefit from further commissioner-level consideration via the Council. In keeping with this approach, SPO staff, in cooperation with other natural resources agency staff, provided professional assistance to help support inter-agency policy initiatives regarding groundwater management, regionalization, local regulation of state activities, state comments on rules

proposed by the Federal Energy Regulatory Commission on the pre-filing review process for LNG projects, state comments on the Minerals Management Service's 5-year Outer Continental Shelf oil and gas leasing program and other natural resources policy matters.

### **Upcoming Issues in 2006**

Topics which the Council anticipates it will address in the coming year include the following:

- Oversight of bay management project

This study project, assigned to the Council by PL 2003 c. 660, Part B, is expected to be a primary focus for the Council in 2006. The Council has approved a work plan and schedule for this project. The Council will submit an interim report to the Legislature's Marine Resources Committee in January 2006. The Council's final report and recommendations are due to the Marine Resources Committee in January 15, 2007.

- Oversight of groundwater management study

This study project, assigned to the Council by PL 2005 c. 452, is expected to be a primary focus for the Council in 2006. The Council has approved a work plan and schedule for this project. The Council's final report and recommendations are due in November 1, 2006.

- Invasive species management

The Interagency Task Force on Invasive Plants and Nuisance Species may have additional recommendations for the Council to consider in 2005. In addition, legislative action regarding the report required by Resolves 2005 c. 43 may result in additional matters that require interagency coordination or Council involvement.

- The Casco Bay Estuary Project

The Council anticipates that in the first half of 2006 it will consider a proposal for recommitment of state natural resources agencies' support for and cooperation with a revised an updated Casco Bay Estuary Plan.

- Coastal dredging; dredged materials management

The Council will oversee an interagency-stakeholder coastal dredging work group. Recommendations that DEP and MDOT presented to the Committee at its request in December 2005 regarding LD 1592 from the first regular session of the 122<sup>nd</sup> Legislature suggested creation of the work group. The Natural Resources Committee indicated its intent to send a letter requesting the Council's oversight of the work group. The work group will consider, among other matters, means to improve interagency coordination on coastal dredging issues and recommendations in the 2002 Dredging

Management Action Plan, the product of an interagency and stakeholder effort led by the Maine Department of Transportation. These discussions may result in policy recommendations for consideration by the Council.

- Priority watersheds

With input from a variety of agencies and stakeholders, DEP is updating and revising the State's list of priority watersheds for nonpoint source water pollution control. DEP developed the list in 1998 through the interagency Watershed Management Committee previously established by the Council, which reviewed and endorsed the list. DEP anticipates presenting the new list to the Council for its consideration in the first half of 2006.

- Interagency coordination

The Council intends to continue to coordinate its role and activities in relation to the Energy Resources Council and other forums for discussion among the State's natural resources agency commissioners. To that end, the Council intends to continue to meet quarterly on a quarterly basis in 2006 to facilitate oversight of the bay management project as well as work on other matters as needed.

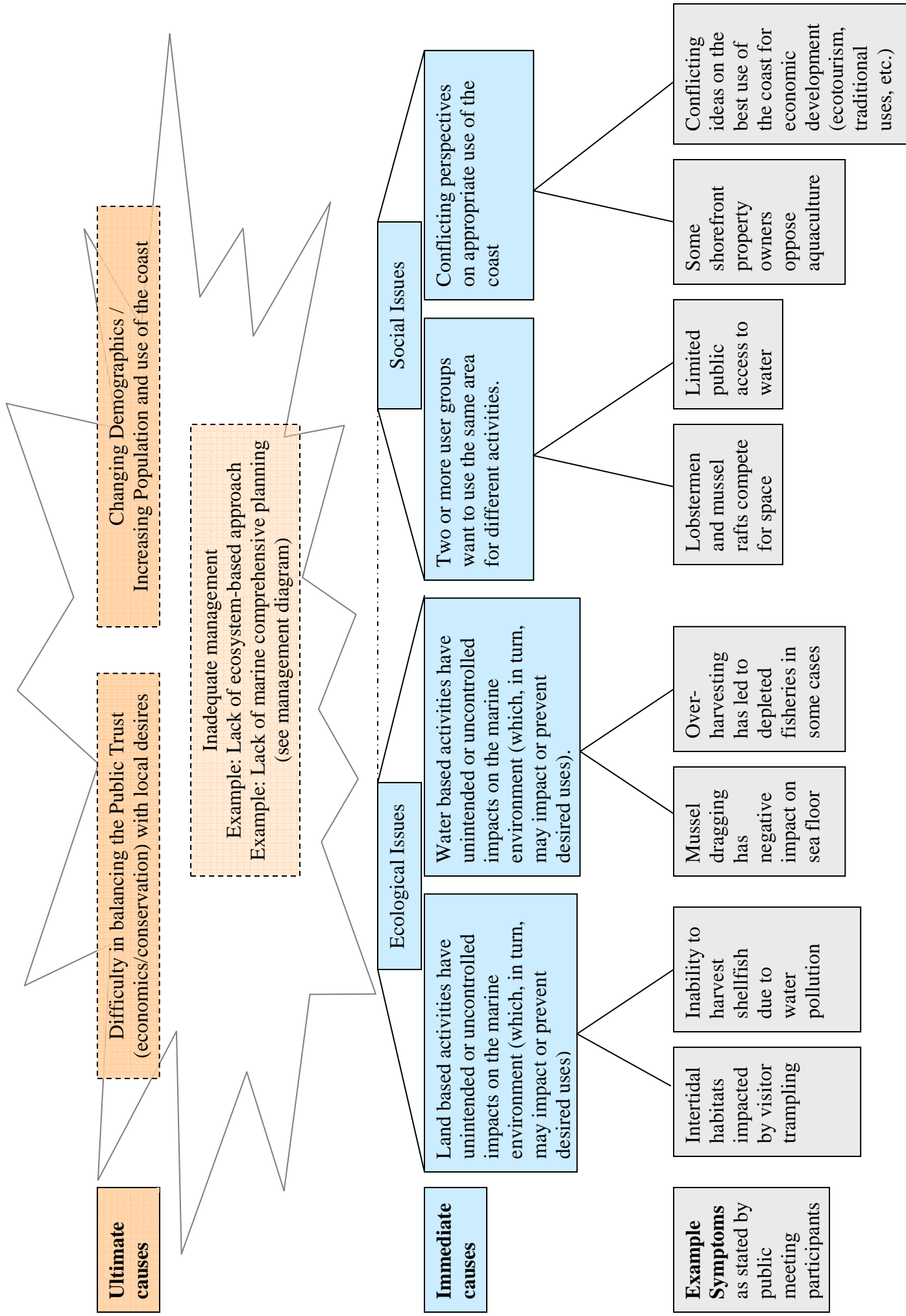
## **CONCLUSION**

The Council continues to provide a decision maker level forum for development and communication of consistent state positions on issues and policies that have statewide natural resources implications and that require coordination among multiple agencies.

As in past years, the Council's work was enabled, benefited from, and continued to promote close collaboration among the state natural resources agencies. The Council thanks members of the public and federal and state government personnel for their hard work and participation in council meetings, and the stakeholder meetings, study commissions, and other public policy development initiatives whose recommendations often inform and enlighten the Council's discussions and decisions.

## **Appendix A**

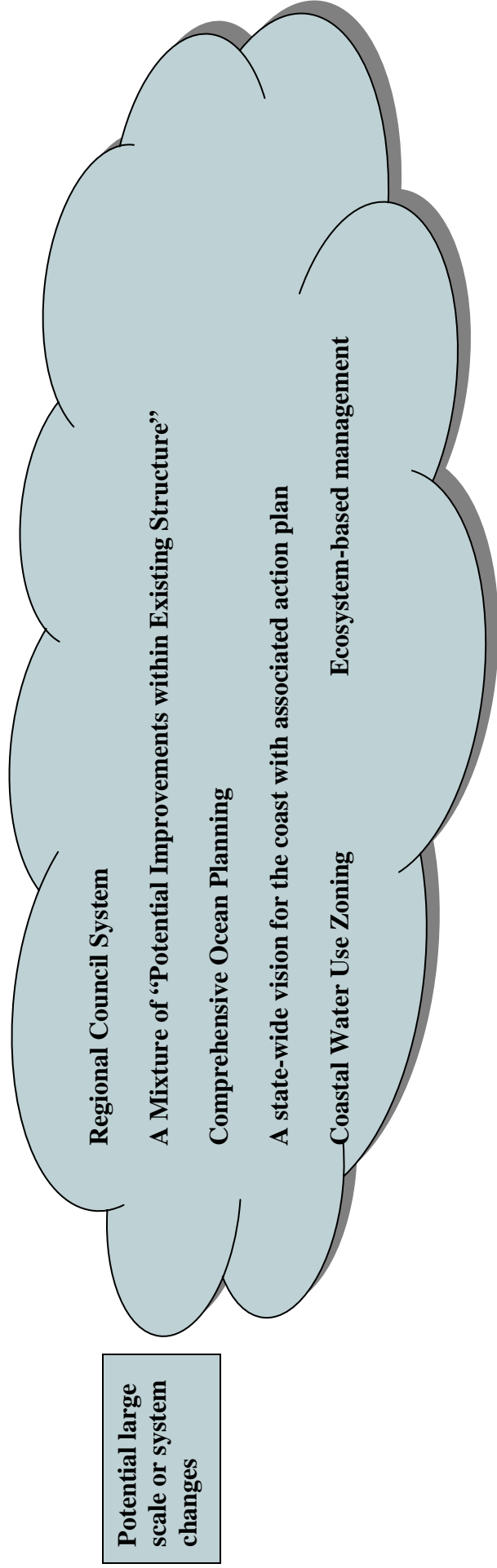
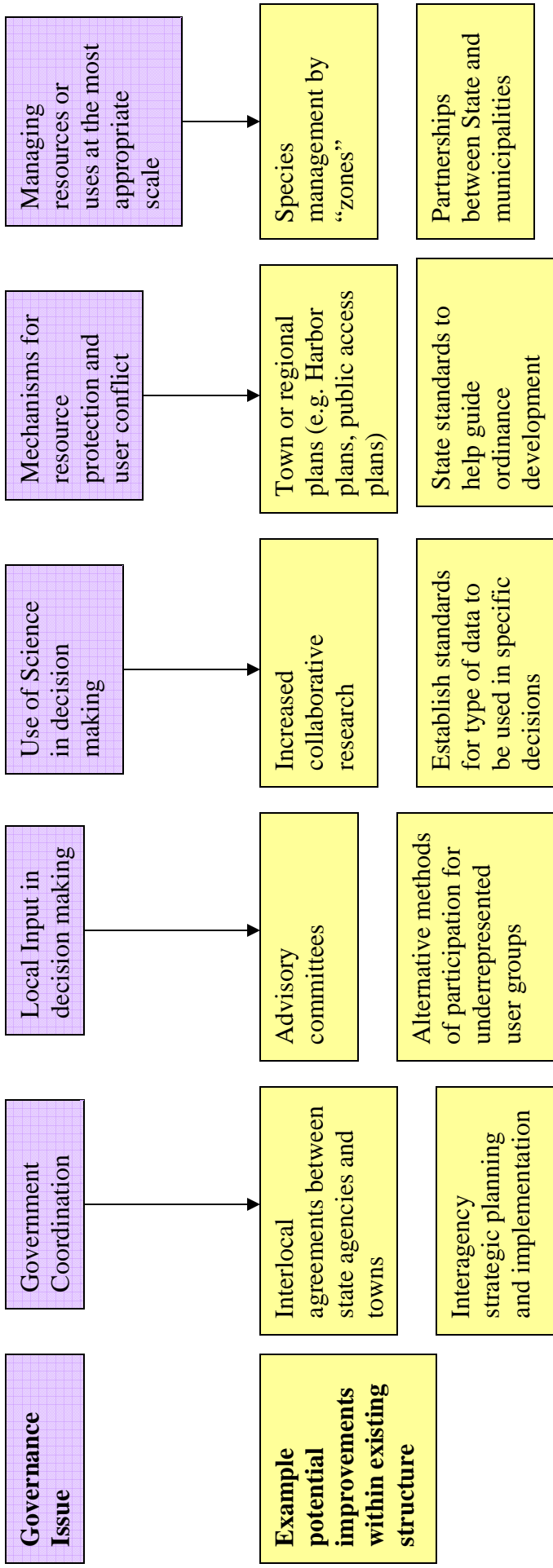
# A TIERED APPROACH TO IDENTIFYING PROBLEMS ON THE MAINE COAST



## **Appendix B**



**A MANAGEMENT-ORIENTED APPROACH TO COASTAL GOVERNANCE ISSUES IN MAINE**



## **Appendix C**

**FINDINGS TO-DATE**  
**FROM ANALYSIS OF PROBLEM AND GOVERNANCE DIAGRAMS**

1. There is no one problem for bay management to address. A large number of issues, concerns, conflicts and problems were identified along the Maine coast. Although some issues are common to many bays, as one might intuitively expect, the specific mix and prioritization of problems is unique to each specific area or bay. Further, the information collected in the January – March 2005 meetings was a snapshot of the issues present at the time, as characterized by those who chose to attend the meetings. It is fully expected that the problems faced by an area will continue to evolve, and that bay management should be structured to anticipate, to the degree possible, future needs.
2. The specific issues/problems identified at the public meetings are ‘symptoms’ that are caused or perpetuated by larger, core problems – it is at this level that we should focus when developing bay management approaches. In addition, there are ultimate causes that seem to underlie many, if not all of the core problems and symptoms. While some of these ultimate causes may be able to be addressed, others are simply characteristics of the situation of the Maine coast at this time.
3. We do not view the work of the bay management project as an exercise to solve particular problems, but rather to set up a process through which unique subsets of problems along the coast could be better addressed. In order to set up such a process, we should focus on the core problems that cause a wide range of symptoms.
4. An analysis of governance issues suggests ways to address identified problems. Specific improvements could be made within the existing management system to deal with many of the issues. However, a larger, system-wide approach may be needed in order to address one or more of the core problems, as well as the large range of identified problems, and be adaptable to the unique mix of problems relevant to a specific bay.
5. We aim to create or improve systems or mechanisms with the following characteristics:
  - Science is incorporated into decisions;
  - Local input is incorporated into decisions;
  - Emerging uses, technologies and trends are addressed;
  - The scale of management matches the scale of the issue;
  - The larger Public Trust interest is considered and protected; and
  - Cumulative impacts are taken into accountAnd which accomplish the following results:
  - Resources are adequately protected;
  - User conflicts are adequately addressed; and
  - The economic viability of coastal uses is maintained.

## **Appendix D**



JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
EXECUTIVE DEPARTMENT  
STATE PLANNING OFFICE  
38 STATE HOUSE STATION AUGUSTA, MAINE 04333

MARTHA E. FREEMAN  
DIRECTOR

November 30, 2005

The Honorable John E. Baldacci  
Office of the Governor  
1 State House Station  
Augusta, ME 04333

RE: 2005 Report of the Land and Water Resources Council on the Land Use Mediation Program

Dear Governor Baldacci;

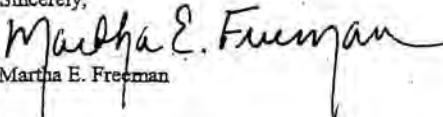
This letter constitutes the Land and Water Resources Council's ("LWRC") report to the Governor, the Administrative Office of the Courts, the Executive Director of the Legislative Council, and the Director of the Court Alternative Dispute Resolution Service ("CADRES") on the operation and effectiveness on the Land Use Mediation Program. 5 M.R.S.A. §3331, sub-§5 specifies that the LWRC's report "list the number and types of mediation requests received, the number of mediation sessions conducted, the number of signed mediation agreements, a summary of the final disposition of mediation agreements, a narrative discussion of the effectiveness of the program as determined by the council, a summary of deposits and expenditures from the land use mediation fund created in Title 4, section 18-B, subsection 10 and any proposals by the council with respect to the operation, improvement or continuation of the mediation program." *Id.* This report covers the period from the LWRC's most recent report on the program, dated December 1, 2003, to date.

In response to an inquiry on November 17, 2005 from the State Planning Office; Diane Kenty, Director of CADRES, indicated that CADRES received one formal request for mediation under the Program during the period covered by this report. The application was submitted on Dec. 31, 2003, by a landowner seeking mediation with the Town of Kittery over denial of a permit. The Town declined to participate in the requested mediation.<sup>1</sup> Since the Town had previously declined to participate in land use mediation under the Program, CADRES initially held and subsequently, when the Town declined to participate, refunded to the landowner's attorney the \$175 mediation fee submitted with the application. As a result, the Program conducted no mediation sessions and generated no signed mediation agreements during this period. Likewise, during this period there were no deposits to or expenditures from the land use mediation fund created in Title 4, section 18-B, subsection 10. Ms. Kenty advises that her office does periodically receive telephone inquiries regarding the land use mediation program.

At its December 8, 2005 meeting, the Council is scheduled to discuss the Land Use Mediation Program and may supplement this report with any recommendations that result from that discussion.

Please let me know if you need additional information or would like to discuss this matter further. Thank you for your consideration.

Sincerely,

  
Martha E. Freeman

cc: Members, LWRC

<sup>1</sup> Unlike state agencies, municipalities are not obligated to participate in land use mediation at the request of a landowner pursuant to CADRES' land use mediation program. 38 M.R.S.A. section 3341, subsection 8. Cf. 2 M.R.S.A. section 8.



