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An Act Concerning the Natural Resources Protection Laws and Related Provisions

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, adjustments need to be made to the protection of natural resources laws prior to the next construction season; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §480-A, as enacted by PL 1987, c. 809, §2, is amended to read:

§ 480-A. Findings; purpose; short title

The Legislature finds and declares that the State's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dunes systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State.

The Legislature further finds and declares that there is a need to facilitate research, develop management programs and establish sound environmental standards that will prevent the degradation of and encourage the enhancement of these resources. It is the intention of the Legislature that existing programs related to Maine's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and sand dunes systems continue and that the Department of Environmental Protection provide coordination and vigorous leadership to develop programs to achieve the purposes of this article. The well-being of the citizens of this State requires the development and maintenance of an efficient system of administering this article to minimize delays and difficulties in evaluating alterations of these resource areas.

The Legislature further finds and declares that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life.

This article is known and may be cited as "the Natural Resources Protection Act."

Sec. 2. 38 MRSA §480-B, sub-§7, as amended by PL 1999, c. 243, §11, is further amended to read:

7. Permanent structure. "Permanent structure" means any structure that is designed to remain at or that is constructed or erected with a fixed location or that is attached to a structure with a fixed location for a period exceeding 7 months each year within any 12-month period, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings.

Sec. 3. 38 MRSA §480-I, sub-§1, as amended by PL 1991, c. 693, §2, is further amended to read:

1. Identification by maps. The commissioner shall map areas meeting the definition of ~~freshwater wetlands and fragile mountain areas set forth in this article and shall periodically review and revise the maps identifying these areas.~~ The data developed under section 546-B may be used for mapping significant wildlife habitat. Maps of significant wildlife habitats that have been produced by the Department of Inland Fisheries and Wildlife must be adopted by rule pursuant to the Maine Administrative Procedure Act to the extent that those habitats are identified by the Department of Inland Fisheries and Wildlife by the department if:

A. The maps are of one or more of the types of areas listed in section 480-B, subsection 10, paragraph A; or

B. The maps are of one or more of the types of areas listed in section 480-B, subsection 10, paragraph B and are for purposes of determining when a permit is required for forest management activities.

Sec. 4. 38 MRSA §480-I, sub-§2, as affected by PL 1989, c. 890, Pt. A, §40 and as amended by Pt. B, §77, is further amended to read:

2. Procedures. ~~The maps and subsequent amendments identifying freshwater wetlands, significant wildlife habitat and fragile mountain areas shall be adopted pursuant to the Maine Administrative Procedure Act~~ are subject to the following procedures.

A. Preliminary maps of the affected area or amendments of a map ~~shall~~must be sent to the municipal officers or their designees.

B. Upon receipt of the proposed maps, the municipal officers of each municipality shall take any action they determine appropriate to increase public participation in this identification and delineation, but shall return their comments to the commissioner within a 90-day period.

Sec. 5. 38 MRSA §480-Q, sub-§4, as enacted by PL 1987, c. 809, §2, is repealed.

Sec. 6. 38 MRSA §480-V, as amended by PL 2001, c. 232, §16, is repealed and the following enacted in its place:

§ 480-V. Applicability

This article applies to all protected natural resources in the State.

Sec. 7. 38 MRSA §480-CC is enacted to read:

§ 480-CC. Significant wildlife habitat; shorebird feeding and roosting areas

Significant wildlife habitat as defined in section 480-B, subsection 10 includes shorebird nesting, feeding and staging areas that are in conformance with criteria adopted by the department or are contained within another protected natural resource except as provided in this section and section 480-DD.

1. Definitions. As used in this section and section 480-DD, unless the context otherwise indicates, the following terms have the following meanings.

A. "Shorebird feeding area" means a shorebird feeding or staging area that is not a roosting area. "Shorebird feeding area" includes a 75-foot-wide surrounding buffer referred to as "the feeding buffer."

B. "Shorebird roosting area" means a shorebird feeding or staging area that is also a roosting area. "Shorebird roosting area" includes a 250-foot-wide surrounding buffer referred to as "the roosting buffer."

2. Cutting standards within roosting and feeding buffers. The cutting standards in this subsection apply in addition to the permitting standards in section 480-D. Any cutting or removal of vegetation allowed under this subsection must be done in consultation with and as approved by the Department of Inland Fisheries and Wildlife.

Cutting or removal of vegetation within a roosting or feeding buffer is prohibited except for the following as approved by the department:

A. Removal of a safety hazard;

B. Cutting or removal of vegetation to allow for a footpath not to exceed 6 feet in width as measured between tree trunks and shrub stems. The footpath may not result in a cleared line of sight to the water; and

C. Cutting or removal of vegetation determined to be necessary by the department in order to conduct other activities approved by the department pursuant to section 480-C and in accordance with the standards of this article and rules adopted, including but not limited to avoidance, minimization and no unreasonable impact. The department may not approve cutting or removal of vegetation for purposes of creating a view.

Sec. 8. 38 MRSA §480-DD is enacted to read:

§ 480-DD. Significant wildlife habitat criteria; reduction in certain significant wildlife habitats due to development

Although an area is otherwise in conformance with significant wildlife habitat criteria adopted by the department for shorebird nesting, feeding, roosting and staging areas, or high and moderate value inland waterfowl and wading bird habitat, the Department of Inland Fisheries and Wildlife may determine that a specific portion of the area is no longer this type of significant wildlife habitat due to the impact of development in existence on June 8, 2006 and continuing in existence as of the date of the determination.

1. Factors. When determining whether an area is no longer a significant wildlife habitat, the Department of Inland Fisheries and Wildlife may consider factors such as species present or exiting and potential use of the area by birds, levels of disturbance, screening, development density, land use and any mitigating factors.

2. Exclusions. The Department of Inland Fisheries and Wildlife may not exclude an area from a significant wildlife habitat designation if future development of the area might unreasonably degrade the remaining significant wildlife habitat, unreasonably disturb the birds or unreasonably affect the continued use of the remaining significant wildlife habitat by the birds.

For purposes of this section, "development" means the area of property altered, including, but not limited to, buildings, roads, driveways, parking areas, wastewater disposal systems and lawns and other nonnative vegetation as determined by the department.

Sec. 9. 38 MRSA §490-D, sub-§1, as amended by PL 1999, c. 556, §34, is further amended to read:

1. Significant wildlife habitat. Affected land may not be located in a significant wildlife habitat, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. ~~The department may not grant a variance from the provisions of this subsection~~allow excavation to occur in a significant wildlife habitat provided a permit is obtained pursuant to article 5-A.

Sec. 10. 38 MRSA §490-Z, sub-§1, as amended by PL 1999, c. 556, §35, is further amended to read:

1. Significant wildlife habitat. Affected land may not be located in a significant wildlife habitat, as defined in section 480-B, ~~subsection 10~~ or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. ~~The department may not grant a variance from the provisions of this subsection~~allow excavation to occur in a significant wildlife habitat provided a permit is obtained pursuant to article 5-A.

Sec. 11. Resolve 2005, c. 183, §1, sub-§16, ¶A is amended to read:

A. An activity occurring in, on, over or adjacent to a significant vernal pool habitat or a potential significant vernal pool habitat is eligible for permit by rule as described in the Department of Environmental Protection rule, chapter 305, section 19, provided that the habitat management standards in chapter 335, section 9, paragraph C, subparagraphs 1 to 5 are met;

Sec. 12. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 38, chapter 3, subchapter 1, article 5-A, in the article headnote, the words "protection of natural resources" are amended to read "natural resources protection act" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. 13. Retroactivity. Those sections of this Act that enact the Maine Revised Statutes, Title 38, sections 480-CC and 480-DD and amend Resolve 2005, chapter 183, subsection 16, paragraph A apply retroactively to June 8, 2006.

Sec. 14. Rulemaking. The Department of Environmental Protection shall amend its rules concerning significant wildlife habitat that were adopted in accordance with the Maine Revised Statutes, Title 38, section 480-DD to be consistent with the provisions of this Act. Changes adopted pursuant to this Act as well as additional corrections, clarifications and minor changes of the rules that were adopted in accordance with section 480-BB are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, notwithstanding section 480-BB.

The Department of Environmental Protection shall amend its rules concerning permit by rule to allow the activities listed in Title 38, section 480-CC, subsection 2, paragraphs A and B and an expansion of up to 10% of an existing development area within a feeding area to be authorized pursuant to permit by rule if applicable standards in the protection of natural resources under article 5-A and rules adopted pursuant to that article are met and an individual permit is not otherwise required for activity on the parcel. "Existing development area" is defined in section 20 of the department's rules concerning permit by rule.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill:

1. Clarifies the definition of "permanent structure" for the natural resources protection laws;
2. Amends the section concerning identification by maps to be consistent with previous amendments to the definition of "significant wildlife habitat" in the natural resources protection laws by qualifying the mapping requirement through a reference to the Maine Revised Statutes, Title 38, section 480-B, subsection 10, paragraphs A and B. It also removes out-of-date language concerning jurisdiction and mapping requirements that applied to wetlands of 10 acres or more when section 480-B was amended in 1995;
3. Repeals the exemption for alteration of freshwater wetlands associated with the construction, operation, maintenance or repair of an interstate pipeline;
4. Amends an applicability section to be consistent with previous amendments to the definition of "significant wildlife habitat";
5. Amends Title 38, section 490-D, subsection 1 of the borrow pit law to provide that the Department of Environmental Protection may allow excavation in a significant wildlife habitat provided a permit is obtained pursuant to the protection of natural resources laws;
6. Amends Title 38, section 490-Z, subsection 1 of the quarry law to provide that the Department of Environmental Protection may allow excavation in a significant wildlife habitat provided a permit is obtained pursuant to the protection of natural resources laws;
7. Enacts a section providing supplemental provisions concerning shorebird feeding, staging and roosting areas. It includes supplemental definitions and permitting standards for cutting within roosting buffers and feeding buffers that apply in addition to otherwise applicable standards under the protection of natural resources laws;

8. Enacts a section to allow the Department of Inland Fisheries and Wildlife to determine that an area is not a significant wildlife habitat due to the impact of development in existence on June 8, 2006 and continuing in existence on the date of the determination, although the area otherwise conforms with significant wildlife criteria adopted by the Department of Environmental Protection for shorebird nesting, feeding and staging areas or high and moderate value inland waterfowl and wading bird habitat. Certain factors and requirements are specified;

9. Amends Resolve 2005, chapter 183, which approved amendments to chapter 335, Significant Wildlife Habitat, a major substantive rule of the Department of Environmental Protection, to clarify that an activity in, on, over or adjacent to a significant vernal pool habitat or potential significant vernal pool habitat is eligible for permit by rule if certain habitat standards are met by adding a citation to the regulatory standards; and

10. Provides that changes to the Maine Revised Statutes, Title 38, sections 480-CC and 480-DD and changes to Resolve 2005, chapter 183 are applicable as of June 8, 2006. The bill also provides that changes to the Department of Environmental Protection's rules on significant wildlife habitat that are adopted pursuant to this legislation as well as additional corrections, clarifications and minor changes of the significant wildlife habitat rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The bill also provides that the Department of Environmental Protection's rules concerning permit by rule must be amended to allow certain specified activities to be authorized under permit by rules if applicable standards are met. The Department of Environmental Protection's rules on permit by rule and amendments to those rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

11. The bill also provides the short title for the Maine Revised Statutes, Title 38, chapter 3, subchapter 1, article 5-A of "the Natural Resources Protection Act."