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An Act To Streamline the Administration of Significant Vernal Pool Habitat Protection

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

Whereas, the determination of whether or not a vernal pool habitat is significant for the purposes of the Natural Resources Protection Act is necessary to ensure proper protection of the resource; and

Whereas, the timeframe for making a determination of whether a vernal pool habitat is not significant and therefore not protected under the Natural Resources Protection Act needs to be expanded prior to the commencement of the next field determination season; and

Whereas, in order to reduce confusion, clarification of the specific types of rare species that must be evaluated in determining whether a vernal pool habitat is significant is needed prior to the commencement of the next field determination 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-FF, as enacted by PL 2007, c. 290, §10, is amended to read:

§ 480-FF. Notification of identification; shorebird nesting, feeding and staging areas

If an area is identified by the Department of Inland Fisheries and Wildlife as the type of area listed in section 480-B, subsection 10, paragraph B, subparagraph (3) after the effective date of this section, the department shall notify each municipality in which the significant wildlife habitat is located and members of the Legislature who represent residents of the municipality in which the significant wildlife habitat is located. The department and the Department of Inland Fisheries and Wildlife shall report to the joint standing committees of the Legislature having jurisdiction over natural resources matters and inland fisheries and wildlife matters on any action taken pursuant to this section.

Sec. 2. Rulemaking; Department of Inland Fisheries and Wildlife. The Department of Inland Fisheries and Wildlife shall amend its rules on significant wildlife habitat to update the definition of "vernal pools" to be consistent with the requirements of section 3 where applicable. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, notwithstanding Title 38, section 480-BB.

Sec. 3. Rulemaking; Department of Environmental Protection. The Department of Environmental Protection shall amend its rules on significant wildlife habitat to incorporate the requirements of this section. The requirements specified in this section are not intended to replace existing requirements in rules, except that, if there is a conflict between the requirements specified in this section and the rules, the rules must be revised to reflect the requirements specified in this section.

1. The following requirements apply to the identification of significant vernal pool habitats and must be employed when implementing significant wildlife habitat rules adopted by the Department of Environmental Protection and the Department of Inland Fisheries and Wildlife pursuant to the Maine Revised Statutes, Title 38, section 480-BB.

A. When a vernal pool habitat has not previously been determined to be significant and the Department of Environmental Protection or the Department of Inland Fisheries and Wildlife makes a determination concerning whether the vernal pool habitat is significant, either department may determine that the vernal pool habitat is not significant if:

- (1) The vernal pool is located in southern Maine and dries out after spring filling and before July 15th based on winter, spring and early summer precipitation; or
- (2) The vernal pool is located in northern Maine and dries out after spring filling and before July 31st based on winter, spring and early summer precipitation.

B. In addition to state threatened and endangered species, for purposes of determining whether a vernal pool habitat is significant, the rare species that must be considered are limited to: Ribbon Snakes, Wood Turtles, Swamp Darner Dragonflies and Comet Darner Dragonflies.

C. In order to be identified as part of a significant vernal pool habitat, the vernal pool may not have a permanent flowing inlet or outlet.

2. The Department of Environmental Protection may delete a note in rule concerning rare indicator species, notwithstanding Resolve 2005, chapter 183, section 1, subsection 10.

Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, notwithstanding Title 38, section 480-BB.

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

Effective March 31, 2008.