

MAINE STATE LEGISLATURE

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(NEW DRAFT OF H.P. 1586, L.D. 2164)
(NEW TITLE)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2567

H.P. 1875 House of Representatives, March 23, 1988
Reported by the Majority from the Committee on Fisheries
and Wildlife and printed under Joint Rule 2.

EDWIN H. PERT, Clerk

Original bill sponsored by Representative MCGOWAN of
Canaan. Cosponsored by Senator USHER of Cumberland,
Representatives CLARK of Millinocket and JACQUES of Waterville.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 **AN ACT to Amend the Endangered Species Act.**
2

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

5 Sec. 1. 12 MRSA §7754, sub-§§2 and 3 are
6 enacted to read:

7 2. Habitat. For species designated as endangered
8 or threatened under this subchapter the commissioner

1 may, by rule, pursuant to Title 5, chapter 375,
2 identify:

3 A. Essential physical or biological features for
4 the preservation of the species; and

5 B. Habitat that may require special management
6 considerations or protection for the preservation
7 of the species.

8 3. Protection guidelines. The commissioner may,
9 by rule, pursuant to Title 5, chapter 375, develop
10 guidelines for the protection of species designated as
11 endangered or threatened under this subchapter.

12 **Sec. 2. 12 MRSA §7755-A is enacted to read:**

13 §7755-A. State and local cooperation

14 1. Review. A state agency or municipal
15 government shall not permit, license, fund or carry
16 out projects that will:

17 A. Significantly alter the habitat identified
18 under section 7754, subsection 2 of any species
19 designated as threatened or endangered under this
20 subchapter; or

21 B. Violate protection guidelines set forth in
22 section 7754, subsection 3.

23 The commissioner shall make information under section
24 7754 available to all other state agencies and
25 municipal governments for the purposes of review.

26 2. Variance. Notwithstanding subsection 1, state
27 agencies and municipal governments may grant a
28 variance from this section provided that:

29 A. The Commissioner of Inland Fisheries and
30 Wildlife certifies that the proposed action would
31 not pose a significant risk to any population of
32 endangered or threatened species within the State;
33 and

1 B. A public hearing is held on the proposed
2 action.

3 3. Pending applications. Notwithstanding Title
4 1, section 302, applications pending at the time of
5 adoption of habitats and guidelines under section
6 7754, subsections 2 and 3 shall be governed by these
7 provisions.

8 **Sec. 3. 12 MRSA §7758 is enacted to read:**
9 §7758. Judicial enforcement

10 1. General. In the event of a violation of this
11 subchapter, any rule adopted pursuant to this
12 subchapter or any license or permit granted under this
13 subchapter, the Attorney General may institute
14 injunctive proceedings to enjoin any further
15 violation, a civil or criminal action, or any
16 appropriate combination of those proceedings without
17 recourse to any other provision of law administered by
18 the Department of Inland Fisheries and Wildlife.

19 2. Restoration. The court may order restoration
20 of any area, affected by any activity found to be in
21 violation of this subchapter, any rule adopted
22 pursuant to this subchapter or any license or permit
23 granted under this subchapter, to its condition prior
24 to the violation or as near to that condition as
25 possible. When the court finds that the violation was
26 willful, the court shall order restoration under this
27 subchapter, unless the restoration would result in:

28 A. A threat to public health and safety;

29 B. Environmental damage; or

30 C. A substantial injustice.

31 **Sec. 4. Appropriation. The following funds are**
32 **appropriated from the General Fund to carry out the**
33 **purposes of this Act.**

34 1988-89

1 INLAND FISHERIES AND WILDLIFE,
2 DEPARTMENT OF

3 Endangered Species

4	Positions	(1)
5	Personal Services	\$28,219
6	All Other	4,500
7	Capital Expenditures	<u>800</u>
8	Total	\$33,519

9 Provides funds for a
10 Biologist I position,
11 rule-making and
12 general operating
13 expenses to accomplish
14 the purposes of this
15 Act.

16 STATEMENT OF FACT

17 This new draft removes the citizen suit provision
18 of the original bill and institutes a system for
19 endangered species preservation. It allows the
20 commissioner to identify critical habitat for
21 endangered species and develop guidelines for its
22 preservation. State agencies and municipal
23 governments are then prohibited from permitting or
24 licensing projects that will significantly alter these
25 designated habitats or violate the protection
26 guidelines. Provisions for a variance are also
27 included in this new draft.

28 This new draft also permits the Attorney General
29 to bring injunctive proceedings to prevent the harm,
30 misuse or harassment of endangered species and in
31 emergencies where species of animals in the State are
32 in serious jeopardy. This parallels the general
33 injunctive authority of the Attorney General to
34 enforce laws administered by the Department of
35 Environmental Protection. This new draft also allows
36 the court to order restoration of an area affected by
37 a violation of the provisions in this new draft and



1 the current subchapter.

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