

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1234

H.P. 908

House of Representatives, March 6, 2003

### An Act To Protect Moderate-value and High-value Bird Habitats

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Reference to the Committee on Natural Resources suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative FAIRCLOTH of Bangor.  
Cosponsored by Senator MARTIN of Aroostook and  
Representatives: BRANNIGAN of Portland, COWGER of Hallowell, DUDLEY of Portland,  
HUTTON of Bowdoinham, KOFFMAN of Bar Harbor, Senator: SAWYER of Penobscot.

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

2           **Sec. 1. 38 MRSA §438-A, sub-§1**, as amended by PL 1993, c. 315,  
4 §1, is further amended to read:

6           **1. Land use guidelines.** In accordance with Title 5,  
8 chapter 375, subchapter II 2, the Board of Environmental  
10 Protection shall adopt, and from time to time shall update and  
12 amend, minimum guidelines for municipal zoning and land use  
14 controls that are designed to carry out the legislative purposes  
16 described in section 435 and the provisions of this article.  
18 These minimum guidelines must include provisions governing  
20 building and structure size, setback and location and  
22 establishment of resource protection, general development,  
24 limited residential, commercial fisheries and maritime activity  
26 zones and other zones. The board shall establish as resource  
28 protection districts areas within 250 feet, horizontal distance,  
30 of the upland edge of freshwater wetlands that are rated moderate  
32 or high value by the Department of Inland Fisheries and Wildlife  
34 at any time. Within each zone, the board shall prescribe uses  
36 that may be allowed with or without conditions and shall  
38 establish criteria for the issuance of permits and nonconforming  
40 uses, land use standards and administrative and enforcement  
42 procedures. These guidelines must also include a requirement for  
44 a person issued a permit pursuant to this article in a great pond  
46 watershed to have a copy of the permit on site while work  
48 authorized by the permit is being conducted. The board shall  
comprehensively review and update its guidelines and shall  
reevaluate and update the guidelines at least once every 4 years.

A. Minimum guidelines adopted by the board under this  
subsection may not require the issuance of a municipal  
permit for the repair and maintenance of an existing road  
culvert or for the replacement of an existing road culvert,  
as long as the replacement culvert is:

(2) Not more than 25% longer than the culvert being  
replaced; and

(3) Not longer than 75 feet.

Ancillary culverting activities, including excavation and  
filling, are included in this exemption. A person  
repairing, replacing or maintaining an existing culvert  
under this paragraph shall ensure that erosion control  
measures are taken to prevent sedimentation of the water and  
that the crossing does not block fish passage in the water  
course.

2           **Sec. 2. 38 MRSA §480-B, sub-§10**, as amended by PL 1999, c.  
401, Pt. BB, §17, is further amended to read:

4           **10. Significant wildlife habitat.** "Significant wildlife  
6           habitat" means candidates proposed by staff of the Department of  
7           Inland Fisheries and Wildlife for designation as high-value and  
8           moderate-value waterfowl and wading bird habitats, including  
9           nesting and feeding areas, that have a completed Department of  
10           Inland Fisheries and Wildlife field survey under the ecoregional  
11           survey for water birds and the following areas to the extent that  
12           they have been mapped by the Department of Inland Fisheries and  
13           Wildlife or are within any other protected natural resource:  
14           habitat, as defined by the Department of Inland Fisheries and  
15           Wildlife, for species appearing on the official state or federal  
16           lists of endangered or threatened animal species; high and  
17           moderate value deer wintering areas and travel corridors as  
18           defined by the Department of Inland Fisheries and Wildlife; high  
19           and moderate value waterfowl and wading bird habitats, including  
20           nesting and feeding areas as defined by the Department of Inland  
21           Fisheries and Wildlife; critical spawning and nursery areas for  
22           Atlantic salmon as defined by the Atlantic Salmon Commission;  
23           shorebird nesting, feeding and staging areas and seabird nesting  
24           islands as defined by the Department of Inland Fisheries and  
25           Wildlife; and significant vernal pools as defined and identified  
26           by the Department of Inland Fisheries and Wildlife. For purposes  
27           of this subsection, "identified" means identified in a specific  
28           location by the Department of Inland Fisheries and Wildlife. For  
29           purposes of this subsection, candidates proposed by the staff of  
30           the Department of Inland Fisheries and Wildlife for designation  
31           as high-value and moderate-value waterfowl and wading bird  
32           habitats, including nesting and feeding areas, are deemed to be  
33           mapped by the Department of Inland Fisheries and Wildlife.

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

36           **1. Identification by maps.** The commissioner shall map  
37           areas meeting the definition of freshwater wetlands and fragile  
38           mountain areas set forth in this article and shall periodically  
39           review and revise the maps identifying these areas. The data  
40           developed under section 546-B may be used for mapping significant  
41           wildlife habitat. Maps of significant wildlife habitats must be  
42           adopted by rule pursuant to the Maine Administrative Procedure  
43           Act to the extent that those habitats are identified by the  
44           Department of Inland Fisheries and Wildlife, except that maps of  
45           candidates proposed by staff of the Department of Inland  
46           Fisheries and Wildlife for designation as high-value and  
47           moderate-value waterfowl and wading bird habitats, including  
48           nesting and feeding areas, that have a completed Department of  
49           Inland Fisheries and Wildlife field survey under the ecoregional  
50           survey for water birds and

2 survey for water birds need not be adopted by rule under this  
3 section, and such habitats and areas are deemed to be mapped by  
4 the Department of Inland Fisheries and Wildlife.

5 **Sec. 4. 38 MRSA §480-I, sub-§2,** as affected by PL 1989, c.  
6 890, Pt. A, §40 and amended by Pt. B, §77, is further amended to  
7 read:

8  
9 **2. Procedures.** The maps and subsequent amendments  
10 identifying freshwater wetlands, significant wildlife habitat and  
11 fragile mountain areas shall--be are subject to the following  
12 procedures.

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

16  
17 B. Upon receipt of the proposed maps, the municipal  
18 officers of each municipality shall take any action they  
19 determine appropriate to increase public participation in  
20 this identification and delineation, but shall return their  
21 comments to the commissioner within a 90-day period.

22  
23 This subsection does not apply to maps of candidates proposed by  
24 staff of the Department of Inland Fisheries and Wildlife for  
25 designation as high-value and moderate-value waterfowl and wading  
26 bird habitats, including nesting and feeding areas, that have a  
27 completed Department of Inland Fisheries and Wildlife field  
28 survey under the ecoregional survey for water birds.

29  
30 **Sec. 5. 38 MRSA §480-V, sub-§1, ¶A,** as amended by PL 2001, c.  
31 232, §16, is further amended to read:

32  
33 A. Significant wildlife habitat not within another  
34 protected natural resource, unless that significant wildlife  
35 habitat is identified on a map adopted by the board, except  
36 that maps of candidates proposed by staff of the Department  
37 of Inland Fisheries and Wildlife for designation as  
38 high-value and moderate-value waterfowl and wading bird  
39 habitats, including nesting and feeding areas, that have a  
40 completed Department of Inland Fisheries and Wildlife field  
41 survey under the ecoregional survey for water birds need not  
42 be adopted by the board for this article to be applicable.

## 43 SUMMARY

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48 The purpose of this bill is to clarify the application of  
rules adopted by the Department of Environmental Protection

governing the guidelines for municipal shoreland zoning  
ordinances, and to extend currently existing protections of  
shoreland zoning to certain candidates for designation as  
high-value and moderate-value waterfowl and wading bird habitats.

Under current law, the Board of Environmental Protection is  
directed in the Maine Revised Statutes, Title 38, section 438-A,  
subsection 1 to adopt and update guidelines for municipal zoning  
and land use controls, including the establishment of resource  
protection zones. In department rules governing municipal  
shoreland zoning ordinances, "resource protection district" is  
defined as "areas within 250 feet of...wetlands...which are rated  
'moderate' or 'high' value by the Maine Department of Inland  
Fisheries and Wildlife as of January 1, 1973. (emphasis added)"  
This bill codifies language following that rule that suggests  
that, as significant wildlife habitat continues to be "mapped and  
development standards are established, municipalities should  
incorporate such areas and standards into their locally adopted  
ordinances."

This bill expands the definition of "significant wildlife  
habitat" to include the more than 100 candidates proposed by the  
staff of the Department of Inland Fisheries and Wildlife for  
designation as high and moderate value waterfowl and wading bird  
habitats, including nesting and feeding areas, that have a  
completed Department of Inland Fisheries and Wildlife field  
survey under the ecoregional survey for water birds. The bill  
also excludes those habitats and areas from the requirement that  
maps of such areas be adopted by rule by the Department of Inland  
Fisheries and Wildlife and instead deems those areas to be mapped  
by the department.