

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1477

H.P. 1039

House of Representatives, March 19, 2007

An Act Concerning the Natural Resources Protection Laws and Related Provisions

(EMERGENCY)

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative KOFFMAN of Bar Harbor.
Cosponsored by Senator MARTIN of Aroostook and
Representatives: ANNIS of Dover-Foxcroft, BABBIDGE of Kennebunk, DUCHESNE of
Hudson, EBERLE of South Portland, WATSON of Bath, Senators: BROMLEY of
Cumberland, SCHNEIDER of Penobscot.

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

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

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

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

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

11 **§480-A. Findings; purpose; short title**

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

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

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

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

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

37 **7. Permanent structure.** "Permanent structure" means any structure that is
38 designed to remain at or that is constructed or erected with a fixed location or that is

1 attached to a structure with a fixed location for a period exceeding 7 months ~~each year~~
2 within any 12-month period, including, but not limited to, causeways, piers, docks,
3 concrete slabs, piles, marinas, retaining walls and buildings.

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

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

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

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

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

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

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

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

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

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

35 **§480-V. Applicability**

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

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

1 **§480-CC. Significant wildlife habitat; shorebird feeding and roosting areas**

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

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

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

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

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

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

20 A. Removal of a safety hazard;

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

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

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

30 **§480-DD. Significant wildlife habitat criteria; reduction in certain significant**
31 **wildlife habitats due to development**

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

38 **1. Factors.** When determining whether an area is no longer a significant wildlife
39 habitat, the Department of Inland Fisheries and Wildlife may consider factors such as

1 species present or existing and potential use of the area by birds, levels of disturbance,
2 screening, development density, land use and any mitigating factors.

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

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

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

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

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

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

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

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

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

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

1 7. Enacts a section providing supplemental provisions concerning shorebird feeding,
2 staging and roosting areas. It includes supplemental definitions and permitting standards
3 for cutting within roosting buffers and feeding buffers that apply in addition to otherwise
4 applicable standards under the protection of natural resources laws;

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

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

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

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