

# 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 electronic originals  
(may include minor formatting differences from printed original)

**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-THIRD LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 6, 2006 to June 21, 2007**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 20, 2007**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

---

---

**Penmor Lithographers**  
**Lewiston, Maine**  
**2007**

B. The corporation has continued to exceed or abuse the authority conferred upon it by law;

**2. Shareholder.** A shareholder if it is established that:

A. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and, because of the deadlock, irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally;

B. The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

C. The shareholders are so divided ~~respecting~~ regarding the management of the business and affairs of the corporation that the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally;

D. The shareholders are deadlocked in voting power and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have expired; ~~or~~

E. The corporate assets are being misapplied or wasted; or

F. A shareholder of the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve;

**3. Creditor.** A creditor if it is established that:

A. The creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied and the corporation is insolvent; or

B. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

**4. Corporation.** The corporation to have its voluntary dissolution continued under court supervision.

**Sec. 44. 13-C MRSA §1432, sub-§1,** as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

**1. Appoint receivers.** A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to manage and to wind up and liquidate the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver. The

court appointing a receiver has ~~exclusive~~ jurisdiction over the corporation and all of its property wherever located.

**Sec. 45. 13-C MRSA §1432, sub-§4,** as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

**4. Compensation; expenses.** A court from time to time during a receivership under this section may order compensation paid and ~~expense disbursements or reimbursements made~~ expenses paid or reimbursed to the receiver and the receiver's counsel from the assets of the corporation or proceeds from the sale of the assets.

**Sec. 46. 13-C MRSA §1604, sub-§3,** as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

**3. Refuse inspection; good faith.** If the court orders inspection and copying of the records demanded under subsection 1 or 2, the court shall also order the corporation to pay the shareholder's ~~costs including reasonable counsel fees~~ expenses incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

**Sec. 47. 13-C MRSA §1605, sub-§3,** as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

**3. Provisions to protect corporation.** If an order is issued under subsection 2, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's ~~costs, including reasonable counsel fees,~~ expenses incurred in connection with the application.

See title page for effective date.

---

---

**CHAPTER 290**

**H.P. 1039 - L.D. 1477**

**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 to 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-§14**, as corrected by RR 1993, c. 1, §117, is amended to read:

**14. Lawful harvesting of marine organisms or vegetation in coastal wetlands.** A person lawfully engaged in the harvesting of marine organisms or vegetation under the provisions of Title 12, chapter 605 is not required to obtain a permit to engage in those activities in a coastal wetland or a coastal wet-

land containing a high or moderate value waterfowl or wading bird habitat or shorebird feeding or staging area. Within a coastal wetland or a coastal wetland containing a high or moderate value waterfowl or wading bird habitat or shorebird feeding or staging area, the removal of vegetation or displacement of soil associated with or authorized by those lawful activities is not a violation of this article; and

**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 100-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.

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

- (1) Removal of a safety hazard;
- (2) 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
- (3) 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 pursuant to this article, 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 unless the department in consultation with the Department of Inland Fisheries and Wildlife determines there will be no unreasonable impact on the protected resource.

Any cutting or removal of vegetation under this paragraph must be done in consultation with and as approved by the Department of Inland Fisheries and Wildlife.

**B. Cutting or removal of vegetation within a feeding buffer is prohibited except as approved by the department for:**

(1) Cutting or removal of vegetation that meets the vegetative screening standards set forth in Title 38, section 439-A, subsection 6. In interpreting and enforcing these standards, the department shall rely upon the department's shoreland zoning rules regarding cutting or removal of vegetation for activities other than timber harvesting and apply the cutting standards applicable within 75 feet of a coastal wetland to the entire 100-foot feeding buffer; and

(2) 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 pursuant to this article, including but not limited to avoidance, minimization and no unreasonable impact.

This paragraph may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this paragraph.

**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 or topography**

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 topography or 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, presence of cliffs or bluffs 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 non-native vegetation as determined by the department.

**Sec. 9. 38 MRSA §480-EE** is enacted to read:

**§480-EE. Significant wildlife habitat criteria; inland open water**

Regardless of its identification on maps as a high or moderate value waterfowl and wading bird habitat, an upland area adjacent to a great pond is not considered high or moderate value waterfowl and wading bird habitat for purposes of this article unless the upland area is within 250 feet of one or more freshwater wetlands that are high or moderate value waterfowl and wading bird habitat.

**Sec. 10. 38 MRSA §480-FF** is enacted to read:

**§480-FF. Notification of identification of significant wildlife habitat**

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 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. 11. 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. 12. 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. 13. 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. 14. 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. 15. Retroactivity.** Those sections of this Act that enact the Maine Revised Statutes, Title 38, sections 480-CC, 480-DD and 480-EE and amend Resolve 2005, chapter 183, subsection 16, paragraph A apply retroactively to June 8, 2006.

**Sec. 16. 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.

The Department of Environmental Protection shall amend its rules to clarify that if significant wildlife habitat is not fully contained within a freshwater wetland, the department does not have adjacency jurisdiction under the Maine Revised Statutes, Title 38, section 480-C.

**Sec. 17. Mitigation and compensation standards.** The Department of Environmental Protection shall develop a proposal for mitigation and compensation standards for tidal and freshwater significant wildlife habitat. By January 5, 2008, the department shall report to the Joint Standing Committee on Natural Resources on its proposal, including any legislation necessary to implement the proposal. The Joint Standing Committee on Natural Resources may submit legislation related to the proposal to the 123rd Legislature.

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

Effective June 14, 2007.

**CHAPTER 291  
H.P. 902 - L.D. 1274**

**An Act To Allow the Discharge of Aquatic Pesticides Approved by the Department of Environmental Protection for the Control of Mosquito-borne Diseases in the Interest of Public Health and Safety**

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

**Sec. 1. 38 MRSA §464, sub-§4, ¶A,** as amended by PL 2005, c. 182, §1, is further amended to read:

A. Notwithstanding section 414-A, the department may not issue a water discharge license for any of the following discharges:

(1) Direct discharge of pollutants to waters having a drainage area of less than 10 square miles, except that:

(a) Discharges into these waters that were licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist;

(b) Storm water discharges in compliance with state and local requirements are exempt from this subparagraph;

(c) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species are exempt from this subparagraph; ~~and~~

(d) Chemical discharges for the purpose of restoring water quality in GPA waters approved by the department are exempt from this subparagraph; and

(e) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species are exempt from this subparagraph. When the department issues a license for the discharge of aquatic pesticides authorized under this division, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

(2) New direct discharge of domestic pollutants to tributaries of Class-GPA waters;

(3) Any discharge into a tributary of GPA waters that by itself or in combination with other activities causes water quality degradation that would impair the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters except for aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species in the GPA waters or a tributary to the GPA waters;

(4) Discharge of pollutants to waters of the State that imparts color, taste, turbidity, toxicity, radioactivity or other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class;