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January 23, 2001

Senator John L. Martin, Chair
Representative Scott W. Cowger, Chair
Joint Standing Committee on Natural Resources
120th Maine Legislature
State House Room 437
Augusta, Maine 04333-003

Re: Report to the Legislature on the effort to establish a wetlands compensation program under the Natural Resources Protection Act

Dear Senator Martin, Representative Cowger and Members of the Natural Resources Committee,

In 1997 the Legislature amended the Natural Resources Protection Act, Section 480-Z, to allow the development of a wetlands compensation fund program. Such a program, also known as a "fee-in-lieu of wetland compensation", or, "in-lieu fee program," would allow wetland applicants to pay a fee instead of performing traditional wetland compensation, in which each wetland loss is compensated for by an individual mitigation project. An in-lieu fee program would allow fees to be combined and directed to priority wetland projects with potentially greater environmental returns. Use of an in-lieu fee program will allow applicants for wetlands alteration projects to save considerable time and expense over traditional permit by permit compensation efforts and has the potential for greatly improving freshwater wetland mitigation efforts in the State.

Section 480-Z, Subsection 3 as enacted by the Legislature specifically requires the Department of Environmental Protection ("Department") to develop a compensation fee program in consultation with the State Planning Office, The United States Army Corps of Engineers and state and federal resource agencies, including the United States Fish and Wildlife Service and the United States Environmental Protection Agency. The program must include, at a minimum, the following:

- (1) Identification of wetland management priorities on a watershed basis;
- (2) Identification of the types of wetland losses eligible for compensation under this subsection;
- (3) Standards for compensation fee projects;

- (4) Calculation of compensation fees based on the functions and values of the affected wetlands and the cost of compensation, taking into account the potential higher cost of compensation when a project is implemented at a later date; and
- (5) Methods to evaluate the long-term effectiveness of compensation fee projects implemented under this subsection in meeting the wetland management priorities identified pursuant to subparagraph (1).

Substantial progress has been made in meeting these requirements. Much of the work required to institute the in-lieu fee program is relatively unprecedented in wetland regulation nationwide and the State's efforts to date have been extensive and time consuming. However additional work is needed to implement the program as set forth in the enabling legislation. Therefore the Department is requesting an extension of the deadline to establish the in-lieu fee compensation program from October 2001 to October 2003.

The following is a summary of those actions taken to date in the development of the program:

Working with a steering committee including state and federal agencies, as well as interested local and other partners, an extensive watershed characterization has been completed for the Casco Bay watershed. The characterization uses a GIS-based approach to assign potential wetland attributes based on scientific and geographic criteria established by a steering committee. The characterization has been peer-reviewed by nationally known wetland experts, and has been evaluated in the field by wetland scientists. The results of this evaluation have been very positive. The characterization is expected to have applications and benefits on many levels, and is already being used by towns and local conservation organizations, as well as by large-scale wetland permit applicants who are seeking highly significant wetland compensation alternatives. The methodologies learned from the Casco Bay analysis are now being incrementally applied to other watersheds. Full implementation of the program will require that all watersheds in the State be similarly characterized. The Department will be able to use the currently available information in instituting an in-lieu fee program.

Projects eligible for the compensation fund have been identified in agreement with the federal regulatory agencies. These agencies are the U.S. Environmental Protection Agency, the U. S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service. Eligible projects currently include those that receive permits under the State Programmatic General Permit, which may include projects having up to 3 acres of wetland impact. The standards for compensation fee project implementation are expected to be the same as those currently governing wetland compensation projects.

There has been a considerable effort to evaluate compensation fee calculation methods to date. Additional work is currently underway to determine the market value of current wetland compensation. This issue is crucial in establishing the efficiency and effectiveness of the program, particularly in satisfying the federal agencies' requirements and in meeting applicants' expectations. Methods to assess the effectiveness of actual compensation funded projects are

being established, based primarily on the Department's extensive experience with wetland compensation projects under existing programs.

Finally, a wetland stakeholder workgroup, comprised of representatives of state and federal regulatory and resource agencies, business and environmental interests, continues to work on the outstanding elements of the program. Again, whereas much progress has been made, additional time is necessary to complete the formation of the program and to implement the elements of an in-lieu fee program. The Department feels confident that an additional two-year extension will be sufficient to complete the work and to bring the initial results of the program back to the Legislature in 2003.

My staff looks forward to answering any questions you may have about this report.

Sincerely,

Martha G. Kirkpatrick
Commissioner