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January 7, 1998

Senator Sharon Treat, Senate Chair
Representative Steven Rowe , House Chair
Joint Standing Committee on Natural Resources
State House , Room 437
Augusta , Maine 04333-0003

Dear Senator Treat, Representative Rowe and Members of the Natural Resources Committee;

In accordance with P. L. 1997 Chapter 230 , the Departments of Inland Fisheries and Wildlife and Environmental Protection are required to report by January 1, 1998 and on or before January 1st of every odd-numbered year thereafter to the joint standing committees of the Legislature having jurisdiction over natural resource matters and inland fisheries and wildlife matters on the progress of the mapping of significant wildlife habitats. The attached report outlines the ongoing efforts of the Department of Inland Fisheries and Wildlife (IF&W) to define and map significant wildlife habitats. Under the Natural Resources Protection Act, once these habitats are defined and mapped by IF&W , the maps are then provided to the Department of Environmental Protection. (DEP). Maps of significant wildlife habitat must be adopted by rule pursuant to the Maine Administrative Procedure Act.

Maps designating shorebird nesting islands have been provided to the DEP and the attached report outlines the current status of the rulemaking effort to adopt the maps and rules regulating activities which may potentially affect these habitats. It should be noted that as part of the rulemaking effort , the DEP is required to furnish the preliminary maps identifying the habitats to the municipal officials in which the habitats are located. Upon receipt of the proposed maps, the municipal officers are to take action they determine appropriate to increase public participation in this identification and delineation, but are required to return their comments to the DEP within a 90 day period. This phase of the rulemaking process has been completed. A formal request to the Board of Environmental Protection for posting the maps and rules to a public hearing is anticipated shortly. Our staff look forward to answering any questions you may have about the report , the mapping process or the current rulemaking effort on shorebird nesting islands.

Sincerely '

Edward O. Sullivan
Commissioner of the Department of Environmental Protection

Lee Perry
Commissioner of the Department of Inland Fisheries and Wildlife

DEPARTMENTS OF INLAND FISHERIES & WILDLIFE AND ENVIRONMENTAL PROTECTION

Report to the Legislature on the progress of Significant Wildlife Habitat protection under the Natural Resources Protection Act

January 1998

In accordance with Public Law 1997, Chapter 230 the Commissioners of the Department of Environmental Protection (DEP) and the Department of Inland Fisheries and Wildlife (IFW) are required to report each year to the Joint Standing committee on Natural Resources on the progress of the mapping of Significant Wildlife Habitats under the Natural Resource Protection Act (NRPA).

Since the Significant Habitat provision of the NRPA was enacted in the late 1980's, the Department of Inland Fisheries and Wildlife has been evaluating the need to restrict land use in each of the designated categories mentioned under Significant Habitat from the wildlife perspective. In other words, is it necessary to restrict private land use to allow these habitats to continue to functionally support the wildlife species that depend on them? If so, then how would these habitats be defined, and based on what information and assumptions? The answers to both of these questions must be answered fully to justify restricting private land use.

In order to answer these questions for each of the potential Significant Habitats, IFW biologists have been working on developing the information that defines the biological species-habitat ties that subsequently justify the biological importance of these habitats to continued species existence in Maine. If IFW determines that one of the potential Significant Habitats is critical to the health and continued existence of certain wildlife species to the level of our publicly set management goals, and that there is no better alternative to protect the function of the habitat areas, such as through cooperative management agreements, then IFW will develop the criteria that will define the habitat and adopt these criteria through our rulemaking process. Once defined by IFW rules, these habitats become protected under NRPA if they fall within another protected resource, such as a wetland. If it is necessary to protect these habitats regardless of whether or not they fall within wetlands, then IFW will map the habitats and submit to DEP for adoption under DEP rules.

At present, IFW has defined high and moderate deer wintering areas, inland high and moderate value waterfowl and wading bird habitats, and seabird nesting areas through IFW rules. Seabird nesting areas are the only habitat type that IFW has also mapped and submitted to DEP for adoption. These will be proposed for adoption by DEP early in 1998. We also have developed draft definitions for coastal high and moderate value waterfowl and wading bird habitats and shorebird nesting, feeding, and staging areas that we will bring before IFW's Advisory Council for adoption sometime in 1998. In addition, we have sponsored and lead research attempting to

define the critical components of vernal pools that contribute to the survival of many species of amphibians and reptiles.

There are 2 main reasons why IFW has not defined and mapped all potential Significant Habitat types. The Department of Inland Fisheries and Wildlife feels strongly that any restricting of private land use should be justified by an identified need of the species using the habitat. IFW has been working on making this tie between species requirements and habitat types. Then, cooperative management agreements can often take the place of restrictive zoning. If cooperative agreements can not work, then NRPA Significant Habitats become a valuable tool for habitat conservation.

The second major reason that IFW has not completed more NRPA definitions and mapping is that IFW has little or no extra funding or staff to accomplish such a major task needing statewide consistency. Until funds are available for such projects, IFW staff will continue to work towards definitions and mapping of significant habitats where needed for species management and as time allows.

As previously mentioned, IFW has defined seabird nesting islands (SNIs) through rule making and subsequently mapped these resources. They have been submitted to DEP for development of rules for regulating activities potentially impacting SNIs, under Chapter 335, significant wildlife habitat. Responsibility for rule adoption rests with the Board of Environmental Protection (BEP). As required in 38 MRS § 480-I (NRPA), DEP sent the SNI maps in the summer of 1997 to all municipalities with mapped SNIs for a 90 day review period to allow the municipalities to gather and submit public comment. No major comments were received during this period. Also at this time, letters were sent to all property owners located on proposed SNIs to inform them of the map and rulemaking process. Although only a few comments were received from property owners, those received outlined concerns that they be able to maintain existing properties and undertake minor modifications to them.

SNI rules are currently being developed. DEPs expected timetable for rule adoption is:

Post to public hearing and publish notice	February 1998
Hold public hearing	March 1998
Prepare final rule	April 1998, and
Present rule to BEP for adoption	May 1998