

**NATURAL RESOURCES PROTECTION ACT  
(NRPA)**

38 M.R.S.A. §§ 480-A to 480-FF

*Note Concerning the Text  
June 30, 2008*

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*This handout June 30, 2008 includes amendments to the NRPA contained in the following chapters enacted during the Second Regular Session of the 123rd Legislature:*

*PL 2007, ch. 527, An Act to Expand the Natural Resources Protection Act Compensation Program. Effective June 30, 2008.*

*PL 2007, ch. 655, An Act to Amend Certain Laws Related to Environmental Protection. Effective July 18, 2008.*

*The department has added a table of content, footnotes and appendices: these are not part of the codified statutory text of the Natural Resources Protection Act. Not all amendments to this statute are indicated by the footnotes. The department has included the texts of certain significant, recent unallocated law provisions in footnotes and in Appendix A.*

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Title 38, Article 5-A  
NATURAL RESOURCES PROTECTION ACT

**§ 480-A. Findings; purpose**

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 National Resources Protection Act."

**§ 480-B. Definitions**

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

**1. Coastal sand dune systems.** "Coastal sand dune systems" means sand and gravel deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand and gravel areas deposited by wave or wind action. Coastal sand dune systems may extend into coastal wetlands.

**1-A. Community public water system.** "Community public water system" has the same meaning as "community water system" has in Title 22, section 2660-B, subsection 2.

**1-B. Community public water system primary protection area.** "Community public water system primary protection area" means:

- A. The area within 250 feet, measured horizontally, of a great pond that is a source for a community public water system;
- B. The area within 250 feet, measured horizontally, of a river, stream or brook that is a source for a community public water system for a distance of 1/2 mile upstream from the intake of the public water supply; or

C. A source water protection area identified and mapped by the Department of Health and Human Services as described under Title 30-A, section 2001, subsection 20-A.

**2. Coastal wetlands.** "Coastal wetlands" means all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**2-A. Dredge spoils.** "Dredge spoils" means sand, silt, mud, gravel, rock or other sediment or material that is moved from coastal wetlands.

**2-B. Forest management activities.** "Forest management activities" means timber stand improvement, timber harvesting activities, forest products harvesting and regeneration of forest stands. For the purposes of this definition, "timber harvesting activities" means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. For the purposes of this definition, "timber harvesting" means the cutting or removal of timber for the primary purpose of selling or processing forest products.

**2-C. Forested wetland.** "Forested wetland" means a freshwater wetland dominated by woody vegetation that is 6 meters tall, or taller.

**2-D. Floodplain wetland.** "Floodplain wetland" means lands adjacent to a river, stream or brook that are inundated with floodwater during a 100-year flood event and that under normal circumstances support a prevalence of wetland vegetation typically adapted for life in saturated soils.

**3. Fragile mountain areas.** "Fragile mountain areas" means areas above 2,700 feet in elevation from mean sea level.

**4. Freshwater wetlands.** "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas that are:

A. Deleted. Laws 1995, ch. 460, § 1.<sup>1</sup>

B. Inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and

C. Not considered part of a great pond, coastal wetland, river, stream or brook.

**5. Great ponds.** "Great ponds" means any inland bodies of water which in a natural state have a surface area in excess of 10 acres and any inland bodies of water artificially formed or increased which have a surface area in excess of 30 acres.

**5-A. Mooring.** "Mooring" means equipment, such as anchors, chains and lines, for holding fast a vessel, aircraft, floating dock or buoy.

**6. Normal high water line.** "Normal high water line" means that line along the shore of a great pond, river, stream, brook or other nontidal body of water which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or from changes in vegetation and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the

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<sup>1</sup>Repeal effective September 29, 1995.

case of great ponds, all land below the normal high water line shall be considered the bottom of the great pond for the purposes of this article.

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

**8. Protected natural resource.** "Protected natural resource" means coastal sand dune system, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water systems primary protection areas<sup>2</sup> great ponds or rivers, streams or brooks, as these terms are defined in this article.

**8-A. Transportation reconstruction or replacement project.** "Transportation reconstruction or replacement project" means the improvement of an existing transportation facility to modern design standards without expanding its function or creating any additional roadways, facilities or structures. These projects are limited to:

- A. Highway or bridge alignment changes not exceeding a distance of 200 feet between the old and new center lines in any protected natural resource;
- B. Replacement or rehabilitation of the roadway base, pavement and drainage;
- C. Replacement or rehabilitation of bridges or piers;
- D. The addition of climbing lanes, and turning lanes of less than 1,000 feet in length in a protected natural resource; and
- E. Rehabilitation or repair of state-owned railroads.

**9. River, stream or brook.** "River, stream or brook" means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

- A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.
- B. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.
- C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.
- D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.
- E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"River, stream or brook" does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.

**9-A. Significant groundwater well.** "Significant groundwater well" is defined as follows.

- A. "Significant groundwater well" means any well, wellfield, excavation or other structure, device or method used to obtain groundwater that is:

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<sup>2</sup> A permit is not required under the Maine Revised Statutes, Title 38, chapter 3, article 5-A for an activity located in, on or over a community public water system primary protection area until the effective date of the rules provided for PL 2007, ch. 353(14), unless a permit is otherwise required under the Maine Revised Statutes, Title 38, section 480-C. PL 2007, ch. 353(14).

(1) Withdrawing at least 75,000 gallons during any week or at least 50,000 gallons on any day and is located at a distance of 500 feet or less from a coastal or freshwater wetland, great pond, significant vernal pool habitat, water supply well not owned or controlled by the applicant or river, stream or brook; or

(2) Withdrawing at least 216,000 gallons during any week or at least 144,000 gallons on any day and is located at a distance of more than 500 feet from a coastal or freshwater wetland, great pond, significant vernal pool habitat, water supply well not owned or controlled by the applicant or river, stream or brook.

Withdrawals of water for firefighting are not applied toward these thresholds.

B. "Significant groundwater well" does not include:

(1) A public water system as defined in Title 22, section 2601, subsection 8 other than a public water system used solely to bottle water for sale;

(2) Individual home domestic supply;

(3) Agricultural use or storage;

(4) A development or part of a development requiring a permit pursuant to article 6, article 7 or article 8-A; or

(5) A structure or development requiring a permit from the Maine Land Use Regulation Commission.

**10. Significant wildlife habitat.** "Significant wildlife habitat" means:

A. The following areas to the extent that they have been mapped by the Department of Inland Fisheries and Wildlife or are within any other protected natural resource: habitat, as defined by the Department of Inland Fisheries and Wildlife, for species appearing on the official state or federal list of endangered or threatened animal species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife; and critical spawning and nursery areas for Atlantic salmon as defined by the Atlantic Salmon Commission; and

B. Except for solely forest management activities, for which "significant wildlife habitat" is as defined and mapped in accordance with section 480-I by the Department of Inland Fisheries and Wildlife, the following areas that are defined by the Department of Inland Fisheries and Wildlife and are in conformance with criteria adopted by the Department of Environmental Protection or are within any other protected natural resource:

(1) Significant vernal pool habitat;

(2) High and moderate value waterfowl and wading bird habitat, including nesting and feeding areas; and

(3) Shorebird nesting, feeding and staging areas.

#### **§ 480-C. Prohibitions**

**1. Prohibition.** A person may not perform or cause to be performed any activity listed in subsection 2 without first obtaining a permit from the department if the activity is located in, on or over any protected natural resource or is located adjacent to any of the following:

- A. A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or
- B. Freshwater wetlands consisting of or containing:
  - (1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or
  - (2) Peatlands dominated by shrubs, sedges and sphagnum moss.

A person may not perform or cause to be performed any activity in violation of the terms or conditions of a permit.

**2. Activities requiring a permit.** The following activities require a permit:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction, repair or alteration of any permanent structure.

**3. Application.**<sup>3</sup>

**4. Significant groundwater well.** A person may not perform or cause to be performed the establishment or operation of a significant groundwater well without first obtaining a permit from the department.<sup>4</sup>

#### § 480-D. Standards

The department shall grant a permit upon proper application and upon such terms as it considers necessary to fulfill the purposes of this article. The department shall grant a permit when it finds that the applicant has demonstrated that the proposed activity meets the following standards set forth in subsections 1 to 9, except that when an activity requires a permit only because it is located in, on or over a community public water system primary protection area the department shall issue a permit

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<sup>3</sup>Repeal effective October 1, 1994. The repealed text read: "This section applies to all protected natural resources statewide without regard to whether they have been mapped pursuant to section 480-I. Significant wildlife habitat that is not within any other protected natural resource must be mapped before this section applies." For applicability requirements now, see Section 480-V and 480-E-1.

<sup>4</sup> PL 2007, ch. 399(13) provided: "**Sec. 13. Transition.** If a person who requires a permit for establishment or operation of a significant groundwater well from the Department of Environmental Protection pursuant to the Maine Revised Statutes, Title 38, section 480-C is authorized to transport water pursuant to Title 22, section 2660-A on the effective date of this Act and applies for a permit for establishment or operation of the significant groundwater well prior to expiration of the water transport authorization, the person may continue to withdraw water until final agency action on the permit application."

when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 2 and 5.<sup>5</sup>

**1. Existing uses.** The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.<sup>6</sup>

**2. Soil erosion.** The activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

**3. Harm to habitats; fisheries.** The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

- A. Avoiding an impact altogether by not taking a certain action or parts of an action;
- B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;
- C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;
- D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or
- E. Compensating for an impact by replacing the affected significant wildlife habitat.

**4. Interfere with natural water flow.** The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

**5. Lower water quality.** The activity will not violate any state water quality law, including those governing the classification of the State's waters.

**6. Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

\* **7. Sand supply.** If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand or gravel within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.

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<sup>5</sup> A permit is not required under the Maine Revised Statutes, Title 38, chapter 3, article 5-A for an activity located in, on or over a community public water system primary protection area until the effective date of the rules provided for PL 2007, ch. 353(14), unless a permit is otherwise required under the Maine Revised Statutes, Title 38, section 480-C. PL 2007, ch. 353(14).

<sup>6</sup> This paragraph beginning "In making a determination..." is effective April 18, 2008. See PL 2007, c. 661. For text of Title 35-A, section 3552, see Appendix B of this handout.

**8. Outstanding river segments.** If the proposed activity is a crossing of any outstanding river segment as identified in section 480-P, the applicant shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

**9. Dredging.**<sup>7</sup> If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant must demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable. The Commissioner of Marine Resources shall provide the department with an assessment of the impacts on the fishing industry of a proposed dredging operation in the coastal wetlands. The assessment must consider impacts to the area to be dredged and impacts to the fishing industry of a proposed route to transport dredge spoils to an ocean disposal site. The Commissioner of Marine Resources may hold a public hearing on the proposed dredging operation. In determining if a hearing is to be held, the Commissioner of Marine Resources shall consider the potential impacts of the proposed dredging operation on fishing in the area to be dredged. If a hearing is held, it must be within at least one of the municipalities in which the dredging operation would take place. If the Commissioner of Marine Resources determines that a hearing is not to be held, the Commissioner of Marine Resources must publish a notice of that determination in a newspaper of general circulation in the area proposed for the dredging operation. The notice must state that the Commissioner of Marine Resources will accept verbal and written comments in lieu of a public hearing. The notice must also state that if 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources will hold a hearing. If 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources must hold a hearing. In making its determination under this subsection, the department must take into consideration the assessment provided by the Commissioner of Marine Resources. The permit must require the applicant to:

- A. Clearly mark or designate the dredging area, the spoils disposal route and the transportation route;
- B. Publish in a newspaper of general circulation in the area adjacent to the route the approved transportation route of the dredge spoils; and
- C. Publish in a newspaper of general circulation in the area adjacent to the route a procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation.

**10. Significant groundwater well.** If the proposed activity includes a significant groundwater well, the applicant must demonstrate that the activity will not have an undue unreasonable effect on waters of the State, as defined in section 361-A, subsection 7, water-related natural resources and existing uses, including, but not limited to, public or private wells within the anticipated zone of contribution to the withdrawal. In making findings under this subsection, the department shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

#### **§ 480-E. Permit processing requirements**

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<sup>7</sup>Amendments to this section effective September 19, 1997 are affected by an application provision (PL 1997, c. 164, § 2) that provides:

**Sec. 2. Application.** This Act applies to permit applications filed with the Department of Environmental Protection on or after the effective date of this Act.  
This section was later amended by Laws 1999, ch. 248, § 1.

The department shall process all permits under this article, except as provided in section 480-E-1, in accordance with chapter 2, subchapter I, and the following requirements.

**1. Municipal notification.** The department may not review a permit without notifying the municipality in which the proposed activity is to occur and considering any comments filed by the municipality within a reasonable period as established by the commissioner.

**2. Water supply notification.** If the resource subject to alteration or the underlying ground water is utilized by a community public water system as a source of supply, the applicant for the permit shall, at the time of filing an application, forward a copy of the application to the community public water system and the drinking water program of the Department of Health and Human Services by certified mail and the department shall consider any comments concerning the application filed with the commissioner within a reasonable period, as established by the commissioner.

**3. Dredge spoils disposal.** The commissioner may not accept an application for dredge spoils disposal in a coastal wetland unless the following requirements are met.

A. The applicant has collected and tested the dredge spoils in accordance with a protocol approved by the commissioner.

B. The applicant has published notice of the proposed route by which the dredged materials are to be transported to the disposal site in a newspaper of general circulation in the area adjacent to the proposed route.

C. The application has been submitted to each municipality adjacent to any proposed marine and estuarine disposal site and route.

Any public hearing held pursuant to this application must be held in the municipality nearest to the proposed disposal site.

**4. Deferrals.** When winter conditions prevent the department or municipality from evaluating a permit application, the department or municipality, upon notifying the applicant of that fact, may defer action on the application for a reasonable period. The applicant may not alter the resource area in question during the period of deferral.

**5. Permission of record owner.** The written permission of the record owner or owners of flowed land is considered sufficient right, title or interest to confer standing for submission of a permit application, provided that the letter of permission specifically identifies the activities being performed and the area that may be used for that purpose. The commissioner may not refuse to accept a permit application for any prohibited activity due to the lack of evidence of sufficient right, title or interest if the owner or lessee of land adjoining a great pond has made a diligent effort to locate the record owner or owners of flowed land and has been unable to do so.

**6. Permit display.** A person issued a permit pursuant to this article for activities in a great pond watershed shall have a copy of the permit on site while work authorized by that permit is being conducted. Activities exempt by rule from the requirements of this article are not required to be in compliance with this subsection.

**7. Individual permit; maintenance dredging.** Notwithstanding section 344, subsection 7, an individual permit or consistency determination issued by the department pursuant to this article is required for maintenance dredging if the amount of material to be dredged exceeds 50,000 cubic yards.

Notwithstanding section 480-X, if an analysis of alternatives to the dredging project has been completed by the applicant within the previous 10 years pursuant to section 480-X and rules adopted to implement that section as part of an individual permit application, the applicant may update the previous analysis for purposes of obtaining a permit for maintenance dredging under this subsection.