Resolve to Increase Wetland Protection by the Maine Department of Environmental Protection

Chapter 37, H.P. 803, L.D. 1160

A Report to the Maine Legislature's Joint Standing Committee on Natural Resources

February 2006

Prepared by: Judy Gates

Department of Environmental Protection, Division of Land Resource Regulation

DEPLW0753

In accordance with Resolves 2005, Chapter 37, the Commissioner of the Department of Environmental Protection (DEP) is required to report to the Joint Standing Committee on Natural Resources regarding Tier 1 freshwater wetland alteration permitting and freshwater wetland compensation under the Natural Resources Protection Act.

Recommendations & findings

- Apply the habitat standard from NRPA (38 M.R.S.A. § 480-D (3)) to all Tier 1 wetland permits.
- Increase the permit processing time for Tier 1 wetland permits from 30 to 45 days.
- The waiver from full NRPA permitting to Tier 1 review is appropriate when used judiciously.
- Maintain the exemption for filling up to 4,300 square feet of wetlands not of special significance.
- Lower the size threshold for wetland compensation from 20,000 square feet to 15,000 square feet in order to increase wetland mitigation acreage by approximately 70 acres each year.
- Implement an in-lieu fee compensation program for wetland impacts per existing statute in §480-Z (3) of the NRPA, and make a minor statutory change to improve program implementation.

Should additional standards apply to Tier 1 (<15,000 square feet of impact) projects?

Section 1 of the Resolve directed the DEP to evaluate the resources necessary to apply all standards in 38 M.R.S.A. § 480-D (Appendix A) to projects eligible for Tier 1 freshwater wetland review. Tier 1 activities are those impacting less than 15,000 square feet of freshwater wetland, in which the wetlands are not designated as "of special significance." Under existing statute only the standard (480-D (5)) that prohibits violation of water quality applies to Tier 1 projects. In its evaluation, the DEP was to consider cumulative impacts, staff time, regulatory processing time, fees and the benefits of applying all standards to Tier 1 review.

Maine Audubon, the proponent of LD 1160, expressed concern that small, incremental losses of freshwater wetland are permitted under the Tier 1 process with no consideration of the habitat value that these areas can provide and their importance for ecological integrity. We concur and recognize that those wetlands most often impacted under the Tier 1 process, forested and scrub shrub, can have important habitat functions. Prior to 2004, Tier 2 projects, those impacting between 15,000 square feet and one acre, were also subject to only the water quality standard, but the 121st Legislature changed NRPA to apply all nine standards to these projects. Using our experience with implementing this change for Tier 2 projects provides a direct comparison to making such a change for Tier 1 projects.

The average processing time for Tier 2 applications has not increased since this change; staff are generally able to process these projects within the 60 days required by statute. Additional fees are not required to enable applying all nine standards to these projects. The benefits of applying all standards to Tier 2 projects include a more thorough understanding of cumulative impacts to wetland functions. Whether those impacts are to wetlands that support specific types of wildlife or act to decrease the severity of flood events is important to how their elimination may impact the landscape.

However, there are important distinctions to make between Tier 1 and Tier 2 projects.

Applicants for Tier 2 activities are required to submit a wetland delineation as part of their application, Tier 1 do not. This delineation establishes the location of wetlands based on soils, plants and hydrology much more precisely than a visual observation alone. If an application is for more than 20,000 square feet of impact, it must also include an assessment of the functions and values of the wetland. The functional assessment provides valuable information about how the wetland works in its landscape, and how well it works. Because this information was already provided as part of Tier 2 applications before all 9 standards were applied to their review, its use by project managers was merely broadened to consider all NRPA standards instead of only water quality.

If DEP staff were required to apply all NRPA standards to Tier 1 activities without the benefit of a functional assessment, the time and costs of processing would be expected to increase. Because most Tier 1 applicants prepare their own applications, requiring a functional assessment would result in a significant increase in the cost of Tier 1 permitting to both the applicant who now has to hire a professional and to the DEP that has to evaluate the additional information.

After evaluating the various submission requirements and the nature of Tier 1 projects we determined that adding just the habitat standard would be the most appropriate to improve oversight of small projects like Tier 1.

So is there a way to effectively apply the habitat standard to Tier 1 projects in a meaningful way without increasing costs and requiring a wetland delineation? We think there is.

Currently all NRPA applications are screened using GIS data layers that show locations of moderate to high value wildlife habitat, endangered and threatened species habitat, natural resources, and projects processed since March 2005. A sample map is included as Appendix B These GIS maps are created and maintained by the Department of Inland Fisheries and Wildlife or the Department of Conservation's Natural Areas Program. This data is used to verify that the appropriate level of permitting is being used, to identify potential issues that may arise and be of interest to other agencies, and to track cumulative impacts.

Although GIS mapping of projects has not been going on long enough to draw any conclusions about cumulative impacts, it does provide an opportunity to put time already spent screening Tier 1 projects to a second use.

Because Tier 1 applications are already screened under existing permitting protocols, expanding our consideration of impacts on habitat to those depicted on these GIS data layers would not require additional submittals such as a wetland delineation from the applicant.

If the habitat standard was applied to Tier 1 applications, it would be more likely that a staff person would need to visit the site to accurately assess any potential impacts to habitats. The maximum statutory processing time for a Tier 1 is 30 days. This timeframe already severely limits staff's present ability to visit a site as well as an applicant's ability to provide any additional information. Permitting data in the table below supports this as approximately 50% of Tier 1 applications processed in 2005 exceeded this processing deadline due to either delays on information submittals or complexities associated with the project. By increasing the Tier 1 processing time to 45 days, we could meet our deadlines, providing a more reasonable opportunity for an applicant to interact with staff on site and to respond to questions about a project. This would be an improvement for both the regulated public and the environment.

Calendar Year	Total number of Tier 1 applications approved*	Tier 1 applications exceeding 30 day processing time (% of total)	Number of Tier 1 applications exceeding 45 day processing time (% of total)
2000	152	26 (17%)	5 (3%)
2001	140	22 (16%)	9 (6%)
2002	162	55 (34%)	19 (12%)
2003	150	39 (26%)	14 (9%)
2004	176	71 (40%)	16 (9%)
2005	169	85 (50%)	28 (17%)

* Total number of applications processed across all Land Licensing programs averages between 800 and 1000 annually.

The issue of addressing cumulative impacts to freshwater wetlands is more complex. Because locating projects by GIS is still relatively new, we only have a limited picture of where impacts are occurring. And while we know that small,

isolated wetlands are sensitive to even one impact, we have very little information about the carrying capacity of larger wetland complexes.

In discussions with Maine Audubon, their concern centered on ensuring that impacts are avoided and minimized to the maximum extent practicable. A specific concern was the provision within Chapter 310 Section 4(B) which grants DEP the authority to waive freshwater impacts within the Shoreland Zone and within some wetlands of special significance from full NRPA permitting to Tier 1 or Tier 2 permitting levels. Maine Audubon sought assurance that DEP was using this waiver provision judiciously and appropriately only when impacts to wetland functions and values would be minimal. We believe that applying the habitat standard to Tier 1 applications, addressing some small, isolated wetlands with high habitat value as vernal pools through the proposed changes to Chapter 335 (LD 1981 presently in front of the committee this session), and verifying that this waiver process is consistent and conservative addresses Maine Audubon's concern for the incremental loss of freshwater wetlands.

Are wetland filling exemptions and compensation requirements presently appropriate?

Section 2 of the Resolve directs the DEP to work with the State Planning Office and other interested parties to develop a proposal for a freshwater wetland compensation program for Tier 1 projects, to review the wetlands exemptions contained in 38 M.R.S.A. Section 480-Q (17)(Appendix C), and to recommend changes to ensure adequate protection of regulated freshwater wetlands.

The DEP undertook such a review both internally and collaboratively with a workgroup comprised of Maine Audubon/University of Maine, The Nature Conservancy, U.S Army Corps of Engineers, Environmental Protection Agency, U.S. Fish and Wildlife, State Planning Office, and the Department of Transportation.

The DEP internally evaluated the feasibility of eliminating the exemption for minor wetland alteration (38 M.R.S.A. Section 480-Q (17)) up to 4,300 square feet of freshwater wetland not of special significance. It is our determination that the additional administrative work associated with permitting freshwater wetland impacts down to zero square feet is beyond the DEP's staff resources at this point in time. Although the lack of resources is not an environmentally-based justification, it is valid given current budget constraints.

The DEP looked at two possible permitting scenarios that would provide compensation for Tier 1 wetland impacts. One was that each applicant could be required to submit additional information to assess individual compensation projects. This option would significantly increase applicant's costs by requiring wetland delineations and function and value assessments for even the smallest project and the costs of DEP staff time. It would also undoubtedly result in a

large number of small, disconnected compensation projects. Such sites do not provide the ecological integrity of larger wetland/upland complexes.

A second alternative, each Tier 1 application could include a compensation fee in addition to the processing/ licensing fees. Statutory authority exists for such a fee in Section 480-X (6). However, any compensation fee would have to be in proportion to existing fees. Because Tier 1 fees range from $35 to $150, any additional fees directed toward compensation would be modest. Based on the number of Tier 1 applications processed over the last five years, if a 15 % increase in Tier 1 fees was earmarked as a compensation fee, only about $2,000 to $3,000 dollars would be generated annually.

After identifying drawbacks of the first two alternatives reviewed, DEP is proposing two other measures to compensate for freshwater wetland losses.

Under current state regulations, compensation is required for 20,000 square feet or more of impact to freshwater wetlands of special significance. In 2005, the DEP approved 11 Tier 2 projects, each impacting between 20,000 square feet and one acre. The wetland losses for these projects totaled 6.65 acres with 73.98 acres of compensation required as a result of these losses (Detail listed in Appendix D). However the DEP approved 17 projects in 2005 that impacted between 15,000 and 20,000 square feet, totaling 6.62 acres of freshwater wetland loss without mitigation.

Rather than assess a minor fee on a number of small Tier 1 projects, a more effective strategy to increase compensation for freshwater wetland impacts is to lower the regulatory threshold for mitigation to 15,000 square feet. Compensation at this level would mirror federal review by the U.S. Army Corps of Engineers for any project impacting 15,000 square feet or more. To implement such a change, we would need to have applicants submit function and value assessments for the approximately 10 to 20 projects per year that fall in this 15,000 to 20,000 square foot range.

If compensation were provided at the same level as the 2005 projects, approximately 70 additional acres of mitigation would result.

Second, the DEP has worked this past year to craft an in lieu fee compensation program that is currently authorized by and described in Section 480-Z (3) (Appendix E). Such a program allows for developers to fund mitigation projects not directly associated with their projects. This allows for creative and mutually beneficial work to be done across the state. Together with the same group of agencies as listed above, the DEP has drafted a Memorandum of Agreement to be signed by the commissioner and a third party meeting the requirements of Section 480-Z (3) (B) (2). Through this agreement and the minor recommended statutory changes (detailed in Appendix F), the DEP can create an effective and proactive avenue for mitigation, providing the opportunity for the restoration,

enhancement and preservation of larger areas of high resource value. An in lieu compensation fee program based on watershed or biophysical regions would eliminate the need for small, isolated, low value mitigation on marginal sites that can be a barrier to site development, particularly in Southern Maine where mitigation opportunities are limited.

Appendix A

Title 38, §480-D, Standards

§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. [1989, c. 890, Pt. A, §40 (aff); Pt. B, §71 (amd).]

1. Existing uses. The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses. [1987, c. 809, §2 (new).]

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. [1989, c. 430, §5 (amd).]

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. [2001, c. 618, §3 (amd).]

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: [2001, c. 618, §3 (amd).]

A. Avoiding an impact altogether by not taking a certain action or parts of an action;

[1987, c. 809, §2 (new).]

B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;

[1987, c. 809, §2 (new).]

C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;

[1987, c. 809, §2 (new).]

D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or

[1987, c. 809, §2 (new).]

E. Compensating for an impact by replacing the affected significant wildlife habitat.

[1987, c. 809, §2 (new).]

4. Interfere with natural water flow. The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters. [1987, c. 809, §2 (new).]

5. Lower water quality. The activity will not violate any state water quality law, including those governing the classification of the State's waters. [1987, c. 809, §2 (new).]

6. Flooding. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties. [1987, c. 809, §2 (new).]

7. Sand or gravel 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. [2003, c. 551, §8 (amd).]

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. [1987, c. 809, §2 (new).]

9. Dredging. 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: [2001, c. 248, §1 (amd).]

A. Clearly mark or designate the dredging area, the spoils disposal route and the transportation route;

[1997, c. 164, §1 (new); §2 (aff).]

B. Publish in a newspaper of general circulation in the area adjacent to the route the approved transportation route of the dredge spoils; and

[1997, c. 164, §1 (new); §2 (aff).]

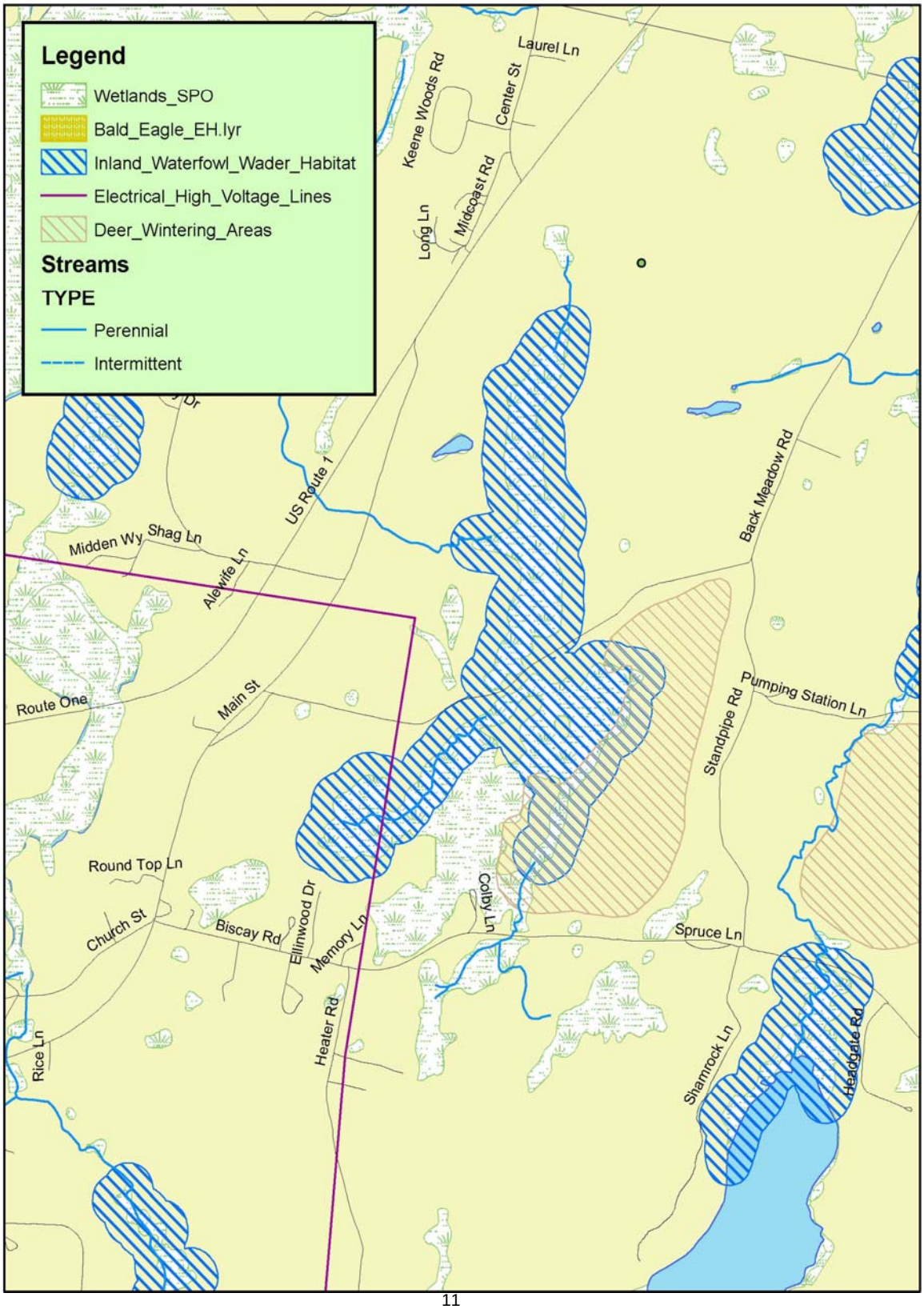
C. Publish in a newspaper of general circulation in the area adjacent to the route a procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation.

[1997, c. 164, §1 (new); §2 (aff).]

PL 1987, Ch. 809, §2 (NEW).
PL 1989, Ch. 430, §5 (AMD).
PL 1989, Ch. 656, §3 (AMD).
PL 1989, Ch. 890, §A40,B71,72 (AMD).
PL 1993, Ch. 296, §2 (AMD).
PL 1997, Ch. 164, §1 (AMD).
PL 1997, Ch. 164, §2 (AFF).
PL 2001, Ch. 248, §1 (AMD).
PL 2001, Ch. 618, §3 (AMD).
PL 2003, Ch. 551, §8 (AMD).

Appendix B

Pine Meadows, Damariscotta



Appendix C

Title 38, §480-Q, Activities for which a permit is not required (excerpt)

17. Minor alterations in freshwater wetlands. Activities that alter less than 4,300 square feet of freshwater wetlands, as long as: [2005, c. 116, §§3, 4 (amd).]

A. The activity does not occur in, on or over another protected natural resource;

[1995, c. 575, §1 (new).]

B. A 25-foot setback from other protected natural resources is maintained and erosion control measures are used;

[1995, c. 575, §1 (new).]

C. The activity is not located in a shoreland zone regulated by a municipality pursuant to chapter 3, subchapter I, article 2-B or in the wetland or water body protected by the shoreland zone;

[1995, c. 575, §1 (new).]

D. The activity does not occur in a wetland normally consisting of or containing at least 20,000 square feet of open water, aquatic vegetation or emergent marsh vegetation, except for artificial ponds or impoundments;

[1995, c. 575, §1 (new).]

E. The activity does not take place in a wetland containing or consisting of peat land dominated by shrubs, sedges and sphagnum moss;

[2005, c. 116, §3 (amd).]

F. The entire activity constitutes a single, complete project; and

[2005, c. 116, §3 (amd).]

G. The activity does not occur in a significant wildlife habitat.

[2005, c. 116, §4 (new).]

An activity does not qualify for exemption under this subsection if that activity is part of a larger project, including a multiphase development, that does not qualify as a whole project. Activities authorized or legally conducted prior to September 29, 1995 may not be considered in calculating the size of the alteration. [2005, c. 116, §§3, 4 (amd).]

Appendix D

TIER 2 APPLICATION IMPACTS

cy	2000	2001	2002	2003	2004	2005
TD	Fill - 4.9	Fill - 7.34	Fill - 3.27	Fill - 3.59	Fill - 8.31	Fill - 5.98
(15 - 20,000	Alter - 0.45	Alter - 0.87	Alter - 0	Alter - 0.36	Alter - 0.72	Alter - 0.64
Sq. ft.)	(14 projects)	(20 projects)	(10 projects)	(10 projects)	(25 projects)	(17 projects)
Total	**5.35**	**8.21**	**3.27**	**3.95**	**9.03**	**6.62**
TE	Fill - 6.18	Fill - 2.51	Fill - 4.69	Fill - 5.78	Fill - 3.26	Fill - 6.65
(20 - 43, 560	Alter - 0.18	Alter - 0.92	Alter - 0.69	Alter - 0.57	Alter - 0	Alter - 0
Sq. ft.)	(9 projects)	(7 projects)	(8 projects)	(11 projects)	(5 projects)	(11 projects)
Total	**6.36**	**3.43**	**5.38**	**6.35**	**3.26**	**6.65**

TIER 2 PROJECT MITIGATION

cy	2000	2001	2002	2003	2004	2005
# of projects	6	3	6	6	5	7
Creation	1.69	0	2.21	1.4	0.84	0.34
Enhancement	1.05	0	1.89	11.43	0.8	1.34
Restoration	1.72	0.1	0.13	0	0.76	0.69
Preservation	23.94	18.5	23.86	25.43	73.86	71.61
Total	**28.4**	**18.6**	**28.09**	**38.26**	**76.26**	**73.98**

Appendix E

Title 38, §480-Z, Compensation

§480-Z. Compensation

The department may establish a program providing for compensation of unavoidable freshwater or coastal wetland losses due to a proposed activity. Compensation must include the restoration, enhancement, creation or preservation of wetlands that have functions or values similar to the wetlands impacted by the activity, unless otherwise approved by the department. Preservation may include protection of uplands adjacent to wetlands. [1997, c. 101, §1 (new); §2 (aff).]

The department may require that compensation include the design, implementation and maintenance of a compensation project or, in lieu of such a project, may allow the applicant to purchase credits from a mitigation bank or to pay a compensation fee. If compensation is required, the completion and maintenance of a project, purchase of credits or payment of a compensation fee must be a condition of the permit. [1997, c. 101, §1 (new); §2 (aff).]

The department shall identify an appropriate project, or determine the amount of credits or compensation fee, based upon the compensation that would be necessary to restore, enhance, create or preserve wetlands with functions or values similar to the wetlands impacted by the activity. However, the department may allow the applicant to conduct a project of equivalent value, or allow the purchase of credits or payment of a compensation fee of equivalent value, to be used for the purpose of restoring, enhancing, creating or preserving other wetland functions or values that are environmentally preferable to the functions and values impacted by the activity, as determined by the department. The loss of functions or values of a coastal wetland may not be compensated for by the restoration, enhancement, creation or preservation of freshwater wetland functions or values. [1997, c. 101, §1 (new); §2 (aff).]

A project undertaken pursuant to this section must be approved by the department. The department shall base its approval of a compensation project on the wetland management priorities identified by the department for the watershed in which the project is located. The department may not approve a compensation project until the applicant has complied with all other applicable provisions of this article and all applicable rules adopted by the department pursuant to this article. [1997, c. 101, §1 (new); §2 (aff).]

1. Location of project. A compensation project must be located on or adjacent to the project site, unless otherwise approved by the department. A compensation project must be located in the same watershed as the wetlands affected by the activity unless the department determines, based on regional hydrological or ecological priorities, that there is a scientific justification for locating the compensation project outside of the same watershed. [1997, c. 101,

§1 (new); §2 (aff).]

2. Approval of mitigation bank. A mitigation bank from which any credits are purchased must be approved by the department consistent with all applicable federal rules and regulations. [1997, c. 101, §1 (new); §2 (aff).]

3. Compensation fee program. The department may 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. [2003, c. 245, §8 (amd).]

A. The program may include 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).

[2003, c. 245, §8 (amd).]

B. Any compensation fee may be paid into a wetlands compensation fund established by the department as provided in subparagraph (1) or to an organization authorized by the department as provided in subparagraph (2). A compensation project funded in whole or in part from compensation fees must be approved by the department.

(1) The department may establish a wetlands compensation fund for the purpose of receiving compensation fees, grants and other related income. The wetlands compensation fund must be a fund dedicated to payment of costs and related expenses of wetland restoration, enhancement, preservation and creation projects. The department may make payments from the fund consistent with the purpose of the fund. Income received under this subsection must be deposited with the State Treasurer to the credit of the wetlands compensation fund and may be invested as provided by law. Interest on these investments must be credited to the wetlands compensation fund.

(2) The department may enter into an enforceable, written agreement with a public, quasi-public or municipal organization or a private, nonprofit organization for the protection of wetlands and other natural areas. Such an organization must demonstrate the ability to receive compensation fees, administer a wetlands compensation fund and ensure that

compensation projects are implemented consistent with local, regional or state wetland management priorities for the watershed in which the project is located. If compensation fees are provided to an authorized organization, the organization shall maintain records of expenditures and provide an annual summary report as requested by the department. If the authorized agency is a state agency other than the department, the agency shall establish a fund meeting the requirements specified in subparagraph (1). If the organization does not perform in accordance with this subsection or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this subsection.

[2003, c. 245, §8 (amd).]

Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A. [2003, c. 245, §8 (amd).]

4. Relationship to other provisions. The purchase of credits from a mitigation bank or the payment of a compensation fee in no way relieves the applicant of the requirement to comply with any other provision of this article, including, but not limited to, the requirement to avoid or minimize effects on wetlands and water quality to the greatest extent practicable under section 480-X. [1997, c. 101, §1 (new); §2 (aff).]

5. Report; evaluation. [2003, c. 245, §9 (rp).]

6. Repeal. [2003, c. 245, §9 (rp).]

PL 1997, Ch. 101, §1 (NEW).
PL 1997, Ch. 101, §2 (AFF).
PL 2001, Ch. 232, §17 (AMD).
PL 2003, Ch. 245, §8,9 (AMD).

Appendix F

Draft Amendment

Sec. 1. 38 MRSA § 480-X, sub-§2, fourth ¶, is amended to read:

The standards of section 480-D do not apply to projects that qualify for Tier 1 review, except that habitat standards under section 480-D, subsection 3, and water quality standards under section 480-D, subsection 5 apply to those projects. Projects that meet the eligibility requirements for Tier 1 review and that satisfy the permitting requirements set forth in subsection 3 and 6, as applicable, are presumed not to have significant environmental impact.

Sec. 2. 38 MRSA § 480-X, sub-§6, ¶B, is amended to read:

B. Work may not occur until ~~30~~ 45 days after the department receives a complete application, unless written approval is issued sooner by the department. The department shall notify the applicant in writing no later than ~~30~~ 45 days after the department receives a complete application if the applicable requirements of this section have not been met or if the review period may be extended pursuant to section 344-B, subsection 4. If the department has not notified the applicant within the ~~30~~45-day review period, a permit is deemed to be granted.

Sec 3. 38 MRSA § 480-Z, sub-§6, fourth ¶, is amended to read:

A project undertaken pursuant to this section must be approved by the department. The department shall base its approval of a compensation project on the wetland management priorities identified by the department for the watershed or biophysical region in which the project is located. The department may not approve a compensation project until the applicant has complied with all other applicable provisions of this article and all applicable rules adopted by the department pursuant to this article.

Sec 4. 38 MRSA § 480-Z, sub-§3, ¶A, sub-¶1, is amended to read:

(1) Identification of wetland management priorities on a watershed or biophysical region basis;

SUMMARY

Section 1 amends Title 38, section 480-X, fourth paragraph to add a requirement providing that projects qualifying for Tier 1 review must meet the habitat standards at Title 38, section 480-D, subsection 3.

Section 2 amends Title 38, section 480-X. subsection 6, paragraph B to change three specified time periods from 30 to 45 days each.

Section 3 amends Title 38, section 480-Z, paragraph 4 to add "biophysical region" as a second area, in addition to the watershed, for which wetland management priorities may be identified.

Section 4 amends Title 38, section 480-Z, paragraph 4, subparagraph 1, to add "biophysical region" as a second basis on which wetland management priorities may be identified.