

MEMORANDUM

TO: Board of Environmental Protection
FROM: Hetty Richardson and Mike Mullen, Bureau of Land & Water Quality
DATE: January 15, 2008
RE: Amendments to Chapter 335, Significant Wildlife Habitat

Statutory and Regulatory Reference: The applicable statutory framework for this rule is the department's general rulemaking authority¹ and the Natural Resources Protection Act². Some of the proposed rule amendments are intended to provide for consistency with the following recent legislation:

- PL 2007, ch. 290, An Act Concerning the Natural Resources Protection Laws and Related Provisions
- PL 2007, ch. 527, An Act to Expand the Natural Resources Protection Act Compensation Program
- PL 2007, ch. 533, An Act to Streamline the Administration of Significant Vernal Pool Habitat

This is a routine technical rulemaking pursuant to PL 2007, ch. 290, sec. 16.

Description:

The proposed amendments are intended (1) to update the text of Chapter 335 to be consistent with recent statutory changes, and (2) to make other corrections, clarifications and minor updates. The rulemaking is not intended to set significant new policy.

History: A draft of the rules was initially made available for informal public comment. Several comments were received, and an informal basis statement was made available on the website. On October 16, 2008, the Board of Environmental Protection (BEP) posted the proposed amendments to public comment without a hearing. Notices were mailed to the Department's subscription list, and an additional list. The rulemaking materials were also posted on the department's website. The comment deadline was December 1, 2008 at 5:00 pm. No requests for a hearing were received.

Comments were received from two persons. The Basis Statement attached summarizes comments received and responses from the department.

Changes made from the posted draft

Sections 3(D)(1), 3(D)(2)(b), and 9(B)(6) of the draft posted for public comment have been amended as described in the Basis Statement. A copy of the rule showing changes as a result of comments in double-underline/double-strike has been provided, as well as a "clean copy" with all changes incorporated.

¹ 38 M.R.S.A. §341-D(1-B).

² 38 M.R.S.A. §§480-A – 480-FF.

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Some minor typographical, spelling and grammar errors were found while preparing the final draft and have been corrected. These are also shown in double-underline/double-strike and include:

- Sec. 2(A), delete a semi-colon and add a comma after “dewatering”, and add a comma after “freshwater wetlands”. These punctuation changes were apparently made in a previous rulemaking but not incorporated, and appear as struck and underlined text in the current text of the rule. They are shown in double-underline/stripped text in the draft proposed for adoption.
- Sec. 3(C)(1). Replace “affects” with “effects”.
- Sec. 3(D)(3). Insert “the” before “type”.
- Sec. 9. Third note. Remove extra period at end of sentence, and indent note.
- Sec. 11. First sentence. Capitalize “shorebird” at beginning of the sentence.

Environmental issues: The rule does not raise significant environmental issues. Certain changes recommended by the Department of Inland Fisheries and Wildlife are intended to make minor updates the rule. For example, the proposed amendments result in a change from a two-region approach to a three-region approach for purposes of describing seasonal identification periods for identifying significant vernal pool habitat. This should make it more likely that these habitats are accurately identified.

Discussion: The department made three minor clarifying changes to the proposed draft in response to comments received, and discussed two additional issues in the Basis Statement.

Department Recommendation: The Department recommends the proposed amendments be adopted as revised.

Estimated Time of Presentation: Approximately 20 minutes.