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Natural Resources Protection Act and 35-A M.R.S.A. § 3452 2015

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STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Natural Resources Protection Act

and 35-A M.R.S.A. § 3452

38 M.R.S.A. §§ 480-A to 480-HH

STATUTE



**NATURAL RESOURCES PROTECTION ACT
(NRPA)**

38 M.R.S.A. §§ 480-A to 480-HH

Note Concerning the Text - September 12, 2009

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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.

Please send any suggestions or comments concerning this publication to:

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*The DEP Land Resources Regulation web page is located at:
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*Supplementary materials relating to the NRPA are available at:
<http://www.maine.gov/dep/land/nrpa/index.html>*

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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 Natural 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.

2-E. Footprint. "Footprint" means the outline of a structure on the ground, except that for a building "footprint" means the outline that would be created on the ground by extending the exterior walls of a building to the ground surface.

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. Repealed. Laws 1995, ch. 460, § 1.¹

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.

¹Repeal effective September 29, 1995.

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

5-B. Impervious area. "Impervious area" means an area that is a building, parking lot, roadway or similar constructed area. "Impervious area" does not mean a deck or patio.

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 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.

6-A. Offshore wind power project. "Offshore wind power project" means a project that uses a windmill or wind turbine to convert wind energy to electrical energy and is located in whole or in part within coastal wetlands. "Offshore wind power project" includes both generating facilities as defined by Title 35-A, section 3451, subsection 5 and associated facilities as defined by Title 35-A, section 3451, subsection 1, without regard to whether the electrical energy is for sale or use by a person other than the generator.

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 areas² 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.

² 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).

- 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:

- (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 or preoperational capacity testing 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, except that "significant groundwater well" includes:
 - (a) A public water system used solely to bottle water for sale; and
 - (b) Any portion of a public water system that is:
 - (i) Constructed on or after January 1, 2009;
 - (ii) Used solely to bottle water for sale; and
 - (iii) Not connected to another portion of the public water system through pipes intended to convey water.

For purposes of this paragraph, a public water system that is used solely to bottle water for sale includes a public water system that bottles water for sale and may provide a de minimus amount of water for other purposes, such as employee or other use, as determined by the department;

- (2) Individual home domestic supply;
- (3) Agricultural use or storage;
- (3-A) Dewatering of a mining operation;
- (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.³

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.⁴

§ 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 11, 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 when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 2 and 5.⁵

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, or an offshore wind power project, the department shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452. In making a decision under this subsection regarding an application for an offshore wind power project, the department may not consider whether the project meets the specific criteria designated in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6), divisions (a) to (d). This limitation is not intended to restrict the department's review of related potential impacts of the project as determined by the department.

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.

³Repeal 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.

⁴ 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."

⁵ 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).

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.

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.⁶ 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

⁶Amendments 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.

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.

11. Offshore wind power project. This subsection applies to an offshore wind power project.

A. If an offshore wind power project does not require a permit from the department pursuant to article 6, the applicant must demonstrate that the generating facilities:

(1) Will meet the requirements of the noise control rules adopted by the board pursuant to article 6;

(2) Will be designed and sited to avoid unreasonable adverse shadow flicker effects; and

(3) Will be constructed with setbacks adequate to protect public safety, while maintaining existing uses to the extent practicable. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities.

B. If an offshore wind power project does not require a permit from the department pursuant to article 6, the applicant must demonstrate adequate financial capacity to decommission the offshore wind power project.

C. An applicant for an offshore wind power project is not required to demonstrate compliance with requirements of this article that the department determines are addressed by criteria specified in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6).

§ 480-E. Permit processing requirements

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 and other notification. The department shall provide notice according to this subsection.

A. Except as otherwise provided in paragraph B, the department may not review a permit without notifying the municipality in which the proposed activity is to occur. The municipality may provide comments within a reasonable period established by the commissioner and the commissioner shall consider any such comments.

B. The department may not review an application for an offshore wind power project without providing:

(1) Notice to the Maine Land Use Regulation Commission when the proposed development is located within 3 miles of an area of land within the jurisdiction of the Maine Land Use Regulation Commission; and

(2) Notice to any municipality with land located within 3 miles of the proposed development and any municipality in which development of associated facilities is proposed.

The Maine Land Use Regulation Commission and any municipality notified pursuant to this paragraph may provide comments within a reasonable period established by the commissioner and the commissioner shall consider such comments.

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 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 an individual permit for maintenance dredging under this subsection.

8. Permit by rule; maintenance dredging renewal. An individual permit for maintenance dredging may be renewed with a permit by rule only if the area to be dredged is located in an area that was dredged within the last 10 years and the amount of material to be dredged does not exceed the amount approved by the individual permit.

9. Permit; reconstruction in V-Zone. Repealed. Laws 2005, ch. 548, § 1.

10. Road construction associated with forest management activities. A permit by rule for road construction or maintenance associated with a forest management activity becomes effective upon receipt of notification by the department as long as:

- A. The road construction or maintenance is eligible for a permit by rule; and
- B. The notification is on a form provided by the department and is complete.

This subsection is repealed August 1, 2002.

11. Road construction associated with forest management activities. A permit by rule for road construction or maintenance associated with a forest management activity becomes effective upon receipt of notification by the department as long as:

- A. The road construction or maintenance is eligible for a permit by rule; and
- B. The notification is on a form provided by the department and is complete.

12. Dam removal. A person intending to file an application for a permit to remove an existing dam must attend a preapplication meeting with the department and must hold a public informational meeting prior to filing the application. The preapplication meeting and the public informational meeting must be held in accordance with the department's rules on the processing of applications.

§ 480-E-1. Delegation of permit-granting authority to Maine Land Use Regulation Commission

The Maine Land Use Regulation Commission shall issue all permits under this article for activities that are located wholly within its jurisdiction and are not subject to review and approval by the department under any other article of this chapter, except as provided in subsection 3.

1. Activity located in organized and unorganized area. If an activity is located in part within an organized area and in part within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, that portion of the activity within the organized area is subject to department review under this article if that portion is an activity pursuant to this article. That portion of the activity within the jurisdiction of the Maine Land Use Regulation Commission is not subject to the requirements of this article except as provided in subsection 2.

2. Allowed use. If an activity is located as described in subsection 1, the department may review that portion of the activity within the jurisdiction of the Maine Land Use Regulation Commission if the commission determines that the project is an allowed use within the subdistrict or subdistricts for which it is proposed pursuant to Title 12, section 685-B. A permit from the Maine Land Use Regulation Commission is not required for those aspects of an activity approved by the department under this subsection.

Review by the department of subsequent modifications to a development approved by the department is required, except that the Maine Land Use Regulation Commission shall issue modifications to permits issued by the department pursuant to this article prior to September 18, 1999. The Maine Land Use Regulation Commission shall process these permits and modifications in accordance with the provisions of Title 12, sections 681 to 689 and rules and standards adopted under those sections.

The Maine Land Use Regulation Commission, in consultation with the department, shall annually review land use standards adopted by the commission to ensure that the standards afford a level of protection consistent with the goals of this article, the goals of Title 12, chapter 206-A and the commission's comprehensive land use plan.

3. Offshore wind power project. The department shall issue all permits under this article for offshore wind power projects except for community-based offshore wind energy projects as defined in Title 12, section 682, subsection 19.

§ 480-E-2. Delegation of review authority to the Department of Health and Human Services or to a community public water system

The commissioner may delegate review authority to determine whether an activity that requires a permit because it is located within a community public water system primary protection area meets the standards in section 480-D, subsections 2 and 5 if the activity does not in whole or in part otherwise require a permit pursuant to section 480-C. The commissioner may delegate this review authority to the drinking water program of the Department of Health and Human Services or to a community public water system that demonstrates adequate technical capacity to perform the review. If review authority is delegated, the department shall issue or deny the permit and retains enforcement authority.

§480-E-3. Delegation of permit-granting authority to the Department of Agriculture, Conservation and Forestry, Bureau of Forestry

Notwithstanding section 480-E-1, the Department of Agriculture, Conservation and Forestry, Bureau of Forestry shall issue all permits under this article for timber harvesting activities in all areas of the State that are not subject to review and approval by the department under any other article of this chapter. For

the purposes of this section, “timber harvesting activities” means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting, the mining of gravel used for the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. Prior to issuing a permit under this section for the mining of gravel used for the construction or maintenance of roads used primarily for timber harvesting in an organized area of the State, the Bureau of Forestry shall consult with the department.

1. Activity located in organized and unorganized area. (repealed)

2. Allowed Use. (repealed)

The Department of Agriculture, Conservation and Forestry, Bureau of Forestry, in consultation with the department, shall annually review standards for timber harvesting activities adopted by the Bureau of Forestry to ensure that the standards afford a level of protection consistent with the goals of this article and the goals of Title 12, chapter 805, subchapter 3-A.

§ 480-F. Delegation of permit-granting authority to municipality; home rule

1. Delegation. A municipality may apply to the board for authority to issue all permits under this article or for partial authority to process applications for permits involving activities in specified protected natural resources or for activities included in chapter 305 of the department's rules, addressing permit by rule. The board shall grant such authority if it finds that the municipality has:

- A. Established a planning board and a board of appeals;
- B. Adopted a comprehensive plan and related land use ordinances determined by the State Planning Office to be consistent with the criteria set forth in Title 30-A, chapter 187, subchapter II and determined by the commissioner to be at least as stringent as criteria set forth in section 480-D;
- C. The financial, technical and legal resources to adequately review and analyze permit applications and oversee and enforce permit requirements;
- D. Made provision by ordinance or rule for:
 - (1) Prompt notice to the commissioner of all applications received except for those activities included in chapter 305 of the department's rules, addressing permit by rule; and
 - (2) Prompt notice to the public upon receipt of application and written notification to the applicant and the commissioner of the issuance or denial of a permit stating the reasons for issuance or denial, except for those applications for which no public notice or written decision is required;
- E. Provided an application form that is substantially the same as that provided by the commissioner; and
- F. Appointed a code enforcement officer, certified by the Executive Department, State Planning Office.

2. Procedure. The following procedures apply to applications under this article processed by municipalities.

- A. For applications processed by municipalities except those described in chapter 305 of the department's rules, no permit issued by a municipality may become effective until 30 days subsequent to its receipt by the commissioner, but, if approved by the department in less than 30 days, the effective date is the date of approval. A copy of the application for the permit and the permit issued by the municipality must be sent to the commissioner, immediately upon its

issuance, by registered mail. The department shall review that permit and either approve, deny or modify it as necessary. If the department does not act within 30 days of its receipt of the permit by the municipality, this constitutes its approval and the permit is effective as issued, except that within this 30-day period the department may extend the time for its review an additional 30 days.

B. For those applications for approval of activities described in chapter 305 of the department's rules, a copy of the municipality's action to approve or deny an application must be sent to the commissioner within 14 days of the municipality's decision.

3. Home rule. Nothing in this article may be understood or interpreted to limit the home rule authority of a municipality to protect the natural resources of the municipality through enactment of standards that are more stringent than those found in this article.

4. Joint enforcement. Any person who violates any permit issued under this section is subject to the provisions of section 349 in addition to any penalties which the municipality may impose. The provisions of this section may be enforced by the commissioner and the municipality that issued the permit.

§ 480-G. Periodic review of delegated authority

If the board finds that a municipality has failed to satisfy one or more of the criteria listed in section 480-F, the board shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval.

If, at any time, the board determines that a municipality may be failing to exercise its permit-granting authority in accordance with its approval procedures or the purposes of this article, the board shall notify the municipality of the specific alleged deficiencies and shall order a public hearing of which adequate public notice shall be given to be held in the municipality to solicit public or official comment on the alleged deficiencies. Following the hearing, if the board finds such deficiencies, the board shall revoke the municipality's permit-granting authority. The municipality may reapply for authority at any time.

§ 480-H. Rules; performance and use standards

In fulfilling its responsibilities to adopt rules pursuant to section 341-D, the board, to the extent practicable, shall adopt performance and use standards for activities regulated by this article. These standards at a minimum must include:

1. Department of Transportation projects. By February 15, 1991, requirements for projects that are under the direction and supervision of the Department of Transportation that do not affect coastal wetlands or coastal sand dune systems and that involve only maintenance or repair of public transportation facilities or structures or transportation reconstruction or replacement projects.

A. The Department of Transportation shall meet the following conditions for any project undertaken pursuant to this subsection after February 15, 1991.

(1) All projects must be performed in a manner consistent with this article and in compliance with rules adopted by the board.

(2) The project may not unreasonably harm the protected natural resources covered by this article.

(3) The Department of Transportation and its contractors shall use erosion control measures to prevent sedimentation of any surface waters.

(4) The project may not block any fish passage in any watercourse.

- (5) The project may not result in any excessive intrusion of the project into the protected natural resources.
- B. Those activities that are exempt from permitting requirements under section 480-Q are not subject to this subsection.
- C. The Department of Transportation must notify the commissioner before construction activities begin if the provisions of this subsection are utilized.

§ 480-I. Identification of freshwater wetlands and fragile mountain areas

1. Identification by maps. The commissioner shall map areas meeting the definition of fragile mountain areas set forth in this article. The data developed under section 546-B may be used for mapping significant wildlife habitat. Maps of significant wildlife habitats that have been produced by the Department of Inland Fisheries and Wildlife must be adopted by rule pursuant to the Maine Administrative Procedure Act by the department if:

- A. The maps are of one or more of the types listed in section 480-B, subsection 10, paragraph A; or
- B. The maps are of one or more of the types of areas listed in section 480-B, subsection 10, paragraph B and are for purposes of determining when a permit is required for forest management activities.

2. Procedures. The maps and subsequent amendments to be adopted pursuant to the Administrative Procedure Act are subject to the following procedures.

- A. Preliminary maps of the affected area or amendments of a map must be sent to the municipal officers or their designees.
- B. Upon receipt of the proposed maps, the municipal officers of each municipality shall take any action they determine appropriate to increase public participation in this identification and delineation, but shall return their comments to the commissioner within a 90-day period.

3. Progress report. Repealed. PL 2007, ch. 655, §2.

§ 480-J. Maps

Maps delineating the boundaries of freshwater wetlands, significant wildlife habitat and fragile mountain areas that meet the criteria of this article shall be available at the offices of the municipality and of the regional council in which the resources are located.

§ 480-K. Data bank

The commissioner shall maintain, in cooperation with other state agencies, a data bank containing all the known information pertaining to all resources of state significance, as enumerated in this article, within the State. All governmental agencies, state or federal, shall make available to the commissioner information in their possession relating to these resources.

§ 480-L. Research

The commissioner, in cooperation with other state agencies, is authorized to conduct research and studies to determine how the resource values of resources of state significance can be restored and enhanced.

§ 480-M. Funds

The department is the public agency of the State authorized to accept funds, public and private, for the purposes of this article.

§ 480-N. Lake Restoration and Protection Fund

1. Fund purposes and administration. There is established a nonlapsing Lake Restoration and Protection Fund, from which the commissioner may pay up to 50% of the eligible costs incurred in a lake restoration or protection project, except that projects addressing technical assistance, public education or research issues may be paid up to 100%. Eligible costs include all costs except those related to land acquisition, legal fees and debt service. All money credited to that fund must be used by the commissioner for projects to improve or maintain the quality of lake waters in the State and for no other purpose. The commissioner may authorize the State Controller to draw a warrant for such funds as may be necessary to pay the lawful expenses of the lake restoration or protection project, up to the limits of the money duly authorized. Any balance remaining in the fund must continue without lapse from year to year and remain available for the purpose for which the fund is established and for no other purpose.

2. Money. Money in the Lake Restoration and Protection Fund may not be used for projects in or on lakes for which public access is not provided.

3. Intensive staffing program. The commissioner shall establish an intensive staffing program to provide adequate staffing at both the state and regional levels. The commissioner shall provide technical information and guidance and the regional agencies shall assist with the adoption of revised comprehensive plans, standards and local ordinances by local governments.

4. Public education program. The commissioner shall develop a coordinated public education program for school children involving extensive use of the media.

5. Research. The commissioner shall encourage internal research focused on the following statewide topics:

- A. Lake vulnerability, particularly as it relates to noncultural features of the watershed;
- B. The effectiveness and design of the best management practices to control phosphorous pollution; and
- C. New lake and watershed diagnostic tools.

§ 480-O. Bulkheads and retaining walls on Scarborough River; permit requirements

Nothing in this article prohibits the rebuilding, replacement or new construction of a bulkhead, retaining wall or similar structure, provided that the applicant for a permit demonstrates to the department or municipality, as appropriate, that the following conditions are met.

1. Location. The bulkhead or similar structure to be constructed, rebuilt or replaced is located along some or all of the north-northeasterly property lines of land abutting the Scarborough River from the jetty to the Scarborough town landing.

2. Termination. The terminus of any bulkhead or similar structure, including any wing wall, unless connected to another bulkhead or similar structure, shall terminate at least 25 feet from any abutting property.

Any permit issued under this section for a bulkhead or similar structure which is not connected at both ends to another bulkhead or similar structure shall be subject to only the standard conditions applicable to all permits granted under this article as well as the following conditions. The permit applicant or applicants shall be responsible for reasonably maintaining the bulkhead or similar structure and for repairing damage to the frontal sand dune which occurs between the end of the bulkhead or similar structure and the Scarborough town landing and which is caused by the existence of the bulkhead or similar structure. The applicant or applicants shall submit a report prepared by a state-certified geologist to the commissioner every 2nd year following issuance of the permit or until such time as the commissioner deems the report need not be filed or may be filed at longer intervals. The report shall describe the status of the frontal sand dune between the end of the bulkhead or similar structure and the Scarborough town landing and contain whatever recommendations the geologist determines are reasonably required to maintain the frontal sand dune in that area. The applicant or applicants shall follow the recommendations.

§ 480-P. Special protection for outstanding river segments

In accordance with Title 12, section 402, outstanding river segments shall include:

1. Aroostook River. The Aroostook River from the Canadian border to the Masardis and T.10, R.6, W.E.L.S. town line, excluding the segment in T.9, R.5, W.E.L.S., including its tributaries the Big Machias River from the Aroostook River to the Ashland and Garfield Plantation town line and the St. Croix Stream from the Aroostook River in Masardis to the Masardis and T.9, R.5, W.E.L.S. town line;

2. Carrabassett River. The Carrabassett River from the Kennebec River to the Carrabassett Valley and Mt. Abram Township town line;

3. Crooked River. The Crooked River, including the Songo River, from its inlet into Sebago Lake in Casco to the Waterford and Albany Township town lines;

4. Dennys River. The Dennys River from the railroad bridge in Dennysville Station to the outlet of Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;

5. East Machias River. The East Machias River, including the Maine River, from the old powerhouse in East Machias to the East Machias and T.18, E.D., B.P.P. town line, from the T. 19, E.D., B.P.P. and Wesley town line to the outlet of Crawford Lake and from the No. 21 Plantation and Alexander town line to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Lower Mud Pond and Upper Mud Pond;

6. Fish River. The Fish River from the former bridge site at the dead end of Mill Street in Fort Kent Mills to the Fort Kent and Wallagrass Plantation town line, from the T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle Lake and Winterville Plantation town line and from the T.14, R.6, W.E.L.S. and Portage Lake town line to the Portage Lake and T.13, R.7, W.E.L.S. town line, excluding Portage Lake;

7. Kennebago River. The Kennebago River from its inlet into Cupsuptic Lake to the Rangeley and Lower Cupsuptic Township town line;

8. Kennebec River. The Kennebec River from the Route 148 bridge in Madison to the Caratunk and The Forks Plantation town line, excluding the western shore in Concord Township, Pleasant Ridge Plantation and Carrying Place Township and excluding Wyman Lake;

9. Machias River. The Machias River from the Route 1 bridge to the Northfield and T.19, M.D., B.P.P. town line, including its tributaries the Old Stream from the Machias River to the northern most

crossing of the Wesley and T.31, M.D., B.P.P. town line, excluding the segments in T.25, M.D., B.P.P. and T.31, M.D., B.P.P.;

10. Mattawamkeag River. The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township town line and from the Reed Plantation and Bancroft town line to the East Branch, including its tributaries the West Branch from the Mattawamkeag River to the Haynesville and T.3, R.3, W.E.L.S. town line and from its inlet into Upper Mattawamkeag Lake in Island Falls to the Hersey and Moro Plantation town line; the East Branch from the Mattawamkeag River to the Haynesville and Forkstown Township town line and from the T.4, R.3, W.E.L.S. and Oakfield town line to the Smyrna and Dudley Township town line; the Fish Stream from the West Branch of the Mattawamkeag River to the Crystal and Patten town line; the Molunkus Stream from the Silver Ridge Township and Benedicta town line to the East Branch Molunkus Stream; the Macwahoc Stream from the Silver Ridge Township and Sherman town line to the outlet of Macwahoc Lake; and the Baskehegan Stream from the Mattawamkeag River to the Danforth and Brookton Township town line, and from the Brookton Township and Topsfield town line to the Topsfield and Kossuth Township town line, excluding Baskehegan Lake and Crooked Brook Flowage;

11. Narraguagus River. The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township town line, excluding Beddington Lake;

12. Penobscot River. The Penobscot River from the Bangor Dam in Bangor to the Veazie Dam and its tributary the East Branch of the Penobscot from the Penobscot River to the East Millinocket and Grindstone Township town line;

13. Piscataquis River. The Piscataquis River from the Penobscot River to the Monson and Blanchard Plantation town line, including its tributaries the East and West Branches of the Piscataquis River from the Blanchard Plantation and Shirley town line to the Shirley and Moosehead Junction Township town line; the Seboeis Stream from its confluence with the Piscataquis River in Howland to the Howland and Mattamiscontis Township town line and from the Mattamiscontis and Maxfield town line to the Maxfield and Seboeis Plantation town line, excluding Shirley Pond and West Shirley Bog;

14. Pleasant River. The Pleasant River from the dam in Columbia Falls, formerly the Hathaway Dam, to the Columbia and T.18, M.D., B.P.P. town line and from the T.24, M.D., B.P.P. and Beddington town line to the outlet of Pleasant River Lake in Beddington;

15. Rapid River. The Rapid River from the Magalloway Plantation and Upton town line to the outlet of Pond in the River;

16. Saco River. The Saco River from the Little Ossipee River to the New Hampshire border;

17. St. Croix River. The St. Croix River from the cotton mill dam in Milltown to the Calais and Baring Plantation town line, from the Baring Plantation and Baileyville town line to the Baileyville and Fowler Township town line and from the Lambert Lake Township and Vanceboro town line to the outlet of Spednik Lake, excluding Woodland Lake and Grand Falls Flowage;

18. St. George River. The St. George River from the Route 90 bridge in Warren to the outlet of Lake St. George in Liberty, excluding White Oak Pond, Seven Tree Pond, Round Pond, Sennebec Pond, Trues Pond, Stevens Pond and Little Pond;

19. St. John River. The St. John River from the Hamlin Plantation and Van Buren town line to the Fort Kent and St. John Plantation town line and from the St. John Plantation and St. Francis town line to the Allagash and St. Francis town line;

20. Sandy River. The Sandy River from the Kennebec River to the Madrid and Township E town line;

21. Sheepscot River. The Sheepscot River from the Head Tide Dam in Alna to the Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributary the West Branch of the Sheepscot River from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China;

22. West Branch Pleasant River. The West Branch Pleasant River from the East Branch to the Brownville and Williamsburg Township town line; and

23. West Branch Union River. The West Branch Union River from the Route 181 bridge in Mariaville to the outlet of Great Pond in the Town of Great Pond.

For the purpose of receiving a permit for a transmission line or a pipeline under this article, outstanding river segments also include any other outstanding river and stream segments described in Title 12, section 403.

§ 480-Q. Activities for which a permit is not required

A permit is not required for the following activities if the activity takes place solely in the area specified below:

1. Water lines and utility cables. In an area which affects a great pond, the placement of water lines to serve a single-family house or the installation of cables for utilities, such as telephone and power cables, provided that the:

- A. Excavated trench for access to the water is backfilled and riprapped to prevent erosion;
- B. Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion; and
- C. Bureau of Parks and Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction;

2. Maintenance and repair. Maintenance and repair of a structure, other than a crossing, in, on, over or adjacent to a protected natural resource if:

- A. Erosion control measures are taken to prevent sedimentation of the water;
- B. Repealed.
- C. There is no additional intrusion into the protected natural resource; and
- D. The dimensions of the repaired structure do not exceed the dimensions of the structure as it existed 24 months prior to the repair, or if the structure has been officially included in or is considered by the Maine Historical Preservation Commission eligible for listing in the National Register of Historic Places, the dimensions of the repaired structure do not exceed the dimensions of the historic structure.

This subsection does not apply to: the repair of more than 50% of a structure located in a coastal sand dune system; the repair of more than 50% of a dam, unless that repair has been approved by a representative of the United States Natural Resources Conservation Service; or the repair of more than 50% of any other structure, unless the municipality in which the proposed activity is located requires a permit for the activity through an ordinance adopted pursuant to the mandatory shoreland zoning laws and the application for a permit is approved by the municipality;

2-A. Repealed. Laws 2011, c. 205, § 2

2-B. Floating docks. Replacement of a floating dock with another floating dock if the dimensions of the replacement dock do not exceed those of the dock being replaced and the configuration of the replacement dock is the same as the dock being replaced. In any action brought by the department against a person claiming an exemption under this subsection, the burden is on that person to demonstrate that the replacement dock satisfies the requirements of this subsection;

2-C. Transportation reconstruction or replacement project within a community public water system primary protection area. A transportation reconstruction or replacement project located within a community public water system primary protection area as long as a permit is not required due to the presence of any other type of protected natural resource;

2-D. Existing crossings. A permit is not required for the repair and maintenance of an existing crossing or for the replacement of an existing crossing, including ancillary crossing installation activities such as excavation and filling, in any protected natural resource area, as long as:

- A. Erosion control measures are taken to prevent sedimentation of the water;
- B. The crossing does not block passage for fish in the protected natural resource area; and

C. For replacement crossings of a river, stream or brook:

(1) The replacement crossing is designed, installed and maintained to match the natural stream grade to avoid drops or perching; and

(2) As site conditions allow, crossing structures that are not open bottomed are embedded in the stream bottom a minimum of one foot or at least 25% of the culvert or other structure's diameter, whichever is greater, except that a crossing structure does not have to be embedded more than 2 feet.

For purposes of this subsection, "repair and maintenance" includes but is not limited to the riprapping of side slopes or culvert ends; removing debris and blockages within the crossing structure and at its inlet and outlet; and installing or replacing culvert ends if less than 50% of the crossing structure is being replaced.

3. Peat mining. Repealed. Laws 1995, ch. 700, § 1.⁷

4. Interstate pipelines. Alteration of freshwater wetlands associated with the construction, operation, maintenance or repair of an interstate pipeline, subject to article 6, where applicable;

5. Gold panning. Notwithstanding section 480-C, a permit shall not be required for panning gold, provided that stream banks are not disturbed and no unlicensed discharge is created;

5-A. Motorized recreational gold prospecting. Notwithstanding section 480-C, a permit is not required for motorized recreational gold prospecting as long as the provisions of this subsection are met.

- A. A person may perform motorized recreational gold prospecting only from June 15th to

⁷Repeal effective July 4, 1996. A transition provision was also enacted. It read:

"**Transition provisions.** A peat mine licensed pursuant to the Maine Revised Statutes, Title 38, chapter 13, subchapter I, article 6 prior to the effective date of this Act is also considered licensed pursuant to Title 38, chapter 3, subchapter I, article 5-A, as of the effective date of this Act." Laws 1995, ch. 700, § 1 (effective July 4, 1996).

September 15th and only with written permission of the relevant landowner.

B. A person may not perform motorized recreational gold prospecting that causes an undue adverse effect on natural resources. The area in which the motorized recreational gold prospecting is performed must be kept free of litter, trash and any other materials that may constitute a hazardous or nuisance condition.

C. The following provisions limit the use of equipment in motorized recreational gold prospecting.

- (1) Equipment may not have any fuel, oil or hydraulic leaks or cause any unlicensed discharge.
- (2) Motorized equipment may not exceed 7 horsepower.
- (3) The inside diameter of a suction dredge intake nozzle and hose may not exceed 4 inches.
- (4) The area of a sluice may not exceed 10 square feet.
- (5) A flume may not be used to transport water outside of a stream channel.

D. A person may not use mercury, nitric acid or other chemicals for extraction in motorized recreational gold prospecting.

E. A person may not perform motorized recreational gold prospecting in a manner that:

- (1) Disturbs a stream bank, including but not limited to digging into the bank or dredging or altering water flow within a stream channel in a manner that causes the bank to erode or collapse;
- (2) Removes or damages vegetation or woody debris such as root wads, stumps or logs within a stream channel, on the bank or on nearby upland, including cutting or abrasion of trees;
- (3) Diverts, dams or otherwise obstructs a stream;
- (4) Deposits soil, rocks or any other foreign material from outside of the channel into a stream; or
- (5) Deposits stream bottom sediments or rocks onto the bank or upland.

F. Upon completion of one or more consecutive days of motorized recreational gold prospecting, a person who performed the motorized recreational gold prospecting shall smooth out dredge spoils and refill dredge holes below the normal high-water mark of the stream in order to restore the approximate original contours of the stream bottom and not deflect the current.

G. Motorized recreational gold prospecting is prohibited within the following areas:

- (1) Waters closed to motorized recreational gold prospecting in the unorganized territories identified in rules adopted by the Department of Agriculture, Conservation and Forestry, Maine Land Use Planning Commission;
- (2) Waters closed to motorized recreational gold prospecting identified in rules adopted by the Department of Environmental Protection;
- (3) Waters defined as Class AA waters pursuant to section 465; and
- (4) The following areas of critical or high-value brook trout or Atlantic salmon habitat:
 - (a) Bemis Stream and tributaries in Township D and Rangeley Plantation;
 - (b) Bond Brook in the City of Augusta and the Town of Manchester;
 - (c) Bull Branch of Sunday River and tributaries in Grafton Township and Riley Township;
 - (d) Carrabassett River and tributaries in the Town of Carrabassett Valley, Freeman Township, the Town of Kingfield, Mount Abram Township and Salem Township;

(e) Cold Stream tributaries, including Tomhegan Stream, in Chase Stream Township, Johnson Mountain Township and West Forks Plantation;

(f) Enchanted Stream in Upper Enchanted Township and Lower Enchanted Township;

(g) Magalloway River and tributaries, including Little Magalloway River, in Bowmantown Township, Lincoln Plantation, Lynchtown Township, Magalloway Plantation, Oxbow Township, Parkertown Township and Parmachenee Township;

(h) Rapid River in the Town of Upton and Township C;

(i) Sheepscot River and tributaries, including the West Branch, in the Town of Alna, the Town of China, the Town of Freedom, the Town of Liberty, the Town of Montville, the Town of Palermo, the Town of Somerville, the Town of Whitefield and the town of Windsor;

(j) South Bog Stream in Rangeley Plantation;

(k) Spencer Stream and Little Spencer Stream tributaries, including Kibby Stream in Kibby Township, Skinner Township, T.3, R.5 B.K.P.W.K.R., T.4, R.5 B.K.P.W.K.R., King and Bartlett Township and T.5, R.6 B.K.P.W.K.R., and

(l) Togus Stream in the Town of Chelsea and the Town of Randolph.

6. Agricultural activities. Subject to other provisions of this article that govern other protected natural resources, altering a freshwater wetland for the purpose of normal farming activities such as clearing of vegetation for agricultural purposes if the land topography is not altered, plowing, seeding, cultivating, minor drainage and harvesting, construction or maintenance of farm or livestock ponds or irrigation ditches, maintenance of drainage ditches and construction or maintenance of farm roads;⁸

7. Forestry. Repealed. Laws 1989, c. 838, § 5.

7-A. Forestry. Forest management activities, including associated road construction or maintenance, in or adjacent to an existing forested wetland or a harvested forested wetland or adjacent to a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B, as long as:

A. Repealed. Laws 2009, c. 537, § 3.

B. The activity meets permit-by-rule standards in rules adopted pursuant to this article for any road crossing of a river, stream or brook or for any soil disturbance adjacent to a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B and the commissioner is notified before the forest management activity commences;

C. The protected natural resource is not mapped as a significant wildlife habitat under section 480-I; and

D. Any road construction is used primarily for forest management activities that do not constitute a change in land use under rules adopted by the Department of Conservation, Bureau of Forestry concerning forest regeneration and clear-cutting and is not used primarily to access development, unless the road is removed and the site restored to its prior natural condition. Roads must be the minimum feasible width and total length consistent with forest management activities. This exemption does not apply to roads within a subdivision as defined in Title 30-A, section 4401, subsection 4, for the organized portions of the State, or Title 12, section 682, subsection 2-A, including divisions of land exempted by Title 12, section 682-B, for portions of the State under the jurisdiction of the Maine Land Use Regulation Commission;

⁸This provision was rewritten by Laws 1995, ch. 460, § 5 and affected by an application provision reprinted in footnote 9.

8. Hydropower projects. Hydropower projects are exempt from the provisions of this article to the extent provided in section 634. Alteration of a freshwater wetland associated with the operation of a hydropower project, as defined in section 632, is exempt from the provisions of this article, but is subject to chapter 5, subchapter I, article 1, subarticle 1-B, where applicable;

9. Public works. A permit is not required for emergency repair or normal maintenance and repair of existing public works which affect any protected natural resource. An activity which is exempt under this subsection shall employ erosion control measures to prevent sedimentation of any surface water, shall not block fish passage in any water course and shall not result in any additional intrusion of the public works into the protected natural resource. This exemption does not apply to any activity on an outstanding river segment as listed in section 480-P;

9-A. Community public water systems. Community public water systems are exempt from the provisions of this article for activities within their community public water system primary protection areas as long as the activities are conducted in a manner that protects the quality and quantity of water available for the system;

10. Aquaculture. Aquaculture activities regulated by the Department of Marine Resources under Title 12, section 6072, 6072-A, 6072-B or 6072-C. Ancillary activities, including, but not limited to, building or altering docks or filling of wetlands, are not exempt from the provisions of this article;

11. Soil evaluation. Borings taken to evaluate soil conditions in or adjacent to a great pond, river, stream or brook, coastal wetland, freshwater wetland or sand dune are exempt from the provisions of this article provided that no area of wetland vegetation is destroyed or permanently removed;

12. Existing access ways. Normal maintenance and repair or reconstruction of existing access ways in freshwater or coastal wetlands to residential dwellings as long as:

- A. The applicant shows evidence that the access way in disrepair is the existing route of access to the residential dwelling;
- B. Erosion control measures are used;
- C. Intrusion of the access way into the freshwater or coastal wetland is minimized and allows for proper drainage where necessary;
- D. The access way, if in a coastal wetland, is traditionally dry at mean high tide; and
- E. A notice of intent to maintain, repair or reconstruct the access way and the description of the work to be completed are submitted to the commissioner and to the municipal reviewing authority at least 20 days before the work is performed; and

13. Moorings. The placement of a mooring in any area regulated by this article.

14. Lawful harvesting of marine organisms or vegetation in coastal wetlands. A person lawfully engaged in the harvesting of marine organisms or vegetation under the provisions of Title 12, chapter 605 is not required to obtain a permit to engage in those activities in a coastal wetland or a coastal wetland containing a high or moderate value waterfowl or wading bird habitat or shorebird feeding or staging area. Within a coastal wetland or a coastal wetland containing a high or moderate value waterfowl or wading bird habitat or staging area, the removal of vegetation or displacement of soil associated with or authorized by those lawful activities is not a violation of this article; and

15. Subsurface wastewater disposal systems.

15-A. Subsurface wastewater disposal systems. Installation, removal or repair of a subsurface wastewater disposal system, as long as the system complies with all requirements of the subsurface wastewater disposal rules adopted by the Department of Health and Human Services under Title 22, section 42, subsection 3. This subsection takes effect on March 1, 1995.

16. Alterations in back dunes of coastal sand dune systems. Repealed⁹

17. Minor alterations in freshwater wetlands. Activities that alter less than 4,300 square feet of freshwater wetlands, as long as:

- A. The activity does not occur in, on or over another protected natural resource;
- B. A 25-foot setback from other protected natural resources is maintained and erosion control measures are used;
- 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;
- 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;
- E. The activity does not take place in a wetland containing or consisting of peat land dominated by shrubs, sedges and sphagnum moss;
- F. The entire activity constitutes a single, complete project; and
- G. The activity does not occur in a significant wildlife habitat.

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.

18. Service drops for telephone or electrical service. Vegetative clearing of a freshwater wetland for the installation of telephone or electrical service, if:

- A. The line extension does not cross or run beneath a coastal wetland, river, stream or brook;
- B. The placement of wires or installation of utility poles is located entirely upon the premises of the customer requesting service, upon a roadway right-of-way or, in the case of telephone service, on existing utility poles; and
- C. The total length of the extension is less than 1,000 feet.

19. Displacement or bulldozing of sediment within a lobster pound. Displacement or bulldozing of sediment within a lobster pound, provided the sediment is not removed from the area inundated as a result of the impoundment.

20. Constructed ponds. Alteration of legally created constructed ponds that are not considered part of a great pond, coastal wetland, river, stream or brook, as long as the constructed pond is not expanded beyond its original size.

21. Removal of beaver dams. Removal of a beaver dam as authorized by a game warden, as long as:

- A. Efforts are made to minimize erosion of soil and fill material from disturbed areas into a protected natural resource;
- B. Efforts are made to minimize alteration of undisturbed portions of a wetland or water body; and

⁹Repealed February 15, 1995 pursuant to terms of subsection.

C. Wheeled or tracked equipment is operated in the water only for the purpose of crossing a water body to facilitate removal of the beaver dam. Where practicable, wheeled or tracked equipment may cross a water body only on a rock, gravel or ledge bottom.

This exemption includes the draining of a freshwater wetland resulting from removal of a beaver dam. It does not include removal of a beaver house.

22. Archaeological excavation. Archaeological excavation adjacent to a great pond, freshwater wetland, coastal wetland, sand dune system, river, stream or brook as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Commission level 1 or level 2 approved list and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

23. Cutting or clearing subject to mandatory shoreland zoning laws. Cutting or clearing of upland vegetation adjacent to those protected natural resources listed in section 480-C, subsection 1, paragraph A or B for a purpose other than forest management as long as:

A. The cutting or clearing is subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter 1, article 2-B; or

B. If the cutting or clearing is not subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter 1, article 2-B, vegetation within the adjacent area is maintained as follows:

(1) There is no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown, except that a footpath may be established for the purpose of access to water if it does not exceed 6 feet in width as measured between tree trunks and has at least one bend in its path to divert channelized runoff;

(2) Any selective cutting of trees within the buffer strip leaves a well-distributed stand of trees and other natural vegetation.

(a) For the purposes of this subparagraph, a "well-distributed stand of trees" is defined as maintaining a rating score of 16 or more points in a 25-foot by 50-foot rectangular area as determined by the following rating system.

(i) A tree with a diameter at 4 1/2 feet above ground level of 2.0 to less than 4.0 inches has a point value of one.

(ii) A tree with a diameter at 4 1/2 feet above ground level of 4.0 inches to less than 8.0 inches has a point value of 2.

(iii) A tree with a diameter at 4 1/2 feet above ground level of 8.0 inches to less than 12.0 inches has a point value of 4.

(iv) A tree with a diameter at 4 1/2 feet above ground level of 12.0 or more inches or more has a point value of 8.

(b) In applying this point system:

(i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

- (ii) Each successive plot must be adjacent to, but may not overlap, a previous plot;
- (iii) Any plot not containing the required points may have no vegetation removed except as otherwise allowed by this subsection;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this subsection; and
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

(c) For the purposes of this subparagraph, "other natural vegetation" is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4 1/2 feet above ground level for each 25-foot by 50-foot rectangular area. If 5 saplings do not exist, the landowner or lessee may not remove any woody stems less than 2 inches in diameter until 5 saplings have been recruited into the plot;

(3) In addition to the requirements of subparagraph (2), no more than 40% of the total volume of trees 4.5 inches or more in diameter, measured 4 1/2 feet above ground level, is selectively cut in any 10-year period;

(4) Deleted.

(5) Tree branches are not pruned except on the bottom 1/3 of the tree as long as tree vitality will not be adversely affected; and

(6) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings in excess of 250 square feet, these openings are replanted with native tree species unless there is existing new tree growth.

Cleared openings legally in existence on September 1, 2002 may be maintained but may not be enlarged.

This subsection applies to an area with vegetation composed primarily of shrubs, trees or other woody vegetation without regard to whether the area was previously cut or cleared;

24. Existing lawns and gardens. Maintenance, but not enlargement, of lawns and gardens in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter I, article 2-B;

25. Existing agricultural fields and pastures. Maintenance, but not enlargement, of agricultural fields and pastures in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter 1, article 2-B;

26. Overboard wastewater system. Installation, maintenance or removal of a licensed overboard discharge treatment system, including the outfall pipe, if:

- A. Erosion control measures are taken to prevent sedimentation of the water;
- B. Effects of construction activity on the protected natural resource are minimized; and

C. The activity is approved by the department as provided in the department's rules concerning overboard discharges adopted pursuant to section 414-A;

27. Fishways. Erection, maintenance, repair or alteration of a fishway in a dam or other artificial obstruction when required by the Commissioner of Inland Fisheries and Wildlife pursuant to Title 12, section 12760 or by the Commissioner of Marine Resources pursuant to Title 12, section 6121;

28. Release of water from dam after petition by owner for release from dam ownership or water level maintenance. Activity associated with the release of water from a dam pursuant to an order issued by the department pursuant to section 905;

29. Dam safety order. Activity associated with the breach or removal of a dam pursuant to an order issued by the Commissioner of Defense, Veterans and Emergency Management under Title 37-B, chapter 24;

30. Lobster trap storage. The storage of lobster traps and related trap lines, buoys and bait bags on docks in, on, over or adjacent to a coastal wetland. For purposes of this subsection, "dock" means a dock, wharf, pier, quay or similar structure built in part on the shore and projected into a harbor and used as a landing, docking, loading or unloading area for watercraft; and

31. Minor expansions to buildings in a coastal sand dune system. Expansion of an existing residential or commercial structure in a coastal sand dune system if:

- A. The footprint of the expansion is contained within an existing impervious area;
- B. The footprint of the expansion is no further seaward than the existing structure;
- C. The height of the expansion is within the height restriction of any applicable law or ordinance; and
- D. The expansion conforms to the standards for expansion of a structure contained in the municipal shoreland zoning ordinance adopted pursuant to article 2-B.

For purposes of this subsection, "structure" does not include a seawall, retaining wall, closed fence or other structure used to stabilize the shoreline or to prevent the movement of sand or water. For purposes of this subsection, expansion of an existing structure does not include a change from one type of structure to another.

32. Placement of wood in streams. The placement of wood in stream channels to enhance cold water fisheries habitat in accordance with Title 12, section 8867-C and rules adopted to implement that section.

§ 480-R. Violations; enforcement

1. Violations. A violation is any activity which takes place contrary to the provisions of a valid permit issued under this article or without a permit having been issued for that activity. Each day of a violation shall be considered a separate offense. A finding that any such violation has occurred shall be prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred.

2. Enforcement. In addition to department staff, inland fisheries and wildlife game wardens, Department of Marine Resources marine patrol officers and all other law enforcement officers enumerated in Title 12, section 10401, shall enforce the terms of this article.

§ 480-S. Fee for significant wildlife habitat review

The commissioner shall establish procedures to charge applicants for costs incurred in reviewing license and permit applications regarding significant wildlife habitats in the same manner as provided for other fees in section 352. The maximum fees are \$150 for processing and \$50 for a license. All fees must be credited to the Maine Environmental Protection Fund established in section 351.

§ 480-T. Transportation improvements

Prior to February 15, 1991, an individual permit is not required by this article for maintenance or repair of public transportation facilities or structures, or transportation reconstruction or replacement projects that are under the direction and supervision of the Department of Transportation that do not affect a coastal wetland or coastal sand dune system.

1. Requirements. The commissioner and the Commissioner of Transportation shall enter into a memorandum of understanding for projects to be undertaken in accordance with this section. In addition, the Department of Transportation shall meet the following conditions for any project undertaken pursuant to this section.

- A. All projects must be performed in a manner consistent with this article and in compliance with rules adopted by the board.
- B. The project may not unreasonably harm the protected natural resources covered by this article.
- C. The Department of Transportation and their contractors use erosion control measures to prevent sedimentation of any surface waters.
- D. The project may not block any fish passage in any watercourse.
- E. The project may not result in any excessive intrusion of the project into the protected natural resources.

2. Exempt activities. Those activities that are exempt from permitting requirements under section 480-Q are not subject to this section.

3. Notification. The Department of Transportation must notify the department prior to beginning the construction of any projects undertaken that meet the requirements of this section.

4. Repeal. This section is repealed on February 15, 1991, except that reconstruction or replacement projects that have been advertised prior to that date continue to be subject to this section.

§ 480-U. Cranberry cultivation

1. General permit. An individual permit is not required for the alteration of freshwater wetlands to cultivate cranberries as long as the provisions of this section are met.

2. Requirements. An application must be filed with the department and must meet the following requirements.

- A. The application must contain written certification by a knowledgeable professional that the cranberry cultivation project will not be located in a wetland that has one or more of the following characteristics:

- (1) Is a coastal wetland or is located within 250 feet of a coastal wetland;
- (2) Is a great pond;
- (3) Contains endangered or threatened plant species as defined in Title 12, section 544;
- (4) Contains any type of palustrine natural community of which there are 20 or fewer occurrences in the State;
- (5) Contains any of the following resources:
 - (a) Habitat for species appearing on the official state or federal lists of endangered or threatened species when there is evidence that the species is present;
 - (b) As defined by rule by the Commissioner of Inland Fisheries and Wildlife, whether or not the resource has been mapped, high-value and moderate-value deer wintering areas; deer travel corridors; high-value and moderate-value waterfowl or wading bird habitats, including nesting and feeding areas; shorebird nesting, feeding or staging areas; or seabird nesting islands; or
 - (c) Critical spawning and nesting areas for Atlantic salmon as defined by rule by the Atlantic Salmon Commission whether or not mapped;
- (6) Is located within 250 feet of the normal high water line and within the same watershed of any lake or pond classified as GPA under section 465-A;
- (7) Is a bog dominated by ericaceous shrubs, sedges and sphagnum moss and usually having a saturated water regime, except that applications proposing reclamation of previously mined peat bogs may be considered;
- (8) Is land adjacent to the main stem of a major river, as classified in section 467, that is inundated with floodwater during a 100-year flood event and that under normal circumstances supports a prevalence of wetland vegetation, typically adapted for life in saturated soils; or
- (9) Contains at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments, during most of the growing season in most years; except that cranberry cultivation is allowed more than 250 feet from the edge of the area of aquatic vegetation, emergent marsh vegetation or open water.

A project to cultivate indigenous cranberries may be located in wetlands described in subparagraphs (6) and (7) only if the project location is a natural cranberry bog and provisions of paragraph D are met. For purposes of this paragraph, "natural cranberry bog" means an area with indigenous large cranberries, *Vaccinium macrocarpon* Ait., comprising more than 50% of the cover in the herbaceous layer; and "cover in the herbaceous layer" means all herbaceous or woody vegetation less than 10 inches in height. [1999, c. 401, Pt. BB, §18 (amd).]

B. The application must contain a plan that includes the following elements:

- (1) A top view drawing of the entire project including existing and proposed beds, dikes, ditches, roads and reservoirs; cross-sectional drawings of beds, dams, dikes and ditches; length, width and depth of beds, dikes and ditches; delineation of the wetland boundaries and calculated area of wetlands affected; description of existing vegetation; amount and type of fill material to be discharged over the beds and location of borrow area; type and size of water control structures; and placement and description of water sources;
- (2) A soil erosion and sedimentation control plan that is consistent with erosion and sediment control specifications as determined by the Department of Agriculture, Food and Rural Resources and the department;

(3) A plan for a water recovery system, including either a reservoir or the cranberry beds themselves, that is designed to contain the runoff from the project area during a 10-year, 24-hour storm event;

(4) A plan to maintain a 75-foot buffer strip from any river or stream draining a watershed of 100 acres or more, except that excavated ditches and water intake and outfall pipes or control structures may be allowed in the 75-foot buffer area;

(5) Design specifications for water intake and outfall pipes and excavated ditches which must be consistent with specifications as determined by the Department of Agriculture, Food and Rural Resources and the department;

(6) A plan to maintain minimum base flows for each water supply area. Minimum base flow is the aquatic base flow for that watershed, or a flow that can be shown to protect designated uses and characteristics assigned in section 465; and

(7) Appurtenant facilities, including, but not limited to storage buildings, parking areas and processing areas, may not be located in the freshwater wetland. This limitation does not apply to pump houses, roadways, service areas and other appurtenant facilities directly related and needed to carry out the water related activities.

C. The applicant must provide a management plan that includes a pesticide and fertilizer program approved by the Department of Agriculture, Food and Rural Resources. The plan must include the following practices:

(1) The application of nutrients and soil amendments in terms of timeliness, amounts, materials and method of application;

(2) The use of current integrated pest management practices for applying pesticides properly and in the minimum amounts necessary to control pests; and

(3) The management of water in terms of bed drainage, runoff disposal, sprinkler irrigation, control devices to separate natural water from pumping supply for irrigation purposes, back-siphoning prevention devices and flooding.

D. A person applying for approval on the basis that the project location is a natural cranberry bog as defined in paragraph A must provide a management plan that meets all of the requirements of paragraph C and the requirements of this paragraph.

(1) The cranberries must be cultivated in accordance with organic production standards established in Title 7, section 551, subsection 2 and section 553, subsection 1, paragraph A.

(2) A person may not introduce nonindigenous cranberry plants to the project site. A person may not remove cranberry plants existing on the project site.

(3) Cultivation practices may not alter natural drainage. Filling is limited to placement each year of up to one inch of sand on bearing cranberry vines.

3. Agriculture certification. The Department of Agriculture, Food and Rural Resources shall review all plans submitted pursuant to subsection 2, paragraphs B, C or D and shall certify compliance of these sections to the department within 20 days of receipt of an application.

4. Review period. Work may not occur until 45 days after the department has accepted an application for processing. This period may be extended pursuant to section 344-B with the consent of the applicant.

5. Notification. The department shall notify an applicant in writing within 45 days of acceptance for processing if the department determines that the requirements of this section have not been met. Any such notification must specifically cite the requirements of this section that have not been met. If the

department has not notified the applicant under this subsection within the specified time period, a general permit is deemed to have been granted.

6. Deferrals. The 45-day time limit for processing a completed application under subsection 5 does not apply when winter conditions prevent the department from evaluating a permit application. Under such circumstances, the department may defer action for a reasonable period. The department shall immediately notify the applicant of a deferral under this subsection.

7. Fees. The department shall assess a fee for review of applications filed pursuant to this section. The fee must be equivalent to the amount assessed to activities requiring an individual permit for freshwater wetland alterations.

8. Violation. Any action taken by a person receiving a general permit under this section that is not in compliance with the plans submitted under subsection 2, paragraphs B, C or D is a violation of the general permit.

§ 480-V. Applicability

This article applies to all protected natural resources in the State.

§ 480-W. Emergency actions to protect threatened property

1. Protective materials. Repealed. Laws 2005, ch. 548, § 2.

2. Strengthening of structure. Repealed. Laws 2005, ch. 548, § 2.

3. Emergency action exemption. Notwithstanding section 480-C, if the local code enforcement officer, a state-licensed professional engineer or a state-certified geologist determines that the integrity of a seawall, bulkhead, retaining wall or similar structure in a coastal sand dune system is destroyed or threatened, the owner of property protected by the seawall, bulkhead, retaining wall or similar structure may perform or cause to be performed the following activities without obtaining a permit under this article:

A. Place riprap, sandbags or other heavy nonhazardous material to shore up the threatened structure and leave the material in place until a project designed to repair or replace the structure is permitted by the department. After such emergency action is taken and within 5 working days after the imminent threat, the property owner must provide written notice to the department of the date the emergency action was taken and a description of the emergency action taken. Within 6 months following placement of any material pursuant to this paragraph, the property owner must submit to the department an application to repair or replace the structure. The material placed pursuant to this paragraph must be removed within 18 months from the date a permit is issued by the department; or

B. Make permanent repairs, to the extent necessary to alleviate the threat, to strengthen the seawall, bulkhead, retaining wall or other structure, to widen the footings or to secure the structure to the sand with tie-back anchors. A state-certified geologist, state-licensed professional engineer or other qualified professional must make the determination that the actions taken by the property owner in accordance with this section are only those actions necessary to alleviate the imminent threat and do not include increasing the height or length of the structure.

If a local code enforcement officer, state-licensed professional engineer or state-certified geologist fails to determine within 6 hours of initial contact by the property owner whether the integrity of a structure is destroyed or threatened, the property owner may proceed as if the local code enforcement officer, state-

licensed professional engineer or state-certified geologist had determined that the integrity of the structure was destroyed or threatened.

4. Replacement after emergency action under permit by rule. Notwithstanding any other provision of this chapter, the department shall approve a permit by rule to repair or replace a seawall, bulkhead, retaining wall or similar structure that has been destroyed or threatened with a structure that is identical in all dimensions and location as long as a property owner files a completed permit-by-rule notification for the repair or replacement of the structure and the following standards are met:

A. During project construction, disturbance of dune vegetation must be avoided and native vegetation must be retained on the lot to the maximum extent possible. Any areas of dune vegetation that are disturbed must be restored as quickly as possible. Dune vegetation includes, but is not limited to, American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine.

B. Sand may not be moved seaward of the frontal dune between April 1st and September 1st unless the owner has obtained written approval from the Department of Inland Fisheries and Wildlife.

C. The replacement of a seawall may not increase the height, length or thickness of the seawall beyond that which legally existed within the 24 months prior to the submission of the permit-by-rule notification. The replaced seawall may not be significantly different in construction from the one that previously existed.

§ 480-X. Alterations of freshwater wetlands¹⁰

An application for a permit to undertake activities altering freshwater wetlands must be processed by the department using the review process described in this section.

1. Application. This section does not apply to activities otherwise qualifying for reduced review procedures, such as permits by rule or general permits; activities exempt from review under another section of this article; or activities involving protected natural resources other than freshwater wetlands, such as great ponds, coastal wetlands and rivers, streams or brooks.

¹⁰This section as originally enacted, and other provisions enacted by Laws 1995, ch. 460, are affected by an application provision which reads:

"This Act:

1. Does not apply to an activity that occurred prior to the effective date of this Act and for which a permit was required under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 5-A prior to the effective date of this Act;

2. Does not apply to an activity for which a permit was not required under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 5-A prior to the effective date of this Act, but is required if the activity began prior to the effective date of this Act; and

3. With the exception of those sections of this Act that amend the Maine Revised Statutes, Title 38, section 480-Q, subsection 6 and enact Title 38, section 480-Q, subsection 17, does not apply to an activity performed or caused to be performed on or after the effective date of this Act if the person performing the activity, or causing the activity to be performed, was in possession of applicable federal, state or local licenses prior to the effective date of this Act."

Laws 1995, ch. 460, §12 (effective September 29, 1995).

The Department is also required to monitor the effectiveness of the regulatory program established by 38 M.R.S.A. § 480-X and report back to the Legislature. See Laws 1995, § 10.

2. Three-tiered review process; tiers defined. Except as provided in subsection 1, an application for a permit to undertake activities altering freshwater wetlands must be reviewed in accordance with the following.

A. A Tier 1 review process applies to any activity that involves a freshwater wetland alteration up to 15,000 square feet and does not involve the alteration of freshwater wetlands listed in subsection 4.

B. A Tier 2 review process applies to any activity that involves a freshwater wetland alteration of 15,000 square feet up to one acre and does not involve the alteration of freshwater wetlands listed in subsection 4 or 5.

C. A Tier 3 review process applies to any activity that involves a freshwater wetland alteration of one acre or more or an alteration of a freshwater wetland listed in subsection 4 or 5.

If the project as a whole requires Tier 2 or Tier 3 review, then any activity that is part of the overall project and involves a regulated freshwater wetland alteration also requires the same higher level of review, unless otherwise authorized by the department.

In determining the amount of freshwater wetland to be altered, all components of a project, including all phases of a multiphased project, are treated together as constituting one single and complete project. Activity authorized or legally conducted prior to the effective date of this section is not included.

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.

3. General requirements. A person undertaking an activity for which a permit is processed pursuant to this section must satisfy the requirements of this subsection.

A. An applicant for Tier 1, Tier 2 or Tier 3 review shall meet the following requirements.

(1) Alteration of freshwater wetland areas on the property must be avoided to the extent feasible considering cost, existing technology and logistics based on the overall purpose of the project.

(2) The area of the freshwater wetland to be altered must be limited to the minimum amount necessary to complete the project.

B. Repealed.

C. An applicant for Tier 1 review shall meet the following requirements.

(1) Erosion control measures must be used to prevent sedimentation of protected natural resources. A 25-foot buffer strip must be maintained between the activity and any river, stream or brook.

(2) The activity must comply with applicable water quality standards pursuant to section 480-D, subsection 5.

D. An applicant for Tier 2 or Tier 3 review shall comply with the standards contained in section 480-D.

4. Projects not eligible for Tier 1 or Tier 2 review. The following activities are not eligible for Tier 1 or Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present:

A. Activities located within 250 feet of:

- (1) A coastal wetland; or
 - (2) The normal high-water line, and within the same watershed, of any lake or pond classified as GPA under section 465-A;
- B. Activities occurring in freshwater wetlands, other than artificial ponds or impoundments, containing under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water;
 - C. Activities occurring in freshwater wetlands that are inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information;
 - D. Activities occurring in freshwater wetlands containing significant wildlife habitat that has been mapped, identified or defined, as required pursuant to section 480-B, subsection 10, at the time of the filing by the applicant;
 - E. Activities occurring in peatlands dominated by shrubs, sedges and sphagnum moss, except that applications proposing work in previously mined peatlands may be considered by the department for Tier 1 or Tier 2 review, as applicable; or
 - F. Activities occurring within 25 feet of a river, stream or brook.

The department shall inform the applicant in writing within the review period specified in subsection 6 or 7 if the proposed project does not qualify for Tier 1 or Tier 2 review processing and shall explain permitting options if the applicant wishes to pursue the project. The department is responsible for providing information necessary to establish whether the types of wetlands described in paragraphs D and E will be affected by the proposed activity. Unless the applicant knowingly or willfully provided incomplete or false information to the department, if the department does not notify the applicant that the proposed project does not qualify for Tier 1 or Tier 2 review, the project is deemed to be qualified for Tier 1 or Tier 2 review, as applicable.

5. Additional projects not eligible for Tier 2 review. An activity in freshwater wetlands containing a natural community that is imperiled (S2) or critically imperiled (S1), as defined by the Natural Areas Program pursuant to Title 12, section 544 is not eligible for Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present.

6. Application process for Tier 1 review activities. Applications for Tier 1 review are governed by this subsection.

- A. The application must be sent by certified mail or hand-delivered to the department. The application must include:
 - (1) The application fee;
 - (2) The project location on a United States Geological Survey map;
 - (3) A description of the project, including a drawing showing the area of freshwater wetland to be filled or otherwise altered and areas of any marsh or open water within the freshwater wetland; and
 - (4) A signed statement averring that all of the requirements of subsection 3 will be met, that the activity will not occur in a wetland area described in subsection 4 and that a copy of the application has been submitted by the applicant for public display to the municipal office of the municipality in which the project will be located.
- B. Work may not occur until 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 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 45-day review period, a permit is deemed to be granted.

C. Fees for Tier 1 review may not exceed the following:

- (1) For projects up to 5,000 square feet, \$35;
- (2) For projects from 5,000 square feet up to 10,000 square feet, \$75; and
- (3) For projects from 10,000 square feet up to 15,000 square feet, \$150.

7. Application process for Tier 2 review. Applications for Tier 2 review are governed by this subsection.

A. An application form must be submitted, with the application fee, to the department and include the following information:

- (1) Documentation that public notice has been provided of the proposed project in accordance with department rules;
- (2) A United States Geological Survey map showing the project location;
- (3) Written certification by a knowledgeable professional experienced in wetland science that the project will not alter, or cause to be altered, a wetland described in subsection 4 or 5;
- (4) A top view drawing of the entire project, including existing and proposed fill, excavation, roads and structures; cross-sectional drawings of any fill or excavated areas; delineation of the wetland boundaries and calculated area of freshwater wetlands affected; description of existing vegetation on the project site; identification of any surface water bodies within 100 feet of the proposed alteration; and a drawing of the 25-foot buffer strip between the project and any river, stream or brook;
- (5) A soil erosion and sedimentation control plan;
- (6) For work in previously mined peatlands, information on the past mining activity, including the approximate dates of the mining activity, the area and depth to which peat has been excavated from the site, any restoration work on the site and the current condition of the site;
- (7) A statement describing why the project can not be located completely in upland areas and any alternatives that exist for the project that would either avoid or minimize the amount of proposed freshwater wetland alteration;
- (8) A plan for compensating for lost functions and values of the freshwater wetland when required by, and in accordance with, rules adopted by the department;
- (9) Any other information determined by the department to be necessary to meet the requirements of section 480-D and rules adopted by the department.

B. Work may not occur until 60 days after the department has received a complete application for processing, unless written approval is issued sooner by the department. The department shall notify the applicant in writing within 60 days of the department's receipt of a complete application whether the applicable requirements of this section have 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 60-day review period, a permit is deemed to be granted.

C. Fees for Tier 2 review must be set in accordance with the department's fee schedule for freshwater wetland alterations under the natural resources protection laws.

8. Application process for Tier 3 review. Applications for Tier 3 review are governed by this subsection.

A. An application form must be submitted to the department that contains all the information required for Tier 2 review, in addition to any information determined by the department to be necessary to meet the requirements of section 480-D and rules adopted by the department.

B. Written approval from the department is required before work may begin.

C. Fees for Tier 3 review are set in accordance with the department's fee schedule for freshwater wetland alterations under the natural resources protection laws.

§ 480-Y. Creation of agricultural irrigation ponds

1. General permit. A general permit is required for the alteration of a freshwater, nontidal stream to construct an agricultural irrigation pond. If the provisions of this section are met, an individual permit is not required.

2. Eligibility criteria. The following eligibility criteria must be met.

A. The farm must have an irrigation management plan, referred to in this section as the "irrigation plan." The irrigation plan must identify the total number of irrigated acres on the farm or on a specified management unit, the amount of water needed, the potential sources of water for irrigating the field and the water management practices that will be used to ensure that the amount of water used for crop irrigation will be kept to a minimum. For the purposes of this subsection, "farm" has the same meaning as in Title 17, section 2805.

B. The department must have assessed the affected area as having no significant habitat for fish and wildlife. For the purposes of this section, "significant habitat" means the same as "significant wildlife habitat" in section 480-B, subsection 10; a fish spawning or nursery habitat; a habitat required for migration of fish species to or from a spawning or nursery habitat; or a habitat otherwise supporting a moderate to high population of salmonid species as determined by the Department of Inland Fisheries and Wildlife.

C. The pond may not be located in a wetland containing endangered or threatened plant species as determined pursuant to Title 12, section 544-B, subsection 3 or containing a natural community that is imperiled (S2) or critically imperiled (S1) as defined by the Natural Areas Program pursuant to Title 12, section 544.

D. A site assessment must be conducted by the department prior to the submission of an application. The department may defer a site assessment for a reasonable period when winter conditions prevent the department from properly evaluating the affected area.

E. The pond may not be located in a river, stream or brook if the department determines at the site assessment that there is a practicable alternative water supply that would be less damaging to the environment. For purposes of this paragraph, the term "practicable" means feasible considering cost, existing technology and logistics based on the overall purpose of the project.

3. Standards. The following standards must be met.

A. The pond, dams, inlets and outlets must be designed by a professional engineer to United States Natural Resources Conservation Service standards.

B. Dam fill material must be specified by the professional engineer and must be compacted to 95% of standard proctor. Compaction testing must be conducted with tests performed at a minimum of 2 per dam site or one every 100 feet of dam length, whichever is greater.

C. For a pond that is constructed in a river, stream or brook, the pond outlet must be designed to passively discharge a minimum flow equal to inflow or the site-specific aquatic base flow, whichever is less, at all times. For a pond that is constructed adjacent to a river, stream or brook and that uses an inlet pipe or trench from the river, stream or brook, the inlet must be constructed to maintain the site-specific aquatic base flow. The site-specific aquatic base flow must be that specified by the department following consultation with the Department of Inland Fisheries and Wildlife, the United States Natural Resources Conservation Service and other qualified advisors during the site assessment.

D. The pond outlet must be designed and maintained to ensure a cold water release by using a method such as a bottom draw and to induce dissolved oxygen by using a method such as a riprap slope to increase water turbulence.

E. An erosion control plan must ensure that siltation or sedimentation downstream of the dam site is kept to a minimum, to the fullest extent practical, during construction, operation and maintenance of the irrigation pond.

F. The landowner shall maintain a permanently vegetated buffer strip that consists of field grasses or woody vegetation 25 feet wide around the pond except where slopes are equal to or greater than 20%, in which case the buffer strip must be 75 feet wide. Unless recommended to be thinned or mowed on an annual basis by the department or the United States Natural Resources Conservation Service, buffer strip vegetation may not be cut. An access road and irrigation pipes may cross through the buffer strip.

G. All instream construction activities must be conducted between July 15th and October 1st of the same year unless the department determines in the site assessment that an earlier start date will not cause a significant adverse impact to fish and wildlife resources.

4. Submissions. The following provisions apply to the submission of applications.

A. An application must be filed with the department and must include the following:

- (1) The application cover sheet, as provided by the department;
- (2) The United States Geological Survey topographical map with the boundaries of the farm and the pond site clearly marked;
- (3) A photograph of the stream at the proposed dam site;
- (4) A copy of the irrigation plan for the farm;
- (5) Site plans showing existing and proposed topography, stream channel location, existing wetland boundaries, maximum and normal pool elevations for a pond in a river, stream or brook, dam footprints, pond inlet and outlet locations, emergency spillway location, access roads, stockpile locations and buffer strips;
- (6) Cross sections through the dam and outlet structure, including proposed maximum pool elevation and normal pool elevation;
- (7) A plan to maintain minimum flow downstream, including any calculations used to create the plan;
- (8) A complete erosion control plan using practices contained in the "Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices" (1991) unless otherwise approved or required by the department. The erosion control plan must include a narrative with a sequence for implementing the plan, provisions to inspect and maintain erosion controls and a site plan showing locations of control measures. The plan must include provisions for maintaining a dry construction site. These provisions may consist of

construction during a no-flow period, a temporary cofferdam or a stream diversion. The erosion control plan must also include provisions for dewatering and disposal of dredged and excavated soil material. The disposal of soil material dredged from the stream must comply with the requirements of the State's solid waste management rules;

(9) Test pit logs and test results from a minimum of 2 test pits dug in the footprint of the dam and results of tests done under the direction of a professional engineer on the dam fill material; and

(10) A copy of the property deed, lease, purchase and sale agreement or other legal document establishing that the applicant has title or right to or interest in the property proposed for pond development.

All design materials used to show that the dam design meets the standards of the general permit must be signed and stamped by a professional engineer.

B. Following construction and prior to operation of the irrigation pond, the permittee must submit an inspection report by a professional engineer stating that the professional engineer inspected the dam and that it was constructed in conformance with the standards established in subsection 3. The report must specifically include evidence that the proper number of compaction tests were done and proper compaction specifications have been achieved. The inspection report must include a copy of the job diary and information on when inspections were done and what was inspected.

5. Review period. Work may not commence until 30 days after the department has accepted an application for processing. This period may be extended pursuant to section 344-B with the consent of the applicant.

6. Notification. The department shall notify the applicant in writing within 30 days of acceptance for processing if the department determines that the requirements of this section have not been met. This notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this section within the specified time period, a general permit is deemed to have been granted.

7. Fees. The department shall assess a fee for review of an application filed pursuant to this section. The fee must be equivalent to the amount assessed for activities requiring an individual permit for stream alterations.

8. Violation. A violation occurs when an activity takes place that is not in compliance with the provisions of this section or the plans submitted with the application. Any deviation from the approved plans must receive prior department approval.

§ 480-Z. Compensation

The department may establish a program providing for compensation of unavoidable losses to an area listed in subsection 7 due to a proposed activity. Compensation must include the restoration, enhancement, creation or preservation of an area or areas that have functions or values similar to the area impacted by the activity, unless otherwise approved by the department. Preservation may include protection of uplands adjacent to an area

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 compensation project, purchase of credits or payment of a compensation fee must be a condition of the permit.

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 areas with functions or values similar to the areas 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 functions or values of the area 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 one type of area may not be compensated for by the restoration, enhancement, creation or preservation of another type of area. For example, 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.

A project undertaken pursuant to this section must be approved by the department. The department shall base its approval of a wetlands 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 shall base its approval of a compensation project concerning an area listed in subsection 7, paragraph C, D or E on the management priorities identified by the department for the type of habitat. The department may not approve a compensation project for unavoidable losses to an area 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. For purposes of this section, "biophysical region" means a region with shared characteristics of climate, geology, soils and natural vegetation.

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 area 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.

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.

3. Compensation fee program. The department may develop a wetlands compensation fee program for the areas listed in subsection 7, paragraphs A and B 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 department may develop a compensation fee program for the areas listed in subsection 7, paragraphs C, D and E in consultation with the Department of Inland Fisheries and Wildlife.

A. The program may include the following:

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

(1-A) Identification of management priorities for the areas listed in subsection 7, paragraphs C, D and E;

(2) Identification of the types of 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 areas 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 management priorities identified pursuant to subparagraphs (1) and (1-A).

B. Any compensation fee may be paid into a 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 compensation funds for the purpose of receiving compensation fees, grants and other related income. A compensation fund must be a fund dedicated to payment of costs and related expenses of 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 compensation fund and may be invested as provided by law. Interest on these investments must be credited to the 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 natural areas. Such an organization must demonstrate the ability to receive compensation fees, administer a compensation fund and ensure that compensation projects are implemented consistent with local, regional or state management priorities. 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.

Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

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.

5. Report; evaluation.¹¹

6. Repeal.

7. Areas. As used in this section, “area” includes:

A. Freshwater wetlands;

B. Coastal wetlands;

C. Significant vernal pool habitat;

D. High and moderate value waterfowl and wading bird habitat, including nesting and feeding areas; and

E. Shorebird nesting, feeding and staging areas.

¹¹ Repealed. Laws 2003, ch. 245, §9.

§480-AA. Coastal sand dune rules

Rules adopted by the board regarding development in coastal sand dune systems are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

§480-BB. Significant wildlife habitat; major substantive rules

The Department of Inland Fisheries and Wildlife shall adopt rules that define "significant vernal pool habitat," "high and moderate value waterfowl and wading bird habitat" and "shorebird nesting, feeding and staging areas" under section 480-B, subsection 10, paragraph B. The Department of Environmental Protection shall adopt rules regarding the criteria used to determine whether an area is significant vernal pool habitat, high and moderate value waterfowl and wading bird habitat or shorebird nesting, feeding and staging areas under section 480-B, subsection 10, paragraph B. The rules, as applicable, must:

- 1. Definition of buffer area.** Include a definition of the buffer area to be regulated;
- 2. Certain landowners not subject to regulation.** Provide the following exemptions to regulation.
 - A. A landowner proposing to cause an impact on the buffer area defined for a significant vernal pool habitat is not subject to regulation pursuant to the rule if the significant vernal pool habitat depression is not on property owned or controlled by that landowner.
 - B. If a vernal pool depression is bisected by a property boundary and a landowner proposing to cause an impact does not have permission to enter the abutting property, only that portion of the vernal pool depression located on property owned or controlled by that landowner may be considered in determining whether the vernal pool is significant. A written department determination that a vernal pool is not significant pursuant to this paragraph remains valid regardless of timeframe;
 - C. Rules adopted under this section may not require an applicant for a license for a working waterfront activity on working waterfront land that is part of a state or federal brownfields program or a voluntary response action program under section 343-E to compensate for lost habitat function with a function of equal or greater value or to provide a compensation fee pursuant to section 480-Z.
- 3. Department of Environmental Protection must provide written field determination.** Require that the Department of Environmental Protection provide a written field determination upon the request of a landowner whose land may be affected by the definitions and criteria adopted in a rule;
- 4. Department of Environmental Protection may not assess fine in certain cases.** Provide that the Department of Environmental Protection may not assess a fine against a landowner who acted in accordance with a written field determination if the fine would be based solely on information in the written field determination;
- 5. Process for voluntary identification.** Include a process for a landowner to voluntarily identify the landowner's land as a significant vernal pool habitat and to provide the Department of Inland Fisheries and Wildlife the authority to map the significant vernal pool habitat; and

6. Artificial vernal pool. Explicitly provide that an artificial vernal pool is exempt from regulation as long as the vernal pool was not created in connection with a compensation project pursuant to section 480-Z.

§ 480-CC. Significant wildlife habitat; shorebird feeding and roosting areas

Significant wildlife habitat as defined in section 480-B, subsection 10 includes shorebird nesting, feeding and staging areas that are in conformance with criteria adopted by the department or are contained within another protected natural resource except as provided in this section and section 480-DD.

1. Definitions. As used in this section and section 480-DD, unless the context otherwise indicates, the following terms have the following meanings.

A. "Shorebird feeding area" means a shorebird feeding or staging area that is not a roosting area. "Shorebird feeding area" includes a 100-foot-wide surrounding buffer referred to as "the feeding buffer."

B. "Shorebird roosting area" means a shorebird feeding or staging area that is also a roosting area. "Shorebird roosting area" includes a 250-foot-wide surrounding buffer referred to as "the roosting buffer."

2. Cutting standards within roosting and feeding buffers. The cutting standards in this subsection apply in addition to the permitting standards in section 480-D.

A. Cutting or removal of vegetation within a roosting buffer is prohibited except as approved by the department for:

(1) Removal of a safety hazard;

(2) Cutting or removal of vegetation to allow for a footpath not to exceed 6 feet in width as measured between tree trunks and shrub stems. The footpath may not result in a cleared line of sight to the water; and

(3) Cutting or removal of vegetation determined to be necessary by the department in order to conduct other activities approved by the department pursuant to section 480-C and in accordance with the standards of this article and rules adopted pursuant to this article, including but not limited to avoidance, minimization and no unreasonable impact. The department may not approve cutting or removal of vegetation for purposes of creating a view unless the department in consultation with the Department of Inland Fisheries and Wildlife determines there will be no unreasonable impact on the protected resource.

Any cutting or removal of vegetation under this paragraph must be done in consultation with and as approved by the Department of Inland Fisheries and Wildlife.

B. Cutting or removal of vegetation within a feeding buffer is prohibited except as approved by the department for:

(1) Cutting or removal of vegetation that meets the vegetative screening standards set forth in Title 38, section 439-A, subsection 6. In interpreting and enforcing these standards, the department shall rely upon the department's shoreland zoning rules regarding cutting or removal of vegetation for activities other than timber harvesting and apply the cutting standards applicable within 75 feet of a coastal wetland to the entire 100-foot feeding buffer; and

(2) Cutting or removal of vegetation determined to be necessary by the department in order to conduct other activities approved by the department pursuant to section 480-C and in accordance with the standards of this article and rules adopted pursuant to this article, including but not limited to avoidance, minimization and no unreasonable impact.

This paragraph may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this paragraph.

§ 480-DD. Significant wildlife habitat criteria; reduction in certain significant wildlife habitats due to development or topography

Although an area is otherwise in conformance with significant wildlife habitat criteria adopted by the department for shorebird nesting, feeding, roosting and staging areas, or high and moderate value inland waterfowl and wading bird habitat, the Department of Inland Fisheries and Wildlife may determine that a specific portion of the area is no longer this type of significant wildlife habitat due to the topography or impact of development in existence on June 8, 2006 and continuing in existence as of the date of the determination.

1. Factors. When determining whether an area is no longer a significant wildlife habitat, the Department of Inland Fisheries and Wildlife may consider factors such as species present or exiting and potential use of the area by birds, levels of disturbance, screening, development density, land use, presence of cliffs or bluffs and any mitigating factors.

2. Exclusions. The Department of Inland Fisheries and Wildlife may not exclude an area from a significant wildlife habitat designation if future development of the area might unreasonably degrade the remaining significant wildlife habitat, unreasonably disturb the birds or unreasonably affect the continued use of the remaining significant wildlife habitat by the birds.

For purposes of this section, "development" means the area of property altered, including, but not limited to, buildings, roads, driveways, parking areas, wastewater disposal systems and lawns and other nonnative vegetation as determined by the department.

§ 480-EE. Significant wildlife habitat criteria; inland open water

Regardless of its identification on maps as a high or moderate value waterfowl and wading bird habitat, an upland area adjacent to a great pond is not considered high or moderate value waterfowl and wading bird habitat for purposes of this article unless the upland area is within 250 feet of one or more freshwater wetlands that are high or moderate value waterfowl and wading bird habitat.

§ 480-FF. Notification of identification of significant wildlife habitat

If an area is identified by the Department of Inland Fisheries and Wildlife as the type of area listed in section 480-B, subsection 10, paragraph B, subparagraph (3) after the effective date of this section, the department shall notify each municipality in which the significant wildlife habitat is located and members of the Legislature who represent residents of the municipality in which the significant wildlife habitat is located. The department and the Department of Inland Fisheries and Wildlife shall report to the joint standing committees of the Legislature having jurisdiction over natural resources matters and inland fisheries and wildlife matters on any action taken pursuant to this section.

§ 480-GG. High and Moderate Value Inland Waterfowl and Wading Bird Habitat and Excavations

and Quarries Authorized Pursuant to Article 6, 7 or 8-A

1. Excavation authorized before June 8, 2006. Unless a permit is required due to the presence of a protected natural resource other than a high and moderate value inland waterfowl and wading bird habitat, an excavation or quarry that was authorized pursuant to article 6, 7 or 8-A before June 8, 2006 is not required to obtain a permit pursuant to this article for excavation within the upland portion of a high and moderate value inland waterfowl and wading bird habitat.

If a permit is required pursuant to this article due to the presence of a protected natural resource other than a high and moderate value inland waterfowl and wading bird habitat, an excavation or quarry that was authorized pursuant to article 6, 7 or 8-A before June 8, 2006 is not required to meet standards associated solely with the upland portion of a high and moderate value inland waterfowl and wading bird habitat.

2. Permits not authorized. The department may not issue a permit pursuant to this article for an excavation or quarry authorized pursuant to article 6, 7 or 8-A and located in, on or over the wetland portion of a high and moderate value inland waterfowl and wading bird habitat.

The department may not issue a permit pursuant to this article for an excavation or quarry requiring authorization pursuant to article 6, 7 or 8-A after June 8, 2006 and located in the upland portion of a high and moderate value waterfowl and wading bird habitat.

§ 480-HH. General permit for offshore wind energy demonstration project¹²

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Coastal area" has the same meaning as in section 1802, subsection 1.

B. "Generating facilities" has the same meaning as in Title 35-A, section 3451, subsection 5.

C. "Maine Offshore Wind Energy Research Center" means the offshore wind energy test area designated pursuant to Title 12, section 1868, subsection 2.

D. "Meteorological tower" means an elevated structure or other support platform with attached equipment, such as an anemometer, a wind direction vane and temperature and pressure sensors and other measurement devices, to measure and assess the wind resource in the project area.

E. "Net project removal cost" means the total cost of removal of an offshore wind energy demonstration project, estimated in accordance with the plan required under subsection 3, paragraph G, minus the net salvage value of the project equipment.

F. "Ocean energy generating unit" means a wind turbine that converts wind energy to electrical energy that may be employed pursuant to a general permit under this section, a wave energy converter that may be employed pursuant to a general permit issued under this section or a tidal energy demonstration project that may be employed pursuant to a permit issued under section 636-A.

G. "Ocean sensor package" means a floating, submerged or seabed-mounted instrument that measures currents over the full range of site depths, wave data, seawater temperature and seawater

¹² Emergency, PL 2009, ch. 270(A-2), signed June 4, 2009.

salinity and other measurement devices to assess the wave resources in the project area.

H. "Offshore wind energy demonstration project" or "project" means a wind energy development that uses a wind turbine to convert wind energy to electrical energy and that employs no more than 2 wind energy turbines, each of which may use different technology, for the primary purpose of testing and validating a turbine blade design, floating platform or other support structure, mooring or anchoring system or other offshore wind energy technology that the applicant certifies is designed for use in ocean waters and is not in use elsewhere in the Gulf of Maine for commercial production of electricity and that may also include:

(1) Up to 3 meteorological towers per wind energy turbine proposed;

(2) One submerged utility line that is sized to transmit:

(a) An amount of electricity less than or equal to that produced by the offshore wind energy demonstration project; or

(b) Up to 25 megawatts of electricity if the line is intended to serve multiple offshore wind energy demonstration projects located within the Maine Offshore Wind Energy Research Center and the department has not previously granted approval for such a submerged utility line pursuant to this section; and

(3) A wave energy test project.

I. "Offshore wind energy test area" means a specific geographic area located on state-owned submerged lands in the coastal area identified as suitable for construction and operation of an offshore wind energy demonstration project pursuant to Title 12, section 1868, including the Maine Offshore Wind Energy Research Center.

J. "Wave energy converter" means a device that uses the motion of ocean surface waves to generate electricity.

K. "Wave energy test project" means a hydropower project, as defined by section 632, subsection 3 that uses ocean wave action to produce electricity and that:

(1) Is proposed as part of an offshore wind energy demonstration project and is designed and sited to test production of electricity from wave energy in conjunction with and in a manner that complements electricity produced by an offshore wind energy turbine;

(2) Employs up to 2 wave energy converters, each of which may use different technology, that the applicant certifies are designed for use in the ocean and are not in use elsewhere in the Gulf of Maine for commercial production, for the primary purpose of testing and validating the overall design of the converter and its related systems, subsystems or components; and

(3) May include one or more of the following additional elements:

- (a) A mooring or anchoring system; and
- (b) An ocean sensor package.

2. General permit. A person may apply for a general permit for an offshore wind energy demonstration project in accordance with this section. If a general permit is granted pursuant to this section, a permit is not required under section 480-C for the construction and operation of an offshore wind energy demonstration project.

3. Application requirements. An applicant for a general permit must file with the department an application that contains:

A. Written certification that the offshore wind energy demonstration project, other than any submerged utility line, will be located wholly within an offshore wind energy test area;

B. A site plan that includes the following elements:

(1) A plan view drawing of the entire project area that shows, with geographic positioning system references, the proposed location of the generating facilities and all other project elements, including but not limited to any submerged utility line or meteorological tower;

(2) A narrative description of the proposed activities and methods for construction, operation and removal of the offshore wind energy demonstration project that addresses on-site management of fuels, lubricants and other materials used for project operations or maintenance;

(3) A scale drawing that shows the design and location of the proposed mooring or anchoring system;

(4) A drawing showing the location of the submerged utility line, if any, and plans for its construction in compliance with the permit by rule standards regarding construction of a submerged utility line established in rules adopted by the board; and

(5) A drawing showing the proposed location of each wind turbine in relation to any other offshore wind energy demonstration project within 10 kilometers of the proposed project and written verification that the project will not interfere with the operation of any such previously approved project.

C. A report, prepared following consultation with the Department of Marine Resources, that:

(1) Describes existing information regarding commercial fishing and other existing uses in the project area; and

(2) Describes, based on a field investigation, the marine resources, including benthic communities, in the marine waters and on the submerged lands and immediately adjacent areas in, on or over which the applicant proposes to locate any mooring, anchoring system, meteorological tower, ocean sensor package, submerged utility line or other project element that is secured to the seabed;

D. Written acknowledgement that, in accordance with this section, the department may require the applicant to take remedial action, at the applicant's expense, pursuant to subsection 13, including but not limited to removal of the generating facilities and submerged utility line and termination of the project;

E. A fish and wildlife monitoring plan that includes provisions for conducting monitoring, throughout the term of the general permit, of the behavior and interaction of species listed as threatened or endangered in Title 12, section 6975 or Title 12, section 12803, subsection 3; avian species, including seabirds, passerines, raptors, shorebirds, water birds and waterfowl; bats; and marine mammals and other marine resources with the project, including but not limited to the generating facilities and mooring or anchoring systems employed, and identifying potential adverse effects. The plan, at a minimum, must include:

(1) A detailed description of the methods and equipment that will be used for monitoring fish and wildlife behavior and activity in the vicinity of the project;

(2) A detailed description of how the fish and wildlife monitoring data will be analyzed and provided to the department in electronic format, with specific criteria by which to evaluate adverse effects;

(3) A detailed implementation schedule, including the frequency and timing of data recovery, maintenance of the monitoring equipment and quarterly reporting to the department;

(4) A detailed monitoring schedule that considers ocean conditions, seasonal variations in species' presence or absence and other pertinent biological factors;

(5) Provisions for identifying and implementing remedial measures if monitoring identifies any adverse changes in fish or wildlife behavior or use of ocean habitats;

(6) A detailed description of the methods and equipment that will be used to determine and monitor ambient noise levels, electromagnetic fields and noise associated with project construction and subsequent operations and the effectiveness of any devices that are proposed to avoid and minimize the potential for related foreseeable adverse effects, if any; and

(7) Provisions for filing an annual report with the department describing the monitoring results and any recommendations for modifying the generating facilities or other project elements, or commencing the approved project removal plan, if necessary to minimize adverse effects on natural resources identified pursuant to plans required under this section. Thirty days prior to submission of the report to the department, the applicant shall provide a draft of the report to the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, the Department of Conservation, the United States Fish and Wildlife Service and the National Marine Fisheries Service and shall include in the annual report any comments from those agencies and the applicant's responses to them;

F. A navigation safety plan to protect the public and project facilities from such events as: collisions between commercial and recreational vessels and project facilities; entanglement of fishing gear,

anchors, dredging equipment or other underwater devices that may damage or become entangled with project transmission, anchoring and mooring lines; release of or damage to the project's submerged utility line, anchoring system or other project elements in, on or over the seabed; and electrocution. The plan must, at a minimum, consider the need and provide for as appropriate:

(1) A boundary defining an exclusion zone around the proposed generating facilities, anchoring system, submerged utility line and other project elements, if any, in which specified types of navigation and underwater activities incompatible with project operations may not be conducted. Any such exclusion zone must be specified with global positioning system coordinates and be designed to minimize potential conflicts with other existing uses in the area and may be no larger than the applicant demonstrates is necessary to achieve the purposes of the offshore wind energy demonstration project;

(2) Marking the extreme corners of the exclusion zone, specified pursuant to subparagraph (1), with lights, buoys or other indicators sufficient to warn vessels of the above-water and underwater project elements and the boundaries of the exclusion zone during both day and night;

(3) Marking the generating facilities with fog signals, low-intensity navigation lights, hazard marking lights or other aids to navigation and painting and lighting the generating facilities in a way that considers the aesthetic resources of the project area as well as the safety of the public and project facilities and meets applicable Federal Aviation Administration guidelines and United States Coast Guard requirements;

(4) Procedures to ensure the safety of the public near the project area; and

(5) A description of monitoring for and actions the applicant will take to prevent and address an emergency that specifies: procedures the applicant will take during an emergency, including but not limited to immediate shutdown; a protocol for coordination with and reporting an emergency to local, state and federal agencies; contingency measures to modify operations to address reasonably foreseeable emergency conditions; and a schedule for annual testing of emergency equipment, including the project's emergency shutdown system;

G. A project removal plan that the applicant will, at its expense, initiate within 60 days of expiration or termination of a general permit granted pursuant to this section and that provides for:

(1) Removal of the project in its entirety from all project lands and waters, except for any part of the project regarding which the applicant provides the department substantial evidence of plans for continued beneficial use, including but not limited to an executed lease of state-owned submerged lands, as applicable, or for partial removal or other modification adequate to avoid foreseeable adverse effects on natural resources and existing uses;

(2) Minimizing seabed disturbances and suspended sediments during removal of any underwater facilities;

(3) Monitoring the effects of the removal activities on species listed as threatened or endangered species in Title 12, section 6975 or Title 12, section 12803, subsection 3 and marine resources

both during and subsequent to completion of removal activities;

(4) An implementation schedule that provides for all removal and restoration activities to be completed within one year of the expiration date of the general permit pursuant to subsection 9;

(5) An estimate of the total project removal cost, without regard to salvage value of the equipment, and the net project removal cost, prepared by a licensed professional engineer; and

(6) Written evidence and certification that the applicant has posted and will maintain funds for project removal in an amount equal to the net project removal cost, except that at no point may such funds be less than 25% of the total project removal cost. The applicant shall post and maintain project removal funds with a bonding company or federal-chartered or state-chartered lending institution that is authorized to do business in the State and chosen by the applicant and considered acceptable by the department posting the financial security. Project removal funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that the department considers adequate to ensure funds posted pursuant to this paragraph will remain inviolate and available for project removal if the applicant ceases to exist, declares bankruptcy or becomes insolvent or otherwise unable to finance the project removal plan required under this paragraph;

H. Documentation that, in developing each plan required under paragraphs E to G, the applicant consulted with: the Department of Marine Resources, the Department of Inland Fisheries and Wildlife and the Department of Conservation; the Maine Land Use Regulation Commission and the Executive Department, State Planning Office; the United States Army Corps of Engineers, the United States Coast Guard, the National Marine Fisheries Service, the National Park Service and the United States Fish and Wildlife Service; the lobster management policy council established under Title 12, section 6447 for the lobster management zone in which the offshore wind energy demonstration project is proposed; each municipality in which or adjacent to which the project is proposed; and any other local, state or federal agency the applicant considers appropriate. This documentation must include copies of these agencies' comments and recommendations on the plan, if any, and specific descriptions of how the agencies' comments are accommodated by the plan, including the applicant's reasons, based on project-specific information, for any agency recommendation not adopted. The applicant shall allow a minimum of 60 days for the agencies to review and make comments and recommendations on each draft plan before it is filed with the department. No more than 30 days prior to its initiation, the applicant shall notify each municipality within or adjacent to which it intends to site and operate an offshore wind energy demonstration project and invite its participation in the consultation required under this paragraph;

I. Documentation, including certificates of insurance, that the applicant has and will maintain a current general liability policy for the project that covers bodily injury, property damages and environmental damages in an amount considered reasonable by the department in consideration of the scope, scale and location of the project;

J. Documentation that the applicant has the financial and technical capacity to construct and operate the project as proposed;

K. Certification that neither the applicant nor any corporation, partnership, person or other legal entity with an ownership, leasehold or other direct financial interest in the proposed project holds or has an application pending for approval of a general permit under this section for any other offshore

wind energy demonstration project located in the offshore wind energy test area in which the project is proposed. This paragraph does not apply to an application by the University of Maine System for a project, funded in whole or part with state or federal funds and proposed for location in the Maine Offshore Wind Energy Research Center, that employs offshore wind energy technology for which the department has not previously granted a general permit under this section; and

L. For an offshore wind energy demonstration project proposed for location within the Maine Offshore Wind Energy Research Center, written evidence that the proposed development will be undertaken by or in cooperation with the University of Maine System and on terms and in a manner that the University of Maine System determines consistent with and in furtherance of its offshore wind energy research and development-related objectives, including but not limited to any such objectives to be supported with state bond revenues.

4. Review period. There is a 60-day review period for applications for a general permit for an offshore wind energy demonstration project under this section. The review period begins on the date that the department has accepted an application for processing. This review period may be extended pursuant to section 344-B with the consent of the applicant.

5. Notification. Except as otherwise provided by subsection 13, the department shall notify an applicant in writing within the review period pursuant to subsection 4 if the department determines that the requirements of this section have not been met. The notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the review period, a general permit is deemed to have been granted as of the date immediately following the final day of the review period specified in subsection 4.

6. Fees. The department shall assess a fee for review of applications filed pursuant to this section, including a request for modification under subsection 13. Except as otherwise provided by section 344-A, the fee must be commensurate with the amount assessed, pursuant to section 352, to activities requiring an individual permit for coastal wetland alterations.

7. Violation. Any action taken by a person receiving a general permit under this section that is not in compliance with the plans submitted under subsection 3 or as subsequently modified with the approval of the department in consultation with agencies and other entities with whom the applicant consulted in accordance with subsection 3 is a violation of the general permit.

8. General permit term. Except as otherwise provided in subsections 9 to 12, a general permit granted under this section authorizes conduct of the approved offshore wind energy demonstration project in accordance with this subsection:

A. If the offshore wind energy demonstration project is not located in the Maine Offshore Wind Energy Research Center, conduct of the project is authorized for 3 years from the date that construction of a permitted structure on submerged lands is initiated or 5 years from the date on which the general permit has been granted pursuant to subsection 5, whichever first occurs; or

B. If the offshore wind energy demonstration project is located in the Maine Offshore Wind Energy Research Center, conduct of the project is authorized for 5 years from the date that construction of a permitted structure on submerged lands is initiated or 7 years from the date on which the permit has been granted pursuant to subsection 5, whichever first occurs.

The applicant must provide the department written notice of the date of initiation of construction within 7

days of its commencement. Except as otherwise provided by subsection 9, the department may not extend the term of a general permit granted under this section.

9. Extensions to permit term. The department may grant one or more extensions of the general permit term in accordance with this subsection.

A. The department may grant one or more extensions of the general permit term, each for a period of 6 months or less, if, prior to expiration of the general permit term, the applicant has filed completed applications for all requisite state license and permit approvals for a wind energy development, as defined by Title 35-A, section 3451, subsection 11, located wholly or partly where the offshore wind energy demonstration project is located. The department may not grant an extension under this paragraph for a project located in the Maine Offshore Wind Energy Research Center.

B. The department shall grant one or more extensions, each of which may not exceed 3 years, of the general permit term for an offshore wind energy demonstration project that is funded in whole or in part with state or federal funds and is located in the Maine Offshore Wind Energy Research Center if the applicant provides written evidence that the University of Maine System has determined that the extension is necessary to fulfill the research and development objectives of the project.

10. Surrender; demonstrated progress required. If the department determines that the applicant has not completed or made substantial and ongoing progress to complete construction of all project elements within one year of the date on which the general permit has been granted pursuant to subsection 5, the applicant must surrender its general permit, subject to conditions regarding project removal pursuant to subsection 11. An applicant may surrender to the department a general permit granted pursuant to this section prior to its expiration pursuant to subsection 8 or 9. Subject to conditions regarding project removal under subsection 11, the general permit terminates on the date of its surrender pursuant to this subsection.

11. Project removal. Within 60 days of expiration or termination of a general permit pursuant to subsection 8, 9, 10 or 12, the applicant shall initiate implementation of the project removal plan provided for under subsection 3, paragraph G. If the applicant fails to begin implementing the plan within this 60-day period, the department may take such measures as it considers necessary to initiate and fully implement the plan by drawing on the financial surety provided pursuant to the project removal plan. The applicant's acceptance of the general permit constitutes agreement and consent by the applicant and its heirs, successors and assigns that the department may take such action as necessary to initiate and fully implement the project removal plan. The holder of the project removal funds shall release the project removal funds when the applicant has demonstrated and the department concurs that the project removal plan has been satisfactorily completed or upon written authorization by the department in the event the department implements the plan pursuant to this subsection.

12. Remedial action. If the department determines, based on information provided in annual or periodic reports provided pursuant to subsection 3 or other information, that there is substantial evidence that the project is having a significant adverse effect on a protected natural resource, wildlife, including avian wildlife, bat species, marine mammals, fish or other marine resources or public health or safety, the department shall order the applicant to take action that the department considers necessary to address that adverse effect. Remedial action required by the department may include, but is not limited to:

A. Suspension or modification of project operations; or

B. Cessation of operations and removal of some or all elements of the project, including but not

limited to the generating facilities, if there is no practicable alternative to address the adverse effect.

13. Permit modification; relocation. Following the granting of a general permit under this section, the department may authorize an applicant to move the generating facilities to another location within the same offshore wind energy test area, as long as the applicant provides an amended site plan that meets the requirements of subsection 3, paragraphs B, C, E, F and H. The department shall notify the applicant in writing within 30 days of acceptance for processing if the department determines that the requirements of this section have not been met. Any such notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a permit modification is deemed to have been granted.

14. Relationship to other laws. Notwithstanding any other provision of law to the contrary, an offshore wind energy demonstration project that has been granted a general permit under this section is not subject to review by or required to obtain a development permit, rezoning authorization or other approval or authorization from the Maine Land Use Regulation Commission and is not otherwise subject to review or approval by the department pursuant to this subchapter.

A municipality may not enact or enforce any land use, zoning or other standard, conditions or requirement regarding an offshore wind energy demonstration project located within the municipality that is stricter than standards, conditions or requirements of this section. The municipality has the burden of proof regarding the location of the project in relation to its boundaries. Any action by the municipality regarding its authorization to site, construct or operate an offshore wind energy demonstration project must be taken within 60 days of the grant of a general permit under this section or within 30 days of the granting of a permit modification pursuant to subsection 13.

15. Number of projects in the Maine Offshore Wind Energy Research Center. Notwithstanding any provision of law to the contrary, a general permit may not be granted under this section for an offshore wind energy demonstration project that is proposed for location within the Maine Offshore Wind Energy Research Center if grant of that general permit would authorize more than 6 ocean energy generating units to be sited and in operation at any one time within the Maine Offshore Wind Energy Research Center.

Appendix A. Unallocated Law Provisions of Interest

Laws 1999, c. 333, An Act to Improve the Efficiency of Environmental Regulation in the Unorganized and Deorganized Areas of the State. §§ 21-22.

Sec. 21. Transitional language; natural resources protection laws. A permit issued by the Department of Environmental Protection prior to the effective date of this Act for an activity altering or adjacent to a protected natural resource within the jurisdiction of the Maine Land Use Regulation Commission and any conditions of that permit continue in effect and may be enforced by the department until the permit expires or is modified by the Maine Land Use Regulation Commission. The Maine Land Use Regulation Commission may enforce a permit it has modified.

Sec. 22. Authorization to report out legislation. The Joint Standing Committee on Agriculture, Conservation and Forestry and the Joint Standing Committee on Natural Resources may report out legislation during the Second Regular Session of the 119th Legislature regarding the regulatory responsibilities of the Maine Land Use Regulation Commission and the Department of Environmental Protection. The legislation may propose reassigning the regulatory responsibilities of the 2 agencies to eliminate or reduce duplicative project review and permitting.

Laws 2003, c. 637, An Act to Change the Point System for Clearing Vegetation Adjacent to Protected Natural Resources, §2.

Sec. 2. Rulemaking. Notwithstanding Resolve 1999, chapter 116, rules adopted by the Board of Environmental Protection and the Department of Conservation, Maine Land Use Regulation Commission pursuant to this Act are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Laws 2005, c. 592, An Act to Increase Wetland Protection

Sec. 5. Rules regarding wetland compensation. The Department of Environmental Protection shall amend the rules regarding wetland compensation to require wetland compensation for 15,000 square feet or more of impact to freshwater wetlands. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Laws 2007, c. 92, § 2, An Act To Modify the Requirement To Replace Trees Cut Down in Violation of Local Laws

C-2. Notwithstanding paragraph C, for violations of the laws and ordinances set forth in subsection 5, paragraph Q, the provisions of this paragraph apply. The court must order the violator to correct or mitigate the violation unless the correction or mitigation would result in a threat or hazard to public health or safety, substantial environmental damage or a substantial injustice.

(1) Except for timber harvesting, correction or mitigation of a violation that involves the cutting of a tree or trees must include, but is not limited to, replacement of each tree cut with a tree or trees of varying size and species such that the visual impact from the cutting will be remediated, the tree canopy that was cut will be restored within a reasonable time period and a total basal area equal to at least 50% of the basal area cut will be replanted.

(2) Except for timber harvesting, correction or mitigation of a violation that involves the cutting of understory vegetation must include, but is not limited to, replacement of the understory vegetation with understory vegetation of substantially similar size and species to

the extent reasonably available and feasible.

(3) For violations requiring correction or mitigation pursuant to subparagraph (1) or (2), the violator shall submit to the municipality a reforestation plan and 5-year management plan developed with and signed by a forester licensed pursuant to Title 32, chapter 76 or other qualified professional. The reforestation plan must include consideration of specified site conditions and address habitat and other riparian restoration, visual screening, understory vegetation and erosion and sedimentation control. The management plan must address how the replacement trees must be maintained to enable the trees to grow to a healthy, mature height.

For purposes of this paragraph, "timber harvesting" has the same meaning as in Title 38, section 438-B, subsection 1, paragraph C.

For purposes of this paragraph, "understory vegetation" means all saplings that measure less than 2 inches in diameter at 4.5 feet above ground level and all shrubs

Laws 2007, c. 290, An Act Concerning the Natural Resources Protection Laws and Related Provisions

Sec. 14. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 38, chapter 3, subchapter 1, article 5-A, in the article headnote, the words "protection of natural resources" are amended to read "natural resources protection act" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. 15. Retroactivity. Those sections of this Act that enact the Maine Revised Statutes, Title 38, sections 480-CC, 480-DD and 480-EE and amend Resolve 2005, chapter 183, subsection 16, paragraph A apply retroactively to June 8, 2006.

Sec. 16. Rulemaking. The Department of Environmental Protection shall amend its rules concerning significant wildlife habitat that were adopted in accordance with the Maine Revised Statutes, Title 38, section 480-DD to be consistent with the provisions of this Act. Changes adopted pursuant to this Act as well as additional corrections, clarifications and minor changes of the rules that were adopted in accordance with section 480-BB are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, notwithstanding section 480-BB.

The Department of Environmental Protection shall amend its rules concerning permit by rule to allow the activities listed in Title 38, section 480-CC, subsection 2, paragraphs A and B and an expansion of up to 10% of an existing development area within a feeding area to be authorized pursuant to permit by rule if applicable standards in the protection of natural resources under article 5-A and rules adopted pursuant to that article are met and an individual permit is not otherwise required for activity on the parcel. "Existing development area" is defined in section 20 of the department's rules concerning permit by rule.

The Department of Environmental Protection shall amend its rules to clarify that if significant wildlife habitat is not fully contained within a freshwater wetland, the department does not have adjacency jurisdiction under the Maine Revised Statutes, Title 38, section 480-C.

Sec. 17. Mitigation and compensation standards. The Department of Environmental Protection shall develop a proposal for mitigation and compensation standards for tidal and freshwater significant wildlife habitat. By January 5, 2008, the department shall report to the Joint Standing Committee on Natural Resources on its proposal, including any legislation necessary to implement the proposal. The

Joint Standing Committee on Natural Resources may submit legislation related to the proposal to the 123rd Legislature.

Laws 2007, c. 353, An Act To Implement Recommendations of the Drinking Water Program Regarding Public Water Supply Protection. § 14.

Sec. 14. Rulemaking and implementation date. The Department of Environmental Protection shall adopt rules to specify requirements for an activity located in a community public water system primary protection area. The rules may include provisions addressing mitigation. For purposes of the rulemaking, mitigation may include avoiding, minimizing, rectifying, reducing or eliminating an adverse impact, but may not include compensating for an impact. 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 in this section, unless a permit is otherwise required under the Maine Revised Statutes, Title 38, section 480-C. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The Department of Environmental Protection shall provide notice of the rulemaking under this section to municipalities in which community public water system primary protection areas are located.

Laws 2007, c. 399, An Act Concerning the Sustainable Use of and Planning for Water Resources. §§ 13, 14 and 15. As amended by Laws 2009, ch. 295, §§ 2, 3, and 4.

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 September 20, 2007 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.

For purposes of this section, "significant groundwater well" has the same meaning as in the Maine Revised Statutes, Title 38, section 480-B, subsection 9-A.

Sec. 14. Rulemaking public information meetings. The Department of Environmental Protection and the Maine Land Use Regulation Commission shall amend their rules to require that a public information meeting be held prior to submission of an application for a significant groundwater well or project including a significant groundwater well unless the project already has a public information meeting requirement. The public information meeting must meet the requirements for public information meetings contained in the Department of Environmental Protection's rule concerning the processing of applications and other administrative matters. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

For purposes of this section, "significant groundwater well" has the same meaning as in the Maine Revised Statutes, Title 38, section 480-B, subsection 9-A, except that a development or part of a development requiring a permit pursuant to Title 38, chapter 3, subchapter 1, article 6 or a structure or development requiring a permit from the Maine Land Use Regulation Commission is not excluded from the definition of "significant groundwater well."

Sec. 15. Rulemaking independent monitoring; fees. The Department of Environmental Protection and the Maine Land Use Regulation Commission shall periodically contract with independent environmental professionals to provide a technical review and assessment of monitoring information submitted to the Department of Environmental Protection or the Maine Land Use Regulation Commission related to significant groundwater wells that are part of projects or developments permitted under the

Maine Revised Statutes, Title 12, chapter 206-A or Title 38, chapter 3, subchapter 1, article 5-A or 6, and each shall through rulemaking develop a fee structure to provide funding for the contracts. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

For purposes of this section, "significant groundwater well" has the same meaning as in the Maine Revised Statutes, Title 38, section 480-B, subsection 9-A, except that a development or part of a development requiring a permit pursuant to Title 38, chapter 3, subchapter 1, article 6 or a structure or development requiring a permit from the Maine Land Use Regulation Commission is not excluded from the definition of "significant groundwater well."

The Department of Environmental Protection or the Maine Land Use Regulation Commission may exclude certain types of pumping or certain significant groundwater wells or portions of significant groundwater wells from a fee requirement when appropriate based upon considerations such as the applicability of other fees, the type or amount of pumping or insignificant risk to protected natural resources or other wells.

Laws 2007, c. 533, An Act To Streamline the Administration of Significant Vernal Pool Habitat Protection

Sec. 3. Rulemaking; Department of Environmental Protection. The Department of Environmental Protection shall amend its rules on significant wildlife habitat to incorporate the requirements of this section. The requirements specified in this section are not intended to replace existing requirements in rules, except that, if there is a conflict between the requirements specified in this section and the rules, the rules must be revised to reflect the requirements specified in this section.

1. The following requirements apply to the identification of significant vernal pool habitats and must be employed when implementing significant wildlife habitat rules adopted by the Department of Environmental Protection and the Department of Inland Fisheries and Wildlife pursuant to the Maine Revised Statutes, Title 38, section 480-BB.

A. When a vernal pool habitat has not previously been determined to be significant and the Department of Environmental Protection or the Department of Inland Fisheries and Wildlife makes a determination concerning whether the vernal pool habitat is significant, either department may determine that the vernal pool habitat is not significant if:

(1) The vernal pool is located in southern Maine and dries out after spring filling and before July 15th based on winter, spring and early summer precipitation; or

(2) The vernal pool is located in northern Maine and dries out after spring filling and before July 31st based on winter, spring and early summer precipitation.

B. In addition to state threatened and endangered species, for purposes of determining whether a vernal pool habitat is significant, the rare species that must be considered are limited to: Ribbon Snakes, Wood Turtles, Swamp Darner Dragonflies and Comet Darner Dragonflies.

C. In order to be identified as part of a significant vernal pool habitat, the vernal pool may not have a permanent flowing inlet or outlet.

2. The Department of Environmental Protection may delete a note in rule concerning rare indicator species, notwithstanding Resolve 2005, chapter 183, section 1, subsection 10.

Sec. 6. Routine technical rules. Notwithstanding the Maine Revised Statutes, Title 38, section 480-

BB, rules adopted pursuant to this Act are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Laws 2007, ch. 661, An Act To Implement Recommendations of the Governor's Task Force on Wind Power Development

Sec. E-2. Rulemaking. Any rules adopted pursuant to this Act by the Department of Environmental Protection or the Maine Land Use Regulation Commission are routine technical rules as defined by the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Laws 2009, ch. 460, An Act to Ensure that Replacement Culverts Permit Fish Passage

Sec. 3. Fish passage rules. The Department of Environmental Protection shall amend its rules, Chapter 305, Permit By Rule to require municipalities to achieve natural stream flow when they are repairing or maintaining roads or stream crossings. These rule changes apply only to water courses containing fish. The amendments must establish standards that ensure:

1. Adequate flow during high water conditions;
2. Upstream and downstream movement for aquatic organisms and downstream and lateral movement of materials;
3. Vertical gradient that matches up and down stream; and
4. Horizontal alignment that matches up and down stream.

Sec. 4. Rules. Rules adopted pursuant to or to implement the provisions of this Act are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A and must be submitted to the Legislature by January 1, 2011 for review by the joint standing committee of the Legislature having jurisdiction over natural resources matters.

Sec. 5. Road construction; maintenance. The provisions of this Act do not affect forestry management activities, including associated road construction or maintenance.

Appendix B. Title 35-A, Section 3452

§ 3452. Determination of effect on scenic character and related existing uses

1. Application of standard. In making findings regarding the effect of an expedited wind energy development on scenic character and existing uses related to scenic character pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3 or section 480-D, the primary siting authority shall determine, in the manner provided in subsection 3, whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the scenic resource of state or national significance. Except as otherwise provided in subsection 2, determination that a wind energy development fits harmoniously into the existing natural environment in terms of potential effects on scenic character and existing uses related to scenic character is not required for approval under either Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484, subsection 3.

2. Exception; certain associated facilities. The primary siting authority shall evaluate the effect of associated facilities of a wind energy development in terms of potential effects on scenic character and existing uses related to scenic character in accordance with Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484, subsection 3, in the manner provided for development other than wind energy development, if the primary siting authority determines that application of the standard in subsection 1 to the development may result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities. An interested party may submit information regarding this determination to the primary siting authority for its consideration. The primary siting authority shall make a determination pursuant to this subsection within 30 days of its acceptance of the application as complete for processing.

3. Evaluation criteria. In making its determination pursuant to subsection 1, and in determining whether an applicant for an expedited wind energy development must provide a visual impact assessment in accordance with subsection 4, the primary siting authority shall consider:

- A. The significance of the potentially affected scenic resource of state or national significance;
- B. The existing character of the surrounding area;
- C. The expectations of the typical viewer;
- D. The expedited wind energy development's purpose and the context of the proposed activity;
- E. The extent, nature and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and
- F. The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.

A finding by the primary siting authority that the development's generating facilities are a highly visible feature in the landscape is not a solely sufficient basis for determination that an expedited wind energy project has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance. In making its determination under subsection 1, the primary siting authority shall consider insignificant the effects of portions of the development's generating facilities located more than 8 miles, measured horizontally, from a scenic resource of state or national significance.

4. Visual impact assessment; rebuttable presumption. An applicant for an expedited wind energy development shall provide the primary siting authority with a visual impact assessment of the development that addresses the evaluation criteria in subsection 3 if the primary siting authority determines such an assessment is necessary in accordance with subsection 3. There is a rebuttable presumption that a visual impact assessment is not required for those portions of the development's generating facilities that are located more than 3 miles, measured horizontally, from a scenic resource of state or national significance. The primary siting authority may require a visual impact assessment for portions of the development's generating facilities located more than 3 miles and up to 8 miles from a scenic resource of state or national significance if it finds there is substantial evidence that a visual impact assessment is needed to determine if there is the potential for significant adverse effects on the scenic resource of state or national significance. Information intended to rebut the presumption must be submitted to the primary siting authority by any interested person within 30 days of acceptance of the application as complete for processing. The primary siting authority shall determine if the presumption is rebutted based on a preponderance of evidence in the record.