Protecting Your Coastal Wetlands

A Citizen's Guide to the Coastal Wetlands Act

W.P.

Coastal Zone
Information
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Introduction

Coastal wetlands have long played an important role in Maine's history. Indians and early settlers used them for fishing and waterfowl hunting. Later settlers built wharfs over them and harvested firewood and salt hay. In colonial times, town ordinances granted all inhabitants the common use of these areas for "free fishing and fowling."[1]

However, as time passed, the focus of the town shifted upland away from the marsh areas. Individuals began to look at wetlands as their own property, and began to look for ways to adapt or "improve" wetlands for other uses. Only shellfish diggers and waterfowl hunters continued to utilize wetlands for their natural value, food. Today, many still think of wetlands as a wasteland with no usefulness at all.

Research has shown that the value of wetlands for food production is tremendous; that, in fact, they are among the most naturally productive areas in the world. Nearly two thirds of all fish caught on the continental shelf have spent some portion of their lives in wetland areas. These fish represent 90% of the total U.S. offshore catch.

The Maine Legislature, recognizing the importance of coastal wetlands, established the Wetlands Act in 1967. By restricting activities which harm wetlands, as dredging and filling do, the state provides a measure of protection for these valuable areas.

Maine has not yet received industrial and urban pressures as intense as those which are common further south. The people of Maine still have the opportunity to ensure that the state's coastal wetland resources will not be lost.

Tools such as the Wetlands Law and Mandatory Shoreland Zoning Act can aid towns in protecting wetlands. The ultimate protection will come, however, only when individuals understand why wetlands are important and why "improvements" only destroy their true value and importance in the balance of nature.

Wetlands are unique areas vital to sustaining life offshore. They have a universal importance far beyond their worth to any individual owner. They are a resource for which no substitute exists.

This booklet will explore the reasons for the Wetlands Law and what Maine citizens can do to protect their wetland resource.

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[1] Colonial ordinances 1641-1647, *Ancient Charters and Laws of the Colony and Province of Massachusetts Bay*, p. 148 (1814)

What are the "Coastal Wetlands"?

Coastal Wetlands include swamps, salt marshes, bogs, beaches, flats and other lowland areas subject to tidal action or normal storm flowage except maximum storm activity. As defined in the Wetlands Act, wetlands are all tidal and subtidal lands including all areas below any identifiable debris line left by tidal action. Salt tolerant plants common to wetlands are useful indicators in locating upper boundaries.

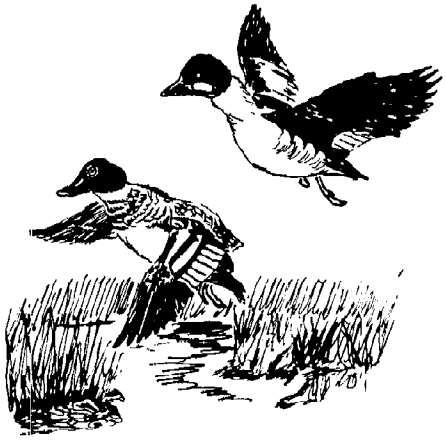
In this booklet we will refer only to coastal wetlands. Fresh water wetlands are also very important resource areas, and should receive protection similar to that given coastal areas.

What Does the Wetlands Act Do?

The Alteration of Coastal Wetlands Act requires that before any proposed alteration of a wetland can take place the person planning the alteration must receive a permit. Permits may be granted when the natural values of wetlands are not threatened.

"Marshes comprise their own form of wilderness. They have their own life-rich genuineness and reflect forces that are much older, much more permanent, and much mightier than man."

Paul L. Errington
Of Men and Marshes
(Iowa State University Press 1957)



What is a Wetland?

Coastal wetlands are all affected to some degree by tidal action. Plants provide the best means by which a wetland can be identified, because they grow in specific locations depending on the amount of salt they can tolerate. As the tides go in and out, both the amount of salt (salinity) and temperature of their environment change rapidly. Wetland plants must be able to adapt to these quick changes and the number of plants which can do this is relatively few.

Northern coastal marshes are also subjected to action by ice. Roots of dominant grasses are buried deep in the mud however, and are protected somewhat from the sharp, cutting action of the ice. In a later section we will show specific plants which indicate the presence of a wetland. First, let's look briefly at the typical wetland area, from tidal flats to the upland. It can roughly be divided into three zones.

Low Marsh This is the intertidal area that is subject to all phases of the tides, including the lowest, or "neap" tides. All the vegetation in this zone is covered by salt water twice daily. ***Spartina alterniflora***, or cord grass, dominates this low area.

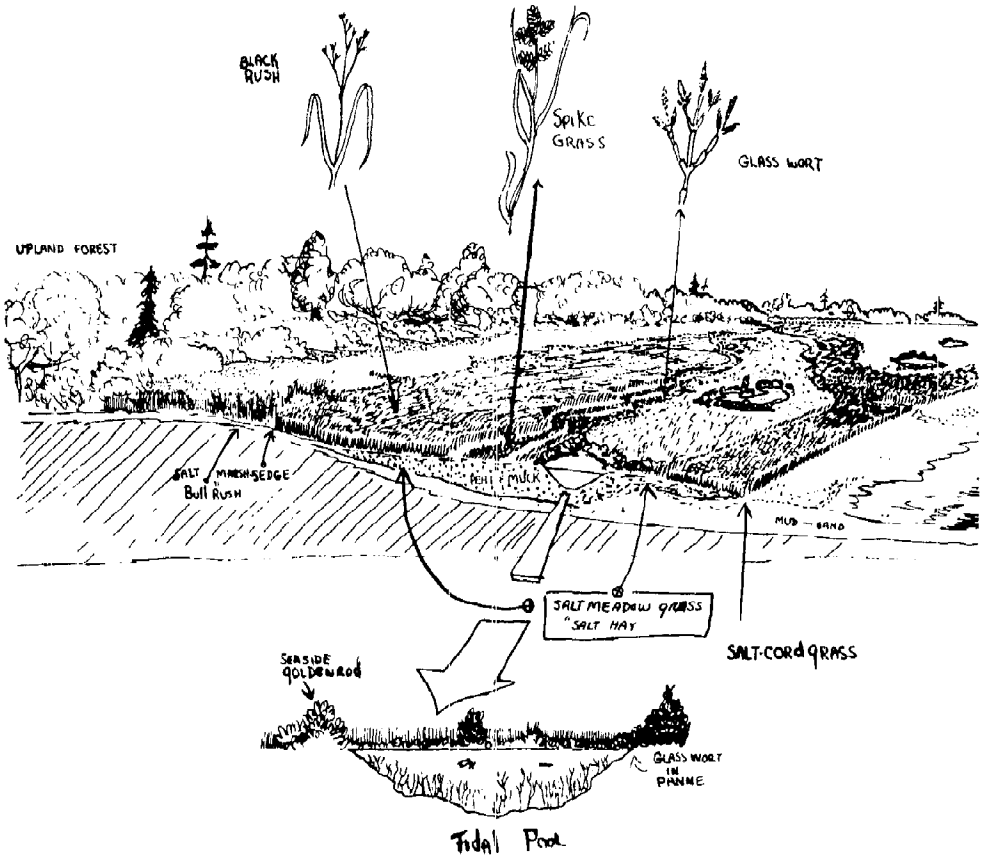
High Marsh This area is subject to tidal action several times during the month, particularly during periods of the new and full moons ("spring" tides). High marsh plants include sea lavendar; a black rush, ***Juncus gerardi***; and the dominant species, ***Spartina patens.*** This thin salt hay grass may well cover 60% of the high marsh area. Sometimes mixed with it is ***Distichilis spicata*** or spike grass.

Transitional Marsh This is the area where upland meets coastal wetland. It is affected by only the maximum tides, and is the upper limit of plant species which can survive a salt environment. Plants include the salt marsh sedge and the salt marsh aster. Border plants such as bayberry and poison ivy will be found on the upland edge as their tolerance to salt is limited to the salt spray.

Beyond the low marsh and along the banks of creeks which run through the marsh are mud flats vital to the shellfish population. Here clams, mussels, and worms burrow in the mud. Crabs may live in the mud and frequent the low marsh for food.

Animals are found in all parts of the wetland. Some, like mice, rabbits and raccoons, visit the wetlands during the day for food, but retire back to the uplands at night. Salt meadows of ***Spartina patens*** and spike grass provide the major nesting and feeding area for birds, particularly rails, sparrows, black ducks, and the familiar red winged blackbird and marsh hawk. Mud snails, crabs and worms are also found among the marsh grasses. Shorebirds and gulls frequently comb the mudflats for their food, as do herons, though only the bittern actually nests in the marsh.

In tidal pools dotting the marsh are found specimens of the life that teems in the intertidal zone just beyond. They include small shrimp, minnows, worms, crabs, clams and other shellfish. Tidal creeks are the nursery for as many as 60 species of fish and shellfish, including crab and clam larvae, flounder, striped bass and menhaden.



Cross section of a typical wetland area

Cross section of a typical wetland area

Why are Wetlands Important?

Although their actual acreage is small, wetlands produce up to 10 tons of nutrients per year, several times more food than an average wheat field.[2] Wetlands provide food not only to organisms living in them, but also the vast shellfish populations which live nearby. As mentioned earlier, wetlands serve as the nursery and source of food for many species of larger fish which spend their adult lives in the ocean.

Wetlands are important wintering areas for migratory waterfowl and may serve as nesting and brood rearing areas because they provide excellent cover protection and food supplies. Many other animals which do not actually live in the marsh feed there.

Wetlands serve as a protective buffer between the sea and the land. Plants create a network of roots which trap sediment and decaying vegetation. They act much like a great sponge, absorbing excess water during storm, cushioning the effects of waves and tidal action, and limiting the danger of upland flooding.

Wetlands also serve as open space, sources of recreation (hunting and fishing) and provide aesthetic pleasures such as come from watching ducks feeding on marsh grass or geese flying across a marsh at sunset.

Wetlands can perform all these functions, ***provided*** the complex interrelationships between plants, animals and their surroundings are not disturbed. When they are, the results are far-reaching. Hence it is important to point out what wetlands are ***not.*** Wetlands are ***not*** dumps, places that need filling or places that need to be dredged.

What is the Value of a Wetland?

Factors such as the rising demand for shorefront property and the mistaken idea that wetlands are wastelands have contributed to the view that the value of wetlands lies in changing them to other uses. This compietely ignores their value as producers of food.

[2] Odum, Eugene, 1961, "The Role of Tidal Marshes in Estuarine Production", New York State Conservation Department, "Conservationist," June-July 1961.

Wetlands produce an average of from 60.5 to 242 pounds of nutrients per acre per day. Research has put the yearly value of an average acre of southern coastal wetland as high as $83,000.[3] This sum is the cumulative value of the many functions that a wetland naturally performs, and is a value which extends far beyond the individual owner of a wetland. It is worth noting too that food produced in a wetland is produced continuously, without any help from man, unlike agricultural crops which must be planted, fertilized, tended and harvested.

The harvest of shellfish and marine worms is a significant part of Maine's coastal economy. Wetland areas are especially valuable in maintaining offshore populations of commercial finfish and lobsters. Striped bass, menhaden, and flounder for example, use the wetlands as nursery and spawning areas. The whole life cycle of the smelt depends on these shallow areas.

The sports fishery also depends upon these coastal estuaries. Large sums of money are involved in the sports industry which financially benefit many local communities. The same holds true for game and hunters. Salt marshes furnish homes for swamp rabbits, mink, muscrats, otters, and racoons.

Thousands of ducks and other migratory waterfowl use wetland areas as a source of food and shelter during migration. Many spend the winter in coastal marshes.

Wetlands are also essential to the development of an aquacultural industry, for which Maine has great potential.

As John and Mildred Teal state in their book, ***Life and Death of the Salt Marsh***: Salt marshes are valuable to us all. Beyond their economic value they are aesthetically valuable as variety on our highly developed coastline. As the only part of our shoreline that still looks much as it did when the first colonist landed, they are also historically valuable. They are scientifically valuable both as places to study adaptations to a marsh environment and as some of the most productive natural areas known.

[3] Gosselink, James, Odum, Eugene and Pope, R.M., "The Value of the Tidal Marsh", Working Paper No. 3, University of Florida, May 1973.

Are There Other Values Which Must Be Considered?

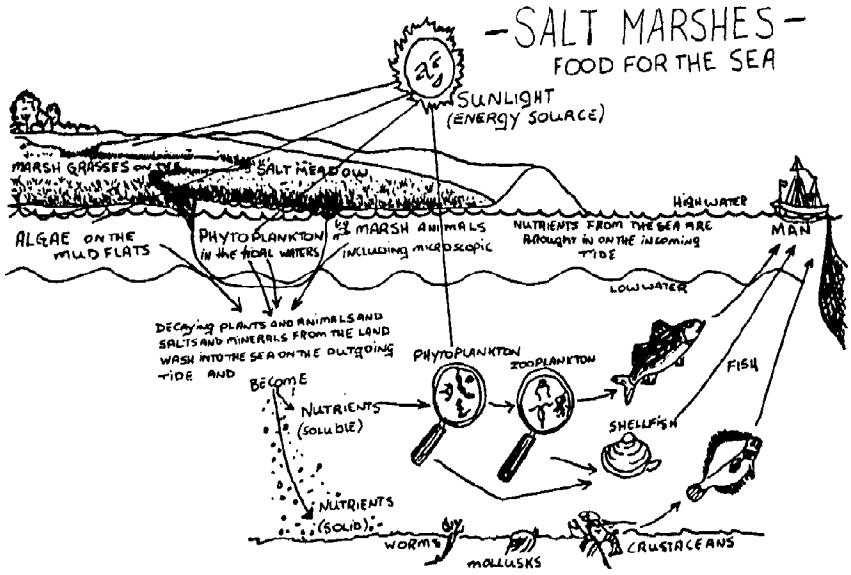
Marshes have a tremendous ability to absorb excess water caused by storms and heavy tides. A ten acre marsh can absorb three million gallons of water in a one foot rise. Because of this resilient quality, wetlands act as additional barriers against the pressure of tidal storms, and prevent much damage to upland areas. Since the law requires "protection of the public's health and welfare," several values less easily translated into economic terms must be considered. In fact, recent court decisions have indicated that this includes protection of environmental quality and aesthetics.

Why are Wetlands so Productive?

Plants are the major producers in wetland areas, in their living as well as decaying forms. Living plants produce seeds and flowers directly eaten by animal life. Dead plants, fallen among the living, decay and are used by other organisms for food. Bacteria and other microscopic organisms reduce detritus (decaying material) to forms which can be used by plant and animal plankton as well as by larger animals—clams, scallops, worms, shrimp, crabs, lobsters and fish. These, in turn, are consumed by larger creatures including man.

Nutrients and minerals washed from the uplands or carried by streams which feed into wetlands, add to the richness of the area. The tides than mix and redistribute all these nutrients throughout the shallows and into the sea. In this manner, food is carried far beyond the immediate wetland area. As many as 2.5 tons of nutrients per acre per year are thus redistributed and recycled through the marsh.

Nutrient cycle in the wetland (Mass. Audubon)



PLANTS COMMON TO WETLAND AREAS

How Do You Recognize a Wetland?

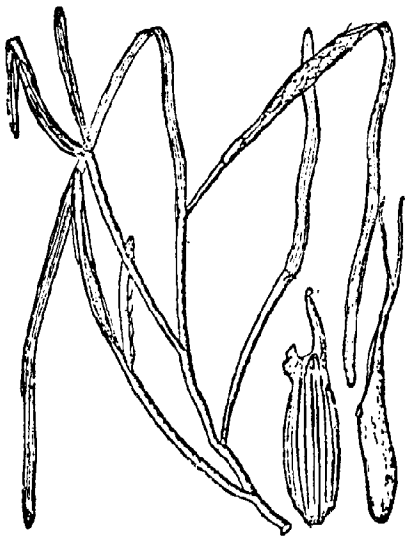
The most noticeable indications of a wetland area are the plants growing there. As noted, there are only a few species which can survive in a salt environment. A number of plants have been recognized by the Department of Environmental Protection as indicators of a wetland area. Drawings of some of the more common ones are included in this booklet to help you determine whether the area is a wetland or not. If you're not sure, check with a biologist. Some additional references are also suggested at the end of this section.

Who Can Help You Identify a Wetland?

Marine Patrol Officers (formerly Coastal Wardens) and biologists from the Department of Marine Resources will help with identification. Biologists from colleges and the University of Maine can also give advise. The Department of Inland Fisheries and Wildlife has classified all Maine wetlands of 10 acres or more with particular reference to their value for waterfowl; this information has been provided to all Regional Planning Commissions. Soil scientists from the Maine Soil and Water Conservation Commission are another source of help. And the U.S. Department of Agriculture, through its National Cooperative Soil Survey, has characterized wetland areas and mapped them.

Low Marsh Vegetation

Spartina alterniflora (Salt marsh cordgrass)
A wide bladed grass, one inch wide and in Maine 3-4 feet high. Found growing along the marsh edge and along creek banks, and is generally covered by every tide. Flower clusters can be as much as one foot long. Dominant species of the low marsh.



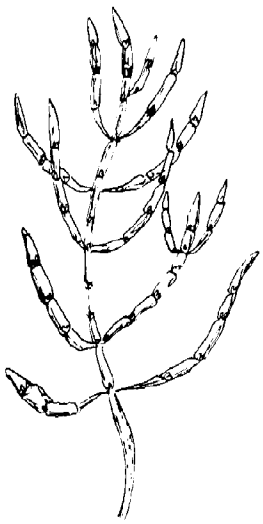
Zostera marina (Eel-grass)
Leaves limp and ribbon-like, about 1-6 feet long. Common in bays, tidal streams and ditches.

High Marsh Vegetation

Spartina patens (Salt meadow hay)
A slender bladed grass, about ¼ inch wide. Fifteen to twenty inches high. Found growing in the central areas of the marsh forming the salt meadows. Mature grass bends in cowlick patterns. Grows in higher elevations than the cordgrass and is covered perhaps 6-8 times a month by the tides.

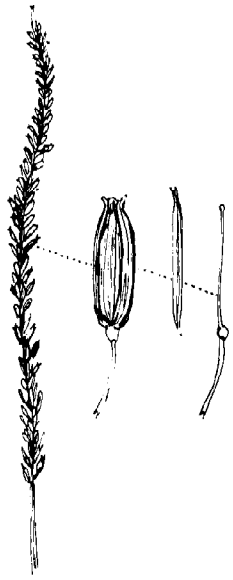
Juncus gerardi (Black rush)
A slender rush, ¼ inch wide with long leaves (8"). Grows in the higher elevations of the salt meadow. Seed capsules are black. Grows to 15" high.

Distichilis spicata (Spike grass)
A narrow bladed grass with numerous blades with overlapping sheaths. Grows to 15 inches, in dense clumps and colonies near the upland border of the marsh. Flower clusters are up to 3 inches.



Salicornia europaea (Glasswort)
An annual succulent herb. The jointed stems are freely branched with minute leaves. The stems are erect with lower branches spreading. Grows 5-6 inches high, in clumps and colonies on the marsh edge. Becomes scarlet in autumn.

Solidago sempervirens (Seaside goldenrod)
Fleshy leafed plant with a thick stem 1-2 feet long. Bright yellow flowers appear in early fall. Flowers grow above the stem.



Triglochin maritima (Arrowgrass)
A thin grass growing to 15-20" high. Leaves are as thick as the stem. Tiny greenish flowers grow on the stems.

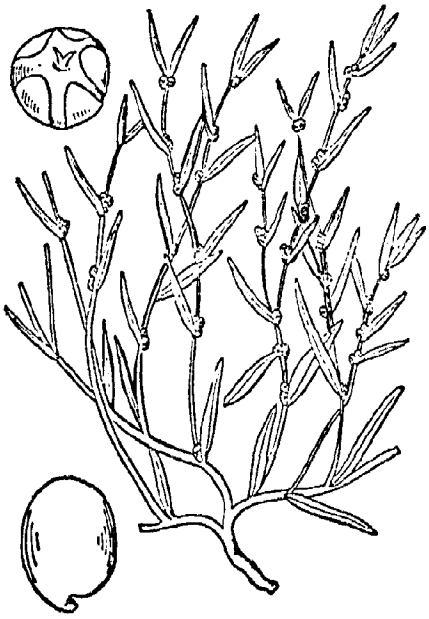
Limonium nashii
(Seaside lavender)
Leaves are wide and leathery, growing close to the ground. Flower clusters 6-15 inches high appear in late summer. The lavender colored flowers are often collected as dried flowers.

Potentilla anserina
(Silverweed)
Undersides of the leaves are silvery. Grows 1-3 feet high. Has bright yellow flowers in the summer.

Scirpus paludosus
(Salt marsh bullrush)
Very pale green triangular stem with two or more supporting leaves below the spikelets. Spikelets are scale-like and brown. Grows to two feet high.

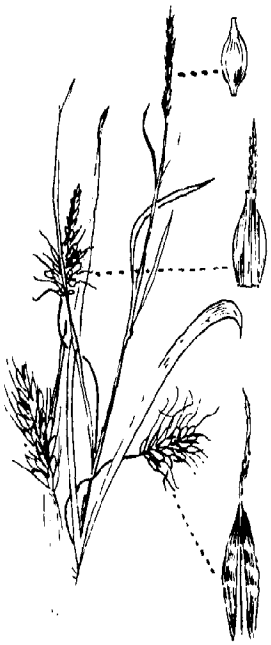
Plantago juncoides
(Seaside plantain)
Stalks are less than 1 foot high. Leaves are linear and fleshy. Has small white flowers.

Atriplex patula (Orach)
Triangular shaped leaves projecting from either side of the base. Grows 1-2 feet high, but the stem is not sturdy so it often trails on the ground. Small purple flowers grow at the tips of the upper branches.



Dondia maritima (Sea-blite)
The main stem of this pale green and brown plant grows along the ground, with branches growing upward. The seeds are round and dark brownish red. It is found on sand beaches, rocky and muddy shores and in salt marshes.

Transitional Marsh Vegetation

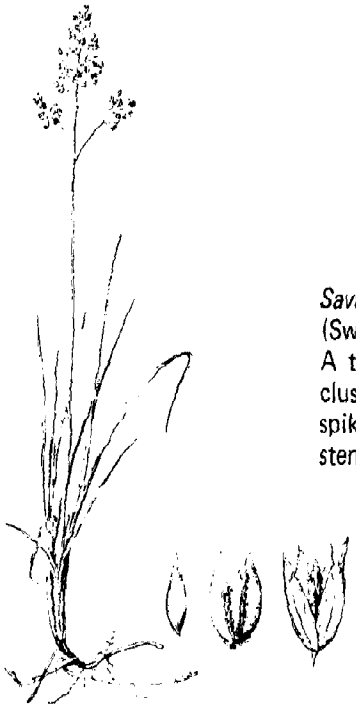


Carex paleacea (Salt marsh sedge)
Grows in the high marsh and border areas. Several feet high. Leaves are ½ inch wide and 2-6 scaley spikelets dangle off the end of the stem.

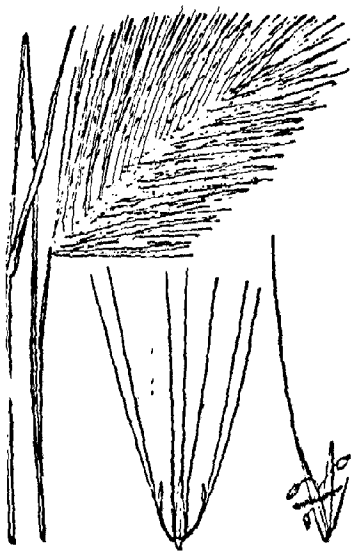
Aster novi-belgii (Salt marsh aster)
A tall fleshy plant growing to three feet high. Has long narrow leaves, with tapering points. Flowers are blue-purple to white.

Juncus balticus (Baltic rush)
Stems several feet in height arise from thick, creeping rootstick. Leaves form a sheath around base.

Samolus parviflorus
(Water pimpernel or brookweed)
Standing 6-8 inches high, this plant has rosette of leaves at the base, with more leaves alternating up the stem. Tiny white flowers on long slender stalks.

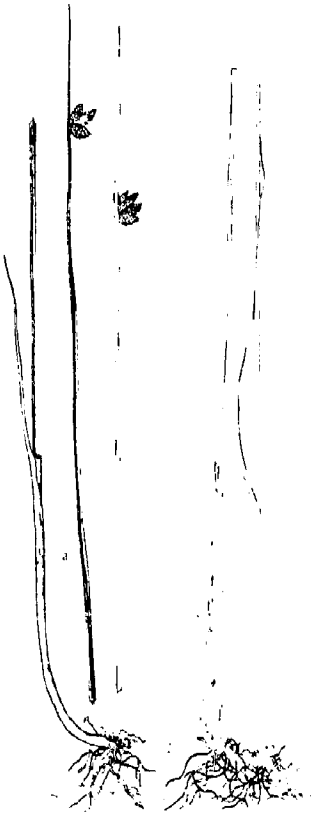


Savastana odorata
(Sweet grass or holy grass)
A tall, sweet-smelling grass. Spreading clusters of yellowish-brown and purple spikelets grow up from the top of the stem.



Hordeum jubatum (Squirrel-tail grass)
This narrow-bladed grass flourishes in dry soil. Fronds of 2-4 inch spikelets grow in clusters of three,

Scirpus americanus
(Three-square or chairmaker's rush)
Found in fresh water and brackish swamps, this common rush has sharply triangular stems and narrow blades. Small brown flower, on slender stalks.



Iva frutescens (Marsh elder)
This shrubby perennial grows along salt marshes and muddy shores. It has oval or oblong notched leaves, with somewhat fleshy stems and small, grouped flowers.

If You Propose to Alter a Wetland, are there Other Laws that You should be Aware of?

Yes. Other laws you will want to know about include:

The Rivers and Harbors Act of 1899

A Federal Act authorizing the Army Corps of Engineers to review all proposed alterations and obstructions to navigable waters of the United States. This sometimes includes wetlands. Persons considering alterations below high water mark in navigable waters must contact the Corps at 424 Trapelo Road, Waltham, Massachusetts 02154. (33 U.S.C. 401 et. seq. (1970)) Phone Toll Free 1-800-343-4789.

Wharves and Wiers

A Maine statute controlling the erection of wharves and fish wiers in the tidewaters. It is administered by Municipal Officers, or by the Land Use Regulation Commission in the unorganized territories. (38 MRSA 1021 et seq.)

Alterations Below Mean Low Water

The 107th Legislature reaffirmed the state's ownership of all of Maine's submerged lands. When a proposed activity extends into the intertidal zone and an applicant cannot prove ownership, or when the activity extends below mean low tide, the applicant must have title, right, or interest to the land involved. For persons intending private uses of state submerged lands abutting their property, the application for a Wetlands permit will also be considered an application for the right to use the land.

The Mandatory Shoreland Zoning Act of 1973

A Maine statute which provided specific standards of protection over all shore lands. Under this law, the first 250 feet of all land above low tide in the State of Maine have been zoned. Contact local municipal officials or the State Planning Office before construction begins.

Some Useful Information

Much has been written about wetlands. Here are a few suggestions if you want to know more.

Books

The Life and Death of a Salt Marsh, John and Mildred Teal, Audubon-Ballentine Books (Paperback)

The Life of the Marsh, William A Niering, McGraw-Hill Book Co.

Wetland Plants of the Eastern United States, North Atlantic Division, Army Corps of Engineers (NADP 200-1-1)

A Beachcomber's Botany, Chatham Conservation Foundation, Chatham, Mass.

Articles

"Wetlands for Tomorrow" Kenneth Anderson (Summer 1966)

"Estuaries—Rich Resource or Wasteland?" Richard Hatch (Fall 1971)
(Available from: Maine Department of Inland Fisheries and Wildlife)

"Report of the Salt Marsh Conference" (November 1971)
(Available from: Maine Department of Marine Resources)

"Salt Marsh Relocation Restoration in Maine" (1974)
(Available from: Maine Department of Transportation)

Sources of Help and Information

Department of Environmental Protection Bureau of Land Quality Control *Administers the Wetlands Law*	289-2111	Augusta, Maine 04333
Citizen's Environmental Assistance Service	1-800-452-1942	
Department of Marine Resources *Marine Patrol Officers and biologists for assistance or enforcement*	289-2291	Augusta, Maine 04333
Land Use Regulation Commission *Land use guidance standards for fresh and salt wetlands in Maine's wildlands*	289-2631	Augusta, Maine 04333
Department of Inland Fisheries and Wildlife *Has inventoried coastal wetlands in state*	289-3286	Augusta, Maine 04333
State Planning Office *Information on Shoreland Zoning*	289-3261	Augusta, Maine 04333
U.S. Army Corps of Engineers *Reviews alterations to navigable waters*	(800) 343-4789	424 Trapelo Road Waltham, Mass. 02154
U.S. Bureau of Sports Fisheries and Wildlife	622-6171	40 Western Avenue Augusta, Maine 04333
Rachel Carson National Wildlife Refuge	646-9226	Drakes Island Road Wells, Maine 04090
Natural Resources Council *General information and assistance on wetlands*	622-3101	271 State Street Augusta, Maine 04333
The Nature Conservancy *Wetland protection capabilities*	729-5182	20 Federal Street Brunswick, Maine 04101
Maine Audubon Society *Wetland protection capabilities*	781-2330	Gilsland Farm Road Falmouth, Maine 04105
Soil Conservation Districts *Soil maps identifying wetlands*		
Local Conservation Commissions		

What is Considered Altering a Wetland?

In recent years, men have tried to change the natural character of wetlands. Ignoring the unsuitability of the soil, they have filled wetlands and built houses and industrial buildings upon them, only to be plagued by a series of problems due to the continued wetness of such areas.

Highways (another form of filling) have been built across wetlands, interrupting the ability of the tides to circulate. Attempts to control mosquitos have resulted in large accumulation of pesticides and not a great reduction of mosquitos. Dredging for navigational purposes or marinas have drastically altered wetlands by tearing out large productive areas. In many cases, wetlands have been used as dumping areas, which not only fills the area, but pollutes the water with the waste and petroleum by-products.

The Wetlands Law states several specific alterations. Let us examine each:

- ***dredging and removing*** sections of wetlands reduces the food supply of many organisms which are dependent on wetlands, and further threatens the future of our fishing industry.
- ***filling*** has the same general effect as dredging. It also restricts tidal flushing of remaining wetland and interferes with natural flood prevention. For example, a causeway, or a culvert which is too small will restrict the flow of water. This may mean an increase in pollution and stagnant pools because the area has not been able to empty with each ebbing tide. And in a storm, it may cause worse flooding somewhere else because water can no longer flow into the area freely.
- ***draining***, to replace natural vegetation with another crop, or for construction, destroys the tremendous natural productivity of the marsh. The wetlands area is a storehouse of water and the water will have to go somewhere. Draining will not change the basic geologic nature of a marsh.

Marshes were formed slowly over thousands of years. It is estimated, for example, that the marsh at Wells took about 3,000 years to develop. One bulldozer can destroy all this in a few hours.

Are there Alterations which can be Made?

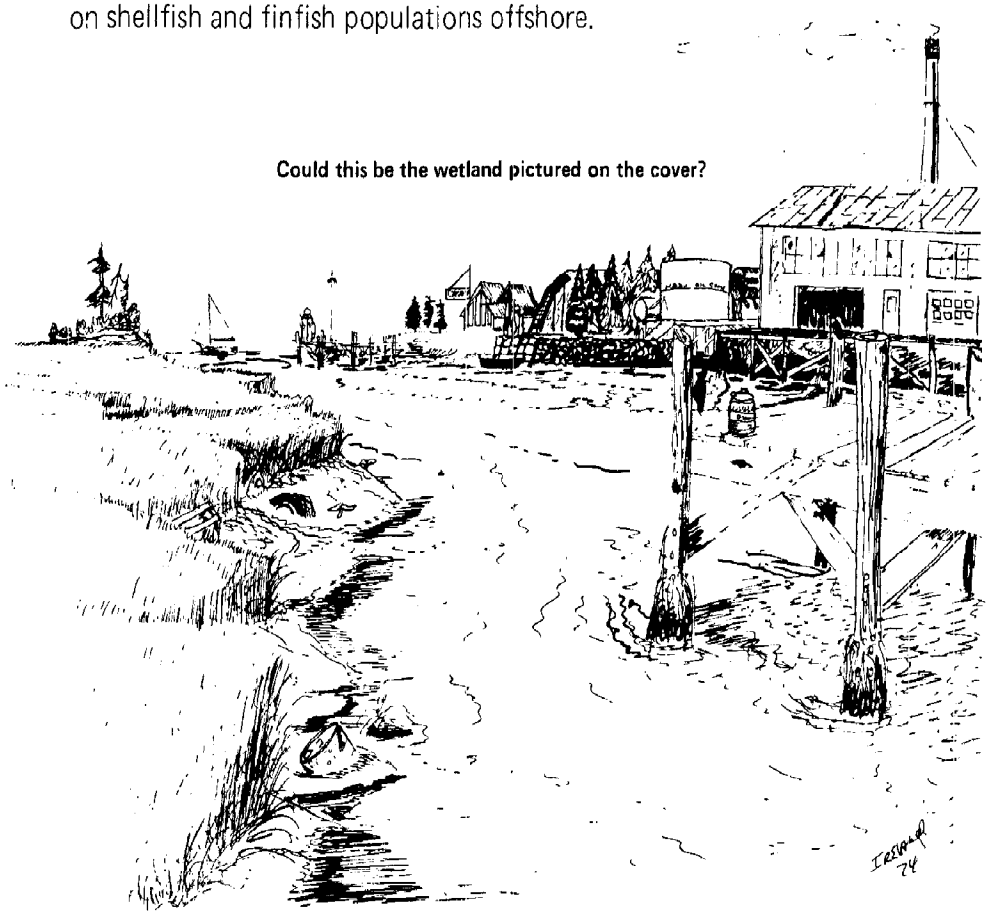
Because of far reaching effects on shellfish and finfish populations, even small alterations will cause some disruptions. Moreover, a series of small alterations will have the same effect in the long run as a large fill. Generally large alterations are denied by the Board of Environmental Protection.

Each case is, however, considered on its merits by the town involved, and by the Department of Environmental Protection. Opinions of other agencies (Department of Marine Resources, Soil and Water Conservation Commission) are also sought. Some projects may be approved conditionally. For example, a wharf built on pilings might be accepted as less destructive than a solid fill pier.

Doesn't Maine have Plenty of Wetlands?

No. Maine has less than 17,000 acres of salt marshes scattered along almost 3,500 miles of shoreline. Combined, they would form an area only about equal the size of Sebago Lake. Of this total, nearly 15,000 acres are in parcels of 10 acres or larger. Remember too that the entire state has 20 million acres! We have seen that the value of these wetland areas is substantial. Even a small wetland area can have a major effect on shellfish and finfish populations offshore.

Could this be the wetland pictured on the cover?



MAINE REVISED STATUTES ANNOTATED

TITLE 38

ARTICLE 5

ALTERATION OF COASTAL WETLANDS

1975, c. 595

§ 471. Prohibitions

No person shall dredge or cause to be dredged, drain or cause to be drained, fill or cause to be filled or erect or cause to be erected a causeway, bridge, marina, wharf, dock or other permanent structure in, on or over any coastal wetland; or bulldoze, remove, add or displace sand, or build any permanent structure in, on or over any coastal sand dune without first obtaining a permit therefor from the Board of Environmental Protection or a municipality acting under the provisions of sections 473 and 474; nor shall any action be taken in violation of the conditions of such permit, once obtained.

1975, c. 595, § 3; 1979, c. 504, § 1.

§ 472. Definition

As used in the alteration of coastal wetlands law, unless the context otherwise indicates, the following terms shall have the following meanings.

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

2. **Coastal wetlands.** "Coastal wetlands" are all tidal and subtidal lands including all areas below any identifiable debris line left by tidal action, all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water habitat, and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity. Coastal wetlands may include portions of coastal sand dunes.

1975, c. 595, § 3; 1979, c. 504, § 2.

§ 473. Permit granting authority

All permits shall be issued by the Board of Environmental Protection, except that a municipality may apply, on forms provided by the board, to the Board of Environmental Protection for authority to issue such permits. The board shall grant such authority if it finds that the municipality has:

1. **Planning board.** Established a planning board;

2. **Adopted zoning ordinance.** Adopted a zoning ordinance approved by the board and the Land Use Regulation Commission, pursuant to Title 12, Chapter 424;

3. **Notice.** Made provision by ordinance or regulation for prompt notice to the board and the public upon receipt of application and written notification to the applicant and the board of the issuance of or denial of a permit stating the reasons therefor; and

4. **Application form.** The application form shall be the same as that provided by the Board of Environmental Protection.

In the event that the board finds that a municipality has failed to satisfy one or more of the above listed criteria, it 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 approved procedures or the purposes of this Article as embodied in the standards set forth in section 474, it 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 thereon. Following such hearing, if it finds such deficiencies, it may revoke the municipalities permit granting authority. The municipality may reapply for authority at any time.

1975, c. 595, § 3.

§ 474. Permits; standards

1. **Wetlands Permit.** If the applicant for the wetlands permit demonstrates, to the satisfaction of the board or municipality as appropriate, that the proposed activity will not unreasonably interfere with existing recreational and navigational uses; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor unreasonably harm wildlife or freshwater, estuarine or marine fisheries; nor lower the quality of any waters, the board or municipality shall grant the permit upon such terms as are necessary to insure that the proposed activity will comply with the foregoing standards.

In municipalities that have been delegated the authority to issue permits under this Article, within 30 days after receipt of a completed application for a permit, the municipality shall either issue the permit or deny the permit setting forth the reasons therefor or order a hearing thereon within 30 days of the order for which hearing adequate public notice shall be given. Within 30 days after the adjournment of the hearing, the municipality shall either issue the permit or deny the permit setting forth the reasons therefor. In the event that a permit applied for is denied by the municipality, the applicant may request a hearing before the municipality with reasonable public notice given.

The board shall issue no permit without notifying the municipality in which the proposed alteration is to occur and considering any comments filed within a reasonable period by that municipality.

No permit issued by a municipality may be effective until 30 days subsequent to its issuance, but if approved by the board in less than 30 days then the effective date shall be the date of approval. A copy of the application for the permit and the permit issued by the municipality shall be sent to the board immediately upon its issuance by registered mail. The board shall review that permit and either approve, deny or modify it as it deems necessary. Failure of the board to act within 30 days of the receipt of the permit by the municipality shall constitute its approval and the permit shall be effective as issued.

When winter conditions prevent the board or municipality from evaluating a permit application, the board or municipality, upon notifying the applicant of that fact, may defer action on the application for a reasonable period. The applicant shall not during the period of deferral fill or cause to be filled, dredge or cause to be dredged, drain or cause to be drained or otherwise alter that coastal wetland.

1983 c.453, §5.

2. **Sand dunes permit.** If the applicant for a sand dunes permit demonstrates to the satisfaction of the board or municipality, as appropriate, that the proposed activity will not unreasonably interfere with existing recreational or wildlife uses; unreasonably interfere with the natural supply or movement of sand within or to the sand dune system; unreasonably increase the erosion hazard to the sand dune system; or cause an unreasonable flood hazard to structures built in, on or over any coastal sand dune or neighboring property, the board or municipality shall grant the permit upon such terms as are necessary to insure that the proposed activity will comply with the foregoing standards.

3. **Single permit.** In the event that a project affects both wetland areas and sand dune areas, the board or municipality, as appropriate, shall grant a single permit upon such terms as are necessary to comply with the foregoing standards.

1975, c. 595, § 3; 1979, c. 504, § 3.

§ 475. Penalties

A violation is defined as any filling, dredging, draining, depositing, altering, erecting or removal of materials which takes place in coastal wetland or coastal sand dunes contrary to the provisions of a valid permit or without a permit having been issued, and without regard to whether these physical acts were witnessed as they were being carried out or whether the action was willfully undertaken to avoid the intent of this subchapter or without knowledge of this subchapter undertaken. Any such filling, dredging, draining, depositing, altering or removal of materials shall be prima facie evidence that it was done or caused to be done by the owner of such coastal wetlands or coastal sand dunes.

1975, c.595, §3; 1977, c.300, §28; 1983, c.566, §30.

§ 476. **Enforcement**

Inland Fish and Game wardens, coastal wardens and all other law enforcement officers enumerated in Title 12, section 2003 shall enforce this subchapter.

§ 477. **Repealed.** 1977, c. 300, § 29.

§ 478. **Exemptions**

The Board of Environmental Protection may by rule or regulation exempt from this subchapter certain activities including, but not limited to, repairs and maintenance of existing structures or waive such procedural requirements as it deems not inconsistent with the purposes of this subchapter. Nothing in this subchapter shall prohibit the minor repair of existing permanent structures which would require less than a total of one cubic yard of material to be filled, deposited, dredged, moved or removed in any coastal wetland or normal maintenance or repair of presently existing ways, roads or railroad beds nor maintenance and repair of installations and facilities of any utility as defined in Title 23, section 255, abutting or crossing said coastal wetlands, provided no watercourse is substantially altered.

ADMINISTRATIVE PROCEDURES
TITLE 38
CHAPTER 2
DEPARTMENT OF ENVIRONMENTAL PROTECTION

§344. Processing of applications

1. **Acceptance and notification.** The Commission of Environmental Protection shall, within 10 working days of receipt of an application, determine whether the application is in a form acceptable for processing and shall notify the applicant of the official date on which the application was accepted or the reasons why the application was not accepted.

Notice shall be provided to the public for each application for a permit or license accepted by the commissioner. Comments shall be solicited from the public for each application in a manner prescribed by the board in the regulations.

A. For those applications delegated to the commissioner under subsection 2 which do not fall under the permit by rule provisions of subsection 7, the commissioner shall issue a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of his interest in the application before he takes final action on the application. The draft permit or license shall be made available to the applicant and to all interested persons at the Augusta office of the department at least 5 working days before the commissioner takes final action on the application.

B. For those applications not delegated to the commissioner under subsection 2, the commissioner shall provide a summary of the application to the board and all interested parties in a manner prescribed by the board in the regulations. At least 10 working days shall be provided for the receipt of comments on the application prior to the preparation of a draft permit or license. The commissioner shall prepare a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of his interest in the application of the date the board will act on the application. The draft permit or license shall be made available to the applicant and to all interested persons at the Augusta office of the department at least 15 working days before the board acts on the application.

All correspondence notifying the applicant of board or commissioner decisions shall be by certified mail, return receipt requested.
1983, c.453, §1.

2. **Delegation Authority** is delegated to the Commissioner of Environmental Protection and the department staff to approve, approve with conditions or disapprove the following categories of applications:

A. All applications under section 393, pertaining to great pond permits;

B. Applications under section 413 for a waste discharge license with a maximum daily discharge of less than 100,000 gallons per day and for a cooling water waste discharge license, regardless of the amount.

C. All applications under section 418, pertaining to log storage permits;

D. Applications under section 474 pertaining to coastal wetlands permits for pile supported piers;

E. Applications under section 483 for site location development permits for subdivisions of less than 75 acres, with fewer than 25 lots to contain fewer than 25 housing units;

F. All applications under section 543, pertaining to oil discharge licenses;

G. All applications under section 545, pertaining to oil terminal facility licenses;

H. Applications under section 590 pertaining to air emissions licenses for all petroleum storage facilities, for incinerators or boilers with capacities of less than 150,000,000 British Thermal Units per hour and for all general process sources;

I. All applications under section 1303-A, pertaining to hazardous waste transporting licensing;

J. All applications under section 1304, subsection 8, paragraph A, pertaining to solid waste sludge or septage waste facility permits; and

K. Applications for permit or license renewals where the permittee or licensee has operated in substantial compliance with the most recent permit or license and where the proposed pollution control equipment is substantially unchanged from that previously permitted or licensed and where applicable laws or rules on which the permit or license would be considered have not changed since the last permit or license was issued.

The board may delegate by regulation to the commissioner the authority to approve, approve with conditions or disapprove any other applications for approvals by the board made pursuant to any of the laws which the board is required to administer.

The board, after a majority of the members present and voting vote to do so, may delegate to the commissioner the authority to approve, approve with conditions or disapprove individual applications not otherwise delegated under this subsection.

Decisions made by the commissioner pursuant to any such delegation shall be made in accordance with the standards found in the applicable statute, with all procedural steps applicable to applications not delegated, and with regulations adopted by the board, which regulations shall include assurance that any interestd person aggrieved by a decision of the commissioner made pursuant to this section shall have a right to appeal that decision to the board.
1983, c.453, §1.

3. **Time limits for processing applications.** Whenever the commissioner receives a properly completed application for any permit or license in a category delegated under subsection 2, he shall make a decision as expeditiously as possible. For those delegated applications which fall under the permit by rule provisions of subsection 7, the decision shall be made within 30 working days after receipt of the notification. For those delegated applications which do not fall under the permit by rule provisions, the commissioner shall make a decision within 60 working days after acceptance of the application. If the commissioner determines that an application for a permit or license in a category delegated to him under subsection 2 is policy setting or precedent setting or has generated substantial public interest, he shall request that the board act on the application.

Whenever the commissioner accepts a properly completed application for any permit, license, approval or certificate not delegated to him under subsection 2, the board shall make a decision as expeditiously as possible, but in no case may this decision be later than 105 working days after acceptance of the application.
1983, c.453, §2.

4. **Exceptions.** The commissioner may waive the time limit requirements of subsection 3, at the request of the applicant.

The board may waive the time limit requirements of subsection 3 after consultation with the applicant, if ⅔ of the members of the board eligible to vote do so vote.
1983, c.453, §3.

5. **Reconsideration.** Within 30 days of applicant's receipt of a board decision, any person aggrieved by the decision may petition the Board of Environmental Protection, in writing, for correction of any part of the decision which the petitioner believes to be in error and not intended by the board, or for an opportunity to present new or additional evidence to secure reconsideration of any part of the decision or challenge any facts of which official notice was taken. Such petition shall set forth in detail the findings, conclusions or conditions to which the petitioner objects, the basis of the objections, the nature of the relief requested and the nature of any new or additional evidence to be offered.

The board shall, within 30 days of receipt of such petition and after appropriate notice, grant the petition in full or in part, order a public hearing or dismiss the petition. Any public hearing held under this section shall be held within 45 days of the board's decision to hold such hearing and the commissioner shall provide reasonable notice to interested persons. The time for appeal of a final decision of the board on any application shall be computed from the date of receipt by petitioner of the board's decision pursuant to this subdivision.

The running of the time for appeal is terminated by a timely petition for reconsideration filed pursuant to this subsection, and the full time for appeal commences to run and is to be computed from the date upon which notice is received of any administrative action denying the petition or any order or decision of the board as a result of the petition; provided that the filing of a petition for reconsideration shall not be deemed an administrative or judicial prerequisite for the filing of appeal.
1977, c.300, §9; 1077, c.694, §754.

6. **Fees.** The board may establish reasonable fees for the reproduction of materials in its custody, including all or part of any application submitted to the department. All such fees may be retained by the department to reimburse expenses incurred in reproducing such materials.
1977, c.300, §9.

7. **Permit by rule.** The Board of Environmental Protection may permit, by rule, any class of activities which would otherwise require the individual issuance of a permit or approval by the board, if the board determines that activities within the class will have no significant impact upon the environment. Any such rule shall describe with specificity the class of activities covered by the rule, and may establish standards of design, construction or use as may be deemed necessary to avoid adverse environmental impacts. Any such rule shall require notification to the commissioner prior to the undertaking of the regulated activity.
1983, c.453, §4.

§345. Hearings.

1. **Hearings.** Except as provided in section 347, whenever the board or Department of Environmental Protection is required or empowered to conduct a hearing pursuant to any provision of law, such hearing may be held and conducted by any member of the board or any employee or representative of the Department of Environmental Protection so authorized by the board.

2. **Notification.** Prior to any hearing conducted by the board or department, the department shall:

A. Publish notice of the hearing twice in a newspaper of general circulation in the area affected. The date of the first publication shall be at least 20 days prior to the date of the hearing and the 2nd publication shall be in the same newspaper no more than 10 days prior to the date of the hearing. In addition, the notice may be published in any other trade, industry, professional or interest group publication which the board deems necessary to reach persons affected;
1977, c.300, §9; 1977, c.694, §755.

B. Provide notice of the hearing to any applicant by registered mail at least 10 days before the date of the hearing; and

C. Provide notice of the hearing at least 10 days before the date of the hearing by regular mail to persons who have filed with the commissioner within the past year a written request to receive notification of hearings.

1977, c.300, §9; 1977, c.694, §756.

3. **Contents of notice.** The public notice and notice of hearing to applicant and others shall contain:

A. A reference to the statutory authority for conduct of the hearing;

B. A statement of the purpose of the hearing, including, for hearings involving the adoption, repeal or modification of a regulation, a concise description of the regulation proposed;

C. A statement of the time, date and place of the hearing and the manner in which views may be submitted for consideration by the board; and

D. A statement of the place, time and where relevant material may be examined, and the name, address and telephone number of the person from whom further information may be obtained.

4. **Fees.** The Commissioner of Environmental Protection may establish fees which recover the expenses entailed in providing notice to interested persons required by this section or reproducing all or any part of the record of any hearings for the applicant or interested persons.

5. **Record.** A full and complete record shall be kept of all hearings.

6. **Written decisions.** Every decision of the board, other than those concerning the adoption, repeal or modification of regulations, shall be in writing and shall include findings of fact and conclusions of law. A copy of the decisions shall be delivered personally or by certified mail, return receipt requested, to each party of record to the hearing as recognized by department hearing regulations. Written notice of the party's rights to review or appeal of the decision, within the agency or by the courts, as the case may be, and of the action required and the time within which the action must be taken in order to exercise the right of review or appeal, shall be given to each such party with the decision.

1977, c.300, §9; 1977, c.694, §757.

§346. Judicial appeals

1. Except as provided in section 347, subsection 2, any person aggrieved by any order or decision of the board resulting from a hearing before the board of which a transcript is available may appeal therefrom to the Superior Court by filing a notice of appeal with the court stating the points of appeal within 30 days after receipt of such order or decision by the person or other legal entity to whom it is directed. The appellant shall send a copy of the notice of appeal to the applicant or licensee. The appeal shall be heard by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcript of the hearing, the exhibits thereto and the decision of the board. The court's review shall be limited to questions of law and to whether the board acted regularly and within the scope of its authority and the board's decision shall be final so long as supported by substantial evidence. The court may affirm or reverse the board's decision or remand the matter to the board for further proceedings.

1977, c.300, §9; 1977, c.694, §758.

2. Repealed 1977, c.694, §759.

2-A. **Appeal to Supreme Judicial Court.** Any party to the appeal in the Superior Court under this section may obtain review by appeal to the Supreme Judicial Court sitting as the law court. The appeal shall be taken as in other civil cases.

1977, c.696, §342.

3. **Limitation.** No riparian or littoral owner on any body of water shall have a cause of action either at law or in equity against any licensee licensed under section 414 to discharge into the same body of water nor be deemed an aggrieved person under this section based on the fact that such licensee is not a riparian or littoral owner on such body of water. No such owner shall have a cause of action either at law or in equity against such licensed discharge will prevent the owner from having the reasonable use and enjoyment of such body of water, provided that such licensed discharge will not either of itself or in combination with existing discharges to the body of water lower the statutory classification of such body of water, nor cause actual damages to such owner.
1977, c.300, §9.

§347. Violations

1. **General procedures.** Whenever it appears to the Board of Environmental Protection, after investigation, that there is a violation of any provisions of the laws or regulations which it administers, or of the terms or conditions of any of its orders, which does not create a substantial or immediate danger to public health or safety, the board may notify the Attorney General or schedule a hearing thereon. If a hearing is scheduled, the commissioner shall give at least 30 days' written notice to the alleged violator of the date, time and place of that hearing. The notice shall specify the act done or omitted to be done which is claimed to be in violation of law.

Any hearing conducted under the authority of this section shall be in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375.

At the hearing, the alleged violator may appear in person or by attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by him to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation.

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the board shall, as soon thereafter as practicable, make findings of fact based on the record and, if it finds that a violation exists, it shall issue an order aimed at ending the violation.
1983, c.566, §7.

2. **Emergency procedures.** Whenever it appears to the board, after investigation, that there is a violation of any provision of the laws or regulations which it administers or of the terms or conditions of any of its orders, which is creating or is likely to create a substantial and immediate danger to public health and safety, it may order the person or persons causing or contributing to such a hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the board's findings and order issued under this emergency procedure shall be made by the sheriff or a deputy sheriff within the county where the person, to whom the order is directed, operates or resides. In the event such persons are so numerous that the specified method of service is a practical impossibility or the board is unable to identify the person or persons causing or contributing to such a hazard, the board shall make its order known through prominent publication in news media serving the affected area.

The person to whom such order is directed shall comply therewith immediately. Such order may not be appealed to the Superior Court in the manner provided in section 346, but such person may apply to the board for the hearing on such order, which hearing shall be held by the board within 48 hours after receipt of application therefor. Within 7 days after such hearing, the board shall make findings of fact and continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in the manner provided by section 346.

3. **Revocation, modification or suspension of licenses.** After written notice and opportunity for a hearing, the board may modify in whole or in part any license or issue an order prescribing necessary corrective action, or, with or without a hearing, may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the board finds:
1977, c.300, §9; c. 760; 1979, c.443, §1.

A. The licensee has violated any condition of the license;

B. The licensee has obtained a license by misrepresentation or failure to disclose fully all relevant facts;
1977, c.300, §9.

B-1. The licensed discharge poses a threat to human health and welfare;

B-2. The license failes to include any standard or limitation applicable on the date of issuance;
1979, c.443, §2.

C. There has been a change in any condition or circumstances that requires revocation, suspension or a temporary or permanent modification of the terms of the license; or
D. The licensee has violated any provision of the laws administered by the board.

For the purpose of this subsection, the term "license" and "licensee" shall include respectively any license, permit, approval or certification issued by the board and the holder thereof.

5. **Subpoenas.** The board may issue subpoenas to compel the production of books, records and other data related to the matters in issue at any such hearing. If any person served with a subpoena demonstrates to the satisfaction of the board that the production of such information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, such information shall be disclosed only at a nonpublic portion of such hearing and shall be confidential and not available for public inspection. If any person fails or refuses to obey such a subpoena, the board may apply to any Justice of the Superior Court for an order compelling such person to comply with the subpoena. The Superior Court may issue such an order and may punish failure to obey the same as civil contempt.

6. **Enforcement orders.** All orders of the board shall be enforced by the Attorney General. If any order of the board is not complied with within the time period specified, the board shall immediately notify the Attorney General of this fact.
1977, c.300, §9.

§348. Judicial enforcement

1. **General.** In theevent of a violation of any provision of the laws administered by the Department of Environmental Protection or of any order, regulation license, permit, approval or decision of the Board of Environmental Protection or decree of the court, as the case may be, the Attorney General may institute injunction proceedings to enjoin any further violation thereof, a civil or criminal action or any apppropriate combination thereof without recourse to any other provision of law administered by the Department of Environmental Protection.

2. **Restoration.** The court may order restoration of any area affected by any action or inaction found to be in violation of any provision of the law administered by the Department of Environmental Protection or decree of the court, as the case may be, to its condition prior to the violation or as need thereto as may be possible.

3. **Injunction proceedings.** If the board finds that the discharge, emission or deposit of any materials into any waters, air or land of this State constitutes a substantial and immediate danger of the health, safety or general welfare of any person, persons or property they shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge. The injunction proceedings may be instituted without recourse to the issuance of an order, as provided for in section 347.
1977, c.300 §9.

§349. Penalties

1. **Criminal penalties.** Notwithstanding Title 17-A, section 4-A and except as provided in subsection 4, any person who violates any provision of the laws administered by the Department of Environmental Protection, or the terms or conditions of any order, regulation, license, permit, approval or decision of the Board of Environmental Protection shall be subject to a fine, payable to the State, of not more than $25,000 for each day of such violation.
1977, c.300, §9 and c.510, §89.

2. **Civil penalties.** Any person who violates any provision of the laws administered by the Department of Environmental Protection, or any order, regulation, license, permit, approval or decision of the Board of Environmental Protection shall be subject to a civil penalty, payable to the State, of not more than $10,000 for each day of such violation.

3. **Falsification and tampering.** Notwithstanding Title 17-A, section 4-A, any person who knowingly makes any false statement, representation or certification in any application, record, report, plain or other document filed or required to be maintained by any provision of decision of the board, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any rule, regulation, license, permit, approval or decision of the board shall, upon conviction, be subject to a fine of not more than $10,000, or by imprisonment for not more than 6 months, or both.
1977, c.300, §9 and c.510 §90.

4. **Violations.** Any person who violates any of the following provisions shall be guilty of a Class E crime for each day of that violation:

A. Section 419; (high phosphorous detergent);

B. Section 391 or regulations under section 394 (Great Ponds);

C. Section 423; (Discharge from watercraft);

D. Section 471; (Alteration of wetlands and sand dunes);

E. Section 1306; (Waste facility);

G. Title 12, section 4757; (Regulations for state-held wetlands);

H. Title 12, chapter 421 and orders thereunder; (Wetlands zoning); and

I. Title 12, chapter 423-A and regulations thereunder (Minimum lot size).
1977, c.300, §9; 1977, c.510, §91; 1979, c.127, §207; 1983, c.566, §9.

SOME DETAILS ABOUT THE LAW

Who Should Apply?

Anyone who intends to remove, fill, dredge, drain or alter a wetland should apply. The law applies to state agencies, private companies, and municipalities, as well as to individuals.

Who Administers the Law?

The Board of Environmental Protection administers the law. If the wetland lies in the unorganized territory, the Land Use Regulation Commission must approve. If the wetland is in more than one town, municipal officers of both must approve.

Where Do I Get an Application?

Applications can be obtained by writing the Department of Environmental Protection, State House Station 17, Augusta, Maine 04333 or by calling 1-800-452-1942.

When should an Application be Filed?

Anyone proposing to alter a wetland must file a written application and a copy of his proposed plans well in advance of the date on which the alteration is to begin. Processing of applications may require up to 105 days. This must be sent to the Department of Environmental Protection **and** the municipal officers of the town in which the wetland is located (or the County Commissioners if in an unorganized territory).

Is a Public Hearing Required?

No. The board may decide to hold a hearing if the proposed activity would have substantial impact on the area, or if the proposed activity has generated substantial public concern.

How Soon will a Decision be Reached?

The Board of Environmental Protection acts on applications as quickly as possible. The procedure may take up to 105 days. In some cases, the board may order a public hearing on the issue, thereby delaying the entire process by as much time as is reasonably required to hold and prepare a record of the proceedings.

If winter conditions prevent evaluation of the project, the board may postpone the proceedings for a reasonable period of time. The board may approve, approve conditionally or deny a permit.

How Long Does a Permit Last?

All permits expire 2 years from the date of issue.

What are some Reasons that a Permit might be Denied?

Requests to alter wetlands may be denied for a number of reasons. See Sec. 474.1, Permits; standards. Page 22.

The Board of Environmental Protection operates under the presumption that all seawalls and similar structures built on a sand beach will cause unreasonable soil erosion, interfere with the natural flow of waters, and interfere with existing recreational and navigational uses. An applicant must overcome this presumption and demonstrate that his project is unique in some way before it will be approved. See Regulation Chapter 342.1, page 36.

Are there Exemptions from the Law?

There is an exemption clause in the Wetland Law. See Regulations, Chapter 341, Exemptions and waivers under Section 478 of the Alteration of Coastal Wetlands Law. Page 35.

Who Enforces This Law?

The law is administered by the Department of Environmental Protection. It is enforced by Marine Patrol Officers and Inland Fish and Wildlife wardens, as well as all other law enforcement officials in the state.

What Happens if there is a Violation?

The law is very specific about violations, which are defined as any alteration without a permit, or any alteration contrary to the provisions of a conditional permit. The fact that the filling, dredging or other alteration exists is considered evidence that it was done or caused to be done by the owner. Under the law it is not necessary to witness this action or to determine the intent of the owner in altering the wetland. The fact that he was not aware of the Wetlands Law is not considered reason to exempt him from prosecution.

Fines are provided for. See Administrative Procedures, Title 38, Chapter 2, Sec. 349. Page **29**

State of Maine
Department of Environmental Protection
State House Station 17, Augusta, Maine 04333

WETLANDS REGULATIONS
ADOPTED PURSUANT TO SECTION 343
Effective November 1979

REGULATION

CHAPTER 340 **Definitions of terms used in the Alteration of Coastal Wetlands law and regulations.**

Sec. 1 Definitions

The following terms, as used in the Alteration of Coastal Wetlands Law (38 M.R.S.A. § 471 *et seq.*) and in these regulations (Chapter 340-347) shall have the following meaning, unless the context otherwise indicates:

A. **Board.** "Board" means the Board of Environmental Protection.

B. **Coastal Bank.** "Coastal bank" means the seaward face or side of any elevated land form, other than a dune, which lies at the landward edge of a coastal beach, land subject to tidal action, or other wetland area.

C. **Coastal Beach.** "Coastal beach" means the gently sloping shore of a body of tidal water consisting of unconsolidated sediment subject to wave, tidal, and coastal storm action.

D. **Coastal Wetlands Law.** "Coastal Wetlands Law" means the Alteration of Coastal Wetlands Law, 38 M.R.S.A. § 471 *et seq.*

E. **Department.** "Department" means the Department of Environmental Protection.

F. **Drain.** "Drain" means to rid or attempt to rid land of surface water by deepening, straightening, or embanking the natural water courses which run through it and by supplementing natural water courses, when necessary, with artificial ditches and canals.

G. **Dredge.** "Dredge" means to move or remove, by digging or scooping, sand, silt, mud, gravel, rock, or any other substance.

H. **Fill.** "Fill" means to put into or upon, supply to, or allow to enter a coastal wetland any earth, rock, gravel, sand, clay, peat, trash, garbage, sewage, or any other material of either a solid or liquid nature.

I. **Permanent Structure.** "Permanent structure," as used in 38 M.R.S.A. §§ 471 and 478, shall not include:

1. Floating structures located in coastal wetlands less than 7 months a year, such as rafts, houseboats, or other floating structures attached to the land solely by lines or removable runways.

2. Temporary structures intended for seasonal use and in place less than 7 months per year, such as tents, removable blinds, or ice houses.

NOTE: **"Permanent structure" shall include permanent fixtures or alterations, such as piers or cement slabs, intended to support, attach to, or provide access to floating or temporary structures.**

J. **Productivity.** "Productivity" means the rate of biomass production over a specified period of time. Biomass includes the amount of living plant and animal matter present and is usually expressed as the number or weight per unit area or volume of habitat.

K. **Staff.** "Staff" means the Staff of the Department of Environmental Protection.

L. **Vegetation ... tolerant of salt water ....** "Vegetation present that is tolerant of salt water and occurs primarily in a salt water habitat," as used in 38 M.R.S.A. § 472, means the following types of vegetation:

Scientific Name	*Common Name*
Low Salt Marsh	
Ruppia maritima	Ditch grass
Spartina alterniflora	Salt marsh cord grass
Zostera marina	Eel grass

High Salt Marsh and Transition Area between High Salt Marsh and Freshwater

Antriplex patula v. hastata	Orach
Carex mackenziei	Sedge
C. paleacea	Salt marsh sedge
C. salina	Sedge
Distichlis spicata	Spikegrass
Eleocharis halophila	Spikerush
Glaux maritima	Sea milkwort
Juncus gerardii	Black grass
Ligusticum scothicum	Scotch lovage
Limonium carolinianum	Sea lavender
L. nashii	Sea lavender
Plantago juncoides	Seaside plaintain
Potentilla anserina	Silverweed
Puccinellia maritima	Alkali grass
P. paupercula	Goose grass
Salicornia bigelovii	Glasswort
S. europaea	Glasswort
Scripus maritimus	Salt marsh bullrush
S. paludosus v. atlanticus	Bayonet grass
Solidago sempervirens	Seaside goldenrod
Spartina patens	Salt meadow hay
Sueda maritima	Sea blite
Triglochin maritima	Arrow grass

NOTE: All scientific names are taken from *Gray's Manual of Botany*, 8th Edition.

REGULATION

CHAPTER 341 Exemptions and waivers under section 478 of the Alteration of Coastal Wetlands Law.

1 Activities Exemp from the permit Requirement

In addition to those activities specified under 38 M.R.S.A. § 478, the following activities are exempt from the requirement of the Coastal Wetlands Law.

A. The contruction and operation of fish weirs, provided proper practices with regard to navigational safety are followed. Fish weirs must be designed and constructed in a manner which allows water to flow through the weir and circulate normally.

B. The placement and use of boat moorings below the mean low tide line provided that proper practices with regard to navigational safety are followed. Such boat moorings shall include any type of bottom anchoring device to which is attached a line cable or chain, with a float on the surface, used only for mooring boats of less than sixty-five feet.

C. The dumping of snow and attendant material from normal snow clean-up operations directly into a tidal area in a manner which does not cause physical alteration to the wetlands area. This exemption shall terminate on June 30, 1984.

1. Normal snow clean-ups include the removal of snow from roads, parking areas or other travelled ways, but does not include the removal of snow known to be contaminated with solid waste, commercial or industrial wastes, or hazardous wastes.

D. The repair and/or replacement of structures in coastal wetlands areas provided that:

1. The structures were in existence and in active use within the one-year period preceding their repair or replacement;

2. The repair or replacement does not result in an encroachment into the wetland area greater than that of the previously existing structure;

3. The repair or replacement does not result in a structure significantly different from that of the previously existing structure;

4. All repairs will be completed within one year of the date of the occurrence of the damage; and

5. All repair will be completed within 60 days of their commencement.

NOTE. 38 M.R.S.A. § 478 states in part: **"Nothing in this subchapter shall prohibit the minor repair of existing permanent structures which would require less than a total of one cubic yard of material to be filled, deposited, dredged, moved or removed in any coastal wetland or normal maintenance or repair of presently existing ways, roads or railroad beds nor maintenance and repair of installations of facilities of any utility as defined in Title 23, section 255, abutting or crossing said coastal wetlands, provided no watercourse is substantially altered."**

2 Activities for which procedural requirements may be waived

A. Sewage treatment procedural requirements:

1. The Board waives the procedural requirements, as authorized by 38 M.R.S.A. § 478, for the following activities:

a. The deposit of treated sanitary sewage.

b. The construction of a sewage outfall line from a single family residence where the property owner holds a valid sanitary wastewater discharge license, issued by the Board pursuant to 38 M.R.S.A. §§ 413 and 414A, meets the standards of best practical treatment pursuant to 38 M.R.S.A. § 414A, and has made adequate provision for the restoration of wetland areas altered during the construction of the outfall line.

2. The following procedural requirements shall replace those specified in 38 M.R.S.A. § 474 and in applicable regulations:

a. A person desiring to engage in wetlands activities described in Paragraph 1 shall, prior to engaging in the activity:

i. Write a letter to the Commissioner of the Department fully describing the proposed activity; or

ii. Submit a description of the proposed activity as part of a waste discharge license application pursuant to 38 M.R.S.A. § 413 *et seq.*

b. If a person receives a written response from the Department stating that the proposed activity falls within the activities described in Paragraph 1 above and the plans for undertaking the activity are acceptable to the Department, the proposed activity may be undertaken, subject to the Standard Conditions which accompany the granting of a permit.

c. If a person receives a response from the Department indicating that the proposed activity does not fall within the activities described in Paragraph 1 above or the plans for undertaking the activity are not acceptable to the Department, the normal application procedure specified by statute should be followed.

d. Any variation from the plans, proposals and supporting documents presented under Paragraph 1a is subject to review of and approval by the Board prior to implementation.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted the 8th day of August, 1979.

REGULATION

CHAPTER 342 General policies and procedures under the Coastal Wetlands Law

1 Rebuttable presumption against seawalls

The Board operates under the rebuttable presumption that all seawalls and similar structures built on or adjacent to a sand beach inherently cause unreasonable soil erosion, unreasonably interfere with the natural flow of waters, and unreasonably interfere with existing recreational and navigational uses. An applicant for a permit to build a new seawall or similar structure on or adjacent to a sand beach must overcome this presumption by persuasive evidence that the proposal is unique in some way that allows fulfillment of the criteria set forth in 38 M.R.S.A. § 474.

NOTE: The presumption against seawalls is based on the Board's review of numerous applications for ocean seawalls. That review consisted of examination of plans, extensive hearings, and receipt of substantial information and expert opinions on the effect of seawalls on sand beaches and adjacent natural resources or man-made structures. As a result of this review, the Board concludes that seawalls or similar structures placed on or adjacent to sand beaches:

- **Cause a physical obstruction in the inter-tidal zone, which obstructs public rights in that zone;**
- **Cause the loss of sand and changes to the slope of the beach in front of the seawall;**
- **When deteriorating, create a likelihood of rubble or debris being scattered across the shore;**
- **Significantly modify normal patterns of water movement; and**
- **Cause erosion or accretion of sand.**

2 Review of projects partially located within Coastal Wetlands

When an activity falling within the scope of the Coastal Wetlands Law is part of a larger project, the Board shall review the entire project and grant a Coastal Wetlands permit only when it finds that all the standards of the Coastal Wetlands Law have been met. Noncompliance with the statute can result from improperly conducted activities taking place adjacent to a coastal wetland as well as those taking place within the coastal wetland.

3 Scope of review

In reviewing applications for permits under the Coastal Wetlands Law, the Board shall consider the location and nature of the proposed activity in relation to the primary, secondary and cumulative impacts on the areas of concern articulated in the standards for granting permits in 38 M.R.S.A. § 474 as interpreted by these regulations.

4 Nature of terms and conditions

As specified in § 474 of the Coastal Wetlands Law, the Board may place terms and conditions on the granting of a permit for a proposed activity. However, terms and conditions shall address themselves to specifying particular means of satisfying minor or easily corrected problems, or both, relating to compliance with the Coastal Wetlands Law and shall not substitute for or reduce the burden of proof of the applicant to provide substantial evidence that each of the standards of the law has been met.

5 Completeness of application

If, in the opinion of the Staff, an application for a permit under the Coastal Wetlands Law is incomplete, the application may be returned to the applicant with an indication of the information which needs to be supplied; and, no further processing shall occur until the application is determined to be complete. The statutory time period within which the Board must act on an application under 38 M.R.S.A. § 474 shall not begin until the application is determined to be complete by the Staff.

6 Requirement of additional information

In reviewing applications for permits for activities under the Coastal Wetlands Law, the Board or Staff may require additional information from the applicant on any aspect of the proposed activity relating to compliance with the standards of 38 M.R.S.A. § 474.

7 **Advisory rulings**

All requests for advisory rulings on the applicability of the Coastal Wetlands Law to particular situations or on other matters shall be based on existent facts and not hypothetical situations. Such requests shall be made in writing and addressed to the Division of Licensing and Review, Bureau of Land Quality Control, Department of Environmental Protection, State House Station 17, Augusta, Maine 04333. Issuance of advisory rulings is discretionary with the Department on a case-by-case basis.

8 **Access to the site**

The filing of an application for a permit constitutes the granting of permission by the applicant to allow authorized application reviewers access to the site of the proposed activity in order to evaluate whether or not the proposed activity will meet the standards, as stated in 38 M.R.S.A. § 474.

9 **Permits not contingent upon other approvals**

The granting of a permit under the Coastal Wetlands Law is not contingent upon the applicant having obtained, prior to filing, other appropriate federal, state, or municipal approvals, licenses, permits, etc.

NOTE: Standard conditions of approval require such permits prior to commencing construction.

10 **Title, right or interest**

The Department will consider an application for a permit only when an applicant has demonstrated sufficient title, right or interest in all of the property on which the proposed activity will be undertaken. An applicant shall demonstrate in writing sufficient title, right or interest as follows:

A. When the applicant claims ownership of the property, copies of the deed to the property shall be supplied.

B. When the applicant has an option to buy the property, a copy of the option agreement shall be supplied. Option agreements shall contain terms deemed sufficient by the Board to establish future title.

C. When the applicant has a lease on the property, a copy of the lease shall be supplied. The lease shall be of sufficient duration, as determined by the Board, to permit construction and reasonable use of the development.

D. When the applicant has eminent domain power over the property, evidence shall be supplied of the ability and intent to use the eminent domain power to acquire sufficient title, right or interest as determined by the Board.

NOTE: The construction of permanent structures and dredging and filling of submerged lands require the issuance of a lease or easement from the Bureau of Public Lands, Department of Conservation. Applications for coastal wetlands permits are forwarded to the Bureau by the Department of Environmental Protection. The Bureau normally issues a lease or easement on the basis of the wetlands permit application and a copy of the lease or easement is forwarded to the applicant upon the granting of a coastal wetlands permit.

11 **Performance bonds**

The Board may require an applicant to post a performance bond to ensure that the approved activity will be undertaken and completed in a manner consistent with approved plans and in compliance with the standards of the Coastal Wetlands Law.

12 **Standard conditions of permits**

The following standard conditions shall apply to all permits granted under the Coastal Wetlands Law, unless otherwise specifically stated in the permit:

A. **Approval of variations from plans.** The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals and supporting documents is subject to review and approval prior to implementation.

B. **Compliance with all applicable laws.** The applicant shall secure and comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.

C. **Compliance with all permit terms and conditions.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all terms and conditions of this permit. All preconstruction terms and conditions must be met before construction begins.

D. **Initiation of activity within two years.** If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the activity was not begun within two years from the granting of the initial permit and the reasons why the applicant will be able to begin the activity within two years from the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.

E. **Reexamination after five years.** If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.

F. **No construction equipment below high water.** No construction equipment being used in the undertaking of an approved activity is allowed below the mean high water line.

G. **Permit included in contract bids.** A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.

H. **Permit shown to contractor.** Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

13 Severability

Should any provision of these regulations be declared invalid or ineffective by court decision, the decision shall not invalidate any other provision of these regulations.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted the 8th day of August, 1979.

REGULATION

CHAPTER 343 Interference with recreational and navigational uses standard of the Coastal Wetlands Law

1 Interference with recreational and navigational uses

A. **Scope of review.** In determining whether there is substantial evidence that a proposed activity will not unreasonably interfere with existing recreational and navigational uses, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. The proposed activity will not unreasonably interfere with established public rights of access to and use of coastal wetlands.

2. The proposed activity will not unreasonably interfere with access to and use of public recreational facilities, both in operation and planned.

3. The proposed activity will not be located in a way which unreasonably interferes with a navigable channel nor eliminate a large water area from small craft navigation.

4. The proposed activity will not unreasonably cause nor contribute to sedimentation problems in adjacent or nearby navigational channels or anchorages.

5. The height, width, and placement of structure will be restricted to the fullest extent practicable.

6. Pile-supported construction rather than crib-type or solid fill construction will be utilized to the fullest extent practicable.

B. **Terms and conditions.** The Board may, as a term or condition of a permit, establish any reasonable requirement to ensure that the proposed activity will not unreasonably interfere with existing recreational and navigational uses, such as requiring that:

1. The location of submarine cables be clearly marked.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted the 8th day of August, 1979.

REGULATION

CHAPTER 344 Soil erosion standard of the Coastal Wetlands Law

1 Soil erosion

A. **Scope of review.** In determining whether there is substantial evidence that a proposed activity will not cause unreasonably soil erosion, either during the undertaking of the activity or after its completion, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. Temporary and permanent erosion control measures will be utilized on the project site both during and after construction. A detailing of erosion control measures will include, when appropriate, such information as

a. The size, location, source, placement, and shape of any fill, rip rap, granite blocks, or other construction material to be used within the proposed project.

b. Plans, including a time schedule, for the fertilization, liming, seeding, and mulching of all disturbed areas.

2. The proposed activity will not cause unreasonable changes in current patterns or water velocity which result in changes in erosion patterns.

3. The proposed activity will not unreasonably affect the volume, distribution of sediment size, relief and elevation of coastal beaches.

4. With respect to coastal banks, the proposed activity will not unreasonably affect:

a. The stability of the bank;

b. The supply of sediment from the bank to coastal beaches or other land subject to tidal action; or

c. The storm damage or flood control function of the bank.

5. Any permanent structure constructed generally protruding from the shoreline will:

a. Not significantly interfere with natural shore processes;

b. Not cause unreasonable erosion of adjacent or downdrift areas of coastal beaches, banks, land under the ocean, or other coastal wetlands;

c. Be no greater in size than length, width, and height necessary to accomplish its intended function; and

d. Include provision for the transfer of sediment to downdrift areas, if necessary to prevent those areas from being deprived of sediment.

6. Plans for channel dredging will be designed to avoid unreasonable siltation at the point where the dredged channel joins with the natural channel.

B. **Terms and conditions.** The Board may, as a term or condition of a permit, establish any reasonable requirement to ensure that the proposed activity will not cause unreasonable soil erosion, such as requiring:

1. Provision for surface water diversion during construction.

2. Preservation of natural beach areas, including but not limited to:

a. Restricting the use of machinery on the beach; or

b. Limiting or restricting the placement or removal of foreign materials on the beach.

3. Protective planting on coastal banks to reduce erosion.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted the 8th day of August, 1979.

NOTE: THE FOLLOWING GUIDELINES ADDRESS THE ESTABLISHMENT OF VEGETATIVE COVER ON DISTURBED OR FILL SOILS WHICH ARE PART OF AN OVERALL PROJECT REQUIRING AN ALTERATION OF COASTAL WETLANDS PERMIT. THESE GUIDELINES ARE DESIGNED TO PREVENT EXPOSED UPLAND MINERAL SOIL FROM BEING ERODED INTO THE WETLAND AREA.

A. Fill shall not be placed below the normal maximum high water mark which means the line which is apparent from visible markings of any identifiable debris left by the maximum peak of the highest tide reached that year.

B. The area shall be graded on a 2:1 slope or flatter and lightly raked to prepare the surface for seeding. Seeding shall be done within 24 hours after the placement of the fill or disturbance of the native soils.

C. The area to be seeded must be limed at a rate of 1 pound per 10 square feet.

D. Fertilization, if required, shall be done with no more than a 10-20-20 fertilizer or its equivalent, at a rate of 10 pounds per 425 square feet. This rate should not be exceeded because it is adequate and more fertilizer may add unnecessary nutrients to the wetland area.

NOTE: CONTACT YOUR LOCAL SOIL CONSERVATION SERVICE FOR ASSISTANCE.

E. Grass shall be a standard conservation mix of 65% by weight of Tall Fescue, 25% Red Fescue, 8% Red Top and 4% White Dutch Clover. It shall be applied at a rate of about 1 pound per 1,000 square feet. These grasses should not be mowed closer than 2½-3 inches. Equivalent seed mixtures approved by the DEP or the Soil Conservation Service (SCS) may be used. This may include other forms of vegetation which are similar to those in the immediate area around the project.

F. Mulch such as hay or straw shall be applied after seeding at a rate of 1 bale per 500 square feet immediately after seeding, liming, and fertilization to protect the area from erosion.

G. Mulch such as hay or straw shall be applied after seeding at a rate of 1 bale per 500 square feet. After September 15th the mulch rate shall be doubled and the area shall be staked and twined so as not to move from the placement areas.

REGULATION

CHAPTER 345 **Interference with natural flow of waters standard of the Coastal Wetlands Law**

1 **Interference with the natural flow of any waters**

A. **Scope of review.** In determining whether there is substantial evidence that a proposed activity will not unreasonably interfere with the natural flow of any waters, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. There will be no unreasonable interference with nor unreasonable alteration of existing water circulation patterns such as tidal flow, current and wave characteristics, including storm wave overwash or flooding which is essential to the long-term maintenance of active beach systems.

2. The flow of fresh water to any coastal wetland area will not be unreasonably affected.

3. Water stagnancy will be neither caused nor contributed to, and the ability of adjacent water bodies to flush themselves will not be unreasonably reduced.

a. Culverts of sufficient size, placed at the proper elevation, will be installed, where necessary, and maintained.

4. The flood control function of coastal wetlands will not be unreasonably affected.

5. Pile-supported construction rather than crib-type or solid fill construction will be utilized to the fullest extent practicable.

B. **Terms and conditions.** The Board may, as a term or condition of a permit, establish any reasonable requirement to ensure that the proposed activity will not unreasonably interfere with the natural flow of any waters, such as requiring that:

1. Rip-rap, stones or granite blocks be installed to facilitate water movement.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted the 8th day of August, 1979.

REGULATION

CHAPTER 346 **Harm to wildlife and fisheries standard of the Coastal Wetlands Law**

1 **Harm to wildlife or freshwater, estuarine or marine fisheries**

A. **Scope of review.** In determining whether there is substantial evidence that a proposed activity will not unreasonably harm wildlife or freshwater, estuarine or marine fisheries, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. Salt marshes and other critical habitat areas, such as habitat of rare and endangered wildlife and fish species, will not be destroyed, filled, or otherwise unreasonably affected.

2. The existing productivity of any coastal wetlands will not be unreasonably affected.

3. Native wildlife species populations will not be unreasonably affected.

4. Erosion from the proposed activity will not result in the formation of deposits unreasonably harmful to any fisheries habitat.

5. Evidence that shellfish beds will not be unreasonably affected. In determining unreasonable effects upon shellfish beds, the Board may consider any or all of the following:

a. The quality of the water flowing over shellfish beds, including dissolved oxygen, nutrients, temperature, and turbidity;

b. Water circulation and depth patterns around and over shellfish beds;

c. Natural relief of areas containing shellfish; and/or

d. Size and distribution of sediment in areas containing shellfish.

6. The timing of construction activities takes into consideration the movements and lifestages of fish, shellfish, and wildlife.

B. **Terms and conditions.** The Board may, as a term or condition of a permit, establish any reasonable requirement to ensure that the proposed activity will not unreasonably harm wildlife or freshwater, estuarine, or marine fisheries, such as requiring that:

1. Construction activities be timed to avoid periods of seasonal fish runs.

2. Construction activities be times to avoid bird nesting seasons.

3. Shellfish beds be protected by routinely maintaining a culvert to insure that debris is removed, thereby preventing any unnatural impoundment of water above the culvert.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted the 8th day of August, 1979.

REGULATION

CHAPTER 347 Lowering of water quality standard of the Coastal Wetlands Law

1 Lowering the quality of any waters

A. **Scope of review.** In determining whether there is substantial evidence that a proposed activity will not lower the quality of any waters, the Board shall consider all relevant evidence to that effect, such as evidence that:

1. Sedimentation from the proposed activity will not unreasonably lower water quality.

2. The existing levels of dissolved oxygen, temperature, salinity, biochemical oxygen demand, and nutrients will not be unreasonably affected.

3. The classification of any waters will not be lowered.

4. All appropriate licenses and permits related to water quality, including a waste discharge license, have been or will be obtained.

B. **Terms and conditions.** The Board may, as a term or condition of a permit, establish any reasonable requirement to ensure that the proposed activity will not lower the quality of waters, such as requiring that:

1. A bottom sediment analysis be submitted to insure that dredged material is not contaminated.

2. The composition of fill be limited to specified materials.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted the 8th day of August, 1979.

REGULATION

CHAPTER 355 COASTAL SAND DUNE RULES

SUMMERY

These rules clarify the criteria for obtaining a permit under Maine's Sand Dune Law (38 M.R.S.A., Sections 471-478). The rules outline classes of projects which are exempted from the requirement of obtaining a permit. For all other projects, the rules outline standards which projects must meet in order to satisfy the statutory criteria. The rules also contain a definitions section, and a section which provides general information on the processing of sand dune applications.

Section 1 Exemptions

The following activities do not require a permit under the sand dune law:

A. Construction of temporary structures.

B. Construction of walkways and paths across lawns or areas filled with non-sandy material.

C. Maintenance and Repair:
In order to qualify for a maintenance and repair exemption, the structure must have been in existence and in use within the one year period preceding the maintenance or repair. All maintenance and repair work must be completed within one year from the time the damage occurred. The maintenance and repair must not result in an encroachment or impact on the sand dune system greater than that caused by the previously existing structure. The repaired structure must not be significantly different from the one which previously existed. Maintenance and repair exemptions apply only to the following projects:

1. Septic systems, walkways, paths, roads, driveways, and parking areas;

2. Buildings. This exemption shall not apply to buildings damaged by an ocean storm, if the damage exceeds 50% of the building's appraised value;

   NOTE: If storm damage exceeds 50% of the building's appraised value, you must get a permit before you can rebuild.

3. Seawalls, if the work is done entirely with hand tools and the dimensions of the seawall are not increased. This exemption shall not apply when the building behind the seawall is severely damaged by an ocean storm, and the damage exceeds 50% of the building's appraised value.

   NOTE: If the repair cannot be done with hand tools, or if the building behind the wall has been severely damaged by a storm, you must get a permit before you can repair the wall.

4. Fences. This exemption shall not apply to any closed fence in an A-zone or V-zone which is damaged by an ocean storm.

   NOTE: A stockade fence is an example of a closed fence. See definition of "closed fence."

D. Movement of sand on the beach face, provided that the work is done manually and the sand is not removed from the sand dune system.

E. Removal of debris from the beach face, provided that little or no sand is removed with the debris.

F. Removal of sand from lawns, walkways, roads, driveways, parking areas, and buildings, provided the sand is placed back into the sand dune system without disturbing beach vegetation. Sand placed on the beach shall be spread out to no greater than 3 inches above the existing beach grade.

Permits are required for all other projects.

Section 2 Standards

Activities in a sand dune system must meet the minimum standards set out in the following paragraphs. The Commissioner or the Board may, as a term or condition of a permit, establish additional reasonable requirements to ensure that the proposed activity will meet the statutory criteria which are found in 38 M.R.S.A. Section 474, subsection 2. The Commissioner or the Board may deny a permit if the proposed activity will not meet the statutory criteria.

The following standards were designed to meet these criteria in most cases. Each component of a project must meet all the applicable standards.

A. All projects

NOTE: The term "projects" as used in these rules refers to any activity which falls under the jurisdiction of the sand dune law. This section, "all projects," applies to all activities which require a permit, including those projects which have additional standards set out below.

1. Projects shall have a minimal impact on the immediate site and on the sand dune system. Impacts which may reasonably be expected to occur during the following 100 years will be considered. In areas where substantial portions of the dune system remain unaltered, special attention will be paid to the cumulative impacts of activities on the dune system.

2. Projects shall not be permitted if, within 100 years, the project may reasonably be expected to be damaged as a result of changes in the shoreline.

   NOTE: Some areas, such as spit ends of beaches, are historically unstable. Shorelines can fluctuate rapidly, alternately eroding and rebuilding within a few yeaers. If you need information about a specific area, contact the nearest regional office of the Department.

3. Projects shall not cause a flood hazard to any structure during a 100 year flood or storm.

   NOTE: A 100 year flood or storm is the flood or storm that has a 1• chance of occurring during any given year. See subsection 4 of these rules for a definition of "flood hazard."

4. Shore bird nesting or breeding areas or activities shall not be unreasonably disturbed by any project activities. Shore bird nesting or breeding areas shall be adequately buffered from subsequent human activities associated with the use of any project. Buffer requirements will be based upon the best available data.

   NOTE: Shore birds include, but are not limited to, least terns and piping plovers. The Maine Audubon Society is a good source of information on the nesting and breeding activities of these birds.

5. Projects shall not interfere with legal access to or use of the public resources.

6. Disturbed areas of beach grass shall be revegetated with beach grass as quickly as possible.

NOTE: In most cases, projects which meet these standards will have satisfied the following statutory criteria:

1. Will not unreasonably interfere with existing recreational or wildlife uses (standards 4, 5);

2. Will not unreasonably interfere with the natural supply or movement of sand (1);

3. *Will not cause unreasonable erosion (1,6); or*

4. *Will not cause an unreasonable flood hazard (2, 3);*

B. Buildings and Additions to Buildings

1. No new building or addition shall be constructed in a V-zone.

   NOTE: The prohibition against new construction in the V-zone is based upon information from applications, workshops, seminars and hearings which underscores the extreme flood hazards in this area. Notice should also be taken of the ocean storms around the country which destroyed even buildings designed to withstand high storm activity. Construction in the V-zone poses a threat to public safety, health, welfare, and property, and as such constitutes an unreasonable flood hazard.

2. No new building or addition shall be constructed on or seaward of a frontal dune.

   NOTE: The prohibition against new construction on or seaward of the frontal dune is based upon information from applications, workshops, seminars and hearings which demonstrates that the frontal dune ridge is the primary buffer for storm waters and is extremely vulnerable to human activity. The frontal dune area and beach sections seaward of it are the most active parts of the dune system in terms of sand transport. Construction in this critical area constitutes an unreasonable interference with the natural supply or movement of sand, and also reduces the ability of the dune to buffer upland areas from storm impacts, thus causing an unreasonable flood hazard.

3. New buildings in an A-zone:

   a. Shall be constructed on posts so that the lowest portion of the structural members of the lowest floor (e.g. the bottom of the sills) is at least one foot above the elevation of the 100 year flood; and

   b. Shall be adequately constructed to withstand a 100 year storm; and

   c. Shall not be used for schools, hospitals, or nursing homes or to house persons who would need special assistance during a flood; and

   d. Shall not be used as a base for emergency services (e.g. fire stations).

4. Additions to buildings in an A-zone shall be constructed on posts so that the lowest portion of the structural members of the lowest floor is at least one foot above the elevation of the 100 foot flood.

5. Buildings severely damaged by an ocean storm shall not be rebuilt without a permit issued pursuant to these rules. A building is severely damaged when the damage exceeds 50% of the appraised value of the building. A severely damaged building may be rebuilt only if the following conditions are met:

   a. the building shall be relocated as far outside the A-zone or V-zone as possible; and

   NOTE: Lot dimensions, zoning ordinances, and other constraints may affect the relocation of a building.

   b. if building cannot be moved entirely out of the A and V flood zones, the building shall be raised on posts so that the lowest portion of the structural members of the lowest floor is at least one foot above the elevation of the 100 year flood; and

   c. the building shall be certified by a Maine registered engineer or architect to withstand 100 year storms; and

NOTE: Standards for coastal construction can be found in FEMA's ***Coastal Construction Manual.***

d. the rebuilt building shall not cover a surface area larger than the surface area occupied by the building prior to the damage;

NOTE: The "appraised value" of a building means a bank, insurance, or other private appraisal of fair market value. It is not the assessed value used to determine real estate taxes.

NOTE: In most cases, buildings and additions which meet these standards will have satisfied the following statutory criteria:

1. Will not unreasonably interfere with existing recreational or wildlife uses (standards 1, 2);

2. Will not unreasonably interfere with the natural supply or movement of sand (1, 2, 3a, 4, 5a, 5b, 5d);

3. Will not cause unreasonable erosion (1, 2, 3a, 4, 5a, 5b, 5d); or

4. Will not cause an unreasonable flood hazard (1, 2, 3a, 3b, 3c, 3d, 4, 5a, 5b, 5c, 5d).

C. Fences

1. No closed fence shall be placed in any A-zone or V-zone.

2. No closed fence shall be rebuilt in any A-zone or V-zone after damage by an ocean storm.

3. Open fences shall not be placed on the beach face unless the fence is used to keep pedestrian traffic off the dune vegetation or away from shore bird nesting or breeding areas.

NOTE: In most cases, fences which meet these standards will have satisfied the following statutory criteria:

1. will not unreasonably interfere with existing recreational or wildlife uses (Standards 1, 2, 3);

2. will not unreasonably interfere with the natural supply or movement of sand (1, 2, 3);

3. will not cause unreasonable erosion (1, 2, 3); or

4. will not cause an unreasonable flood hazard (1, 2, 3).

D. Fill

No fill may be placed in the sand dune system, except as specifically provided for or required in conjunction with projects which fall under paragraphs B, E, F, G, H, I, or J, of this subsection.

NOTE: In some cases, fill will unreasonably interfere with the natural supply or movement of sand; will cause unreasonable erosion; or will cause an unreasonable flood hazard.

E. Roads, Driveways, Parking Areas

1. No roads, driveways, or parking areas may be constructed in a V-zone;

2. Any road, driveway, or parking area shall cover the minimal area necessary for its safe use.

NOTE: In most cases, roads, driveways, and parking areas which meet these standards will have satisfied the following criteria:

1. will not unreasonably interfere with existing recreational or wildlife uses (standards 1);

2. will not unreasonably interfere with the natural supply or movement of sand (1, 2);

3. will not cause unreasonable erosion (1, 2); or

4. will not cause an unreasonable flood hazard (1, 2).

F. Seawalls

1. No new seawalls shall be constructed in or on any sand dune system.

2. Existing seawalls may be repaired or maintained provided that:

   a. failure to repair the seawall will cause unreasonable flood hazard to a building, public road, public water supply, or public sewer system behind the seawall, or to a building on an abutting lot; and

      NOTE: If there are no buildings behind the seawall or on an abutting lot, or if those buildings have been severely damaged by an ocean storm, you probably won't be able to rebuild the seawall. The damaged buildings, if rebuilt, must be redesigned to withstand flooding, and the seawall will no longer be necessary.

   b. the repair or maintenance does not increase any dimension of the seawall beyond the dimensions that existed prior to the damage; and

      NOTE: If you have a rock seawall which is gradually deteriorating, you can rearrange the rocks to bring the wall back to its original dimensions, but you cannot add more than one cubic yeard of new material to the wall.

   c. the repaired seawall is not significantly different in construction from the one which previously existed.

NOTE: The prohibition against new seawalls is based on the Board's review of numerous applications for seawalls in sand dune systems. That review consisted of examination of plans, extensive hearings, and receipt of substantial information and expert opinions on the effect of seawalls on sand beaches and adjacent natural resources or man-made structures. As a result of this review, the Board concludes that seawalls or similar structures placed in the sand dune system:

—cause the loss of sand and changes to the slope of the beach in front of the seawall;

—significantly modifiy normal patterns of water movement;

—cause erosion or accretion of sand;

—cause a physical obstruction in the inter-tidal zone, which obstructs public rights in that zone; and

—when deteriorating, create a likelihood of rubble or debris being scattered across the shore.

The board recognizes the need of property owners to maintain and repair existing seawalls if failure to do so will cause an unreasonable flood hazard to adjacent structures. In most cases, these rules will allow artificially constrained dune systems to gradually revert to their normal dynamic condition without causing undue harm to existing structures.

G. Septic Systems

No permit shall be issued unless the proposed system complies with all the applicable requirements of the Maine Plumbing Code or other regulations dealing with wastewater disposal.

NOTE: In most cases, a septic system which meets the applicable wastewater disposal regulations will not cause unreasonable flood hazard.

H. Walkways

1. Private walkways shall not be more than four feet wide. Public walkways shall not be more than ten feet wide.

2. Walkways shall be placed on the sand dune system so that the walkway will allow for sand transport and will not have a significant impact on due vegetation.

NOTE: In most cases, walkways which meet these standards will have satisfied the following statutory criteria:

1. will not unreasonably interfere with existing recreational or wildlife uses (1, 2);

2. will not unreasonably interfere with the natural supply or movement of sand (1, 2);

3. will not cause unreasonable erosion (2); or

4. will not cause an unreasonable flood hazard (2).

J. Dune Restoration or Construction Projects

1. The project shall use sand which has textural and color characteristics consistent with the natural sand's textural and color characteristics.

2. The project shall be placed behind the berm.

3. The configuration and alignment of adjacent dunes shall be followed as closely as possible.

4. Damage to existing dune vegetation shall be minimal.

5. The dune created shall be planted with beachgrass.

   NOTE: Projects should be planned so that the new dunes can be planted immediately after construction, and the planting should be done when the plants have the best chance of survival. This is usually during early to mid spring.

6. The newly created dune shall be adequately protected from pedestrian traffic until the beachgrass is well established.

NOTE: In most cases, dune restoration projects which meet these standards will have satisfied the following statutory criteria:

1. will not unreasonably interfere with existing recreational or wildlife uses (1, 4);

2. will not unreasonably interfere with the natural supply or movement of sand (1);

3. will not cause unreasonable erosion (1, 2, 3, 4, 5, 6); or

4. will not cause an unreasonable flood hazard (2, 3, 4, 5).

K. Sand Movement

1. No person shall remove more than one cubic yard of sand or sediment (including but not limited to pebbles or cobbles) from any beach or sand dune system.

2. Sand or sediment movement shall cause minimal disturbance to beach vegetation.

3. Beach contours shall be maintained as closely as possible.

4. Sand or sediment may be moved only in conjunction with exempt activities or with other projects for which Board approval has been obtained.

NOTE: In most cases, sand moving projects which meet these standards will have satisfied the following statutory criteria:

1. will not unreasonably interfere with the natural supply or movement of sand (1, 2, 4);

2. will not cause unreasonable erosion (1, 2, 3, 4); or

3. will not cause an unreasonable flood hazard (1, 2, 3, 4).

Section 3 Definitions

A. **A-Zone.** That land area of special flood hazard subject to a one percent or greater chance of flooding in any given year.

NOTE: These areas will be designated as Zones A, A1-30, or AO on a community's Flood Insurance Rate Map, and the depth of flooding will usually be shown on the map. In cases where these maps are not available, no longer apply to a specific site because of significant shoreline changes, or show unnumbered A-zones, the base flood elevation must be determined using the best available data. The base flood, also known as the 100 year flood, is the flood with a one percent chance of occurring in any given year. Flood elevations must be given relative to NGVD, which is a standard elevation (0.00 feet) from which land measurements are derived. Procedures for determining flood elevations should conform with the procedures established by the Federal Emergency Management Agency (FEMA) in developing the Flood Insurance Rate Maps. Computer analysis is not required.

B. **Beach Face.** The sloping portion of a beach which is below the high tide limit, and is usually exposed to wave action.

NOTE: See beach diagram.

C. **Beach grass.** A grass species native to sand dune systems with the scientific name *Ammophila breviligulata.*

D. **Beach Nourishment.** Artificially adding sand to the beach face.

E. **Berm.** The flat or gently sloping area between the high tide limit and the frontal dune. A berm is formed by deposition of sand which has been transported to shore by waves and along shore by waves, wind, and longshore currents.

NOTE: See beach diagram.

F. **Board.** The Board of Environmental Protection.

G. **Closed Fence.** A fence which effectively blocks the movement of wind, water, or sand.

NOTE: A stockade fence is an example of a closed fence.

H. **Commissioner.** The Commissioner of the Department of Environmental Protection.

I. **Department.** The Department of Environmental Protection.

J. **FEMA.** The Federal Emergency Management Agency (FEMA) of the United States Government. This agency administers the National Flood Insurance Program and the Flood Insurance Rate Maps.

K. **Flood Hazard.** The danger to life and property caused by flooding which could result in personal injury, damage to real or personal property, or damage to the sand dune system.

L. **Frontal Dune.** The most seaward ridge of sand which is vegetated with beachgrass. The frontal dune includes the landward slope, the crest, and the seaward slope of that ridge.

NOTE: See beach diagram.

M. **NGVD.** National Geodetic Vertical Datum (NGVD). The base (0.00) elevation point from which land measurements are derived. This elevation was established in 1929 and was formerly called "sea level datum of 1929" or "mean sea level."

N. **Ocean Storm.** A low pressure system accompanied by flooding and sand erosion on the beach face, which results in a recognizable alteration of the beach profile.

O. **Open Fence.** A fence through which water, wind and sand can easily move.

NOTE: Split rail and snow fences are examples of open fences.

P. **Permanent Structure.** Any structure which is not temporary.

NOTE: See definition of "temporary structure."

Q. **Posts.** Any piling or column support which allows water and sand to move freely underneath the structure, and which is structurally adequate for the purpose for which it is intended. The term "posts" does not include any frost wall or breakaway foundation construction.

R. **Sand Dune System.** The term "sand dune system" is used interchangeably with the terms "beach system," "coastal sand dunes," "coastal sand dune system," and "dune system." The statutory definition of "coastal sand dunes" in 38 M.R.S.A., Section 472(1) applies equally to all these terms. Sand dune systems include sand deposits within a marine beach system which have been artificially covered by structures, lawns, raods, and fill. Sand dune systems also include all vegetation which is native to and occurring in the system.

S. **Severe Damage.** Severe damage is damage which exceeds 50% of a building's appraised value. The appraised value of a building means a bank, insurance, or other private appraisal of fair market value. It is not the assessed value used to determine real estate taxes.

T. **Temporary Structure.** Structures intended for seasonal use and in place less than 7 months each year.

NOTE: Tents and removeable blinds are examples of temporary structures.

U. **V-Zone.** That land area of special flood hazard subject to a one percent orgreater chance of flooding in any given year, and subject to additional hazard from high velocity water due to wave action.

NOTE: These areas will be designated as Zones V, V1-30 on a community's Flood Insurance Rate Map. In cases where preliminary mapping does not yet show established V-zones, or where the maps no longer apply to a specific site because of significant shoreline changes, if there is no better data available, V-Zones can be estimated using the following method:

1. Establish the base (100 year) flood elevation using the best available data and procedures consistent with those used by FEMA in developing the Flood Insurance Rate Maps;

2. *Determine the elevation which will be under 3 feet of water during the base flood (the flood with a 1• chance of occurring in any given year); and*

3. *Anything that will be under at least 3 feet of water and will also be subject to wave action during a base flood will be considered to be in a V-zone.*

Section 4 General Provisions

A. An applicant proposing a project in the sand dune system which has several components (e.g., a structure, driveway, fence, etc.) may apply for all components with one application. Each component, however, must meet the applicable standards or requirements.

B. Nature of terms and conditions. As specified in subsection 474 of the Coastal Wetlands Law, the Board may place terms and conditions on the granting of a permit for a proposed activity. Terms and conditions shall not substitute for or reduce the applicant's burden to provide substantial evidence that each of the standards has been met.

C. Incomplete application. If, in the opinion of the staff, an application for a permit under the Coastal Wetlands Law is incomplete, the application may be returned to the applicant with an indication of the information which needs to be supplied; and no further processing shall occur until the application is determined to be complete. The statutory time period within which the Board must act on an application under 38 M.R.S.A. subsection 474 shall not begin until the application is determined to be complete by the staff.

D. Requirement of additional information. In reviewing applications for permits for activities under the Coastal Wetlands Law, the Board or staff may require additional information from the applicant on any aspect of the proposed activity relating to compliance with the standards.

E. Access to the site. Filing an application constitutes permission to allow application reviewers and compliance inspectors access to the site of the proposed activity in order to evaluate whether or not the proposed activity meets the standards.

F. Permits not contingent upon other approval. The granting of a permit under the Coastal Wetlands Law is not contingent upon the applicant having obtained, prior to filing, other appropriate federal, state or municipal approvals, licenses, permits, etc.

G. Performance bonds. The Board may require an applicant to post a performance bond to insure that the approved activity will be undertaken and completed in a manner consistent with approval plans and in compliance with the standards.

H. Standard conditions of permits. The following standard conditions shall apply to all permits granted under the Coastal Wetlands Law, unless otherwise specifically stated in the permit:

1. Approval of variations from plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals and supported documents is subject to review and approval prior to implementation.

2. Compliance with all applicable laws. The applicant shall secure and comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.

3. Compliance with all permit terms and conditions. The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all terms and conditions of this permit. All preconstruction terms and conditions must be met before construction begins.

4. Initiation of activity within two years. If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the activity was not begun within two years from the granting of the initial permit and the reasons why the applicant will be able to begin the activity within two years from the granting of a new permit, if so granted. Reapplication for permits may include information submitted in the initial application by reference.

5. Reexamination after five years. If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.

6. Permit included in contract bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.

7. Permit shown to contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

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What is Being Done to Protect Maine's Wetlands?

The Alteration of Coastal Wetlands Act provides Maine citizens with a legal tool to ensure that Maine's wetland areas are not destroyed. Remember that under this statute "wetlands" include bogs, swamps, marshes, beaches, flats, and other areas affected by tidal action.

At present some 2,100 acres of salt marsh are under Federal ownership, primarily under the Bureau of Sports Fisheries and Wildlife. Called the Rachel Carson Wildlife Preserve in honor of her efforts to protect the "edge of the sea," it includes marshes from Kittery to Cape Elizabeth. Another 3,700 acres of salt marsh are under state lease or ownership through the Department of Inland Fisheries and Wildlife. Private organizations such as The Nature Conservancy, and the National and Maine Audubon Societies have been able to help in the protection of wetland areas in Maine. However, all these efforts account for only about 5,800 acres of salt marsh (out of 17,000) and do not include other lowlands areas mentioned under the Wetlands Law.

What Can I Do as a Private Citizen?

Citizens can do much, for example, just by educating their neighbors to the value of wetlands. Municipal conservation commissions need help to assist towns in the adoption of protective measures for their wetlands. Owners of wetland property might want to place conservation easements on their land, restricting any future development.

Additional copies of this booklet are available from
Department of Environmental Protection
State House Station 17
Augusta, Maine 04333

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