

THE FOLLOWING LETTER WAS PRESENTED TO THE NATURAL RESOURCES SUBCOMMITTEE OF THE MAINE STATE LEGISLATURE AND READ BY MAWS PRESIDENT DALE KNAPP AT THE FEBRUARY 10, 2009 HEARING REGARDING PROPOSED *L.D. 207: AN ACT TO CHANGE THE CLASSIFICATION OF MANMADE WETLANDS*. THE BILL FAILED TO MAKE IT OUT OF COMMITTEE.



MAWS

Maine Association of Wetland Scientists

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The Maine Association of Wetland Scientists was founded in 1990 in order to promote the profession and understanding of wetland science in Maine, and to protect the public interest by maintaining high professional standards. The organization promotes and participates in educational programs pertaining to the study of wetland science and advancing the profession of wetland science for the Association's membership and the public. To that end, the organization supports and contributes to the expansion of wetland science research and development and promotes policies that contribute to the protection and sound stewardship of wetland resources.

February 03, 2009

Maine State Legislature
Senator Seth A. Goodall
Representative Robert S. Duchesne
Natural Resource Committee
100 State House Station
Augusta, Maine 04333

**Subject: Public Hearing Comments LD 107
An Act to Change the Classification of Man-made Wetlands**

On behalf of the Executive Committee (EC) of the Maine Association of Wetland Scientists (MAWS), we respectfully submit comments regarding LD 107, "An Act to Change the Classification of Man-made Wetlands". The proposed legislation would exempt "man-made wetlands" from state regulation under the Natural Resource Protection Act (NRPA). It is the opinion of MAWS that this law duplicates existing provisions of the NRPA, which excludes a number of categories of "man-made features", and that the proposed definition of "man-made wetlands" is vague and excessively open to interpretation. The proposed legislation will greatly complicate the rigid, scientific methodologies currently used for mapping wetland boundaries. As a result, it will increase the expense of defining and defending jurisdictional wetland boundaries.

The NRPA currently has provisions for excluding some "man-made" wetland features from protection, even if they otherwise meet the definition of "wetland". These excluded areas include drainage ditches, which are maintained for the purpose of draining an area, detention basins, which are colonized by hydrophytic vegetation and hydric soils (as long as they are functioning as originally intended), constructed farm ponds, and man-made impoundments. Additionally, vernal pools are not considered significant wildlife habitat if they are not natural (e.g. created in skidder ruts or road ditches). Recent Army Corps of Engineers guidelines further define the federal jurisdictional boundary between natural and manmade wetlands. Finally, qualified wetland scientists have the ability to use "best professional judgment" when determining if an area is an NRPA jurisdictional wetland or whether it simply contains some wetland indicators due to recent anthropogenic influence.

As worded, the definition of “man-made wetlands” in LD 107 is too vague and open to interpretation. Maine has a rich and varied history of land uses that have altered the landscape many times over. Countless miles of roads, hundreds of dams, tens of thousands of acres of timber harvests, agricultural activities, and general development have altered the landscape and hydrology all over the state. These activities have been occurring for more than 200 years. The results of these activities include altered hydrology, degraded soils, and the loss or change of natural vegetation. These manmade changes to hydrology, soils and plants can drain wetlands, create wetlands, and often can expand existing wetlands. In many instances, it will be impossible to determine which wetlands are naturally occurring and which exist, entirely or in-part, due to man-made activities without extensive knowledge of the land use history. Furthermore, in cases where it can be definitively determined that wetlands have been altered or increased by man-made activities, delineating the line between man-made and natural wetland areas would be at best, an educated guess.

This bill could have the unintended consequence of removing protection on wetlands that are currently jurisdictional under NRPA because they have been altered or influenced by humans. This change could affect thousands of acres of important wetland resources across Maine. For example, Maine has more than 100 licensed dams and hundreds of smaller unlicensed dams. The head ponds that are created by the dams extend, in many cases, over hundreds of acres with fringe or riparian wetlands a common feature. Would passage of this bill then declassify these all of these wetlands because they are man-made, regardless of their age of origin or connection to a natural wetland feature? Would the thousands of acres of wetland associated with historic and ongoing road construction throughout the state result in declassification of all ditched, drained, culverted, or flooded wetlands? What would be the mechanism by which regulators determined if the wetlands existed in the altered area previous to the anthropogenic activities? Determining wetlands’ origins could require extensive hydrologic research to compare current and historic hydrology and an exhaustive search of historical aerial and topographical mapping data.

LD 107 will create many more questions and potential regulatory issues than it could possibly rectify. By forcing a permittee or developer to prove that wetlands are man-made, or conversely forcing the regulatory agencies to prove that wetlands are natural, the effect of this bill could easily be to extend project review times, to increase field and historic evidence review costs, and to open normally routine wetland determinations up to extensive review and litigation based solely on the grey area inherent in defining “natural”, “man-made”, and “man-altered” wetland systems. As noted above, our organization supports and contributes to the expansion of wetland science research and development and promotes policies that contribute to the protection and sound stewardship of wetland resources. LD 107 is counter to our fundamental values of sound stewardship and science, and we feel that it will jeopardize the protection of thousands of acres of important wetlands, reduce the validity of scientifically-based wetland determinations, increase costs for permittees, and extend permit review and field mapping periods. With these potentially significant ramifications in mind, the EC encourages the NRC to carefully scrutinize LD 107.

Respectfully Submitted

The Executive Committee of the Maine Association of Wetland Scientists

Lauren Stockwell, President

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