STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

NATURAL RESOURCES PROTECTION ACT

Significant Wildlife Habitat
Chapter 335

Bureau of Land and Water Quality
DEP0076-C2006

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of Maine provide a setting free of mammalian predators such as foxes, coyotes, and raccoons. Flying distance from the mainland discourages avian predators such as great horned owls. Many seabird species nearly eradicated in Maine by the end of the 19th century have recovered dramatically, thanks to the passage of state and federal conservation laws and the restoration efforts of dedicated scientists. In 1998, 234 seabird nesting Islands in Maine were afforded protection as Significant Wildlife Habitat under the Natural Resource Protection Act.

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

(1) Seabird. Colonial nesting waterbirds including Leach's Storm-petrel, Great Cormorant, Double-crested Cormorant, Laughing Gull, Herring Gull, Great Black-backed Gull, Common Tern, Arctic Tern, Roseate Tern, Razorbill, Black Guillemot, Atlantic Puffin, and Common Eider.

(2) Seabird nesting island. (a) An island, ledge, or portion thereof in tidal waters that has documentation of 25 or more: nests or seabirds, adult seabirds displaced from nests, or in combination (single species or aggregate of different species) in any nesting season during, or since, 1976; provided that the island, ledge, or portion thereof continues to have suitable nesting habitat. (b) An island, ledge, or portion thereof in tidal waters that has documentation of one or more nests of a seabird that is a Maine endangered or threatened species in any year during, or since, 1976 provided that the island, ledge, or portion thereof, continues to have suitable nesting habitat.

B. Maps. Seabird nesting islands are delineated on 7.5 minute U.S. Coast and Geodetic Survey maps developed by the Maine Department of Inland Fisheries and Wildlife. The maps are identified as Significant Wildlife Habitat Seabird Nesting Island Maps #1-55, January 1998.

NOTE: The criteria used to define seabird nesting islands was developed by the Maine Department of Inland Fisheries and Wildlife (09-137 CMR 10.02(F)). Maps of seabird nesting islands are available from the Department of Environmental Protection or the Maine Department of Inland Fisheries and Wildlife (IF&W).

C. Removal or displacement of vegetation. For seabird nesting islands, removal or displacement of vegetation does not include:

(1) Gardening, lawn cutting, removal of fallen vegetation, and tree and shrub pruning within an existing development area as of September 15, 1998.

(2) Removal of an entire tree when it threatens a building.

D. Seabird critical nesting period. The seabird critical nesting period is from April 15 to August 31 each year unless otherwise approved by the Maine Department of Inland Fisheries and Wildlife.

9. Significant vernal pool habitat. A vernal pool, also referred to as a seasonal forest pool, is a natural, temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools have no permanent inlet or outlet and no viable populations of predatory fish. A vernal pool may provide the primary

breeding habitat for wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*), blue-spotted salamanders (*Ambystoma laterale*), and fairy shrimp (*Eubranchipus* sp.), as well as valuable habitat for other plants and wildlife, including several rare, threatened, and endangered species. A vernal pool intentionally created for the purposes of compensatory mitigation is included in this definition.

Whether a vernal pool is a significant vernal pool is determined by the number and type of pool-breeding amphibian egg masses in a pool, the presence of fairy shrimp, use by rare, threatened or endangered species, or other criteria as specified in Section 9(B). Significant vernal pool habitat consists of a vernal pool depression and that portion of the critical terrestrial habitat within 250 feet of the spring or fall high water mark of the depression. An activity that takes place in, on, or over a significant vernal pool habitat must meet the standards of this chapter.

NOTE: The term vernal (vernal = spring) pool is used in the Natural Resources Protection Act, and has typically been used to discuss the types of pools described in Section 9. However, because some pools are wet in both spring and fall, and others are never dry, they have also been referred to as "seasonal forest pools." Vernal pool is still a common term, and will continue to be used in this section.

NOTE: The 250 feet of critical terrestrial habitat protected as significant vernal pool habitat is only a portion of the habitat used by adult wood frogs, ambystomatid salamanders, and rare, threatened and endangered species. Tracking studies of adult pool-breeding amphibians have shown that they can travel over a third-mile away from their breeding pool, and that the area within 750 feet of the pool is valuable for protecting viable amphibian populations. The department encourages efforts to protect more habitat adjacent to a vernal pool than this rule has authority over.

NOTE: For more information on identifying vernal pools, see "Maine Citizen's Guide to Locating and Documenting Vernal Pools." Maine Audubon Society, 2003.

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

(1) Critical terrestrial habitat. Uplands and wetlands associated with significant vernal pools used by pool breeding amphibians for migration, feeding, and hibernation, in particular, forested wetlands and forested uplands that provide deep organic litter, coarse woody debris and canopy shade.

(2) Egg mass. Three or more individual eggs clumped in a gelatinous matrix constitute an egg mass. Egg masses often occur in clusters, but each mass within a cluster must be counted as an individual egg mass.

(3) Natural. A natural vernal pool includes pools of natural origin that have been modified or excavated. A natural vernal pool does not include other natural wetland types (wet meadows, marshes, etc.) that have been altered and currently function as vernal pools.

(4) Pool-breeding amphibians. Animals that, as part of their life cycle, reproduce in vernal pools. Most pool-breeding amphibians return to reproduce in the pool where they originated. Most

adult pool-breeding amphibians spend less than one month in breeding pools; the rest of their annual cycle is spent in critical terrestrial habitat.

(5) Qualified individual. An individual who has experience and training in either wetland ecology or wildlife ecology and therefore has qualifications sufficient to identify and document a significant vernal pool.

(6) Significant vernal pool. The vernal pool depression within a significant vernal pool habitat.

(7) Significant vernal pool habitat. A significant vernal pool and that portion of the critical terrestrial habitat within 250 feet of the spring or fall high water mark of the vernal pool depression.

(8) Vernal pool depression or vernal pool. This area includes the vernal pool depression up to the spring or fall high water mark, and includes any vegetation growing within the depression.

B. Significant vernal pool habitat identification criteria. Vernal pool habitat significance must be determined and documented by a qualified individual.

(1) Abundance. Any one of or combination of the following species abundance levels, documented in any given year, determine the significance of a vernal pool habitat.

Species	Abundance Criteria
Fairy shrimp	Presence in any life stage.
Blue spotted salamanders	Presence of 10 or more egg masses.
Spotted salamanders	Presence of 20 or more egg masses.
Wood frogs	Presence of 40 or more egg masses.

(2) Rarity. A pool that has documented use in any given year by a rare species, or state-listed endangered or threatened species that commonly requires a vernal pool to complete a critical portion of its life-history is part of a significant vernal pool habitat. Examples of vernal pool dependent state-listed endangered or threatened species include, but are not limited to, Blanding's turtles, Spotted turtles, and Ringed Boghaunter dragonflies. The rare species that must be considered are limited to: Ribbon Snakes, Wood Turtles, Swamp Darner Dragonflies and Comet Darner Dragonflies.

(3) Identification period. Egg masses must be counted just past the peak breeding period of pool-breeding amphibians. Abundance of pool-breeding amphibians can only be used to determine the presence of a significant vernal pool during the identification period. The presence of fairy shrimp, rare species listed in paragraph (2), or a state-listed endangered or threatened species may be used to determine the presence of a significant vernal pool at times of the year other than the identification period.

NOTE: Optimal times for counting egg masses of pool-breeding amphibians vary according to geographic location and weather. For instance, during cold springs, breeding can begin as much as 2 weeks later than it does in warm, wet springs. The optimal time to count masses is just past the peak breeding period. For wood frogs, this occurs approximately 2 weeks after they start full choruses. Wood frog egg masses hatch

very quickly and are difficult to count much past peak breeding. Salamanders have a more extended breeding period and their eggs do not hatch as quickly as those of wood frogs. Therefore, surveys to count salamander egg masses should be conducted slightly later in the breeding season, generally 2-3 weeks following wood frog egg mass counts. The following are rough guidelines for optimal times for counting egg masses:

Geographic Region	Wood Frogs	Spotted & Blue Spotted Salamanders
Northern Maine	May 5 – May 20	May 15 – June 5
Central Maine	April 25 – May 10	May 5 - May 25
Southern Maine	April 10 – April 25	April 20 – May 10

Note that optimal egg mass counting dates for high elevation localities are likely to be delayed by up to one or two weeks from the suggested dates provided within each geographic region above.

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(4) Geographic regions.

(a) The three geographic regions used in Section 9(B)(3) are as follows.

(i) The Northern Maine region is approximately that part of the state north of a line extending from Rangeley to Dover-Foxcroft to Howland to Calais.

(ii) The Central Maine region is approximately that part of the state south of that same line and north of a line extending from Fryeburg to Augusta to Belfast.

(iii) The Southern Maine region is approximately that part of the state south of the line extending from Fryeburg to Augusta to Belfast.

(b) The two geographic regions used in Section 9(B)(4-A) are as follows.

(i) The Northern Maine region is approximately that part of the state north of a line extending from Rangeley to Dover-Foxcroft to Howland to Calais.

(ii) The Southern Maine region is approximately that part of the state south of the line described in (i).

(4-A) Drying. When a vernal pool habitat has not previously been determined to be significant, and the department or the Maine Department of Inland Fisheries & Wildlife (IF&W) makes a determination concerning whether the vernal pool habitat is significant, either department may determine that the vernal pool habitat is not significant if:

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

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

(4-B) Lack of permanent flowing inlet or outlet. In order to be identified as part of a significant vernal pool habitat, the vernal pool may not have a permanent flowing inlet or outlet.

(5) Seasonality. The department may require an assessment of significance by a qualified individual during the identification period. In any season, indicators of a potentially significant vernal pool habitat may include flat topography with depressions or pit-and-mound topography, wetland flora, fingernail clams, caddisfly cases, and evidence of temporary flooding.

(6) Voluntary identification. A landowner may voluntarily submit documentation to the department or IF&W regarding the significance of a vernal pool on that individual's property. Documentation must be completed by a qualified individual, or field-verified by either the department or IF&W prior to its inclusion on a Geographic Information System (GIS) data layer maintained by either IF&W or the department. A landowner will receive written confirmation of such documentation from the department.

(7) Verification of significance. A significant vernal pool documented on a Geographic Information System (GIS) data layer maintained by either IF&W or the department is eligible for removal from that data layer following IF&W verification of three consecutive years of data demonstrating that a vernal pool no longer meets the criteria in Sections 9(B)(1) or (2). A written request to remove a significant vernal pool from the data layer must be submitted to both IF&W and the department and include documentation made during the identification period by a qualified individual. A written department determination that a vernal pool is not significant remains valid regardless of timeframe.

NOTE: For more information on managing the critical terrestrial habitat surrounding vernal pools, see:

Calhoun, A.J.K. and M.W. Klemens. 2002. Best development practices: Conserving pool-breeding amphibians in residential and commercial developments in the northeastern United States. MCA Technical Paper No. 5, Metropolitan Conservation Alliance, Wildlife Conservation Society, Bronx, New York.

Calhoun, A.J.K. and P. deMaynadier. 2004. Forestry habitat management guidelines for vernal pool wildlife. MCA Technical Paper No. 6, Metropolitan Conservation Alliance, Wildlife Conservation Society, Bronx, New York.

Calhoun, A.J.K. and P.G. deMaynadier (Editors). 2008. Science and Conservation of Vernal Pools in Northeastern North America. CRC Press, Boca Raton, FL.

C. **Habitat management standards for significant vernal pool habitat.** To the greatest extent practicable, the following management practices must be followed within significant vernal pool habitat.

(1) No disturbance within the vernal pool depression;

(2) Maintain a minimum of 75% of the critical terrestrial habitat as unfragmented forest with at least a partly-closed canopy of overstory trees to provide shade, deep litter and woody debris.

(3) Maintain or restore forest corridors connecting wetlands and significant vernal pools;

(4) Minimize forest floor disturbance; and

(5) Maintain native understory vegetation and downed woody debris.

If more than 25% of the critical terrestrial habitat has been previously developed, restoring a portion of that area through supplemental planting or regrowth of native forest species may be considered toward meeting these standards, or towards standards for avoidance, minimization, or compensation. For purposes of this section, developed area includes disturbed areas excluding areas that are returned to a condition with the same drainage patterns and the same or improved cover type that existed prior to the disturbance.

D. Permit by Rule. An activity occurring in, on, or over a significant vernal pool habitat or a potential significant vernal pool habitat is eligible for a Permit by Rule (PBR) as described in Chapter 305, Section 19, provided that the habitat management standards in Section 9(C) above are met. An applicant submitting a Permit by Rule notification pursuant to Chapter 305, Section 19, is not required to provide a seasonal assessment of significance.

Submission of a PBR notification pursuant to Chapter 305, Section 19 does not negate an applicant's ability to submit subsequent documentation to verify or negate applicability of Section 9 of this chapter provided that documentation is completed during the identification period by a qualified individual. GIS data points specific to Chapter 305, Section 19, will be uploaded to the GIS data layer maintained by IF&W or the department only following submission and verification of such documentation by the department or IF&W.

This subsection does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 M.R.S.A. §§ 481 to 490, the Stormwater Management Law, 38 M.R.S.A. § 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. §§ 480-A to 480-FF.

E. Permit not required. A permit is not required from the department under the following circumstances.

(1) Forest management activities. Forest management activities in, on, or over a significant vernal pool habitat do not require a permit pursuant to this section if the significant vernal pool is not defined and mapped according to 38 M.R.S.A. § 480-I.

(2) Location of pool. If an activity is located in, on, or over a vernal pool habitat but the significant vernal pool depression is not located on a parcel owned or controlled by the person carrying out the activity, then a permit is not required pursuant to this section unless:

(a) The significant vernal pool is defined and mapped according to 38 M.R.S.A. § 480-I or is located on a Geographic Information System (GIS) data layer maintained by either IF&W or the department; or