

STATE OF MAINE

 IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY

 S.P. 601 - L.D. 1777

**An Act To Add Rivers, Streams and Brooks to the Department of
Environmental Protection's Compensation Fee Program**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §480-Z, 4th ¶, as amended by PL 2007, c. 527, §1, is further amended to read:

A project undertaken pursuant to this section must be approved by the department. The department shall base its approval of a wetlands compensation project on the wetland management priorities identified by the department for the watershed or biophysical region in which the project is located. The department shall base its approval of a compensation project concerning an area listed in subsection 7, paragraph C, D ~~or~~ E or F on the management priorities identified by the department for the type of habitat. The department may not approve a compensation project for unavoidable losses to an area until the applicant has complied with all other applicable provisions of this article and all applicable rules adopted by the department pursuant to this article. For purposes of this section, "biophysical region" means a region with shared characteristics of climate, geology, soils and natural vegetation.

Sec. 2. 38 MRSA §480-Z, sub-§3, as amended by PL 2011, c. 655, Pt. JJ, §31 and affected by §41 and amended by c. 657, Pt. W, §5, is further amended to read:

3. Compensation fee program. The department may develop a wetlands compensation fee program for the areas listed in subsection 7, ~~paragraphs A and B~~ in consultation with ~~the Department of Agriculture, Conservation and Forestry, the United States Army Corps of Engineers and state and federal resource agencies, including, but not limited to, the Department of Agriculture, Conservation and Forestry, the Department of Inland Fisheries and Wildlife, the United States Army Corps of Engineers, the United States Fish and Wildlife Service and the United States Environmental Protection Agency.~~ The department may develop a compensation fee program for the areas listed in subsection 7, paragraphs C, D and E in consultation with the Department of Inland Fisheries and Wildlife.

- A. The program may include the following:
- (1) Identification of wetland management priorities on a watershed or biophysical region basis;
 - (1-A) Identification of management priorities for the areas listed in subsection 7, paragraphs C, D ~~and~~, E and F;
 - (2) Identification of the types of losses eligible for compensation under this subsection;
 - (3) Standards for compensation fee projects;
 - (4) Calculation of compensation fees based on the functions and values of the affected areas and the cost of compensation, taking into account the potential higher cost of compensation when a project is implemented at a later date; and
 - (5) Methods to evaluate the long-term effectiveness of compensation fee projects implemented under this subsection in meeting the management priorities identified pursuant to subparagraphs (1) and (1-A).
- B. Any compensation fee may be paid into a compensation fund established by the department as provided in subparagraph (1) or to an organization authorized by the department as provided in subparagraph (2). A compensation project funded in whole or in part from compensation fees must be approved by the department.

(1) The department may establish compensation funds for the purpose of receiving compensation fees, grants and other related income. A compensation fund must be a fund dedicated to payment of costs and related expenses of restoration, enhancement, preservation and creation projects. The department may make payments from the fund consistent with the purpose of the fund. Income received under this subsection must be deposited with the State Treasurer to the credit of the compensation fund and may be invested as provided by law. Interest on these investments must be credited to the compensation fund.

(2) The department may enter into an enforceable, written agreement with a public, quasi-public or municipal organization or a private, nonprofit organization for the protection of natural areas. Such an organization must demonstrate the ability to receive compensation fees, administer a compensation fund and ensure that compensation projects are implemented consistent with local, regional or state management priorities. If compensation fees are provided to an authorized organization, the organization shall maintain records of expenditures and provide an annual summary report as requested by the department. If the authorized agency is a state agency other than the department, the agency shall establish a fund meeting the requirements specified in subparagraph (1). If the organization does not perform in accordance with this subsection or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this subsection.

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

Sec. 3. 38 MRSA §480-Z, sub-§7, ¶¶D and E, as enacted by PL 2007, c. 527, §1, are amended to read:

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

E. Shorebird nesting, feeding and staging areas; and

Sec. 4. 38 MRSA §480-Z, sub-§7, ¶F is enacted to read:

F. Rivers, streams and brooks.