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Legislative Document

No. 1287

H.P. 929

House of Representatives, March 14, 2019

An Act To Protect the Penobscot River and Penobscot Bay from Mercury Contamination

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative DODGE of Belfast.
Cosponsored by Senator MIRAMANT of Knox and
Representatives: ACKLEY of Monmouth, BEEBE-CENTER of Rockland, CUDDY of
Winterport, DOUDERA of Camden, EVANGELOS of Friendship, PEBWORTH of Blue Hill,
PLUECKER of Warren, RISEMAN of Harrison.

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

2 **Sec. 1. 38 MRSA §480-D, sub-§3**, as amended by PL 2011, c. 653, §15 and
3 affected by §33, is further amended to read:

4 **3. Harm to habitats; fisheries.** The activity will not unreasonably harm any
5 significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered
6 plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or
7 marine fisheries or other aquatic life.

8 In determining whether mining, as defined in section 490-MM, subsection 11, will
9 comply with this subsection, the department shall review an analysis of alternatives
10 submitted by the applicant. For purposes of this subsection, a practicable alternative to
11 mining, as defined in section 490-MM, subsection 11, that is less damaging to the
12 environment is not considered to exist. The department may consider alternatives
13 associated with the activity, including alternative design and operational measures, in its
14 evaluation of whether the activity avoided and minimized impacts to the maximum extent
15 practicable.

16 In determining whether dredging in the Penobscot River south of the former HoltraChem
17 Manufacturing Company site in the Town of Orrington and Penobscot Bay north of the
18 southern tip of Islesboro Island will comply with this subsection, the department shall
19 review core sample analysis submitted by the applicant. The applicant shall take core
20 samples using the following sampling methodology. A minimum of 10 core samples
21 must be collected for an area proposed to be dredged. Compositing of core samples may
22 not be permitted prior to testing. Each separate core sample must be 90 centimeters in
23 depth or as deep as the area permits, whichever is less. All samples must be specifically
24 tested for the presence of mercury by testing each one-centimeter segment from the
25 surface of the core down to 20 centimeters; each 2-centimeter segment from 21 to 40
26 centimeters; and each 5-centimeter segment from 41 to 90 centimeters or to the actual
27 depth of the core sample if less than 90 centimeters. The department may not approve an
28 application for dredging in the Penobscot River or Penobscot Bay that has not used this
29 methodology for testing and core sampling. The department may not approve an
30 application for dredging if the dredging is not necessary for maintenance of navigation.
31 Dredging may be permitted only if the applicant can demonstrate that dredging can and
32 will be conducted in a manner that will not resuspend or disturb buried mercury.

33 In determining whether there is unreasonable harm to significant wildlife habitat, the
34 department may consider proposed mitigation if that mitigation does not diminish in the
35 vicinity of the proposed activity the overall value of significant wildlife habitat and
36 species utilization of the habitat and if there is no specific biological or physical feature
37 unique to the habitat that would be adversely affected by the proposed activity. For
38 purposes of this subsection, "mitigation" means any action taken or not taken to avoid,
39 minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse
40 impact on the significant wildlife habitat, including the following:

- 41 A. Avoiding an impact altogether by not taking a certain action or parts of an action;
- 42 B. Minimizing an impact by limiting the magnitude, duration or location of an
- 43 activity or by controlling the timing of an activity;

1 C. Rectifying an impact by repairing, rehabilitating or restoring the affected
2 environment;

3 D. Reducing or eliminating an impact over time through preservation and
4 maintenance operations during the life of the project; or

5 E. Compensating for an impact by replacing the affected significant wildlife habitat.

6 **Sec. 2. 38 MRSA §480-D, sub-§9**, as amended by PL 2001, c. 248, §1, is further
7 amended to read:

8 **9. Dredging.** If the proposed activity involves dredging, dredge spoils disposal or
9 transporting dredge spoils by water, the applicant must demonstrate that the
10 transportation route minimizes adverse impacts on the fishing industry and that the
11 disposal site is ecologically and geologically suitable. The Commissioner of Marine
12 Resources shall provide the department with an assessment of the impacts on the fishing
13 industry of a proposed dredging operation in the coastal wetlands. The assessment must
14 consider impacts to the area to be dredged and impacts to the fishing industry of a
15 proposed route to transport dredge spoils to an ocean disposal site, as well as impacts to
16 the fishing industry caused by dredging or disposal of dredge spoils, whether or not the
17 dredge spoils contain contaminants or toxic substances. The Commissioner of Marine
18 Resources may hold a public hearing on the proposed dredging operation. In determining
19 if a hearing is to be held, the Commissioner of Marine Resources shall consider the
20 potential impacts of the proposed dredging operation on fishing in the area to be dredged.
21 If a hearing is held, it must be within at least one of the municipalities in which the
22 dredging operation would take place. If the Commissioner of Marine Resources
23 determines that a hearing is not to be held, the Commissioner of Marine Resources must
24 publish a notice of that determination in a newspaper of general circulation in the area
25 proposed for the dredging operation. The notice must state that the Commissioner of
26 Marine Resources will accept verbal and written comments in lieu of a public hearing.
27 The notice must also state that if 5 or more persons request a public hearing within 30
28 days of the notice publication, the Commissioner of Marine Resources will hold a
29 hearing. If 5 or more persons request a public hearing within 30 days of the notice
30 publication, the Commissioner of Marine Resources must hold a hearing. In making its
31 determination under this subsection, the department must take into consideration the
32 assessment provided by the Commissioner of Marine Resources. The permit must
33 require the applicant to:

34 A. Clearly mark or designate the dredging area, the spoils disposal route and the
35 transportation route;

36 B. Publish in a newspaper of general circulation in the area adjacent to the route the
37 approved transportation route of the dredge spoils; ~~and~~

38 C. Publish in a newspaper of general circulation in the area adjacent to the route a
39 procedure that the applicant will use to respond to inquiries regarding the loss of
40 fishing gear during the dredging operation;

41 D. Provide written notice to all associations known to represent commercial
42 fishermen in the State or in the specific geographic area in which dredging or dredge
43 spoils disposal is to occur; and

