



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

TESTIMONY OF
Rob Wood, Director, Bureau of Land Resources
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN SUPPORT OF L.D. 2168

**RESOLVE, REGARDING LEGISLATIVE REVIEW OF PORTIONS OF CHAPTER 355:
COASTAL SAND DUNE RULES, A MAJOR SUBSTATIVE RULE OF THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

REPORTED BY REP. GRAMLICH

**BEFORE THE JOINT STANDING COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES**

DATE OF HEARING:

JANUARY 31, 2024

Senator Brenner, Representative Gramlich, and members of the Committee, I am Rob Wood, Director of the Bureau of Land Resources at the Department of Environmental Protection, speaking in support of L.D. 2168.

Coastal sand dune systems are a protected natural resource under Maine's Natural Resources Protection Act (NRPA, 38 M.R.S. §§ 480-A–480-JJ). They are fragile, dynamic resources that serve as natural barriers to protect the shoreline from storm events and provide vital habitat for wildlife, including endangered Least Terns and

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

Piping Plovers. Activities within coastal sand dune systems that require a NRPA permit are regulated under the Department's Chapter 355 Coastal Sand Dune Rules.

This rulemaking would update an out-of-date reference in Chapter 355 to a series of 2001 aerial photographs of sand dunes and replace it with a reference to the most recent 2023 Coastal Sand Dune Maps produced by the Maine Geological Survey.

In both statute (38 M.R.S. §480-B) and rule (Chapter 355(3)(H)), coastal sand dune systems are defined based on their sediment characterization, locations, and the depositional processes that created them. In short, they are sand and gravel deposits in marine beach systems that were deposited by wave or wind action. All areas of the State that meet the narrative definition of coastal sand dunes systems are protected natural resources under NRPA.

Following the narrative definition of coastal sand dune systems, Chapter 355 also references a tool created by the Maine Geological Survey (MGS) that is intended to help readers of the rule identify where coastal sand dune systems are located. This reference states:

"Most coastal sand dune systems have been identified by the Maine Geological Survey (MGS) and are shown on photos entitled *Beach and Dune Geology Aerial Photos* dated 2001. *Coastal Sand Dune Maps*, previously produced by MGS and dated 1990, have been discontinued."

Unfortunately, this reference is quite outdated, limiting its utility. The first set of Coastal Sand Dune Maps produced by MGS was published in 1990 and focused on highly developed areas in Southern Maine, where the information would be most useful to homeowners, developers, municipalities, and the Department. Over the past three decades, MGS has continued to expand and refine their mapping through field work, aerial orthophotography, and LiDAR (Light Detection and Ranging) topographic data. The most recent map series, published in 2023, covers Maine's entire coastline.

The 2023 map series reflects our best scientific understanding of where these protected natural resources exist in our State. Updating the reference in the rule will provide clarity to the regulated public by pointing them to a more helpful series of maps for understanding this resource. It will also provide clarity to Department staff. In the past, the Department has been inconsistent in applying Chapter 355, at some times and in some geographic areas, relying on older maps rather than the narrative definition. This rule revision would help eliminate uncertainty and provide clarity by citing the most accurate and up-to-date reference material.

The Coastal Sand Dune Maps have always been intended as an aid. Coastal Sand Dune Systems are defined not by the maps, but by their sediment characterization, location, and the depositional processes that created them. In cases where there is ambiguity or doubt about whether a location is within a coastal sand dune system, a site-specific analysis is conducted, often with the help of MGS, to determine if the location meets the definition and is therefore a protected natural resource.

Thank you for the opportunity to testify before you today in support of L.D. 2168. I would be happy to answer any questions from the Committee, both now and at work session.