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DEPARTMENT OF ENVIRONMENTAL PROTECTION



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**TESTIMONY OF**  
**NAOMI KIRK-LAWLOR, OFFICE OF THE COMMISSIONER**  
**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SPEAKING IN SUPPORT OF L.D. 2171**

**RESOLVE, REGARDING LEGISLATIVE REVIEW OF PORTIONS OF CHAPTER 305:  
NATURAL RESOURCES PROTECTION ACT - PERMIT BY RULE STANDARDS AND  
PORTIONS OF CHAPTER 335: SIGNIFICANT WILDLIFE HABITAT, MAJOR  
SUBSTANTIVE RULES OF THE DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

**REPORTED BY REP. DOUDERA**

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

**DATE OF PUBLIC HEARING:**

**FEBRUARY 11, 2026**

Senator Tepler, Representative Doudera, and members of the Committee, I am Naomi Kirk-Lawlor, Policy Development Specialist in the Commissioner's Office at the Department of Environmental Protection, speaking in support of L.D. 2171. L.D. 2171 provides for legislative review of a major substantive rulemaking provisionally adopted by the Board of Environmental Protection that amends the Department's Chapter 305 and Chapter 335 rules to comply with statutory changes to the Natural Resources Protection Act (NRPA).

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In 2023 and 2025, two laws made changes to how significant wildlife habitat, a category of protected natural resource, is regulated under NRPA. P.L. 2023, ch. 156 expanded the statutory list of significant wildlife habitats to include habitat for state endangered and state threatened species. P.L. 2025, ch. 338 increased protections and made other changes to how significant vernal pool habitat, a type of significant wildlife habitat, is regulated. This provisionally adopted rulemaking updates the Department's significant wildlife habitat regulations to account for these statutory changes. It also updates erosion and sedimentation control standards in the significant wildlife habitat sections of the Department's NRPA permit by rule regulations to conform with current best practices and to be consistent with the other sections of the rule.

#### **Habitat for State Endangered and State Threatened Species**

P.L. 2023, ch. 156 is designed to protect habitat for state endangered and state threatened species without significantly increasing the Department's permitting load. The law designates endangered and threatened species habitat as significant wildlife habitat when it is within another protected natural resource, such as a wetland, or when it is on a project site that is already being reviewed by the Department under NRPA, the Site Location of Development Act, or the gravel pit or quarry performance standards. However, if the Department is reviewing an activity on a single residential lot that is not part of a proposed multi-lot housing development, the law does not allow for consideration of endangered and threatened species habitat unless that habitat is contained in another regulated resource, such as a wetland.

The provisionally adopted Chapter 335 rule defines an area as endangered and threatened species habitat if it is included on a publicly available GIS layer or webmap produced by the Department of Inland Fisheries and Wildlife (DIFW). The provisionally adopted rule also specifies the kinds of records necessary to include habitat in these maps. Habitat may only be included when there is verified evidence of the presence of the species. Acceptable types of evidence include documented sightings of the species, genetic evidence, nests, burrows or similar characteristic structures, vocalization, and

physical signs such as characteristic tracks, scat, eggs, feathers, or fur. Evidence of the presence of the species must either be documented by a qualified individual with experience and training in the identification and life history of the species or verified by DIFW Staff.

Some activities located in, on, or over certain significant wildlife habitat are eligible for a permit-by-rule (PBR). These significant wildlife habitats currently include high- or moderate-value inland waterfowl and wading bird habitat and shorebird nesting, feeding, and staging areas. The provisionally adopted rule revisions add endangered or threatened species habitat to this list. This allows activities in existing developed areas, expansions of up to 10% of an existing developed area and vegetative clearing to address a safety hazard or to create a footpath to be permitted by rule within endangered or threatened species habitat.

### **Significant Vernal Pools**

The provisionally adopted rule revisions make certain changes to how significant vernal pool habitat, a type of significant wildlife habitat, is regulated under NRPA, as required by P.L. 2025, ch 338. In summary, the law:

- Requires no disturbance within 100 feet of a significant vernal pool depression—the “significant vernal pool protection zone”—to the greatest extent practicable.
- Requires the critical terrestrial habitat around a significant vernal pool to be regulated consistently, regardless of property boundaries. Previously, development restrictions in the area surrounding a significant vernal pool were limited to the same property as the vernal pool depression.
- Shifts the date cut-off two weeks earlier for a vernal pool to dry out and allow the Department or DIFW to determine that it is not significant.

Most of the provisionally adopted rule revisions closely follow the statutory language. The only exception is in the significant vernal pool section of the NRPA Permit by Rule (PBR) regulation. The provisionally adopted rule revision does not allow activities that would disturb the area within 100 feet of a significant vernal pool depression to be

eligible for PBR, with two exceptions: Footpaths and activities on residential lots are allowed between 25 and 100 feet if they cannot be located elsewhere. This provision is intended to allow projects on single residential lots and low-impact foot paths to be permitted through PBR when it is not practicable to avoid the area within 100 feet of a significant vernal pool, as long as a 25-foot buffer can be maintained.

Thank you for the opportunity to testify before you today in support of L.D. 2171 and the provisionally adopted rules. I would be happy to answer any questions from the Committee, both now and at work session.