

§480-BB. Significant wildlife habitat; major substantive rules

The Department of Inland Fisheries and Wildlife shall adopt rules that define "significant vernal pool habitat," "high and moderate value waterfowl and wading bird habitat," "shorebird nesting, feeding and staging areas" and "habitat for state endangered and state threatened species listed under Title 12, section 12803, subsection 3" under section 480-B, subsection 10, paragraph B. The Department of Environmental Protection shall adopt rules regarding the criteria used to determine whether an area is significant vernal pool habitat, high and moderate value waterfowl and wading bird habitat, shorebird nesting, feeding and staging areas or habitat for state endangered and state threatened species listed under Title 12, section 12803, subsection 3 under section 480-B, subsection 10, paragraph B. The rules, as applicable, must: [PL 2023, c. 156, §3 (AMD).]

1. Definition of buffer area. Include a definition of the buffer area to be regulated; [PL 2005, c. 116, §5 (NEW).]

2. Certain landowners not subject to regulation. Provide the following exemptions to regulation.

A. A landowner proposing to cause an impact on the buffer area defined for a significant vernal pool habitat is not subject to regulation pursuant to the rule if the significant vernal pool habitat depression is not on property owned or controlled by that landowner. [PL 2011, c. 362, §1 (NEW).]

B. If a vernal pool depression is bisected by a property boundary and a landowner proposing to cause an impact does not have permission to enter the abutting property, only that portion of the vernal pool depression located on property owned or controlled by that landowner may be considered in determining whether the vernal pool is significant. A written department determination that a vernal pool is not significant pursuant to this paragraph remains valid regardless of timeframe. [PL 2013, c. 231, §4 (AMD).]

C. Rules adopted under this section may not require an applicant for a license for a working waterfront activity on working waterfront land that is part of a state or federal brownfields program or a voluntary response action program under section 343-E to compensate for lost habitat function with a function of equal or greater value or to provide a compensation fee pursuant to section 480-Z; [PL 2013, c. 231, §5 (NEW).]
[PL 2013, c. 231, §§4, 5 (AMD).]

3. Department of Environmental Protection must provide written field determination. Require that the Department of Environmental Protection provide a written field determination upon the request of a landowner whose land may be affected by the definitions and criteria adopted in a rule; [PL 2005, c. 116, §5 (NEW).]

4. Department of Environmental Protection may not assess fine in certain cases. Provide that the Department of Environmental Protection may not assess a fine against a landowner who acted in accordance with a written field determination if the fine would be based solely on information in the written field determination; [PL 2011, c. 362, §2 (AMD).]

5. Process for voluntary identification. Include a process for a landowner to voluntarily identify the landowner's land as a significant vernal pool habitat and to provide the Department of Inland Fisheries and Wildlife the authority to map the significant vernal pool habitat; and [PL 2011, c. 362, §3 (AMD).]

6. Artificial vernal pool. Explicitly provide that an artificial vernal pool is exempt from regulation as long as the vernal pool was not created in connection with a compensation project pursuant to section 480-Z.

[PL 2011, c. 362, §4 (NEW).]

Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 116, §5 (NEW).]

SECTION HISTORY

PL 2005, c. 116, §5 (NEW). PL 2011, c. 362, §§1-4 (AMD). PL 2013, c. 231, §§4, 5 (AMD). PL 2023, c. 156, §3 (AMD).

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