

Commissioners Briefing Memo

AGENCY: Department of Environmental Protection

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Mike Mullen
Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017
207-446-1611

CHAPTER NAME AND RULE TITLE:

Chapter 305 Section 20 Activities located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas

STATUTORY AUTHORITY:

P. L. 2011, Chapter 359

PROPOSED DATE AND PLACE OF PUBLIC HEARING:

Board meeting of 10/6/2011

PROPOSED PUBLICATION DATE: September 21, 2011

PROPOSED COMMENT DEADLINE: October 17, 2011

DID YOU CONSIDER ALTERNATIVE PATHS TO RULEMAKING:

This is a legislatively directed rulemaking and is **major substantive**.

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

In P. L. 2011, Chapter 359, the Department of Environmental Protection is directed to amend its rules concerning permit by rule (PBR) under the Natural Resources Protection Act to allow activities occurring in high or moderate value waterfowl and wading bird habitat (IWWH) to be eligible for PBR. After consultation with MDIF&W staff, it is proposed to allow new development in moderate value IWWH provided the development is located at least 100 feet back from the wetland and occupies no more than 20% of the lot within the habitat.

BACKGROUND AND IMPORTANT INFORMATION:

- **List possible Opponents and Proponents:** Opponents may include NGOs such as NRCM and possibly MDIF&W as well. Opposition may be to require an even greater setback (>100 feet) from the edge of the wetland mapped as IWWH.
- **Direct and Immediate threat to public health, safety and/or welfare:** None

- **Factual and Policy Justification and/or issues:** The Legislature wanted more predictability for applicants undertaking activities within IWWH, specifically mentioning reduced permitting requirements within moderate value IWWH. These proposed amendments will allow a reasonable amount of development within moderate value IWWH under the PBR process while still affording protection from unreasonable impact for the resource.
- **Federal law consistency (if different explain):** N/A
- **Is this rule the result of stakeholder work?** No

FISCAL IMPACT OF THE RULE: (if no please explain why)

(5 M.R.S.A. §8063-A and §8052-5A)

The proposed amendment will result in a minor loss of revenue because activities may be allowed under PBR (\$65 fee) instead of requiring a full permit (\$271 fee). It will save the regulated community the extra licensing expense and in some cases, the cost of consultants.

- **Fiscal Impact to Small Business, Regulated Community and Municipalities:** Positive but minor.
- **Fiscal Impact to State Government (Department or other agencies):** Minor revenue loss due to the intake of reduced permitting fees.
- **Benefit Cost Analysis (extent permitted by existing budgeted resources (LD 1 Part B))**
A Cost Benefit Analysis has been determined unnecessary at this time. This rule revision is anticipated to result in no increased costs to the regulated community and no appreciable increased costs to the Department. It is mandated by law and may result in less regulatory burdens on the regulated community.
- **Other Fiscal issues which should be considered:** N/A

Note: Please attach copy of purposed rule.