

TROUBLED WATERS:

Damage to Maine's Lake Protection Program
Under the LePage Administration



Natural Resources
Council of Maine

NRCM gathered the information in this investigative report from lake protection experts across Maine and from documents secured through Freedom of Access Act (FOAA) requests to the Department of Environmental Protection.

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EXECUTIVE SUMMARY

The lake protection program at Maine's Department of Environmental Protection (DEP) has been damaged under the LePage Administration. Although Maine's lakes are among our state's most valuable natural resources, the LePage Administration has put them at increased risk by cutting DEP lake protection staff and resources, terminating education and technical assistance initiatives, purging DEP's website of valuable public documents, disrupting the work of DEP scientific and technical staff, and failing to enforce a Maine lake protection law.

DEP lake protection staff and resources are at their lowest levels in decades, raising serious questions about whether the department can protect the health and integrity of Maine lakes, as required by Maine law.

The decline in DEP's lake protection program comes at a time when the water quality of Maine's lakes is deteriorating.¹ New research shows that the clarity of Maine's lakes has worsened since 1995. If this trend continues, the impact could be severe for Maine's economy. Studies show that Maine's lakes generate at least \$3.5 billion in economic activity annually and help sustain 52,000 jobs.

This is not a time to take Maine's lakes for granted or to believe that the Maine DEP has not played a significant role in helping protect Maine's lakes. The damage done to DEP's lake protection program cannot be easily reversed, but efforts to repair the harm should begin immediately.

FINDINGS

- **Report About a Successful Maine Lake Protection Law Buried.** DEP leadership directed that DEP's logo be removed from a report showing that Maine's shoreland zoning law is successfully protecting Maine lakes. DEP was working to pass a bill that would have weakened shoreland zoning at the time the report surfaced. The report is not on DEP's website and has never been referred to in DEP testimony.
- **DEP Website Purged.** DEP leadership implemented a DEP website redesign that eliminated 80 percent of the documents previously available to Maine people. DEP leadership used a draconian requirement that all webpages not viewed at least 40 times per month be removed. The data used for document elimination decisions was January through April 2011—months when most lake documents are not viewed.
- **DEP Lake Protection Staff and Funding Slashed.** DEP staff and funding for lake protection is at the lowest level in decades, raising serious questions about whether the department can fulfill requirements in Maine law. DEP has lost more than 100 years of institutional knowledge held by lake protection staff that have left in the past two years. Vacant positions have not been filled, DEP's Lake Protection Fund has been cut, and in 2011 approximately \$34,000 from the dedicated fund² for invasive plant management was transferred away from that purpose to the general fund.
- **Lake Education and Technical Assistance Terminated.** DEP leadership has sharply curtailed interaction of department staff with the public, eliminating most efforts aimed at educating school children, land owners, municipalities, and the public about ways to reduce pollution to Maine lakes.

1 <http://www.mpbnet/Home/tabid/36/ctl/ViewItem/mid/5347/ItemId/29941/Default.aspx> Ian M. McCullough, Cynthia S. Loftin, and Steven A. Sader (2013) Landsat imagery reveals declining clarity of Maine's lakes during 1995–2010. *Freshwater Science*: September 2013, Vol. 32, No. 3, pp. 741-752.

2 Money collected through boat registration fees.



Algae blooms like this one on Sabattus Pond (Sabattus) could become more common at Maine's lakes. A new study by University of Maine researchers analyzed data from nearly 550 lakes throughout the state, and found water clarity—a strong indicator of water quality—declining. Photo taken September 19, 2013.

- **Gag Order on Staff.** DEP leadership established a new policy requiring approval of any invitation to speak to an outside group and approval of all presentations, and forbidding staff from soliciting any speaking engagements. The policy has stifled communications that for decades have been at the heart of Maine's successful lake protection efforts.
- **DEP Involvement in Children's Water Festivals Curtailed.** DEP has drastically curtailed its involvement in annual water festivals that, since 1994 when they were established by the DEP, have helped teach thousands of 4th, 5th, and 6th graders and teachers about issues related to protecting Maine waters. Classroom lesson plans have been purged from the DEP website.
- **Successful LakeSmart Program Jettisoned.** In late 2012, DEP abruptly terminated the LakeSmart program that helps waterfront property owners protect lake water quality. DEP failed to provide the funding or staff assistance needed to help transfer LakeSmart to a non-profit.
- **TV Ads Quashed in Response to Lawn Care Companies.** An award-winning ad designed to educate homeowners about how runoff from yards and driveways can degrade water quality was quickly removed from the DEP website when lawn care companies complained to Governor LePage. The DEP Commissioner's office directed that the ads be removed.
- **DEP Scientists Blocked from Interacting with Colleagues.** DEP leadership has terminated lines of communication between DEP technical staff and their peers. DEP dropped sponsorship of the Maine Water Conference and slashed staff participation by 80 percent. For the first time in 35 years, no one from DEP was allowed to attend the New England Association of Environmental Biologists (NEAEB) conference (important for lake science) and DEP leadership blocked Maine from hosting the 2014 NEAEB meeting—also an unprecedented action.
- **Enforcement of Lake Water Quality Law is Faltering.** Contrary to a 2007 law, many stores across Maine are not posting a sign designed to discourage the use of phosphorus-containing fertilizers, which threaten lake water quality. DEP appears to be doing little to ensure compliance with this law.



CROSS LAKE BY ANN FLEWELLING

OVERVIEW

Maine has some of the most scenic and valued lakes in the United States. People travel long distances to visit Maine's nearly 6,000 lakes for swimming, fishing, boating, picnicking, camping, and many other shorefront activities.³ Clean lakes add immeasurably to the quality of life of Mainers, and lakefront property values are vital to town budgets statewide. Maine lakes also provide safe drinking water for more than 400,000 Mainers—a resource that could not be replaced easily or cheaply.⁴ According to a study by the University of Maine, Maine lakes generate more than \$3.5 billion annually to Maine's economy and sustain 52,000 jobs.⁵

Until recently, all levels of Maine government have understood the importance of Maine's clean lakes. Over the past 40 years, with broad bipartisan support, the Maine Legislature has passed laws that have helped protect the clean water in Maine lakes by reducing phosphorus pollution, curbing the spread of invasive species, requiring vegetated buffers to reduce polluted runoff, and promoting best practices on shoreland properties. Through these efforts, the Maine Department of Environmental Protection (DEP) developed one of the best lake protection programs in the nation.

But that has all changed over the past two years. The LePage Administration has drastically curtailed DEP's lake protection efforts by eliminating staff and not filling vacancies, cutting funding, terminating education and technical assistance programs, and reducing enforcement. The current administration also has sharply curtailed interactions between DEP staff and Maine people, lake associations, colleagues in other New England states, and the scientific community.

Maine is now headed into troubled waters when it comes to the protection of our lakes.

Although lake water quality depends on activities of many stakeholders—including lawmakers, lake associations, private companies, landowners, and municipalities—the Maine DEP also has a central role to play. However, the LePage Administration has cut DEP's lake protection staff and resources so deeply that they can no longer perform important work to keep Maine's lakes clean, including work required by law.

As the DEP lake protection program continues on a downward spiral, it is important for the Maine Legislature and Maine people to understand what's at stake. Maine's lakes generate billions in annual spending, support tens of thousands of jobs, and provide up to 80 percent of critical services in many Maine towns. The damage being done to DEP's lake protection program by the LePage Administration could result in significant harm to Maine's economy if we start losing our clean lakes.

1. Report About a Successful Maine Lake Protection Law Buried

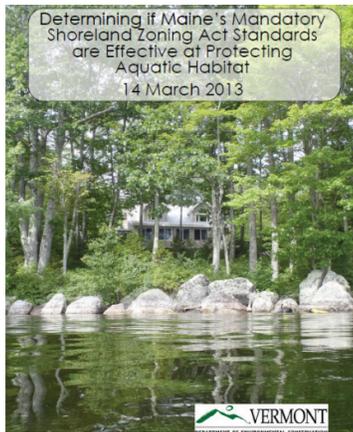
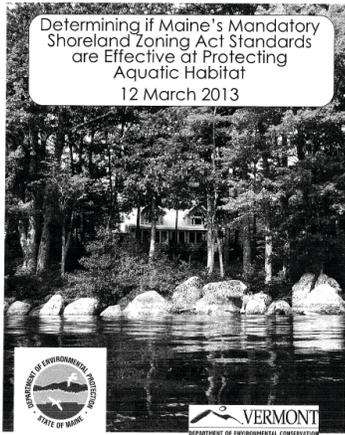
In March 2013, DEP refused to post on its website a report that documents the success of Maine's shoreland zoning law in protecting Maine lakes. The analysis, titled *Determining if Maine's Mandatory Shoreland Zoning Act Standards are Effective at Protecting Aquatic Habitat*, was a joint study conducted by the Vermont Department of Environmental Conservation (DEC) and the Maine DEP. For one 48-hour period, the report circulated with both the Vermont DEC and Maine DEP logos, until DEP leadership directed that the DEP logo be removed and any official association with the report be terminated.

The report, based on water quality sampling in both states in 2011, provides a ringing endorsement of Maine's 1971 mandatory shoreland zoning law. Vermont has no mandatory shoreland zoning, so lakes in Vermont often lack vegetation along their shores, and homes are frequently built right next to the water. In contrast, Maine requires that structures be set back at least 100 feet from the lake and that a vegetated buffer be provided to reduce polluted runoff. The Vermont-Maine report compared the results of these two approaches and concluded that Maine's mandatory shoreland zoning has been extremely successful in protecting aquatic habitat and lake water quality.

3 Maine has an estimated 5,785 lakes and ponds larger than one acre.

4 Maine lakes provide safe drinking water to over 50 communities and the quality of the water is so high that costly treatment is not required.

5 See: Boyle, K.J., J. Schuetz, and S. Kahl. 1997. Great Ponds Play an Integral Role in Maine's Economy. REP 473, Water Research Institute, University of Maine; values updated to 2005 dollars in this document: <http://www.mainecola.org/Portals/0/DOCS/We%20all%20have%20a%20stake%20in%20Maine%20lakes.pdf>. (See Appendices.)



Buried Report. Note that the DEP logo was removed between the March 12 and March 14 versions of the report, suggesting that DEP leadership did not want to be associated with a report about the success of Maine's shoreland zoning law at a time when the LePage Administration was working to weaken shoreland zoning. DEP leadership also refused to allow the report to appear on DEP's website, even though Maine taxpayer dollars helped pay to prepare the report.

However, the LePage Administration buried the report at a time when the DEP was advocating for a bill (LD 470) that would have weakened Maine's shoreland zoning law.⁶ On March 13, 2013, DEP Commissioner Patricia Aho testified in support of LD 470. The Maine Real Estate and Development Association (MEREDA), a former client of Aho when she was an attorney and lobbyist at Pierce Atwood, also testified in support of the bill.⁷

Although LD 470's title—An Act Regarding Working Waterfront Projects—implied that it was related solely to working waterfront activities, the bill had sweeping implications for the entire state, including lakes. One of the most important parts of shoreland zoning is the requirement for vegetated buffers. NRCM Staff Scientist Nick Bennett explained how one provision in LD 470 could eliminate the requirement for well-vegetated buffers between buildings and the shore in many parts of Maine. Bennett also described how the proposed definition of "working waterfront" could reduce protections for significant wildlife habitat by allowing development activities prohibited by Maine's Natural Resources Protection Act.⁸

The Maine Congress of Lake Associations (COLA)⁹ also voiced concerns about how the bill would harm lake water quality through loopholes created in shoreland zoning. COLA Executive Director Maggie Shannon testified that LD 470 would lead in the direction of "an outright weakening of Shoreland Zoning...and must not be allowed to stand."¹⁰ Shannon attached the Vermont-Maine report to her testimony, as substantiation of the success of Maine's shoreland zoning law and why it should not be weakened.¹¹

The version of the report attached to COLA's testimony was dated March 12, 2013, and included *both* the Maine DEP logo and the Vermont DEC logo. Within 24 hours of the March 13th hearing, however, at the direction of DEP leadership, the DEP logo was removed and the report is not available on the DEP website. As a result, one can only find the report on the Vermont DEC website—in the version without the DEP logo, and on the Colby College website.¹²

On March 15, 2013, the retired Maine DEP employee who coauthored the report felt compelled to send an email to Maggie Shannon and other lake protection professionals in Maine, in which he said:

"The DEP administration has objected to the departmental logo (and its implication) appearing on the report... if you refer to the report, please make clear this was not an official DEP publication and does not necessarily reflect the policy of the Department."¹³

6 D 470, An Act Regarding Working Waterfront Projects, was written by DEP.

7 From 2007 to 2010, Patricia Aho worked for the law firm Pierce Atwood and represented MEREDA at the legislature. MEREDA's testimony in support of LD 470 was delivered by Andrea Cianchette Maker, a lobbyist with Pierce Atwood.

8 <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=3288>

9 In June 2013, COLA changed its name to Maine Lakes Society.

10 <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=3293>

11 The Maine Legislature amended LD 470 to eliminate the harm it would have done to shoreland zoning.

12 The Colby College website has a story titled, "Maine's Shoreland Zoning Act Standards are Effective at Protecting Lakes!" with a link to the report on the Vermont DEC website. <http://web.colby.edu/epsacor/2013/03/13/maines-shoreland-zoning-act-standards-are-effective-at-protecting-lakes/>

13 March 15, 2013 email from Roy Bouchard to 23 recipients, including DEP staff, lake associations, and organizations involved in lake conservation (including NRCM).

The Vermont-Maine shoreland zoning report includes a Maine DEP cover photo. Maine taxpayers helped pay the salaries of DEP scientists who worked on the report. The report is an unqualified validation of the success of Maine's mandatory shoreland zoning law enacted decades ago, yet neither the report nor any reference to it is on the DEP website. The current DEP leadership has never publicly acknowledged the report's existence.

2. Website Information Purged

During its first year in office, the LePage Administration implemented a redesign of the DEP website that eliminated 80 percent of the documents that previously were available to the public. This has been a disaster across all bureaus of the department, with many DEP staff strongly objecting to the purge, but the lake protection program was particularly hard hit.

Based on a review of documents secured through a Freedom of Access Act request, NRCM identified significant dissension as DEP Communications Director Samantha DePoy-Warren pressed to remove from the DEP website every document that was getting less than 40 hits a month.¹⁴ Internal emails include these comments of concern:

“The hits per month criteria doesn't make sense (unless you are selling advertising). Many of the low use pages are reports, or pages within reports, that need to be kept available to the public.”¹⁵

“This is not good for business, and will be a ‘black eye’ for the Department... This is a very bad idea and will be a deal breaker for our program. I hope the Department reconsiders this idea.”¹⁶

“Outrageous.... This cut back is not going to make technical assistance easy for our permittees.”¹⁷

“This looks like it could have a huge impact on our outreach abilities. The proposed cut-off seems rather draconian to me.”¹⁸

Requiring that a web page receive 40 hits per month to be retained is a very high bar for documents in a science-based agency where some data may only be of interest to people living in a geographically small portion of the state, during particular times of the year, or when a facility is up for relicensing. DEP leadership based its decisions on an Excel document listing webpage visits during a four-month period, from January 1, 2011 through April 30, 2011.¹⁹ DEP staff questioned the accuracy of the data²⁰ and urged that a more strategic approach be used, but DEP leadership pressed ahead to delete documents in a fashion not pursued at any other state agency.²¹

The Land and Water Bureau, which includes the Lakes Assessment and Protection Program, had about 6,600 web pages before the DEP website redesign. After the redesign, there were only about 400 web pages left—more than a 90 percent purge. Although it is impossible to determine what information was removed, NRCM searched for lake protection related keywords in a list of webpages, organized by hits for the four month period in early 2011 for the Bureau of Land and Water Quality. The chart below shows the extent of lake-related documents that disappeared.

14 Maine Sunday Telegram, June 18, 2013. Pg. A8.

15 Email from Dave Courtemanch to Teco Brown, et. al; June 6, 2011.

16 Email from David Ladd to Alison Moody, et. al; June 8, 2011.

17 Email from Alison Moody to Don Witheral, et. al; June 6, 2011.

18 Email from Don Witheral to Arthur Mcglauffin, et. al; June 6, 2011

19 Copies of the spreadsheet secured through FOAA request.

20 Email from Brian Kavahah to Teco Brown, et. al; June 10, 2011; “after a review of these stats I find them suspect. I'm seeing over 100 hits in the four month period for pages that I would not expect anywhere near that many... Some of the high hit pages are also suspect. Did we really have 1,123 visits to the biomonitoring page on flatworms?”

21 For example, see Maine Forest Service website with easy access to documents and data extending back to the 1990s. <http://www.maine.gov/doc/mfs/pubs/annpubs.htm#aninv>

DEP Bureau of Land & Water Quality Webpages by Document Key Word (1/1/11 - 4/30/11)

Key Word	# of Documents Before Website Revision	Number with 40+ Hits/Month	Number with Less than 40 Hits/Month	Percent Elimination of Documents from DEP Website
Biomonitoring	141	20	121	86
Education	117	7	110	94
Fert or Fertilizer	23	2	21	91
Invasives	82	17	65	79
Lake	244	13	231	95
LakeSmart	36	1	35	97
Publication or Pub	140	2	138	99
Stormwater	649	19	630	97
Teacher	82	2	80	98
Training	82	7	75	92
Watershed	177	9	168	95

Although some deleted documents were restored based on appeals by DEP and EPA staff²², more than 80 percent of the content of DEP’s website overall was removed based on the January through April 2011 data. Deeper cuts appear to have hit many categories of documents dealing with lake protection because winter months are not typically when the public is looking for lake-related information. In terms of specifics, NRCM has determined that documents including the following have been eliminated from DEP’s lake program webpages:

- Virtually all lake resource information for teachers, including lesson plans;
- Virtually all lake-related publications, including reports on: 1) how to reduce the impact on lakes from camp roads, 2) protecting lake water quality from development impacts, and 3) the presence of algae toxins in Maine lakes.
- Dozens of documents dealing with invasive species, algal blooms, swimmer’s itch, lake jellyfish, and foam on lakes [Examples of topics that most people search for in summer months.]
- Scores of documents on ways to reduce nutrient runoff to lakes.

3. DEP Lake Protection Staff and Resources Cut

DEP lake protection staff and resources are at their lowest levels in decades, raising serious questions about whether the department can protect the health and integrity of Maine lakes, as required by Maine law.

In 1998, the Maine Legislature passed a law that refined the focus of Maine’s lake protection program and boosted funding and staff for these purposes.²³ Although early versions of the legislation provided the DEP Commissioner with authority to “establish priorities for activities that contribute to the protection of the physical, chemical and biological integrity of lakes,” the law as enacted was much more directive, stating, “In implementing the Lakes Assessment and Protection Program, the commissioner shall conduct activities within the following areas:

- (1) Education and technical assistance relating to lake functions and values, watershed planning and management, implementation of best management practices, effects of cumulative impacts and applicable laws and rules;

²² Some documents that are required by law to be posted were reinstated.

²³ 38 MSRA §410-L-M, Lakes Assessment and Protection Program, authorized and provided funding for four additional lake protection staff.

- (2) Monitoring and research relating to the ecology and quality of lake resources, the vulnerability and the status of lakes, the relationship between the quality of lake resources and development, the design and effectiveness of best management practices and the effectiveness of efforts to protect lakes; and
- (3) Promoting and monitoring compliance with the enforcement of the natural resources protection laws, the mandatory shoreland zoning laws, the storm water management laws, the erosion and sedimentation control laws and other state and local laws providing standards for protection of lakes.”

Following passage of the 1998 law, DEP had 6.5 Full Time Equivalent (FTE) positions dedicated to lake protection, plus support from staff in DEP’s shoreland zoning and Natural Resources Protection Act programs, a Lakes Educator position, and an AmeriCorps volunteer dedicated to lake education and school programs.²⁴

Today, however, DEP lake program staff has dropped to less than 2.5 FTE: one full-time biologist, a second biologist who is less than full-time on lake protection, and a half-time conservation aide shared with the DEP marine program. The LePage Administration has not filled any lake program vacancies, has eliminated positions, reassigned staff that previously worked on lake protection to other work, and dropped the AmeriCorps position.

At least since 2001, DEP’s lake protection program benefitted from an AmeriCorps intern, but the position was terminated in 2012 by the LePage Administration. The AmeriCorps intern typically worked 1,600 hours annually, reaching thousands of school children and Maine residents with information about protecting Maine lakes.²⁵

The DEP lake program personnel who have departed in the past two years collectively had more than 100 years of institutional knowledge—a resource created with taxpayer investment that cannot be replaced even if the positions themselves were restored.

The Administration also has cut funding for lake protection programs. In 2011, the Administration transferred to other general fund purposes \$34,000 that should have remained in a dedicated fund for invasive plant management,²⁶ and the Administration cut the Lakes Protection Fund portion of the department’s state general fund from \$144,000 to \$122,000. DEP resources aimed at lake protection are now at a level that cannot meet the requirements established by the Legislature in the 1998 Lakes Assessment and Protection Program law.

4. Virtual Termination of Education and Technical Assistance

Although by law “education and technical assistance” are top responsibilities of DEP’s Lakes Assessment and Protection Program, the LePage Administration has virtually eliminated DEP’s lake education and technical assistance activities.

DEP has drastically curtailed all lake education efforts for schools, teachers, and children. For example, DEP has minimized its involvement in the annual Children’s Water Festivals held in northern and southern Maine.²⁷ Although the DEP for nearly 20 years had been one of the most important supporters and sponsors of these education events for 4th, 5th, and 6th graders, DEP participation and funding support this year was cut to the lowest level ever, according to many people associated with these events. This cutback has been a particular challenging for the northern Maine festival, where resources have been scarce and DEP’s role has been pivotal.

Outreach in general has been severely hampered, with the loss of a long-time lake program staff member who was relocated to the Commissioner’s Office and instructed to no longer work on many of DEP’s signature lake education projects. When that person left the DEP, the educator position was not filled.²⁸ [This was one of the FTE’s established by the Legislature in 1998.] School outreach also has suffered from the Administration’s failure to fill a half-time lake educator position left vacant since that individual left the

24 Three additional DEP staff work on invasive species, funded with dedicated funding, and are not considered part of the lake program staff.

25 An AmeriCorps position continues to be available for DEP lake protection and education work, but DEP has refused to fund it—even though most of the funding for the position is covered through other sources.

26 Funds generated from boat license fees.

27 The Children’s Water Festivals are held annually at University of Southern Maine and bi-annually at the University of Maine-Orono. The first festival was held in 1994, initiated by DEP.

28 The position was transferred to DEP’s Portland office to assist with licensing functions.



The LePage Administration DEP has drastically cut back its staff and financial involvement in the Maine Children's Water Festivals, which since 1994 had been a signature event for DEP to help educate over 700 4th, 5th, and 6th graders and their teachers about issues related to protection of Maine waters.



DEP's successful LakeSmart program was abruptly stopped in 2012 and transferred to a non-profit without funding or transition support from DEP.

department and termination of the AmeriCorps educator position who was supervised by this staff member.

Until the LePage Administration, DEP's website included a broad range of materials for teachers to help them with lesson plans on topics such as watershed protection, invasive species, water quality, habitat conservation, and erosion—but these materials have been removed from the website. In general, DEP is no longer directly engaged in a meaningful way with schools, teachers, or children to help educate them about water quality and how Maine people and communities can help protect our lakes.

DEP lake staff also are no longer allowed to participate in many events organized by lake associations. These events provided opportunities to disseminate useful information and technical assistance to thousands of shoreland property owners who are members of Maine's lake associations.

Many of these restrictions on DEP engagement with the public can be traced to a new LePage Administration "Public Communications Policy" that sharply restricts DEP communications, public education, and outreach. The policy prohibits staff from initiating public education or speaking engagements.²⁹ It also requires approval by the Director of Communications & Education of any speaking request before it can be accepted, and approval of any presentation as well. The policy further requires that any presentation must be provided to the Director of Communications & Education for review "as soon as possible but no less than five full working days in advance of the staff person's departure for the presentation."³⁰

For an agency that has been deeply involved in public education, this gag order is contrary to the concept of DEP actively serving as an information resource so that Maine people can make informed decisions that contribute to the stewardship of Maine's natural resources.

Beyond general education and outreach, the DEP lake staff, until recently, were involved in a broad range of technical assistance efforts to protect lake water quality. From 2003 until 2011, for example, the Maine DEP ran LakeSmart, a program that helped lakefront property owners learn how to manage their homes and yards to protect water quality. DEP staff, with support from the Soil and Water Conservation Districts, provided evaluations and technical assistance to property owners and provided awards to home owners who took necessary steps to help reduce pollution from their driveways, septic systems, lawns, and shorefronts. About 500 awards were granted between 2004 and 2011.³¹ Very few were granted in 2012, however, because DEP leadership decided to terminate funding and jettison the program, handing it over to the Congress of Lake Associations.

This abrupt pulling of the plug is problematic. LakeSmart was developed with public funding, and DEP should have protected the public's investment in the program through a hand-off strategy that involved continued DEP staff assistance and funding support through a transition period.³² But that's not what happened. Rather, the way

29 "Department staff is not to solicit speaking/presentation engagements." DEP Public Communications Policy, 6/14/12, p3.

30 DEP Public Communications Policy, p4.

31 More than 940 site visits conducted, with technical assistance provided even if award not granted.

32 The Maine Lakes Society (formerly COLA) is working hard to sustain and expand LakeSmart, but without the DEP support that would have eased this task.

LakeSmart was handled appears to demonstrate that the current DEP leadership is hostile to the role that DEP staff have played in working with landowners to protect lake water quality.

5. Award-Winning Ads Disappear in Wake of Lawn Care Company Complaints

DEP is part of a coalition known as ThinkBlue that has produced two award-winning television ads featuring rubber duckies as a way to teach the public about the risks to water quality from polluted runoff.³³ However, in April 2011 when lawn care companies complained about one of the ads to Governor LePage, the ads quickly disappeared from DEP's website at the direction of then-Deputy Commissioner Aho.³⁴ (See Appendices for timeline.)

The 2011 "Devil Ducks" ad shows yellow duckies turning red to symbolize the risk to water quality from runoff containing fertilizer and bug and weed killers. The ad was developed based on extensive focus group research. DEP paid 56 percent of production and media costs for the campaign.³⁵ A survey conducted after the ads aired demonstrated that they had been successful in raising awareness about the importance of reducing pollution runoff.³⁶



Maine DEP - Think Blue Maine (Devil Ducks)



Think Blue Maine - Ducky Ad

Successful Ads Not on DEP Website. Try YouTube.

An effective public education campaign about the risks to clean water from lawn chemicals and stormwater runoff, initiated before the LePage Administration, has disappeared from sight. Survey results show that the program was successful. The campaign won an advertising industry award, but the DEP website includes no mention of the ads and no links to the video. Lawn care companies reportedly complained about the ads to the LePage Administration. Ads can be viewed at: <http://www.youtube.com/watch?v=XLt8c2fO3QU> <http://www.youtube.com/watch?v=wJCHZLAW18M>

The Devil Duck ad was so successful that DEP received a 2012 Service Industry Advertising Award Bronze Medal from a national panel of judges who reviewed 2,000 entries of similar public service ads. However, the DEP website includes no links to the ads and no mention of DEP involvement in the advertising campaign. Internal emails secured through a Freedom of Access Act Request reveal why.

On March 9, 2011, before the ad began airing, DEP Spokesperson and Director of Education and Outreach sent an email to Commissioner Darryl Brown and Deputy Commissioner Patricia Aho saying:

33 The first ad (Ducky I) aired during four periods between 2004 and 2009; the follow-on ad (Devil Ducks) was initiated in 2010 and aired in spring 2011.

34 In an exchange of emails on April 4, 2011, Samantha DePoy-Warren asked Patricia Aho "will you approve of me pulling the ad off the state website?" and Aho replied "I also concur with removing the ad from the website."

35 The ThinkBlue partnership includes 28 Maine municipalities and 8 state and federal partners that as a coalition have worked to reduce stormwater pollution to meet Clean Water Act requirements.

36 Research Report, The Maine Survey, Market Decisions, July 2011, Jen MacBride, Brian Robertson.

I wanted to give you a head's up to the "Ducky II" ad that DEP largely created and funded and that will soon be appearing on Maine television stations.... While I appreciate the intent of the ad campaign and the hard and passionate work of the team of our staff who shepherded this ad creation process along, I believe it is a vulgar use of our department's time and funds.... With the ad approved by the past administration, already paid for and airing in less than two weeks, I suspect there is nothing we can do to prevent it from going public.³⁷

On April 1, 2011, after the ad had begun airing, Governor LePage received an email written by Chris Turmelle of Atlantic Pest Solutions and sent to 30 other lawn care and pest control businesses. The Subject of the email was: NEW DEP supported Rubber Ducky Ad is anti-lawncare!³⁸ The email was forwarded from the governor's office to the DEP Commissioner's office on April 4, 2011, and on April 6, 2011, Samantha DePoy-Warren, sent an email to staff who were involved in the advertising campaign saying:

we [DEP] and the Governor's office are getting a barrage of complaints about the Ducky II ad, including from an organized group of landscapers, lawn care specialists and others within the industry who are very upset about it... Obviously, an anti-lawn care ad as many see this does not sit well with those industries, who do their part to present eco-friendly options to consumers (sic) and who are important creators of jobs in Maine especially at this time of year. For starters, I'd like this ad pulled off the Maine.gov media library page to protect the state and the department. Secondly, I need ASAP a one-page overview that explains the details of the ad creation and buy as well as the thought process behind the ad and the message it was trying to send. I'd ideally like this well before the end of the day, so I can forward it onto the Governor's Office, which has requested this overview.³⁹

With this intervention from the Governor's Office and the Commissioner's Office, these effective ads were removed from the DEP website, eliminating the continued education value that the ads could be providing. Companies that sell fertilizer and pest control chemicals prevailed in stifling further utilization of the ad by DEP.

6. Connections Severed Between DEP Scientists and Other Lake Professionals

Although Governor LePage and DEP leadership often claim that they support "sound science," they have terminated lines of communication between DEP scientists and Maine lawmakers,⁴⁰ and they have cut off important avenues for communication between DEP technical staff and their peers in Maine and across New England.

For example, DEP staff has been blocked by the Commissioner's Office from attending the Maine Water Conference,⁴¹ the annual meeting of the Maine Environmental Educators Association,⁴² the annual meeting of the National Association of Lake Managers (an organization that Maine DEP helped create),⁴³ and the annual meeting of the New England Association of Environmental Biologists (NEAEB). In some cases, staff requests to participate in these forums have been denied even when the staff has located funding outside DEP to cover all costs. In other cases, staff has been told by DEP leadership that they could only attend the meeting if they used vacation days.

37 Email from Samantha DePoy-Warren to Darryl Brown, Patricia Aho; Subject: Stormwater Ducky Ad; March 9, 2011.

38 Email from Chris Turmelle to lawn care and pest company contacts, forwarded to Governor LePage by Deven Morrill with message: "Please read the e-mail below. This have (sic) gotten WAY out of hand. Now our own government is placing adds (sic) against our industry with false accusations." April 1, 2011.

39 E-mail from Samantha Depoy-Warren to Barb Welch, Kathy M; Subject: Ducky Ad; Importance: High April 6, 2011, 8:23am.

40 In sharp contrast to tradition, the LePage Administration generally has not allowed DEP technical and professional staff from engaging directly with Maine lawmakers. The Commissioner and the staff in the Commissioner's Office tightly control all information provided to the legislature.

41 DEP has sharply cut staff participation in the annual Maine Water Conference, hosted by the Mitchell Center at the University of Maine-Orono, and in 2013 dropped its sponsorship of the event. DEP attendance dropped from 48 in 2011 to only 15 in 2013. The conference usually has about 280-300 attendees and is Maine's signature annual event for water protection professionals.

42 Maine DEP no longer is allowed to have a staff member serving on the Maine Environmental Educators Association Board of Directors; no DEP staff were allowed to attend the 2013 conference; and a DEP lake program staff member needed to make a special appeal to the Commissioner's Office for permission to accept a 2012 Lifetime Achievement in Environmental Education award from the MEEA.

43 No DEP lake protection staff attended the annual NALM conference in 2012.

Preventing DEP technical staff from attending the New England Association of Environmental Biologist is particularly troubling. The Maine DEP helped create NEAEB in 1977, and the annual conference is a valuable forum for sharing technical information about water quality and strategies for controlling pollution. The meeting is attended by biologists, scientists, and professional staff from the environmental agencies of the six New England States, New York, the New England Interstate Water Pollution Control Commission, and the regional office of the Environmental Protection Agency. DEP's annual Performance Partnership Agreement with EPA clearly establishes the expectation that DEP attend the annual NEAEB meeting.⁴⁴

A review of more than 30 years of NEAEB conference programs shows that Maine DEP scientists have been featured presenters almost every year on research data gathered from Maine lakes and waterways. But in 2013, DEP leadership refused to allow any DEP staff from even attending—marking the first time in 35 years that Maine DEP scientists were not present. This appears to have been the first time that *any* New England state environmental agency has blocked the agency's attendance.

DEP leadership also decided that it will not allow the 2014 NEAEB conference to be held in Maine. Since 1978, when Maine hosted the 2nd NEAEB meeting, the role of hosting has rotated through the New England states, with Maine's slot coming up in sequence. Next year was to be Maine's turn, but DEP leadership instructed staff to cancel those plans. As a result, Vermont has offered to take Maine's leadership role as host.

7. DEP Faltering with Law to Reduce Phosphorus Fertilizer

In the late 1990s, the DEP started a campaign to limit the use of phosphorus-containing lawn fertilizers because of the harmful effects of excess phosphorus in Maine lakes. But those efforts appear to be faltering in the LePage Administration DEP.

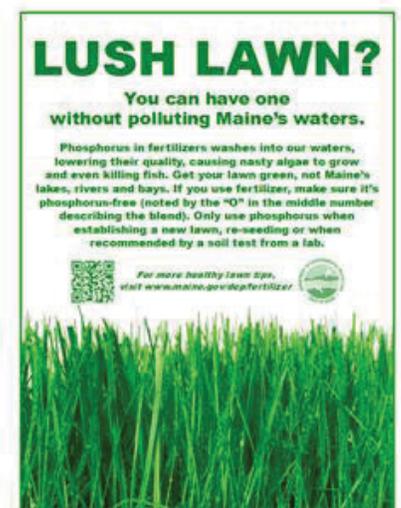
Adding excess phosphorus to water bodies can lead to harmful algae blooms that degrade water quality, impair recreation, threaten fish populations, and reduce lakefront property values. Algae blooms triggered by excess phosphorus from fertilizers and stormwater runoff are among the most significant risks to Maine lakes.

In the past, DEP public education and outreach activities have included a strong emphasis on promoting awareness of the link between phosphorus pollution and reduced lake water quality, but many of these efforts have been curtailed. DEP also has not been appropriately enforcing a law aimed at discouraging the use of phosphorus-containing lawn products.

In 2007, the Maine Legislature passed a law (38 MRSA §419) requiring all retailers that sell phosphorus-containing fertilizer to post a sign discouraging the use of phosphorus lawn products unless used for reseeding, starting a new lawn, or if needed based on soil tests. Generally, Maine soils do not need phosphorus supplements.

Starting in 2008, DEP developed a sign for retailers to display and mailed those signs to all stores with a letter explaining the new law. A 2008 statewide survey by DEP showed that 87 percent of Maine stores were complying.⁴⁵ A 2009 survey showed a similar level of compliance, but compliance rates in 2013 appear to have dropped significantly—to perhaps as low as 50 percent.

During the summer of 2013, NRCM staff visited 34 stores that sell fertilizer to determine whether the signs were on display as required by Maine law. Although some were in full compliance, 17 (50 percent) of the stores visited did not have the



To help protect our lakes, Maine law requires stores to post a DEP-approved sign to discourage the use of fertilizer containing phosphorus. Although compliance was 87% in 2008, an informal NRCM survey showed only 50% compliance in 2013. Also, the required sign (above) is not even available in a downloadable form on the DEP website.

⁴⁴<http://www.maine.gov/dep/publications/documents/ppacurrent.pdf>; p41.

⁴⁵ State of Maine, Department of Environmental Protection, 2010 Integrated Water Quality Monitoring and Assessment Report, p35.

required signs. (See Appendices.) Several stores in non-compliance are located very near significant Maine lakes, meaning that lakefront property owners in those areas are not receiving the notice required by Maine law. One store without the required sign was just across the Kennebec River from DEP headquarters. Some stores had posted the required signs, but so poorly that they were not likely to be seen by customers.

In prior years, DEP personnel visited stores to determine compliance and provide signs if none were on display. Based on NRCM's informal survey, it is not evident that DEP is continuing to do this work. DEP also does not have a downloadable version of the sign on its website, a simple step that would help stores comply with the law.



Augusta Home Depot – Sign not readable



Brunswick Tractor Supply – no signs



Farmingdale Agway – no signs



Home Depot So. Portland – no signs

Stores Not Complying with Law to Discourage Phosphorus Fertilizer

NRCM found that DEP is not ensuring compliance with a Maine law that requires stores to clearly display a sign discouraging use of phosphorus-containing fertilizers, which pose a significant risk to lake water quality.

CONCLUSION:

Maine Lakes at Risk from LePage Administration

Over the past 40 years, Maine people from both the public and private sectors have understood the importance of protecting the water quality of Maine's lakes from the type of degradation seen in nearly all states to our south and west. They have worked together to create a safety net that has helped protect these jewels on the Maine landscape, but that safety net and Maine lakes are now at increased risk because of decline of the DEP lake protection program under the LePage Administration.

To understand the full scope of the risk to Maine lakes, it is important to appreciate the complex safety net that has been so carefully crafted. The safety net is comprised of many strands, including state and local laws and the officials who enforce them; lake associations and their thousands of volunteers; scientists analyzing data about Maine lakes; land owners and businesses working to reduce polluted runoff; teachers helping students learn about lake water quality; and DEP staff working with all of these partners to keep the safety net strong.

The LePage Administration's actions have put this safety net at serious risk. As this report shows, the Administration has cut lake program staff and resources, purged the DEP website of information, buried a study about the success of Maine's shoreland zoning laws, terminated lake education programs, blocked interactions between DEP staff and their colleagues in the scientific community, and failed to enforce a law that discourages the use of phosphorous fertilizers that can cause a rapid decline in lake water quality.

The gag order placed on DEP technical staff is deeply troubling given what has been learned over the years about the importance of communications across all jurisdictions and boundaries to protect water quality within a watershed. It seems that the current DEP leadership believes that DEP's lake program staff, and DEP technical staff in general, should be quarantined and not authorized to engage with the public.

The damage done to DEP's lake protection program cannot be easily reversed, but efforts to repair the harm should begin immediately. The Legislature should reaffirm the critical role that DEP plays in working to preserve the quality of Maine's lakes. Positions and funding that have been cut should be restored, and staff vacancies should be filled with experienced candidates. DEP staff members should be allowed and empowered to work again with lake associations, schools, and land owners. We need to insist that DEP get back on track with education and outreach that helps all Maine people do their part. Otherwise we may see a steady and irreversible decline in the water quality and health of Maine's lakes.

Maine's lakes provide priceless experiences to Maine people and visitors alike. Maine's lakes are worth billions of dollars annually to our state's economy and provide a high quality of life for Maine people and visitors. Once water quality at a lake starts to decline, it is very difficult to recover. This is not a time to take Maine's lakes for granted or to believe that the Maine DEP has not played a significant role in helping protect Maine's lakes. For the sake of Maine's lakes, the damage to the DEP lake program must stop.

APPENDICES

Value of Maine Lakes

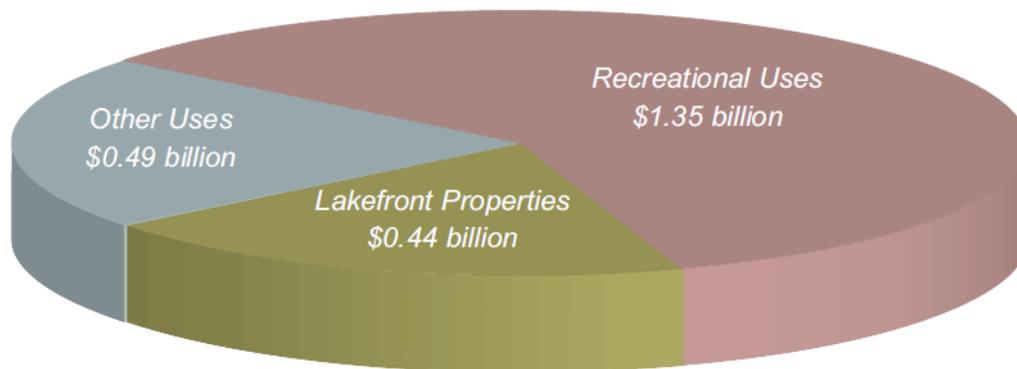
Every year, visitors to Maine lakes:

- Spend almost \$2.3 billion on lake-related uses and activities.
- This creates \$3.5 billion in total economic activity across Maine.
- Producing \$1.8 billion in annual income for Maine citizens.
- Sustaining 52,000 jobs.

In addition:

- One half of Maine's population depends on lakes for drinking water.
- 640,000 Maine residents use our lakes each year.

Breakdown of annual direct spending for lake-related uses in Maine's economy.¹



¹ Boyle, K.J., J. Schuetz, and S. Kahl. 1997. Great Ponds Play an Integral Role in Maine's Economy. REP 473, Water Research Institute, University of Maine. Values were updated to July 2005 dollar figures by T. Allen, Center for Tourism Research and Analysis. The update was based on inflation rates reflected in the Consumer Price Index. These values reflect the role of Maine's lakes in the state's economy ten years ago, but stated in current dollars. Both the numbers of users of Maine lakes and the rate of price inflation for waterfront property are different today. While it is difficult to place a dollar value on our natural heritage, we can account for some of the uses of Maine lakes, providing a minimum estimate of their economic significance.

Source: *We all have a stake in Maine lakes*, Maine Congress of Lake Associations and the Senator George J. Mitchell Center for Environmental and Watershed Research; <http://www.maineola.org/Portals/0/DOCS/We%20all%20have%20a%20stake%20in%20Maine%20lakes.pdf>

Timeline of DEP Removing “Devil Duck” Ad from Website

- 2010** **Production Begins.** DEP contacts Burgess-Advertising to produce an ad to raise awareness of the potential harm that lawn care products can have on water quality. Ad would be a sequel to the “Ducky” ad campaign that Burgess produced in 2004 and which ran four times, ending in 2009. Ducky ad won an EPA Award.
- 3/9/11** **DEP Leadership Worried.** Email from DEP Director of Education and Outreach Samantha DePoy-Warren to Commissioner Darryl Brown and Deputy Commissioner Patricia Aho to give them a “head’s up to the ‘Ducky II’ ad that DEP largely created and funded and that will soon be appearing on Maine television...” “I believe it is a vulgar use of our department’s time and funds...” “I suspect there is nothing we can do to prevent it from going public.”
- 3/20/11** **Ad Receives Award.** Email from DEP staffer Kathy Hoppe to ThinkBlue partners informing them that the Devil Ducks ad won a Service Industry Award Bronze Medal, to be presented to DEP. Award was based on “nearly 2,000 entries.” Burgess submitted the ad to be considered as part of the service industry ad competition.
- 3/28/11** **Ad Starts Airing.** Email from Kathy Hoppe informing other DEP staff that “Ducky II starts airing today in the Portland market, Bangor market next week and the following week in northern Maine.”
- 4/1/11** **Lawn Care and Pest Control Companies Respond.** Email from Chris Turmelle, Atlantic Pest Solutions, to 35 others in the lawn care and pest control business, asserts that the ad was anti-lawncare. “I do not like a government agency being a part of an organization that demonizes my means of earning a living like this.”
- 4/1/11** **Message Sent to Governor LePage.** The email from Chris Turmelle was forwarded to Governor LePage by Deven Morrill of Lucas Tree Experts.
- 4/3/11** **Governor’s Office Contacts DEP Commissioner.** Deven Morrill email was forwarded from the governor to DEP with a message to respond on behalf of the Governor. The email says that Deven Morrill also called the Governor.
- 4/4/11** **DEP Leadership Moves to Pull Ad.** Email from Samantha DePoy-Warren to Commissioner Brown, cc’d to Aho, says that she would draft a response, “My letter would essentially say this was an initiative of the previous administration, and shift the blame that way, which may not be the best way to handle it but is the truth.... Also, will you approve me pulling the ad off the state website?”
- 4/4/11** **Deputy Commissioner Aho Authorizes Pulling Ad.** Email from Aho to DePoy-Warren, “I agree you should send a response quickly and to highlight when and where the initiative started. I also concur with removing the ad from the website.”
- 4/6/11** **Ad Pulled from Website.** Email from Samantha DePoy-Warren to Barb Welch and Kathy Hoppe saying “we and the Governor’s Office are getting a barrage of complaints about the Ducky ad.”... “For starters, I’d like this ad pulled.”
- 7/11** **Report Documents Success of Ad.** Market Decisions releases survey report showing that the ad was successful in raising awareness about the risks to water quality from lawn fertilizer and pest control products.

Informal NRCM Survey of Compliance with Law to Reduce Use of Phosphorus Fertilizer

Store	Town	Compliance	Date	Ph Containing Fertilizer Sold	Sign Notes
Aubuchon	Augusta	Yes	7/24/2013	Yes	Displayed properly
Home Depot	Augusta	No	7/24/2013	Yes	Poorly Displayed, half covered
Lowe's	Augusta	Yes	7/24/2013	Yes	Displayed properly
Walmart	Augusta	No	7/24/2013	Yes	No signs
Ace	Bath	No	7/26/2013	No	No signs
Lowe's	Brunswick	Yes	8/4/2013	Yes	Displayed properly
Skillins	Brunswick	Yes	8/4/2013	Yes	Displayed properly
Tractor Supply	Brunswick	No	8/12/2013	Yes	No signs
Ace Hardware	Falmouth	No	7/26/2013	Yes	No signs
Campbell's True Value Agway	Farmingdale	No	7/30/2013	Yes	No signs
Gosline's	Farmingdale	No	7/30/2013	Yes	No signs
Harvey's	Gardiner	Yes	7/29/2013	Yes	Displayed properly
Drillen True Value	Lewiston	Yes	8/5/2013	Yes	Displayed properly
Tractor Supply	Lewiston	No	8/5/2013	Yes	No signs
Longfellow's	Manchester	Yes	7/25/2013	Yes	Displayed properly
Aubuchon	Naples	No	7/30/2013	Yes	No signs
Aubuchon	Newport	Yes	7/29/2013	Yes	Displayed properly
Ames Farm Center	No. Yarmouth	Yes	7/26/2013	Yes	Displayed properly
Tractor Supply	Oxford	No	7/30/2013	Yes	No signs
Home Depot	Portland	Yes	8/3/2013	Yes	Displayed properly
Lowe's	Portland	Yes	7/29/2013	Yes	Displayed properly
Maine Hardware	Portland	Yes	7/30/2013	Yes	Displayed properly
Stevens Hardware	Sabattus	No	8/5/2013	Yes	No signs
Lowes	Scarborough	No	7/30/2013	Yes	Sign turned over.
Tractor Supply	Skowhegan	No	3/5/2013	Yes	No signs
Broadway Gardens	So. Portland	Yes	7/30/2013	Yes	Signs present; not very visible
Home Depot	So. Portland	No	7/30/2013	Yes	No signs
Home Depot	Topsham	Yes	8/15/2013	Yes	Displayed properly
Home Depot	Waterville	No	8/6/2013	Yes	No Signs
Paris Farmer's Union	Turner	Yes	7/27/2013	Yes	Displayed properly
Walmart	Waterville	Yes	8/6/2013	Yes	Displayed properly
True Value Hardware	Westbrook	No	8/3/2013	Yes	No signs
Paris Farmer's Union	Winthrop	Yes	7/25/2013	Yes	Displayed properly
Ace Hardware	Yarmouth	No	8/1/2013	Yes	No signs
Compliance: 17 of 34 Stores		50%			



CHESUNCOOK LAKE, BY LISA FOHLMANN, PISCATAQUIS COUNTY

Maine has some of the most scenic lakes in the United States. People travel long distances to enjoy Maine's 6,000 lakes.



TROUT, ROUND POND, LIVERMORE, COURTESY EMMIE THEREBERG

According to a study by the University of Maine, Maine lakes generate more than \$3.5 billion annually to Maine's economy and provide 52,000 jobs.



TUFTS POND, KINGFIELD, BY ED SMITH

Maine's wildlife needs healthy lakes for habitat and as a source for food. Iconic species such as moose and loons attract many visitors to the state.



MOOSE, MOOSEHEAD LAKE, BY JASON HEINDEL



SEBAGO LAKE, BY KATHLEEN HESELTINE

Maine lakes provide safe drinking water for more than 400,000 people, making them a resource that could not be easily or cheaply replaced.



ALLISON CHILDS, WELLS

Clean lakes add immeasurably to the quality of life for Maine people.



SYSLAODISSIS LAKE, LAKEVILLE BY ALLEN EWING-MERRILL

Lakefront property values are vital to town budgets statewide. Healthy lakes ensure these property values will remain intact.



ALLISON CHILDS, WELLS

Lake water quality depends on many stakeholders. These include lawmakers, lake associations, private companies, municipalities—and the Maine Department of Environmental Protection (DEP). The damage being done to DEP's lake protection program by the LePage Administration could result in significant harm to Maine's economy and our way of life. To learn more, contact nrcm@nrcm.org.

The Natural Resources Council of Maine is an independent nonprofit membership organization protecting, restoring, and conserving Maine's environment, now and for future generations. www.nrcm.org.

