
Testimony in Support of LD 1882, Resolve, Directing the Department of Environmental Protection to Conduct Rulemaking Regarding Significant Vernal Pools

Before the Committee on Environment and Natural Resources

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Senator Tepler, Representative Doudera, and distinguished members of the Environment and Natural Resources Committee, my name is Luke Frankel, and I am the Woods, Waters, & Wildlife Director and Staff Scientist at the Natural Resources Council of Maine (NRCM). NRCM is Maine's leading nonprofit, nonpartisan membership organization dedicated to protecting the environment on behalf of our nearly 20,000 supporters statewide and beyond. I am here today to testify in support of LD 1882, Resolve, Directing the Department of Environmental Protection to Conduct Rulemaking Regarding Significant Vernal Pools.

Vernal pools are seasonal wetlands that lack a permanent inlet or outlet and as a result typically fill with water during the winter and spring and dry up toward the end of the summer. These wetland ecosystems are dynamic and unique, serving as critical breeding habitat for many species of amphibians and invertebrates. In Maine, this includes many aquatic insects, fairy shrimp, wood frogs, spring peepers, green frogs, Eastern newts, and several species of salamanders.

Because these waterbodies are ephemeral, they are unable to support the fish populations that serve as the primary predators for these species during their early life stages. These low-predator environments are essential in forming the robust amphibian population that we have here in the state.

Maine is a very wet state, and as a result, we have many wetlands and vernal pools. However, not all vernal pools are created equally. Some are small puddles scattered throughout forests that provide local benefits, while others are large pools that serve as prime breeding and nursery habitat that is of statewide significance.

Under the Natural Resources Protection Act (NRPA), these vernal pools that serve as "significant wildlife habitat" were awarded specific protection under the law in 2007 and are referred to as Significant Vernal Pools (SVP). SVPs are identified based on the abundance of four specific species (fairy shrimp, blue-spotted salamanders, spotted salamanders, and wood frogs) or the presence of State-listed endangered or threatened species. The primary protection awarded to SVPs is a 250-foot "zone of consultation" around the high-water mark of the pool where 75% of the area must remain as unfragmented forest to conserve the surrounding terrestrial habitat.

While the inclusion of these habitats within NRPA in 2007 was a big step forward, current regulations have a few key shortcomings. These include permitting disturbance right up to the edge of the SVP and a loophole that allows more than 25% of the 250-foot buffer zone to

become developed in cases where different properties bisect the “zone of consultation.” This loophole was codified in 2014 when the Chapter 335 rules that govern SVPs were amended.

This bill addresses these shortcomings by directing the Maine Department of Environmental Protection to undergo rulemaking to establish a 100-foot “significant vernal pool buffer” that would prohibit disturbance in the most critical terrestrial habitat around the pools. The ecological benefits of avoiding disturbance in this area are well established, and as a result this action is considered a Best Management Practice (BMP) by the U.S. Army Corps of Engineers (USACE).¹ Closing the 25% development loophole is in line with NRPA’s spirit of limiting impacts to protect resources and will only apply to a limited set of cases where property lines run within 250-feet of SVPs. Nature, after all, does not abide by arbitrary property lines, so neither should our laws that protect it.

We are also in support of the proposed date changes associated with the drying criteria for SVPs outlined in this bill. Shifting the drying criteria from July 31st to July 15th for northern Maine and July 15th to July 1st for southern Maine make sense in the context of our changing climate where SVPs can be expected to become dry earlier in the year.

Now more than ever, strong state policies that protect wetlands and vernal pools are needed. In the aftermath of the U.S. Supreme Court’s *Sackett v. EPA* ruling in 2023, which stripped Clean Water Act protections for wetlands that lack a “continuous surface connection” to “traditional interstate navigable waters,” the conservation of these key resources is now left up to state and local governments.

LD 1882 represents a pragmatic, science-based approach to fix shortcomings in Maine’s current SVP regulations. For this reason, we strongly encourage the Committee to vote Ought to Pass on LD 1882.

Thank you for your time and consideration.

¹ <https://www.nae.usace.army.mil/Portals/74/docs/regulatory/VernalPools/VPBMPsJan2015.pdf>