

**Chapter 8: ENDANGERED SPECIES**

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**8.01 Agency Jurisdiction**

- A. The Commissioner has the authority to recommend to the Legislature the designation of any species of fish or wildlife found in the State (12 M.R.S.A. §12803) as Endangered [12 M.R.S.A.) §10001 (19)] or Threatened (12 M.R.S.A. §10001 (63)) in accordance with the provisions of the Maine Endangered Species Act (12 MRSA §12804). The Legislature has sole authority to designate a species as Endangered or Threatened.
- B. *(Repealed)*

**8.02 Designation of Endangered and Threatened Species**

- A. In determining whether a species meets one or more of the standards for designating a species as Endangered or Threatened as listed in 12 M.R.S.A. §12803, qualifications for consideration for listing, population guidelines for risk of extinction in Maine, and other factors will be considered. For the purposes of this chapter, "species" will mean "species" or "subspecies" and "populations" will mean all individuals of the species, statewide.

**1. Qualifications for Consideration for Listing**

A species may only be recommended for listing as a state Endangered or Threatened species if it meets all of the following qualifications:

- a. It is a species of mammal, bird, fish, amphibian, reptile, or invertebrate wild by nature as distinguished from domestic species;
- b. It is an indigenous species to Maine, meaning it is not an exotic deliberately or accidentally introduced into Maine, the United States, or North America;
- c. It is a species that spends some portion of its annual cycle in Maine, including breeding, migration, or wintering, but is not a vagrant or accidental visitor;
- d. It is a species that has not expanded into Maine within the past 50 years as part of a general range expansion, unless it historically occurred in Maine or is threatened or declining throughout a significant portion of its total range;
- e. It is a species that has not been reintroduced into Maine as part of an experimental wildlife management program, unless listing is part of the reintroduction plan; and

- f. It is taxonomically classified no finer than a subspecies, unless federally Endangered or Threatened.

## 2. **Population Guidelines for Risk of Extinction**

The following population characteristics, when available, will be considered by the Commissioner when recommending whether a species meets the definition of Endangered or Threatened as provided 12 M.R.S.A.) §10001 (19 and 63).

- a. Population viability,
- b. Population size,
- c. Population trend,
- d. Population distribution,
- e. Population fragmentation, and
- f. Endemism, meaning the species entirely or largely occurs only in Maine and immediate bordering jurisdictions.

## 3. **Other Factors**

In addition to population guidelines (2) above, other factors, including range or habitat loss, disease, predation, over-utilization, inadequacy of regulations, and other natural or human-related factors as measured through observation, inference, or projection, will be considered when determining whether to recommend a species for listing as Endangered or Threatened as provided in 12 M.R.S.A.) §10001 (19 and 63).

## 4. **Listing Handbook**

The Department shall develop an “Endangered and Threatened Species Listing Handbook” that will provide scientifically based listing guidelines and criteria based on Sections A-1, 2, and 3 of this rule to guide the listing process.

### B. **Review of List**

1. At least every 8 years, the Department shall initiate a review of the designation of species as Endangered or Threatened to determine if any species should be recommended to be added to, deleted from, or changed between the lists.
2. Requests to add, change, or remove species on the lists may be submitted to the Commissioner for review and recommendation no later than six months before the start of the next legislative session. Each request must include a completed and current “Maine Endangered and Threatened Species Listing Review Work Sheet” and scientific documentation that the species meets the criteria for an Endangered or Threatened species. Guidelines for completing the worksheet can be found in a current version of the “Maine Endangered and Threatened Species Listing Handbook.”

- C. Prior to recommending an addition, deletion or other change to the Endangered and Threatened Species List, the Commissioner shall provide for public notice and public hearings on the proposed recommendation(s) in accordance with the provisions of **Title 5, chapter 375, subchapter II**.

### **8.03 Federally Listed Species** *(Repealed)*

### **8.04** *(Repealed)*

### **8.05 Essential Habitat for Species Designated as Endangered or Threatened**

Maps identifying Essential Habitat entitled “Essential Habitat for Endangered and Threatened Species” will be submitted upon adoption.

The following areas, identified as currently or historically providing physical or biological features essential to the conservation of an Endangered or Threatened species and requiring special management considerations, and the management guidelines for the protection of these areas are adopted in accordance with the provisions of 12 M.R.S.A. **§12804**. The Commissioner has identified and mapped such habitats as depicted on the maps entitled "Essential Habitat for Endangered and Threatened Species," which incorporated herein.

*(APA Office Note: the maps are available from the Department of Inland Fisheries and Wildlife, 284 State Street, 41 State House Station, Augusta, ME 04330-0041, phone (207) 287-5252. The latest index is at the end of this file.)*

#### **A. Bald Eagle Nest Site** *(Repealed)*

1. *(Repealed)*

#### **B. Roseate Tern Nesting Area**

##### **1. Purpose**

To provide special protection to maintain breeding habitat and to prevent disturbance, which may cause nesting failure of roseate terns. Protection is focused on the nesting area.

##### **2. Definitions**

- a. **Nesting area.** "Nesting area" means a locality encompassing an island or portion of an island used by at least one pair of nesting roseate terns.
- b. **Nesting.** "Nesting" means the presence of one or more nests, eggs, chicks, or pairs of territorial adult terns between May 15 and August 15.
- c. **Project.** "Project" means a planned undertaking, newly initiated or reinitiated.

### 3. **Designation Criteria**

Roseate tern nesting areas identified and mapped by the Commissioner of Inland Fisheries and Wildlife as Essential Habitat must:

- a. Have a record of at least one pair of nesting roseate terns since 1930,
- b. Have suitable habitat as indicated by the presence of nesting common, arctic, or roseate terns in at least any 3 years since 1976, and
- c. Be considered essential to the achievement of the Department's management goals and objectives for roseate terns.

Roseate tern nesting areas designated as Essential Habitat will be deleted if:

- a. The nesting area has not been occupied by any nesting pairs of common terns, arctic terns, or roseate terns during the most recent 10 years, and the lack of occupancy is not related to predation or competition from other species, or to any human-related activity, or
- b. The nesting area is no longer considered essential to the achievement of the Department's management goals and objectives for roseate terns.

### 4. **Protection Guidelines**

#### a. **Projects Prohibited Without the Commissioner's Approval**

Any project requiring a permit or license from, or to be funded or carried out by, a state agency or municipal government partly or wholly within a Roseate Tern Nesting Area designated as Essential Habitat shall not be permitted, licensed, funded, or carried out unless the Commissioner determines that the activity will not significantly alter or unreasonably harm the Essential Habitat. Projects that may be affected include, but are not limited to: Subdivision of land or buildings, construction, installation, expansion, alteration or repair of permanent structures; agricultural management; mineral exploration and extraction; forest management; road projects and construction; shoreland alteration, utility construction; water crossing; water impoundment; dredging; aquaculture; conversion of seasonal dwelling; installation of subsurface wastewater disposal system; and issuance of an exemption of the minimum lot size requirement.

#### b. **Exemptions**

The following activities are exempted from the requirements of this paragraph.

- (1) Projects limited to repairs, maintenance and alterations to the interior of an existing structure.

- (2) Emergency repairs to existing structures and utilities which due to unforeseen circumstances require immediate action.
- (3) Emergency activities which due to unforeseen circumstances require immediate action for public health or safety.
- (4) Licenses and permits to operate or occupy a completed project.
- (5) Projects that address the protection of the Essential Habitat and the Endangered and Threatened species and are conducted as part of a Department Wildlife Management Area Plan or Species Management Plan, or a Land Use Regulation Commission Resource Protection Plan (P-RP) to which the Department is a party, provided that the parties of the agreement perform according to its terms.

5. **Significant Alteration of Habitat**

In determining whether a project significantly alters or unreasonably harms essential nesting habitat, the following factors will be considered:

- a. Magnitude and time of year of noise and human activity generated by the project.
- b. Physical alteration to the landscape of the uplands, waters, and submerged lands.
- c. Destruction of or alteration to key habitat components such as island vegetation, nesting and roosting substrate, and foraging areas.
- d. Increase in disturbance by humans, and in predation or competition by other species.
- e. Demonstrated tolerance of terns at the site to human activity and disturbance.
- f. Reduction in the future suitability of the nesting area to nesting roseate terns.

C. **Piping Plover and Least Tern Nesting, Feeding, and Brood-Rearing Areas**

1. **Purpose**

The purpose of Essential Habitat designation for Piping Plovers and Least Terns is to: 1) provide special protection to maintain nesting, feeding, and brood-rearing habitats essential to the conservation of these species; and 2) minimize human-related disturbance that can cause nesting failure of these species. Protection is focused on the coastal wetlands and coastal sand dune systems used by nesting Piping Plovers or Least Terns.

This rule is not intended to, and shall not be interpreted to: 1) preclude rebuilding of existing structures in accordance with implementation of the coastal sand dune regulations (38 M.R.S.A., Sec. 480-A (Q) and Chapter 355 of Department of Environmental Protection Rules), nor 2) preclude recreational uses in practice at the time an area was designated as Essential Habitat and that are otherwise allowed by law.

## 2. **Definitions**

When used in this section, the following words and terms shall have the following meaning:

- a. **Nesting.** "Nesting" means the presence of one or more nests, eggs, or chicks of Piping Plovers or Least Terns.
- b. **Nesting, feeding, and brood-rearing area.** "Nesting, feeding, and brood-rearing area" means a locality encompassing portions of coastal wetlands and coastal sand dune systems (including subtidal, intertidal and beach and associated salt marshes and wetlands) used by at least one pair of nesting Piping Plovers or Least Terns.
- c. **Project.** "Project" means a planned undertaking, newly initiated or reinitiated.

## 3. **Designation Criteria**

Piping Plover and Least Tern nesting, feeding, and brood-rearing areas identified and mapped as Essential Habitat by the Commissioner of Inland Fisheries and Wildlife (IF&W) must be essential to the achievement of the Department's management goals and objectives for Piping Plovers or Least Terns.

Piping Plover and Least Tern nesting, feeding, and brood-rearing areas designated as Essential Habitat will be deleted if:

- a. The area has not been occupied by any nesting pairs of Piping Plovers or Least Terns during the most recent 10 years and the lack of occupancy is not related to predation or competition from other species, or to any human-related activity; or
- b. The area is no longer considered essential to the achievement of the Department's management goals and objectives for Piping Plovers or Least Terns.

## 4. **Interpretation of Essential Habitat Area Boundaries**

The following guidelines shall be used to interpret mapped Essential Habitat boundaries:

- a. In shaded areas, boundary lines are delineated in greater detail on composite aerial photographs (see "Boundary Line Detail Photos for Piping Plover and Least Tern Essential Habitat", prepared in November, 1994 and

August 2008) Copies of these photographs are available for viewing at town offices in affected municipalities; and Maine Department of Environmental Protection offices in Portland and Augusta and all Maine Department of Inland Fisheries and Wildlife offices.

Outside of shaded areas, the lines on the maps indicate the boundaries. Where a line is solid, the line on the map determines the boundary, and the inside of the line is the edge of the boundary. Where a line is dashed, the boundary is determined by the edge of the coastal wetlands as defined by **38 M.R.S.A., Sect. 480-B**. Cross-hatched areas are not part of the Essential Habitat.

- b. Where a boundary line follows a seawall or similar protective structure, only the beach area on the seaward side is intended to be included within the Essential Habitat: neither the seawall itself nor the property behind it are part of the Essential Habitat.

## 5. **Protection Guidelines**

### a. **Projects Prohibited Without the Commissioner's Approval**

Any project requiring a permit or license from, or to be funded or carried out by, a state agency or municipal government partly or wholly within a Piping Plover and Least Tern nesting, feeding, and brood-rearing area designated as Essential Habitat shall not be permitted, licensed, funded or carried out unless the Commissioner determines that the project will not significantly alter the Essential Habitat.

Examples of projects that may be affected include, but are not limited to: subdivision of land or buildings; construction, installation, expansion, alteration or repair of permanent structures; mineral exploration and extraction; road projects and construction; dredging; bulldozing; removing or displacing soil, sand, vegetation, or other materials; draining or otherwise dewatering; filling, including adding sand or other material to a coastal sand dune; beach nourishment projects; dune restoration projects; utility construction; water crossing; water impoundment; aquaculture; installing of subsurface wastewater disposal system; and issuance of an exemption to the minimum lot size requirement.

Projects located wholly outside an area designated as Essential Habitat, regardless of whether some other portion of the lot or parcel of land is within the Essential Habitat, are not affected by this rule.

Licensed activities which are not considered projects and therefore are not affected by this rule include, but are not limited to: recreational hunting and fishing, shellfish harvesting, sulky driving, dog ownership, and motor vehicle and boat operation.

b. **Exemptions**

Within areas designated as Essential Habitat, the following projects are exempted from the requirements of this paragraph:

- (1) Emergency repairs to existing utilities and structures, including roads and seawalls that, due to unforeseen circumstances, require immediate action and do not require a coastal sand dune permit under 38 M.R.S.A., Section 480-A, §Q.
- (2) Emergency activities that, due to unforeseen circumstances, require immediate action for public health or safety.
- (3) Licenses and permits to operate or occupy a completed project.
- (4) Projects limited to repairs, maintenance, and alterations to the interior of an existing structure.
- (5) Projects that address the protection of the Essential Habitat and the Endangered or Threatened Species and are conducted as part of a Department Management Area Plan or Species Management Plan, or a Land Use Regulation Commission Resource Protection Plan (P-RP) to which the Department is a party, provided that the parties of the agreement perform according to its terms.
- (6) Municipal licenses or permits for a project for which the Department, through another permitting process, has already found no significant alteration of the habitat or violation of protection guidelines for the Essential Habitat as currently mapped.

c. **Review Process**

For projects located partly or wholly within Essential Habitat as defined by 12 M.R.S.A. §12804-2 and this chapter, it is the responsibility of the state agency or municipality considering the permit or license application, or funding or carrying out the project, to obtain the Department's review. The Department will provide forms entitled Request for Project Evaluation. Upon receiving a completed Request for Project Evaluation, the Department will provide an evaluation of whether the project would significantly alter the Essential Habitat or violate the Department protection guidelines as set forth in 12 M.R.S.A. §12806-1. If the proposed project will significantly alter Essential Habitat or violate the protection guidelines, and if a variance is sought, the Commissioner will determine whether a certification of no significant risk to the population, as described in 12 M.R.S.A. §12806-2 can be issued.

## 6. Significant Alteration of Habitat

In determining whether a project significantly alters essential nesting, feeding, and brood-rearing habitat for Piping Plovers and Least Terns, the following factors will be considered:

- a. Magnitude and time of year of noise and human activity generated by the project;
- b. Within the area designated as Essential Habitat, destruction, alteration, or degradation of a portion of a coastal wetlands or coastal sand dune system (including subtidal, intertidal, beach, associated salt marshes, and wetlands) which will adversely affect the Essential Habitat;
- c. Increase in disturbance by humans and their pets, or increased predation (or attraction of predators) or competition from other species; and
- d. Reduction in the future suitability of the nesting, feeding, and brood-rearing habitat for Piping Plovers and Least Terns.

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STATUTORY AUTHORITY: 12 M.R.S.A. §§ 10104, 12803 and 12804

EFFECTIVE DATE:

January 4, 1984 - Sec. 1

AMENDED:

January 17, 1987 - Sec. 1

March 1, 1990 - Sec. 3

March 11, 1991 - maps only

March 1, 1992 - maps only

March 24, 1993

March 29, 1994 - added new Sec. 1, 2 & renumber previous sec. 1, 2 & 3

May 23, 1994 - Sec. 3, 4 & 5

March 28, 1995 - maps only

May 31, 1995 - Sec. 5 (C)

February 23, 1998 - Sec. 5 - added first sentence; 5(A)(3); converted to M.S. Word 2.0.

October 29, 1998 - amended maps for existing Essential Habitat Site #PPLT 04 (Pine Point and Western Beach, Scarborough and Old Orchard Beach); added PPLT #11 (Fortunes Rocks Beach, Biddeford) and PPLT #12 (Scarborough Beach, Scarborough); added "List of Essential Habitat Maps and Their Current Effective Dates" as Appendix I. Maps are available from the Department.

October 1, 1999 - replaced Appendix I, added Appendix II

June 17, 2002 - maps only. added APA Office Note in Section 8.05

April 19, 2003 - maps only, for bald eagles -- filing 2003-102

August 15, 2004 - index only; APA Office Note refers users to Department for Index and maps. - filing 2004-315

June 18, 2005 - index and maps; APA Office Note refers users to Department for Index and maps - filing 2005-315

September 17, 2007 - index only - filing 2007-399

December 5, 2009 - filing 2009-642

April 5, 2010 - filing 2010-113

**INDEX TO ESSENTIAL WILDLIFE HABITATS  
BY TOWN  
Effective January 2010**

TOWN NAME	ESSENTIAL HABITAT ID#
<b>Addison</b> .....	RT021
<b>Biddeford</b> .....	PPLT11, RT001
<b>Bristol</b> .....	RT011
<b>Brooklin</b> .....	RT018
<b>Cape Elizabeth</b> .....	PPLT07, PPLT09, PPLT13, PPLT17
<b>Criehaven</b> .....	RT015, RT016
<b>Falmouth</b> .....	RT007
<b>Georgetown</b> .....	PPLT06, RT002, RT003, RT014
<b>Harpswell</b> .....	RT004, RT009
<b>Kennebunk</b> .....	PPLT02
<b>Kennebunkport</b> .....	PPLT03, RT006
<b>Matinicus Isle Plt</b> .....	RT012, RT013
<b>Milbridge</b> .....	RT020
<b>Ogunquit</b> .....	PPLT01
<b>Old Orchard Beach</b> .....	PPLT04, PPLT08, PPLT14, PPLT15
<b>Phippsburg</b> .....	PPLT05, RT002, RT003
<b>Saco</b> .....	PPLT08, RT005
<b>Scarborough</b> .....	PPLT04, PPLT09, PPLT12
<b>South Bristol</b> .....	RT010
<b>St. George</b> .....	RT017, RT022
<b>Wells</b> .....	PPLT01, PPLT02
<b>Winter Harbor</b> .....	RT019
<b>Yarmouth</b> .....	RT008

**PENOBSCOT NATION**

**Tribal Lands**

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*(Repealed 12-5-2009 as part of filing 2009-642)*