



DEPARTMENT OF

**Professional &
Financial Regulation**

STATE OF MAINE

- OFFICE OF SECURITIES
- BUREAU OF INSURANCE
- CONSUMER CREDIT PROTECTION
- BUREAU OF FINANCIAL INSTITUTIONS
- OFFICE OF LICENSING AND REGISTRATION

Request for Information from Interested Parties: Sunrise Review for LD 1240

*“Resolve, Directing the Commissioner of Professional and
Financial Regulation To Conduct a Sunrise Review
Regarding a Proposal To License Wetland Scientists”*

**Department of Professional and Financial Regulation
Office of the Commissioner
June 12, 2009**

Sunrise Review Survey: Regulation of Wetland Scientists

Please return the completed survey to the Commissioner's Office by July 20, 2009. You may respond to any or all questions. The survey should be e-mailed to Doug Dunbar, Assistant to the Commissioner. The address is doug.dunbar@maine.gov. An electronic version of the survey is available by contacting the Commissioner's Office at (207) 624-8511.

Completed by: (name, title) Colen R. Peters, Professional Wetland Scientist #706, Maine Certified Geologist #220, New Hampshire Wetland Scientist #31

On behalf of: Colen R. Peters,

Mailing address: **1 Ivie Road, Cape Elizabeth, ME 04107**

E-mail address: **cpeters@trcsolutions.com**

Date: **___ July 23, 2009**

General Information

- 1. Group or organization you represent: Self (practicing wetland scientist in ME since 1988), and founding Member of MAWS in 1990; serving in numerous officer positions including President in 1995.**
- 2. Position on proposed legislation. Does this group or organization support or oppose state regulation of wetland scientists? Personally and professionally, I am opposed.**

Evaluation Criteria (32 M.R.S.A. § 60-J)

- 1. Data on group proposed for regulation. Please provide a description of the professional or occupational group proposed for regulation, including:**
 - (a) The number of individuals or business entities that you believe would be subject to regulation; +/- 100 individuals and less than 20 business entities that excludes sole practitioners who are included within the estimate 100 individuals.**
 - (b) The names and addresses of associations, organizations and other groups representing potential licensees; and MAWS, MAPSS, MASE, MSLS whose addresses are provided in the Survey submitted by Stantec/MAWS.**
 - (c) An estimate of the number of potential licensees in each group. Substantial membership overlap exists between the above organizations and numbers would be greatest from MAWS at maybe 60 with possibly 15 non-MAWS members from MAPSS, 15 non-MAWS/MAPSS members from MASE and MSLS and 10 or so from "other" such as PE's or LA's, etc = +/- 100.**

2. **Specialized skill.** Please describe whether the work of wetland scientists requires such a specialized skill that the public is not qualified to select a competent individual without assurances that minimum qualifications have been met. **It is widely accepted that >30% of ME is wetland and subject to the NRPA; which with regulated buffers further increases jurisdictional extent. A basic premise of NRPA Tiered Permitting and related Permit By Rule is to enable the general public to obtain such permits for “lesser-impact” projects based on practical experience/general knowledge. Conversely, the 1987 Corps Engineers Wetland Delineation Manual adopted by NRPA defines wetlands based on evidence from vegetation, soils and hydrology. Documentation of this information is requirement of NRPA applications for larger impacts and typically prepared by a wetland scientist or other environmental professional. Competence of individual(s) relative to specialized skill is therefore addressed during municipal, DEP, and Corps of Engineers permitting processes for bigger (as well as smaller) impact projects.**

3. **Threat to public health, safety, or welfare.** Please describe:
 - (a) The nature and extent of potential harm to the public, if wetland scientists continue to be unregulated by the State; and

 - (b) The extent to which there is a threat to the public's health, safety or welfare without state regulation (*Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against wetland scientists in this State within the past 5 years*). **Certain “function and values” ranging from wildlife habitat and water quality improvement to aesthetics and recreation are attributed to wetlands on a site by site basis and are why activities in wetlands are regulated by MDEP, Corps of Engineers, municipal Planning Boards and Code Enforcement Officers. Due to this breadth of jurisdiction and enforcement and nature of these functions and values, historic and status quo activities do not rise to the level of being a threat to the public’s health, safety or welfare. As an active environmental consultant in ME for the last 20 years, I have no knowledge (and it’s a small, closely networked field) of complaints lodged in the last 5 yrs. In the late 1980’s there were several wetland-related lawsuits but these stemmed from State and federal jurisdictional differences that have since been closed by promulgation and revisions to the NRPA, particularly circa 1995 and ongoing Planning Office educational efforts with municipalities and CEOs. Related to wetland science, the Board of Geologists and Soil Scientists could provide information on complaints and the DEP would also be an excellent source of information.**

4. **Voluntary and past regulatory efforts.** Please provide a description of the voluntary efforts made by wetland scientists to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public. **Refer to response to #10.**

5. **Costs and benefits of regulation.** Please describe the extent to which regulation of wetland scientists will increase the cost of services provided by wetland scientists and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers. **Licensure costs will be passed on the pool of more competitively priced “sole practitioners” will likely be diminished.**

6. **Service availability under regulation.** Please describe the extent to which regulation of wetland scientists would increase or decrease the availability of services to the public. **Environmental consulting and its sub-category wetland scientists, is a mature, competitive industry in ME where in addition to the present poor economic climate, in the past never has there been suggestion of an inadequate availability. More likely, regulation of wetland scientists will decrease availability, particularly “sole practitioners” who commonly serve smaller projects/clients thereby increasing costs of services to this portion of the public.**
7. **Existing laws and regulations.** Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from continued non-regulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners. **Existing legal remedies are not inadequate and are encompassed within the enforcement powers of municipalities, the DEP, Corps of Engineers and the US EPA. Although enforcement funding may be limited, “spot inspections” as implemented by USEPA in late 1980’s are an effective means to ensure compliance and redress any harm that can be attributed to non-regulation. Educational programs to municipalities as provided in the mid-1990’s by the State Planning Office to Code Enforcement Officers is another established means to address this matter.**
8. **Method of regulation.** Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate. **Does not appear to be necessary based on apparent absence of evident need. Established, rigorous credentialing certification now exists through the Society of Wetland Scientist Professional Certification Program (ME list attached).**
9. **Other states.** Please provide a list of other states that regulate wetland scientists, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on wetland scientists in terms of a before-and-after analysis. **I am aware of wetland scientist certification in NH but have heard mixed reviews on effectiveness. Efficacy and simplicity of considering other state regulations is understood, but with motto being Dirigo, Maine would be best served by first concluding whether Need exists.**
10. **Previous efforts to regulate.** Please provide the details of any previous efforts in this State to implement regulation of wetland scientists. **Representation by others that certification of wetland scientist has been a goal since the organization of MAWS is questionable. While I served as MAWS President in 1995, this matter was evaluated in conjunction with DEP and Bd of Geologists/Soil Scientists from which need was deemed to be unjustified. Corps of Engineers also concluded no basis existed to support. To provide closure to the matter and as published in April 1996 MAWS newsletter *The Obligate*, MAWS enacted a *Resolution Regarding Minimum Qualifications for Practicing Wetland Delineators in Maine* (attached). With no clear tie to an uptick in complaints or decline in practice, circa 2005 the matter resurfaced with MAWS and culminated in 2007 with finalization of *Exploratory Paper on the Issue of Credentialing Wetland Scientists in Maine* wherein a No Acton or Status Quo alternative was also identified.**
11. **Minimal competence.** Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are. **Recognizing allowance for role of property owner described in #2 above, minimal competence**

would require a proficiency in the methods of the *1987 Corps of Engineers Wetland Delineation Manual (now in process of Regional updates)* augmented by practical experience. Workshops and training courses, with certificates of completion, are readily available for the 1987 Manual.

12. Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by potential licensees through dedicated revenue mechanisms. **This would be predicated on fees obtained from approximately 100 licenses that would most effectively be included under modified purview of the State Board of Certification for Geologists and Soil Scientists.**

13. Mandated benefits. Please describe whether the profession or occupation plans to apply for mandated benefits.