



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](mailto: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) Michael Lychwala, Wetland Biologist, MAWS member**

**On behalf of:**

Mailing address: TRC, 400 Southborough Drive, S. Portland, ME 04106

E-mail address: [mlychwala@trcsolutions.com](mailto:mlychwala@trcsolutions.com)

Date: July 23, 2009

### **General Information**

1. **Group or organization you represent:** I do not represent a group or organization
  
2. **Position on proposed legislation.** Does this group or organization support or oppose state regulation of wetland scientists? **I oppose state regulation of wetland scientists.**

### **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;
  
  - (b) The names and addresses of associations, organizations and other groups representing potential licensees; and
  
  - (c) An estimate of the number of potential licensees in each group.

- 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.

There are situations where specialized experience in wetland science is required to accurately delineate wetlands in accordance with the USACE 1987 manual. There are a number of professional companies in New England that supply highly qualified wetland scientists to accomplish this task. However, in many cases the basic principals are more than adequate for the public to manage. The public must obtain the opportunity to address their own concerns and decide when professional help is required. A landowner should not be required in all cases to hire a certified professional to determine the extent of wetland on their property (or just to confirm that wetlands are not present on their land).

- 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*).

I have been involved with working on major and extensive linear projects across the state of Maine since the mid 1990's. I have managed numerous wetland delineation crews and personally conducted delineations across the state. I have observed some problems with certain delineators that did not possess the skills necessary to accurately delineate wetlands in all instances. Some of these delineators were from away, but some were from people here in Maine that possess the years of experience and educational requirements to become certified if required by the state. In all cases, a detailed QA/QC process is performed to assure accuracy of the work and demarcation of the resources. It is my opinion that certification will not change how delineations are performed, and resources are currently being address accurately and properly thus minimizing the potential harm to the public.

As an example of how well wetland resources are being identified, one project that I worked on involved covering a linear corridor over 350 miles in length and the identification of over 60 miles of wetland crossing. Numerous site visits were conducted by the Maine DEP and the USACE, including full time state and federal inspection oversight throughout the construction of the project. In no instances were issues of inaccurate wetland resource delineations raised based on the numerous field visits and project inspections. Although many of the wetland delineators working on the project were from Maine with varying degrees of experience, due to the size, this project required professional wetland delineators from other New England states that could properly implement the requirements of the USACE 1987 manual. This project is just one example that the proper resources exist to accurately delineate wetland resources in Maine without a certification process, and that the delineation requirements are NOT Maine specific. The delineation requirements are New

England based, and although Maine has some unique characteristics, the principals for identifying wetland boundaries have a common thread.

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.

The current professionalism demonstrated by companies that provide experienced wetland delineators in New England have proven to accurately identify wetland resource here in Maine. Numerous projects have been properly permitted without the certification process and the DEP and USACE are currently providing the necessary overview to protect natural resources. This additional level of regulation and cost are unnecessary and burdensome.

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.

Aside from the obvious costs of certification fees, renewal fees, continuing education class costs, loss of productive work to fill out paperwork and take classes and tests, the larger, less obvious economic impacts is the limitations and reduction of the available workforce to handle large scale projects in Maine. Past projects have required an intensive natural resource survey program that gathers resources within New England, and the requirements of Maine certified delineators will limit the available workforce to carry these projects out in a timely manner necessary to meet project objectives and timelines. This would be yet another burden for Maine to bear that reduces the states competitiveness for promoting jobs and improving economic development.

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.

The certification process will reduce the availability of qualified individuals simply due to the burdensome process and time requirements to become certified. I am a perfect example of this. I have an extremely busy work schedule, and during the NH certification process I was working away from home for months on end. I have a Masters degree in Science that specialized in wetland science. Because I did not have the time to go through the NH certification process to become grandfathered into the program, I am not certified in NH and therefore not allowed to conduct wetland delineation there even though my qualifications and years of experience are more than enough. My opportunities to work in NH are less than here in Maine. I cannot afford to spend the time to complete the NH certification process in the hopes I may have some work to perform there. That same will happen to people in New England that are more than qualified to work in Maine, but will not spend the time and money for "potential" work. This will decrease the availability of services to the public. As described above in response #5, this will also become an additional burden that could hinder economic development in Maine.

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.

The Maine DEP and USACE currently provide strong oversight of wetland impacts here in Maine. To my knowledge, I have not heard that these agencies have concerns regarding the delineation of wetland boundaries and that a certification process is needed. The apparent outcry is from a small number of individuals involved with performing wetland delineation services in Maine that are speaking on the behalf of an organization in a process that in my opinion has not been transparent to the members of that organization.

**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.

No further regulation is required.

**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.

N/A

**10. Previous efforts to regulate.** Please provide the details of any previous efforts in this State to implement regulation of wetland scientists.

N/A

**11. Minimal competence.** Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

N/A

**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.

N/A

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

N/A