

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
)	
FKT RESORT MANAGEMENT LLC;)	
FKT BAYLEY FAMILY LIMITED)	
PARTNERSHIP; FRED W. BAYLEY;)	<u>COMPLAINT</u>
KATHLEEN M. BAYLEY; THOMAS R.)	
BAYLEY; BAYLEY HILL DEER &)	
TROUT FARM, INC.; and BAYLEY'S)	
CAMPGROUND, INC.,)	
)	
Defendants.)	
_____)	

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

I. NATURE OF THE ACTION

1. This is a civil action commenced under sections 309(b) and 309(d) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(b) and 1319(d), to obtain injunctive relief and civil penalties against FKT Resort Management LLC, FKT Bayley Family Limited Partnership, Fred W. Bayley, Kathleen M. Bayley, Thomas R. Bayley, Bayley Hill Deer & Trout Farm, Inc., and Bayley’s Campground, Inc. (“Defendants”) for the discharge of pollutants into waters of the United States without authorization on property referred to herein as the “Ross Road Site,” located in the towns of Scarborough (Map/Lot Number R086001) and Old Orchard Beach (Map/Book/Lot Number 101/1/16), Maine, and the “Campground Site,” located in the town of Scarborough (Map/Lot

Number R087018), Maine, in violation of Sections 301(a) and 404 of the CWA, 33 U.S.C. §§ 1311(a) and 1344. See Exhibits A (Aerial Photograph of Ross Road Site) and B (Aerial Photograph of Campground Site).

2. In this action, the United States seeks: (1) to enjoin the discharge of pollutants into waters of the United States without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), at their own expense and at the direction of the EPA, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in CWA sections 309(d), 33 U.S.C. § 1319(d).

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to CWA sections 309(b) and (d), 33 U.S.C. §§ 1319(b) and (d), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in the District of Maine pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), 28 U.S.C. §§ 1391(b) and 1391(c), and 28 U.S.C. § 1395, because the Defendants conduct business in this District, the subject property is located in this District, the violations alleged herein occurred in this District, and the penalty sought by the United States accrued in this District.

5. Notice of the commencement of this action has been given to the State of Maine pursuant to CWA sections 309(b), 33 U.S.C. § 1319(b).

III. THE PARTIES

6. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519,

and in accordance with CWA sections 309(b), 309(d) and 506, 33 U.S.C. §§ 1319(b), 1319(d), and 1366.

7. Defendant Fred W. Bayley is a private individual residing at 27 Ross Road, Scarborough, Maine, 04074. Fred W. Bayley is the co-owner of the Ross Road Site and was a co-owner of the Campground Site when unpermitted discharges of dredged and/or fill material into waters of the United States occurred. In addition, Fred W. Bayley controls and/or directs the activities of business entities and/or other individuals that operate at the Ross Road Site and the Campground Site. Fred W. Bayley performed and/or directed work that resulted in the unpermitted discharge of dredged and/or fill material into wetlands on the Ross Road and Campground Sites. The United States brings this action against Fred W. Bayley in his individual capacity and on the basis of his responsibility for and/or control over the performance of work resulting in the unpermitted discharge of dredged and/or fill material into waters of the United States on the Ross Road and Campground Sites.

8. Defendant Kathleen M. Bayley is a private individual residing at 27 Ross Road, Scarborough, Maine, 04074. Kathleen M. Bayley is the co-owner of the Ross Road Site and was a co-owner of the Campground Site when unpermitted discharges of dredged and/or fill material into waters of the United States occurred. In addition, Kathleen M. Bayley controls and/or directs the activities of business entities and/or other individuals that operate at the Ross Road Site and the Campground Site. The United States brings this action against Kathleen M. Bayley in her individual capacity and on the basis of her responsibility for and/or control over the performance of work resulting in the unpermitted discharge of dredged and/or fill material into waters of the United States on the Ross Road and Campground Sites.

9. Defendant Thomas R. Bayley is a private individual residing at 52 Ross Road, Scarborough, Maine, 04074. Thomas R. Bayley performed and/or directed work that resulted in the unpermitted discharge of dredged and/or fill material into wetlands on the Ross Road and Campground Sites. In addition, Thomas R. Bayley controls and/or directs the activities of business entities and/or other individuals that operate at the Campground Site. The United States brings this action against Thomas R. Bayley in his individual capacity and on the basis of his responsibility for and/or control over the performance of work resulting in the unpermitted discharge of dredged and/or fill material into waters of the United States on the Ross Road and Campground Sites.

10. Defendant Bayley Hill Deer & Trout Farm, Inc. is a privately held corporation incorporated in the State of Maine on July 16, 1992. Bayley Hill Deer & Trout Farm, Inc. conducts business in the District of Maine and has a business address of 27 Ross Road, Scarborough, Maine, 04074. Fred W. Bayley and Kathleen M. Bayley are the sole directors and officers of Bayley Hill Deer & Trout Farm, Inc. Between approximately 1993 and 2007, Bayley Hill & Trout Farm, Inc. operated a sport hunting resort on the Ross Road Site. Unpermitted discharges of dredged and/or fill material into waters of the United States on the Ross Road Site and Campground Site resulted from the business operations of Bayley Hill & Trout Farm, Inc. The United States brings this action against Bayley Hill Deer & Trout Farm, Inc. on the basis of its responsibility for and/or control over the performance of work resulting in the unpermitted discharge of dredged and/or fill material into waters of the United States on the Ross Road Site and Campground Site.

11. Defendant FKT Bayley Family Limited Partnership is a limited partnership formed in the State of Maine on October 29, 2009. FKT Bayley Family Limited Partnership conducts

business in the District of Maine and has a business address of 27 Ross Road, Scarborough, Maine, 04074. Fred W. Bayley, Kathleen M. Bayley, and Thomas R. Bayley are the sole limited partners of FKT Bayley Family Limited Partnership. FKT Bayley Family Limited Partnership has owned the Campground Site since approximately December 7, 2009. Unpermitted discharges of dredged and/or fill material into waters of the United States occurred on property owned and controlled by the FKT Bayley Family Limited Partnership. The United States brings this action against FKT Bayley Family Limited Partnership on the basis of its responsibility for and/or control over the performance of work resulting in the unpermitted discharge of dredged and/or fill material into waters of the United States on the Campground Site and possibly the Ross Road Site.

12. Defendant FKT Resort Management LLC is a limited liability company with a business address of 27 Ross Road, Scarborough, Maine, 04074. It was formed in the State of Maine on October 29, 2009, and conducts business in the District of Maine. FKT Resort Management LLC is the general partner of FKT Bayley Family Limited Partnership. Fred W. Bayley is the sole member-manager of the FKT Resort Management LLC. The United States brings this action against FKT Resort Management LLC on the basis of its responsibility as the general partner of FKT Bayley Family Limited Partnership for and/or control over the performance of work resulting in the unpermitted discharge of dredged and/or fill material into waters of the United States on the Campground Site and possibly the Ross Road Site.

13. Defendant Bayley's Campground, Inc. is a privately held corporation originally incorporated in the State of Maine on March 10, 1965 under the name "Kathleen & Julie, Inc." Bayley's Campground, Inc. conducts business in the District of Maine and has a business address of 52 Ross Road, Scarborough, Maine, 04074. Fred W. Bayley and Kathleen M. Bayley are the

sole directors of Bayley's Campground, Inc. Fred W. Bayley, Kathleen M. Bayley, and Thomas R. Bayley each serve as officers of Bayley's Campground, Inc. From approximately 1970 to the present, Bayley's Campground, Inc. has operated a camping resort on property in Scarborough, Maine, that includes the Campground Site and is the owner of mechanized equipment used on both the Ross Road Site and Campground Site. Unpermitted discharges of dredged and/or fill material into waters of the United States on the Campground Site and Ross Road Site resulted from the business operations of Bayley's Campground, Inc. The United States brings this action against Bayley's Campground, Inc. on the basis of its responsibility for and/or control over the performance of work resulting in the unpermitted discharge of dredged and/or fill material into waters of the United States on the Campground Site and the Ross Road Site.

14. At all times relevant to the Complaint, one or more of the Defendants owned, leased, or otherwise controlled the real property that is the subject of this Complaint, and/or otherwise controlled the discharges of pollutants into waters and wetlands on such property.

IV. STATUTORY AND REGULATORY AUTHORITY

15. Sections 301(a) and 404(a) of the CWA, 33 U.S.C. §§ 1311(a), 1344(a), prohibit the discharge of pollutants, including dredged and fill material, into navigable waters except in compliance with, inter alia, a permit issued by the Army Corps of Engineers pursuant to CWA section 404, 33 U.S.C. § 1344.

16. CWA section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

17. CWA section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include, inter alia, “any addition of any pollutant to navigable waters from any point source.”

18. CWA section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, inter alia, dredged spoil, rock, and sand.

19. CWA section 502(7), 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

20. 40 C.F.R. §§ 230.3, 232.2 and 33 C.F.R. § 328.3 define “waters of the United States” to include, inter alia: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) tributaries of such waters; and (iv) wetlands adjacent to such waters or their tributaries.

21. 40 C.F.R. §§ 230.3, 232.2 and 33 C.F.R. § 328.3 define “wetlands” as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

22. CWA section 502(14), 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

23. CWA section 502(5), 33 U.S.C. § 1362(5), defines “person” to include, inter alia, “an individual, corporation, partnership [or] association.”

24. CWA section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

25. CWA section 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

26. Each day that dredged or fill material remains in the place where it is discharged without authorization constitutes a separate violation of CWA section 301(a), 33 U.S.C. §1311(a).

V. STATUTORY VIOLATIONS ALLEGED

A. GENERALLY APPLICABLE ALLEGATIONS

27. The State of Maine has designated more than 3,000 acres of tidally influenced marshes surrounding the Scarborough River and several closely associated freshwater wetlands, including those in the Towns of Scarborough and Old Orchard Beach, the Scarborough Marsh Focus Area of Statewide Ecological Significance. Exhibit C.

28. The Ross Road Site and the Campground Site are located within the Scarborough Marsh Focus Area. Exhibit D.

29. Jones Creek is located within the Scarborough Marsh Focus Area and is south of the Ross Road and the Campground Sites. Jones Creek is subject to the ebb and flow of the tide. Jones Creek flows into the Scarborough River, which then empties into Saco Bay, an embayment of the Atlantic Ocean. Jones Creek, the Scarborough River, Saco Bay and the Atlantic Ocean are each “waters of the United States” within the meaning of the CWA and regulations promulgated thereunder. 40 C.F.R. §§ 230.3, 232.2; 33 C.F.R. § 328.3.

B. THE ROSS ROAD SITE

30. The Ross Road Site is located in the State of Maine north of Ross Road on the Scarborough/Old Orchard Beach town line and the Cumberland County/York County line. The Ross Road Site is less than a mile from the Atlantic Ocean and situated within the Scarborough Marsh Focus Area. Exhibit D.

31. Prior to the unauthorized discharges described in Paragraphs 39, 61, and 62, the Ross Road Site contained forested freshwater wetlands and several unnamed tributaries to Jones Creek.

32. The present and former wetlands and tributaries on the Ross Road Site are and were “waters of the United States” within the meaning of the CWA and regulations promulgated thereunder. 40 C.F.R. §§ 230.3, 232.2; 33 C.F.R. § 328.3.

33. Aerial photography analysis and field observation indicate that prior to the unauthorized discharges referenced in Paragraphs 39, 61, and 62, at least three of the tributaries on the Ross Road Site were relatively permanent bodies of water that flowed and/or possessed a significant nexus to Jones Creek. These tributaries are labeled Tributaries 1, 2, and 3 on Exhibit E.

34. Aerial photography analysis and field observation indicate that prior to the unauthorized discharges referenced in Paragraphs 39, 61, and 62, wetlands on the Ross Road Site directly abutted and had a continuous surface connection with one or more of the relatively permanent tributaries to Jones Creek.

35. Prior to the unauthorized discharges referenced in Paragraphs 39, 61, and 62, the impacted wetlands and tributaries at the Ross Road Site exhibited flow characteristics and ecological functions that, when considered alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of Jones Creek, the Scarborough River, and Saco Bay. Specifically, the impacted wetlands and tributaries, alone and in combination with similarly situated lands in the region, provided important ecological functions, including, but not limited to, nutrient export to marine food webs; purification of surface water run-off prior to discharge into Jones Creek, the Scarborough River, Saco Bay, and the Atlantic Ocean; and valuable plant and wildlife habitat.

36. At all times relevant to this Complaint, the Ross Road Site has been owned and controlled by Fred W. Bayley, Kathleen M. Bayley, and/or Bayley Hill Deer & Trout Farm, Inc. Specifically, the land comprising the Ross Road Site was purchased by Fred W. Bayley and Kathleen M. Bayley in 1970. Between 1993 and 2007, and possibly during other periods, Fred W. Bayley, Kathleen M. Bayley, and/or Bayley Hill Deer & Trout Farm, Inc. operated a sport hunting resort on the Ross Road Site. Fred W. Bayley and Kathleen M. Bayley retained ownership of the property comprising the Ross Road Site during operation of the sport hunting resort and are the current owners of the Ross Road Site.

37. Fred W. Bayley, Kathleen M. Bayley, Thomas R. Bayley, Bayley Hill Deer & Trout Farm, Inc., Bayley's Campground, Inc., and possibly other named Defendants (collectively "Ross Road Defendants") conducted, contracted for, supervised and/or otherwise controlled the unauthorized discharges referenced in Paragraphs 39, 61, and 62 .

38. The Ross Road Defendants are jointly and severally responsible for some or all of the unauthorized discharges referenced in Paragraphs 39, 61, and 62.

39. At various times between 1980 and the present, one or more of the Ross Road Defendants, and/or persons acting on their behalf, discharged dredged and/or fill material into up to approximately 77 acres of wetlands and approximately 3,773 linear feet of tributaries that are waters of the United States on the Ross Road Site.

40. Each of the Ross Road Defendants is "person" within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

41. The dredged or fill material that the Ross Road Defendants, and/or persons acting on their behalf, caused to be discharged into waters of the United States on the Ross Road Site

included, among other things, dirt, spoil, rock, and/or sand, all of which constitute “pollutants” as defined in CWA section 502(6), 33 U.S.C. § 1362(6).

42. The Ross Road Defendants and/or persons acting on their behalf, used excavators, bulldozers, trucks, mechanized rakes, and/or other earth-moving equipment to accomplish the discharges on the Ross Road Site. This equipment constitutes “point source[s]” as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

43. The Ross Road Defendants did not obtain a permit from the Secretary of the Army, acting through the Chief of Engineers, for the discharges of dredged and/or fill material into waters of the United States on the Ross Road Site, as required by CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344, nor were the discharges authorized under any other provision of the CWA.

44. The Ross Road Defendants have allowed pollutants to remain in waters of the United States at the Ross Road Site.

C. THE CAMPGROUND SITE

45. The Campground Site is located entirely in the Town of Scarborough, York County, Maine. The Campground Site is approximately a half mile from the Atlantic Ocean and is situated within the Scarborough Marsh Focus Area. Exhibit D.

46. Prior to the unauthorized discharges referenced in Paragraphs 54, 66, and 67, the Campground Site contained forested freshwater wetlands and several unnamed tributaries to Jones Creek.

47. The present and former wetlands and tributaries on the Campground Site are and were “waters of the United States” within the meaning of the CWA and regulations promulgated thereunder. 40 C.F.R. §§ 230.3, 232.2; 33 C.F.R. § 328.3.

48. Aerial photography analysis and field observation indicate that prior to the unauthorized discharges referenced in Paragraphs 54, 66, and 67, at least two of the tributaries on the Campground Site were relatively permanent bodies of water that flowed and/or possessed a significant nexus to Jones Creek. These tributaries are labeled Tributaries 4 and 5 on Exhibit E. In addition, aerial photography analysis and field observation indicate that prior to the unauthorized discharges referenced in Paragraphs 54, 66, and 67, the unnamed tributary that runs along the western edge of the Campground Site, labeled Tributary 3 on Exhibit E, was a relatively permanent body of water that flowed into and/or possessed a significant nexus to Jones Creek.

49. Aerial photography analysis and field observation indicate that prior to the unauthorized discharges described in Paragraphs 54, 66, and 67, the wetlands on the Campground Site directly abutted and had a continuous surface connection with one or more of the relatively permanent tributaries to Jones Creek and/or to Jones Creek itself.

50. Prior to the unauthorized discharges described in Paragraphs 54, 66, and 67, the impacted wetlands and tributaries at the Campground Site exhibited flow characteristics and ecological functions that, when considered alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of Jones Creek, the Scarborough River, and Saco Bay. Specifically, the impacted wetlands and tributaries, alone and in combination with similarly situated lands in the region, provided important ecological functions, such as nutrient export to marine food webs; purification of surface water run-off prior to discharge into Jones Creek, the Scarborough River, Saco Bay, and the Atlantic Ocean; and valuable plant and wildlife habitat.

51. At all times relevant to this Complaint, the Campground Site has been owned and controlled by Fred W. Bayley, Kathleen M. Bayley, Thomas R. Bayley, FKT Bayley Family

Limited Partnership, and/or FKT Resort Management LLC. Specifically, the property comprising the Campground Site was purchased by Fred W. Bayley and Kathleen M. Bayley in or around 1984. On or around December 6, 2006, Fred W. Bayley and Kathleen M. Bayley transferred partial ownership of the Campground Site to Thomas R. Bayley. On or around December 7, 2009, Fred W. Bayley, Kathleen M. Bayley, and Thomas R. Bayley transferred ownership of the Campground Site to FKT Bayley Family Limited Partnership. FKT Resort Management LLC is the general partner of FKT Bayley Family Limited Partnership.

52. Fred W. Bayley, Kathleen M. Bayley, Thomas R. Bayley, FKT Bayley Family Limited Partnership, FKT Resort Management LLC, Bayley's Campground, Inc., and Bayley Hill Deer & Trout Farm, Inc. (collectively "Campground Defendants") conducted, contracted for, supervised and/or otherwise controlled the unauthorized discharges at issue in Paragraphs 54, 66, and 67.

53. The Campground Defendants are jointly and severally responsible for some or all of the unauthorized discharges referenced in Paragraphs 54, 66, and 67.

54. At various times between 1984 and the present, one or more of the Campground Defendants, and/or persons acting on their behalf, discharged dredged and/or fill material into approximately 18 acres of wetlands and approximately 1,082 linear feet of tributaries that are waters of the United States on the Campground Site.

55. Each of the Campground Defendants is a "person" within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

56. The dredged or fill material that the Campground Defendants, and/or persons acting on their behalf, caused to be discharged into waters of the United States on the Campground Site

included, among other things, dirt, spoil, rock, and/or sand, all of which constitute “pollutants” as defined in CWA section 502(6), 33 U.S.C. § 1362(6).

57. The Campground Defendants, and/or persons acting on their behalf, used excavators, bulldozers, trucks, mechanized rakes, and/or other earth-moving equipment to accomplish the discharges on the Campground Site. This equipment constitutes “point source[s]” as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

58. Defendants did not obtain a permit from the Secretary of the Army, acting through the Chief of Engineers, for the discharges of dredged and/or fill material into waters of the United States on the Campground Site, as required by CWA sections 301(a) and 404, 33 U.S.C. §§1311(a), 1344, nor were the discharges authorized under any other provision of the CWA.

59. The Campground Defendants have allowed pollutants to remain in waters of the United States at the Campground Site.

COUNT ONE – ROSS ROAD SITE

60. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 59.

61. At various times between 1980 and the present, one or more of the Ross Road Defendants, and/or persons acting on their behalf, discharged dredged and/or fill material from a point source into up to approximately 77 acres of wetlands and approximately 3,773 linear feet of other waters of the United States on the Ross Road Site without a permit or authorization under Section 404 of the CWA, 33 U.S.C. § 1344.

62. The unauthorized activities on the Ross Road Site at issue in Paragraphs 39 and 61 include, but are not limited to: (a) the discharge of dredged and/or fill material into wetlands and/or other waters of the United States associated with the mechanized land-clearing, stumping, grubbing, filling, and/or grading of forested freshwater wetlands on the Ross Road Site; (b) the

discharge of dredged and/or fill material into wetlands and/or other waters of the United States associated with the excavation and redeposition of materials related to the construction of four ponds on the Ross Road Site; and (c) the discharge of dredged and/or fill material into Tributaries 1, 2, and 3 and/or other waters of the United States associated with the installation of culverts and/or drainage structures at various locations on the Ross Road Site.

63. The Ross Road Defendants have violated and continue to violate CWA section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of dredged or fill material into waters of the United States, including wetlands, at the Ross Road Site.

64. Unless enjoined, the Ross Road Defendants are likely to continue to discharge dredged and/or fill material into and/or to allow dredged or fill material to remain in wetlands and other waters of the United States on the Ross Road Site in violation of CWA section 301, 33 U.S.C. § 1311.

COUNT TWO – CAMPGROUND SITE

65. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 64.

66. At various times between 1980 and the present, one or more of the Campground Defendants, and/or persons acting on their behalf, discharged dredged and/or fill material from a point source into approximately 18 acres of wetlands and approximately 1,082 linear feet of relatively permanent tributaries that are waters of the United States on the Campground Site without a permit or authorization under Section 404 of the CWA, 33 U.S.C. § 1344.

67. The unauthorized activities on the Campground Site at issue in Paragraph 54 and 66 include, but are not limited to: (a) the discharge of dredged and/or fill material into wetlands and/or other waters of the United States associated with the mechanized land-clearing, stumping, grubbing, filling and/or grading of forested freshwater wetlands on the Campground Site; (b) the

discharge of dredged and/or fill material into wetlands and waters of the United States associated with the excavation and redeposition of materials related to the construction of one or more ponds on the Campground Site; (c) the discharge of dredged and/or fill material into Tributary 5 and/or other waters of the United States associated with the installation of culverts and/or drainage structures at various locations on the Campground Site; and (d) the discharge of dredged and/or fill material into wetlands and/or other waters of the United States for the construction of campsites and playing courts on the Campground Site.

68. The Campground Defendants have violated and continue to violate CWA section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of dredged or fill material into waters of the United States, including wetlands, at the Campground Site.

69. Unless enjoined, the Campground Defendants are likely to continue to discharge dredged and/or fill material into and/or to allow dredged or fill material to remain in wetlands and other waters of the United States on the Campground Sites in violation of CWA section 301, 33 U.S.C. § 1311.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that this Court order the following relief:

1. That Defendants be permanently enjoined from discharging or causing the discharge of dredged and/or fill material or other pollutants into any waters of the United States except in compliance with the CWA;
2. That Defendants be enjoined to undertake measures, at Defendants' own expense and at the direction of the EPA, to effect complete restoration of the Sites, and/or to conduct compensatory mitigation for environmental damage, as appropriate;

3. That Defendants be assessed pursuant to CWA sections 309(d), 33 U.S.C. § 1319(d), a civil penalty for each day of each violation of CWA section 301(a), 33 U.S.C. § 1311(a).
4. That the United States be awarded costs and disbursements in this action; and
5. That this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.

Respectfully submitted,

JOHN C. CRUDEN
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Division

s/ Amy J. Dona
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Dated: September 28, 2016

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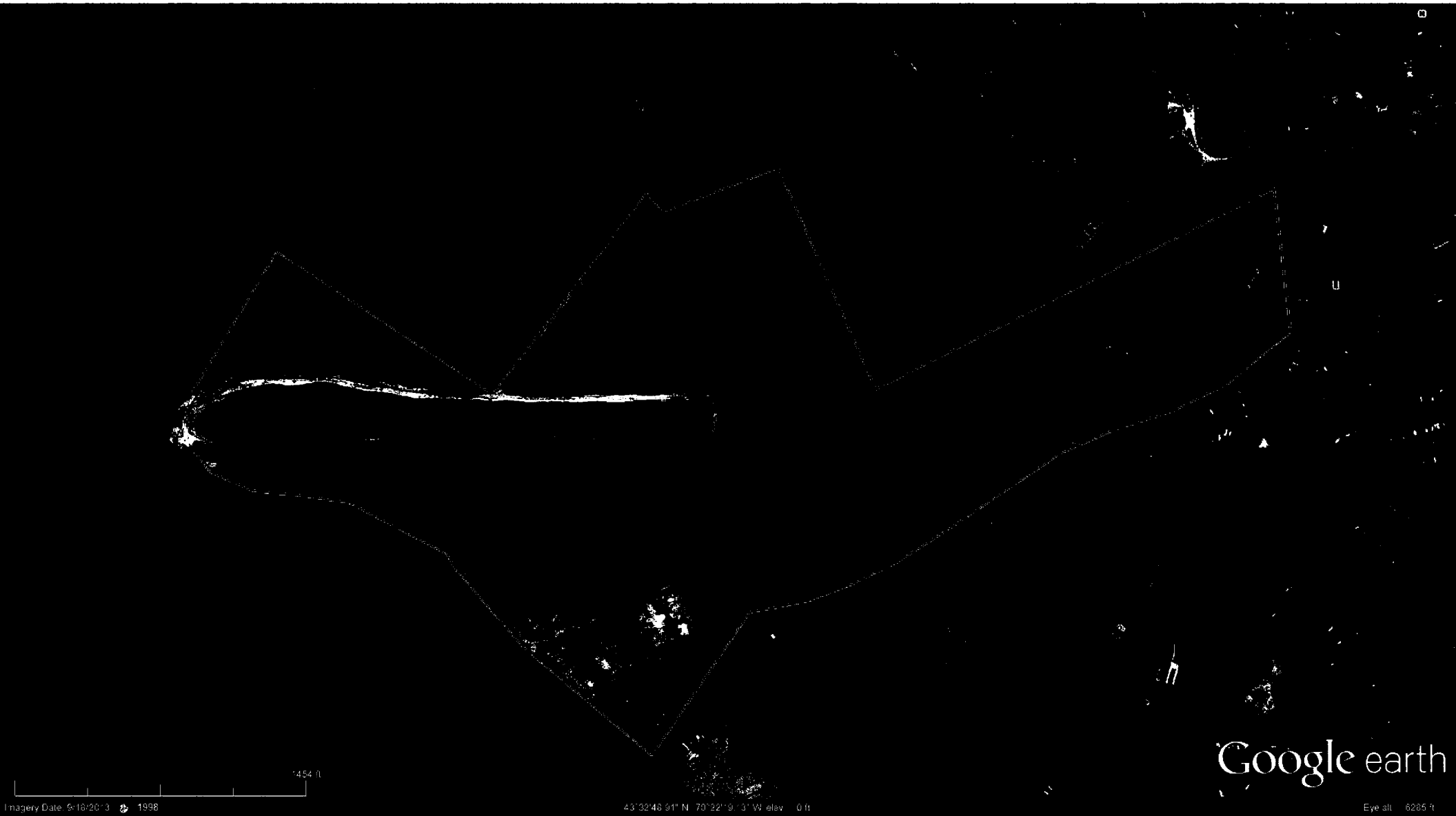
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LIST OF EXHIBITS TO THE COMPLAINT

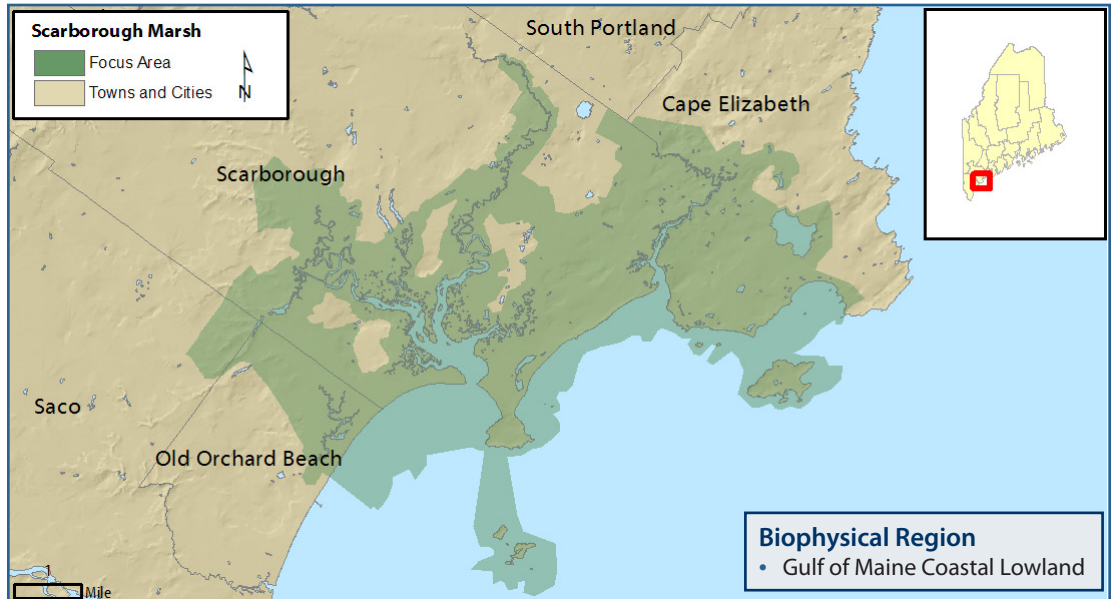
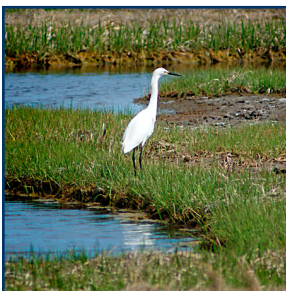
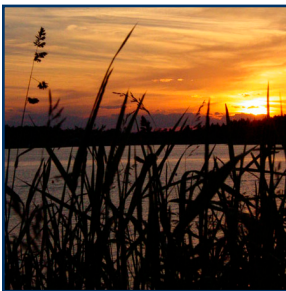
- A. 2013 Aerial Photograph of Ross Road Site
- B. 2013 Aerial Photograph of Campground Site
- C. State of Maine Description of the Scarborough Marsh Focus Area of Statewide Ecological Significance
- D. Aerial Photograph of the Ross Road and Campground Sites with overlay showing location of Scarborough Marsh Focus Area
- E. 1980 Aerial Photograph of Ross Road and Campground Sites with overlay showing tributaries to Jones Creek prior to unpermitted discharges

Exhibit A





Scarborough Marsh



WHY IS THIS AREA SIGNIFICANT?

Covering more than 3,000 acres, Scarborough Marsh is the largest contiguous salt marsh system in Maine. Salt marshes filter pollution from the water and provide food and shelter for numerous species of birds, fish, mammals, and shellfish. Given the wildlife productivity and habitat diversity in this area, Scarborough Marsh is arguably the most significant of Maine's coastal Focus Areas. The Focus Area also includes Scarborough Beach and its dunes, which are Essential Habitat for piping plovers and least terns.

OPPORTUNITIES FOR CONSERVATION

- » Work with willing landowners to permanently protect remaining undeveloped areas.
- » Encourage town planners to improve approaches to development that may impact Focus Area functions.
- » Encourage homeowners to maintain adequate riparian buffers.
- » Monitor and remove invasive plant populations.
- » Identify and restore tidal restrictions and undersized culverts.
- » Educate recreational users about the ecological and economic benefits provided by the Focus Area.

For more conservation opportunities, visit the Beginning with Habitat Online Toolbox: www.beginningwithhabitat.org/toolbox/about_toolbox.html.

Scarborough Marsh photographs by Jennifer Soule

Rare Animals

- Saltmarsh Sharp-tailed Sparrow
- Common Moorhen
- Harlequin Duck
- Least Bittern
- Arctic Tern
- New England Cottontail

Rare Plants

- Saltmarsh False-foxglove
- Smooth Winterberry Holly
- Beach Plum
- Dwarf Glasswort

Rare and Exemplary Natural Communities

- Coastal Dune-marsh Ecosystem
- Dune Grassland
- Pitch Pine Bog
- Pitch Pine Dune Woodland
- Salt-hay Saltmarsh

Essential Wildlife Habitats

- Piping Plover/Least Tern
- Roseate Tern

Significant Wildlife Habitats

- Tidal Wading Bird and Waterfowl Habitat
- Inland Wading Bird and Waterfowl Habitat
- Deer Wintering Area

Focus Areas of Statewide Ecological Significance: **Scarborough Marsh**

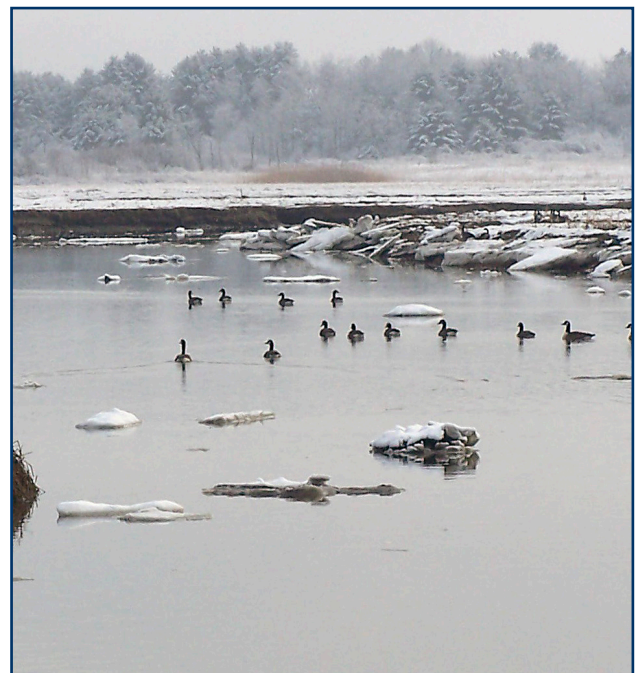


In all seasons, Scarborough Marsh Focus Area provides important habitat for fish, shellfish, mammals, and birds. *Hildegarde Anderson*

FOCUS AREA OVERVIEW

Scarborough Marsh is the largest contiguous tidal marsh system in the state of Maine. This 3000-plus-acre system of tidally influenced marshes, along with several closely associated freshwater wetlands, is located south of Portland, in the towns of Cape Elizabeth, Scarborough, and Old Orchard Beach. The marsh is at the terminus of a small watershed of approximately 58 square miles and is divided into five principal lobes by the adjacent uplands and the associated drainage channels of several rivers and creeks. Approximately 95% of the salt marsh (2965 acres) is currently owned and managed by the Maine Department of Inland Fisheries and Wildlife (MDIFW).

Given the wildlife productivity and habitat diversity in this area, Scarborough Marsh is arguably the most significant of Maine's coastal Focus Areas. The marsh and the adjacent uplands form a mosaic of 16 habitat types. The Maine Natural Areas Program (MNAP) has identified an exemplary salt-hay saltmarsh that covers most of the focus area and also a small area of exemplary pitch pine bog on the northwest side of the focus area. The Scarborough Beach area is included within the Focus Area. The beach has two exemplary natural community types: dune grassland and pitch pine dune woodland.



Hildegarde Anderson

Focus Areas of Statewide Ecological Significance: **Scarborough Marsh****CHARACTERISTIC SPECIES**

Stratton Island is the most diverse seabird nesting colony in Maine. The 35-acre island is located in Saco Bay approximately one and a half miles off Prouts Neck. Nesting species include common tern, roseate tern, least tern, glossy ibis, snowy egret, little blue heron, cormorants, and gulls. Stratton and nearby Bluff Island are owned by the National Audubon Society. Breeding by the American oystercatcher was recorded for the first time in Maine on Stratton Island in 1995. Harbor seals haul out in large numbers on Little Stratton, which is connected to Stratton Island at low tide. Bluff Island is the breeding site for herring and great black-backed gulls, common eider, and double-crested cormorant. Hundreds of terns return to the islands each year to nest and raise their chicks. Many birds from Stratton and Bluff Islands feed in nearby Scarborough Marsh. Scarborough Marsh also supports the state's largest populations of Nelson's and saltmarsh sharp-tailed sparrows.

Scarborough Marsh's tidal rivers and streams, salt marsh, pannes, and mudflats support commercially, recreationally, and /or ecologically valuable fish and shellfish including soft-shelled clams, sea worms, alewives, striped bass, smelt, sea run brook trout, and eel. The marsh also protects high value habitat for shad, river herring - alewives, blue black herring, and winter flounder. Tidal creeks and pannes in the high marsh provide habitat for silversides and mummichogs which are key prey species for waterfowl and wading birds.

The National Marine Fisheries Service has designated Saco Bay as "essential fish habitat" for Atlantic salmon; pollock; whiting; hake; winter, yellowtail, and windowpane flounder; American plaice; ocean pout; halibut; sea scallop; sea herring; bluefish; and mackerel. With five major tributaries, the Scarborough Marsh flows into Saco Bay, and the high concentrations of herring, hake, and sand lance in Saco Bay depend directly on the delivery of clean and nourishing waters from the marsh.

RARE AND EXEMPLARY NATURAL COMMUNITIES

Salt-hay saltmarsh is abundant throughout Scarborough Marsh. Flooded by the tides, these areas are dominated by expanses of saltmeadow cordgrass, smooth cordgrass, and blackgrass. Populations of two rare plant species—dwarf glasswort and seaside gerardia—occur in the marsh.

The **pitch pine bog** is a sparsely forested peatland in which the dominant trees are pitch pine and red maple. The pitch pine bog in the Focus Area is located between the eastern and western tributaries of Mill Brook. It lies west of Winnocks Neck and east of Willowdale golf course.

Dune grassland is dominated almost exclusively by dune grass with very few other thinly scattered species. Much of the dune grassland that historically occurred along this section of the coast is now heavily developed. Dunes and fore dune areas are essential habitat for the Federally Threatened piping plover and the State Endangered least tern. The dunes also support a population of a rare plant—sea-beach sedge. All



Top: Arctic Tern. *USFWS* Above: This bridge is part of a public trail that crosses Scarborough Marsh. *Maine Natural Areas Program*

remaining viable areas of dune grassland should be preserved and managed as a sensitive natural area. All areas of sand dunes should be posted with signs indicating their fragile nature and regular crossing areas should be well defined and managed to prevent erosion of the dunes.

Pitch pine dune woodlands are generally located on the landward side of dune grasslands. This community type is found only in the southern coastal region of the state. Like dune grasslands, it has been impacted severely by development of shorefront properties. It is currently known from only four isolated locations.

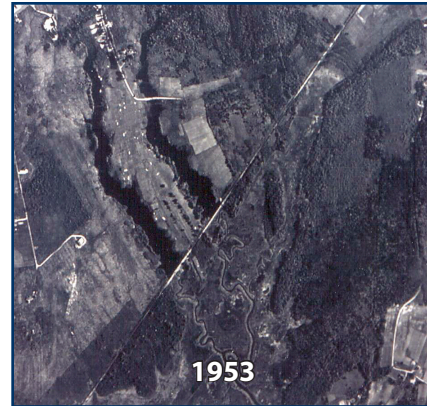
Scarborough Marsh has not yet been surveyed thoroughly for natural communities or rare plants and animals.

Focus Areas of Statewide Ecological Significance: **Scarborough Marsh****Ecological Services of the Focus Area**

- Nutrient export to marine food webs
- Major migratory stopover for myriad bird species
- Cleans water running off land prior to discharge into ocean
- Nursery for juvenile fish and shellfish
- Contributes to regional biodiversity by providing habitat for rare species and habitats.

Economic Contributions of the Focus Area

- Attracts tourism for wildlife observation, paddling, hunting, and angling
- Acts as protective buffer for storm surge
- Supports local marine resource industries
- Provides scenic vistas that raise property values
- Valuable open space for local residents



Residential and commercial development have dramatically changed the uplands adjacent to Scarborough Marsh.

CONSERVATION CONSIDERATIONS

- » Although most known populations of rare plants and rare and exemplary natural communities have now been conserved through public and private efforts, additional survey work is warranted in cooperation with private landowners, and additional conservation effort is needed, especially in undeveloped uplands that buffer marsh functions.
- » Natural communities still occurring on the uplands adjacent to the marsh—including upland forests, pine barrens, shrub swamps, forested swamps, and sand dunes—should be conserved as part of the greater ecosystem of the marsh. For long-term preservation of high-value natural areas such as Scarborough Marsh, retaining the surrounding natural landscape is critical.
- » The marsh system will benefit from establishing and/or maintaining vegetative buffer around its perimeter wherever possible. The marsh and the life it supports are not independent of the landscape in which they occur. A buffer of 250 feet or more will limit impacts from adjacent development, help prevent erosion, provide habitat for numerous species that depend on the marsh, limit opportunities for colonization of invasive species, and prevent reckless impacts from off-road vehicle use.
- » The integrity of the marsh, including its natural processes and the life forms it supports, is dependent on the maintenance of tidal hydrology in a natural condition. The hydrology of the marsh and its sedimentation patterns have been and are currently being impacted by the following factors: culverts, which restrict tidal flow on several creeks; dredging of the channel for boat usage; and past ditching. Partial tidal restriction from culverts causes increased freshwater influ-

Focus Areas of Statewide Ecological Significance: **Scarborough Marsh**Sunrise at Scarborough Marsh. *Hildegarde Anderson*

ence (reduced salinity) in the upper marsh and an increase of oxygen. Increased oxygen leads to deterioration of the upper marsh through decreases in peat elevation and shifts in plant species. Channel dredging may cause erosion of adjacent marsh banks and disrupt natural sedimentation patterns in the lower marsh. Future management should prohibit additional impacts to the hydrology of the marsh.

- » Scarborough Marsh is crossed by a rail line, a pipeline, and several roads. Disturbances to the hydrology, soils, and natural vegetation in or adjacent to the marsh can create opportunities for colonization by invasive plant species, such as common reed (*Phragmites australis*). Common reed is already well established in several areas where tidal constrictions may be affecting the hydrology.
- » Care should be taken to ensure that boating in the channels and mouth of the marsh doesn't cause erosion to the exposed soils along the marsh edge, and that excessive noise from boats and people do not disrupt normal patterns of wildlife behavior.
- » No dredge spoils or other fill materials should be placed in the marsh.

Public Access Opportunities

- » MDIFW trail (end of Dunstan Landing Road, Scarborough)
- » Eastern Road/East Coast Greenway Trail (Scarborough)
- » Maine Audubon Visitors Center (Pine Point Road, Scarborough)
- » Pine Point Landing (Scarborough)
- » Ferry Beach (Scarborough)
- » Scarborough Beach State Park (Scarborough)
- » Crescent Beach State Park (Cape Elizabeth)

Focus Areas of Statewide Ecological Significance: **Scarborough Marsh**

- » Scarborough and adjacent towns have experienced rapid growth in the last decade, and many upland areas adjacent to the marsh are under increasing threat. Unmanaged land development and sprawl can contribute to habitat fragmentation, spread of invasive plant species, and water-quality degradation through pollution from storm-water runoff and private sewage systems.
- » Sea level is expected to rise rapidly during this century. Salt marshes tend to shift inland when sea level rises, offsetting loss of marsh areas that become submerged. It may be possible to accommodate the Scarborough Marsh's inland migration by carefully choosing where and how to develop along the upland edge of the marsh.



Jennifer Soule

Focus Areas of Statewide Ecological Significance: **Scarborough Marsh**

RARE SPECIES AND EXEMPLARY NATURAL COMMUNITIES OF THE FOCUS AREA

	Common Name	Scientific Name	State Status*	State Rarity Rank	Global Rarity Rank
Animals	Saltmarsh Sharp-tailed Sparrow	<i>Ammodramus caudacutus</i>	SC	S3	G4
	Common Moorhen	<i>Gallinula chloropus</i>	T	S2	G5
	Harlequin Duck	<i>Histrionicus histrionicus</i>	T	S2S3	G4
	Least Bittern	<i>Ixobrychus exilis</i>	E	S2	G5
	Arctic Tern	<i>Sterna paradisaea</i>	T	S2	G5
	New England Cottontail	<i>Sylvilagus transitionalis</i>	E	S2	G3
Plants	Saltmarsh False-foxglove	<i>Agalinis maritima</i>	SC	S3	G5
	Smooth Winterberry Holly	<i>Ilex laevigata</i>	SC	S3	G5
	Beach Plum	<i>Prunus maritima</i>	E	S1	G4
	Dwarf Glasswort	<i>Salicornia bigelovii</i>	SC	S1	G5
Natural Communities	Coastal Dune-marsh	Coastal Dune-marsh		S3	n/a
	Dune Grassland	Dune Grassland		S2	G4
	Pitch Pine Bog	Pitch Pine Bog		S2	G3G5
	Pitch Pine Dune Woodland	Pitch Pine Dune Woodland		S1	G2
	Salt-hay Saltmarsh	<i>Spartina</i> Saltmarsh		S3	G5

State Status*

- E Endangered: Rare and in danger of being lost from the state in the foreseeable future, or federally listed as Endangered.
- T Threatened: Rare and, with further decline, could become endangered; or federally listed as Threatened.
- SC Special Concern: Rare in Maine, based on available information, but not sufficiently rare to be Threatened or Endangered.

*State status rankings are not assigned to natural communities.

State Rarity Rank

- S1 Critically imperiled in Maine because of extreme rarity (5 or fewer occurrences or very few remaining individuals or acres).
- S2 Imperiled in Maine because of rarity (6–20 occurrences or few remaining individuals or acres) or because of other factors making it vulnerable to further decline.
- S3 Rare in Maine (on the order of 20–100 occurrences).
- S4 Apparently secure in Maine.
- S5 Demonstrably secure in Maine.

Global Rarity Rank

- G1 Critically imperiled globally because of extreme rarity (5 or fewer occurrences or very few remaining individuals or acres) or because some aspect of its biology makes it especially vulnerable to extirpation.
- G2 Globally imperiled because of rarity (6–20 occurrences or few remaining individuals or acres) or because of other factors making it vulnerable to further decline.
- G3 Globally rare (on the order of 20–100 occurrences).
- G4 Apparently secure globally.
- G5 Demonstrably secure globally.

Scarborough Marsh Focus Area

Exhibit D



Scarborough & Old Orchard Beach, Maine

Bayley Sites

