

*Chapter 305: PERMIT BY RULE  
Draft Amendments 3/2009*

*All text in bold italics is descriptive or citation material intended to assist the reader, and is not part of the proposed amendments.*

**TEXT OF PROPOSED AMENDMENTS SHOWN IN  
UNDERLINE/STRIKE**

**REASONS FOR  
PROPOSED  
AMENDMENTS**

• ***Section 2(C) of Activities adjacent to protected natural resources***

**C. Standards**

- (1) No activity or portion of an activity may be located within the 75 foot setback if there is a practicable alternative location on the parcel that would cause or result in less impact on the environment. The following activities are presumed to have no practicable alternative location on the parcel.
  - (a) The planting of vegetation for the purpose of controlling erosion or for establishing a vegetative buffer.
  - (b) The removal or replacement of underground storage tanks when performed in accordance with 38 M.R.S.A. Section 566-A.
  - (c) The replacement of a structure or the placement or replacement of a foundation or supports for a legally existing structure or addition that is not closer to a protected natural resource than the existing structure provided the municipality has approved the location of the replaced or modified structure. However, any fill, other than that required to maintain the integrity of the structure such as foundation backfill, must meet the 75 foot setback standard unless otherwise approved by the DEP pursuant to this section.

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NOTE: In most cases when a structure is being replaced or a foundation is being put under an existing structure that does not meet the setback requirements of the Municipal Shoreland Zoning Ordinance, the applicant is required by the municipality to move the structure back from the natural resource to the maximum extent practicable.

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- (d) The closure of a landfill in conformance with the DEP's solid waste management rules.
- (e) Access ways consisting of a footpath, stairway, or steps to the

*Limits access to the natural resource to footpaths, stairs and steps. Eliminates construction of a platform as an "access way" from which to anchor other*

resource.

*temporary structures,  
such as a seasonal  
pier.*

- (2) Except for those activities listed in Section 2(C)(1)(a)-(e) above, a 25 foot setback must be maintained between the normal high water line or upland edge of the protected natural resource and the activity. Areas that have slopes of 3 horizontal feet: 1 vertical foot (approximately 33% slope), or steeper, may not be counted when determining the 25 foot setback. Existing vegetation within the setback may not be disturbed except for cutting activity meeting the exemption requirements in 38 M.R.S.A. Section 480-Q(23).
- (3) Disturbance within the setback must be minimized.
- (4) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas:
- (a) Staked hay bales or silt fence must be properly installed at the edge of disturbed areas between the activity and the resource before the activity begins;
  - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
  - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
  - (d) All disturbed soils must be permanently stabilized; and
  - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.
- (5) A footpath to the resource is limited to 6 feet in width and stairs or steps are limited to 4 feet in width. *Sets width limits to footpaths and stairs consistent with municipal shoreland zoning requirements.*
- (6) All work is limited to the location and extent depicted on the plan or plans submitted pursuant to subsection B(4) of this section. *Restricts activities to the location and extent shown on the plans submitted with the PBR notification form.*

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NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

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● ***Section 3(A)(1) of Intake pipes & water monitoring devices***

**A. Applicability**

- (1) This section applies to the installation or maintenance of a permanent water intake pipe which will not significantly affect the water level or flow of waters within a coastal wetland, freshwater *Designed to inform*

wetland, great pond, river, stream or brook. This section also applies to the installation of a well in or adjacent to a freshwater wetland or adjacent to a great pond, coastal wetland, river, stream or brook. Allowed uses of water for the purposes of this section include a water supply for a single family residence and a dry hydrant. Some intake pipes and wells adjacent to a great pond may be exempt by law (see Note 2 at the end of this subsection).

*that some intake pipes and wells next to a great pond can be exempt in attempt to avoid unnecessary PBR filings.*

- **Section 4 (A) of Replacement of structures**

### A. Applicability

- (1) This section applies to the replacement of an existing permanent structure in, on, or over a coastal wetland, freshwater wetland, great pond, fragile mountain area, or river, stream or brook. ~~Any activity involving structure replacement adjacent to protected natural resources must conform with Section 2 "Activities adjacent to protected natural resources".~~ Some activities involving maintenance and repair of a permanent structure may not require a permit (see note 2 at the end of this section).
- (2) In order to be eligible for this section, the structure must have been in place and functioning as intended within 24 months of the DEP's receipt of the notification form. A permit by rule for replacement is valid for three years from the date of approval.
- (3) This section does not apply to the replacement of a structure adjacent to a protected natural resource. (See Section 2: Activities adjacent to protected natural resources.)
- ~~(34)~~ This section does not apply to structures located within a sand dune system. (See Section 16: Activities in coastal dune systems.)
- ~~(45)~~ This section does not apply to the replacement of a dam or a tidal flood gate.
- ~~(56)~~ This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of permits issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- ~~(67)~~ This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

*Clarifies that this section applies only to structure replacement in, on or over a resource and that applicants for replacement of structures adjacent to a resource must apply under Sec. 2.*

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NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements

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- **Section 4 (B) of Replacement of structures**

### B. Submissions

- (1) For an activity occurring in tidal waters, notice of approval of timing of the activity from the Department of Marine Resources must be submitted to the DEP with the notification form.
- (2) The applicant is required to submit photographs of the area which will be affected by the activity proposed. *Requires information necessary for determining*
- (3) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labeled with the applicant's name and the town in which the activity took place. *compliance with the standard in Section 4(C)(1) that requires replaced structures not exceed previous dimensions.*
- (4) A scaled plan or drawing of the structure to be replaced that includes at a minimum the location, width, length and height of the existing structure.

It is not necessary to have the plan professionally prepared. However, it must be legible and drawn to a scale that provides a clear representation of distances and measurements on the plan.

- **Section 4 (D) (8) of Replacement of structures**

- (8) Riprap. Heavy, irregularly-shaped rocks that are fit into place, without mortar, on a slope. Square or rectangular rocks with flat faces, such as quarry stone or manufactured blocks, do not qualify as "irregularly-shaped". *Limits and better describes acceptable rock that can be used for riprap.*

- **Section 8 Shoreline stabilization**

## 8. Shoreline stabilization

### A. Applicability

- (1) This section applies to the establishment of vegetation adjacent to any protected natural resource and the installation of riprap along the shoreline of a ~~coastal wetland~~, great pond, freshwater wetland with over 20,000 square feet of open water, stream or brook. ~~This rule limits riprap in coastal wetland areas to that required to protect~~ *Makes riprap on coastal shoreline ineligible for PBR.*

- ~~a structure within 100 feet of an eroding bank or agricultural land.~~
- (2) This section applies only to areas where erosion exists and vegetation is not present, as demonstrated by photographs submitted with the notification form.
- (3) This section does not apply to riprap on any river as defined by 38 M.R.S.A. Section 436-A(11), the Mandatory Shoreland Zoning Act (information is available at the Town Office).
- (4) This section does not apply to a riprap project that affects more than 100 feet of shoreline. ~~This section does not apply to areas within or adjacent to a coastal wetland containing soft bottom (mudflat) sediments or salt marsh vegetation.~~ *Limits riprap to no more than 100 feet in length.*
- (5) This section does not apply to areas within any portion of a coastal sand dune system even if portions of these systems extend into the coastal wetland.
- (6) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

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NOTES:

- (1) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.
- (2) A permit will be required from the US Army Corps of Engineers for riprap projects that include fill below the ordinary high water line of fresh waters or below the spring high tide line of tidal waters.

A copy of the PBR notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

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**B. Submissions**

- (1) The applicant is required to submit photographs of the entire shoreline area where this activity is proposed.
- (2) Photographs showing the finished activity must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labeled with the applicant's name and the town in which the activity took place.
- (3) A scaled drawing, including a cross section, of the proposed riprap installation. The drawing must clearly depict the extent of riprap proposed to be installed, such as the length along shore and height above the normal high water line. *Requires additional information to ensure project dimensions and scale.*

It is not necessary to have the plan professionally prepared. However, it must be legible and drawn to a scale that provides a clear representation of distances and measurements on the plan.

- (34) ~~Professional~~ design plans for riprap on streams and brooks when required pursuant to paragraph C(12) of this section.

### C. Standards

- (1) Riprap may be utilized only where eroded slopes exceed 3 horizontal feet to 1 vertical foot (approximately 33% slope), or where riprap is used to stabilize an existing stormwater outfall. Where eroded slopes are shallower than 3 horizontal to 1 vertical, vegetation must be used to control erosion.
- (2) Riprap installed on the shoreline of a great pond or open water wetland may not extend higher than 2 feet above the normal high water line. Riprap installed on a river, stream or brook may not extend higher than 2 feet above the normal high water line, or to the elevation of the 100-year flood where mapped by the Federal Emergency Management Agency, whichever is higher. ~~Riprap installed in a coastal area may extend no higher than the elevation of waves expected during coastal storms.~~
- (3) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
  - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
  - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
  - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
  - (d) All disturbed soils must be permanently stabilized; and
  - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

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NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

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- (4) New soil may be brought to the site and soil amendments, such as fertilizer or lime, may be used to increase soil fertility provided:

- (a) Slopes do not exceed 3 horizontal to 1 vertical;
  - (b) Existing vegetation is not permanently removed;
  - (c) Water bars or diversions are used to divert stormwater runoff away from the loam;
  - (d) Depth of ~~loam~~ new soil is less than 2 inches;
  - (e) The amendment is worked into the underlying soils;
  - (f) Disturbed areas are immediately mulched and seeded; and
  - (g) Final vegetation consists of native trees and shrubs, or matches existing vegetation immediately adjacent to the treated area.
- (5) Rocks used for riprap may not be obtained from the shoreline (because they help prevent erosion) or below the normal high water line (because they provide habitat for aquatic life).

*Makes the term “new soil” consistent through this subsection.*

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NOTE: On many slopes, slumping is caused by wave or water motion undercutting the bank. If riprap is placed only at the bottom of the slope, and the upper portions of the bank are graded and revegetated, the cost of the shoreline stabilization project can be reduced.

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- (6) The slope of the riprap may not be steeper than 1 horizontal to 1 vertical, nor shallower than 3 horizontal to 1 vertical.
- (7) Riprap must be anchored at the base of the existing bank by placing the bottom row of rock in a trench excavated at least to a depth equal to the height of the largest rock, or the riprap must be pinned to underlying ledge.
- (8) A layer of filter fabric; and crushed stone ~~or washed gravel~~ must be placed under the riprap to prevent the washing of soil particles into the water.
- (9) No fill material other than the riprap; and crushed stone ~~or washed gravel~~ may be placed below the normal high water line.
- (10) Riprap may not be placed in front of a retaining wall such that it extends further into the water.
- (11) A buffer strip of undisturbed vegetation at least 25 feet wide must be established and maintained along the upland edge of any riprap placed for the protection of agricultural land.
- (12) Design of riprap on stream or brook banks must be approved by either a Maine Registered Professional Engineer, the United States

*Improves standard by requiring both filter fabric and crushed stone as bedding material for the riprap. “washed gravel” is not being used by applicants.*

- Natural Resources Conservation Service, or the local Soil and Water Conservation District. Evidence of this approval or plans stamped by a professional engineer must be submitted along with the Notification Form. With prior written agreement, the DEP may waive this standard for minor riprap activities on small streams.
- (13) When riprap is necessary along a river, stream or brook, it must be combined with tree and shrub plantings to provide bank stabilization, shading of the water and cover for wildlife.
- (14) If work is performed in a river, stream or brook that is less than three feet deep at the time of the activity and at the location of the activity, the applicant must provide for temporary diversion of flow to the opposite side of the channel while work is in progress.
- (a) Diversion may be accomplished by placing sandbags, timbers, sheet steel, concrete blocks, 6+ mil polyethylene or geotextiles from the bank to midstream on the upstream side of the activity. No more than two-thirds (2/3) or 25 feet of stream width, whichever is less, may be diverted at one time.
- (b) Any material used to divert water flow must be completely removed upon completion of the activity, and the stream substrate must be restored to its original condition.
- (c) A pump may be operated, where necessary, for a temporary diversion. The pump outlet shall be located and operated such that erosion or the discharge of sediment to the water is prevented.
- (15) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.
- (16) Work below the high water line of a great pond, river, stream or brook must be done at low water except as required for emergency flood control work. *Unnecessary standard if coastal riprap is no longer eligible for PBR.*
- ~~(17) All wheeled or tracked equipment that must travel or work in a vegetated coastal wetland area must travel and work on mats or platforms in order to protect wetland vegetation.~~ *Requires removal of any material to beyond 75' of the resource unless a lesser setback is allowed pursuant to Section 2 of PBR.*
- ~~(18)~~ (17) All excavated material must be stockpiled either outside the wetland/protected natural resource or on mats or platforms. Hay bales or silt fence must be used, where necessary, to prevent sedimentation. All excavated material must be removed to a location more than 75 feet from the natural resource, unless otherwise approved by the DEP, and properly stabilized with vegetation upon project completion. *Clarifies and strengthens the replanting*

~~(18)~~ Disturbance of vegetation must be avoided if possible. If vegetation must be disturbed during the activity, ~~it~~ similar types and amounts of vegetation must be re-established immediately upon completion of the activity and must be maintained.

*requirement.*

~~(19)~~ Non-native species may not be planted in disturbed areas.

*Restricts riprap to the location, dimensions and extent shown on the plans submitted with the PBR notification form.*

~~(20)~~ Riprap projects must be constructed in accordance with the plans or drawings submitted pursuant to subsections B(3) and (4) of this section, as applicable.

**D. Definitions.** The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

(1) Fill. a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or adjacent to a water body or wetland.

*Clarifies acceptable riprap material.*

(2) Riprap. Heavy, irregularly-shaped rocks that are fit into place, without mortar, on a slope. Square or rectangular rocks with flat faces, such as quarry stone or manufactured blocks, do not qualify as “irregularly-shaped”.

(3) Structure. Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. Examples of structures include buildings, utility lines and roads.

● **Section 9(D)(4) of Utility Crossings**

(4) Riprap. Heavy, irregularly-shaped rocks that are fit into place, without mortar, on a slope. Square or rectangular rocks with flat faces, such as quarry stone or manufactured blocks, do not qualify as “irregularly-shaped”.

*Clarifies acceptable riprap materials.*

● **Sections 10(C)(10) of Stream Crossings**

(10) Culvert crossings must:

(a) Be limited to 75 feet in length. This limit may not be exceeded within a half-mile length of the stream or within the length of stream controlled by the applicant, if less;

(b) Follow the alignment and grade of the existing stream channel where possible. On perennial streams the culvert's gradient may not exceed 1%;

*Requires entire culvert*

- (c) ~~At the outfall, h~~ Have the bottom of the entire culvert installed at or below stream bed elevation, except for additional culverts at the same crossing; *set at or below stream bed (eliminates ponding above the culvert);*
- (d) Where ~~2~~two or more culverts are installed, be offset in order to concentrate low flows into the culvert within the natural channel;
- (e) Be seated on firm ground, or on geotextiles, logs or other materials used to stabilize the ground;
- (f) Be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater;
- (g) Have the soil compacted at least halfway up the side of the culvert; and *Requires riprap at both inlet/outlet of culvert.*
- (h) Have the inlet and outlet ends stabilized by riprap in accordance with Section 8 Shoreline Stabilization standards ~~or other means~~ to avoid erosion of material around the culvert.

● ***Section 10(D)(4) of Stream crossings***

- (4) Riprap. Heavy, irregularly-shaped rocks that are fit into place, without mortar, on a slope. Square or rectangular rocks with flat faces, such as quarry stone or manufactured blocks, do not qualify as "irregularly-shaped". *Clarifies acceptable riprap materials.*

• ***Section 11(B)(2) of State transportation facilities***

- (2) The activity must be reviewed by the Department of Inland Fisheries and Wildlife, and the Department of Marine Resources, and the Atlantic Salmon Authority, as applicable. The applicant must coordinate with the reviewing agencies and incorporate any recommendations from those agencies into the performance of the activity.

*This agency no longer exists: Atlantic salmon issues are now handled by the Department of Marine Resources.*

• ***Section 12(B)(4) of Restoration of natural areas***

- ~~(4) For an activity involving the removal of a beaver dam, notice of approval for the removal from the Department of Inland Fisheries and Wildlife must be submitted to the DEP with the notification form.~~

*Eliminates unnecessary requirement: beaver dam removal is now exempt.*

• ***Section 13(A)(1) of Habitat creation or enhancement and water quality improvement activities***

**A. Applicability**

- (1) This section applies to an alteration in or adjacent to a ~~great pond, river, stream or brook, coastal wetland and a freshwater wetland~~ protected natural resource by a public natural resource agency. This rule also applies to an alteration in the same types of resources by a public utility, the Department of Transportation, owner of a federally licensed hydropower project, a conservation group, or a municipality in conjunction with and under the supervision of a public natural resource agency, exclusively for the purpose of:

*Expands section to allow this activity in all protected natural resources such as significant wildlife habitats.*

- (a) Creating or enhancing habitat for fisheries or wildlife; or  
(b) A water quality improvement project.

These activities may include but are not limited to: fishway installation; the construction of artificial reefs; removal, maintenance, installation or modification of dam structures; and the construction and maintenance of nutrient retention structures.

• ***Section 13(D)(2) of Habitat creation or enhancement and water quality improvement activities***

- (2) Public natural resources agency. The Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the Maine DEP, ~~the Atlantic Sea Run Salmon Commission~~, the Maine Department of Conservation, the United States Fish and Wildlife Service, the United States Natural Resources Conservation

*At its request, expands definition to allow for US Forest service to be eligible to perform this kind of activity.*

Service, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Forest Service, National Marine Fisheries Service, National Park Service, National Oceanic and Atmospheric Administration, and County Soil and Water Conservation Districts.

- **Section 15(B)(4) of Public boat ramps**

- (4) ~~If the proposed activity involves work below the mean low water line of a waterbody,~~ the applicant shall submit a copy of the project design plan along with a copy of the notification form to the Department of Conservation, Bureau of Parks and Lands, Submerged Lands Program (State House Station #22 Augusta, Maine 04333) at the time the notification form is submitted to the DEP. Work on the activity may not begin until a lease or easement is obtained or the Bureau of Parks and Lands has provided notification that one is not necessary.
- Properly limits when notice to Submerged Lands Program is needed.*

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NOTE: Processing of a request for a lease or easement may require several weeks of review by the Bureau of Public Lands.

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- **Section 15(D)(2) of Public boat ramps**

- (2) Public natural resource agency. The Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the Maine DEP, ~~the Atlantic Sea Run Salmon Commission,~~ the Maine Department of Conservation, the United States Fish and Wildlife Service, the United States Forest Service, the United States Natural Resources Conservation Service and County Soil and Water Conservation Districts.
- Adds US forest Service to list of agencies that can utilize this section of PBR.*

- **Section 19(C)(2) of Activities in, on or over significant vernal pool habitat**

- (2) Except for activities in existing developed area, maintain a minimum of 75% of the critical terrestrial habitat as unfragmented forest with at least a partly-closed canopy of overstory trees to provide shade, deep litter and woody debris.
- Purpose: allows for activities in developed areas even if <75% forested. Redevelopment of existing developed areas does not result in any additional habitat loss.*

- **Section 19(D)(2) of Activities in, on or over significant vernal pool habitat** *Clarifies/ limits what is considered "developed". Eliminates fields from being considered developed.*
  - (2) Existing developed area. The area of property altered including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other land scaped areas~~non-native vegetation~~, as of September 1, 2007.

- **Section 20(D)(2) of Activities located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas** *Purpose: same as for Section 19(D) above.*

- (1) Existing development area. The area of property altered including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other land scaped areas~~non-native vegetation~~, as of June 8, 2006. "Existing developed area" has the same meaning as "existing development area".