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DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 305:

NATURAL RESOURCES PROTECTION ACT -
PERMIT BY RULE

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Chapter 305: PERMIT BY RULE

- 1. Introduction.** A "permit by rule" or "PBR", when approved by the Department of Environmental Protection (DEP), is an approval for an activity that requires a permit under the Natural Resources Protection Act (NRPA). Only those activities described in this chapter may proceed under the PBR process. A PBR activity will not significantly affect the environment if carried out in accordance with this chapter, and generally has less of an impact on the environment than an activity requiring an individual permit. A PBR satisfies the ~~Natural Resources Protection Act (NRPA)~~ permit requirement and Water Quality Certification requirement.

If a proposed activity is not described in this chapter, or will not be conducted in accordance with the standards of this chapter, the applicant must obtain an individual permit prior to beginning the activity.

- A. Location of activity.** The location of an activity may affect whether an activity qualifies for PBR, and whether review by the Department of Inland Fisheries and Wildlife (~~IF&W~~), the Department of Marine Resources (DMR), or the Maine Geological Survey (MGS) is required.

- (1) Type of resource. For some types of activities, the availability of a PBR is affected by the type of natural resource in or adjacent to which the activity is proposed. For example, an applicant proposing an activity consisting of "Movement of rocks or vegetation" may receive a PBR only if the activity will take place in a great pond, river, stream or brook. Limitations concerning the location of activities are addressed in the "Applicability" provision in each section of this chapter.
- (2) Essential ~~H~~habitat. Essential ~~H~~habitats include areas critical to the survival of threatened and endangered species such as ~~the bald eagle~~, least tern, roseate tern, and piping plover. If the activity is located in ~~E~~ssential ~~H~~habitat, such as near ~~an eagle~~piping plover -nesting sites, a PBR is only available if the applicant obtains written approval from ~~the Department of Inland Fisheries and Wildlife (IF&W)~~. This approval from IF&W must be submitted to the DEP with the PBR notification form, and the applicant must follow any conditions stated in the IF&W approval.

NOTE: Maps showing areas of essential habitat are available from the Department of Inland Fisheries and Wildlife regional headquarters, municipal offices, the Land Use Regulation Commission (for unorganized territories) and DEP regional offices. If the activity is located in essential habitat, IF&W must be contacted to request and obtain a "certification of review and approval".

- (3) Other activities requiring IF&W, DMR, or MGS approval. Other activities authorized under this rule require pre-approval from state natural resource agencies. The requirements are noted in each section of the rule. For example, activities occurring in tidal waters require DMR approval of the timing of the activity, and certain activities in coastal sand dune systems require pre-approval from MGS. Please read the requirements of each section carefully to ensure the necessary pre-approvals are obtained and provided with the PBR notification form.

- B. Notification to Department.** The applicant must file notice of the activity with the DEP prior to beginning work on the activity. The notification must be on a form provided by the DEP and must

include any submissions required in this chapter. The applicant must keep a copy to serve as the permit.

The notification form must be filed electronically at maine.gov/dep/, sent to the DEP by certified mail (return receipt requested), or hand delivered to the DEP and date stamped by the ~~department~~DEP. By signing the notification form, the applicant is representing that the activity will meet the applicability requirements and standards of the rule. In addition, by signing the notification form the applicant represents that the applicant has sufficient title, right, or interest in the property where the proposed activity is to take place.

C. Public notice. Within 30 days prior to filing notice of the activity with the DEP, the applicant must mail public notice to abutters and to the municipal office. “Abutter” for the purposes of public notice means any person who owns property that is contiguous with the property on which the activity is proposed, unless the abutter is located one mile or more from the proposed activity.

Notice may be provided on a public notice form provided by the DEP. The notice must include the name, U.S. postal address, electronic mail address, and telephone number of the applicant; the location of the proposed activity, including a physical address where applicable; a summary of the proposed activity; a statement that the activity is regulated by the Natural Resources Protection Act and the DEP’s Chapter 305 Natural Resources Protection Act – Permit by Rule Standards; an anticipated date on which the notification form will be filed with the Department; a statement providing the DEP web address and the location of the municipal office where the notification form and submissions will be available for public inspection; and a statement that public comments on the application may be submitted to the Department during the 20 working day review period, with the DEP web address, DEP electronic mail address, and DEP regional office address to which comments may be submitted.

A list of persons to whom notice was provided must be submitted with the PBR notification form.

ED. Effective period

- (1) Beginning of period. The PBR becomes effective ~~14-20 working calendar~~ days after the DEP receives the notification form, unless the DEP approves or denies the PBR, or requests additional information, prior to that date. If the DEP does not speak with or write to the applicant within this ~~20 working~~14 day period regarding the PBR notification, the applicant may proceed to carry out the activity. Working days are weekdays (Monday-Friday), excluding State holidays and any other day State of Maine offices are closed.

There are three exceptions regarding the effective date of an approved PBR:

- (a) Activities listed in Section 10 (Stream crossings) occurring in association with forest management are exempt from the ~~20 working~~14 day waiting period.
- (b) Activities listed in Section 10 (Stream crossings) performed or supervised by individuals currently certified in erosion control practices by the DEP are exempt from the ~~14-20 working~~ day waiting period. To be certified in erosion control practices, an individual must successfully complete all course requirements of the Voluntary Contractor Certification Program administered by the DEP's Nonpoint Source Training and Resource Center.

- (c) Activities that are part of a larger project requiring a permit under the Site Location of Development or the Storm Water Management ~~Acts-Laws~~ may not proceed until any required permit under those laws is obtained.

NOTE: Activities that are part of a larger project may require other permits from the DEP also. These other laws may prohibit the start of construction of any part of the project unless a permit under that law is obtained. In these cases, while not a violation of this rule, starting work on a PBR approved activity would be a violation of those other applicable laws.

- (2) End of period. The PBR is generally effective for 2 years from the date of approval, except that a PBR for "Replacement of structures" under Section 4 is effective for 3 years.

NOTE: Activities that qualify under this chapter may need to meet other local, state and federal requirements. Examples -- (1) If an activity extends below the low water line of a lake, coastal wetland or international boundary water, the applicant should contact the Bureau of Parks and Lands' Submerged Lands Program (207-287-3061) concerning possible lease or easement requirements, or (2) If an activity will involve work below the mean high water line in navigable waters of the United States, the applicant should contact the Army Corps of Engineers (207-623-8367).

DE. Discretionary authority. Notwithstanding compliance with the PBR applicability requirements and standards set forth in this chapter, the DEP may require an individual permit application to be filed in any case where credible evidence indicates that the activity:

- (1) May violate the standards of this rule or the NRPA (38 ~~M.R.S.A.~~M.R.S. Section 480-D);
- (2) Could lead to significant environmental impacts, including cumulative impacts; or
- (3) Could adversely impact a resource of special concern.

If an individual permit is required pursuant to this subsection, the DEP ~~shall~~will notify the applicant in writing within the ~~14 calendar~~20 working day waiting period described in sub-section (C) above. When the DEP notifies an applicant that an individual permit is required, no work may be conducted unless and until the individual permit is obtained.

EF. Violations. A violation of law occurs when a person, or his or her agent, performs or causes to be performed any activity subject to the NRPA without first obtaining a permit from the DEP, or acts contrary to the provisions of a permit. The person, his or her agent, or both, may be held responsible for the violation. Commonly, the "person" is the landowner, and the "agent" is the contractor carrying out the activity. A violation occurs when:

- (1) An activity occurs that is not allowed under PBR, whether or not a PBR notification form has been filed with and/or approved by the DEP;
- (2) An activity occurs that is allowed under PBR, but a PBR for the activity has not become effective prior to the beginning of the activity; or
- (3) An activity occurs that is allowed under PBR and a PBR for the activity is in effect, but the standards specified in this chapter are not met.

See the "applicability" provision under each activity for rules concerning what activities are allowed under PBR. A PBR is only valid for the person listed on the notification form, or for his or her agent.

Each day that a violation occurs or continues is considered a separate offense. Violations are subject to criminal penalties and civil penalties of not less than \$100 nor more than ~~\$10,000~~\$50,000 for each day of that violation (38 ~~M.R.S.A.~~M.R.S. Section 349).

NOTE: A local Code Enforcement Officer (CEO) may take enforcement action for a violation of the Natural Resources Protection Act if ~~he or she~~the CEO is authorized to represent a municipality in District Court, and ~~he or she has~~they have been certified as familiar with court procedures, 30-A ~~M.R.S.A.~~M.R.S. Section 4452(7).

2. Activities adjacent to protected natural resources

A. Applicability

(1) This section applies to an activity adjacent to the following protected natural resources:

- (a) A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or
- (b) Freshwater wetlands consisting of or containing:
 - (i) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or
 - (ii) Peatlands dominated by shrubs, sedges and sphagnum moss.

(2) This section does not apply to an activity located in, on, or over any protected natural resource as defined by 38 M.R.S. §480-B.

(32) This section does not apply to an activity where sustained slopes are steeper than 3 horizontal feet: 1 vertical foot (approximately 33% slope) between the normal high water line or upland edge of the protected resource and the soil disturbance.

(43) This section does not apply to an activity that qualifies for a permit by rule under another section of this chapter. Activities that qualify for permit by rule under another section are not required to comply with this section unless expressly stated in that section.

(54) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 ~~M.R.S.A.~~M.R.S. Sections 481 to 490, the Storm Water Management Law, 38 ~~M.R.S.A.~~M.R.S. Section 420-D, or the Natural Resources Protection Act, 38 ~~M.R.S.A.~~M.R.S. Sections 480-A to ~~480-Z~~480-KK.

(65) This section does not apply to an activity that does not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements. In most shoreland areas, a 75 or 100 foot undisturbed buffer strip is required between the disturbed areas and the water or wetland.

B. Submissions

- (1) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (2) 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~~municipality in which the activity took place.
- (3) A brief narrative explaining why there is no practicable alternative to location of the activity within the 75 foot setback, and how the impact on the remaining buffer and the resource will be minimized. This narrative is not required for those activities presumed to have no practicable alternative as listed in paragraph 2(C)(1) of this ~~Chapter~~section.
- (4) A scaled plan or drawing of the area affected, including information such as:
 - (a) The entire property on which the activity will take place, including property lines, the 75 foot setback, and the boundaries or location of protected natural resources such as streams and wetlands;
 - (b) Proposed and existing development on the parcel including buildings, parking areas, roads, fill areas, landscaped areas, ~~etc~~and other relevant features; and
 - (c) Any site constraints limiting development beyond the 75 foot setback, such as steep slopes.

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

C. Standards

- ~~(1) (4)~~—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.~~M.R.S. 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.

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.

(d) The closure of a landfill in conformance with the DEP's solid waste management rules.

(e) Access way consisting of a footpath, stairway, or steps to the resource.

~~(2) (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.~~ M.R.S. Section 480-Q(23).

~~(3)~~ Disturbance within the setback must be minimized.

~~(3)~~

~~(4) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:~~

~~(a) Sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be properly installed between the area of soil disturbance and the resource before the activity begins and maintained until the disturbed area is permanently stabilized;~~

~~(b) Surface flows from above the disturbed area must be diverted around the disturbed area until final stabilization and any diverted runoff must be managed to prevent erosion; examples of diversions include but are not limited to erosion control mix berms or socks, sand bags, and shallow excavated trenches;~~

~~(c) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or 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, straw bales, or temporary erosion or sediment controls containing plastic or other non-biodegradable materials must be removed and erosion control mulch berms must be raked to a depth of no more than 6 inches.~~

~~(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.
 - (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.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated ~~March 2003~~October 2016. This handbook and other references are available online at <https://www.maine.gov/dep/land/erosion/escbmps/> or by contacting ~~from~~ the DEP.

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.
- (2) **Land adjacent to a protected natural resource.** Any land area within 75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (2-A) **Practicable.** Available and feasible considering cost, existing technology and logistics based on the overall purpose of the project.
- (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.
- (4) **Upland edge.** The boundary between upland and wetland.

NOTE:

Section 480-Q(15-A) of the NRPA exempts the installation, removal or repair of a septic system from permitting requirements as of March 1, 1995, as long as the system complies with all requirements of the subsurface wastewater disposal rules adopted by the Department of Health and Human Services pursuant to 22 ~~M.R.S.A.~~M.R.S. Section 42(3).

3. 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 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).
- (2) This section also applies to the installation or maintenance of a permanent device used to monitor water elevations, flow or quality including a gauging station, staff gauge, tide gauge, water recording device, water quality testing and improvement device or other similar scientific equipment within a coastal wetland, freshwater wetland great pond, river, stream or brook.
- (3) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 ~~M.R.S.A.~~M.R.S. Sections 481 to 490, the Storm Water Management Law, 38 ~~M.R.S.A.~~M.R.S. Section 420-D, or the Natural Resources Protection Act, 38 ~~M.R.S.A.~~M.R.S. Sections 480-A to ~~480-Z~~480-KK.
- (4) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTES:

- (1) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.
- (2) In a great pond, the placement of water lines to serve a single-family house or the installation of cables for utilities, such as telephone and power cables, is exempt from permit requirements under 38 ~~M.R.S.A.~~M.R.S. Section 480-Q provided that the:
 - (a) Excavated trench for access to the water is backfilled and riprapped to prevent erosion;
 - (b) Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion; and
 - (c) Bureau of Parks and Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction.
- (3) A permit will be required from the US Army Corps of Engineers for the following types of projects:
 - (a) Any activity involving open trench excavation in a waterbody or wetland;
 - (b) Any activity in coastal waterways;

- (c) Any activity within a river, stream or brook that takes place between October 2 and July 14; or
- (d) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the PBR notification and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (U.S. Army Corps of Engineers, 442 Civic Center Drive, Suite 350, Augusta, ME 04330. Tel. (207) 623-8367~~US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367~~).

B. Submissions

- (1) For an activity occurring in tidal waters, notice of approval of the 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.
- (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~~municipality in which the activity took place.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) For any soil disturbance that is limited to the upland and does not extend into the protected natural resource, sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be properly installed between the area of soil disturbance and the resource before the activity begins and maintained until the disturbed area is permanently stabilized;
 - (b) Any soil disturbance within a freshwater wetland, great pond, river, stream, or brook must be done during periods of low water to minimize impacts (in-stream work window, lake draw-down, etc.) and must be temporarily or permanently stabilized daily. The placement of sediment barriers within the water would be ineffective and could cause unnecessary damage to the resource;
 - (c) Any soil disturbance within a coastal wetland must be done at or near low tide and must be temporarily or permanently stabilized before being submerged. The placement of

sediment barriers within the tidal zone would be ineffective and could cause unnecessary damage to the resource;

(d) Surface flows from above the disturbed area must be diverted around the disturbed area until final stabilization and any diverted runoff must be managed to prevent erosion; examples of diversions include but are not limited to erosion control mix berms or socks, sand bags, and shallow excavated trenches;

(e) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or spread on any exposed soils;

(f) All disturbed soils must be permanently stabilized; and

(g) Within 30 days of final stabilization of the site, any silt fence, straw bales, or temporary erosion or sediment controls containing plastic or other non-biodegradable materials must be removed and erosion control mulch berms must be raked to a depth of no more than 6 inches.

~~(1) 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 edge of 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.~~

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated ~~March 2003~~October 2016. This handbook and other references are available online at <https://www.maine.gov/dep/land/erosion/escbmps/> or by contacting from the DEP.

(2) Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be replaced or reestablished immediately upon completion of the activity and must be maintained.

(3) Non-native wetland plants may not be planted in disturbed areas.

(4) The trench width in any protected natural resource must be no wider than necessary to install the device.

(5) Any trench in or adjacent to the wetland must be refilled with the material that was excavated. The original grading and elevation of the wetland must be restored. Residual fill

- material must be removed from the wetland or water body and properly stabilized. Pipe bedding material such as crushed stone or sand may be used provided clay dams or synthetic boots are used where appropriate to prevent wetland draining through the bedding material.
- (6) The water intake structure may not interfere with any potential boat usage and may not block fish passage.
 - (7) If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.
 - (8) Excavation of a pool to increase depth is prohibited under this section.
 - (9) Maintenance clearing of deposited debris and sediments from the intake area is allowed provided the cleared materials are removed from the resource and are disposed of in an upland location at least 75 feet from any open water body and stabilized to prevent erosion unless a closer upland disposal area is approved under Section 2 of this rule. Disposal of any dredged material or debris must be carried out in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 ~~M.R.S.A.~~ M.R.S. Sections 1301 *et seq.* Clearing or removal of sediment from a water body for other purposes is not allowed under this section.
 - (10) 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 must be located and operated such that erosion or the discharge of sediment to the water is prevented.
 - (11) Wheeled or tracked equipment may not be operated 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.
 - (12) Wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
 - (13) 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. Measures such as a silt boom or staked fencing must be employed to reduce and isolate turbidity.
 - (14) Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water, or where necessary, must be placed in

forms and cured at least one week before the forms are removed. No washing of tools, forms, ~~or other equipment~~ may occur in or adjacent to the waterbody or wetland.

- (15) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 ~~M.R.S.A.~~M.R.S. §1682, provided it is cured on dry land in such a manner to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where the wood will come in contact with water.

- (16) Blasting in inundated areas is prohibited.

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

- (1) **Land adjacent to a protected natural resource.** Any land area within 75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (2) **Non-native wetland plants.** Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites communis*) and purple loosestrife (*Lythrum salicaria*).

4. Replacement of structures

A. Applicability

- (1) ~~(1)~~ This section applies to the replacement of ~~ana~~ legally existing permanent structure in, on, or over a coastal wetland, freshwater wetland, great pond, fragile mountain area, or river, stream or brook. 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, except for a structure that is partly in, on, or over and partly adjacent to the resource and except for a legally existing shoreline stabilization structure (e.g., riprap, vertical seawall or retaining wall)-or-seawall. (See Section 2: Activities adjacent to protected natural resources.)
- (4) This section does not apply to structures located within a coastal sand dune system. (See Section 16: Development Activities in coastal ~~dune systems~~sand dunes.)
- (5) This section does not apply to the replacement of a dam or a tidal flood gate.
- (6) 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.~~M.R.S. Sections 481 to 490, the Storm Water Management Law, 38

~~M.R.S.A.~~M.R.S. Section 420-D, or the Natural Resources Protection Act, 38
~~M.R.S.A.~~M.R.S. Sections 480-A to ~~480-Z~~480-KK.

- (7) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

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

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.
- (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~~municipality in which the activity took place.
- (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.

C. Standards

- (1) ~~(1)~~ A replaced structure that is located in, on, or over a protected natural resource may not exceed the dimensions, including height, of the previously existing structure, and may not extend any further into the water body or wetland, except that retaining walls may be reinforced with a facing material not exceeding 6 inches in width or may be replaced with riprap, biodegradable stabilization materials or vegetation in accordance with Section 8 "Shoreline stabilization".

NOTE: Vegetation is the preferred method of erosion control near water bodies. Where the use of vegetation is not feasible, riprap is preferred over retaining walls because it dissipates wave action and is a more stable structure over the long term. The DEP encourages the replacement of retaining walls with riprap, unless the presence of large trees or structures makes its use impractical.

- (2) A replaced structure may be relocated landward during replacement so that its footprint covers less of the protected natural resource.
- (3) Notwithstanding Section 4(C)(1), the height of a replaced pier, wharf or dock in, on or over a coastal wetland may be increased by no more than the amount necessary for the bottom of the

lowest horizontal structural component of the deck of the pier, wharf or dock to be 4 feet above the base flood elevation mapped by the Federal Emergency Management Agency (FEMA). The deck of the pier, wharf or dock may be extended into the upland only as necessary to accommodate any height increase under this paragraph and an additional row of pilings may be placed under the deck to facilitate that extension.

For the purposes of this section a “pier, wharf, or dock” includes any permanent structures located on the pier, wharf or dock but does not include a seawall, jetty, breakwater, or similar structure intended to dissipate wave action.

NOTE: FEMA flood map information may be found at the FEMA website or your town office/municipal office: <https://www.fema.gov/flood-maps>

- (4) Notwithstanding Section 4(C)(1), the height of an existing riprap stabilization structure, vertical seawall or retaining wall located in and/or directly adjacent to a coastal wetland may be increased up to one foot above the base flood elevation mapped by FEMA in accordance with Section 8 or Section 8-A.
- (5) Notwithstanding Sections 4(C)(1-3), the height of another structure that is a legally existing nonconforming principal or accessory structure under the local shoreland zoning ordinance may be increased by no more than the amount necessary for the bottom of the lowest horizontal structural component of the structure to be 3 feet above the base flood elevation mapped by FEMA or to be the elevation necessary to be consistent with the local floodplain management elevation requirement, whichever is greater. The applicant must submit evidence that the municipality has approved the elevation and location of the replacement structure.
- (6) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) For any soil disturbance that is limited to the upland and does not extend into the protected natural resource, sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be properly installed between the area of soil disturbance and the resource before the activity begins and maintained until the disturbed area is permanently stabilized;
 - (b) Any soil disturbance within a freshwater wetland, great pond, river, stream, or brook must be done during periods of low water to minimize impacts (in-stream work window, lake draw-down, etc.) and must be temporarily or permanently stabilized daily. The placement of sediment barriers within the water would be ineffective and could cause unnecessary damage to the resource;
 - (c) Any soil disturbance within a coastal wetland must be done at or near low tide and must be temporarily or permanently stabilized before being submerged. The placement of sediment barriers within the tidal zone would be ineffective and could cause unnecessary damage to the resource;
 - (d) Surface flows from above the disturbed area must be diverted around the disturbed area until final stabilization and any diverted runoff must be managed to prevent erosion;

examples of diversions include but are not limited to erosion control mix berms or socks, sand bags, and shallow excavated trenches;

(e) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or spread on any exposed soils;

(f) All disturbed soils must be permanently stabilized; and

(1)(g) Within 30 days of final stabilization of the site, any silt fence, straw bales, or temporary erosion or sediment controls containing plastic or other non-biodegradable materials must be removed and erosion control mulch berms must be raked to a depth of no more than 6 inches.

~~NOTE: Vegetation is the preferred method of erosion control near water bodies. Where the use of vegetation is not feasible, riprap is preferred over retaining walls because it dissipates wave action and is a more stable structure over the long term. The DEP encourages the replacement of retaining walls with riprap, unless the presence of large trees or structures makes its use impractical.~~

~~(2) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the protected resources:~~

~~(a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the edge of 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.~~

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated ~~March 2003~~ October 2016. This handbook and other references are available online at <https://www.maine.gov/dep/land/erosion/escbmps/> or by contacting from the DEP.

(7) (3) Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be reestablished immediately upon completion of the activity and must be maintained.

(8) (4) Non-native wetland plants may not be planted in disturbed areas.

(9) (5) Work done in a river, stream or brook must allow for fish passage and the maintenance of normal stream flows at all times of year and may not impound water.

- ~~(10) (6)~~ No dredging may take place during the activity and no material may be removed from the affected natural resource except that rocks that were part of the original structure may be removed or reused.
- ~~(11) (7)~~ 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. Measures, such as a silt boom or staked fencing, must be employed to reduce and isolate turbidity.
- ~~(12) (8)~~ If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.
- ~~(13) (9)~~ 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 must be located and operated such that erosion or the discharge of sediment to the water is prevented.
- ~~(14) (10)~~ Wheeled or tracked equipment may not be operated 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.
- ~~(15) (11)~~ All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- ~~(16) (12)~~ All debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. ~~Hay~~ Straw bales, silt fence or mulch must be used, where necessary, to prevent sedimentation. Any debris generated during the activity must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 ~~M.R.S.A.~~ M.R.S. Section 1301 et seq.
- ~~(17) (13)~~ Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water, or where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.
- ~~(18) (14)~~ The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 ~~M.R.S.A.~~ M.R.S. §1682, and provided it is cured on dry land in such a manner as to expose all surfaces to the air for a period of at least 21

days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where the wood will come in contact with water.

~~(19) (45)~~ The replaced structure may not interfere with, or reduce the opportunity for, existing navigational and recreational uses of the site.

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

- (1) **Dam.** Any ~~man-made~~ artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, that impounds or diverts a river, stream or brook or great pond.
- (2) **Dredge.** To move or remove, by digging scooping or suctioning any sand, silt, mud, gravel, rock, or other material from the bottom of a water body or wetland surface.
- (3) **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.
- (4) **Land adjacent to a protected natural resource.** Any land area within 75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (5) **Public works project.** A federal, state or local government, or state-regulated utility project for public use or service including, but not limited to, highways, dams, bridges, utility lines, water lines, sewerage, and recreational facilities such as boat launch facilities.
- (6) **Replacement.** Any activity that results in more than 50% of a structure being restored or reconstructed whether above or below the normal high water line.
- (7) **Retaining wall.** A vertical or near vertical structure generally constructed of wood, concrete or rock or a combination of these materials and located at or below the normal high water line.
- (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”.
- (9) **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.
- (10) **Non-native wetland plants.** Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites communis*) and purple loosestrife (*Lythrum salicaria*).

NOTES:

- (1) Section 480-Q(15-A) of the NRPA exempts the installation, removal or repair of a septic system from permitting requirements as of March 1, 1995, as long as the system complies with all

requirements of the subsurface wastewater disposal rules adopted by the Department of Health and Human Services under 22 M.R.S.A-M.R.S. Section 42, subsection 3.

- (2) Section 480-Q(2) of the NRPA exempts from permitting the maintenance and minor repair of structures in, on, over or adjacent to a protected natural resource and maintenance and minor repair of private crossings of a river, stream or brook provided:
- (a) Erosion control measures are taken to prevent sedimentation of the water;
 - (b) The crossing does not block fish passage in the water course;
 - (c) There is not additional intrusion into the protected natural resources; and
 - (d) The dimensions of the repaired structure do not exceed the dimensions of the structure as it existed 24 months prior to the repair.

Section 480-Q(2) of the NRPA does not apply to the repair of more than 50% of a structure located in a coastal sand dune system; the repair of more than 50% of a dam, unless that repair has been approved by a representative of the United States Natural Resources Conservation Service; or the repair of more than 50% of any other structure, unless the municipality in which the proposed activity is located requires a permit for the activity through an ordinance adopted pursuant to the mandatory shoreland zoning laws and the application for a permit is approved by the municipality.

- (3) Section 480-Q(2-B) of the NRPA exempts from permitting the replacement of a floating dock with another floating dock if the dimensions of the replacement dock do not exceed those of the dock being replaced and the configuration of the replacement dock is the same as the dock being replaced.

- (4) Section 480-Q(2-F) of the NRPA exempts from permitting the repair of a pier, wharf or dock located wholly or partially in, on or over a coastal wetland if:

- (a) Erosion control measures are taken to prevent sedimentation of the water;
- (b) There is no additional intrusion into the coastal wetland;
- (c) Fill is not placed in or adjacent to the coastal wetland; and
- (d) The dimensions of the repaired pier, wharf or dock do not exceed the dimensions of the pier, wharf or dock as it existed 24 months prior to the repair, except that the height of the pier, wharf or dock may be increased by no more than the amount necessary for the bottom of the lowest horizontal structural component of the deck of the pier, wharf or dock to be 4 feet above the base flood elevation. The deck of the pier, wharf or dock may be extended into the upland only as necessary to accommodate any height increase under this paragraph.

Section 480-Q(2-F) does not apply to the repair of more than 50% of a pier, wharf or dock located wholly or partially in, on or over a coastal wetland unless the municipality in which the repair activity is located requires a permit for the activity through an ordinance adopted pursuant to the mandatory shoreland zoning laws and the application for a permit is approved by the municipality.

For the purposes of Section 480-Q(2-F), "pier, wharf or dock" includes any permanent structures located on the pier, wharf or dock. "Pier, wharf or dock" does not include a seawall, jetty, breakwater or similar structure designed to dissipate wave action.

- (54) Section 480-Q(9) of the NRPA exempts from permitting emergency repair or normal maintenance and repair of existing public works which affect any protected natural resource. An activity which is exempt under this subsection ~~shall~~ must employ erosion control measures to prevent sedimentation of any surface water, ~~shall~~ may not block fish passage in any water course and ~~shall~~ may not result in any additional intrusion of the public works into the protected natural resource. This exemption does to apply to any activity on an outstanding river segment as listed in section 480-P.

5. [REPEALED]

6. Movement of rocks or vegetation

A. Applicability

- (1) This section applies to the limited movement of rocks or hand removal of vegetation from below the normal high water line of a great pond or river, stream or brook in order to provide access for swimming or navigation.
- (2) 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.~~ M.R.S. Sections 481 to 490, the Storm Water Management Law, 38 ~~M.R.S.A.~~ M.R.S. Section 420-D, the Natural Resources Protection Act, 38 ~~M.R.S.A.~~ M.R.S. Sections 480-A to ~~480-Z~~ 480-KK.
- (3) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

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

B. Submissions

- (1) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (2) 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~~ municipality in which the activity took place.

C. Standards

- (1) The width of the area to be cleared may not exceed 10 feet, as measured parallel to the shore. Only one area may be cleared per lot with shore frontage or area under common ownership with shore frontage.
- (2) If the area has been cleared in the past, subsequent clearing must be limited to the same area.

- (3) Rocks moved from the cleared area must remain in the water and must be distributed randomly in such a way that a structure such as a jetty or boat ramp will not be formed. Rocks may not be removed from the water.
- (4) Wheeled or tracked equipment may not be operated in the water. For large rock movement, equipment operating on the shore may reach into the water with a bucket or similar extension provided no bottom sediments are removed or displaced. Areas that are disturbed as part of equipment access and operation must be restored to their original grade and vegetation or as near thereto as practicable.
- (5) Rocks that are holding the shoreline may not be moved.
- (6) Cut or uprooted vegetation must be removed from the water.
- (7) Work must be done during periods of low water level or flow.

7. Outfall pipes

A. Applicability

- (1) This section applies to the installation and maintenance of a permanent outfall pipe, an outlet from a ditch or drain tile for storm water, ground water or other discharges licensed by the DEP in or on land adjacent to a coastal wetland, freshwater wetland, great pond, river, stream or brook.

NOTES:

- (1) A wastewater discharge license from the DEP is required for any discharge from an the outlet other than stormwater from residential development; small commercial or industrial facilities; or uncontaminated groundwater.
- (2) A permit will be required from the US Army Corps of Engineers for the following types of projects:
 - (a) Any activity involving open trench excavation in a waterbody or wetland;
 - (b) Any activity in coastal waterways;
 - (c) Any activity within a river, stream or brook between October 2 and July 14; or
 - (d) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the PBR notification and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities ([U.S. Army Corps of Engineers, 442 Civic Center Drive, Suite 350, Augusta, ME 04330. Tel. \(207\) 623-8367](#)~~US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367~~).

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- (2) 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.~~M.R.S. Sections 481 to 490, the Storm Water Management Law, 38 ~~M.R.S.A.~~M.R.S. Section 420-D, or the Natural Resources Protection Act, 38 ~~M.R.S.A.~~M.R.S. Sections 480-A to ~~480-Z~~480-KK.
- (3) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.
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NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.

B. Submissions

- (1) For an activity occurring in tidal waters, notice of approval of the 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.
- (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~~municipality in which the activity took place.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
- (a) For any soil disturbance that is limited to the upland and does not extend into the protected natural resource, sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be properly installed between the area of soil disturbance and the resource before the activity begins and maintained until the disturbed area is permanently stabilized;
- (b) Any soil disturbance within a freshwater wetland, great pond, river, stream, or brook must be done during periods of low water to minimize impacts (in-stream work window, lake draw-down, etc.) and must be temporarily or permanently stabilized daily. The placement of sediment barriers within the water would be ineffective and could cause unnecessary damage to the resource;
- (c) Any soil disturbance within a coastal wetland must be done at or near low tide and must be temporarily or permanently stabilized before being submerged. The placement of sediment barriers within the tidal zone would be ineffective and could cause unnecessary damage to the resource;
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- (d) Surface flows from above the disturbed area must be diverted around the disturbed area until final stabilization and any diverted runoff must be managed to prevent erosion; examples of diversions include but are not limited to erosion control mix berms or socks, sand bags, and shallow excavated trenches;
- (e) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or spread on any exposed soils;
- (f) All disturbed soils must be permanently stabilized; and
- (g) Within 30 days of final stabilization of the site, any silt fence, straw bales, or temporary erosion or sediment controls containing plastic or other non-biodegradable materials must be removed and erosion control mulch berms must be raked to a depth of no more than 6 inches.
- ~~(1) The following measures must be taken to prevent erosion of soil or fill material from the disturbed areas into the resource:~~
- ~~(a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the edge of 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.~~

NOTE: For guidance on erosion and sedimentation control consult the Maine Erosion and Sediment Control BMPs, dated ~~March 2003~~ October 2016. This handbook and other references are available online at <https://www.maine.gov/dep/land/erosion/escbmps/> or by contacting from the DEP.

- (2) Stormwater outfalls, whether a pipe or trench, must utilize velocity reducing structures and/or rock aprons to prevent erosion. A vegetative filter strip of at least 25 feet long must be established and maintained between the outfall structure and the resource unless a different standard is required pursuant to the Site Location of Development Law, 38 ~~M.R.S.A.~~ M.R.S. Sections 481 to 490, or the Storm Water Management Law, 38 ~~M.R.S.A.~~ M.R.S. Section 420-D. The DEP may approve a reduction in width of the vegetated buffer if:
- (a) The applicant demonstrates in writing that the full buffer width is not practicable;
- (b) Any recommendations from the DEP are incorporated into the activity; and
- (c) Approval of the reduction is from the DEP in writing.

- (3) Foundation drains and licensed discharges may extend to, and outfall in, the resource. If necessary, a rock apron must be constructed to prevent erosion.
- (4) Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (5) Non-native wetland plants may not be planted in disturbed areas.
- (6) The trench width in any protected natural resource must be no wider than necessary to install the device.
- (7) The trench in and adjacent to the protected natural resource must be refilled with the material that was excavated. The original grading and elevation of the wetland must be restored. Residual fill material must be removed from the wetland or water body and properly stabilized. Pipe bedding material such as crushed stone or sand may be used provided clay dams or synthetic boots are used where appropriate to prevent wetland draining through the bedding material.
- (8) Blasting in inundated areas is prohibited.
- (9) The outfall structure may not interfere with any potential boat usage of the project site.
- (10) 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.
- (11) All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- (12) 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. Measures, such as a silt boom or staked fencing, must be employed to reduce and isolate turbidity.
- (13) Maintenance clearing of deposited debris and sediments from the outfall area is allowed provided the cleared materials are removed from the resource. Any debris generated during the activity must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 ~~M.R.S.A.~~M.R.S. Section 1301 *et seq.*
- (14) Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water, or where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.
- (15) 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 must be located and operated such that erosion or the discharge of sediment to the water is prevented.

(16) If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.

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

- (1) **Diversion.** A rerouting of a river, stream or brook to a location outside of its established channel.
- (2) **Dredge.** To move or remove, by digging, scooping, or suctioning any sand, silt, mud, gravel, rock, or other material from the bottom of a water body or wetland surface.
- (3) **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.
- (4) **Land adjacent to a protected natural resource.** Any land area within 75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (5) **Non-native wetland plants.** Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites communis*) and purple loosestrife (*Lythrum salicaria*).

8. Shoreline stabilization

A. Applicability

(1) General applicability for all projects

(a) This section applies to a shoreline stabilization activity along the shoreline of a coastal wetland, great pond, freshwater wetland with over 20,000 square feet of open water, stream, or brook that uses one or a combination of the following techniques:

(i) Establishment of native vegetation, which may include the use of biodegradable stabilization materials;

(ii) Toe protection, which may include the use of biodegradable stabilization materials or riprap; and

(iii) Riprap stabilization.

- (b) This section applies to a shoreline stabilization activity along the shoreline of a river as defined by the Mandatory Shoreland Zoning Act, 38 M.R.S. Section 436-A(11), that uses one or a combination of the following techniques:
- (i) Establishment of native vegetation, which may include the use of biodegradable stabilization materials;
 - (ii) Toe protection using biodegradable stabilization materials.
- (c) This section applies only to areas where soils are exposed due to erosion from wave action, currents, ice scouring or changes in water levels.
- (d) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.
- (e) This section does not apply to an activity that causes the total square footage of fill on the entire lot from shoreline stabilization to exceed:
- (i) 200 square feet below the normal high waterline for freshwater wetlands, great ponds, rivers, streams or brooks; or
 - (ii) 400 square feet below the highest astronomical tide line for coastal wetlands.
- (Under this section, fill may only be placed below the normal high water line or highest astronomical tide line for toe protection in accordance with subsection C(3)).
- (f) This section does not apply to an activity that covers or destroys saltmarsh or eelgrass vegetation.
- (g) This section does not apply to an activity in or seaward of a coastal sand dune system (see Section 16-A: Non-development activities in coastal sand dunes).
- (h) This section does not apply to an activity in an essential or significant wildlife habitat, except that this section applies to an activity in Tidal Waterfowl and Wading Bird Habitat as long as the activity is not in a saltmarsh or mudflat.

NOTE: Significant wildlife habitat is defined in the Department's Chapter 335 Significant Wildlife Habitat rule. Essential Habitat is defined in the Department of Inland Fisheries and Wildlife's Chapter 8 Endangered Species rule.

(2) Applicability for activities that use riprap

- (a) This section does not apply to an activity using riprap that causes the total linear feet of shoreline stabilized by riprap, seawalls, retaining walls or other similar structures on the lot to exceed:
- (i) 100 linear feet for freshwater wetlands, great ponds, streams or brooks; or
 - (ii) 125 linear feet for coastal wetlands.

- (b) This section does not apply to an activity using riprap along the shoreline of a coastal wetland except in the following circumstances:
- (i) To protect a legally existing water-dependent structure such as a pier, wharf, dock, boat ramp, stormwater outfall, perimeter drain outfall or stairway to the water;
 - (ii) To protect a subsurface wastewater disposal system that is located 25 feet or less from the upland edge of an eroding bank;
 - (iii) To protect a residential dwelling, commercial or public building or facility, or road (not including a driveway) that legally existed on the parcel prior to January 1, 2026, or that is part of the permitted redevelopment of impervious area that existed on the parcel prior to January 1, 2026, and that is located 100 feet or less from the upland edge of an eroding bank if the bank:
 - a. Is classified as an unstable or highly unstable bluff by the Maine Geological Survey, or
 - b. Has eroded at least five feet landward in a single year or has been eroding at least one foot landward per year, on average, over multiple years, or
 - c. Is determined to be unstable or highly unstable based on a site-specific evaluation by the Maine Geological Survey; or
 - (iv) To protect a publicly owned open space such as a municipal park if the bank:
 - a. Is classified as an unstable or highly unstable bluff by the Maine Geological Survey, or
 - b. Has eroded at least five feet landward in a single year or has been eroding at least one foot landward per year, on average, over multiple years, or
 - c. Is determined to be unstable or highly unstable based on a site-specific evaluation by the Maine Geological Survey.
 - (c) This section does not apply to an activity using riprap within 25 feet of a coastal sand dune system.
 - (d) This section does not apply to an activity using riprap in or seaward of a coastal barrier resources system unit.

NOTES:

- (1) Coastal sand dune systems are defined in the Department's Chapter 355 Coastal Sand Dune Rules. The Maine Geological Survey publishes maps to aid in the identification of coastal sand dune systems. Maps can be found here:
<https://www.maine.gov/dacf/mgs/pubs/digital/dunes.htm>
- (2) Coastal barrier resources system units are listed in 38 M.R.S. §1904 and are mapped by the U.S. Fish and Wildlife Service. Maps can be found here:
<https://www.fws.gov/program/coastal-barrier-resources-act/maps-and-data>

- (3) Coastal bluff maps can be found on the Maine Geological Survey website here: <https://www.maine.gov/dacf/mgs/pubs/digital/bluffs.htm>
- (4) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements. The DEP's minimum guidelines for Municipal Shoreland Zoning Ordinances allow for a construction equipment access path no wider than 12 feet if working from the upland. An approved replanting plan is required for any vegetation that is removed.
- (5) A permit will generally be required from the US Army Corps of Engineers for the construction of any structure in, over, or under any navigable water of the U.S. (see 33 CFR 328), the excavating or dredging from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters (see 33 CFR 322). Additionally, a permit will generally be required from the US Army Corps of Engineers for the discharge of dredged or fill material and certain discharges associated with excavation into waters of the U.S. including wetlands (see 33 CFR 323). In general, any project that includes fill or structures below the ordinary high water line of fresh waters or below the spring high tide line of tidal waters will usually require a permit from the US Army Corps of Engineers. A copy of the PBR notification form and original photographs, not photocopies, should be submitted to the Corps for these activities (US Army Corps of Engineers, 442 Civic Center Drive, Suite 350, Augusta, ME 04330. Tel. (207) 623-8367).
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B. Submissions

- (1) The applicant is required to submit a minimum of one photograph in an orientation parallel to the shoreline and one photograph in an orientation perpendicular to the shoreline from the resource landward along each 25-foot section of shoreline where the activity is proposed. The photographs must clearly document erosion of the shoreline caused by wave action, currents, ice scouring or changes in water levels. The photographs should include a person or some other object for scale. Photographs along a coastal shoreline must be taken at or near low tide.
- (2) The applicant must submit a written description of the cause of the erosion.
- (3) For an activity using riprap along the shoreline of a coastal wetland, the applicant must provide photographs or site plans showing the structure(s) or publicly owned open space that the riprap is designed to protect in accordance with subsection (A)(2)(b) above. As applicable, the applicant must also provide a measurement from the structure to the upland edge of the eroding bank (see subsections (A)(2)(b)(ii)&(iii)) and either a Maine Geological Survey map or site-specific evaluation by the Maine Geological Survey showing the bluff as unstable or highly unstable or dated photographs, satellite imagery, or aerial imagery demonstrating that the area where the project is proposed has eroded at least five feet landward in a single year or is eroding at least one foot landward per year, on average, over multiple years (subsections(A)(2)(b)(iii and iv)).
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NOTE: Coastal bluff maps can be found on the Maine Geological Survey website here: <https://www.maine.gov/dacf/mgs/pubs/digital/bluffs.htm>

- (4) The applicant must submit photographs of all pre-existing riprap on the lot and photographs or descriptions of all pre-existing fill from stabilization activities below the normal high water line or highest astronomical tide line on the lot. The applicant must state how many linear feet of shoreline on the lot have been stabilized using riprap and how many square feet of fill from

stabilization exists below the normal high water line or the highest astronomical tide line on the lot.

- (5) The applicant must submit a scaled drawing and at least two cross-sections of the proposed activity. The drawing must clearly depict the property boundaries, the normal high water line or highest astronomical tide line, and the extent of any soil disturbance, grading, vegetated areas, biodegradable stabilization materials, and/or riprap proposed to be installed, such as the length along the shoreline, square footage of fill below the normal high water line or highest astronomical tide line, and height above and below the normal high water line or highest astronomical tide line. The drawing must be legible and drawn to a scale that provides a clear representation of distances and measurements on the plan.
- (6) The applicant must submit a plan for how machinery will access the project site. If work will be done below the normal high water line or highest astronomical tide line, the plan must describe how machinery will access these areas.
- (7) If required pursuant to subsection C(4)(b) of this section, the applicant must submit approval from a Maine Registered Professional Engineer, the United States Natural Resources Conservation Service, or the local Soil and Water Conservation District for the design of a riprap stabilization activity along the shoreline of a stream or brook.
- (8) If required pursuant to subsection C(4)(c) of this section, the applicant must submit approval from, and evidence of the credentials of, a design professional for the design of a riprap stabilization activity along the shoreline of a coastal wetland.
- (9) 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 municipality in which the activity took place.

C. Standards

NOTE: Shoreline stability and erosion is influenced by several factors including energy levels from waves and currents, the amount of vegetation on the shoreline, groundwater and surface water flows, and land use changes. Shoreline stabilization activities under this section should match the natural condition of the shoreline to the greatest extent possible, including minimizing impacts from stabilization activities, preserving vegetation, and assessing how the use of the upland may be affecting long term shoreline stability.

(1) Standards for All Shoreline Stabilization Activities

- (a) The activity must conform to the local shoreland zoning ordinance.
- (b) The activity may not result in more than:
 - (i) 200 square feet of fill below the normal high water line for freshwater wetlands, great ponds, rivers, streams or brooks from all shoreline stabilization activities on the lot; or
 - (ii) 400 square feet below the highest astronomical tide line from coastal wetlands for all shoreline stabilization activities on the lot.

This includes any fill placed during the activity and any pre-existing fill from shoreline stabilization activities on the lot.

- (c) No trees larger than 4 inches diameter at breast height may be removed, except as necessary for regrading in accordance with subsection C(4)(e) or for equipment access to the water. Hazard trees may also be removed.
- (d) Disturbance of otherwise vegetated portions of the shoreline and bank must be avoided to the greatest extent possible, except for removal of invasive species. If non-invasive vegetation must be disturbed during the activity, similar types and amounts of native vegetation must be re-established in accordance with the revegetation standards in the Department's Chapter 1000 Guidelines for Municipal Shoreland Zoning Ordinances immediately upon completion of the activity and must be maintained to ensure survival.
- (e) A yard or other developed area may not be extended closer to the water as part of a shoreline stabilization activity.
- (f) The elevation of a parcel may not be increased as part of a shoreline stabilization activity.
- (g) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource during construction:
 - (i) For any soil disturbance that is limited to the upland and does not extend into the protected natural resource, sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be properly installed between the area of soil disturbance and the resource before the activity begins and maintained until the disturbed area is permanently stabilized;
 - (ii) Any soil disturbance within a freshwater wetland, great pond, river, stream, or brook must be done during periods of low water to minimize impacts (in-stream work window, lake draw-down, etc.) and must be temporarily or permanently stabilized daily. The placement of sediment barriers within the water would be ineffective and could cause unnecessary damage to the resource;
 - (iii) Any soil disturbance within a coastal wetland must be done at or near low tide and must be temporarily or permanently stabilized before being submerged. The placement of sediment barriers within the tidal zone would be ineffective and could cause unnecessary damage to the resource;
 - (iv) Surface flows from above the disturbed area must be diverted around the disturbed area until final stabilization and any diverted runoff must be managed to prevent erosion; examples of diversions include but are not limited to erosion control mix berms or socks, sand bags, and shallow excavated trenches;
 - (v) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or spread on any exposed soils;
 - (vi) All disturbed soils must be permanently stabilized; and

- (vii) Within 30 days of final stabilization of the site, any silt fence, straw bales, or temporary erosion or sediment controls containing plastic or other non-biodegradable materials must be removed and erosion control mulch berms must be raked to a depth of no more than 6 inches.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2014. This handbook and other references are available from the DEP or at www.maine.gov/dep/land/erosion/escbmps/esc_bmp_field.pdf.

- (h) 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 and the following conditions must be met:
- (i) 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.
 - (ii) 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.
 - (iii) A pump may be operated, where necessary, for a temporary diversion. The pump outlet must be located and operated such that erosion or the discharge of sediment to the water is prevented.
- (i) 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 or brooks on rock, gravel, or ledge bottom.
- (j) Work below the high water line of a great pond, river, stream, or brook or the highest astronomical tide line of a coastal wetland must be done at low water or low tide except as required for emergency flood control work.
- (k) All excavated material must be stockpiled either outside the protected natural resource or on mats or platforms while work is taking place. Appropriate sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be used, where necessary, to prevent sedimentation. All excavated material must be removed to a location more than 75 feet from the protected natural resource, unless otherwise required by this section or otherwise approved by the DEP, and properly stabilized with vegetation upon project completion.
- (l) Activities must be performed in accordance with the plans and drawings submitted pursuant to subsection B of this section.
- (m) Non-native species of vegetation may not be planted.

(2) Vegetation Establishment Standards

NOTE: Information on salt-resistant native species of vegetation useful for stabilizing Maine's coastal bluffs can be found in the Coastal Planting Guide published by the Cumberland County Soil and Water Conservation District and available at: <https://www.cumberlandswcd.org/s/171114-Coastal-Planting-Guide-Web-Reduced.pdf>

- (a) Non-native species of vegetation may not be planted.
- (b) Biodegradable stabilization materials may be used to support the establishment of native vegetation adjacent to any protected natural resource.
- (c) Stakes used to secure biodegradable stabilization materials must be made of wood. Anchors or cables used to secure biodegradable stabilization materials may be made of wood, bright steel, or galvanized steel. No stainless steel may be used.
- (d) Non-toxic, biodegradable tackifiers may be used for vegetation establishment only with prior written approval from the DEP.
- (e) New soil may be added to the bank adjacent to any protected natural resource and soil amendments, such as fertilizer or lime, may be used to increase soil fertility provided:
 - (i) No fill is placed below the normal high water line or highest astronomical tide line;
 - (ii) The slope is not steeper than 1 horizontal feet to 1 vertical foot;
 - (iii) Water bars or diversions are used to divert stormwater runoff away from the new soil and/or soil amendments;
 - (iv) The depth of new soil is less than 2 inches;
 - (v) The amendment is worked into the underlying soils; and
 - (vi) Disturbed areas are immediately mulched and seeded.
- (f) Where slopes are steeper than 2 horizontal feet to 1 vertical foot, the bank may be cut back to a shallower slope for the purposes of establishing vegetation, provided that no trees larger than 4 inches diameter at breast height are removed (except as necessary for equipment access and hazard tree removal in accordance with subsection C(1)(c) above).

(3) Toe Protection Standards

- (a) Toe protection using biodegradable stabilization materials and/or riprap may be installed where undercutting or toe erosion is occurring and where the eroded slope is steeper than 3 horizontal feet to 1 vertical foot. The activity may not result in more than:
 - (i) 100 linear feet of shoreline stabilized by riprap, retaining walls or other similar structures on the lot for freshwater wetlands, great ponds, streams and brooks; or
 - (ii) 125 linear feet of shoreline stabilized by riprap, seawalls, retaining walls or other similar structures on the lot for coastal wetlands.

These linear limits include any riprap, placed along the shoreline during the activity and any pre-existing riprap, seawalls, retaining walls or other similar structures along the shoreline on the lot.

- (b) For freshwater wetlands, great ponds, rivers, streams and brooks, fill may be placed at or below the normal high water line but may not extend into the protected natural resource more than 2 feet horizontally from the change of slope at the toe of the bank. No more than 200 square feet of fill may be placed below the normal high water line from all shoreline stabilization activities on the lot, including fill placed during the activity and any pre-existing fill from shoreline stabilization activities on the lot.
- (c) For coastal wetlands, fill may be placed at or below the highest astronomical tide line but may not extend into the protected natural resource more than 3 feet horizontally from the change of slope at the toe of the bank and may not cover any saltmarsh or eelgrass vegetation. No more than 400 square feet of fill may be placed below the highest astronomical tide line from all shoreline stabilization activities on the lot, including fill placed during the activity and any pre-existing fill from shoreline stabilization activities on the lot.
- (d) Native vegetation may be planted (live staked) as part of a toe protection activity.
- (e) Tree root wads may be driven or anchored into the bank for toe protection provided they do not impede navigation in the waterway.
- (f) Stakes used to secure biodegradable stabilization materials must be made of wood. Anchors or cables used to secure biodegradable stabilization materials may be made of wood, bright steel, or galvanized steel. Stainless steel may not be used.
- (g) Rocks used for riprap may not be obtained from the shoreline or a protected natural resource, unless the rocks are from a previously failed riprap project.
- (h) Riprap should be of similar color as the rocks and boulders in nearby areas.
- (i) When sediment is excavated to allow for riprap stabilization adjacent to a coastal wetland, the excavated sediment must be evenly distributed across the riprap. This requirement may be waived if the DEP determines that it is not feasible due to site conditions.

NOTE: Evenly distributing the sediment on the stabilization structure allows the sediment to naturally transfer to the wetland over time, mimicking the natural transfer of sediment from the terrestrial to the marine environment

(4) Riprap Stabilization Standards

NOTE: On many slopes, slumping is caused by wave action or currents undercutting the bank at the toe of the slope. Slumping can also be caused by groundwater saturation. The cost of shoreline stabilization activities can be reduced by installing toe protection in accordance with subsection C(3) above and leaving the upper portion of the bank natural or revegetating the upper portion of the bank in accordance with subsection C(2) above.

- (a) The activity may not result in more than:

(i) 100 linear feet of shoreline stabilized by riprap, retaining walls or other similar structures on the entire lot for a freshwater wetland, great pond, stream or brook; or

(ii) 125 linear feet of shoreline stabilized by riprap, seawalls, retaining walls, or other similar structures on the entire lot for a coastal wetland.

These linear limits include any riprap placed along the shoreline during the activity and any pre-existing riprap, seawalls, retaining walls or other similar structures along the shoreline on the lot.

(b) Design of a riprap stabilization project along the shoreline of a stream or brook must be approved by either a Maine Registered Professional Engineer, the United States 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.

(c) Design of a riprap stabilization project along the shoreline of a coastal wetland must be approved by a design professional such as a Maine Registered Professional Engineer or a contractor or consultant with demonstrated experience designing coastal shoreline stabilization projects. Evidence of the design professional's approval and credentials must be submitted with the Notification Form. With prior written agreement, the DEP may waive this standard for riprap stabilization activities in an area that is not mapped by the Federal Emergency Management Agency (FEMA) as a high-velocity flood zone.

(d) Riprap may be utilized only where eroded slopes are steeper than 3 horizontal feet to 1 vertical foot (approximately 33% slope).

(e) The slope of the riprap may not be steeper than 1.5 horizontal feet to 1 vertical foot, nor shallower than 3 horizontal feet to 1 vertical foot. The bank may be regraded to meet this standard. With prior written agreement, the DEP may allow the slope to be as steep as 1 horizontal foot to 1 vertical foot if site-specific circumstances do not allow for a shallower slope.

(f) 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 stream or brook may not extend higher than either the base flood elevation mapped by the Federal Emergency Management Agency (FEMA), or 2 feet above the normal high water line, whichever is higher. Riprap installed on the shoreline of a coastal wetland may not extend higher than one foot above the base flood elevation mapped by FEMA.

NOTE: FEMA flood map information may be found at the FEMA website or your municipal office: <https://www.fema.gov/flood-maps>

(g) Riprap must be tapered downward as it approaches an abutting property line and may not be placed within 5 feet of an abutting property line, unless the applicant owns the abutting property, the abutting property contains riprap (or another structural stabilization measure) up to the property line, or the abutting property owner agrees in writing that the riprap may be extended closer to the property line.

- (h) Rocks used for riprap may not be obtained from the shoreline or a protected natural resource, unless the rocks are from a previously failed riprap project.
- (i) Riprap should be of similar color as the rocks and boulders in nearby areas.
- (j) 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 half the height of the largest rock, or the riprap must be pinned to underlying ledge.
- (k) A layer of filter fabric and/or at least 6 inches of well-graded gravel with less than 5 percent fines, or a layer of dormant living brush bundles (a brush mattress), must be placed under the riprap to enhance the stability of the project by preventing the erosion of soil under the riprap.
- (l) A vegetative buffer at least 10 feet wide as measured perpendicular to the shoreline and consisting of both native woody and herbaceous vegetation must be established and maintained along the upland edge of the riprap stabilization project. The buffer must include trees if the project is along the shoreline of a river, stream or brook. If the buffer is planted over a subsurface wastewater disposal system, the buffer may be comprised entirely of herbaceous vegetation. The width of the buffer may be reduced if the DEP determines that a 10-foot buffer is not feasible due to the proximity of a structure to the upland edge of the eroding shoreline. If a buffer consisting of native woody vegetation or a diverse mix of native woody and herbaceous vegetation at least 5 feet wide already exists along the upland edge of the stabilization project, no additional buffer width is required. However, the buffer must be at least 25 feet wide if the project is conducted for the protection of agricultural land.
- (m) Where feasible, native vegetation must be planted within gaps on the riprap stabilization project. Up to 2 inches of soil may be added to support plantings within riprap, in accordance with the standards in subsection C(2)(e) above.

NOTE: Information on salt-resistant native species of vegetation useful for stabilizing Maine's coastal bluffs can be found in the Coastal Planting Guide published by the Cumberland County Soil and Water Conservation District and available at:
<https://www.cumberlandsdwc.org/s/171114-Coastal-Planting-Guide-Web-Reduced.pdf>

- (n) When sediment is excavated to allow for riprap stabilization adjacent to a coastal wetland, the excavated sediment must be evenly distributed across the riprap. This requirement may be waived if the DEP determines that it is not feasible due to site conditions.

NOTE: Evenly distributing the sediment on the stabilization structure allows the sediment to naturally transfer to the wetland over time, mimicking the natural transfer of sediment from the terrestrial to the marine environment

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

- (1) **Biodegradable stabilization materials.** Natural, plant-based biodegradable or compostable fabrics, erosion control blankets, and logs or rolls made from coir, jute, straw, or other similar materials, including materials that contain or use gravel or cobble; discarded holiday trees

and native trees, native brush, or native biodegradable materials; tree root wads; and wooden stakes. Metal anchors or cables may be used to secure those materials. Anchors may also include cobbles or small boulders that are not obtained from the shoreline or below the normal high water line or highest astronomical tide line.

- (2) **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. For the purposes of this section, fill includes biodegradable stabilization materials until such materials have entirely biodegraded.
- (3) **Hazard tree.** A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.
- (4) **Mudflat.** A low-energy intertidal environment with sediments composed of fine clays, silt, sand and organic matter. Anoxic conditions are usually present below the surface. Mudflats are organically rich regions that support large populations of shellfish, baitworms and small invertebrates, and provide important feeding grounds for migrating and resident shorebirds.
- (5) **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.” Rounded rocks are not considered riprap.
- (6) **Riprap stabilization.** A shoreline stabilization technique that uses riprap to stabilize a bank above the toe.
- (7) **Shoreline stabilization.** An activity designed to prevent erosion of soil or sediment from the terrestrial into the marine or freshwater environment caused by wave action, currents, ice scouring or changes in water levels.
- (8) **Toe protection.** A shoreline stabilization technique in which materials are installed under or against the base of a bank, near the change in slope at the base of the bank, to prevent the undercutting of the bank from waves or currents.
- (9) **Saltmarsh.** A persistent marine nearshore emergent grass habitat. Saltmarshes can be found between upland and intertidal flats and beaches, along tidal rivers, or behind barrier beaches. Saltmarshes are flooded by salt water on timescales ranging from twice daily to irregularly during spring tides.

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 great pond, freshwater wetland with over 20,000 square feet of open water, stream or brook.~~
- ~~(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. M.R.S. Section 436-A(11), the Mandatory Shoreland Zoning Act (information is available at the Town Office/Municipal office).~~
- ~~(4) This section does not apply to a riprap project that affects more than 100 feet of shoreline.~~
- ~~(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.~~

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).~~

~~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.~~

~~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.~~

- ~~(4) 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.~~
- ~~(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.~~

~~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.~~

- ~~(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 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).~~

~~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.~~

- ~~(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 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 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 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.~~
- ~~(17) All excavated material must be stockpiled either outside the 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 protected natural resource, unless otherwise approved by the DEP, and properly stabilized with vegetation upon project completion.~~
- ~~(18) Disturbance of vegetation must be avoided if possible. If vegetation must be disturbed during the activity, similar types and amounts of vegetation must be re-established immediately upon completion of the activity and must be maintained.~~
- ~~(19) Non native species may not be planted in disturbed areas.~~
- ~~(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.~~
- ~~(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.~~

8-A. Increasing the height of a vertical seawall or retaining wall in a coastal wetland

A. Applicability

- (1) This section applies to increasing the height of a legally existing vertical seawall or retaining wall in and/or directly adjacent to a coastal wetland when erosion or damage to structures from wave action has occurred above or behind the structure.
- (2) This section does not apply to an activity in a coastal sand dune system (see Section 16: Development activities in coastal sand dunes).

- (3) This section applies both to projects that constitute a replacement of a vertical seawall or retaining wall under Section 4 of this chapter and to projects that do not meet the definition of a replacement.
- (4) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.
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NOTES:

- (1) Coastal sand dune systems are defined by the Department's Chapter 355 Coastal Sand Dune Rules. The Maine Geological Survey publishes maps to aid in the identification of coastal sand dune systems. Maps can be found here:
<https://www.maine.gov/dacf/mgs/pubs/digital/dunes.htm>
- (2) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements. The DEP's minimum guidelines for Municipal Shoreland Zoning Ordinances allow for a construction equipment access path no wider than 12 feet if working from the upland. An approved replanting plan is required for any vegetation that is removed.
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B. Submissions

- (1) The applicant must submit at least one photograph showing the existing structure for each 25 feet of its length along the shoreline. The photographs must clearly document active erosion or recent damage to structures occurring above or behind the structure, and a written statement describing the cause of the erosion or damage.
- (2) The applicant must submit a scaled drawing and at least two cross-sections of the proposed project. The drawing must clearly depict the extent of any soil disturbance or grading, vegetated areas, property boundaries, the highest astronomical tide line, the location of the existing vertical seawall or retaining wall and the location of the height increase. The cross sections must clearly depict the elevations of the top of the current vertical seawall or retaining wall, the proposed final elevation of the top of vertical seawall or retaining wall, and the base flood elevation mapped by FEMA. The drawing must be legible and drawn to a scale that provides a clear representation of distances and measurements on the plan.
- (3) Pursuant to subsection C(4) of this section, if the project is not designed by a design professional, the applicant must submit approval from, and evidence of the credentials of, a design professional.
- (4) 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 municipality in which the activity took place.

C. Standards

- (1) The top of the vertical seawall or retaining wall may not extend higher than one foot above the base flood elevation mapped by FEMA.

NOTE: FEMA flood map information may be found at the FEMA website or your municipal office:
<https://www.fema.gov/flood-maps>

- (2) The height of the vertical seawall or retaining wall may not be increased within 5 feet of abutting properties unless the structure, after being increased in height, connects to vertical seawall or retaining wall of the same or greater height on the abutting property, the applicant owns the abutting property, or the abutting property owner agrees in writing that the portion of the structure that is being increased in height may be extended closer to the property line.
- (3) The newly added portions of vertical seawall or retaining wall must be made of the same or similar material and have the same or similar color and texture as the existing portions.
- (4) No fill may be placed behind the increased-height vertical seawall or retaining wall except as necessary to provide structural stability to the vertical seawall or retaining wall. Increasing the elevation of a lawn or yard behind a seawall is not allowed.
- (5) The project must be designed or approved by a design professional such a Maine Registered Professional Engineer or a contractor or consultant with demonstrated experience designing coastal shoreline stabilization structures or repairing seawalls or retaining walls. Evidence of the design professional's approval and credentials must be submitted with the Notification Form. With prior written agreement, the DEP may waive this standard for a project in an area that is not mapped by FEMA as a high-velocity flood zone.
- (6) If non-invasive vegetation must be disturbed during the activity, similar types and amounts of native vegetation must be re-established in accordance with the revegetation standards in the Department's Chapter 1000 Guidelines for Municipal Shoreland Zoning Ordinances immediately upon completion of the activity and must be maintained to ensure survival. No trees larger than 4 inches diameter at breast height may be removed, except as for equipment access to the structure and removal of hazard trees.
- (7) If soil must be disturbed during the activity, the following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:

 - (a) For any soil disturbance that is limited to the upland and does not extend into the protected natural resource, sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be properly installed between the area of soil disturbance and the resource before the activity begins and maintained until the disturbed area is permanently stabilized;
 - (b) Any soil disturbance within a coastal wetland must be done at or near low tide and must be temporarily or permanently stabilized before being submerged. The placement of sediment barriers within the tidal zone would be ineffective and could cause unnecessary damage to the resource;
 - (c) Surface flows from above the disturbed area must be diverted around the disturbed area until final stabilization and any diverted runoff must be managed to prevent erosion; examples of diversions include but are not limited to erosion control mix berms or socks, sand bags, and shallow excavated trenches;

- (d) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or spread on any exposed soils;
- (e) All disturbed soils must be permanently stabilized; and
- (f) Within 30 days of final stabilization of the site, any silt fence, straw bales, or temporary erosion or sediment controls containing plastic or other non-biodegradable materials must be removed and erosion control mulch berms must be raked to a depth of no more than 6 inches.
- (8) Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (9) For any work occurring below the highest astronomical tide line, the activity must occur during the time period approved by the Department of Marine Resources.
- (10) Wheeled or tracked equipment may not be operated in the water.
- (11) All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- (12) Uncured concrete may not be placed below the highest astronomical tide line. Concrete must be pre-cast and cured at least three weeks before placing below the highest astronomical tide line, or where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.
- (13) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 M.R.S. §1682, and provided it is cured on dry land in such a manner as to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where the wood will come in contact with water.

D. Definitions

- (1) **Hazard tree.** A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

- (2) **Replacement.** Any activity that results in more than 50% of a structure being restored or reconstructed whether above or below the normal high water line or highest astronomical tide line.
- (3) **Retaining wall.** A vertical or near vertical structure generally constructed of wood, concrete or rock or a combination of these materials and located at or below the normal high water line or highest astronomical tide line and designed to retain earth behind the wall.
- (4) **Seawall.** A vertical wall that separates land from water areas, commonly constructed out of rocks, wood, concrete or other similar materials, generally built for the purpose of protecting structures or property from shoreline erosion caused by wave or current action.

9. Crossings (utility lines, pipes and cables)

A. Applicability

- (1) This section applies to the installation, maintenance and replacement of an overhead utility line across a river, stream or brook excluding outstanding river segments identified in 38 ~~M.R.S.A.~~M.R.S. Section 480-P.
- (2) This section applies to the installation, maintenance and replacement of a submerged utility line across a coastal wetland, freshwater wetland, great pond, river, stream, or brook excluding outstanding river segments identified in 38 ~~M.R.S.A.~~M.R.S. Section 480-P.
- (3) This section applies to the installation, maintenance and replacement of an overhead utility line across or adjacent to a coastal wetland, freshwater wetland or great pond provided the line is within the right-of-way of, or adjacent to the path of, an existing traveled way.
- (4) This section does not apply to a submerged utility crossing that is part of a larger project involving multiple crossings of a natural resource or more than one natural resource. Projects consisting of multiple natural resource crossings must obtain an individual permit under the Natural Resources Protection Act.
- (5) 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.~~M.R.S. Sections 481 to 490, the Storm Water Management Law, 38 ~~M.R.S.A.~~M.R.S. Section 420-D, or the Natural Resources Protection Act, 38 ~~M.R.S.A.~~M.R.S. Sections 480-A to ~~480-Z~~480-KK.
- (6) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTES:

- (1) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.
- (2) In a great pond, the placement of water lines to serve a single-family ~~house-dwelling~~ or the installation of cables for utilities, such as telephone and power cables, is exempt from NRPA permit requirements under 38 ~~M.R.S.A.~~M.R.S. Section 480-Q (1) provided that the:

- (a) Excavated trench for access to the water is backfilled and riprapped to prevent erosion;
 - (b) Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion; and
 - (c) Bureau of Parks and Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction.
- (3) Approval for crossing any state-owned (submerged) land must be obtained from the ~~Department of Conservation~~Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands, State House Station 22, Augusta, ME 04333.
- (4) A permit will be required from the US Army Corps of Engineers for the following types of projects:
- (a) Any activity involving open trench excavation in a waterbody or where the impact (direct and indirect) to wetlands exceeds 4,300 square feet;
 - (b) Any activity in coastal waterways;
 - (c) Any activity within a river, stream or brook between October 2 and July 14 ;or
 - (d) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the PBR notification and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (U.S. Army Corps of Engineers, 442 Civic Center Drive, Suite 350, Augusta, ME 04330. Tel. (207) 623-8367~~US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367~~).

B. Submissions

- (1) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (2) 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~~municipality in which the activity took place.
- (3) For any work involving trenching or disturbance of substrate in a coastal wetland, great pond, river, stream or brook that occurs between October 2 and July 14, notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife, the Atlantic Salmon Authority and the Department of Marine Resources must be submitted to the DEP with the notification form, unless otherwise approved by the DEP based upon the location of the project. In addition, for a utility crossing of marine or estuarine waters at any time of year,

notice of approval of the timing from the Department of Marine Resources must be submitted to the DEP with the notification form.

C. Standards

~~(1) (4) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:~~

- ~~(a) For any soil disturbance that is limited to the upland and does not extend into the protected natural resource, sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be properly installed between the area of soil disturbance and the resource before the activity begins and maintained until the disturbed area is permanently stabilized;~~
- ~~(b) Any soil disturbance within a freshwater wetland, great pond, river, stream, or brook must be done during periods of low water to minimize impacts (in-stream work window, lake draw-down, etc.) and must be temporarily or permanently stabilized daily. The placement of sediment barriers within the water would be ineffective and could cause unnecessary damage to the resource;~~
- ~~(a)(c) Any soil disturbance within a coastal wetland must be done at or near low tide and must be temporarily or permanently stabilized before being submerged. The placement of sediment barriers within the tidal zone would be ineffective and could cause unnecessary damage to the resource;~~
- ~~(d) Surface flows from above the disturbed area must be diverted around the disturbed area until final stabilization and any diverted runoff must be managed to prevent erosion; examples of diversions include but are not limited to erosion control mix berms or socks, sand bags, and shallow excavated trenches;~~
- ~~(e) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or spread on any exposed soils;~~
- ~~(f) All disturbed soils must be permanently stabilized; and~~
- ~~(g) Within 30 days of final stabilization of the site, any silt fence, straw bales, or temporary erosion or sediment controls containing plastic or other non-biodegradable materials must be removed and erosion control mulch berms must be raked to a depth of no more than 6 inches.~~

~~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.~~

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated ~~March 2003~~ **October 2016**. This handbook and other references are available online at <https://www.maine.gov/dep/land/erosion/escbmps/> or by contacting ~~from~~ the DEP.

- (2) Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (3) Non-native wetland plants may not be planted in disturbed areas.
- (4) If the activity occurs in a coastal wetland, great pond, river, stream or brook between October 2 and July 14, the activity must occur during the time period approved by the Department of Inland Fisheries and Wildlife, the Atlantic Salmon Authority and the Department of Marine Resources.
- (5) The trench in and adjacent to the wetland must be refilled with the material that was excavated. The original grading and elevation of the wetland must be restored. Residual fill material must be removed from the wetland or water body and properly stabilized. Pipe bedding material such as crushed stone or sand may be used provided clay dams or synthetic boots are used where appropriate to prevent wetland draining through the bedding material.
- (6) Any trench excavation that occurs within a river, stream or brook must be performed either during a period when no water is flowing, or utilize a dry crossing method such as diverting water flow by coffer dam and pumping around the area of excavation. The trench width in any natural resource must be no wider than necessary to install the device.
- (7) The crossing may not obstruct any recreational usage of the water body.
- (8) 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.
- (9) All wheeled or tracked equipment that must travel or work in a vegetated wetland must travel and work on mats or platforms in order to protect wetland vegetation.
- (10) Any debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. ~~Hay~~ **Straw** bales or silt fence must be used, where necessary, to prevent sedimentation.
- (11) Any debris generated during the activity must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance

with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 ~~M.R.S.A.~~M.R.S. Section 1301 *et seq.*

- (12) Temporary roads constructed of fill are not allowed in the resource except that fill may be used on top of mats or platforms for equipment access.
- (13) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 ~~M.R.S.A.~~M.R.S. 1682, and provided it is cured on dry land in such a manner to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol must not be used where the wood will come in contact with water.
- (14) Blasting in inundated areas is prohibited.

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

- (1) **Crossing.** Any activity extending from one side to the opposite side of a protected natural resource, or to an island or upland within a protected natural resource whether under, through or over that resource. Such activities include, but are not limited to roads, fords, bridges, culverts, utility lines, water lines, sewer lines and cables, and the clearing and removal of vegetation necessary to install and maintain these crossings.
- (2) **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.
- (3) **Land adjacent to a protected natural resource.** Any land area within 75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (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”.
- (5) **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.
- (6) **Utility lines, pipes and cables.** Wires and pipes providing utility services. The term includes telephone and electric wires, gas, oil, water and sewer pipelines, and their support structures, whether public or private.
- (7) **Non-native wetland plants.** Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites communis*) and purple loosestrife (*Lythrum salicaria*).

10. Stream crossings (bridges, culverts and fords)

A. Applicability

- (1) This section applies to the construction of a bridge span or culvert crossing of a river, stream or brook, and associated accessway construction within 25 feet of the river, stream or brook crossing excluding the following:
 - (a) Crossings of outstanding river segments identified in 38 ~~M.R.S.A.~~M.R.S. Section 480-P;
 - (b) Crossings of any river as defined the Mandatory Shoreland Zoning Act, by 38 ~~M.R.S.A.~~M.R.S. Section 436-A(11), ~~the Mandatory Shoreland Zoning Act~~ (information is available at the ~~Town municipal~~ Office); or
 - (c) Crossings of any portion of a river, stream or brook that experiences tidal action.

NOTE: Temporary structures do not require a permit from the department under the ~~Natural Resources Protection Act~~ (NRPA) provided no filling and minimal soil disturbance occurs. All crossings involving filling in and adjacent to a river, stream or brook, such as culvert crossings, are subject to the NRPA and must first receive a permit before construction.

- (2) This section also applies to the establishment of a permanent stream ford for purposes of timber harvesting, livestock, agriculture and construction and maintenance of a utility line.
- (3) A stream crossing constructed between July 15 and October 1 that is associated with forest management activities is exempt from the 14-20 working day waiting period required in Section 1(C)(1).
- (4) A stream crossing constructed between July 15 and October 1 that is performed or supervised by individuals currently certified in erosion control practices by the DEP is exempt from the 14-20 working day waiting period required in Section 1(C)(1).
- (5) Multiple stream crossings may be submitted on one PBR notification form as long as all of the crossing activities are located within one ~~town~~municipality.
- (6) 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.~~M.R.S. Sections 481 to 490, the Storm Water Management Law, 38 ~~M.R.S.A.~~M.R.S. Section 420-D, or the Natural Resources Protection Act, 38 ~~M.R.S.A.~~M.R.S. Sections 480-A to ~~480-Z~~480-KK.
- (7) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTES:

- (1) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.
- (2) Maintenance and repair of a public or private crossing of a river, stream or brook is exempt from the NRPA provided that:
 - (a) Erosion control measures are taken to prevent sedimentation of the water;

- (b) The crossing does not block fish passage in the water course; and
 - (c) Any replaced culvert is not more than 25% longer than the culvert being replaced and is not longer than 75 feet.
- (3) A permit will be required from the US Army Corps of Engineers for the following types of projects:
- (a) Any activity involving impacts (direct and secondary) to freshwater wetlands; or
 - (b) An activity within a river, stream or brook between October 2 and July 14.

A copy of the PBR notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (U.S. Army Corps of Engineers, 442 Civic Center Drive, Suite 350, Augusta, ME 04330. Tel. (207) 623-8367~~US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367~~).

B. Submissions

- (1) For any crossing involving trenching or disturbance of substrate in a river, stream or brook that occurs between October 2 and July 14, the proposed dates for construction of the crossing must be clearly identified on the notification form under "Description of Project".
- (2) Except for crossings associated with forest management activities, the applicant is required to submit photographs of the area that will be affected by the activity proposed.
- (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~~municipality in which the activity took place.

C. Standards

(1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:

- (a) For any soil disturbance that is limited to the upland and does not extend into the protected natural resource, sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be properly installed between the area of soil disturbance and the resource before the activity begins and maintained until the disturbed area is permanently stabilized;
- (b) Any soil disturbance within a freshwater wetland, great pond, river, stream, or brook must be done during periods of low water to minimize impacts (in-stream work window, lake draw-down, etc.) and must be temporarily or permanently stabilized daily. The placement of sediment barriers within the water would be ineffective and could cause unnecessary damage to the resource;

- ~~(a)(c) Any soil disturbance within a coastal wetland must be done at or near low tide and must be temporarily or permanently stabilized before being submerged. The placement of sediment barriers within the tidal zone would be ineffective and could cause unnecessary damage to the resource;~~
- ~~(d) Surface flows from above the disturbed area must be diverted around the disturbed area until final stabilization and any diverted runoff must be managed to prevent erosion; examples of diversions include but are not limited to erosion control mix berms or socks, sand bags, and shallow excavated trenches;~~
- ~~(e) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or spread on any exposed soils;~~
- ~~(f) All disturbed soils must be permanently stabilized; and~~
- ~~(g) Within 30 days of final stabilization of the site, any silt fence, straw bales, or temporary erosion or sediment controls containing plastic or other non-biodegradable materials must be removed and erosion control mulch berms must be raked to a depth of no more than 6 inches.~~
- ~~(1) 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.~~

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated ~~March 2003~~ October 2016. This handbook and other references are available online at <https://www.maine.gov/dep/land/erosion/escbmps/> or by contacting ~~from~~ the DEP.

- (2) If a perennial watercourse to be crossed is used for navigation, the crossing must consist of a bridge span or pipe arch with at least 4 feet of clearance during normal high water for boat traffic.
- (3) If the stream to be crossed is a perennial watercourse and has a slope of more than 2%, a bridge or a pipe arch must be used to maintain the natural streambed.
- (4) Fill sideslopes in a stream or floodplain wetland must be maintained at a slope no shallower than 3 horizontal to 1 vertical and no steeper than 1.5 horizontal to 1 vertical. Fill sideslopes must be stabilized at the completion of the activity.

NOTE: Uncompacted soils or sandy soils that are saturated at the toe of a slope will be unstable at a 1.5 to 1 slope.

- (5) A bridge or culvert must provide an opening with a cross-sectional area at least equal to 3 times the cross-sectional area of the stream channel or sufficient in size to accommodate 25-year frequency water flows.

NOTE: Stream crossings allowable under this section but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM) must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a crossing may be required to pass a 100-year flood event.

- (6) Road surfaces must be constructed in a manner to prevent erosion of material into the river, stream or brook.
- (7) Surface water on or adjacent to crossing approaches must be diverted through vegetative filter areas at least 25 feet long to avoid sedimentation of the watercourse. Roadside ditches may not extend to the resource being crossed.

NOTE: Surface water on or adjacent to crossing approaches should be diverted through vegetative filter areas to avoid sedimentation of the watercourse. Because roadside ditches may not extend to the resource being crossed, filter areas should be established in accordance with the following tables:

Average slope of land between exposed mineral soil and normal high water mark (percent)	Width of strip between ditch terminus and normal high water mark (feet along surface of the ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

- (8) A stream ford must be lined with crushed stone, blasted ledge, washed stone, gabion blankets or geotextile material for erosion control when the natural stream bed does not consist of ledge or rock.
- (9) A stream ford must allow for fish passage at all times of the year and may not impound water. The fords must also allow for maintenance of normal stream flows.
- (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%;
- (c) Have the bottom of the entire culvert installed at or below stream bed elevation, except for additional culverts at the same crossing;
- (d) Where 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
- (h) Have the inlet and outlet ends stabilized by riprap in accordance with Section 8 Shoreline stabilization standards to avoid erosion of material around the culvert.

NOTE: For guidance on riprap installation, consult the Maine Erosion and Sediment Control BMPs, dated ~~March 2003~~October 2016. This handbook and other references are available online at <https://www.maine.gov/dep/land/erosion/escbmps/> or by contacting ~~from~~ the DEP.

- (11) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may, where necessary, reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.
- (12) Work below the normal high water line must be done during periods of low water level or flow.
- (13) If the crossing involves trenching or disturbance of substrate in a river, stream or brook between October 2 and July 14, the activity must occur during the time period approved by the DEP. The approved time period may be the time period proposed by the applicant or an alternative time period approved by the DEP. An alternative time period will be required where it appears an unreasonable impact on water quality or fisheries may result at the point of crossing or immediately downstream of the crossing. The applicant will be notified by the DEP within 14-20 working days if an alternative time period, other than the one proposed by the applicant, is required for constructing the crossing.
- (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 must be located and operated such that erosion or the discharge of sediment to the water is prevented.
- (15) All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- (16) All excavated material must be stockpiled either outside the wetland or on mats or platforms. ~~Hay~~Straw bales or silt fence must be used, where necessary, to prevent sedimentation.
- (17) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 ~~M.R.S.A.~~M.R.S. § 1682, and provided it is cured on dry land in a way that exposes all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where it will contact water.

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

- (1) **Cross-sectional area.** The cross-sectional area of a stream channel is determined by multiplying the stream channel width by the average stream channel depth. The stream channel width is the straight line distance from the normal high water line on one side of the channel to the normal high water line on the opposite side of the channel. The average stream channel depth is the average of the vertical distances from a straight line between the normal high water marks of the stream channel to the bottom of the channel.
- (2) **Crossing.** Any activity extending from one side to the opposite side of a protected natural resource, or to an island or upland within a protected natural resource whether under, through or over that resource. Such activities include, but are not limited to roads, fords, bridges, culverts, utility lines, water lines, sewer lines and cables, and the clearing and removal of vegetation necessary to install and maintain these crossings.
- (3) **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.
- (4) **Ford.** A permanent crossing of a stream utilizing an area of existing, non-erodible substrate of the stream, such as ledge or cobble, or by placing non-erodible material such as stone or geotextile on the stream bottom.
- (5) **Perennial watercourse.** A river, stream or brook depicted as a solid line on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15 minute series topographic map.
- (6) **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”.

- (7) **Used for navigation.** Those rivers, streams or brooks used by motorized watercraft.

11. State transportation facilities

A. Applicability

- (1) This section applies to the maintenance, repair, reconstruction, rehabilitation, replacement or minor construction of a State Transportation Facility carried out by, or under the authority of, the Maine Department of Transportation (MaineDOT) or the Maine Turnpike Authority, including any testing or preconstruction engineering, and associated technical support services.
- (2) This section does not apply to an activity within a coastal sand dune system.

NOTE: The construction of a transportation facility other than roads and associated facilities may be subject to the Storm Water Management Law, 38 ~~M.R.S.A.~~M.R.S. Section 420-D.

B. Standards

- (1) Photographs of the area to be altered by the activity must be taken before work on the site begins. The photographs must be kept on file and be made available at the request of the DEP.
- (2) The activity must be reviewed by the Department of Inland Fisheries and Wildlife and the Department of Marine Resources, as applicable. The applicant must coordinate with the reviewing agencies and incorporate any recommendations from those agencies into the performance of the activity.
- (3) All construction activities undertaken must be detailed in a site-specific Soil Erosion and Water Pollution Control Plan and conducted in accordance with MaineDOT's Best Management Practices for Erosion and Sediment Control, dated ~~January 2000~~February 2008, and Standard Specifications, dated ~~December 2002~~March 2020.
- (4) Alignment changes may not exceed a distance of 200 feet between the old and new center lines in any natural resource.
- (5) The activity may not alter more than 300 feet of shoreline (both shores added together) within a mile stretch of any river, stream or brook, including any bridge width or length of culvert.
- (6) The activity may not alter more than 150 feet of shoreline (both shores added together) within a mile stretch of any outstanding river segment identified in 38 ~~M.R.S.A.~~M.R.S. §480-P, including any bridge width or length of culvert.
- (7) The activity must minimize wetland intrusion. The activity is exempt from the provisions of Chapter 310, the Wetlands and Waterbodies Protection Rules, if the activity alters less than 15,000 square feet of natural resources per mile of roadway (centerline measurement) provided that the following impacts are not exceeded within the 15,000 square foot area:

- (a) 1,000 square feet of coastal wetland consisting of salt tolerant vegetation or shellfish habitat; ~~or~~
- (b) 5,000 square feet of coastal wetland not containing salt tolerant vegetation or shellfish habitat; or
- (c) 1,000 square feet of a great pond.

All other activities must be performed in compliance with all sections of Chapter 310, the Wetlands and Waterbodies Protection Rules, except 310.2(C), 5(A), 9(A), 9(B) and 9(C).

- (8) The activity may not permanently block any fish passage in any watercourse containing fish. The applicant must coordinate with the reviewing agencies listed in paragraph 2 section 11(B)(2) above to improve fish passage and incorporate any recommendations from those agencies into the performance of the activity.

NOTE: For guidance on meeting the design objectives for fish passage, including peak flow, maximum velocity, mining depth and gradient, see the MaineDOT Waterbody and Wildlife Crossing Policy and Design Guide (July 2008), developed in conjunction with state and federal resource and regulatory agencies.

- (9) Rocks may not be removed from below the normal high water line of any coastal wetland, freshwater wetland, great pond, river, stream or brook except to the minimum extent necessary for completion of work within the limits of construction.
- (10) If work is performed in a river, stream or brook that is less than three feet deep at the time and location of the activity, the applicant must isolate the work area from the resource and divert stream flows around the work area, maintaining downstream flows while work is in progress.
- (11) 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. If avoiding the operation of wheeled or tracked equipment in the water is not possible, the applicant must explain the need to operate in the water. Approval from the DEP to operate in the water must be in writing, and any recommendations from the DEP must be incorporated into the performance of the activity.
- (12) All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms.
- (13) Any debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. Erosion and sediment control best management practices must be used, where necessary, to prevent sedimentation. Any debris generated during the activity must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. M.R.S. Section 1301 *et seq.*
- (14) Work below the normal high water line of a great pond, river, stream or brook must be done at low water except for emergency work or work agreed to by the resource agencies listed in paragraph 2 above.

- (15) Perimeter controls must be installed before the work starts. Disturbance of natural resources beyond the construction limits shown on the plans is not allowed under this rule.

NOTE: Guidance on the location of construction limits can be obtained from the on site Construction Manager.

- (16) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 ~~M.R.S.A.~~M.R.S. §1682, and provided it is cured on dry land in a manner that exposes all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where it will contact water.
- (17) A temporary road for equipment access must be constructed of crushed stone, blasted ledge, or similar materials that will not cause sedimentation or restrict fish passage. Such roads must be completely removed at the completion of the activity. In addition, any such temporary roads which are in rivers, streams or brooks, must allow for a passage of stormwater flows associated with a 10-year storm.
- (18) Non-native species may not be planted in restored areas.
- (19) Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 ~~M.R.S.A.~~M.R.S. Sections 1301 *et seq.*
- (20) Disturbance of vegetation must be avoided, if possible. Where vegetation is disturbed outside of the area covered by any road or structure construction, it must be reestablished immediately upon completion of the activity and must be maintained.
- (21) A vegetated area at least 25 feet wide must be established and maintained between any new stormwater outfall structure and the high water line of any open water body. A velocity reducing structure must be constructed at the outlet of the stormwater outfall that will create sheet flow of stormwater, and prevent erosion of soil within the vegetated buffer. If the 25 foot vegetated buffer is not practicable, the applicant must explain the reason for a lesser setback in writing. Approval from the DEP must be in writing and any recommendations must be incorporated into the activity.

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

- (1) **Diversion.** The rerouting of a river, stream or brook around a construction site and then back to the downstream channel.
- (2) **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 immediately adjacent to a wetland or water body.
- (3) **Floodplain wetlands.** Freshwater wetlands that are inundated with flood water during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Agency or other site specific information.

- (4) **Riprap.** Heavy, irregularly shaped rocks that are fit into place, without mortar, on a slope as defined in the MaineDOT Standard Specifications, dated ~~December 2002~~March 2020.

12. Restoration of natural areas

A. Applicability

- (1) This section applies to the restoration of an altered portion of a coastal wetland, freshwater wetland, great pond, river, stream or brook to its pre-existing natural condition through the removal of fill, structures or debris which is located in, on over, or adjacent to the natural resource.

~~(2)~~ (2) This section applies to the removal of non-native species and/or the planting of ~~natural~~native vegetation in any protected natural resource except a coastal sand dune system (see Sec. 16-A).

(3) This section applies to the use of biodegradable stabilization materials to support the planting and establishment of native saltmarsh vegetation in or adjacent to a coastal wetland provided that no more than 200 square feet of biodegradable stabilization materials are installed below the highest astronomical tide line.

- ~~(4)~~ This section applies to the retrieval of sand from below the normal high water line for redistribution on an existing adjacent sand beach on a great pond.

- ~~(5)~~ This section applies to the restoration of the natural grade within a dredged area of a freshwater or coastal wetland.

- ~~(6)~~ This section does not apply to:

- (a) Restoration or replacement of a structure or unnatural condition such as the installation of a dam structure;
- (b) Conversion of existing natural wetlands to wetland of a different type through flooding, inundation or other means;
- (c) Dredging of silt, sand or soil materials which have been naturally deposited from a great pond, river, stream or brook, coastal wetland or freshwater wetland except that eroded sand may be retrieved from a great pond for redistribution on an existing adjacent sand beach;
- (d) Mining of gravel or other mineral materials from a river, stream, or brook;
- (e) Replacement of eroded soil material in areas above, below and adjacent to the normal high water mark of a great pond, river, stream or brook, freshwater wetland, or coastal wetland, except that sand may be regraded on an existing sand beach;
- (f) Removal of an artificial~~man-made~~ dam structure;
- (g) Draining of a freshwater wetland to convert an area to upland; or
- (h) An activity occurring within a coastal sand dune system.

(76) 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.~~ M.R.S. Sections 481 to 490, the Storm Water Management Law, 38 ~~M.R.S.A.~~ M.R.S. Section 420-D, or the Natural Resources Protection Act, 38 ~~M.R.S.A.~~ M.R.S. Sections 480-A to ~~480-Z~~ 480-KK.

(87) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE:

- (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 the following types of projects:
 - (a) Any activity involving impacts (direct and secondary) to freshwater wetlands;
 - (b) Any activity within a coastal wetland;
 - (c) Any activity within an open water area;
 - (d) Any activity within a river, stream or brook between October 2 and July 14; or
 - (e) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the PBR notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (U.S. Army Corps of Engineers, 442 Civic Center Drive, Suite 350, Augusta, ME 04330. Tel. (207) 623-8367~~US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367~~).

B. Submissions

- (1) The applicant is required to submit photographs of the area in which 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~~ municipality in which the activity took place.
- (3) For an activity occurring in tidal waters, notice of approval of timing from the Department of Marine Resources must be submitted to the DEP with the notification form.

- (4) -When an applicant proposes to support the planting of native saltmarsh vegetation in a coastal wetland with biodegradable stabilization materials, the applicant must submit a scaled drawing of the proposed activity. The drawing must clearly depict the property boundaries, the highest astronomical tide line, and the extent and type of the biodegradable stabilization materials to be installed, including the square footage. The plan must be legible and drawn to a scale that provides a clear representation of distances and measurements on the plan.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:

- (a) For any soil disturbance that is limited to the upland and does not extend into the protected natural resource, sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be properly installed between the area of soil disturbance and the resource before the activity begins and maintained until the disturbed area is permanently stabilized;

- (b) Any soil disturbance within a freshwater wetland, great pond, river, stream, or brook must be done during periods of low water to minimize impacts (in-stream work window, lake draw-down, etc.) and must be temporarily or permanently stabilized daily. The placement of sediment barriers within the water would be ineffective and could cause unnecessary damage to the resource;

- ~~(a)~~(c) Any soil disturbance within a coastal wetland must be done at or near low tide and must be temporarily or permanently stabilized before being submerged. The placement of sediment barriers within the tidal zone would be ineffective and could cause unnecessary damage to the resource;

- (d) Surface flows from above the disturbed area must be diverted around the disturbed area until final stabilization and any diverted runoff must be managed to prevent erosion; examples of diversions include but are not limited to erosion control mix berms or socks, sand bags, and shallow excavated trenches;

- (e) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or spread on any exposed soils;

- (f) All disturbed soils must be permanently stabilized; and

- (g) Within 30 days of final stabilization of the site, any silt fence, straw bales, or temporary erosion or sediment controls containing plastic or other non-biodegradable materials must be removed and erosion control mulch berms must be raked to a depth of no more than 6 inches.

- ~~(1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the proposed 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.~~

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated ~~March 2003~~ October 2016. This handbook and other references are available online at <https://www.maine.gov/dep/land/erosion/escbmps/> or by contacting from the DEP.

- (2) Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (3) Non-native wetland plants may not be planted ~~in disturbed areas~~.
- (4) Only material that has been placed in a natural resource by persons may be removed from these waterbodies except for debris deposited within the previous 12 calendar months, and sand that will be regraded onto existing adjacent sand beaches.
- (5) Sand may be regraded from below the normal high water line, but machinery may not operate in the water. Equipment operating on shore may reach into the water with a bucket or similar extension. Areas covered by vegetation, either aquatic or terrestrial, may not be disturbed during any beach regrading.
- (6) Any activity involving the regrading of an existing sand beach must include the installation of permanent erosion control devices, such as water bars and diversion ditches, that prevent future erosion of the sand from upland runoff. The erosion control devices must be installed prior to the regrading of the beach.
- (7) Vegetation and soil material used in restoring wetland areas must be similar to the vegetation and soil materials occurring under pre-existing natural conditions.
- ~~(7)-(8) Biodegradable stabilization materials may be used to support the planting of native saltmarsh vegetation in a coastal wetland provided that no more than 200 square feet of biodegradable stabilization materials are used below the highest astronomical tide line; tackifiers are not used for any purpose; any stakes used to secure the materials are made of wood; and any anchors or cables used to secure the materials are made of wood, bright steel, or galvanized steel. Stainless steel may not be used.~~
- ~~(9)~~ (8) No fill other than soil material used to restore natural elevations within a dredged area of a coastal or freshwater wetland may be placed in or adjacent to a natural resource. Sand may not be brought in from off-site to replenish an existing beach.

NOTE: Erosion of sand from beaches may be due to wave action or the action of overland water flows. Contact the DEP, the local Soil and Water Conservation District, or the local lake association for assistance with identifying sources of beach erosion.

- (109) — 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.
- (110) All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- (124) All excavated material must be stockpiled either outside the wetland or on mats or platforms. ~~Hay~~Straw bales, silt fence or mulch must be used, where necessary, to prevent sedimentation.
- (132) If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.

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

- (1) ~~(+)~~ **Biodegradable stabilization materials.** Natural, plant-based biodegradable or compostable fabrics, erosion control blankets, and logs or rolls made from coir, jute, straw, or other similar materials, including materials that contain or use gravel or cobble; discarded holiday trees and other native trees, native brush, or native biodegradable materials; tree root wads; and wooden stakes. Metal anchors or cables may be used to secure those materials. Anchors may also include cobbles or small boulders that are not obtained from the shoreline or below the normal high water line or highest astronomical tide line.
- (24) **Dam.** Any ~~man-made~~ artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, that impounds or diverts a river, stream or brook or great pond.
- (32) **Dredge.** To move or remove, by digging, scooping, or suctioning any sand, silt, mud, gravel, rock, or other material from the bottom of a water body or wetland surface.
- (43) **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 wetland or water body.
- (54) **Debris.** Non-mineral materials (including but not limited to wood, brush or flotsam) deposited by wind, wave action, flooding or wild animals within the last 12 months. This term includes beaver dams, but does not include beaver or muskrat houses or nests of wild birds such as wading birds or waterfowl.
- (65) **Restoration.** An activity returning a great pond, coastal wetland, freshwater wetland, river, stream or brook from a disturbed or altered condition with lesser acreage or fewer functions to a previous condition with greater acreage or functions.

(7) **Saltmarsh.** A persistent marine nearshore emergent grass habitat. Saltmarshes can be found between upland and intertidal flats and beaches, along tidal rivers, or behind barrier beaches. Saltmarshes are flooded by salt water on timescales ranging from twice daily to irregularly during spring tides.

(86) 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.

(97) Non-native wetland plants. Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites communis*) and purple loosestrife (*Lythrum salicaria*).

13. Habitat creation or enhancement and water quality improvement activities

A. Applicability

(1) This section applies to an alteration in or adjacent to a 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~~ **MaineDOT**, 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:

- (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.

(2) This section applies to a landfill closure activity approved by the DEP.

(3) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

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 the following types of projects:
 - (a) Any activity involving impacts (direct and secondary) to freshwater wetlands;
 - (b) Any activity within a coastal wetland;
 - (c) Any activity within an open water area;
 - (d) Any activity within a river, stream or brook between October 2 and July 14; or

- (e) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the PBR notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (U.S. Army Corps of Engineers, 442 Civic Center Drive, Suite 350, Augusta, ME 04330. Tel. (207) 623-8367~~US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367~~).

B. Submissions

- (1) The applicant is required to submit photographs of the area in which 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~~municipality in which the activity took place.
- (3) Excluding landfill closures, if an activity is to be performed by a public utility, conservation group, municipality or the Maine Department of Transportation, certification from a public natural resource agency that the proposed activity will be done in conjunction with, or under the supervision of, the agency must be submitted with the notification form.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) For any soil disturbance that is limited to the upland and does not extend into the protected natural resource, sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be properly installed between the area of soil disturbance and the resource before the activity begins and maintained until the disturbed area is permanently stabilized;
 - (b) Any soil disturbance within a freshwater wetland, great pond, river, stream, or brook must be done during periods of low water to minimize impacts (in-stream work window, lake draw-down, etc.) and must be temporarily or permanently stabilized daily. The placement of sediment barriers within the water would be ineffective and could cause unnecessary damage to the resource;
 - (c) Any soil disturbance within a coastal wetland must be done at or near low tide and must be temporarily or permanently stabilized before being submerged. The placement of sediment barriers within the tidal zone would be ineffective and could cause unnecessary damage to the resource;

- (d) Surface flows from above the disturbed area must be diverted around the disturbed area until final stabilization and any diverted runoff must be managed to prevent erosion; examples of diversions include but are not limited to erosion control mix berms or socks, sand bags, and shallow excavated trenches;
- (e) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or spread on any exposed soils;
- (f) All disturbed soils must be permanently stabilized; and
- (g) Within 30 days of final stabilization of the site, any silt fence, straw bales, or temporary erosion or sediment controls containing plastic or other non-biodegradable materials must be removed and erosion control mulch berms must be raked to a depth of no more than 6 inches.
- ~~(1) 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.~~

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated ~~March 2003~~ October 2016. This handbook and other references are available online at <https://www.maine.gov/dep/land/erosion/escbmps/> or by contacting from the DEP.

- (2) Disturbance of vegetation must be avoided if possible. Where vegetation is disturbed outside of the area covered by any structures or filling associated with this activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (3) Non-native wetland plants may not be planted in disturbed wetland areas.
- (4) All debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. ~~Hay~~ Straw bales, silt fence, or mulch must be used where necessary to prevent sedimentation. Any debris generated during the activity must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 ~~M.R.S.A.~~ M.R.S. Section 1301 *et seq.*

- (5) Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water, or where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.
- (6) The use of untreated lumber is preferred. Lumber pressure-treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 ~~M.R.S.A.~~ M.R.S. §1682, and provided it is cured on dry land in such a manner as to expose all surfaces to the air for at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where the wood will come in contact with water.
- (7) 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.
- (8) Work below the high water line of a great pond, river, stream or brook shall be done at low water, except as required for emergency flood control work. Measures, such as a silt boom or staked fencing, must be employed to reduce and isolate turbidity.
- (9) All wheeled or tracked equipment that must travel or work in a vegetated coastal wetland must travel and work on mats or platforms in order to protect wetland vegetation.

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

- (1) **Dam.** Any ~~man-made~~ artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, that impounds or diverts a river, stream or brook or great pond.
- (2) **Public natural resources agency.** The Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the ~~Maine~~ DEP, the Maine ~~Department of Conservation~~ Department of Agriculture, Conservation and Forestry, the United States Fish and Wildlife Service, the United States Natural Resources Conservation 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.
- (3) **Water quality improvement project.** An activity designed exclusively to maintain or enhance water quality of a freshwater wetland, great pond or river, stream, brook or a coastal wetland. Examples include but are not limited to: nutrient retention basins, water level manipulation and rerouting of drainage ways.
- (4) **Non-native wetland plants.** Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites communis*) and purple loosestrife (*Lythrum salicaria*).

14. Piers, wharves, pilings and haulouts *[repealed]*

15. Public boat ramps

A. Applicability

- (1) This section applies to the construction of a new, or the replacement of an existing, public boat ramp or carry-in launch area, including associated parking and accessways, in or adjacent to a protected natural resource by a public natural resource agency, ~~Maine Department of Transportation~~ MaineDOT, municipality, or owners of a federally licensed hydropower project within the resource affected by the hydropower project. This section does not apply if a portion of the ramp or related facilities is located in, on or over emergent marsh vegetation or intertidal mudflat.
- (2) This section applies to the construction of up to 2 launch lanes at a facility provided no more than 2 lanes exist or will exist at the completion of the activity.
- (3) This section does not apply to a new boat ramp on a lake infested with aquatic invasive plants, as defined in 38 ~~M.R.S.A.~~ M.R.S. Section 410-N. The ~~Department of Environmental Protection~~ DEP identifies and maintains a list of these infested lakes.

NOTE: A permit will be required from the US Army Corps of Engineers for the following types of projects:

- (a) Any activity involving open trench excavation in a waterbody;
- (b) Any activity in coastal waterways;
- (c) Any activity within a river, stream or brook between October 2 and July 14; or
- (d) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the permit by rule notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (U.S. Army Corps of Engineers, 442 Civic Center Drive, Suite 350, Augusta, ME 04330. Tel. (207) 623-8367~~US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367~~).

B. Submissions

- (1) The applicant is required to submit photographs of the area in which 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~~ municipality in which the activity took place.

- (3) If the project results in a new or expanded access drive or parking area, the project design plan, erosion control plan and a request for review for an activity on great ponds classified as GPA under 38 ~~M.R.S.A.~~ M.R.S. Section 465-A must be submitted to the DEP's Division of Watershed Management (DWM) prior to submitting the notification form to the DEP. A certification from DWM must be obtained and must be included with the notification form, along with final project plans and the erosion control plan, when it is submitted to the DEP.
- (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~~ Department of Agriculture, Conservation and Forestry, 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.

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

- (5) If the proposed activity is located within a coastal wetland area, the applicant ~~shall~~ must submit, along with the notification form, a letter from both the Department of Inland Fisheries and Wildlife and the Department of Marine Resources that describes times of the year in which the construction of the boat ramp may occur.
- (6) If the proposed activity is located within a freshwater wetland, great pond, river, stream or brook, the applicant ~~shall~~ must submit, along with the notification form, a letter from the Department of Inland Fisheries and Wildlife that describes times of the year in which the construction of the boat ramp may occur.

C. Standards

- (1) The erosion control plan must be followed. The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) For any soil disturbance that is limited to the upland and does not extend into the protected natural resource, sediment controls such as trenched and anchored silt fence, an erosion control mix berm at least 1 foot tall, staked straw bales, anchored erosion control socks at least 12 inches in diameter, or a combination of these methods must be properly installed between the area of soil disturbance and the resource before the activity begins and maintained until the disturbed area is permanently stabilized;
 - (b) Any soil disturbance within a freshwater wetland, great pond, river, stream, or brook must be done during periods of low water to minimize impacts (in-stream work window, lake draw-down, etc.) and must be temporarily or permanently stabilized daily. The placement of sediment barriers within the water would be ineffective and could cause unnecessary damage to the resource;
 - (c) Any soil disturbance within a coastal wetland must be done at or near low tide and must be temporarily or permanently stabilized before being submerged. The placement of sediment barriers within the tidal zone would be ineffective and could cause unnecessary damage to the resource;

- (d) Surface flows from above the disturbed area must be diverted around the disturbed area until final stabilization and any diverted runoff must be managed to prevent erosion; examples of diversions include but are not limited to erosion control mix berms or socks, sand bags, and shallow excavated trenches;
 - (e) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or spread on any exposed soils;
 - (f) All disturbed soils must be permanently stabilized; and
 - (g) Within 30 days of final stabilization of the site, any silt fence, straw bales, or temporary erosion or sediment controls containing plastic or other non-biodegradable materials must be removed and erosion control mulch berms must be raked to a depth of no more than 6 inches.
- ~~(1) The erosion control plan must be followed. Erosion of soil or fill material from disturbed areas into the resource must be prevented. The following measures must be taken:~~
- ~~(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.~~

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated ~~March 2003~~ October 2016. This handbook and other references are available online at <https://www.maine.gov/dep/land/erosion/escbmps/> or by contacting from the DEP.

- (2) A hard-surfaced launch must be used where boats will be launched from trailers, and must meet the following specifications:
 - (a) The underwater portions of the ramp, at the time of construction, must be constructed of reinforced precast concrete planks, panels or slabs;
 - (b) The portion of the ramp used by the towing vehicle may not have a slope that exceeds 15%; the portion of the ramp used by the trailer only may not have a slope that exceeds 20%;
 - (c) The width of the hard surfaced launch lane(s) may not exceed 20 feet as measured parallel to shore;

- (d) The upper most 6 inches of the base must consist of crushed rock or crushed or screened gravel having 5% or less passing a 200 mesh sieve; and
 - (e) Fill slopes at or below the normal high water line must be protected with riprap. Riprap installation must meet the standards for riprap in PBR Section 8, "Shoreline stabilization".
- (3) An additional area of up to 8 feet wide as measured parallel to shore may be constructed using bituminous pavement, precast concrete planks, panels or slabs to support docking systems.
- (4) A carry-in launch area for small boats must:
- (a) Consist of gravel, rock, sand, vegetation, or other erosion resistant materials;
 - (b) Have a grade not exceeding 18%; and
 - (c) Be ~~limited~~, below the low water line, to constructing a path up to 6 feet wide, measured parallel to shore, consisting of cobble, rock or concrete planks, to access deeper water to float watercraft.
- (5) A vegetated buffer zone at least 25 feet in width must be maintained between any new or expanded parking area and the waterbody.
- (6) A parking area or access road may not be located in a protected natural resource, except that an access roadway may cross a stream if the requirements of PBR Section 10 "Stream crossings" are met.
- (7) Any new or expanded parking area or roadway must divert stormwater runoff away from the ramp to an area where it may infiltrate into the ground before reaching the waterbody.
- (8) Machinery may operate below the water line only when necessary to excavate or place material below the existing water level and must travel and operate on temporary mats or portions of the ramp that have been constructed.
- (9) Timing of the activity must conform to the recommendations of ~~biologists from the~~ Department of Inland Fisheries and Wildlife or the Department of Marine Resources, as appropriate, as described in letters submitted along with the notification form.
- (10) Any debris generated during the work must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A Section 1301 *et seq.*
- (11) Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water or, where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.
- (12) The use of untreated lumber is preferred. Lumber pressure-treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law

and not prohibited from sale under 38 ~~M.R.S.A.~~⁰⁷⁹~~M.R.S.~~ §1682, and provided it is cured on dry land in such a manner as to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol shall not be used where it will contact water.

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

- (1) **Emergent marsh vegetation.** Plants that are erect, rooted and herbaceous, and that may be temporarily to permanently flooded at the base, but do not tolerate prolonged inundation of the entire plant; (e.g. cattails, saltmarsh cordgrass).
- (2) **Public natural resource agency.** The Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the ~~Maine~~-DEP, the Maine ~~Department of Conservation~~~~Department of Agriculture, Conservation and Forestry~~, 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.
- (3) **Project design plan.** A detailed plan of the proposed activity indicating all dimensions (width, height, length) relative to the mean low water mark, and including any appurtenant structures that may be seasonal in nature.

16. ~~Development~~^Aactivities in coastal sand dunes

A. Applicability

- (1) This section applies to the following activities in coastal sand dune systems:
 - (a) Repair or replacement of an existing seawall, patio, deck, driveway, walkway, porch or parking area;
 - (b) Installation or repair of underground utility lines;
 - (c) Construction of a new structure or new development, other than a building or closed fence, in a back dune area;
 - (d) New buildings or an addition to an existing building in a back dune;
 - (e) Construction of closed fences in a back dune, non-erosion hazard area;
 - (f) Construction of open fences in a frontal dune or back dune erosion hazard area;
 - (g) Construction of cobble-trapping fences with permanent anchors landward of an existing seawall in a developed area;
 - (h) Construction of a walkway or driveway on existing developed area in a frontal dune;
 - (i) Installation of underground propane tanks; and
 - (j) Replacement of a pier, wharf or dock if:

(i) The pier, wharf or dock was in existence on January 1, 2024;

(ii) The replaced pier, wharf or dock is built on pilings, posts or similar supports that allow for the free movement of water, wind and sand; and

(iii) The pier, wharf or dock was in place and functioning as intended within 24 months of the DEP's receipt of the notification form.

For the purposes of this section a “pier, wharf or dock” includes any permanent structures located on the pier, wharf or dock but does not include a seawall, jetty, breakwater, or similar structure intended to dissipate wave action.

(k) One-time minor expansions where:

- (i) The footprint of the expansion is contained within an impervious area that existed on January 1, 2021;
- (ii) The footprint of the expansion is no further seaward than the existing structure;
- (iii) The height of the expansion is within the height restriction of any applicable law or ordinance; and
- (iv) The expansion conforms to the standards for expansion of a structure contained in the municipal shoreland zoning ordinance.

Notwithstanding an activity being listed above, if upon review of a PBR notification filed pursuant to this section the Department determines the proposed activity may result in significant impact on the environment, the Department may require a person to obtain an individual permit for the activity pursuant to the Natural Resources Protection Act.

- (2) This section does not apply to the construction of a new structure or addition to an existing structure in V-Zones.
- (3) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

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

B. Submissions

- (1) The applicant is required to submit photographs of the area in which the 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~~municipality in which the activity took place.
- (3) The following information must be submitted with the notification form:
 - (a) A site plan that includes the following information:

- (i) The dimensions and square footage of the lot;
- (ii) The dimensions (including height) and square footage of existing and proposed structures and development e.g., houses, sheds, garages, decks, patios, driveways, parking areas, walkways, lawn, fences, etc. and their location on the lot (see definitions of Building, Footprint and Development in Section 16(D)). The existing and the proposed structures must be clearly distinguished;
- (iii) The location of property lines and names of abutters;
- (iv) The location of buildings on adjacent properties;
- (v) For patios, decks, driveways, walkways, porches, ~~and~~ parking areas, piers, wharves or docks that are to be repaired or replaced, the site plan must include the length and width of the existing structure, the height of the existing structure if it is elevated and the thickness of the existing structure; and
- (vi) For new buildings or an addition to an existing building in a back dune erosion hazard area, the site plan must include a post foundation designed to meet the requirements of the Department's Coastal Sand Dune Rules, 06-096 CMR 355(6)(G);
- (b) A copy of the most recent Coastal Sand Dune Geology Map, produced by the Maine Geological Survey that contains the project site and has the project site clearly identified on the map;
- (c) For replacement of piers, wharves or docks, aerial or satellite imagery on or prior to January 1, 2024. Include the source of the imagery;
- (c) For minor expansions, aerial or satellite imagery on or prior to January 1, 2021. Include the source of the imagery;

NOTE: Maps are available for review on the Maine Geological Survey (MGS) website and for purchase from MGS, 93 State House Station, Augusta, ME 04333.
<https://www.maine.gov/dacf/mgs/pubs/digital/dunes.htm>
 Aerial or satellite imagery is often available free online.

- (d) For seawall repair or replacement only, an accurate plan drawn to scale by a licensed surveyor, coastal geologist or professional engineer showing the location of the existing and proposed wall and the elevation of the wall(s) referenced to a nearby permanent and reproducible elevation point, such as a described point on a building or other structure. The plan must be signed and dated by the person responsible for preparing the drawing;
- (e) If moving sand in an area seaward of the frontal dune between March 15 and September 15, a copy of the written approval to proceed from the Department of Inland Fisheries and Wildlife; and
- (f) For open or cobble-trapping fences, a detail showing a typical section of the fence and the dimensions of the fence including the size of the openings.

C. Standards

- (1) No more than 40% of the lot may be covered by development including, but not limited to, buildings, driveways, walkways, parking areas, lawn or landscaped area, and land area previously developed; nor may the total area to be covered by the footprint of buildings exceed 20% of the lot, including existing buildings. Land area within the V-zone may not be included as part of a lot for the purposes of this section. These lot coverage restrictions do not apply to minor expansions.
- (2) Where development that is existing or did exist within one year of application exceeds 40% of the total lot area, the percentage of developed area may not be increased. This lot coverage restriction does not apply to minor expansions.
- (3) Where the footprint of buildings that are existing or did exist within one year of application exceeds 20% of the total lot area, the percentage of area covered by buildings may not be increased. This lot coverage restriction does not apply to minor expansions.
- (4) An activity occurring on land adjacent to a coastal wetland, freshwater wetland containing over 20,000 square feet of open water or emergent marsh vegetation, great pond, river, stream or brook must meet the erosion control and setback requirements of Section 2, "Activities adjacent to protected natural resources."
- (5) Building or building additions may not result in a building greater than 35 feet in height or covering a ground area greater than 2,500 square feet. For purposes of determining whether the building is 35 feet high, the starting point for measuring the bottom elevation of the building is described in Chapter 355(5)(D). The top of the building is considered to be the highest point of the building excluding ancillary features such as weathervanes or chimneys that are attached to the building's primary roof but including features such as decks or observation towers that extend higher than the building's primary roof. Notwithstanding the description above, for buildings located within an area of special flood hazard that have been or are proposed to be relocated, reconstructed, replaced or elevated, in accordance with 38 M.R.S. § 439-A(4)(C-1), the starting point for measuring the bottom elevation of the building is the bottom of the sill of the structure.

NOTE: The Department recommends that projects be constructed according to the Coastal Construction Manual published by the Federal Emergency Management Agency, which describes the best practices for residential construction in coastal areas.

- (6) A building may not be constructed so that any part of the building extends seaward of a line drawn between the seaward most point of buildings on adjacent properties if the construction would significantly obstruct the view from an adjacent building.
- (7) During project construction, disturbance of dune vegetation must be avoided and native vegetation must be retained on the lot to the maximum extent possible. Any areas of dune vegetation that are disturbed must be restored as quickly as possible.
- (8) No fill may be placed on the project site other than that required for new construction or a minor expansion. Foundation backfill and construction must utilize sand that has textural and color characteristics consistent with the natural sand's textural and color characteristics.

- (9) No sand may be moved seaward of the frontal dune between March 15 and September 15, unless written approval from the Department of Inland Fisheries and Wildlife has been obtained.
- (10) The replacement of a seawall may not increase the height, length or thickness dimensions of a seawall beyond that which legally existed within 24 months of submission of the notification form. The replaced seawall may not be significantly different in construction from the one that previously existed.
- (11) A private walkway must be 4 feet or less in width. A public walkway must be 10 feet or less in width. Walkways must allow for sand movement and may not have a significant impact on vegetation outside of the footprint of the walkway. No portion of the walkway may be located in the V-Zone.
- (12) The repair or replacement of a patio, deck, driveway, walkway, porch, ~~or~~ parking area, pier, wharf or dock may not increase the height, length, width or thickness dimensions of the existing structure. The new or repaired patio, deck, driveway, walkway, porch, ~~or~~ parking area, pier, wharf or dock may be constructed of a different material provided the dimensions remain the same.
- (13) All proposed construction and development activity is limited to the location and extent depicted on the plan or drawing submitted pursuant to subsection B(3) of this section.
- (14) An open fence must have openings that allow for the easy movement of water, wind and sand. If a picket board fence is proposed, the opening must be at least 4 inches wide or at least double the width of the picket board, whichever is greater. A continuous footing may not be used to support the fence and support posts may not be larger than 4 inches by 4 inches.
- (15) A cobble-trapping fence may only be placed on properties that are adjacent to beaches with gravel and cobble sediment and have developed areas such as lawn between the building and the beach. Such a fence may not be placed on a naturally vegetated frontal dune ridge.
- (16) A cobble-trapping fence must be placed landward of an existing seawall in a developed area, must not extend more than two feet beyond the building's foundation on either side, must not consist of more than one row of fencing, must not have openings smaller than 2 inches square or in diameter, and must not be higher than 4 feet above grade. The fence may be supported by permanent, small subsurface pipes or similar emplacements that are left in place all year. A permanent, continuous footing may not be used to support the fence. Cobbles and sediment trapped by the fence may be removed and placed immediately seaward of a frontal dune or seawall on the property.
- (17) Underground propane tanks must be placed under an existing structure on the parcel.

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

- (1) **Area of special flood hazard.** An area as defined in 38 M.R.S. §436-A(1-C)

- (2) **Back dunes.** Back dunes consist of sand dunes and eolian sand flats that lie landward of the frontal dune or a low energy beach. Back dunes include those areas containing artificial fill over back dune sands or over wetlands adjacent to the coastal sand dune system.
- (3) **Beach.** The zone of unconsolidated sand or gravel that extends landward from the mean low water line to the seaward toe of a dune. The definition of beach includes the beach face and berm.
- (4) **Berm.** The flat or gently sloping area between the high tide limit and frontal dune. A berm is formed by deposition of sand transported to shore by tides, waves, wind and currents.
- (5) **Building.** A structure designed for habitation, shelter, storage, or as a gathering place that has a roof. For the purposes of this rule, the foundation is considered to be a part of the building. A porch with a roof, attached to the exterior walls of a building, is considered part of the building.
- (6) **Closed fence.** A fence that effectively blocks the movement of wind, water, or sand, such as a stockade fence or snow fence.
- (7) **Cobble.** A rock that is smaller than a boulder and larger than gravel.
- (8) **Cobble-trapping fence.** An open fence with a continuous porosity equal to or greater than 50% that is designed to prevent cobbles from passing through it.
- (9) **Development.** The alteration of property for human-related use including, but not limited to, buildings, decks, driveways, parking areas, lawns, landscaped areas, and areas of non-native vegetation, and any other appurtenant facilities, but excluding temporary structures.
- ~~(10)~~ ~~(10)~~ **Dune vegetation.** Dune plant species typically adapted to Maine's coastal sand dune systems including, but not limited to, American beach grass, virginiana rose, bayberry, beach pea, beach heather and pitch pine.
- ~~(10)~~(11) **Replacement.** Any activity that results in more than 50% of a structure being restored or reconstructed whether above or below the highest astronomical tide line.
- ~~(12)~~ **Erosion hazard area.**
- (a) Any portion of the coastal sand dune system that can reasonably be expected to become part of a coastal wetland in the next 100 years due to cumulative and collective changes in the shoreline from:
- (i) Historical long-term erosion;
- (ii) Short-term erosion resulting from a 100-year storm; or
- (iii) Flooding in a 100-year storm after a two-foot rise in sea level; or
- (b) Any portion of the coastal sand dune system that is mapped as an AO flood zone by the effective FEMA Flood Insurance Rate Map, which is presumed to be located in an Erosion Hazard Area unless the applicant demonstrates based on site-specific information, as determined by the DEP, that a coastal wetland will not result from

subsection 11(a)(i) through (iii) occurring on an applicant's lot given the expectation that an AO-Zone, particularly if located immediately behind a frontal dune, is likely to become a V-Zone after two feet of sea level rise in 100 years.

- (132) **Footprint.** The outline of a structure on the ground, except that for a building "footprint" means the outline that would be created on the ground by extending the exterior walls of the building to the ground surface.
- (143) **Foundation.** The portion of a structure that transmits the loads of the structure to the ground, including but not limited to: spread footings, foundation walls, posts, piers, piles, beams, girders, structural slabs, bracings, and associated connectors.
- (154) **Frontal dune.** The frontal dune is the area consisting of the most seaward ridge of sand and gravel and includes former frontal dune areas modified by development. Where the dune has been altered from a natural condition, the dune position may be inferred from the present beach profile, dune positions along the shore, and regional trends in dune width. The frontal dune may or may not be vegetated with dune vegetation and may consist in part or in whole of artificial fill. In areas where smaller ridges of sand are forming in front of an established dune ridge, the frontal dune may include more than one ridge.
- (165) **Impervious area.** An area that is a building, parking lot, roadway or similar constructed area. "Impervious area" does not mean a deck or patio.
- (176) **Land adjacent to a protected natural resource.** Any land area within 75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (187) **Lot.** Also referred to as a lot of record, all contiguous areas under a single present ownership as indicated by a deed and recorded in the registry of deeds constituting a piece of land measured and marked by metes and bounds descriptions or by some other approved surveying technique.
- (198) **Minor Expansion.** An increase of 25 percent or less in the footprint of an existing structure, up to a maximum expansion of 500 square feet, provided the expansion does not result in a building covering a ground area of more than 2,500 square feet.
- (2049) **Open fence.** A fence through which water, wind and sand can easily move, for example, a split rail fence.
- (219) **Permanent structure** (also referred to as a "structure" in this section). Any structure constructed or erected with a fixed location or attached to a structure with a fixed location for a period exceeding 7 months each year. Permanent structures include, but are not limited to: causeways, piers, docks, concrete slabs, piles, marinas, retaining walls, buildings, swimming pools, fences, seawalls, roads, driveways, parking areas, and walkways. Natural features, such as frontal dunes, are not considered permanent structures.
- (224) **Posts.** Any pilings or column supports that allow water and sand to move freely underneath the structure, and that are adequate to provide a foundation for the structure they support. The term "post" does not include frost walls or breakaway foundation construction.

- (232) **Seawall.** Vertical wall, or other sloped barrier that separates land from water areas, commonly constructed out of rocks, wood, concrete or other similar materials, generally built for the purpose of protecting structures or property from shoreline erosion caused by wave or current action. A seawall is presumed to be a permanent structure.
- (243) **V-Zone.** That land area of special flood hazard subject to a one- percent or greater chance of flooding in any given year, and subject to additional hazard from high velocity water due to wave action. Wave heights or wave run-up depths are equal to or greater than 3 feet in V-Zones. V-Zones are as identified on the effective Flood Insurance Rate Maps and any subsequent Letters of Map Changes issued by FEMA.

16-A. ~~Beach nourishment and, seaweed removal and dune restoration or construction~~ Non-development activities in coastal sand dunes

A. Applicability

- (1) This section applies to the following activities in coastal sand dune systems:
- (a) Beach nourishment using ~~upland sources of~~ sand and gravel;
 - (b) Dune restoration or construction using ~~upland sources of~~ sand and gravel or sand and gravel in combination with and biodegradable stabilization materials; and
 - (c) Planting of native dune vegetation by hand in excess of 2,000 square feet or on multiple properties;
 - (d) Removal of seaweed from the beach by a municipality using hand or mechanical means when the seaweed is then removed from the coastal sand dune system; and
 - ~~(e)~~(e) Beach scraping to move sand from the beach up to the seaward edge of the dune.

NOTES:

- (1) A beach nourishment or dune restoration or construction activity that qualifies under this section may require approval from the U.S. Army Corps of Engineers if the activity will involve work below the mean high water line. Applicants should contact the Army Corps of Engineers Maine Project Office at 207-623-8367.
 - (2) A beach nourishment or dune restoration or construction activity that uses dredged sand or gravel may require a permit from the DEP for beneficial use of solid wastes. Please refer to the DEP's Chapter 418 Solid Waste Management Rules: Beneficial Use of Solid Wastes.
 - (3) Removal of seaweed from the beach by hand or mechanical means is considered a *de minimis* activity that does not require a permit under the Natural Resources Protection Act pursuant to the DEP's Chapter 355 Coastal Sand Dune Rules only if the seaweed is not removed from the coastal sand dune system and does not disturb dune vegetation.
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- (2) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

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

B. Submissions

- (1) The applicant is required to submit photographs of the area in which the 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 previously submitted notification form or labeled with the applicant's name and the ~~town~~municipality in which the activity took place.
- (3) The following information must be submitted with the notification form:
 - (a) The physical address, location of property lines, and names of abutters;
 - (b) A copy of the most recent Coastal Sand Dune Geology Map, produced by the Maine Geological Survey that contains the project site and has the project site clearly identified on the map;

NOTE: Maps are available for review and download on the Maine Geological Survey (MGS) website and for purchase from MGS, 93 State House Station, Augusta, ME 04333. <https://www.maine.gov/dacf/mgs/pubs/digital/dunes.htm>

- (c) A copy of the written review comments from the Department of Inland Fisheries and Wildlife, and a demonstration that any project-specific recommendations on the design, timing, and/or construction of the proposed project received from that agency have been incorporated into the proposed activity;
- (d) For beach nourishment projects:
 - (i) A plan describing the need for the project, the depth of sand and gravel to be placed on each area of the beach, details on how machinery will access the beach, the volume of sand and gravel to be placed, the sources of sand and gravel, and project start and end dates; and
 - (ii) Written confirmation from MGS that it has reviewed the project and finds the plan acceptable and the proposed sand and gravel suitable for beach nourishment.
- (e) For dune ~~reconstruction~~restoration or construction projects:
 - (i) A plan describing the need for the project, ~~and~~ the depth and location(s) of sand and gravel to be placed on the beach and/or dune, and the types, depths and location(s) of any biodegradable stabilization materials to be placed on the beach and/or in the dune. The plan also must include details on how machinery will access the dune area, the volume of sand and gravel to be placed, the sources of sand and gravel, how dune grass will be planted, and project start and end dates; and

- (ii) Written confirmation from MGS that it has reviewed the project and finds the plan acceptable and the proposed sand, ~~and~~ gravel, cobble and/or biodegradable stabilization materials suitable for ~~beach nourishment~~ dune restoration or construction;

(f) For planting of native dune vegetation by hand:

- ~~(iii)~~(i) A plan describing the area to be planted, type(s) of species to be planted, pattern of planting, and project start and end dates.

(g) For removal of seaweed from the beach by a municipality:

- (i) A plan describing the area from which the seaweed will be removed, equipment to be used, details on how machinery will access the beach, project start and end dates, removal schedule (e.g. weekly or daily), where the seaweed will be stored, when it will be returned and where it will be placed in the coastal -sand dune system when it is returned.

(h) For beach scraping:

- (i) A plan describing the need for the project, the depth and location of sand to be removed from the beach to the dune, and the location where it will be placed, and equipment to be used. The plan must also include details on how machinery will access the beach.
- ~~(iv)~~(ii) Written confirmation from MGS that it has reviewed the project and finds the plan acceptable.

NOTE: An applicant should be prepared to provide MGS with a sample or photograph of the sediment they plan to use for beach nourishment or dune restoration or construction projects.

C. Standards

- ~~(1) An activity occurring on land adjacent to a coastal wetland, freshwater wetland containing over 20,000 square feet of open water or emergent marsh vegetation, great pond, river, stream or brook must meet the erosion control and setback requirements of Section 2 of this chapter, "Activities adjacent to protected natural resources."~~
- ~~(2)~~(1) Disturbance of dune vegetation must be avoided, damage to existing dune vegetation must be minimized, and native vegetation must be retained on the project site to the maximum extent possible. Any areas of dune vegetation that are disturbed must be restored as quickly as possible.
- ~~(3)~~(2) For beach nourishment projects:
- (a) Beach nourishment projects must utilize sand and gravel ~~from upland sources~~ that have textural and color characteristics consistent with the natural textural and color characteristics of the beach sediment. ~~Dredged sand and gravel may not be used.~~

- (b) Beach nourishment activities may not occur between March 15 and ~~September 15~~October 1 unless written approval from the Department of Inland Fisheries and Wildlife has been obtained to conduct this work during specific time periods within this window.
- (c) The depth of sand and gravel placed on the beach must be tapered at the perimeter of the nourished area.
- (d) Beach nourishment may extend up to the frontal dune, including up to the top of an erosional scarp, but may not cover in-place dune vegetation.
- (e) For a beach nourishment project, the total volume of sand and gravel to be placed on the beach may not exceed a volume of two feet deep over the surface area of the beach or 10,000 cubic yards, whichever is less. The surface area of the beach is measured in width from the normal low tide to the highest astronomical tide and in length along the beach parallel with the shoreline. The sand and gravel does not have to be placed to an even depth across the profile of the beach, nor is it restricted to two feet in depth in any specific place.

~~(f) Beach nourishment activities may not occur more often than once a year in the same location.~~

(3) For dune restoration or construction projects, including those that use biodegradable stabilization materials:

~~(g)~~(a) An activity involving dune restoration or dune construction must be performed between October 1 and March 15, unless written approval from the Department of Inland Fisheries and Wildlife has been obtained and submitted with the notification. Dune grass must be planted immediately after restoration or construction. Dune grass must be planted with 3 culms per hole. The holes must be spaced 18 inches apart or less. The planted dune grass must be protected from pedestrian traffic until the dune grass is well established. The density of the growing stand of dune grass must be at least 40 plants per 100 square feet.

~~(h)~~(b) A dune restoration ~~/ or dune~~ construction activity must use sand, ~~and~~ gravel, and/or cobble that has textural and color characteristics consistent with the natural textural and color characteristics of the existing dune sediments.

~~(i)~~(c) A dune restoration or dune construction activity must minimize damage to existing dune vegetation and must follow the configuration and alignment of adjacent dunes as closely as possible. No sand, ~~and~~ gravel, and/or cobble may be placed below the ~~normal~~ highest annual tide highest astronomical tide line.

~~(4) Dune restoration or construction activities may not occur more often than once a year in the same location.~~

(4) For dune restoration or construction projects that use biodegradable stabilization materials:

(a) Projects may not use or place stakes, anchors, or cables made from metal or other nonbiodegradable materials or fabrics, blankets or other stabilization materials made from polylactic acid polymers. Projects using these materials must apply for an individual permit pursuant to the Natural Resources Protection Act.

- (b) No biodegradable stabilization materials may be placed below the highest astronomical tide line.
 - (c) The slope of the restored or constructed dune may not be steeper than the slope of the adjacent existing dunes.
 - (d) Biodegradable stabilization materials must be used in a manner designed to encourage the revegetation of the dune with native dune vegetation and must be covered with sand and native dune vegetation at all times following placement.
 - (a)(e) Biodegradable stabilization materials containing or using gravel or cobble may only be used in a dune system primarily composed of gravel or cobble or directly adjacent to a beach that is primarily gravel or cobble.
- (5) For planting of native dune vegetation by hand:
- ~~(b)~~(a) Dune planting activities must be performed between October 1 and March 15, unless written approval from the Department of Inland Fisheries and Wildlife has been obtained.
- (6) For removal of seaweed from the beach by a municipality:
- (a) Seaweed removal activities are limited to June 15 through August 31.
 - (b) Seaweed that is removed from the coastal sand dune system must be stockpiled and returned to the coastal sand dune system by October 1 of the same year.
 - (c) Returned seaweed must be placed within 10 feet of the base of the dune and spread out so that it does not exceed 6 inches in depth.
 - (d) If the seaweed is proposed to be removed from an area designated as Essential Habitat, the municipality must obtain written approval for the activity from the Department of Inland Fisheries and Wildlife and a trained spotter must be on site during seaweed removal activities.
- (7) For beach scraping:
- ~~(e)~~ Beach scraping activities may not occur between March 15 and October 1 unless written approval from the Department of Inland Fisheries and Wildlife has been obtained to conduct this work during specific time periods within this window.
 - (a) Scraping may not extend seaward beyond the lower elevation of the two most recent high tides unless written approval from MGS has been obtained based on site-specific conditions. Recent high tide elevations can be approximated using the wet-dry line on the beach or the wrack line of seaweed.
 - (b) Scraping activities must not disturb or uncover any underlying ravinement surfaces such as peat or cobbles. If non-sand material, such as peat or cobbles, is encountered during scraping, the operator must reduce the depth of scraping in order to avoid those underlying materials. Only native beach material may be scraped and moved, not underlying ravinement.

(c) Scraping is limited to a maximum of 12 inches of elevation removed from the beach.

(d) Beach scraping activities may not occur more often than twice a year in the same location.

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

(1) **Back dunes.** Back dunes consist of sand dunes and eolian sand flats that lie landward of the frontal dune or a low energy beach. Back dunes include those areas containing artificial fill over back dune sands or over wetlands adjacent to the coastal sand dune system.

(2) **Beach.** The zone of unconsolidated sand or gravel that extends landward from the mean low water line to the seaward toe of a dune. The definition of beach includes the beach face and berm.

(3) **Biodegradable stabilization materials.** Natural, plant-based biodegradable or compostable fabrics, erosion control blankets, and logs or rolls made from coir, jute, straw or other similar materials, including materials that contain or use gravel or cobble; discarded holiday trees; and native trees, native brush, or native biodegradable materials; tree root wads; and biodegradable stakes, anchors or cables used to secure those materials.

~~(43)~~ **Beach nourishment.** The artificial addition of sand, gravel or other similar natural material to a beach or subtidal area adjacent to a beach.

~~(54)~~ **Native dune vegetation.** Dune plant species typically adapted to Maine's coastal sand dune systems including, but not limited to, American beach grass, virginiana rose, bayberry, beach pea, beach heather and pitch pine.

~~(65)~~ **Frontal dune.** The frontal dune is the area consisting of the most seaward ridge of sand and gravel and includes former frontal dune areas modified by development. Where the dune has been altered from a natural condition, the dune position may be inferred from the present beach profile, dune positions along the shore, and regional trends in dune width. The frontal dune may or may not be vegetated with dune vegetation and may consist in part or in whole of artificial fill. In areas where smaller ridges of sand are forming in front of an established dune ridge, the frontal dune may include more than one ridge.

~~(76)~~ **Land adjacent to a protected natural resource.** Any land area within 75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.

17. Transfers and permit extensions

A. Applicability

(1) This section allows an individual permit, general permit or tier review approval issued under the Natural Resources Protection Act to be transferred from the permittee to the applicant when the permitted project changes ownership.

- (2) This section allows an individual permit, general permit or tier review approval issued under the Natural Resources Protection Act to be extended one time provided the approved activity has not begun and the permit has not expired. This section does not apply to an extension request for a permit previously extended under this chapter.

B. Submissions

- (1) For a transfer, the applicant must submit an affidavit attesting to the fact that ~~he or she~~the applicant has received, read, understand and will comply with the terms of the DEP Order(s) and conditions of approval for the activity.
- (2) For a transfer, the applicant must submit a copy of the ~~DEP O~~order(s) to be transferred as well as a copy of documents establishing proof of ownership of the property on which the activity is located or sufficient title, right or interest to complete the activity in accordance with the requirements of the permit and the NRPA.
- (3) For a transfer, the original permittee must submit a statement attesting that ~~he or she~~they agrees to the transfer of ~~his or her~~the permit to the applicant.
- (4) For a transfer of a project that requires compensation, the applicant must submit documentation that demonstrates sufficient expertise and financial resources to complete the approved compensation work, including subsequent monitoring and corrective actions.
- (5) For permit extensions, a copy of the ~~DEP O~~order(s) to be extended ~~shall~~must be submitted to the ~~Department~~DEP along with a written reason for the extension request.

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

- (1) **Affidavit.** A written declaration made under oath before a notary public.
- (2) **Extension.** A DEP approval to extend an unexpired permit. An extension is valid for 2 years.

18. Maintenance dredging permit renewal

A. Applicability

- (1) This section applies to the renewal of an individual permit issued by the DEP for maintenance dredging in a coastal wetland, great pond and river, stream or brook provided that:
- (a) The area to be dredged is located in an area that was dredged within the last ten years;
- (b) The permit to be renewed ~~was~~is an individual Natural Resources Protection Act permit. If the most recent dredge was permitted under a PBR, this section does not apply;
- (c) The area to be dredged is not located in or within 250 feet of an area identified as significant wildlife habitat by the Department of Inland Fisheries and Wildlife;

NOTE: Contact the nearest regional office of the Maine Department of Inland Fisheries and Wildlife for more information regarding the location of significant wildlife habitats.

- (d) Less than 50,000 cubic yards will be dredged.
- (2) This section does not apply to the renewal of a permit issued by the DEP for gravel mining in any protected natural resource.

NOTE:

- (1) Displacement or bulldozing of sediment within a lobster pound does not require a Natural Resources Protection Act permit provided that the sediment is not removed from the area inundated as a result of the impoundment, 38 ~~M.R.S.A.~~M.R.S. Section 480-Q(19).
- (2) Any activity involving dredging may require a permit from the US Army Corps of Engineers. A copy of the PBR notification should be submitted to the Corps of Engineers for these activities (U.S. Army Corps of Engineers, 442 Civic Center Drive, Suite 350, Augusta, ME 04330. Tel. (207) 623-8367~~US Army Corps of Engineers, RR 2 Box 1855, Manchester, ME 04354~~).
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B. Submissions

- (1) A copy of the permit issued for the most recent maintenance dredging must be submitted to the DEP with the notification form.
- (2) For a dredge activity in tidal waters, notice of approval of the timing of the activity from the Department of Marine Resources must be submitted to the DEP with the notification form.

C. Standards

- (1) The dimensions of the area proposed to be dredged may not exceed previously approved dimensions and dredging must be conducted in the same location.
- (2) All conditions previously attached to the original permit are incorporated into the ~~permit by rule~~PBR unless otherwise stated by the DEP in writing.
- (3) For a dredge activity in tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.
- (4) Any debris or dredged material generated during the activity may not be disposed of in any protected natural resource unless otherwise allowed in this chapter and the disposal conforms with the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 ~~M.R.S.A.~~M.R.S. Sections 1301 *et seq.*

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

- (1) **Dredge.** To move or remove, by digging scooping or suctioning any sand, silt, mud, gravel, rock, or other material from the bottom of a water body or wetland surface.
- (2) **Dredge spoils.** Sand, silt, mud, gravel rock or other sediment or material that is moved from coastal wetlands, great ponds or rivers, streams or brooks.

19. Activities in, on or over significant vernal pool habitat

A. Applicability

- (1) This section applies to activities in, on, or over a significant vernal pool habitat or a potential significant vernal pool habitat. Significant vernal pool habitat consists of a vernal pool depression and the portion of the critical terrestrial habitat within a 250 foot radius of the spring or fall high water mark of the depression.

NOTE: The 250 feet of critical terrestrial habitat protected as significant vernal pool habitat is only a portion of the habitat used by adult wood frogs, ambystomatid salamanders, and threatened and endangered species. Tracking studies of adult pool-breeding amphibians have shown that they can travel over a third-mile away from their breeding pool, and that a radius of 750 feet around the pool is optimal for protecting viable amphibian populations. The DEP encourages efforts to protect more habitat adjacent to a vernal pool than this regulation has authority over.

- (2) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Stormwater Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Section 480-A to BB.

NOTE: For additional regulatory provisions applicable to significant vernal pools, see 06-096 CMR 335, Significant Wildlife Habitat.

B. Submissions. The following items must be submitted with the notification, unless otherwise provided below.

- (1) Photographs of the area that will be affected by the activity proposed.
- (2) 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~~municipality in which the activity took place.
- (3) A scaled plan or drawing of the area affected, including but not limited to the following information:
 - (a) The entire property on which the activity will take place, including property lines, the vernal pool depression and remaining surrounding significant vernal pool habitat within 250 feet of the spring or fall high water mark of the depression, and the boundaries and location of other protected natural resources such as streams and other wetlands;
 - (b) Proposed activity and existing development on which the activity will take place, including buildings, parking areas, roads, fill areas, landscaped areas, etc.; and
 - (c) Any site constraints limiting development beyond the significant vernal pool habitat, such as steep slopes.

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

C. Standards. The following measures must be taken during construction and maintenance of the activity.

- (1) No disturbance within the vernal pool depression.
- (2) Except for activities in existing developed areas, 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.
- (3) Maintain or restore forest corridors connecting wetlands and significant vernal pools.
- (4) Minimize forest floor disturbance.
- (5) Maintain native understory vegetation and downed woody debris.

In determining whether the standard in Section 19(C)(2) has been met, the DEP considers only that portion of the critical terrestrial habitat within the significant vernal pool habitat, which is the area within a 250 foot radius of the spring or fall high water mark of the vernal pool depression.

- (6) Take the following measures 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 vernal pool depression 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.

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.

- (7) An activity of a type that would qualify for a permit by rule under one of the other sections of this chapter listed below, notwithstanding any restriction concerning significant wildlife habitat that may be in that section, must also meet the requirements of that section.

- Sec. 4. Replacement of structures
- Sec. 9. Crossings (utility lines, pipes, cables)
- Sec. 10. Stream crossings (bridges, culverts, fords)
- Sec. 11. State transportation facilities
- Sec. 12. Restoration of natural areas.

- Sec. 13. Habitat creation or enhancement and water quality improvement activities
- Sec. 15. Public boat ramps
- Sec. 16. Coastal sand dune projects

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

- (1) **Critical terrestrial habitat.** Uplands and wetlands associated with significant vernal pools used by pool breeding amphibians for migration, feeding, and hibernation, in particular, forested wetlands and forested uplands that provide deep organic litter, coarse woody debris and canopy shade.
- (2) **Existing developed area.** The area of property altered including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other landscaped areas, as of September 1, 2007.
- (3) **Significant vernal pool habitat.** A vernal pool depression and the portion of the critical terrestrial habitat within a 250 foot radius of the spring or fall high water mark of the depression. For complete criteria, see Chapter 335(9), Significant vernal pools.
- (4) **Vernal pool depression.** This area includes the vernal pool depression up to the spring or fall high water mark, and includes any vegetation growing within the depression.

20. Activities located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas

A. Applicability

- (1) This section applies to activities in existing developed areas located in, on, or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas.
- (2) This section applies to an expansion of up to 10% of an existing development area within a high or moderate value inland waterfowl and wading bird habitat, or a shorebird feeding area, if an individual permit is not otherwise required for activity on the parcel.
- (3) This section applies to activities consisting of cutting or removal of vegetation within high or moderate value inland waterfowl and wading bird habitat, or shorebird feeding or roosting buffer.
- (4) This section applies to new activities, such as the construction of buildings, roads, and driveways, in an upland area on a lot in moderate value inland waterfowl and wading bird habitat and that contains no Development area.

NOTE: If exterior lighting is anticipated to extend into the habitat within the 150 foot setback, the Department may request a detailed lighting plan.

- (5) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the *Site Location of Development Law*,

38 M.R.S.A. §§ 481–490, the *Stormwater Management Law*, 38 M.R.S.A. §420-D, or the *Natural Resources Protection Act*, 38 M.R.S.A. §§ 480-A–480-FF.

- (6) This section does not apply to an activity that does not conform to the local shoreland zoning ordinance.

NOTE: For additional regulatory provisions applicable to significant wildlife habitats, see *Significant Wildlife Habitat*, 06-096 CMR 335 (last amended June 8, 2006).

B. Submissions. The following items must be submitted with the notification, unless otherwise provided below.

- (1) Photographs of the area that will be affected by the activity proposed.
- (2) 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~~municipality in which the activity took place.
- (3) A scaled plan or drawing of the area affected, including information such as the following.
 - (a) The entire property on which the activity will take place, including property lines, and the boundaries and location of protected natural resources such as streams, and wetlands, as well as significant wildlife habitat (specify type of significant wildlife habitat).
 - (b) Proposed activity and existing development on which the activity will take place, including buildings, parking areas, roads, fill areas, landscaped areas, etc. If up to a 10% expansion of an existing developed area is proposed within a high or moderate value inland waterfowl and wading bird habitat, or a shorebird feeding area, indicate the existing developed area and proposed expansion.

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

- (4) For cutting or removal of vegetation in a shorebird roosting buffer, notice of approval of the activity from the Department of Inland Fisheries and Wildlife (IF&W) must be submitted to the DEP with the notification form. The IF&W approval may specify the location of the activity or other conditions of approval.
- (5) For any work in, on or over a shorebird nesting, feeding, and staging area that would occur between July 15 and September 15, notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife must be submitted to the DEP with the notification form.
- (6) For new activities in a moderate value inland waterfowl and wading bird habitat that take place between April 15 and July 31 of any year, notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife must be submitted to the DEP with the notification form.

C. Standards

- (1) For activities in, on or over a shorebird nesting, feeding, and staging area between July 15 and September 15, the activity must occur during the time period approved by the Department of Inland Fisheries and Wildlife.
- (2) 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 at the edge of disturbed areas between the activity and the undeveloped area 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.

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.

- (3) An activity of a type that would qualify for a permit by rule under one of the sections listed below must also meet the requirements of that section.

- Sec. 3. Intake pipes
- Sec. 4. Replacement of structures
- Sec. 6. Movement of rocks or vegetation
- Sec. 7. Outfall pipes
- Sec. 8. Shoreline stabilization
- Sec. 9. Crossings (utility lines, pipes, cables)
- Sec. 10. Stream crossing (bridges, culverts, fords)
- Sec. 11. State transportation facilities
- Sec. 12. Restoration of natural areas
- Sec. 13. Habitat creation or enhancement and water quality improvement activities
- Sec. 15. Public boat ramps
- Sec. 16. Coastal sand dune projects
- Sec. 18. Maintenance dredging renewal permit

- (4) Except for cutting or removal of vegetation allowed pursuant to paragraph C(6) of this section, cutting or removal of vegetation within a high or moderate value inland waterfowl and wading bird habitat, or shorebird roosting buffer, is limited to:
 - (a) Removal of a safety hazard; or
 - (b) Cutting or removal of vegetation to allow for a footpath not to exceed 6 feet in width as measured between tree trunks and shrub stems. The footpath may not result in a cleared line of sight to the water.

Any cutting or removal of vegetation within a shorebird roosting buffer under this paragraph must be done in consultation with and as approved by the Department of Inland Fisheries and Wildlife.

- (5) Cutting or removal of vegetation within a shorebird feeding buffer must meet the vegetative screening standards set forth in *Mandatory Shoreland Zoning*, 38 M.R.S.A. §439-A(6). In interpreting and enforcing these standards, the department shall rely upon the department's shoreland zoning rules regarding cutting or removal of vegetation for activities other than timber harvesting¹ and apply the cutting standards applicable within 75 feet of a coastal wetland to the entire 100-foot feeding buffer.
- (6) New activities in an upland area on a lot in a moderate value inland waterfowl and wading bird habitat and that contains no Development area must meet the following standards:
 - (a) New structures must be located a minimum of 150 feet landward of the upland edge or forested wetland edge of the inland wetland complex within the waterfowl and wading bird habitat;
 - (b) Beyond 150 feet from the upland edge or forested wetland edge of the inland wetland complex within the waterfowl and wading bird habitat, no more than 20 % of the applicant's land within the habitat may be cleared or developed;
 - (c) Within 150 feet of the upland edge or forested wetland edge of the inland wetland complex within the waterfowl and wading bird habitat, cutting and removal of vegetation is limited to those activities described in Paragraphs C(4)(a) and (b) of this section.
 - (d) No construction or clearing activity may take place from April 15 through July 31 of any year unless otherwise approved by the Maine Department of Inland Fisheries and Wildlife.
- (7) All work is limited to the location and extent depicted on the plan or plans submitted pursuant to subsection B(3) of this section.

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

- (1) **Development area.** The area of property altered including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other landscaped areas, as of June 8, 2006. "Developed area" has the same meaning as "development area".
- (2) **Inland high or moderate value waterfowl and wading bird habitat.** A high to moderate value inland habitat is an inland wetland complex, and a 250 foot wide zone surrounding the wetland complex, that through a combination of dominant wetland type, wetland diversity, wetland size, wetland type interspersions, and the percent of open water meets IF&W guidelines or is an inland wetland complex that has documented outstanding use by waterfowl or wading birds. See Chapter 335(10)(A) for complete criteria.

¹ *Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 CMR 1000(15)(P) (chapter last amended May 1, 2006).

- (3) **Shorebird nesting, feeding, and staging areas.** Shorebird nesting, feeding, and staging areas, and a zone surrounding those areas as described in paragraphs (4) and (5), are significant wildlife habitats. Shorebird species include the members of the families Scolopacidae, Charadriidae, and Haematopodidae, including, but not limited to, sandpipers and plovers. See Chapter 335(11) for complete criteria.
- (4) **Shorebird feeding area.** A shorebird feeding or staging area that is not a roosting area. The shorebird feeding area includes a 100-foot-wide surrounding buffer referred to as the feeding buffer.
- (5) **Shorebird roosting area.** A shorebird feeding or staging area that is also a roosting area. The shorebird roosting area includes a 250-foot-wide surrounding buffer referred to as the roosting buffer.
- (6) **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.

NOTE: The significant wildlife habitats subject to this section are depicted on GIS data layers maintained by IF&W and available from either IF&W or the DEP.

STATUTORY AUTHORITY:

38 ~~M.R.S.A.~~ M.R.S., Sections 341-D(1), 344(7), 480-H

EFFECTIVE DATE:

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AMENDED:

March 23, 1991
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May 1, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 4, 1996

NON-SUBSTANTIVE CORRECTIONS:

May 12, 1997 - punctuation, formatting, comparison with May 14, 1995 amendment
October 29, 1998 - APA Office Note added to first Section 5

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June 1, 1999
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