



NEPA Coastal Barrier Guidance

Introduction

Pursuant to 23 United States Code 327 and the implementing Memorandum of Understanding (MOU) executed on XX, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP). MaineDOT's assumption includes all highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA responsibilities or NEPA Assignment includes responsibility for environmental review, interagency consultation, and approval of NEPA actions. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for coastal barriers and the process for identifying coastal barriers to determine what appropriate level of coordination is required.

In accordance with the Coastal Barrier Resources Act (CBRA) (16 USC 3501-3510), projects located within a system unit of the Coastal Barrier Resources System (CBRS) may not be processed with federal funding if the exception criteria are not met. The CBRS is delineated and maintained by the U.S. Department of the Interior through USFWS. While most activities that involve federal expenditures are prohibited within the CBRS, several categories of activities are listed as exceptions (16 USC 3505(a)) to the federal expenditure prohibition.

MaineDOT Biologists are responsible for assessing and ensuring compliance with these laws under NEPA Assignment

This guidance document defines the process for identifying CBRS to determine what appropriate level of coordination is required.

Coastal Barrier information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision.

1.0 Coastal Barrier Initial Project Question and Documentation

The following question is required to be answered by the MaineDOT Biologist:

1. Does the project intersect with a Coastal Barrier Resource System?

The MaineDOT Biologist will use the USFWS Interactive Mapper [CBRS Mapper \(usgs.gov\)](https://www.usgs.gov/interactive-mapper) to answer this question.

A Yes response to Question 1 requires a review of the categories of activities listed as exceptions (16 USC 3505(a)) to the federal expenditure prohibition (go to 2.0). A No response concludes the Coastal Barrier assessment as CBRA would not apply to the project. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

2.0 Coastal Barrier Exception Process and Documentation

Once it has been determined that the location for a proposed project is within a system unit, the MaineDOT Biologist will notify the NEPA Manager. The next step is for the NEPA Manager to compare the project description to the exception criteria, and then determine if the project qualifies for an exception to the



NEPA Coastal Barrier Guidance

prohibition to use federal funding to develop an undeveloped coastal barrier resource. The CBRA exception criteria are listed in 16 USC 3505. The CBRA makes provisions for several exceptions for transportation which require additional consultation and the preparation of written evidence supporting the determination that an exception applies. Exceptions do not apply to project activities that involve the expansion of publicly owned or publicly operated roads or structures. If the proposed project is within a system unit and does not meet the exception criteria, the proposed project is not eligible for federal funding. The following are the two exceptions that will be reviewed:

- a. Compare the project description to the exceptions listed in 16 USC 3505(a)(3) to determine if project activities qualify for an exception because the project is an essential link.

Essential Link Exception

Project activities excepted under 16 USC 3505(a)(3) must be essential links in a larger network or system. An essential link is that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.

- b. Compare the project description to the exceptions listed in 16 USC 3505(a)(6)(F) to determine if project activities qualify for an exception and if the project is consistent with the purposes of the CBRA (16 USC 3501(b))

CBRA Consistent Exception

Project activities excepted under 16 USC 3505(a)(6)(F) must be consistent with the purposes of the CBRA. According to 16 USC 3501(b), the purposes of the CBRA are to minimize the following:

- Loss of human life
- Wasteful expenditure of federal revenues
- Damage to fish, wildlife, and other natural resources associated with coastal barriers

If the project qualifies as an exception, the NEPA Manager prepares written evidence to support the determination. If the project does not qualify for an exception, then the project activities are not eligible for federal funding under the CBRA. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

3.0 Agency Coordination, Review, and Approval Process

Once a determination is made regarding whether the project meets the threshold for one of the CBRA exceptions and written evidence supporting the exception has been prepared, the NEPA Manager will submit the evidence to USFWS. USFWS will provide an opinion as to whether the activity is allowed under a CBRA exception. However, the USFWS response is considered an opinion only. MaineDOT has the final decision under NEPA assignment. The NEPA Manager will consult with the Environmental Office Director for a final determination.

Compliance is met by obtaining the USFWS opinion if a project meets the exception criteria. For those projects, NEPA approval cannot be granted until the procedural requirement to solicit a USFWS opinion has been satisfied. USFWS opinions will be documented in MaineDOT's ProjEx database and MaineDOT's



MaineDOT

NEPA Coastal Barrier Guidance

Environmental CPD e-file.

4.0 Links

Coastal Barrier Resources Act

<https://www.law.cornell.edu/uscode/text/16/chapter-55>

CBRA Mapper

[CBRS Mapper \(usgs.gov\)](https://www.usgs.gov/land-use-land-cover/cbra-mapper)

CBRA Maps

[Maps and Data | U.S. Fish & Wildlife Service \(fws.gov\)](https://www.fws.gov/land-use-land-cover/cbra-maps)

DRAFT