

Attachment 8 - Permitting Risk Assessment

MaineDOT & DMR Culvert AOP Program – Downeast Bundle

The Maine Department of Transportation (MaineDOT) recognizes that assuring sustainability of habitats, ecosystems, and transportation infrastructure can occur in concert rather than in conflict. Toward that end, MaineDOT endeavors to exercise reasonable stewardship over both natural resources and transportation infrastructure through its commitment to addressing aquatic organisms, wildlife habitat, and fish passage. This is done in cooperation with natural resource agencies while weighing all aspects of a proposed project.

The parties involved in this grant application are also applying an innovative means with respect to NEPA and permitting for this project through Programmatic Agreements to ensure timely and consistent reviews and accelerate project delivery.

Programmatic Agreements

MaineDOT and various other state and federal departments have executed agreements to expeditiously, but thoroughly, review environmental impacts from projects. MaineDOT will take advantage of the following agreements, where applicable, to streamline the environmental review and approval process:

1. Programmatic Agreement between the Federal Highway Administration (FHWA), Maine Division and the Maine Department of Transportation Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid Highway Projects;
2. Programmatic Agreement among Federal Highway Administration, Federal Transit Administration, the Advisory Council on Historic Preservation, the Maine State Historic Preservation Officer, and MaineDOT Regarding Implementation of the Federal Aid Highway and Federal Transit Programs in Maine;
3. Cooperative Agreement between U.S. Department of the Interior Fish and Wildlife Service (USFWS), FHWA and the MaineDOT for State Transportation Reviews by the USFWS in Maine;
4. Maine Atlantic Salmon Programmatic Consultation finalized January 23, 2017;
5. Programmatic Agreement for the State of Maine concerning identification of listed and proposed species and designation of non-federal representative under the Federal Endangered Species Act between FHWA Maine Division, United States Army Corps of Engineers (USACE), & MaineDOT;
6. Memorandum of Agreement for Stormwater Management Between MaineDOT, Maine Turnpike Authority (MTA), and Maine Department of Environmental Protection (DEP);
7. Memorandum of Agreement between USACE, New England District and MaineDOT for Expediting Permit Application Evaluations under Section 214 of the Water Resources Development Act of 2000, as amended, and Section 139(j) of Title 23, United States Code, Assistance to Affected State and Federal Agencies, July 2022.

Project Readiness

1. Environmental Risk

During the development of the Culvert AOP project list, numerous risks were contemplated but each has a comprehensive mitigation strategy. Preliminary design is currently underway for several projects and coordination between the design team and the environmental team will continue to ensure that the Project goals and community needs can be met while avoiding, minimizing, and mitigation potential environmental impacts.

2. Required Approvals

MaineDOT has initiated communication with environmental agencies and interested parties. Preliminary baseline data collection to identify natural and cultural resources potentially affected by the Project is underway. This information will be refined during design and will be used to avoid and minimize impact while meeting the purpose and need of the Project.

- a. **National Environmental Policy Act (NEPA):** The (NEPA) process will inform design efforts. Based on the Project scope, the Project(s) are likely to be classified as Categorical Exclusion(s) in accordance with 23 CFR 771.117(c) (26) or d(13). NEPA Assignments is a Program which formally assigns the Federal Highway Administration's (FHWA's) NEPA responsibilities to the Maine Department of Transportation (MaineDOT) for Categorical Exclusions (23 USC 326) and the Surface Transportation Delivery Program (23 USC 327). MaineDOT assumes responsibility for all classes of NEPA and also assumes responsibility for environmental laws, regulations, Executive orders, and interagency consultation in Maine. MaineDOT, under this program, is deemed lead Federal agency for environmental review and consultation per 23 UCS 326 9e) and 23 USC 327 (m). Should any issues arise, MaineDOT will work directly with the respective agencies to quickly resolve them. Public involvement will be completed in accordance with MaineDOT Public Involvement Plan and the MaineDOT NEPA Public Involvement Plan. These plans can be found at this link:
<https://www.maine.gov/mdot/env/NEPA/public/index.shtml>

- b. **Historic and Archeological:** MaineDOT and FHWA will complete the Section 106 process for both sections in accordance with the Programmatic Agreement among Federal Highway Administration, Federal Transit Administration, the Advisory Council on Historic Preservation, the Maine State Historic Preservation Officer, and Maine Department of Transportation Regarding Implementation of the Federal Aid Highway and Federal Transit Programs in Maine. The MaineDOT historic coordinator will evaluate existing information and complete additional survey as necessary to identify all historic resources. The design team will work to avoid and

minimize impacts. Generally, pavement improvements and culvert replacements do not result in adverse effects. Should they arise because of unique circumstances, MaineDOT and FHWA will resolve adverse effects to historic properties in consultation with the Cultural Coordinator and the Maine Historic Preservation Commission as outlined in 36 CFR 800 and the MaineDOT Section 106 Programmatic Agreement. MaineDOT and FHWA Maine Division will engage federally recognized Tribes, especially for the portions of the project in the Passamaquoddy Pleasant Point Reservation area.

- c. **Section 4(f) of the Department of Transportation Act:** The MaineDOT Cultural Coordinator will review the project corridor to identify Section 4(f) resources. Project details and right-of-way information will be evaluated to avoid and minimize potential Section 4(f) uses. Based on the project scope and Section 4(f), use that is unavoidable is expected to be de minimus.
- d. **Endangered Species Act (ESA) and Essential Fisheries Habitat (EFH):** The Project area includes designated Essential Fish Habitat. MaineDOT and FHWA will incorporate Conservation Recommendations provided by NMFS for any culvert replacements that require in-water work. The project is located within the range of federally-listed Gulf of Maine Distinct Population segment of Atlantic salmon and its designated Critical Habitat. Stream crossings requiring replacement as part of the project will be sized and designed to meet the Maine Atlantic Salmon Programmatic Consultation, finalized in 2017. The Project is located within the range of the federally endangered Northern Long Eared Bat, proposed endangered Tricolored Bat, and proposed threatened Monarch Butterfly. MaineDOT anticipates that the Project may affect, but not adversely, the Northern Long-Eared Bat and the Tricolored Bat. The Project will be eligible for Streamlined Section 7 Consultation pursuant to the USFWS Northern Long-eared Bat and Tricolored Bat Range-wide Determination Key and/or the U.S. DOT and USFWS Range-wide Programmatic Consultation for Indiana Bat, Northern Long-eared Bat, and Tricolored Bat. Given the nature of the Project as a culvert replacement, MaineDOT does not anticipate any effect to the Monarch Butterfly should it be listed in the future. MaineDOT and FHWA will coordinate with federal agencies during Project design to avoid and/or minimize effects to EFH and ESA species and to update the required consultations as applicable in accordance with the Project schedule.
- e. **Section 404 Clean Water Act Permit (U.S. Army Corps of Engineers):** Freshwater wetland and stream impacts are expected to install replacement stream crossings. MaineDOT will avoid and minimize temporary and permanent wetland and waterbody impacts to the extent practicable. MaineDOT anticipates that wetland

impacts and any in-water work will be eligible for Category 2 Permits under the Maine Programmatic General Permit. Use of In-lieu fee mitigation payments to the Maine Natural Resources Compensation Program will streamline compensatory mitigation for unavoidable wetland impacts.

- f. **Natural Resources Protection Act (Maine DEP):** Wetland and stream impacts are regulated by the Maine Natural Resources Protection Act. MaineDOT anticipates that wetland and stream impacts associated with the Project will be eligible for Permit-By-Rule Chapter 305, Section 11, which is a streamlined permit process for State Transportation Facilities.
- g. **Stormwater (Maine DEP):** The Project will incorporate Best Management Practices for temporary and permanent management of soil erosion and sedimentation. Permanent measures for treatment of stormwater quantity and quality will be incorporated in accordance with Chapter 500 regulations and the Memorandum of Agreement for Stormwater Management Between the MaineDOT, MTA and Maine Department of Environmental Protection.
- h. **Floodway/Floodplains:** The Project may require construction of new crossings at waterbodies with designated Zone A and Zone B floodplains. All crossings will be designed to avoid and minimize encroachments into designated flood zones and in accordance with Executive Order 11988. Crossings will generally be designed to improve hydraulic capacity and aquatic connectivity.

Project Risks	Mitigations
Environmental permitting/restriction • Federally Endangered Atlantic Salmon DPS and Critical Habitat	• Collaborative agreements with MaineDOT, USFWS, USACE, FHWA and MTA under the Endangered Species Act through a process that expedites endangered species consultations and aims to meet both wildlife and Project goals (http://www.maine.gov/mdot/maspc/4) • Choosing a final design that minimizes in water work • Constructability reviews will be completed during design to ensure the selected alternative is buildable given the various environmental restrictions.