

# Frequently Asked Questions on Permitting and Variances

## Section 11. Crossings of Water Bodies 2

**Does the forest operations notification requirement and certification for permanent crossings and standards in the rule replace the requirement for a permit or permit-by-rule from the MFS?**

Answer: No. Permanent crossings of waterbodies will continue to require a permit or permit by rule from MFS.

**Will there be a cost for permits or will the SWS use permit by rule?**

Answer: The fees for permits for permanent stream crossings and related activities are set forth in MFS Chapter 29 Rule, Fee Schedule. The permit-by rule (PBR) fee currently is \$125. There may also be fees required to obtain permits from other agencies (e.g. LUPC, DEP, Army Corp, DIFW) or for activities requiring a permit under other MFS rules.

**When is a crossing considered permanent?**

Answer: Any crossing that exists for more than 7 months is considered permanent and must meet the standards for permanent crossings. In addition, any use of fill below the normal high water line of a waterbody automatically makes it a permanent crossing, regardless of how long it exists.

**Is fish passage required for all water crossings? What about seasonal brooks or ephemeral areas?**

Answer: If a waterbody meets the MFS definition of a brook or stream, then it must allow for fish passage. In addition, crossing structures must not impound water and must maintain normal stream flows.

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## **When installing a stream crossing structure (or removing one), what is considered an unreasonable discharge of sediment?**

Answer: Discharges of sediment must be consistent with the Protection and Improvement of Waters Act and Erosion and Sediment Control Law. Discharges of sediment are generally considered unreasonable when commonly accepted Best Management Practices are not applied effectively.

## **Is a permit by rule required for both the temporary and permanent water crossings?**

Answer: A permit by rule, submitted to the MFS, is required for permanent water crossings only.

## **Can a town that is under Statewide standards require a permit for a temporary crossing?**

Answer: No, provided the crossing is associated with a skid trail or haul road as defined by the statewide standards. Requiring a permit would be considered more restrictive than the statewide standards.

## **When is a variance allowed?**

Answer: A variance may be granted in limited instances in which compliance with the standards in the rule is not possible and the applicant meets all 4 of the criteria below. Specifically, a successful applicant for a variance must demonstrate that: a. Strict compliance with the regulations or standards would, because of unique conditions of topography, access, location, shape, size, or other physical features of the site or forest condition, cause unusual hardship or extraordinary difficulties; b. The unusual hardship or extraordinary difficulties claimed as a ground for the variance have not been created by the owner or a predecessor in title; c. The proposed use meets the purpose and intent of statewide standards; and d. The public interest is otherwise served.

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## **Do streams that drain less than 300 acres need a PBR?**

Answer: Yes

Section 11.B.4.b of the SWS document states “A permit by rule must be submitted to the Bureau prior to construction, maintenance, alteration, and replacement of permanent crossings of waterbodies subject to a 75’ shoreland area or adjacent shoreland area as defined by §(4)(W)(2) and (3) of this rule.”

## **Can you amend an existing PBR to add other crossings?**

Answer: Yes, as long as it is an open PBR for the town of activity (2 year expiration on a PBR).

You can think about filing a PBR for each town when you file a new FON (can last for two years). After the PBR is open you can amend and add as many crossing as needed for the 2 year window. Each new crossing is still subject to the wait period if the work is done between October 2<sup>nd</sup> and July 14<sup>th</sup>, and still requires a map and pertinent information be submitted. The application fee is waived for amendments (landowners pay the \$125 fee once to open a new PBR) but don’t pay for the amendments. It does make sense to put as many planned crossings on a PBR at the time of the original submission to save on paperwork. It is important to indicate what time of year the crossings will be installed given the wait period between October 2<sup>nd</sup> and July 14<sup>th</sup> which requires an IFW review before work is done.

## **Do you need a PBR to replace bridge decking where the abutments were left when the road was put to bed?**

Answer: Yes. Repair, maintenance and replacements to existing crossings are allowed without a PBR. The existing structure has to have been used to be able to allow a two wheel drive vehicle to cross within the last two years for it to not to require a permit. If the deck has been removed longer than two years then a PBR is required.

## **Do you need a PBR to put culverts back into a road that is put to bed?**

Answer: If the road was put to bed more than 2 years ago, then yes a PBR would be required to install new culverts. As mentioned above MFS does not require a PBR for the repair, maintenance, or replacement of existing crossings. MFS interprets a crossing to be existing if it was passable with a two wheel drive vehicle at any point in the last two years. If the road was put to bed more than 2 years ago and new culverts will be installed then a PBR is required.

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PBR's only apply to the crossing of regulated streams, or the crossing of non forested freshwater wetlands greater than 4,300 square feet in size, a PBR would not be required to replace cross drain culverts. MFS defines a stream based on the following criteria.

1. Has exposed mineral soil or parent bed material
2. Has defined banks/ defined channel.
3. Is hydrologically connected to other waterbodies.

MFS defines non forested freshwater wetlands as ponds, freshwater swamps, marshes, bogs and similar areas that are: Inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Wetlands become forested once they are stocked with species of acceptable growing stock that have obtained a minimum of 20 in height and are stocked with either greater than 300 TPA or 30 square feet of basal area.

**Chapter 21 allows for the repair, maintenance and replacement of existing crossing without a permit, but requires that MFS be notified prior to the start of the activity, what is required for MFS to be properly notified?**

Answer: Indicating the activity on a Forest Operation Notification, or notification amendment is sufficient for notification. MFS can also be notified of the activity via email or phone call to a District Forester or Regional Enforcement Coordinator.