Chapter 305: NATURAL RESOURCES PROTECTION ACT

PERMIT BY RULE

Section 4:

Replacement of Structures

NOTE: *This Section-by Section version of Permit By Rule is re-formatted to increase usability and includes additional guidance, annotations, and addendum. The entire rule, as published, is available below.*

Link to Permit By Rule Section 1 (Introductions & Compliance Info)

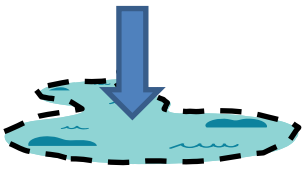
Official Chapter 305 Rule (all sections):
https://www.maine.gov/sos/rulemaking/agency-rules/department-environmental-protection-rules

AMENDED:
May 25, 2005 – filing 2005-174 December 5, 2006 – filing 2006-496
February 25, 2008 – Section 20 only, filing 2008-88
July 15, 2009 – filing 2009-339
July 30, 2011 – Section 16 only, filing 2011-211 (Final adoption, major substantive)
June 8, 2012 – filing 2012-146 (Final adoption, major substantive)
December 27, 2022 – Section 16-A only, filing 2022-256

Permit By Rule Section 4

A. APPLICABILITY

1



This section applies to the replacement of a 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 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). (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 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. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S. Sections 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.*

Permit By Rule Section 4

B. SUBMISSIONS

Submissions for all sections:

PBR Notification Form

Location Map

Submissions for Section 4:

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.

Marine Resources Timing Form:
https://www.maine.gov/dmr/sites/maine.gov.dmr/files/inline-files/DMR%20TOY%20app%2002-20.pdf

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 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.

C. STANDARDS

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" 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.

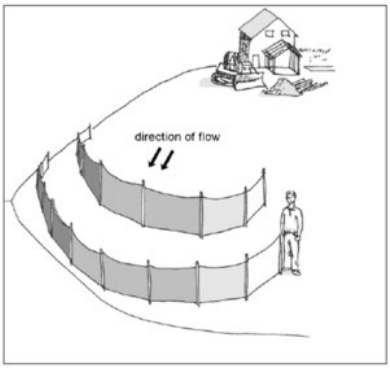
***NOTE:** FEMA flood map information may be found at the FEMA website or your municipal office: https://www.fema.gov/flood-maps.*

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.

C. STANDARDS (CONT.)

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; sandbags, and shallow excavated trenches;

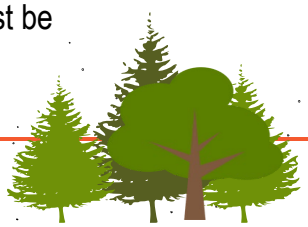
(e) Within 1 calendar day following the completion of any soil disturbance, and prior to any storm event, temporary or permanent stabilization must be implemented or spread on any exposed soils;

(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.

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

7 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.



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

NRPA Permit By Rule Section 4

C. STANDARDS (CONT.)

9 

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

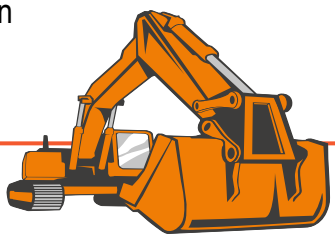
13 If work is performed in a river, stream or brook that is less than three feet deep at the time of the activity and at the location of the activity, the applicant must provide for temporary diversion of flow to the opposite side of the channel while work is in progress.

(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 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 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.

C. STANDARDS (CONT.)

16 All debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. 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. Section 1301 et seq.

17 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 the waterbody or wetland.

18 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. Sawdust or other lumber waste materials may not be stored or placed in such a manner that the pollutants may be discharged into the resource.

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

NRPA Permit By Rule Section 4

D. DEFINITIONS

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

1. **Dam.** Any 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).

Permit By Rule Section 4

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. 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(9)** 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:

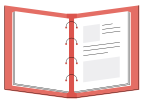
(a) Erosion control measures are taken to prevent sedimentation of the water;
(b) There is no additional intrusion into the coastal wetland;
(c) Fill is not placed in or adjacent to the coastal wetland; and
(d) The dimensions of the repaired pier, wharf or dock do not exceed the dimensions of the pier, 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.

(5) **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 must employ erosion control measures to prevent sedimentation of any surface water, may not block fish passage in any water course and 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.

HOW TO SUBMIT YOUR PERMIT BY RULE

 **STEP 1**	DETERMINE APPLICABLE PERMIT-BY-RULE SECTION(S)	Permit-by-Rule regulations (Chapter 305) apply to certain activities that require a permit under the Natural Resources Protection Act (NRPA). Find the appropriate section for the activity you are proposing to see the requirements.
 **STEP 2**	REVIEW CHAPTER 305 PBR SECTION STANDARDS	Find the section for your type of proposed activity in the Chapter 305 standards. Read the applicability section that describes in further detail which activities are included and where they are allowed. Read and comply with all the standards contained in the section.
 **STEP 3**	MAINE ENTERPRISE LICENSING SYSTEM **(MELS)** HUB	Use the MELS Hub, which is the centralized DEP resource designed to apply for your PBR electronically. Payment is also accepted during this process: Maine DEP: MELS Hub
 **STEP 4**	WAIT 20 WORKING DAYS AND PROCEED WITH PROJECT FOLLOWING STANDARDS	The PBR becomes effective 20 working days (M-F excluding holidays) from the date the Department receives the completed MELS submission, unless otherwise notified by the Department.

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