Chapter 305: NATURAL RESOURCES PROTECTION ACT

PERMIT BY RULE

Section 12:

Restoration of Natural Areas

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
December 9, 2023 - Section 16 only, filing 2023-231 (Final adoption, major substantive)
June 17, 2025 – filing 2025-129

NRPA Permit By Rule Section 12

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 This section applies to the removal of non-native species and/or the planting of 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 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.

7 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-A to 480-KK.

A. APPLICABILITY

8 ✗ 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 (US Army Corps of Engineers, 442 Civic Center Drive, Suite 350, Augusta, ME 04330. Tel. (207) 623-8367).

B. SUBMISSIONS

Submissions for all sections:

PBR Notification Form

Location Map

Submissions for Section 12:

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 municipality in which the activity took place.

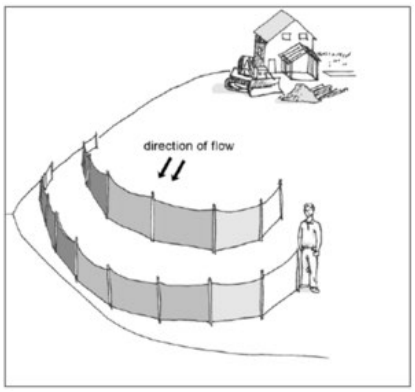
3. For an activity occurring in tidal waters, notice of approval of timing from the Department of Marine Resources must be submitted to the DEP with the notification form.

DMR Timing Form is available here:
https://www.maine.gov/dep/land/nrpa/pbrdmr.pdf

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;

(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, 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 control consult the Maine DEP 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.*

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.

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.

C. STANDARDS (CONT.)

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.

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 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.*

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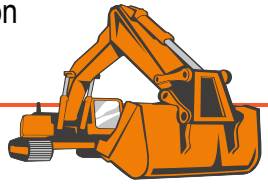
C. STANDARDS (CONT.)

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 All 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.

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

DMR Timing Form is available here:
https://www.maine.gov/dep/land/nrpa/pbrdmr.pdf

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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.

2 **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.

3 **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.

4 **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.

5 **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.

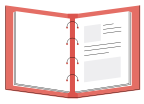
6 **Restoration.** An activity returning a great pond, coastal wetland, freshwater wetland, river, stream or brook from a disturbed or altered condition with lesser acreage or fewer functions to a previous condition with greater acreage or functions.

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.

8 **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.

9 **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).*

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
https://www.maine.gov/dep/mels/hub.html

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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GUIDANCE & RESOURCES

Natural Resources Protection Act (NRPA) Basics & Submitting a Permit By Rule (Video)
https://youtu.be/cPmqZYE0XZY

Maine DEP Erosion Control Best Management Practices Field Guide
www.maine.gov/dep/land/erosion/escbmps/esc_bmp_field.pdf

Additional Manuals and Guides to Reduce Water Pollution
www.maine.gov/dep/land/watershed/materials.html