Chapter 305: NATURAL RESOURCES PROTECTION ACT

PERMIT BY RULE

Section 8-A:

Increasing the Height of a Vertical Seawall or Retaining Wall in a Coastal Wetland

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

A. APPLICABILITY

1 This section applies to increasing the height of a legally existing vertical seawall or retaining wall in and/or directly adjacent to a coastal wetland when erosion or damage to structures from wave action has occurred above or behind the structure.

2 This section does not apply to an activity in a coastal sand dune system (see Section 16: Development activities in coastal sand dunes).

3 This section applies both to projects that constitute a replacement of a vertical seawall or retaining wall under Section 4 of this chapter and to projects that do not meet the definition of a replacement.

4 This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTES:

(1) Coastal sand dune systems are defined by the Department's Chapter 355 Coastal Sand Dune Rules. The Maine Geological Survey publishes maps to aid in the identification of coastal sand dune systems. Maps can be found here: https://www.maine.gov/dacf/mgs/pubs/digital/dunes.htm

(2) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements. The DEP's minimum guidelines for Municipal Shoreland Zoning Ordinances allow for a construction equipment access path no wider than 12 feet if working from the upland. An approved replanting plan is required for any vegetation that is removed.

NRPA Permit By Rule Section 8-A

B. SUBMISSIONS

Submissions for all sections:

 **PBR Notification Form**

 **Location Map**

Submissions for Section 8-A:

1. The applicant must submit at least one photograph showing the existing structure for each 25 feet of its length along the shoreline. The photographs must clearly document active erosion or recent damage to structures occurring above or behind the structure, and a written statement describing the cause of the erosion or damage.

2. The applicant must submit a scaled drawing and at least two cross-sections of the proposed project. The drawing must clearly depict the extent of any soil disturbance or grading, vegetated areas, property boundaries, the highest astronomical tide line, the location of the existing vertical seawall or retaining wall and the location of the height increase. The cross sections must clearly depict the elevations of the top of the current vertical seawall or retaining wall, the proposed final elevation of the top of vertical seawall or retaining wall, and the base flood elevation mapped by FEMA. The drawing must be legible and drawn to a scale that provides a clear representation of distances and measurements on the plan.

3. Pursuant to subsection C(5) of this section, if the project is not designed by a design professional, the applicant must submit approval from, and evidence of the credentials of, a design professional.

4. 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.

C. STANDARDS

1 The top of the vertical seawall or retaining wall may not extend higher than one foot above the base flood elevation mapped by FEMA.

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

2 The height of the vertical seawall or retaining wall may not be increased within 5 feet of abutting properties unless the structure, after being increased in height, connects to vertical seawall or retaining wall of the same or greater height on the abutting property, the applicant owns the abutting property, or the abutting property owner agrees in writing that the portion of the structure that is being increased in height may be extended closer to the property line.

3 The newly added portions of vertical seawall or retaining wall must be made of the same or similar material and have the same or similar color and texture as the existing portions.

4 No fill may be placed behind the increased-height vertical seawall or retaining wall except as necessary to provide structural stability to the vertical seawall or retaining wall. Increasing the elevation of a lawn or yard behind a seawall is not allowed.

5 The project must be designed or approved by a design professional such a Maine Registered Professional Engineer or a contractor or consultant with demonstrated experience designing coastal shoreline stabilization structures or repairing seawalls or retaining walls. Evidence of the design professional's approval and credentials must be submitted with the Notification Form. With prior written agreement, the DEP may waive this standard for a project in an area that is not mapped by FEMA as a high-velocity flood zone.

6 If non-invasive vegetation must be disturbed during the activity, similar types and amounts of native vegetation must be re-established in accordance with the revegetation standards in the Department's Chapter 1000 Guidelines for Municipal Shoreland Zoning Ordinances immediately upon completion of the activity and must be maintained to ensure survival. No trees larger than 4 inches diameter at breast height may be removed, except as for equipment access to the structure and removal of hazard trees.

C. STANDARDS (CONT.)

7 If soil must be disturbed during the activity; 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 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;

(c) 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;

(d) 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;

(e) All disturbed soils must be permanently stabilized; and

(f) 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.

8 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.

9 For any work occurring below the highest astronomical tide line, the activity must occur during the time period approved by the Department of Marine Resources.

10 Wheeled or tracked equipment may not be operated in the water.

NRPA Permit By Rule Section 8-A

C. STANDARDS (CONT.)

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 Uncured concrete may not be placed below the highest astronomical tide line. Concrete must be pre-cast and cured at least three weeks before placing below the highest astronomical tide line, 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 or adjacent to the waterbody or wetland.

13 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 must 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 pollutants may be discharged into the resource.

NRPA Permit By Rule Section 8-A

D. DEFINITIONS

1 **Hazard tree**. A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

2 **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 or highest astronomical tide line.

3 **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 or highest astronomical tide line and designed to retain earth behind the wall.

4 **Seawall**. A vertical wall that separates land from water areas, commonly constructed out of rocks, wood, concrete or other similar materials, generally built for the purpose of protecting structures or property from shoreline erosion caused by wave or current action.