

Frequently Asked Questions

Maine Forest Service, Chapter 21 Rule: Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas

These frequently asked questions are intended to address specific questions related to the Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas (“SWS”). The answers take into account the full context, meaning, and intent of the rules themselves, as well as the original intent of the authorizing statutes, and other associated Maine Forest Service (MFS) rules pertaining to timber harvesting. The answers below should be understood and applied within that context.

The SWS are anticipated to take effect in unorganized and de-organized territories in January 2026. The process by which this change is occurring is described in greater depth on the MFS website.

General questions:

1. Why are SWS taking effect in unorganized territories in 2026?

Answer: The statutes authorizing SWS require that SWS become effective in unorganized territories once a “critical mass” of organized towns have adopted them. That critical mass of towns has now been reached in 2024. The statute states that SWS take effect in unorganized towns one full calendar year after the year in which critical mass is reached, i.e. January 2026.

2. Will there be more information about the SWS for those working in unorganized towns?

Answer: Yes. The “full calendar year” before SWS take effect in unorganized towns, i.e. all of 2025, is to allow MFS to provide additional workshops, training and information on the standards themselves. MFS intends to hold workshops in multiple locations, as well as hosting webinars, along with printed materials and information on our website.

3. Will the Chapter 27 standards that currently apply in unorganized territories still be in effect? Will there be overlap between Chapter 27 and Chapter 21 standards?

Answer: Chapter 27 will still exist, but there will not be overlap. MFS is undertaking rule-making for Chapter 27 to remove duplication with SWS. Chapter 21 SWS will apply to water bodies and shoreland areas, while Chapter 27 will have standards for other protected resources and activities in unorganized territories, such as mountain areas and gravel extraction.

4. After SWS are adopted statewide, can individual municipalities choose to have their own shoreland standards for timber harvesting?

Answer: Yes. Municipalities may choose not to adopt SWS and continue to have their own local ordinances related to timber harvesting in shoreland areas, based on state-mandated Municipal Shoreland Zoning Ordinances and other local ordinances.

5. Will the remaining municipalities that have not acted or chosen to enact their own ordinances related to timber harvesting in shoreland areas come under statewide standards once SWS is adopted statewide?

Answer: No, towns that have not adopted statewide standards will continue to have and be responsible for their own ordinances, including municipal shoreland zoning ordinances that address timber harvesting. However, towns that wish to consider adopting SWS are encouraged to contact MFS for information and assistance.

6. If a harvest is ongoing when a municipality adopts SWS, can the harvest continue under the previous standards?

Answer: Yes, as long as prior to the effective date of SWS in the municipality, a Forest Harvest Notification was filed and certified by all parties, and harvesting has begun. MFS will consider harvests as having begun when a log landing has been established, trees have been felled, and/or skidding or forwarding is ongoing. If there are multiple, non-contiguous harvest areas identified on a Forest Operations Notification, only those harvest areas that have begun can operate under previous standards. All harvest areas begun after the effective date of SWS must comply with newly adopted standards.

7. Do SWS apply when forest land is being cleared to convert the land to development or other nonforest uses?

Answer: No, SWS rules only apply to timber harvesting activities. Clearing forests for development or other nonforest uses (e.g. agriculture) fall under DEP, LUPC, and/or local municipal regulations and are regulated by those agencies.

8. If a harvest is ongoing in an unorganized territory on January 2, 2026, can the harvest continue under the previous (Chapter 27) standards?

Answer: Yes, as long as prior to the effective date of SWS, a Forest Harvest Notification was filed and certified by all parties, and harvesting has begun. MFS will consider harvests as having begun when a log landing has been established, trees have been felled, and/or skidding or forwarding is ongoing. If there are multiple, non-contiguous harvest areas identified on a Forest Operations Notification, only those harvest areas that have begun can operate under previous standards. All harvest areas begun after the effective date of SWS must comply with newly adopted standards.

9. If a harvest is started before a municipality adopts SWS but the harvester wants to change to the SWS after the adoption date, does the harvester have to amend the FONs?

Answer: Yes, provided the municipality has adopted the statewide standards. In this situation, the Forest Operations Notification must be amended, and the shade option indicated.

The following Q&A refer to particular sections of the Chapter 21 rules.

Section 4. Definitions

10. If a stream with a 75-foot shoreland area flows into a waterbody that does not meet the definition of a great pond and flows out again what is the buffer width around the waterbody?

Answer: In this case the waterbody is considered part of the stream and the 75-foot buffer will continue around the waterbody. In cases where the waterbody through which a stream flows has a larger required shoreland area than the stream, the more restrictive standards in the rule will apply to that waterbody.

11. For the purpose of determining the normal high-water line, what are the criteria for identifying a forested wetland?

Answer: Forested wetland means a freshwater wetland dominated by woody vegetation that is at least 20 feet tall. Woody vegetation present on the site must consist of either:

- a. acceptable growing stock trees over 4.5 inches DBH comprising more than 30 square feet per acre basal area; or,
- b. at least 300 acceptable growing stock trees per acre at least 20 feet tall.

Trees must be windfirm (Height/diameter ratio ≤ 80) and well distributed across the site.

Section 5. Shoreline Integrity and Sedimentation

12. Are harvesting equipment tracks (depressions in the ground) that do not expose mineral soil allowed within the shoreland areas?

Answer: Depressions are allowed in shoreland areas so long as sediment and concentrated runoff do not enter the waterbody and shoreline integrity is not disrupted. See Chapter 21 §§9(C) and 4(G).

Chapter 21 § 9(C) provides: “**DESIGN, CONSTRUCTION, AND CLOSEOUT.** Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body. Upon termination of their use, skid trails and yards must be stabilized.”

Chapter 21 § 4(G) provides the definition for disruption of shoreline integrity.

The activity should not cause sediment or concentrated water runoff to enter a water body.

Sections 7 and 8. Standards for Timber Harvesting and Related Activities in Shoreland Areas

13. Are roads, skid trails and harvest landings included in the area calculations for cleared openings?

Answer: Yes, the areas of skid trails, roads, and harvest landings are included in the calculations for cleared openings and volume removal. Cleared openings are openings in the forest canopy that exceed 2,500 square feet, measured from the drip edge of the remaining trees.

14. How do we know when clearing for development standards apply instead of Statewide Standards for Timber Harvesting?

Answer: The exclusions found in Chapter 21, Section 3(B), clarify when the removal of vegetation is not considered timber harvesting. If the removal of vegetation meets one or more of these exclusions, the activity must comply with the requirements and standards of the Department of Environmental Protection, other state rules, Municipal Shoreland Zoning Ordinance or the Land Use Planning Commission, or other local ordinances, depending on which entity has jurisdiction.

There are three exclusions:

1. Removal of vegetation in proximity to an existing developed area.
2. Removal of vegetation in the shoreland area from parcels less than two acres in size.
3. Removal of vegetation for the primary purpose of converting the land to a use other than forestland.

15. How does MFS determine when the primary purpose of a timber harvest is for development or change of land use?

Answer: Timber harvesting activity typically includes the cutting and removal of trees and the subsequent transport of trees to a roundwood processing operation. The activity is considered forest conversion if the subsequent use of the land is farm pasture, hay land, a site for growing agricultural crops, a site for the construction of a residential dwelling unit or units, or a site for other development. The MFS will use available evidence to determine the objectives of the landowner regarding the activity that has occurred or will occur on the parcel in deciding if the site will remain forest land or be converted to a different use.

Except in cases where the landowner can demonstrate that a change in use is indisputable, the MFS will make its determination on a case by case basis based on site specific circumstances and in consultation with other regulatory authorities as appropriate.

16. Many softwood stands are not in a windfirm condition before being harvested. How can a forester be expected to leave a windfirm stand when one did not exist in the first place?

Answer: If a windfirm stand cannot be established or retained a variance is needed.

17. Will the calendar on the 40% removal in any ten-year period start when statewide standard become effective in a municipality or unorganized town, or does cutting prior to the effective date of these standards count?

Answer: All harvesting in the 10 years prior to the forest operations notification filing date counts toward the removal threshold.

18. What is the definition of a cleared opening?

Answer: A cleared opening is an opening in the forest canopy measured from the drip edges of the remaining trees that exceeds 2,500 square feet. Cutting a single tree will not create a cleared opening regardless of size. The residual stand must comply with all other provisions of SWS.

19. What is the definition of a well distributed stand?

Answer: A well distributed stand is one where each acre meets the shade and tree retention standards, including cleared openings. If all acres meet these standards, the stand will be considered well distributed. Sample plots will be used to determine acres that meet/do not meet these standards.

20. When can the outcome-based option be used to meet shade and tree retention standards?

Answer: The outcome based option may be used when it provides equal or better protection of the shoreland area and the adjacent waters than the rule, and MFS has approved the proposal.

21. If there are multiple waterbodies on a harvest, can you choose more than one option for shade?

Answer: This is allowed under the outcome based option for shade and tree retention, provided the MFS approves.

22. Can unacceptable growing stock be used to meet the 60 ft² residual option under SWS?

Answer: Trees must be alive and meet the same definition of acceptable growing stock found in the FPA rules at Ch. 20 §2(A)(1).

Acceptable growing stock means live trees of commercially valuable species that are not culls, are capable of developing into trees suitable for producing merchantable products, and which:

- a. Have survived at least two full growing seasons (April 1 through October 1);
- b. Do not lean more than 30 degrees from vertical;
- c. Do not have a broken, dead, or missing main stem;
- d. For trees 8 inches DBH or larger, have not suffered scrapes from timber harvesting that penetrate the cambium on more than one half of the stem circumference at any point on the tree;
- e. For trees less than 8 inches DBH, have not suffered scrapes from timber harvesting that penetrate the cambium on more than one third of the stem circumference at any point on the tree; and
- f. Have not suffered visible severing, mutilation, or exposure from timber harvesting of more than one third of the root spread.

23. Which areas of significant wildlife habitat are currently subject to a 250-foot zone?

Answer: Significant wildlife habitat is defined at 38 M.R.S. §480-B(10).

According to the statutory definition (see below for text) in order to be considered significant wildlife habitat, areas must have been mapped by DIFW and the maps must have been adopted by rule pursuant the Administrative Procedures Act (APA). At the current time, no significant wildlife habitat maps, except for sea bird nesting islands, have been adopted as rules in accordance with the rulemaking process set forth in the APA. Therefore, ponds and wetlands identified by DIFW as significant wildlife habitat are currently not subject to statewide standards unless these areas happen to lie in an area that is in another shoreland area. If the purpose of the timber harvest is development or change to land use, significant wildlife habitat may affect state or local permitting and be required to adhere to those standards.

24. If a harvest removes 40% of volume in a shoreland area prior to SWS implementation, can you then use Option 2 to thin to 60 BA or apply for an Option 3 outcome-based method within that ten-year window?

Answer: No. Only one option can be used within any ten-year period.

25. If a shoreland area is harvested more than once in any ten-year period can the harvests remove 40% of the volume each time?

Answer: No. A maximum of 40% volume may be removed in any ten year period. The volume removed in each entry will be cumulative and count toward the total volume removed during the period.

Similarly, if multiple harvest entries are conducted in any 10-year period, one standard must be chosen for all harvests within the period, i.e. reducing the shoreland area to 60 ft² residual basal area in the first entry and returning within 10 years and removing 40% of the residual volume is not allowed.

Section 10. Land Management Road Construction and Maintenance Standards

26. If a road is extended does just the extension need to meet standards or does the entire road need to be brought into compliance?

Answer: The extension must comply. The remainder of the road may continue to exist and be

maintained provided it is not being enlarged or made more non-conforming, and is not delivering sediment or other pollution to a waterbody. It is important to remember that these standards only apply to roads within a shoreland area.

27. For existing nonconforming roads within a shoreland area, when does maintenance rise to the level of enlargement? Example: brushing and re-ditching an old nonconforming road.

Answer: Anything that increases the footprint of an existing road and ditches is considered enlargement.

Section 11. Crossings of Water Bodies

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

Section 13. Responsibility

35. Who is the responsible party for compliance with SWS?

Answer: The responsible party is that person (or entity) responsible for activities within the shoreland area that are regulated by the Chapter 21 rules and may include the landowner, designated agent, harvester, or forester. Ultimately the landowner is responsible for actions taken on their property, but the MFS will determine through due diligence the parties that will be held responsible for violations and corrective actions to bring activities into compliance.

Section 14. Variances

36. 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.