

# Chapter 305: NATURAL RESOURCES PROTECTION ACT

## PERMIT BY RULE



## Section 11: State Transportation Facilities

**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.

### Official Chapter 305 Rule (all sections):

<http://www.maine.gov/sos/cec/rules/06/096/096c305.docx>

#### 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

# A. APPLICABILITY

- 1 This section applies to the maintenance, repair, reconstruction, rehabilitation, replacement or minor construction of a State Transportation Facility carried out by, or under the authority of, the Maine Department of Transportation (MaineDOT) or the Maine Turnpike Authority, including any testing or preconstruction engineering, and associated technical support services.
- 2  This section does not apply to an activity within a coastal sand dune system.

NOTE: The construction of a transportation facility other than roads and associated facilities may be subject to the Storm Water Management Law, [38 M.R.S.A. Section 420-D](#).

# B. STANDARDS

- 1 Photographs of the area to be altered by the activity must be taken before work on the site begins. The photographs must be kept on file and be made available at the request of the DEP.
- 2 The activity must be reviewed by the Department of Inland Fisheries and Wildlife and the Department of Marine Resources, as applicable. The applicant must coordinate with the reviewing agencies and incorporate any recommendations from those agencies into the performance of the activity.
- 3 All construction activities undertaken must be detailed in a site-specific Soil Erosion and Water Pollution Control Plan and conducted in accordance with MaineDOT's Best Management Practices for Erosion and Sediment Control, dated January 2000, and Standard Specifications, dated December 2002.
- 4 Alignment changes may not exceed a distance of 200 feet between the old and new center lines in any natural resource.
- 5 The activity may not alter more than 300 feet of shoreline (both shores added together) within a mile stretch of any river, stream or brook, including any bridge width or length of culvert.
- 6 The activity may not alter more than 150 feet of shoreline (both shores added together) within a mile stretch of any outstanding river segment identified in [38 M.R.S.A. §480-P](#), including any bridge width or length of culvert.

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### C. STANDARDS (CONT.)

**7** The activity must minimize wetland intrusion. The activity is exempt from the provisions of Chapter 310, the Wetland and Waterbodies Protection Rules, if the activity alters less than 15,000 square feet of natural resources per mile of roadway (centerline measurement) provided that the following impacts are not exceeded within the 15,000 square foot area:

- (a) 1,000 square feet of coastal wetland consisting of salt tolerant vegetation or shellfish habitat; or
- (b) 5,000 square feet of coastal wetland not containing salt tolerant vegetation or shellfish habitat; or
- (c) 1,000 square feet of a great pond.

All other activities must be performed in compliance with all sections of Chapter 310, the Wetland Protection Rules, except 310.2(C), 5(A), 9(A), 9(B) and 9(C).

**8** The activity may not permanently block any fish passage in any watercourse containing fish. The applicant must coordinate with the reviewing agencies listed in paragraph 2 above to improve fish passage and incorporate any recommendations from those agencies into the performance of the activity.

NOTE: For guidance on meeting the design objectives for fish passage, including peak flow, maximum velocity, mining depth and gradient, see the MaineDOT Waterbody and Wildlife Crossing Policy and Design Guide (July 2008), developed in conjunction with state and federal resource and regulatory agencies.

**9** Rocks may not be removed from below the normal high water line of any coastal wetland, freshwater wetland, great pond, river, stream or brook except to the minimum extent necessary for completion of work within the limits of construction.

**10** If work is performed in a river, stream or brook that is less than three feet deep at the time and location of the activity, the applicant must isolate the work area from the resource and divert stream flows around the work area, maintaining downstream flows while work is in progress.

**11** 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. If avoiding the operation of wheeled or tracked equipment in the water is not possible, the applicant must explain the need to operate in the water. Approval from the DEP to operate in the water must be in writing, and any recommendations from the DEP must be incorporated into the performance of the activity.

**12** All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms.

**13** Any debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. Erosion and sediment control best management practices 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 the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Section 1301 et seq.

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### C. STANDARDS (CONT.)

**14** Work below the normal high water line of a great pond, river, stream or brook must be done at low water except for emergency work or work agreed to by the resource agencies listed in paragraph 2 above.

**15** Perimeter controls must be installed before the work starts. Disturbance of natural resources beyond the construction limits shown on the plans is not allowed under this rule.

NOTE: Guidance on the location of construction limits can be obtained from the on site Construction Manager.

**16** 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.A. §1682, and provided it is cured on dry land in a manner that exposes 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 it will contact water.

**17** A temporary road for equipment access must be constructed of crushed stone, blasted ledge, or similar materials that will not cause sedimentation or restrict fish passage. Such roads must be completely removed at the completion of the activity. In addition, any such temporary roads which are in rivers, streams or brooks, must allow for a passage of stormwater flows associated with a 10-year storm.

**18** Non-native species may not be planted in restored areas.

**19** Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Sections 1301 et seq.

**20** Disturbance of vegetation must be avoided, if possible. Where vegetation is disturbed outside of the area covered by any road or structure construction, it must be reestablished immediately upon completion of the activity and must be maintained.

**21** A vegetated area at least 25 feet wide must be established and maintained between any new stormwater outfall structure and the high water line of any open water body. A velocity reducing structure must be constructed at the outlet of the stormwater outfall that will create sheet flow of stormwater, and prevent erosion of soil within the vegetated buffer. If the 25 foot vegetated buffer is not practicable, the applicant must explain the reason for a lesser setback in writing. Approval from the DEP must be in writing and any recommendations must be incorporated into the activity..

## D. DEFINITIONS

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

- 1 **Diversion.** The rerouting of a river, stream or brook around a construction site and then back to the downstream channel
- 2 **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 immediately adjacent to a wetland or water body.
- 3 **Floodplain wetlands.** Freshwater wetlands that are inundated with flood water during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Agency or other site specific information.
- 4 **Riprap.** Heavy, irregularly shaped rocks that are fit into place, without mortar, on a slope as defined in the MaineDOT Standard Specifications, dated December 2002.