

Chapter 305: PERMIT BY RULE

- 1. Introduction.** A "permit by rule" or "PBR", when approved by the Department of Environmental Protection (DEP), is an approval for an activity that requires a permit under the Natural Resources Protection Act (NRPA). Only those activities described in this chapter may proceed under the PBR process. A PBR activity will not significantly affect the environment if carried out in accordance with this chapter, and generally has less of an impact on the environment than an activity requiring an individual permit. A PBR satisfies the Natural Resources Protection Act (NRPA) permit requirement and Water Quality Certification requirement.

If a proposed activity is not described in this chapter, or will not be conducted in accordance with the standards of this chapter, the applicant must obtain an individual permit prior to beginning the activity.

- A. Location of activity.** The location of an activity may affect whether an activity qualifies for PBR, and whether review by the Department of Inland Fisheries and Wildlife is required.
- (1) Type of resource. For some types of activities, the availability of a PBR is affected by the type of natural resource in or adjacent to which the activity is proposed. For example, an applicant proposing an activity consisting of "Movement of rocks or vegetation" may receive a PBR only if the activity will take place in a great pond, river, stream or brook. Limitations concerning the location of activities are addressed in the "Applicability" provision in each section of this chapter.
 - (2) Essential habitat. Essential habitats include areas critical to the survival of threatened and endangered species such as the bald eagle, least tern, roseate tern, and piping plover. If the activity is located in essential habitat, such as near an eagle nesting site, a PBR is only available if the applicant obtains written approval from the Department of Inland Fisheries and Wildlife (IF&W). This approval from IF&W must be submitted to the DEP with the PBR notification form, and the applicant must follow any conditions stated in the IF&W approval.

NOTE: Maps showing areas of essential habitat are available from the Department of Inland Fisheries and Wildlife regional headquarters, municipal offices, the Land Use Regulation Commission (for unorganized territories) and DEP regional offices. If the activity is located in essential habitat, IF&W must be contacted to request and obtain a "certification of review and approval".

- B. Notification.** The applicant must file notice of the activity with the DEP prior to beginning work on the activity. The notification must be on a form provided by the DEP and must include any submissions required in this chapter. The applicant must keep a copy to serve as the permit.

The notification form must be sent to the DEP by certified mail (return receipt requested), or hand delivered to the DEP and date stamped by the department. By signing the notification form, the applicant is representing that the activity will meet the applicability requirements and standards of the rule. In addition, by signing the notification form the applicant represents that the applicant has sufficient title, right, or interest in the property where the proposed activity is to take place.

C. Effective period

- (1) Beginning of period. The PBR becomes effective 14 calendar days after the DEP receives the notification form, unless the DEP approves or denies the PBR prior to that date. If the DEP does not speak with or write to the applicant within this 14 day period regarding the PBR notification, the applicant may proceed to carry out the activity.

There are three exceptions regarding the effective date of an approved PBR:

- (a) Activities listed in Section 10 (Stream crossings) occurring in association with forest management are exempt from the 14 day waiting period.
- (b) Activities listed in Section 10 (Stream crossings) performed or supervised by individuals currently certified in erosion control practices by the DEP are exempt from the 14 day waiting period. To be certified in erosion control practices, an individual must successfully complete all course requirements of the Voluntary Contractor Certification Program administered by the DEP's Nonpoint Source Training and Resource Center.
- (c) Activities that are part of a larger project requiring a permit under the Site Location of Development or the Storm Water Management Acts may not proceed until any required permit under those laws is obtained.

NOTE: Activities that are part of a larger project may require other permits from the DEP also. These other laws may prohibit the start of construction of any part of the project unless a permit under that law is obtained. In these cases, while not a violation of this rule, starting work on a PBR approved activity would be a violation of those other applicable laws.

- (2) End of period. The PBR is generally effective for 2 years from the date of approval, except that a PBR for "Replacement of structures" under Section 4 is effective for 3 years.

NOTE: Activities that qualify under this chapter may need to meet other local, state and federal requirements. Examples -- (1) If an activity extends below the low water line of a lake, coastal wetland or international boundary water, the applicant should contact the Bureau of Parks and Lands (287-3061) concerning possible lease or easement requirements, or (2) If an activity will involve work below the mean high water line in navigable waters of the United States, the applicant should contact the Army Corps of Engineers (623-8367).

D. Discretionary authority. Notwithstanding compliance with the PBR applicability requirements and standards set forth in this chapter, the DEP may require an individual permit application to be filed in any case where credible evidence indicates that the activity:

- (1) May violate the standards of this rule or the NRPA (38 M.R.S.A. Section 480-D);
- (2) Could lead to significant environmental impacts, including cumulative impacts; or
- (3) Could adversely impact a resource of special concern.

If an individual permit is required pursuant to this subsection, the DEP shall notify the applicant in writing within the 14 calendar day waiting period described in sub-section (C) above. When the DEP notifies an applicant that an individual permit is required, no work may be conducted unless and until the individual permit is obtained.

E. Violations. A violation of law occurs when a person, or his or her agent, performs or causes to be performed any activity subject to the NRPA without first obtaining a permit from the DEP, or acts contrary to the provisions of a permit. The person, his or her agent, or both, may be held responsible for the violation. Commonly, the "person" is the landowner, and the "agent" is the contractor carrying out the activity. A violation occurs when:

- (1) An activity occurs that is not allowed under PBR, whether or not a PBR notification form has been filed with and/or approved by the DEP;
- (2) An activity occurs that is allowed under PBR, but a PBR for the activity has not become effective prior to the beginning of the activity; or
- (3) An activity occurs that is allowed under PBR and a PBR for the activity is in effect, but the standards specified in this chapter are not met.

See the "applicability" provision under each activity for rules concerning what activities are allowed under PBR. A PBR is only valid for the person listed on the notification form, or for his or her agent.

Each day that a violation occurs or continues is considered a separate offense. Violations are subject to criminal penalties and civil penalties of not less than \$100 nor more than \$10,000 for each day of that violation (38 M.R.S.A. Section 349).

NOTE: A local Code Enforcement Officer (CEO) may take enforcement action for a violation of the Natural Resources Protection Act if he or she is authorized to represent a municipality in District Court, and he or she has been certified as familiar with court procedures, 30-A M.R.S.A. Section 4452(7).

2. Activities adjacent to protected natural resources

A. Applicability

- (1) This section applies to an activity adjacent to, but not in:
 - (a) A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or
 - (b) Freshwater wetlands consisting of or containing:
 - (i) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or
 - (ii) Peatlands dominated by shrubs, sedges and sphagnum moss.

- (2) This section does not apply to an activity where sustained slopes are steeper than 3 horizontal feet: 1 vertical foot (approximately 33% slope) between the normal high water line or upland edge of the protected resource and the soil disturbance.
- (3) Activities that qualify for permit by rule under another section are not required to comply with this section unless expressly stated in that section.
- (4) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (5) This section does not apply to an activity that does not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements. In most shoreland areas, a 75 or 100 foot undisturbed buffer strip is required between the disturbed areas and the water or wetland.

B. Submissions

- (1) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (2) 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 town in which the activity took place.
- (3) A brief narrative explaining why there is no practicable alternative to location of the activity within the 75 foot setback, and how the impact on the remaining buffer and the resource will be minimized. This narrative is not required for those activities presumed to have no practicable alternative as listed in paragraph C(1) of this section.
- (4) A scaled plan or drawing of the area affected, including information such as:
 - (a) The entire property on which the activity will take place, including property lines, the 75 foot setback, and the boundaries or location of protected natural resources such as streams and wetlands;
 - (b) Proposed and existing development on the parcel including buildings, parking areas, roads, fill areas, landscaped areas, etc.; and
 - (c) Any site constraints limiting development beyond the 75 foot setback, such as steep slopes.

It is not necessary to have the plan professionally prepared. However, it must be legible and drawn to a scale that allows clear representation of distances and measurements on the plan.

C. Standards

- (1) No activity or portion of an activity may be located within the 75 foot setback if there is a practicable alternative location on the parcel that would cause or result in less impact on the environment. The following activities are presumed to have no practicable alternative location on the parcel.
 - (a) The planting of vegetation for the purpose of controlling erosion or for establishing a vegetative buffer.
 - (b) The removal or replacement of underground storage tanks when performed in accordance with 38 M.R.S.A. Section 566-A.
 - (c) The replacement of a structure or the placement or replacement of a foundation or supports for a legally existing structure or addition that is not closer to a protected natural resource than the existing structure provided the municipality has approved the location of the replaced or modified structure. However, any fill, other than that required to maintain the integrity of the structure such as foundation backfill, must meet the 75 foot setback standard unless otherwise approved by the DEP pursuant to this section.

NOTE: In most cases when a structure is being replaced or a foundation is being put under an existing structure that does not meet the setback requirements of the Municipal Shoreland Zoning Ordinance, the applicant is required by the municipality to move the structure back from the natural resource to the maximum extent practicable.

- (d) The closure of a landfill in conformance with the DEP's solid waste management rules.
 - (e) Access way consisting of a footpath, stairway, or steps to the resource.
- (2) Except for those activities listed in Section 2(C)(1)(a)-(e) above, a 25 foot setback must be maintained between the normal high water line or upland edge of the protected natural resource and the activity. Areas that have slopes of 3 horizontal feet: 1 vertical foot (approximately 33% slope), or steeper, may not be counted when determining the 25 foot setback. Existing vegetation within the setback may not be disturbed except for cutting activity meeting the exemption requirements in 38 M.R.S.A. Section 480-Q(23).
 - (3) Disturbance within the setback must be minimized.
 - (4) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas:
 - (a) Staked hay bales or silt fence must be properly installed at the edge of disturbed areas between the activity and the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;

- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.
- (5) A footpath to the resource is limited to 6 feet in width and stairs or steps are limited to 4 feet in width.
- (6) All work is limited to the location and extent depicted on the plan or plans submitted pursuant to subsection B(4) of this section.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

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

- (1) **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.
- (2) **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.
- (2-A) **Practicable.** Available and feasible considering cost, existing technology and logistics based on the overall purpose of the project.
- (3) **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.
- (4) **Upland edge.** The boundary between upland and wetland.

NOTE:

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 Human Services pursuant to 22 M.R.S.A. Section 42(3).

3. Intake pipes & water monitoring devices

A. Applicability

- (1) This section applies to the installation or maintenance of a permanent water intake pipe which will not significantly affect the water level or flow of waters within a coastal wetland, freshwater wetland, great pond, river, stream or brook. This section also applies to the installation of a well in or adjacent to a freshwater wetland or adjacent to a great pond, coastal wetland, river, stream or brook. Allowed uses of water for the purposes of this

section include a water supply for a single family residence and a dry hydrant. Some intake pipes and wells adjacent to a great pond may be exempt by law (see Note 2 at the end of this subsection).

- (2) This section also applies to the installation or maintenance of a permanent device used to monitor water elevations, flow or quality including a gauging station, staff gauge, tide gauge, water recording device, water quality testing and improvement device or other similar scientific equipment within a coastal wetland, freshwater wetland great pond, river, stream or brook.
- (3) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (4) 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) In a great pond, the placement of water lines to serve a single-family house or the installation of cables for utilities, such as telephone and power cables, is exempt from permit requirements under 38 M.R.S.A. Section 480-Q provided that the:
 - (a) Excavated trench for access to the water is backfilled and riprapped to prevent erosion;
 - (b) Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion; and
 - (c) Bureau of Parks and Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction.
- (3) A permit will be required from the US Army Corps of Engineers for the following types of projects:
 - (a) Any activity involving open trench excavation in a waterbody or wetland;
 - (b) Any activity in coastal waterways;
 - (c) Any activity within a river, stream or brook that takes place between October 2 and July 14.; or
 - (d) 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 and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

B. Submissions

- (1) For an activity occurring in tidal waters, notice of approval of the timing of the activity from the Department of Marine Resources must be submitted to the DEP with the notification form.
- (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 town in which the activity took place.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the edge of the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.
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NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

- (2) 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.
 - (3) Non-native wetland plants may not be planted in disturbed areas.
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- (4) The trench width in any protected natural resource must be no wider than necessary to install the device.
- (5) Any trench in or adjacent to the wetland must be refilled with the material that was excavated. The original grading and elevation of the wetland must be restored. Residual fill material must be removed from the wetland or water body and properly stabilized. Pipe bedding material such as crushed stone or sand may be used provided clay dams or synthetic boots are used where appropriate to prevent wetland draining through the bedding material.
- (6) The water intake structure may not interfere with any potential boat usage and may not block fish passage.
- (7) If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.
- (8) Excavation of a pool to increase depth is prohibited under this section.
- (9) Maintenance clearing of deposited debris and sediments from the intake area is allowed provided the cleared materials are removed from the resource and are disposed of in an upland location at least 75 feet from any open water body and stabilized to prevent erosion unless a closer upland disposal area is approved under Section 2 of this rule. Disposal of any dredged material or debris must be carried out in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Sections 1301 *et seq.* Clearing or removal of sediment from a water body for other purposes is not allowed under this section.
- (10) 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.
- (11) 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.
- (12) 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.

- (13) 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.
- (14) 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 or adjacent to the waterbody or wetland.
- (15) 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, provided it is cured on dry land in such a manner 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.
- (16) Blasting in inundated areas is prohibited.

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

- (1) **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.
- (2) **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*).

4. Replacement of structures

A. Applicability

- (1) This section applies to the replacement of an 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 2 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. (See Section 2: Activities adjacent to protected natural resources.)
- (4) This section does not apply to structures located within a sand dune system. (See Section 16: Activities in coastal dune systems.)
- (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.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (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

B. Submissions

- (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.
- (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 town 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.

It is not necessary to have the plan professionally prepared. However, it must be legible and drawn to a scale that provides a clear representation of distances and measurements on the plan.

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 inch in width or may be replaced with riprap 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) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the protected resources:

- (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the edge of the resource before the activity begins;
- (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
- (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

- (3) 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.
- (4) Non-native wetland plants may not be planted in disturbed areas.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.
- (9) 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.
- (10) 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.
- (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 debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay 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.A. Section 1301 *et seq.*
- (13) 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 or adjacent to the waterbody or wetland.
- (14) 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 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.
- (15) The replaced structure may not interfere with, or reduce the opportunity for, existing navigational and recreational uses of the site.

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

- (1) **Dam.** Any man-made 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*).

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 Human Services under 22 M.R.S.A. 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) 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 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 shall employ erosion control measures to prevent sedimentation of any surface water, shall not block fish passage in any water course and shall 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.
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5. *[REPEALED]*

6. **Movement of rocks or vegetation**

A. Applicability

- (1) This section applies to the limited movement of rocks or hand removal of vegetation from below the normal high water line of a great pond or river, stream or brook in order to provide access for swimming or navigation.
- (2) 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.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (3) 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.

B. Submissions

- (1) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (2) 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 town in which the activity took place.

C. Standards

- (1) The width of the area to be cleared may not exceed 10 feet, as measured parallel to the shore. Only one area may be cleared per lot with shore frontage or area under common ownership with shore frontage.
- (2) If the area has been cleared in the past, subsequent clearing must be limited to the same area.
- (3) Rocks moved from the cleared area must remain in the water and must be distributed randomly in such a way that a structure such as a jetty or boat ramp will not be formed. Rocks may not be removed from the water.
- (4) Wheeled or tracked equipment may not be operated in the water. For large rock movement, equipment operating on the shore may reach into the water with a bucket or similar extension provided no bottom sediments are removed or displaced. Areas that are disturbed as part of equipment access and operation must be restored to their original grade and vegetation or as near thereto as practicable.
- (5) Rocks that are holding the shoreline may not be moved.
- (6) Cut or uprooted vegetation must be removed from the water.
- (7) Work must be done during periods of low water level or flow.

7. Outfall pipes**A. Applicability**

- (1) This section applies to the installation and maintenance of a permanent outfall pipe, an outlet from a ditch or drain tile for storm water, ground water or other discharges licensed by the DEP in or on land adjacent to a coastal wetland, freshwater wetland, great pond, river, stream or brook.

NOTES:

- (1) A wastewater discharge license from the DEP is required for any discharge from an the outlet other than stormwater from residential development; small commercial or industrial facilities; or uncontaminated groundwater.
- (2) A permit will be required from the US Army Corps of Engineers for the following types of projects:
 - (a) Any activity involving open trench excavation in a waterbody or wetland;
 - (b) Any activity in coastal waterways;
 - (c) Any activity within a river, stream or brook between October 2 and July 14; or
 - (d) 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 and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

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- (2) 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.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
 - (3) 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.

B. Submissions

- (1) For an activity occurring in tidal waters, notice of approval of the timing of the activity from the Department of Marine Resources must be submitted to the DEP with the notification form.
- (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 town in which the activity took place.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from the disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the edge of the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;

- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation control consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

- (2) Stormwater outfalls, whether a pipe or trench, must utilize velocity reducing structures and/or rock aprons to prevent erosion. A vegetative filter strip of at least 25 feet long must be established and maintained between the outfall structure and the resource unless a different standard is required pursuant to the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, or the Storm Water Management Law, 38 M.R.S.A. Section 420-D. The DEP may approve a reduction in width of the vegetated buffer if:
 - (a) The applicant demonstrates in writing that the full buffer width is not practicable;
 - (b) Any recommendations from the DEP are incorporated into the activity; and
 - (c) Approval of the reduction is from the DEP in writing.
- (3) Foundation drains and licensed discharges may extend to, and outfall in, the resource. If necessary, a rock apron must be constructed to prevent erosion.
- (4) 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.
- (5) Non-native wetland plants may not be planted in disturbed areas.
- (6) The trench width in any protected natural resource must be no wider than necessary to install the device.
- (7) The trench in and adjacent to the protected natural resource must be refilled with the material that was excavated. The original grading and elevation of the wetland must be restored. Residual fill material must be removed from the wetland or water body and properly stabilized. Pipe bedding material such as crushed stone or sand may be used provided clay dams or synthetic boots are used where appropriate to prevent wetland draining through the bedding material.
- (8) Blasting in inundated areas is prohibited.
- (9) The outfall structure may not interfere with any potential boat usage of the project site.
- (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) 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.
- (13) Maintenance clearing of deposited debris and sediments from the outfall area is allowed provided the cleared materials are removed from the resource. 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.A. Section 1301 *et seq.*
- (14) 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 or adjacent to the waterbody or wetland.
- (15) 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.
- (16) If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.

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

- (1) **Diversion.** A rerouting of a river, stream or brook to a location outside of its established channel.
- (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) **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*).

8. Shoreline stabilization

A. Applicability

- (1) This section applies to the establishment of vegetation adjacent to any protected natural resource and the installation of riprap along the shoreline of a great pond, freshwater wetland with over 20,000 square feet of open water, stream or brook.
- (2) This section applies only to areas where erosion exists and vegetation is not present, as demonstrated by photographs submitted with the notification form.
- (3) This section does not apply to riprap on any river as defined by 38 M.R.S.A. Section 436-A(11), the Mandatory Shoreland Zoning Act (information is available at the Town Office).
- (4) This section does not apply to a riprap project that affects more than 100 feet of shoreline.
- (5) This section does not apply to areas within any portion of a coastal sand dune system even if portions of these systems extend into the coastal wetland.
- (6) 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 riprap projects that include fill below the ordinary high water line of fresh waters or below the spring high tide line of tidal waters.

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, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

B. Submissions

- (1) The applicant is required to submit photographs of the entire shoreline area where 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 town in which the activity took place.

- (3) A scaled drawing, including a cross section, of the proposed riprap installation. The drawing must clearly depict the extent of riprap proposed to be installed, such as the length along shore and height above the normal high water line.

It is not necessary to have the plan professionally prepared. However, it must be legible and drawn to a scale that provides a clear representation of distances and measurements on the plan.

- (4) Professional design plans for riprap on streams and brooks when required pursuant to paragraph C(12) of this section.

C. Standards

- (1) Riprap may be utilized only where eroded slopes exceed 3 horizontal feet to 1 vertical foot (approximately 33% slope), or where riprap is used to stabilize an existing stormwater outfall. Where eroded slopes are shallower than 3 horizontal to 1 vertical, vegetation must be used to control erosion.
- (2) Riprap installed on the shoreline of a great pond or open water wetland may not extend higher than 2 feet above the normal high water line. Riprap installed on a river, stream or brook may not extend higher than 2 feet above the normal high water line, or to the elevation of the 100-year flood where mapped by the Federal Emergency Management Agency, whichever is higher.
- (3) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

- (4) New soil may be brought to the site and soil amendments, such as fertilizer or lime, may be used to increase soil fertility provided:
 - (a) Slopes do not exceed 3 horizontal to 1 vertical;

- (b) Existing vegetation is not permanently removed;
 - (c) Water bars or diversions are used to divert stormwater runoff away from the loam;
 - (d) Depth of new soil is less than 2 inches;
 - (e) The amendment is worked into the underlying soils;
 - (f) Disturbed areas are immediately mulched and seeded; and
 - (g) Final vegetation consists of native trees and shrubs, or matches existing vegetation immediately adjacent to the treated area.
- (5) Rocks used for riprap may not be obtained from the shoreline (because they help prevent erosion) or below the normal high water line (because they provide habitat for aquatic life).

NOTE: On many slopes, slumping is caused by wave or water motion undercutting the bank. If riprap is placed only at the bottom of the slope, and the upper portions of the bank are graded and revegetated, the cost of the shoreline stabilization project can be reduced.

- (6) The slope of the riprap may not be steeper than 1 horizontal to 1 vertical, nor shallower than 3 horizontal to 1 vertical.
- (7) Riprap must be anchored at the base of the existing bank by placing the bottom row of rock in a trench excavated at least to a depth equal to the height of the largest rock, or the riprap must be pinned to underlying ledge.
- (8) A layer of filter fabric and crushed stone must be placed under the riprap to prevent the washing of soil particles into the water.
- (9) No fill material other than the riprap and crushed stone may be placed below the normal high water line.
- (10) Riprap may not be placed in front of a retaining wall such that it extends further into the water.
- (11) A buffer strip of undisturbed vegetation at least 25 feet wide must be established and maintained along the upland edge of any riprap placed for the protection of agricultural land.
- (12) Design of riprap on stream or brook banks must be approved by either a Maine Registered Professional Engineer, the United States Natural Resources Conservation Service, or the local Soil and Water Conservation District. Evidence of this approval or plans stamped by a professional engineer must be submitted along with the Notification Form. With prior written agreement, the DEP may waive this standard for minor riprap activities on small streams.
- (13) When riprap is necessary along a river, stream or brook, it must be combined with tree and shrub plantings to provide bank stabilization, shading of the water and cover for wildlife.

- (14) 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 shall be located and operated such that erosion or the discharge of sediment to the water is prevented.
- (15) 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.
- (16) 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.
- (17) All excavated material must be stockpiled either outside the protected natural resource or on mats or platforms. Hay bales or silt fence must be used, where necessary, to prevent sedimentation. All excavated material must be removed to a location more than 75 feet from the protected natural resource, unless otherwise approved by the DEP, and properly stabilized with vegetation upon project completion.
- (18) Disturbance of vegetation must be avoided if possible. If vegetation must be disturbed during the activity, similar types and amounts of vegetation must be re-established immediately upon completion of the activity and must be maintained.
- (19) Non-native species may not be planted in disturbed areas.
- (20) Riprap projects must be constructed in accordance with the plans or drawings submitted pursuant to subsections B(3) and (4) of this section, as applicable.

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

- (1) **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.
- (2) **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”.

- (3) **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. Crossings (utility lines, pipes and cables)

A. Applicability

- (1) This section applies to the installation, maintenance and replacement of an overhead utility line across a river, stream or brook excluding outstanding river segments identified in 38 M.R.S.A. Section 480-P.
- (2) This section applies to the installation, maintenance and replacement of a submerged utility line across a coastal wetland, freshwater wetland, great pond, river, stream, or brook excluding outstanding river segments identified in 38 M.R.S.A. Section 480-P.
- (3) This section applies to the installation, maintenance and replacement of an overhead utility line across or adjacent to a coastal wetland, freshwater wetland or great pond provided the line is within the right-of-way of, or adjacent to the path of, an existing traveled way.
- (4) This section does not apply to a submerged utility crossing that is part of a larger project involving multiple crossings of a natural resource or more than one natural resource. Projects consisting of multiple natural resource crossings must obtain an individual permit under the Natural Resources Protection Act.
- (5) 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.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (6) 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) In a great pond, the placement of water lines to serve a single-family house or the installation of cables for utilities, such as telephone and power cables, is exempt from NRPA permit requirements under 38 M.R.S.A. Section 480-Q (1) provided that the:
 - (a) Excavated trench for access to the water is backfilled and riprapped to prevent erosion;
 - (b) Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion; and
 - (c) Bureau of Parks and Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction.

- (3) Approval for crossing any state-owned (submerged) land must be obtained from the Department of Conservation, Bureau of Parks and Lands, State House Station 22, Augusta, ME 04333.
- (4) A permit will be required from the US Army Corps of Engineers for the following types of projects:
 - (a) Any activity involving open trench excavation in a waterbody or where the impact (direct and indirect) to wetlands exceeds 4,300 square feet;
 - (b) Any activity in coastal waterways;
 - (c) Any activity within a river, stream or brook between October 2 and July 14 ;or
 - (d) 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 and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

B. Submissions

- (1) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (2) 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 town in which the activity took place.
- (3) For any work involving trenching or disturbance of substrate in a coastal wetland, great pond, river, stream or brook that occurs between October 2 and July 14, notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife, the Atlantic Salmon Authority and the Department of Marine Resources must be submitted to the DEP with the notification form, unless otherwise approved by the DEP based upon the location of the project. In addition, for a utility crossing of marine or estuarine waters at any time of year, notice of approval of the timing from the Department of Marine Resources must be submitted to the DEP with the notification form.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from 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 in disturbed areas.
- (4) If the activity occurs in a coastal wetland, great pond, river, stream or brook between October 2 and July 14, the activity must occur during the time period approved by the Department of Inland Fisheries and Wildlife, the Atlantic Salmon Authority and the Department of Marine Resources.
- (5) The trench in and adjacent to the wetland must be refilled with the material that was excavated. The original grading and elevation of the wetland must be restored. Residual fill material must be removed from the wetland or water body and properly stabilized. Pipe bedding material such as crushed stone or sand may be used provided clay dams or synthetic boots are used where appropriate to prevent wetland draining through the bedding material.
- (6) Any trench excavation that occurs within a river, stream or brook must be performed either during a period when no water is flowing, or utilize a dry crossing method such as diverting water flow by coffer dam and pumping around the area of excavation. The trench width in any natural resource must be no wider than necessary to install the device.
- (7) The crossing may not obstruct any recreational usage of the water body.
- (8) 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.

- (9) All wheeled or tracked equipment that must travel or work in a vegetated wetland must travel and work on mats or platforms in order to protect wetland vegetation.
- (10) Any debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay bales or silt fence must be used, where necessary, to prevent sedimentation.
- (11) 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.A. Section 1301 *et seq.*
- (12) Temporary roads constructed of fill are not allowed in the resource except that fill may be used on top of mats or platforms for equipment access.
- (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.A. 1682, and provided it is cured on dry land in such a manner 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.
- (14) Blasting in inundated areas is prohibited.

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

- (1) **Crossing.** Any activity extending from one side to the opposite side of a protected natural resource, or to an island or upland within a protected natural resource whether under, through or over that resource. Such activities include, but are not limited to roads, fords, bridges, culverts, utility lines, water lines, sewer lines and cables, and the clearing and removal of vegetation necessary to install and maintain these crossings.
- (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 adjacent to a water body or wetland.
- (3) **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.
- (4) **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”.
- (5) **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.

- (6) **Utility lines, pipes and cables.** Wires and pipes providing utility services. The term includes telephone and electric wires, gas, oil, water and sewer pipelines, and their support structures, whether public or private.
- (7) **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*).

10. Stream crossings (bridges, culverts and fords)

A. Applicability

- (1) This section applies to the construction of a bridge span or culvert crossing of a river, stream or brook, and associated accessway construction within 25 feet of the river, stream or brook crossing excluding the following:
 - (a) Crossings of outstanding river segments identified in 38 M.R.S.A. Section 480-P;
 - (b) Crossings of any river as defined by 38 M.R.S.A. Section 436-A(11), the Mandatory Shoreland Zoning Act (information is available at the Town Office); or
 - (c) Crossings of any portion of a river, stream or brook that experiences tidal action.

NOTE: Temporary structures do not require a permit from the department under the Natural Resources Protection Act (NRPA) provided no filling and minimal soil disturbance occurs. All crossings involving filling in and adjacent to a river, stream or brook, such as culvert crossings, are subject to the NRPA and must first receive a permit before construction.

- (2) This section also applies to the establishment of a permanent stream ford for purposes of timber harvesting, livestock, agriculture and construction and maintenance of a utility line.
- (3) A stream crossing constructed between July 15 and October 1 that is associated with forest management activities is exempt from the 14 day waiting period required in Section 1(C)(1).
- (4) A stream crossing constructed between July 15 and October 1 that is performed or supervised by individuals currently certified in erosion control practices by the DEP is exempt from the 14 day waiting period required in Section 1(C)(1).
- (5) Multiple stream crossings may be submitted on one PBR notification form as long as all of the crossing activities are located within one town.
- (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.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (7) 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) Maintenance and repair of a public or private crossing of a river, stream or brook is exempt from the NRPA provided that:
 - (a) Erosion control measures are taken to prevent sedimentation of the water;
 - (b) The crossing does not block fish passage in the water course; and
 - (c) Any replaced culvert is not more than 25% longer than the culvert being replaced and is not longer than 75 feet.
- (3) 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; or
 - (b) An activity within a river, stream or brook between October 2 and July 14.

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, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

B. Submissions

- (1) For any crossing involving trenching or disturbance of substrate in a river, stream or brook that occurs between October 2 and July 14, the proposed dates for construction of the crossing must be clearly identified on the notification form under "Description of Project".
- (2) Except for crossings associated with forest management activities, the applicant is required to submit photographs of the area that 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 town in which the activity took place.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;

- (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
- (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

- (2) If a perennial watercourse to be crossed is used for navigation, the crossing must consist of a bridge span or pipe arch with at least 4 feet of clearance during normal high water for boat traffic.
- (3) If the stream to be crossed is a perennial watercourse and has a slope of more than 2%, a bridge or a pipe arch must be used to maintain the natural streambed.
- (4) Fill sideslopes in a stream or floodplain wetland must be maintained at a slope no shallower than 3 horizontal to 1 vertical and no steeper than 1.5 horizontal to 1 vertical. Fill sideslopes must be stabilized at the completion of the activity.

NOTE: Uncompacted soils or sandy soils that are saturated at the toe of a slope will be unstable at a 1.5 to 1 slope.

- (5) A bridge or culvert must provide an opening with a cross-sectional area at least equal to 3 times the cross-sectional area of the stream channel or sufficient in size to accommodate 25-year frequency water flows.

NOTE: Stream crossings allowable under this section but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM) must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a crossing may be required to pass a 100-year flood event.

- (6) Road surfaces must be constructed in a manner to prevent erosion of material into the river, stream or brook.
- (7) Surface water on or adjacent to crossing approaches must be diverted through vegetative filter areas at least 25 feet long to avoid sedimentation of the watercourse. Roadside ditches may not extend to the resource being crossed.

NOTE: Surface water on or adjacent to crossing approaches should be diverted through vegetative filter areas to avoid sedimentation of the watercourse. Because roadside ditches may not extend to the resource being crossed, filter areas should be established in accordance with the following tables:

Average slope of land between exposed mineral soil and normal high water mark (percent)	Width of strip between ditch terminus and normal high water mark (feet along surface of the ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

- (8) A stream ford must be lined with crushed stone, blasted ledge, washed stone, gabion blankets or geotextile material for erosion control when the natural stream bed does not consist of ledge or rock.
- (9) A stream ford must allow for fish passage at all times of the year and may not impound water. The fords must also allow for maintenance of normal stream flows.
- (10) Culvert crossings must:
- Be limited to 75 feet in length. This limit may not be exceeded within a half-mile length of the stream or within the length of stream controlled by the applicant, if less;
 - Follow the alignment and grade of the existing stream channel where possible. On perennial streams the culvert's gradient may not exceed 1%;
 - Have the bottom of the entire culvert installed at or below stream bed elevation, except for additional culverts at the same crossing;
 - Where two or more culverts are installed, be offset in order to concentrate low flows into the culvert within the natural channel;
 - Be seated on firm ground, or on geotextiles, logs or other materials used to stabilize the ground;
 - Be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater;
 - Have the soil compacted at least halfway up the side of the culvert; and
 - Have the inlet and outlet ends stabilized by riprap in accordance with Section 8 Shoreline stabilization standards to avoid erosion of material around the culvert.

NOTE: For guidance on riprap installation, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

- (11) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may, where necessary, reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.
- (12) Work below the normal high water line must be done during periods of low water level or flow.
- (13) If the crossing involves trenching or disturbance of substrate in a river, stream or brook between October 2 and July 14, the activity must occur during the time period approved by the DEP. The approved time period may be the time period proposed by the applicant or an alternative time period approved by the DEP. An alternative time period will be required where it appears an unreasonable impact on water quality or fisheries may result at the point of crossing or immediately downstream of the crossing. The applicant will be notified by the DEP within 14 days if an alternative time period, other than the one proposed by the applicant, is required for constructing the crossing.
- (14) 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.
- (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.
- (16) All excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay bales or silt fence must be used, where necessary, to prevent sedimentation.
- (17) 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 way 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.

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

- (1) **Cross-sectional area.** The cross-sectional area of a stream channel is determined by multiplying the stream channel width by the average stream channel depth. The stream channel width is the straight line distance from the normal high water line on one side of the channel to the normal high water line on the opposite side of the channel. The average stream channel depth is the average of the vertical distances from a straight line between the normal high water marks of the stream channel to the bottom of the channel.
- (2) **Crossing.** Any activity extending from one side to the opposite side of a protected natural resource, or to an island or upland within a protected natural resource whether under, through or over that resource. Such activities include, but are not limited to roads, fords, bridges, culverts, utility lines, water lines, sewer lines and cables, and the clearing and removal of vegetation necessary to install and maintain these crossings.
- (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) **Ford.** A permanent crossing of a stream utilizing an area of existing, non-erodible substrate of the stream, such as ledge or cobble, or by placing non-erodible material such as stone or geotextile on the stream bottom.
- (5) **Perennial watercourse.** A river, stream or brook depicted as a solid line on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15 minute series topographic map.
- (6) **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”.
- (7) **Used for navigation.** Those rivers, streams or brooks used by motorized watercraft.

11. State transportation facilities

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.
- (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.*
- (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.

C. 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.

12. Restoration of natural areas

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 the planting of natural vegetation in any protected resource.
- (3) 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.
- (4) This section applies to the restoration of the natural grade within a dredged area of a freshwater or coastal wetland.
- (5) 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 a man-made 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.
- (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.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (7) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE:

- (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, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

B. Submissions

- (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 town 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.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the proposed resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from 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 in disturbed areas.
- (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.
- (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) 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.

- (9) 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.
- (10) 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.
- (11) All excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay bales, silt fence or mulch must be used, where necessary, to prevent sedimentation.
- (12) If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.

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

- (1) **Dam.** Any man-made 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 wetland or water body.
- (4) **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.
- (5) **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.
- (6) **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.
- (7) **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*).

13. Habitat creation or enhancement and water quality improvement activities

A. Applicability

- (1) This section applies to an alteration in or adjacent to a protected natural resource by a public natural resource agency. This rule also applies to an alteration in the same types of resources by a public utility, the Department of Transportation, owner of a federally licensed hydropower project, a conservation group, or a municipality in conjunction with and under the supervision of a public natural resource agency, exclusively for the purpose of:
 - (a) Creating or enhancing habitat for fisheries or wildlife; or
 - (b) A water quality improvement project.

These activities may include but are not limited to: fishway installation; the construction of artificial reefs; removal, maintenance, installation or modification of dam structures; and the construction and maintenance of nutrient retention structures.

- (2) This section applies to a landfill closure activity approved by the DEP.

- (3) 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, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

B. Submissions

- (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 town in which the activity took place.
- (3) Excluding landfill closures, if an activity is to be performed by a public utility, conservation group, municipality or the Maine Department of Transportation, certification from a public natural resource agency that the proposed activity will be done in conjunction with, or under the supervision of, the agency must be submitted with the notification form.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:

- (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
- (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
- (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

- (2) Disturbance of vegetation must be avoided if possible. Where vegetation is disturbed outside of the area covered by any structures or filling associated with this activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (3) Non-native wetland plants may not be planted in disturbed wetland areas.
- (4) All debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay 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.A. Section 1301 *et seq.*
- (5) 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 or adjacent to the waterbody or wetland.
- (6) 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 such a manner as to expose all surfaces to the air for 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.
- (7) 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.
- (8) Work below the high water line of a great pond, river, stream or brook shall 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.

- (9) All wheeled or tracked equipment that must travel or work in a vegetated coastal wetland must travel and work on mats or platforms in order to protect wetland vegetation.

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

- (1) **Dam.** Any man made 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) **Public natural resources agency.** The Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the Maine DEP, the Maine Department of Conservation, the United States Fish and Wildlife Service, the United States Natural Resources Conservation Service, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Forest Service, National Marine Fisheries Service, National Park Service, National Oceanic and Atmospheric Administration, and County Soil and Water Conservation Districts.
- (3) **Water quality improvement project.** An activity designed exclusively to maintain or enhance water quality of a freshwater wetland, great pond or river, stream, brook or a coastal wetland. Examples include but are not limited to: nutrient retention basins, water level manipulation and rerouting of drainage ways.
- (4) **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*).

14. Piers, wharves, pilings and haulouts *[repealed]*

15. Public boat ramps

A. Applicability

- (1) This section applies to the construction of a new, or the replacement of an existing, public boat ramp or carry-in launch area, including associated parking and accessways, in or adjacent to a protected natural resource by a public natural resource agency, Maine Department of Transportation, municipality, or owners of a federally licensed hydropower project within the resource affected by the hydropower project. This section does not apply if a portion of the ramp or related facilities is located in, on or over emergent marsh vegetation or intertidal mudflat.
- (2) This section applies to the construction of up to 2 launch lanes at a facility provided no more than 2 lanes exist or will exist at the completion of the activity.
- (3) This section does not apply to a new boat ramp on a lake infested with aquatic invasive plants, as defined in 38 M.R.S.A. Section 410-N. The Department of Environmental Protection identifies and maintains a list of these infested lakes.

NOTE: A permit will be required from the US Army Corps of Engineers for the following types of projects:

- (a) Any activity involving open trench excavation in a waterbody;
- (b) Any activity in coastal waterways;
- (c) Any activity within a river, stream or brook between October 2 and July 14; or
- (d) 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 permit by rule notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

B. Submissions

- (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 town in which the activity took place.
- (3) If the project results in a new or expanded access drive or parking area, the project design plan, erosion control plan and a request for review for an activity on great ponds classified as GPA under 38 M.R.S.A. Section 465-A must be submitted to the DEP's Division of Watershed Management (DWM) prior to submitting the notification form to the DEP. A certification from DWM must be obtained and must be included with the notification form, along with final project plans and the erosion control plan, when it is submitted to the DEP.
- (4) If the proposed activity involves work below the mean low water line of a waterbody, the applicant shall submit a copy of the project design plan along with a copy of the notification form to the Department of Conservation, Bureau of Parks and Lands, Submerged Lands Program (State House Station #22 Augusta, Maine 04333) at the time the notification form is submitted to the DEP. Work on the activity may not begin until a lease or easement is obtained or the Bureau of Parks and Lands has provided notification that one is not necessary.

NOTE: Processing of a request for a lease or easement may require several weeks of review by the Bureau of Public Lands.

- (5) If the proposed activity is located within a coastal wetland area, the applicant shall submit, along with the notification form, a letter from both the Department of Inland Fisheries and Wildlife and the Department of Marine Resources that describes times of the year in which the construction of the boat ramp may occur.
- (6) If the proposed activity is located within a freshwater wetland, great pond, river, stream or brook, the applicant shall submit, along with the notification form, a letter from the Department of Inland Fisheries and Wildlife that describes times of the year in which the construction of the boat ramp may occur.

C. Standards

- (1) The erosion control plan must be followed. Erosion of soil or fill material from disturbed areas into the resource must be prevented. The following measures must be taken:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

- (2) A hard-surfaced launch must be used where boats will be launched from trailers, and must meet the following specifications:
 - (a) The underwater portions of the ramp, at the time of construction, must be constructed of reinforced precast concrete planks, panels or slabs;
 - (b) The portion of the ramp used by the towing vehicle may not have a slope that exceeds 15%; the portion of the ramp used by the trailer only may not have a slope that exceeds 20%;
 - (c) The width of the hard surfaced launch lane(s) may not exceed 20 feet as measured parallel to shore;
 - (d) The upper most 6 inches of the base must consist of crushed rock or crushed or screened gravel having 5% or less passing a 200 mesh sieve; and

- (e) Fill slopes at or below the normal high water line must be protected with riprap. Riprap installation must meet the standards for riprap in PBR Section 8, "Shoreline stabilization".
- (3) An additional area of up to 8 feet wide as measured parallel to shore may be constructed using bituminous pavement, precast concrete planks, panels or slabs to support docking systems.
- (4) A carry-in launch area for small boats must:
 - (a) Consist of gravel, rock, sand, vegetation, or other erosion resistant materials;
 - (b) Have a grade not exceeding 18%; and
 - (c) Be Limited, below the low water line, to constructing a path up to 6 feet wide, measured parallel to shore, consisting of cobble, rock or concrete planks, to access deeper water to float watercraft.
- (5) A vegetated buffer zone at least 25 feet in width must be maintained between any new or expanded parking area and the waterbody.
- (6) A parking area or access road may not be located in a protected natural resource, except that an access roadway may cross a stream if the requirements of PBR Section 10 "Stream crossings" are met.
- (7) Any new or expanded parking area or roadway must divert stormwater runoff away from the ramp to an area where it may infiltrate into the ground before reaching the waterbody.
- (8) Machinery may operate below the water line only when necessary to excavate or place material below the existing water level and must travel and operate on temporary mats or portions of the ramp that have been constructed.
- (9) Timing of the activity must conform to the recommendations of biologists from the Department of Inland Fisheries and Wildlife or the Department of Marine Resources, as appropriate, as described in letters submitted along with the notification form.
- (10) Any debris generated during the work 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.A Section 1301 *et seq.*
- (11) 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 or adjacent to the waterbody or wetland.
- (12) 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 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 shall not be used where it will contact water.

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

- (1) **Emergent marsh vegetation.** Plants that are erect, rooted and herbaceous, and that may be temporarily to permanently flooded at the base, but do not tolerate prolonged inundation of the entire plant; (e.g. cattails, saltmarsh cordgrass).
- (2) **Public natural resource agency.** The Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the Maine DEP, the Maine Department of Conservation, the United States Fish and Wildlife Service, the United States Forest Service, the United States Natural Resources Conservation Service and County Soil and Water Conservation Districts.
- (3) **Project design plan.** A detailed plan of the proposed activity indicating all dimensions (width, height, length) relative to the mean low water mark, and including any appurtenant structures that may be seasonal in nature.

16. Activities in coastal sand dunes

A. Applicability

- (1) This section applies to the following activities in coastal sand dune systems:
 - (a) Repair or replacement of an existing seawall, patio, deck, driveway, walkway, porch or parking area;
 - (b) Dune restoration or construction;
 - (c) Installation or repair of underground utility lines;
 - (d) Construction of a new structure or new development, other than a building or closed fence, in a back dune area;
 - (e) New buildings or an addition to an existing building in a back dune when mitigation and enhancement measures are not required as determined by the DEP;
 - (f) Construction of closed fences in a back dune, non-erosion hazard area;
 - (g) Construction of open fences in a frontal dune or back dune erosion hazard area;
 - (h) Construction of cobble-trapping fences with permanent anchors landward of an existing seawall in a developed area;
 - (i) Construction of a walkway or driveway on existing developed area in a frontal dune; and
 - (j) Installation of underground propane tanks.

PBR applications are reviewed on a case by case basis to determine the concern for damage due to shoreline change. In an area where concern for damage due to shoreline change is identified or mitigation and enhancement measures are required, the applicant is required to file for an individual Natural Resources Protection Act Permit, and is encouraged to contact the DEP for a pre-application meeting.

- (2) This section does not apply to the construction of a new structure or addition to an existing structure in V-Zones.
- (3) 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.

B. Submissions

- (1) The applicant is required to submit photographs of the area in which the 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 town in which the activity took place.
- (3) The following information must be submitted with the notification form.
 - (a) A site plan that includes the following information.
 - (i) The dimensions and square footage of the lot.
 - (ii) The dimensions (including height) and square footage of existing and proposed structures and development e.g. houses, sheds, garages, decks, patios, driveways, parking areas, walkways, lawn, fences, etc. and their location on the lot (see definitions of Building, Footprint and Development in Section 16(D)). The existing and the proposed structures must be clearly distinguished.
 - (iii) The location of property lines and names of abutters.
 - (iv) The location of buildings on adjacent properties.

For patios, decks, driveways, walkways, porches, and parking areas that are to be repaired or replaced, the site plan must include the length and width of the existing structure, the height of the existing structure if it is elevated and the thickness of the existing structure;

For new buildings or an addition to an existing building in a back dune erosion hazard area, the site plan must include a post foundation designed to meet the requirements of the Department's *Coastal Sand Dune Rules*, 06-096 CMR 355(6)(G);

- (b) A copy of the most recent Coastal Sand Dune Geology Map, produced by the Maine Geological Survey, which contains the project site and has the project site clearly identified on the photo;

NOTE: Maps are available for review at the town offices of most coastal communities and at DEP regional offices. The maps are also available for purchase from the Maine Geological Survey, 22 State House Station, Augusta, ME 04333

- (c) For seawall repair or replacement only, an accurate plan drawn to scale by a licensed surveyor, coastal geologist or professional engineer showing the location of the existing and proposed wall and the elevation of the wall(s) referenced to a nearby permanent and reproducible elevation point, such as a described point on a building or other structure. The plan must be signed and dated by the person responsible for preparing the drawing;
- (d) If moving sand in an area seaward of the frontal dune between April 1 and September 1, a copy of the written approval to proceed from the Department of Inland Fisheries and Wildlife; and
- (e) For open or cobble-trapping fences, a detail showing a typical section of the fence and the dimensions of the fence including the size of the openings.

C. Standards

- (1) No more than 40% of the lot may be covered by development including, but not limited to, buildings, driveways, walkways, parking areas, lawn or landscaped area, and land area previously developed; nor may the total area to be covered by the footprint of buildings exceed 20% of the lot, including existing buildings. Land area within the V-zone may not be included as part of a lot for the purposes of this section.
- (2) Where development that is existing or did exist within one year of application exceeds 40% of the total lot area, the percentage of developed area may not be increased.
- (3) Where the footprint of buildings that are existing or did exist within one year of application exceeds 20% of the total lot area, the percentage of area covered by buildings may not be increased.
- (4) An activity occurring on land adjacent to a coastal wetland, freshwater wetland containing over 20,000 square feet of open water or emergent marsh vegetation, great pond, river, stream or brook must meet the erosion control and setback requirements of Section 2, "Activities adjacent to protected natural resources".
- (5) Building or building additions may not result in a total structure greater than 35 feet in height or have a footprint greater than 2500 square feet. For purposes of determining whether the building is 35 feet high, the starting point for measuring the bottom elevation of the building is described in Chapter 355(5)(D). The top of the building is considered to be the highest point of the building excluding ancillary features such as weathervanes or chimneys that are attached to the building's primary roof but including features such as decks or observation towers that extend higher than the building's primary roof.

NOTE: The Department recommends that projects be constructed according to the Coastal Construction Manual published by the Federal Emergency Management Agency, which describes the best practices for residential construction in coastal areas.

- (6) A building may not be constructed so that any part of the building extends seaward of a line drawn between the seaward most point of buildings on adjacent properties if the construction would significantly obstruct the view from an adjacent building.
- (7) During project construction, disturbance of dune vegetation must be avoided and native vegetation must be retained on the lot to the maximum extent possible. Any areas of dune vegetation that are disturbed must be restored as quickly as possible. Dune vegetation includes American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine.
- (8) No fill may be placed on the project site other than that required for an approved dune restoration project or new construction. Foundation backfill and sand dune restoration and construction must utilize sand that has textural and color characteristics consistent with the natural sand's textural and color characteristics.
- (9) No sand may be moved seaward of the frontal dune between April 1 and September 1, unless written approval from the Department of Inland Fisheries and Wildlife has been obtained.
- (10) An activity involving dune restoration or dune construction must be performed between March 1 and April 1 or October 1 and November 15. Dune grass must be planted immediately after construction. Dune grass must be planted with 3 culms per hole. The holes must be spaced 18 inches apart. The planted dune grass must be protected from pedestrian traffic until the dune grass is well established. The density of the growing stand of dune grass must be at least 40 plants per 100 square feet.
- (11) A dune restoration/construction activity must use sand that has textural and color characteristics consistent with the natural sand's textural and color characteristics.
- (12) A dune restoration or dune construction activity must minimize damage to existing dune vegetation and must follow the configuration and alignment of adjacent dunes as closely as possible. No sand or other materials may be placed below the normal high tide line.
- (13) The replacement of a seawall may not increase the height, length or thickness dimensions of a seawall beyond that which legally existed within 24 months of submission of the notification form. The replaced seawall may not be significantly different in construction from the one that previously existed.
- (14) A private walkway must be 4 feet or less in width. A public walkway must be 10 feet or less in width. Walkways must allow for sand movement and may not have a significant impact on vegetation outside of the footprint of the walkway. No portion of the walkway may be located in the V-Zone.
- (15) The repair or replacement of a patio, deck, driveway, walkway, porch or parking area may not increase the height, length, width or thickness dimensions of the existing structure. The new or repaired patio, deck, driveway, walkway, porch or parking area may be constructed of a different material provided the dimensions remain the same.

- (16) All proposed construction and development activity is limited to the location and extent depicted on the plan or drawing submitted pursuant to subsection B(3) of this section.
- (17) An open fence must have openings that allow for the easy movement of water, wind and sand. If a picket board fence is proposed, the opening must be at least 4 inches wide or at least double the width of the picket board, whichever is greater. A continuous footing may not be used to support the fence and support posts may not be larger than 4 inches by 4 inches.
- (18) A cobble-trapping fence may only be placed on properties that are adjacent to beaches with gravel and cobble sediment and have developed areas such as lawn between the building and the beach. Such a fence may not be placed on a naturally vegetated frontal dune ridge.
- (19) A cobble-trapping fence must be placed landward of an existing seawall in a developed area, must not extend more than two feet beyond the building's foundation on either side, must not consist of more than one row of fencing, must not have openings smaller than 2 inches square or in diameter, and must not be higher than 4 feet above grade. The fence may be supported by permanent, small subsurface pipes or similar emplacements that are left in place all year. A permanent, continuous footing may not be used to support the fence. Cobbles and sediment trapped by the fence may be removed and placed immediately seaward of a frontal dune or seawall on the property.
- (20) Underground propane tanks must be placed under an existing structure on the parcel.

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

- (1) **Back dunes.** Back dunes consist of sand dunes and eolian sand flats that lie landward of the frontal dune or a low energy beach. Back dunes include those areas containing artificial fill over back dune sands or over wetlands adjacent to the coastal sand dune system.
- (2) **Beach.** The zone of unconsolidated sand or gravel that extends landward from the mean low water line to the seaward toe of a dune. The definition of beach includes the beach face and berm.
- (3) **Beach nourishment.** *(Deleted)*
- (4) **Berm.** The flat or gently sloping area between the high tide limit and frontal dune. A berm is formed by deposition of sand transported to shore by tides, waves, wind and currents.
- (5) **Building.** A structure designed for habitation, shelter, storage, or as a gathering place that has a roof. For the purposes of this rule, the foundation is considered to be a part of the building. A porch with a roof, attached to the exterior walls of a building, is considered part of the building.
- (6) **C-zone.** *(Deleted)*

- (7) **Closed fence.** A fence that effectively blocks the movement of wind, water, or sand, such as a stockade fence or snow fence.
- (8) **Cobble.** A rock that is smaller than a boulder and larger than gravel.
- (9) **Cobble-trapping fence.** An open fence with a continuous porosity equal to or greater than 50% that is designed to prevent cobbles from passing through it .
- (10) **Development.** The alteration of property for human-related use including, but not limited to, buildings, decks, driveways, parking areas, lawns, landscaped areas, and areas of non-native vegetation, and any other appurtenant facilities, but excluding temporary structures.
- (11) **Dune vegetation.** Dune plant species typically adapted to Maine's coastal sand dune systems including, but not limited to, American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine.
- (12) **Erosion hazard area**
- (a) Any portion of the coastal sand dune system that can reasonably be expected to become part of a coastal wetland in the next 100 years due to cumulative and collective changes in the shoreline from:
- (i) Historical long-term erosion;
- (ii) Short-term erosion resulting from a 100-year storm; or
- (iii) Flooding in a 100-year storm after a two-foot rise in sea level; or
- (b) Any portion of the coastal sand dune system that is mapped as an AO flood zone by the effective FEMA Flood Insurance Rate Map, which is presumed to be located in an Erosion Hazard Area unless the applicant demonstrates based on site-specific information, as determined by the DEP, that a coastal wetland will not result from either (i), (ii), or (iii) occurring on an applicant's lot given the expectation that an AO-Zone, particularly if located immediately behind a frontal dune, is likely to become a V-Zone after 2 feet of sea level rise in 100 years.
- (13) **Footprint.** The outline that would be created on the ground by extending the exterior walls of the building to the ground surface.
- (14) **Foundation.** The portion of a structure that transmits the loads of the structure to the ground, including but not limited to: spread footings, foundation walls, posts, piers, piles, beams, girders, structural slabs, bracings, and associated connectors.
- (15) **Frontal dune.** The frontal dune is the area consisting of the most seaward ridge of sand and gravel and includes former frontal dune areas modified by development. Where the dune has been altered from a natural condition, the dune position may be inferred from the present beach profile, dune positions along the shore, and regional trends in dune width. The frontal dune may or may not be vegetated with dune vegetation and may consist in part or in whole

of artificial fill. In areas where smaller ridges of sand are forming in front of an established dune ridge, the frontal dune may include more than one ridge.

- (16) **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.
- (17) **Lot.** Also referred to as a lot of record, all contiguous areas under a single present ownership as indicated by a deed and recorded in the registry of deeds constituting a piece of land measured and marked by metes and bounds descriptions or by some other approved surveying technique.
- (18) **Open fence.** A fence through which water, wind and sand can easily move, for example, a split rail fence.
- (19) **Permanent structure** (also referred to as a “structure” in this section). Any structure constructed or erected with a fixed location or attached to a structure with a fixed location for a period exceeding 7 months each year. Permanent structures include, but are not limited to: causeways, piers, docks, concrete slabs, piles, marinas, retaining walls, buildings, swimming pools, fences, seawalls, roads, driveways, parking areas, and walkways. Natural features, such as frontal dunes, are not considered permanent structures. For the purposes of this section, open decks and storage sheds that comply with the criteria outlined below are not considered to be structures.
- (a) Open decks that: do not exceed a total of 200 square feet, including any existing decks on the property, are not located in a V-Zone, are supported by posts, and are elevated at least 3 feet above existing grade to allow unobstructed flow of sand, wind and water. One set of outside stairs, attached to the deck, will be considered part of the open deck but not included when determining the 200 square foot area.
- (b) One storage shed per lot that does not exceed 100 square feet, provided that it is not located in a V-Zone and that it is not converted to a habitable structure.
- (20) **Posts.** Any pilings or column supports that allow water and sand to move freely underneath the structure, and that are adequate to provide a foundation for the structure they supports. The term “post” does not include frost walls or breakaway foundation construction.
- (21) **Seawall.** Vertical wall, or other sloped barrier 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. A seawall is presumed to be a permanent structure.
- (22) **V-Zone.** That land area of special flood hazard subject to a one- percent or greater chance of flooding in any given year, and subject to additional hazard from high velocity water due to wave action. Wave heights or wave run-up depths are equal to or greater than 3 feet in V-Zones. V-Zones are as identified on the effective Flood Insurance Rate Maps and any subsequent Letters of Map Changes issued by FEMA.

17. Transfers and permit extensions

A. Applicability

- (1) This section allows an individual permit, general permit or tier review approval issued under the Natural Resources Protection Act to be transferred from the permittee to the applicant when the permitted project changes ownership.
- (2) This section allows an individual permit, general permit or tier review approval issued under the Natural Resources Protection Act to be extended one time provided the approved activity has not begun and the permit has not expired. This section does not apply to an extension request for a permit previously extended under this chapter.

B. Submissions

- (1) For a transfer, the applicant must submit an affidavit attesting to the fact that he or she has received, read, understand and will comply with the terms of the DEP Order(s) and conditions of approval for the activity.
- (2) For a transfer, the applicant must submit a copy of the order(s) to be transferred as well as a copy of documents establishing proof of ownership of the property on which the activity is located or sufficient title, right or interest to complete the activity in accordance with the requirements of the permit and the NRPA.
- (3) For a transfer, the original permittee must submit a statement attesting that he or she agrees to the transfer of his or her permit to the applicant.
- (4) For a transfer of a project that requires compensation, the applicant must submit documentation that demonstrates sufficient expertise and financial resources to complete the approved compensation work, including subsequent monitoring and corrective actions.
- (5) For permit extensions, a copy of the order(s) to be extended shall be submitted to the Department along with a written reason for the extension request.

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

- (1) **Affidavit.** A written declaration made under oath before a notary public.
- (2) **Extension.** A DEP approval to extend an unexpired permit. An extension is valid for 2 years.

18. Maintenance dredging permit renewal

A. Applicability

- (1) This section applies to the renewal of an individual permit issued by the DEP for maintenance dredging in a coastal wetland, great pond and river, stream or brook provided that:
 - (a) The area to be dredged is located in an area that was dredged within the last ten years;

- (b) The permit to be renewed was an individual Natural Resources Protection Act permit. If the most recent dredge was permitted under a PBR, this section does not apply;
- (c) The area to be dredged is not located in or within 250 feet of an area identified as significant wildlife habitat by the Department of Inland Fisheries and Wildlife;

NOTE: Contact the nearest regional office of the Maine Department of Inland Fisheries and Wildlife for more information

- (d) Less than 50,000 cubic yards will be dredged.
- (2) This section does not apply to the renewal of a permit issued by the DEP for gravel mining in any protected natural resource.

NOTE:

- (1) Displacement or bulldozing of sediment within a lobster pound does not require a Natural Resources Protection Act permit provided that the sediment is not removed from the area inundated as a result of the impoundment, 38 M.R.S.A. Section 480-Q(19).
 - (2) Any activity involving dredging may require a permit from the US Army Corps of Engineers. A copy of the PBR notification should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, RR 2 Box 1855, Manchester, ME 04351).
-

B. Submissions

- (1) A copy of the permit issued for the most recent maintenance dredging must be submitted to the DEP with the notification form.
- (2) For a dredge activity in tidal waters, notice of approval of the timing of the activity from the Department of Marine Resources must be submitted to the DEP with the notification form.

C. Standards

- (1) The dimensions of the area proposed to be dredged may not exceed previously approved dimensions and dredging must be conducted in the same location.
- (2) All conditions previously attached to the original permit are incorporated into the permit by rule unless otherwise stated by the DEP in writing.
- (3) For a dredge activity in tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.
- (4) Any debris or dredged material generated during the activity may not be disposed of in any protected natural resource unless otherwise allowed in this chapter and the disposal conforms with the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Sections 1301 *et seq.*

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

- (1) **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.
- (2) **Dredge spoils.** Sand, silt, mud, gravel, rock or other sediment or material that is moved from coastal wetlands, great ponds or rivers, streams or brooks.

19. Activities in, on or over significant vernal pool habitat

A. Applicability

- (1) This section applies to activities in, on, or over a significant vernal pool habitat or a potential significant vernal pool habitat. Significant vernal pool habitat consists of a vernal pool depression and the portion of the critical terrestrial habitat within a 250 foot radius of the spring or fall high water mark of the depression.

NOTE: The 250 feet of critical terrestrial habitat protected as significant vernal pool habitat is only a portion of the habitat used by adult wood frogs, ambystomatid salamanders, and threatened and endangered species. Tracking studies of adult pool-breeding amphibians have shown that they can travel over a third-mile away from their breeding pool, and that a radius of 750 feet around the pool is optimal for protecting viable amphibian populations. The DEP encourages efforts to protect more habitat adjacent to a vernal pool than this regulation has authority over.

- (2) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Stormwater Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Section 480-A to BB.

NOTE: For additional regulatory provisions applicable to significant vernal pools, see 06-096 CMR 335, Significant Wildlife Habitat.

B. Submissions. The following items must be submitted with the notification, unless otherwise provided below.

- (1) Photographs of the area that will be affected by the activity proposed.
- (2) 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 town in which the activity took place.
- (3) A scaled plan or drawing of the area affected, including but not limited to the following information:
 - (a) The entire property on which the activity will take place, including property lines, the vernal pool depression and remaining surrounding significant vernal pool habitat within

250 feet of the spring or fall high water mark of the depression, and the boundaries and location of other protected natural resources such as streams and other wetlands;

- (b) Proposed activity and existing development on which the activity will take place, including buildings, parking areas, roads, fill areas, landscaped areas, etc.; and
- (c) Any site constraints limiting development beyond the significant vernal pool habitat, such as steep slopes.

It is not necessary to have the plan formally prepared. However, it must be legible and drawn to a scale that allows a clear representation of distances and measurements on the plan.

C. Standards. The following measures must be taken during construction and maintenance of the activity.

- (1) No disturbance within the vernal pool depression.
- (2) Except for activities in existing developed areas, maintain a minimum of 75% of the critical terrestrial habitat as unfragmented forest with at least a partly-closed canopy of overstory trees to provide shade, deep litter and woody debris.
- (3) Maintain or restore forest corridors connecting wetlands and significant vernal pools.
- (4) Minimize forest floor disturbance.
- (5) Maintain native understory vegetation and downed woody debris.

In determining whether the standard in Section 19(C)(2) has been met, the DEP considers only that portion of the critical terrestrial habitat within the significant vernal pool habitat, which is the area within a 250 foot radius of the spring or fall high water mark of the vernal pool depression.

- (6) Take the following measures to prevent erosion of soil or fill material from disturbed areas:
 - (a) Staked hay bales or silt fence must be properly installed at the edge of disturbed areas between the activity and the vernal pool depression before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

- (7) An activity of a type that would qualify for a permit by rule under one of the other sections of this chapter listed below, notwithstanding any restriction concerning significant wildlife habitat that may be in that section, must also meet the requirements of that section.

- Sec. 4. Replacement of structures
- Sec. 9. Crossings (utility lines, pipes, cables)
- Sec. 10. Stream crossings (bridges, culverts, fords)
- Sec. 11. State transportation facilities
- Sec. 12. Restoration of natural areas.
- Sec. 13. Habitat creation or enhancement and water quality improvement activities
- Sec. 15. Public boat ramps
- Sec. 16. Coastal sand dune projects

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

- (1) **Critical terrestrial habitat.** Uplands and wetlands associated with significant vernal pools used by pool breeding amphibians for migration, feeding, and hibernation, in particular, forested wetlands and forested uplands that provide deep organic litter, coarse woody debris and canopy shade.
- (2) **Existing developed area.** The area of property altered including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other landscaped areas, as of September 1, 2007.
- (3) **Significant vernal pool habitat.** A vernal pool depression and the portion of the critical terrestrial habitat within a 250 foot radius of the spring or fall high water mark of the depression. For complete criteria, see Chapter 335(9), Significant vernal pools.
- (4) **Vernal pool depression.** This area includes the vernal pool depression up to the spring or fall high water mark, and includes any vegetation growing within the depression.

20. Activities located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas

A. Applicability

- (1) This section applies to activities in existing developed areas located in, on, or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas.
- (2) This section applies to an expansion of up to 10% of an existing development area within a high or moderate value inland waterfowl and wading bird habitat, or a shorebird feeding area, if an individual permit is not otherwise required for activity on the parcel.

- (3) This section applies to activities consisting of cutting or removal of vegetation within high or moderate value inland waterfowl and wading bird habitat, or shorebird feeding or roosting buffer.
- (4) This section applies to new activities, such as the construction of buildings, roads, and driveways, in an upland area on a lot in moderate value inland waterfowl and wading bird habitat and that contains no Development area.

NOTE: If exterior lighting is anticipated to extend into the habitat within the 150 foot setback, the Department may request a detailed lighting plan.

- (5) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the *Site Location of Development Law*, 38 M.R.S.A. §§ 481–490, the *Stormwater Management Law*, 38 M.R.S.A. §420-D, or the *Natural Resources Protection Act*, 38 M.R.S.A. §§ 480-A–480-FF.
- (6) This section does not apply to an activity that does not conform to the local shoreland zoning ordinance.

NOTE: For additional regulatory provisions applicable to significant wildlife habitats, see *Significant Wildlife Habitat*, 06-096 CMR 335 (last amended June 8, 2006).

B. Submissions. The following items must be submitted with the notification, unless otherwise provided below.

- (1) Photographs of the area that will be affected by the activity proposed.
- (2) 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 town in which the activity took place.
- (3) A scaled plan or drawing of the area affected, including information such as the following.
 - (a) The entire property on which the activity will take place, including property lines, and the boundaries and location of protected natural resources such as streams, and wetlands, as well as significant wildlife habitat (specify type of significant wildlife habitat).
 - (b) Proposed activity and existing development on which the activity will take place, including buildings, parking areas, roads, fill areas, landscaped areas, etc. If up to a 10% expansion of an existing developed area is proposed within a high or moderate value inland waterfowl and wading bird habitat, or a shorebird feeding area, indicate the existing developed area and proposed expansion.

It is not necessary to have the plan formally prepared. However, it must be legible and drawn to a scale that allows a clear and accurate representation of distances and measurements on the plan.

- (4) For cutting or removal of vegetation in a shorebird roosting buffer, notice of approval of the activity from the Department of Inland Fisheries and Wildlife (IF&W) must be submitted to the DEP with the notification form. The IF&W approval may specify the location of the activity or other conditions of approval.
- (5) For any work in, on or over a shorebird nesting, feeding, and staging area that would occur between July 15 and September 15, notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife must be submitted to the DEP with the notification form.
- (6) For new activities in a moderate value inland waterfowl and wading bird habitat that take place between April 15 and July 31 of any year, notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife must be submitted to the DEP with the notification form.

C. Standards

- (1) For activities in, on or over a shorebird nesting, feeding, and staging area between July 15 and September 15, the activity must occur during the time period approved by the Department of Inland Fisheries and Wildlife.
- (2) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed at the edge of disturbed areas between the activity and the undeveloped area before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

- (3) An activity of a type that would qualify for a permit by rule under one of the sections listed below must also meet the requirements of that section.

- Sec. 3. Intake pipes
- Sec. 4. Replacement of structures
- Sec. 6. Movement of rocks or vegetation
- Sec. 7. Outfall pipes
- Sec. 8. Shoreline stabilization
- Sec. 9. Crossings (utility lines, pipes, cables)

- Sec. 10. Stream crossing (bridges, culverts, fords)
- Sec. 11. State transportation facilities
- Sec. 12. Restoration of natural areas
- Sec. 13. Habitat creation or enhancement and water quality improvement activities
- Sec. 15. Public boat ramps
- Sec. 16. Coastal sand dune projects
- Sec. 18. Maintenance dredging renewal permit

(4) Except for cutting or removal of vegetation allowed pursuant to paragraph C(6) of this section, cutting or removal of vegetation within a high or moderate value inland waterfowl and wading bird habitat, or shorebird roosting buffer, is limited to:

- (a) Removal of a safety hazard; or
- (b) Cutting or removal of vegetation to allow for a footpath not to exceed 6 feet in width as measured between tree trunks and shrub stems. The footpath may not result in a cleared line of sight to the water.

Any cutting or removal of vegetation within a shorebird roosting buffer under this paragraph must be done in consultation with and as approved by the Department of Inland Fisheries and Wildlife.

(5) Cutting or removal of vegetation within a shorebird feeding buffer must meet the vegetative screening standards set forth in *Mandatory Shoreland Zoning*, 38 M.R.S.A. §439-A(6). In interpreting and enforcing these standards, the department shall rely upon the department's shoreland zoning rules regarding cutting or removal of vegetation for activities other than timber harvesting¹ and apply the cutting standards applicable within 75 feet of a coastal wetland to the entire 100-foot feeding buffer.

(6) New activities in an upland area on a lot in a moderate value inland waterfowl and wading bird habitat and that contains no Development area must meet the following standards:

- (a) New structures must be located a minimum of 150 feet landward of the upland edge or forested wetland edge of the inland wetland complex within the waterfowl and wading bird habitat;
- (b) Beyond 150 feet from the upland edge or forested wetland edge of the inland wetland complex within the waterfowl and wading bird habitat, no more than 20 % of the applicant's land within the habitat may be cleared or developed;
- (c) Within 150 feet of the upland edge or forested wetland edge of the inland wetland complex within the waterfowl and wading bird habitat, cutting and removal of vegetation is limited to those activities described in Paragraphs C(4)(a) and (b) of this section.

¹ *Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 CMR 1000(15)(P) (chapter last amended May 1, 2006).

- (d) No construction or clearing activity may take place from April 15 through July 31 of any year unless otherwise approved by the Maine Department of Inland Fisheries and Wildlife.
- (7) All work is limited to the location and extent depicted on the plan or plans submitted pursuant to subsection B(3) of this section.

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

- (1) **Development area.** The area of property altered including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other landscaped areas, as of June 8, 2006. "Developed area" has the same meaning as "development area".
- (2) **Inland high or moderate value waterfowl and wading bird habitat.** A high to moderate value inland habitat is an inland wetland complex, and a 250 foot wide zone surrounding the wetland complex, that through a combination of dominant wetland type, wetland diversity, wetland size, wetland type interspersion, and the percent of open water meets IF&W guidelines or is an inland wetland complex that has documented outstanding use by waterfowl or wading birds. See Chapter 335(10)(A) for complete criteria.
- (3) **Shorebird nesting, feeding, and staging areas.** Shorebird nesting, feeding, and staging areas, and a zone surrounding those areas as described in paragraphs (4) and (5), are significant wildlife habitats. Shorebird species include the members of the families Scolopacidae, Charadriidae, and Haematopodidae, including, but not limited to, sandpipers and plovers. See Chapter 335(11) for complete criteria.
- (4) **Shorebird feeding area.** A shorebird feeding or staging area that is not a roosting area. The shorebird feeding area includes a 100-foot-wide surrounding buffer referred to as the feeding buffer.
- (5) **Shorebird roosting area.** A shorebird feeding or staging area that is also a roosting area. The shorebird roosting area includes a 250-foot-wide surrounding buffer referred to as the roosting buffer.
- (6) **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.

NOTE: The significant wildlife habitats subject to this section are depicted on GIS data layers maintained by IF&W and available from either IF&W or the DEP.

STATUTORY AUTHORITY: 38 M.R.S.A., Section 480-H & 341-D(1)

EFFECTIVE DATE:

February 15, 1989

AMENDED:

March 23, 1991
April 11, 1992
May 19, 1992
May 1, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 4, 1996

NON-SUBSTANTIVE CORRECTIONS:

May 12, 1997 - punctuation, formatting, comparison with May 14, 1995 amendment
October 29, 1998 - APA Office Note added to first Section 5

AMENDED:

June 1, 1999
July 16, 1999 (EMERGENCY, expires October 14, 1999) - Section 10(A)
October 15, 1999 - language reverted to June 1, 1999 version
February 14, 2000 - Section 10

NON-SUBSTANTIVE CORRECTIONS:

November 23, 2000 - removed erroneous April 21, 1995 amendment date

AMENDED:

September 1, 2002

NON-SUBSTANTIVE CORRECTIONS:

September 5, 2002 - title of Section 2 only

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*)

**DEPARTMENT OF THE ARMY
GENERAL PERMIT
STATE OF MAINE**

The New England District of the U.S. Army Corps of Engineers (Corps) hereby issues this General Permit (GP) for activities in waters of the United States (U.S.) that have no more than minimal individual, secondary, and cumulative adverse effects on the aquatic environment in waters of the U.S. within the boundaries of and off the coast of the State of Maine.

I. GENERAL CRITERIA

In order for activities to qualify for this GP, they must meet the GP's terms and eligibility criteria (Pages 1 – 4), general conditions (GC) (Pages 5 – 18), and Appendix A - Definition of Categories.

Under this GP, projects may qualify for the following:

- Category 1: Category 1 Notification Form required.
(Submittal of the Category 1 Notification Form at Appendix B to the Corps is required.)
- Category 2: Application required.
(Submittal of an application to the Corps is required and written approval from the Corps must be received.)

If your project is ineligible for Category 1, it may qualify for Category 2 or an Individual Permit and you must submit an application (see Page 3). The thresholds for Categories 1 and 2 are defined in Appendix A. This GP does not affect the Corps Individual Permit review process or activities exempt from Corps regulation.

II. ACTIVITIES COVERED:

- Work and structures that are located in, under or over any navigable water of the U.S.¹ that affect the course, location, condition, or capacity of such waters; or the excavating from or depositing of material in such waters. The Corps regulates this under Section 10 of the Rivers and Harbors Act of 1899);
- The discharge of dredged or fill material into waters of the U.S.². The Corps regulates this under Section 404 of the Clean Water Act (CWA).³
- The transportation of dredged material for the purpose of disposal in the ocean. The Corps regulates this under Section 103 of the Marine Protection, Research and Sanctuaries Act.

¹ Defined at 33 CFR 329 and Appendix A, Page 4.

² Defined at 33 CFR 328

³ When there is a regulated discharge of dredged or fill material into waters of the U.S., the Corps will also consider secondary impacts, which are defined at Appendix A, Endnote/Definition 2.

III. PROCEDURES:

1. State Approvals

Applicants are responsible for applying for and obtaining any of the required state or local approvals (see GC 1, Page 5). Federal and state jurisdictions may differ in some instances. State permits may be required for specific projects regardless of the general permit category.

In order for authorizations under this GP to be valid, when any of the following state approvals or statutorily-required reviews is also required, the approvals must be obtained prior to the commencement of work in Corps jurisdiction.

- Maine Department of Environmental Protection (DEP): Natural Resources Protection Act (NRPA) permit, including permit-by-rule and general permit authorizations; Site Location of Development Act permit; and Maine Waterway Development and Conservation Act permit.
- Maine Department of Conservation: Land Use Regulation Commission (LURC) permit.
- Maine Department of Marine Resources: Aquaculture Leases.
- Maine Department of Conservation, Bureau of Parks and Lands, Submerged Lands: Lease

NOTE: This GP may authorize projects that are not regulated by the State of Maine (e.g., seasonal floats or moorings).

2. Corps Authorizations

a. Category 1 (Submission of Category 1 Notification Form required)

Eligibility Criteria

Activities in Maine that:

- Are subject to Corps jurisdiction (see GC 2, Page 5),
- Meet the terms and eligibility criteria of this GP (Pages 1 - 4),
- Meet all GCs of this GP (Pages 5 – 18), and
- Meet the definition of Category 1 in Appendix A - Definition of Categories,

may proceed without application to the Corps provided:

- The Category 1 Notification Form (Appendix B) is submitted to the Corps before starting the work authorized by this GP.

Consultation with the Corps and/or outside experts may be necessary to ensure compliance with this GP's general conditions (starting on Page 5) and related federal laws such as the National Historic Preservation Act, the Endangered Species Act (ESA), and the Wild and Scenic Rivers Act. For example, experts on historic resources may include the agencies and tribes referenced in GC 8, while experts on endangered species include the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS). Project proponents are encouraged to contact the Corps with Category 1 eligibility questions.

Work that is not regulated by the State of Maine, but is subject to Corps jurisdiction, is eligible for Category 1 authorization under this GP. The Maine DEP and LURC have waived WQC for projects authorized under Categories 1 and 2 of this GP. The state has concurred with the determination that projects authorized under Categories 1 and 2 of this GP are consistent with the enforceable policies of the Maine CZM Program.

b. Category 2 (Application to and written approval from the Corps required)

Eligibility Criteria

Activities in Maine that:

- Are subject to Corps jurisdiction (see GC 2, Page 5),
- Meet the terms of this GP (Pages 1 - 4),
- Meet all GCs of this GP (Pages 5 - 18),
- Meet the definition of Category 2 in Appendix A - Definition of Categories,

require an application to and written approval from the Corps. The Corps will coordinate review of Category 2 activities with federal and state agencies, as appropriate. To be eligible and subsequently authorized, an activity must result in no more than minimal impacts to the aquatic environment as determined by the Corps based on comments from the review team and the criteria listed above. This may require project modifications involving avoidance, minimization or compensatory mitigation for unavoidable impacts to ensure the net effects of a project are minimal. Compensatory mitigation for waterway/wetland impacts may take the form of wetland preservation, restoration, enhancement, creation, and/or “in-lieu fee” for inclusion into the Natural Resources Mitigation Fund. See www.nae.usace.army.mil/reg, “Mitigation” and then “Maine” for more information.

Work that is not regulated by the State of Maine, but is subject to Corps jurisdiction, is eligible for Category 2 authorization under this GP. The Maine DEP and LURC have waived WQC for projects authorized under Categories 1 and 2 of this GP. The state has concurred with the determination that projects authorized under Categories 1 and 2 of this GP are consistent with the enforceable policies of the Maine CZM Program.

3. Applying for a Permit

All applicants for Category 2 projects must:

- a.** Apply directly to the Corps using the state application form or the Corps application form (ENG Form 4345¹), and apply directly to the state (DEP, LURC, BPL or DMR) as applicable using the appropriate state form, if the work is regulated by the Corps and the state.
- b.** Apply directly to the Corps using the Corps application form (ENG Form 4345¹) if the work is regulated by the Corps but not the state (DEP, LURC, BPL or DMR).
- c.** Provide application information (see “Information Typically Required” in Appendix C) to help ensure the application is complete and to speed project review.
- d.** Submit a copy of their application materials to the Maine Historic Preservation Commission (MHPC) and the five Indian tribes listed at Appendix D, at the same time, or before, they apply to the state (DEP or LURC) or the Corps, to be reviewed for the presence of historic, archaeological or tribal resources in the permit area that the proposed work may affect. Submittals to the DEP or Corps shall include information to indicate that this has been done (a copy of the applicant’s cover letter to MHPC and tribes or a copy of the MHPC and tribal response letters is acceptable).

¹ Located at www.nae.usace.army.mil/reg under “Forms.”

4. Review Procedures

The Corps will coordinate review of all Category 2 activities with federal and state agencies, as appropriate, to ensure that the work will result in no more than a minimal impact to the aquatic environment. Applicants are responsible for applying for the appropriate state and local approvals listed on Page 2.

Emergency Procedures: 33 CFR 325.2(e)4 states that an “emergency” is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.” The Corps will work with all applicable agencies to expedite authorization according to established procedures in emergency situations.

Individual Permit Procedures: Proponents of work that does not meet the terms and general conditions of this GP must submit the Corps application form and the appropriate application materials to the Corps at the earliest possible date in order to expedite the Individual Permit review process. General information and application forms can be obtained at our website or by calling us (see Appendix D). Individual WQC and CZM consistency concurrence are required when applicable from the State of Maine before Corps permit issuance. The Corps encourages applicants to concurrently apply for a Corps Individual Permit and state permits.

5. Approval Process

Applicants for Category 2 activities may not proceed with work in Corps jurisdiction until written authorization is received from the Corps. If the Corps determines that the Category 2 activity is eligible for the GP, the Corps will send an authorization letter directly to the applicant. The Corps will attempt to issue a written eligibility determination within the state’s review period. If the Corps determines that the activity is not eligible under the GP or that additional information is required, the Corps will notify the applicant in writing and send a copy to the DEP or LURC. Applicants are responsible for obtaining all applicable approvals listed on Page 2 from the appropriate state and local agencies before commencing work in Corps jurisdiction.

V. GENERAL PERMIT CONDITIONS:

The following conditions apply to activities authorized under this Maine GP, unless otherwise specified, including all Category 1 (notification required) and Category 2 (application required) activities:

1. Other Permits. Authorization under this GP does not obviate the need to obtain other federal, state, or local authorizations required by law. This includes, but is not limited to, the project proponent obtaining a Flood Hazard Development Permit issued by the town, if necessary. Inquiries may be directed to the municipality or to the Maine Floodplain Management Coordinator at (207) 287-8063. See www.maine.gov/spo/flood.

2. Federal Jurisdictional Boundaries.

(a) Applicability of this GP shall be evaluated with reference to federal jurisdictional boundaries. Applicants are responsible for ensuring that the boundaries used satisfy the federal criteria defined at 33 CFR 328 “Waters of the U.S.” and 33 CFR 329 “Navigable Waters of the U.S.”

Note: Waters of the U.S. include the subcategories “navigable waters of the U.S.” and “wetlands.”

(b) For Category 1 projects, proponents are not required to delineate the waters of the U.S. that they plan to impact, but must approximate the square footage of impacts in order to determine the review category (1 or 2 or Individual Permit). For projects filling <15,000 SF of waters of the U.S. that do not qualify for Category 1 (e.g., vernal pool, secondary or endangered species impacts, etc.) and therefore require an application to the Corps, and for those filling \geq 15,000 SF, applicants shall delineate all waters of the U.S. that will be filled (direct impacts) in accordance with the Corps of Engineers Wetlands Delineation Manual and the most recent regional supplements (see Appendix E). In addition, applicants shall approximately identify all waters of the U.S. on the property and known waters adjacent to the property in order for the Corps to evaluate secondary impacts. The waters of the U.S. shall be clearly shown on the project plans submitted with the application. This includes all waters of the U.S. in areas under DEP or LURC jurisdiction regardless of whether they’re shown on LURC zoning maps.

(c) On a case-by-case basis, the Corps may modify/refine the above delineation and identification requirements for waters of the U.S.

3. Minimal Direct, Secondary and Cumulative Impacts.

(a) Projects authorized by this GP shall have no more than minimal direct, secondary and cumulative adverse environmental impacts. Category 2 applicants should provide information on secondary and cumulative impacts as stated in Appendix C. Compensatory mitigation may be required to offset unavoidable impacts (see GC 16) and to ensure that they are no more than minimal. Compensatory mitigation requirements will be determined on a case-by-case basis.

(b) Secondary impacts to waterway and/or wetland areas, (e.g., areas drained, flooded, cleared, excavated or fragmented) shall be added to the total fill area when determining whether the project qualifies for Category 1 or 2. Direct, secondary and cumulative impacts are defined at Appendix A, Endnote 2.

(c) Site clearing, grading and construction activities in the upland habitat surrounding vernal pools (“Vernal Pool Management Areas”) are secondary impacts. See GC 28 for avoidance and minimization requirements and recommendations.

4. Discretionary Authority. Notwithstanding compliance with the terms and conditions of this permit, the Corps retains discretionary authority to require Category 2 or Individual Permit review based on concerns for the aquatic environment or for any other factor of the public interest [33 CFR

320.4(a)]. This authority is invoked on a case-by-case basis whenever the Corps determines that the potential consequences of the proposal warrant a higher level of review based on the concerns stated above. This authority may be invoked for projects that may contribute to cumulative environmental impacts that are more than minimal or if there is a special resource or concern associated with a particular project that is not already covered by the remaining conditions of the GP and that warrants greater review. Whenever the Corps notifies an applicant that an Individual Permit may be required, the project is not authorized under this GP and no work may be conducted until an Individual Permit is obtained or until the Corps notifies the applicant that further review has demonstrated that the work may proceed under this GP.

5. Single and Complete Projects.

(a) This GP shall not be used to piecemeal work and shall be applied to single and complete projects¹. When determining the review category in Appendix A (Category 1 or 2) for a single and complete project, proponents must include any permanent historic fill placed since October 1995 that is associated with that project and all currently proposed temporary and permanent impact areas.

(b) A single and complete project must have independent utility¹.

(c) Unless the Corps determines the activity has independent utility¹:

i. This GP shall not be used for any activity that is part of an overall project for which an Individual Permit is required,

ii. All components of a single project and/or all planned phases of a multi-phased project (e.g., subdivisions should include all work such as roads, utilities, and lot development) shall be treated together as constituting one single and complete project¹.

(d) For linear projects, such as power lines or pipelines with multiple crossings, the single and complete project¹ is all crossings of a single water of the U.S. (i.e., single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies and crossings of such features cannot be considered separately. If any crossing requires a Category 2 activity, then the entire linear project shall be reviewed as one project under Category 2.

6. Permit On-Site. For Category 2 projects, the permittee shall ensure that a copy of this GP and the accompanying authorization letter are at the work site (and the project office) authorized by this GP whenever work is being performed, and that all personnel with operation control of the site ensure that all appropriate personnel performing work are fully aware of its terms and conditions. The entire permit authorization shall be made a part of any and all contracts and sub-contracts for work that affects areas of Corps jurisdiction at the site of the work authorized by this GP. This shall be achieved by including the entire permit authorization in the specifications for work. The term “entire permit authorization” means this GP and the authorization letter (including its drawings, plans, appendices and other attachments) and also includes permit modifications. If the authorization letter is issued after the construction specifications, but before receipt of bids or quotes, the entire permit authorization shall be included as an addendum to the specifications. If the authorization letter is issued after receipt of bids or quotes, the entire permit authorization shall be included in the contract or sub-contract. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions contained within the entire GP authorization, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

¹ Single and Complete Project and Independent Utility are defined at Appendix E.

7. St. John/St. Croix Rivers. Work within the Saint John and Saint Croix River basins that requires approval of the International Joint Commission is not eligible for Category 1 and an application to the Corps is required if any temporary or permanent use, obstruction or diversion of international boundary waters could affect the natural flow or levels of waters on the Canadian side of the line; or if any construction or maintenance of remedial works, protective works, dams, or other obstructions in waters downstream from boundary waters could raise the natural level of water on the Canadian side of the boundary.

8. Historic Properties. No activity otherwise authorized by this GP shall result in effects (as that term is defined at 36 C.F.R. § 800.16(i)) on properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties, unless and until the Corps or another federal agency has satisfied the consultation requirements of Section 106 of the National Historic Preservation Act. Work is not eligible for Category 1 and an application to the Corps is required if the activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. Work is eligible for Category 1 if a no effect or no adverse effect determination has been made for that work by another federal action agency in its Section 106 consultation with the Maine Historic Preservation Commission (MHPC) and the five federally recognized Indian tribes listed at Appendix D. Information on the location and existence of known historic resources can be obtained from the MHPC, the National Register of Historic Places, and the five tribes listed in Appendix D. Historic properties include those that are eligible for inclusion, but not necessarily listed on the National Register. If the permittee, either prior to construction or during construction of the work authorized herein, encounters a previously unidentified archaeological or other cultural resource within the area subject to Corps jurisdiction that might be eligible for listing in the National Register of Historic Places, he/she shall stop work and immediately notify the Corps and the MHPC and/or applicable tribe(s).

9. National Lands. None of the following work is eligible as a Category 1 project:

(a) Activities that impinge upon the value of any National Wildlife Refuge, National Forest, National Marine Sanctuary, National Park or any other area administered by the National Park Service, U.S. Fish and Wildlife Service (USFWS) or U.S. Forest Service.

(b) Work on Corps properties and Corps-controlled easements. Contact the Corps, Real Estate Division (978) 318-8585 to initiate reviews about both Corps holdings and permit requirements.

(c) Any proposed temporary or permanent modification or use of a federal project (including but not limited to a levee, dike, floodwall, channel, sea wall, bulkhead, jetty, wharf, pier, or other work built but not necessarily owned by the United States), which would obstruct or impair the usefulness of the federal project in any manner, and/or would involve changes to the authorized federal project's scope, purpose, and/or functioning that go beyond minor modifications required for normal operation and maintenance (requires review and approval by the Corps pursuant to 33 USC 408). Federal projects in Maine as of October 2010 are shown at Appendix F. This map may not be inclusive of all projects.

10. Endangered Species.

(a) No activity may be authorized under Category 1 of this GP which:

i. "May affect" a threatened or endangered species, a species proposed for listing as threatened or endangered, or designated or proposed critical habitat (all herein referred to as "listed species or habitat") as identified under the federal Endangered Species Act (ESA) (unless specified in a programmatic agreement with NMFS or USFWS),

- ii. Results in a “take” of any federally-listed threatened or endangered species of fish or wildlife, or
- iii. Results in any other violation of Section 9 of the ESA protecting threatened or endangered species of plants.

(b) Work in Inland Waters and Wetlands¹ and the non-tidal portions of Navigable Waters² (e.g., the Penobscot River, Kennebec River) is not eligible for Category 1 if:

- i. The project action area occurs within a watershed occupied by listed Atlantic salmon or shortnose sturgeon. Project proponents must check the site in Footnote 3 below.
- ii. In areas outside these watersheds contact the USFWS (see Appendix D, Page 1 for contact information) to check for the presence of other listed species.

(c) Work in the tidal portions of Navigable Waters may be eligible for Category 1. Reference Appendix A, II. Navigable Waters, Pages 4 – 9, and the other terms and general conditions (GC 11 is particularly relevant) of this GP to determine Category 1 eligibility. Project proponents must contact the USFWS (see Appendix D, Page 1 for contact information) to ensure that work in all tidal portions of Navigable Waters² is not in critical habitat or areas occupied by listed species other than Atlantic salmon or shortnose sturgeon.

(d) Although some work is excluded from Category 1 as stated in (b) and (c) above, work may qualify for Category 1 if a no effect determination has been made for that work by a federal action agency such as the Corps.

(e) Proponents must submit an application to the Corps if any of the activities in 10(a)-10(c) that do not qualify for Category 1 may occur and provide information on federally-listed species or habitat to allow the Corps to conduct any required consultation under Section 7 of the ESA.

(f) The Corps review may consider species listed as endangered and threatened pursuant to Maine state law.

11. Essential Fish Habitat. Any work in the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration, shall not be authorized under Category 1 of the GP and must be screened for potential impacts to EFH (see Appendix E for more information).

Androscoggin River	Aroostook River	Boyden River	Dennys River
Ducktrap River	East Machias River	Hobart Stream	Kennebec River
Machias River	Narraguagus River	Orland River	Passagassawaukeag River
Patten Stream	Penobscot River	Pleasant River	Presumpscot River
Saco River	Sheepscot River	St. Croix River	Tunk Stream
			Union River

The above does not apply to the following activities which may qualify for Category 1 work:

- Exploratory drilling and borings for bridges.
- Moorings (see Appendix A, Page 6 for Category 1 thresholds and requirements)
- Structures and floats (see Appendix A, Page 7 for Category 1 thresholds and requirements)
- Other activities specified in a programmatic agreement with NMFS.

¹ See Appendix A, Page 1 for definition.

² See Appendix A, Page 4 for definition.

³ For areas considered occupied by listed Atlantic salmon and/or shortnose sturgeon in Inland Waters and Wetlands, and in Navigable Waters, see: www.nero.noaa.gov/prot_res/altsalmon/dpsmaps.html. Tidal portions of navigable waters occupied by listed Atlantic salmon are more specifically described as those waters from the Kennebec River to its mouth at Merrymeeting Bay, northeast to the Dennys River, including the Androscoggin River upstream to the Brunswick Dam, and other streams northeast of this line to the limit of their tidal reaches.

12. Wild and Scenic Rivers. Any activity that occurs in the designated main stem of, within 0.25 mile up or downstream of the designated main stem of, or in tributaries within .25 miles of the designated main stem of a National Wild and Scenic River, or in “bordering and contiguous wetlands” (see Appendix A, Endnote 1) that are adjacent to the designated main stem of a National Wild and Scenic River, or that has the potential to alter flows within a river within the National Wild and Scenic River System, is not eligible for Category 1 regardless of size of the impacts. This condition applies to both designated Wild and Scenic Rivers and rivers officially designated by Congress as study rivers for possible inclusion while such rivers are in an official study status. National Wild and Scenic Rivers System segments for Maine as of October 2010 include: Allagash River beginning at Telos Dam continuing to Allagash checkpoint at Eliza Hole Rapids, approximately 3 miles upstream of the confluence with the St. John River (length = 92 miles).

13. Federal Navigation Project. Any structure or work that extends closer to the horizontal limits of any Corps Federal Navigation Project (see Appendix F) than a distance of three times the project’s authorized depth shall be subject to removal at the owner’s expense prior to any future Corps dredging or the performance of periodic hydrographic surveys. This is applicable to Category 1 and 2. Reference Appendix A, Page 6 (Mooring) and Page 7 (Structure and Floats).

14. Navigation.

(a) There shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein and no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized herein.

(b) The permittee understands and agrees that, if future U.S. operations require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.

15. Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the U.S. in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

16. Avoidance, Minimization and Compensatory Mitigation.

Discharges of dredged or fill material into waters of the U.S., including wetlands, shall be avoided and minimized to the maximum extent practicable through consideration of alternatives. The Corps may require compensatory mitigation of unavoidable direct and secondary impacts associated with Category 2 projects on a case-by-case basis (see Appendix E).

17. Heavy Equipment in Wetlands. Operating heavy equipment other than fixed equipment (drill rigs, fixed cranes, etc.) within wetlands shall be minimized, and such equipment shall not be stored, maintained or repaired in wetlands, to the maximum extent practicable. Where construction requires heavy equipment operation in wetlands, the equipment shall either have low ground pressure

(typically <3 psi), or it shall be placed on swamp/construction/timber mats (herein referred to as “construction mats” and defined at Appendix A, Endnote 4) that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation. Construction mats are to be placed in the wetland from the upland or from equipment positioned on swamp mats if working within a wetland. Dragging construction mats into position is prohibited. Other support structures that are capable of safely supporting equipment may be used with written Corps authorization (Category 2 authorization or Individual Permit). Similarly, the permittee may request written authorization from the Corps to waive use of mats during frozen, dry or other conditions. An adequate supply of spill containment equipment shall be maintained on site.

18. Temporary Fill.

Temporary fill that qualifies for Category 1 (e.g., <15,000 SF of combined temporary and permanent fill associated with the single and complete project) or is authorized in writing under Category 2, shall adhere to the following:

- (a) All temporary fill shall be stabilized to prevent its eroding into portions of waters of the U.S., including wetlands, where it is not authorized.
- (b) Unconfined temporary fill authorized for discharge into waters of the U.S., including wetlands, shall consist of material that minimizes impacts to water quality (e.g. sandbags, clean gravel, stone, aggregate, etc.).
- (c) Temporary fill authorized for discharge into wetlands should be placed on geotextile fabric or other material (e.g., straw) laid on the pre-construction wetland grade where practicable to minimize impacts.
- (d) Temporary fill shall be removed as soon as it is no longer needed, disposed of at an upland site, and suitably contained to prevent subsequent erosion into waters of the U.S, including wetlands. To qualify for Category 1, temporary fill placed during the:
 - i. Growing season must be removed before the beginning of the next growing season.
 - ii. Non-growing season may remain throughout the following growing season, but must be removed before the beginning of the next growing season.
- (e) Waters of the U.S., including wetlands, where temporary fill was discharged shall be restored (see GC 19).
- (f) Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must be placed in a manner that will not be eroded by expected high flows (see GC 21).
- (g) Construction mats and corduroy roads (see GC 17 above) are considered as temporary fill when they are removed immediately upon work completion. The area must be restored (see GC 19).

19. Work Site Restoration.

- (a) Wetland areas where permanent disturbance is not authorized shall be restored to their original condition and elevation, which under no circumstances shall be higher than the pre-construction elevation. Original condition means careful protection and/or removal of existing soil and vegetation, and replacement back to the original location such that the original soil layering and vegetation schemes are approximately the same, unless otherwise authorized.
- (b) Upon completion of construction, all disturbed wetland areas (the disturbance of these areas must be authorized) shall be properly stabilized. Any seed mix shall contain only plant species native to New England and shall not contain any species listed in the “Invasive and Other Unacceptable Plant Species” Appendix in the “New England District Compensatory Mitigation Guidance” (see Appendix E, Paragraph 6). This list may be updated periodically.
- (c) In areas of authorized temporary disturbance, if trees are cut they shall be cut at ground level and

not uprooted in order to prevent disruption to the wetland soil structure and to allow stump sprouts to revegetate the work area, unless otherwise authorized.

20. Bank Stabilization.

(a) Projects involving construction or reconstruction/maintenance of bank stabilization structures within Corps jurisdiction shall be designed to minimize environmental effects, effects to neighboring properties, scour, etc. to the maximum extent practicable.

(b) Project proponents must design and construct bank stabilization projects using this sequential minimization process: avoidance of aquatic resource impacts, diversion of overland flow, vegetative stabilization, stone-sloped surfaces, and walls/bulkheads. Vertical walls/bulkheads shall only be used in situations where reflected wave energy can be tolerated. Refer to Appendix E for design guidance.

(c) Inland Water bank stabilization activities necessary for erosion prevention must meet all of the following criteria: (i) No material is placed in excess of the minimum needed for erosion protection; (ii) The activity is no more than 500 feet in length along the bank; (iii) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark; (iv) Structures angled steeper than 1H:1V and any material other than angular or subangular stone or fiber roll revetments require at least a Category 2 review. (v) The activity does not involve discharges of dredged or fill material into special aquatic sites; (vi) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the U.S.; (vii) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and, (viii) The activity is not a stream channelization activity.

(d) Navigable Water bank stabilization activities are provided at Appendix A, Page 4.

21. Sedimentation and Erosion Control.

(a) Adequate sedimentation and erosion control management measures, practices and devices, such as phased construction, installation of sediment control barriers (i.e. silt fence, vegetated filter strips, geotextile silt fences, erosion control mixes, hay bales or other devices) downhill of all exposed areas, retention of existing vegetated buffers, application of temporary mulching during construction, and permanent seeding and stabilization shall be installed and properly maintained to reduce erosion and retain sediment on-site during and after construction. They shall be capable of preventing erosion, of collecting sediment, suspended and floating materials, and of filtering fine sediment.

(b) Temporary sediment control barriers shall be removed upon completion of work, but not until all disturbed areas are permanently stabilized. The sediment collected by these sediment barriers shall be removed and placed at an upland location and stabilized to prevent its later erosion into a waterway or wetland.

(c) All exposed soil and other fills shall be permanently stabilized at the earliest practicable date (see GC 19).

22. Stream Work and Crossings¹.

Notes:

(a) GC 22(a) and (b) apply to Inland Waters and Wetlands (see Appendix A, Page 1 for definition) and Navigable Waters (see Appendix A, Page 4 for definition). GC 22(c)-(l) only apply to Inland Waters and Wetlands that are streams. All new and replacement crossings in Navigable Waters require an application to the Corps and at least a Category 2 review.

(b) In-stream work in a watershed occupied by listed Atlantic salmon or shortnose sturgeon [see GC 10(b)] and some stream work such as crossings on EFH waters (see GC 11) is not eligible for Category 1.

(c) “High-Quality Stream Segments” are shown at www.maine.gov/dep/gis/datamaps and may be useful in evaluating impacts to fisheries. GIS shape files are under “Other Google Earth Interactive Maps” and PDFs by county are under “DEP GIS Maps.” See Appendix E, 8(b) for more information.

Conditions:

(a) All permanent crossings of rivers, streams, brooks, etc. (hereon referred to as “streams”) shall be suitably culverted, bridged, or otherwise designed to **i**) withstand and to prevent the restriction of high flows to qualify for Category 1, and **ii**) not obstruct the movement of or not substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, beyond the actual duration of construction unless the activity’s primary purpose is to impound water to qualify for Category 1 or 2. (NOTE: Areas of fill and/or cofferdams must be included in total waterway/wetlands impacts to determine applicability of this GP).

(b) Any work that temporarily or permanently impacts upstream or downstream flood conditions, or permanently impacts wetlands in excess of Category 1 thresholds, must be reviewed at least under Category 2. See the documents referenced in Appendix E, 8(c) and (d) for guidance.

(c) New Stream Crossings. For new stream crossings to qualify for Category 1:

i. Must ensure compliance with GC 22(a) and GC 22(b) above.

ii. Shall be designed and constructed in accordance with the Corps General Stream Crossing Standards provided on Page 14 and the stream simulation document listed at Appendix E, 8(a).

(d) Replacement Stream Crossings. For replacement stream crossings to qualify for Category 1:

i. Must ensure compliance with GC 22(a) and GC 22(b) above.

ii. Shall be designed and constructed in accordance with the Corps General Stream Crossing Standards provided on Page 14 and the stream simulation document listed at Appendix E, 8(a).

(e) Culvert Extensions. Culvert extensions on culverts that do not meet the Corps General Stream Crossing Standards do not qualify for Category 1 and require an application to the Corps at least as a Category 2 project.

(f) Temporary Stream Crossings.

Note: The General Stream Crossing Standards don’t apply to temporary stream crossings.

i. Temporary stream crossings or cofferdams shall be used for equipment access across streams [see Appendix E, 8(e)]. Note: Areas of fill and/or cofferdams must be included in total waterway/wetlands impacts to determine the review category in Appendix A.

ii. Temporary stream crossings shall be removed within 180 days to qualify for Category 1.

iii. Temporary stream crossings that are not spans² (typically culverts) must be designed in accordance with 1-6 below to qualify for Category 1. Category 2 applications should include information demonstrating 2-6 below:

¹ This condition does not apply to non-tidal drainage systems and irrigation ditches excavated on dry land.

² For the purposes of this GP, spans are bridges, three-sided box culverts, open-bottom culverts or arches that span the stream with footings landward of bankfull width.

1. Installed and removed during the low flow period specified in GC 22(l) below.
2. Placed on geotextile fabric or other material where practicable to ensure restoration to the original grade. Soil may not be used to construct or stabilize these structures and rock must be large enough to allow for easy removal without disrupting the streambed.
3. Designed and maintained to withstand and pass high flows. Water height should be no higher than the top of the culvert's inlet. A minimum culvert diameter of two feet is required to pass debris. Culverts must be aligned to prevent bank erosion or streambed scour.
4. Equipped with energy dissipating devices installed downstream if necessary to prevent scour.
5. Designed and maintained to prevent soil from entering the waterbody.
6. Removed upon the completion of work. Impacts to the streambed or banks requires restoration to their original condition using stream simulation methods¹.

(g) Slip Lining. Work using slip lining (retrofitting an existing culvert by inserting a smaller diameter pipe), invert lining, or resulting in decreased diameter, do not qualify for Category 1, either as new work or maintenance activities.

(h) Work in Flowing Waters. To qualify for Category 1, no unconfined fill [see GC 18(b)] or excavation in flowing waters is allowed. To accomplish this:

i. Bank stabilization work below ordinary high water (OHW) shall utilize erosion controls such as inflatable cofferdams, jersey barrier, silt screen, turbidity curtain, etc. where practicable to prevent sediment input to the stream and to minimize turbidity and sedimentation impacts for sensitive life stages. Bank stabilization above OHW must utilize erosion controls.

ii. Management techniques such as temporary flume pipes, culverts, cofferdams, etc. must be used to maintain normal flows within the stream boundary's confines, or water diversions may be used immediately up and downstream of the work footprint (see Appendix A, Endnote 6) or work must be performed in the dry under no flow conditions, or under very low flow conditions following the practices in GC 22(a).

(i) Minimization. In order to make the Category 2 review process more efficient and result in a faster decision, new and replacement stream crossings should be designed using the least intrusive and environmentally damaging method following this sequential minimization process: 1) spans with no stream impacts, 2) spans with stream impacts, and 3) embedded culverts with stream simulation or low-slope design.

(j) Maintenance Requirements. The permittee shall maintain the work authorized herein in good condition and in conformance with the terms and general conditions of this permit to facilitate aquatic life passage as stated in GC 22(a). Culverts that develop "hanging" inlets or outlets, result in bed washout, or a stream that doesn't match the characteristics of the substrate in the natural stream channel such as mobility, slope, stability confinement will require maintenance or repair to comply with this GC. This does not apply to GC 22(f) above.

(k) Maintenance and Replacement Information. An existing stream crossing must be authorized and in compliance with all conditions of its authorization(s) to qualify for maintenance not subject to regulation. See Appendix A, Endnote 7. A non-serviceable crossing is not eligible for maintenance and is therefore considered as a replacement crossing [see 22(d)].

(l) Work Window. For projects that otherwise meet the terms of Category 1, in-stream construction work shall be conducted during the low flow period July 15 - October 1 in any year. Projects that are not to be conducted during that time period are ineligible for Category 1 and shall be screened pursuant to Category 2, regardless of the waterway and wetland fill and/or impact area.

(See next page for Corps General Stream Crossing Standards.)

¹ Design and construction shall be in accordance with the stream simulation document listed at Appendix E, 8(a).

Corps General Stream Crossing Standards (required for Category 1, recommended for Category 2):

(a) Culverts must be embedded:

- ≥ 2 feet for box culverts and other culverts with smooth internal walls,
- ≥ 1 foot for corrugated pipe arches
- ≥ 1 foot and at least 25 percent for corrugated round pipe culverts

(b) For new crossings, spans¹ are required to avoid or cause minimal disruption to the streambed and to meet the requirements of General Condition 22(a) and 22(b). Footings and abutments must be landward of 1.2 times bankfull width. To the greatest extent practicable, work in the stream shall be minimized, and design and construction shall allow the streambed's natural structure and integrity to remain intact. Any fill or excavation of the streambed below bankfull width other than footings, support pilings, or work specified in 22(h)ii requires Category 2 review and, unless demonstrated otherwise, stream simulation² to establish substrate and banks in the span structure and work area as specified in (d) and (e) below.

(c) For replacement crossings, spans¹ are required to meet the requirements of General Condition 22(a) and 22(b). Footings and abutments shall be landward of 1.2 times bankfull width. Unless demonstrated otherwise, stream simulation² is required to establish substrate and banks in the span structure and work area as specified in (d) and (e) below.

(d) Crossings must have a natural bottom substrate within the structure matching the characteristics of the substrate in the natural stream channel and the banks (mobility, slope, stability, confinement, grain and rock size)² at the time of construction and over time as the structure has had the opportunity to pass significant flood events. To allow terrestrial passage for wildlife and prevent undermining the footings, crossings shall have a bank on both sides of the stream matching the horizontal profile of the existing stream and banks².

(e) Crossings must be designed and constructed² with appropriate bed forms and streambed characteristics so that water depths and velocities are comparable to those found in the natural channel at a variety of flows. In order to provide appropriate water depths and velocities at a variety of flows and especially low flows, it is usually necessary to reconstruct the streambed or preserve the natural channel within the structure. Otherwise, the width of the structure needed to accommodate higher flows will create conditions that are too shallow at low flows. The grain and rock size, and arrangement of streambed materials within the structure should be in accordance with (d) above. Flows could go subsurface within the structure if only large material is used without smaller material filling the voids.

23. Wetland Crossings.

(a) All temporary and permanent crossings of wetlands shall be suitably culverted, bridged, or otherwise designed to: **i)** Withstand and prevent the restriction of high flows, **ii)** Not obstruct the movement of or not substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the wetland, including those species that normally migrate through the area, beyond the actual duration of construction unless the activity's primary purpose is to impound water. See Appendix E for the Maine DEP's crossing standards.

(b) To qualify for Category 1, new and replacement wetland crossings that are permanent shall be culverted, spanned or bridged in such a manner as to preserve hydraulic and ecological connectivity, at its present level, between the wetlands on either side of the road. To meet this requirement, we

¹ For the purposes of this GP, spans are bridges, three-sided box culverts, open-bottom culverts or arches that span the stream with footings landward of bankfull width.

² Design and construction shall be in accordance with the stream simulation document listed at Appendix E, 8(a).

recommend that culverts, spans or bridges be placed at least every 50 feet with an opening at least 2 feet high and 3 feet wide at ground level where practicable. Closed bottom culverts shall be embedded at least 6 inches with a natural bottom.

(c) In the case of non-compliance, the permittee shall take necessary measures to correct wetland damage due to lack of hydraulic and ecological connectivity.

(d) Any work that results in flooding, results in impacts to wetlands on either side of the wetland crossing in excess of Category 1 thresholds, or impacts wetland drainage from the upgradient side of the wetland crossing does not qualify for Category 1.

24. Discharge of Pollutants.

(a) All activities involving any discharge of pollutants into waters of the U.S., including wetlands, authorized under this GP shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the Clean Water Act (CWA) (33 USC 1251), and applicable state and local laws. If applicable water quality standards, limitations, etc., are revised or modified during the term of this GP, the authorized work shall be modified to conform with these standards within six months of the effective date of such revision or modification, or within a longer period of time deemed reasonable by the Corps in consultation with the EPA. Issuance of a LURC or DEP NRPA permit confirms that state water quality standards are met.

(b) All projects authorized by this GP shall be designed, constructed and operated to minimize or eliminate the discharge of pollutants.

(c) All activities involving any discharge of pollutants into waters of the U.S., including wetlands, authorized under this GP must comply with Section 402 [33 U.S.C. 1342] of the CWA and the requirements of the National Pollutant Discharge Elimination System (40 CFR 122).

25. Spawning, Breeding and Migratory Areas. Activities and impacts such as excavations, discharges of dredged or fill material, and/or suspended sediment producing activities, in fish migratory areas, fish and shellfish spawning or nursery areas, or amphibian and migratory bird breeding areas, during spawning or breeding seasons shall be avoided and minimized to the maximum extent practicable.

26. Storage of Seasonal Structures. Coastal structures, such as pier sections and floats, that are removed from the waterway for a portion of the year (often referred to as seasonal structures) shall be stored in an upland location located above mean high water (MHW) and not in tidal wetlands or mudflats. These seasonal structures may be stored on the fixed, pile-supported portion of the structure that is seaward of MHW. This is intended to prevent structures from being stored on the marsh substrate, mudflats, or the substrate seaward of MHW. Seasonal storage of structures in navigable waters, e.g., in a protected cove on a mooring, requires Corps and local harbormaster approval.

27. Environmental Functions and Values. The permittee shall make every reasonable effort to carry out the construction or operation of the work authorized herein in a manner that maintains as much as is practicable, and minimize any adverse impacts on existing fish, wildlife, and natural environmental functions and values.

28. Protection of Vernal Pools (VPs).

(a) Impacts to VP Management Areas¹ for all VPs on, and known VPs surrounding, the project site shall be minimized to the maximum extent practicable.

(b) The following management practices must be followed for all work within the VP Management Area (750' of a VP's edge) of all VPs in order to qualify for Category 1 when there is fill placed in a water of the U.S., including wetlands:

i. Similar to the DEP's Significant Wildlife Habitat regulations²:

1. No disturbance within the VP Depression or VP Envelope (area within 100 feet of the VP Depression's edge)³;
2. Maintain a minimum of 75% of the Critical Terrestrial Habitat (area within 100-750 feet of the VP Depression's edge) as unfragmented forest with at least a partly-closed canopy of overstory trees to provide shade, deep litter and woody debris³;
3. Maintain or restore forest corridors connecting wetlands and significant vernal pools;
4. Minimize forest floor disturbance; and
5. Maintain native understory vegetation and downed woody debris.

ii. Cape Cod style-curbings or no curbing options shall be used on new roads to facilitate amphibian passage².

(c) For work not complying with the requirements in (b) above, applicants shall submit an application to the Corps for at least Category 2 review with information on directional buffers in accordance with the VP Directional Buffer Guidance document². Conservation of the unimpacted area within the VP Management Area will often be required.

(d) GC 2 requires applicants to delineate or approximately identify on the project plans all waters of the U.S., which include vernal pools. Appendix A, Page 1 lists VP Category 1 thresholds.

29. Invasive Species.

(a) The introduction, spread, or the increased risk of invasion of invasive plant or animal species on the project site, into new or disturbed areas, or areas adjacent to the project site caused by the site work is prohibited (see Appendix E, Paragraph 6).

(b) Unless otherwise directed by the Corps, all applications for Category 2 inland projects and Category 2 coastal fill projects proposing fill in Corps jurisdiction shall include an Invasive Species Control Plan (ISCP) (see Appendix E, Paragraph 6).

30. Cranberry Development Projects. For cranberry development projects authorized under the GP, the following conditions apply:

(a) If a cranberry bog is abandoned for any reason, the area must be allowed to revert to natural wetlands unless an Individual Permit is obtained from the Corps allowing the discharge of fill for an alternate use.

¹ The Corps VP Management Area, which includes the VP and a 750' radius from the VP's edge, is defined at Appendix A, Endnote 5.

² Appendix E, 10(a)-(d) provides links to the state's Significant Wildlife Habitat regulations and references that provide impact minimization measures to reference when designing projects.

³ The no disturbance requirement in the VP envelope [see (b)(i)(1)], and (b)(i)(2), do not apply to temporary impacts associated with construction mats in previously disturbed areas of existing utility project (e.g., transmission lines, gas pipelines) or linear transportation project (e.g., roads, highways, railways, trails, airport runways and taxiways) right-of-ways provided there is a Vegetation Management Plan that avoids, minimizes and mitigates impacts to aquatic resources.

(b) No stream diversion shall be allowed under Category 1 of this GP.

(c) No impoundments of intermittent or perennial streams shall be allowed under Category 1 and an application to the Corps is required for at least Category 2 review.

(d) The project shall be designed and constructed to not cause flood damage on adjacent properties.

31. Inspections. The permittee shall allow the Corps to make periodic inspections at any time deemed necessary in order to ensure that the work is being or has been performed in accordance with the terms and conditions of this GP. The Corps may also require post-construction engineering drawings for completed work or post-dredging survey drawings for any dredging work.

To facilitate these inspections, the permittee shall complete and return to the Corps:

- For Category 1 projects, the Category 1 Notification Form (Appendix B).
- For Category 2 projects, the 1) Work-Start Notification Form and 2) Compliance Certification Form whenever either is provided with a Category 2 authorization letter.

32. Maintenance.

(a) The permittee shall maintain the work authorized herein in good condition and in conformance with the terms and general conditions of this permit.

(b) This does not include maintenance of dredging projects. Each maintenance dredging event exceeding the Category 1 thresholds (see Appendix A, Page 6) requires a new written Corps authorization unless an unexpired, written Corps authorization specifies that the permittee may “dredge and maintain” an area for a particular time period. Category 1 or 2 maintenance dredging includes only those areas and depths previously authorized and dredged.

(c) Some maintenance activities may not be subject to regulation under Section 404 in accordance with 33 CFR 323.4(a)(2) (see Appendix A, Endnote 7).

33. Property Rights. This PGP does not convey any property rights, either in real estate or material, or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

34. Transfer of GP Verifications. When the structures or work authorized by this GP are still in existence at the time the property is transferred, the terms and conditions of this GP, including any special conditions, will continue to be binding on the entity or individual who received the GP verification, as well as the new owner(s) of the property. The permittee may transfer responsibilities and obligations under the GP verification to the new owner by submitting a letter to the Corps (see Appendix D for address) to validate the transfer. A copy of the GP verification must be attached to the letter and the letter must contain the following statement and signature: “When the structures or work authorized by this GP are still in existence at the time the property is transferred, the terms and conditions of this GP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this GP and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

35. Modification, Suspension, and Revocation. This GP or any work authorized under Category 1 or 2 may be either modified, suspended, or revoked, in whole or in part, pursuant to the policies and procedures of 33 CFR 325.7. Any such action shall not be the basis for any claim for damages against the United States.

36. Restoration Directive. The permittee, upon receipt of a notice of revocation of authorization under this GP, shall restore the wetland or waterway to its former condition without expense to the United States and as directed by the Secretary of the Army or his authorized representative. If the permittee fails

to comply with such a directive, the Secretary or his designee may restore the wetland or waterway to its former condition, by contract or otherwise, and recover the cost from the permittee.

37. Special Conditions. The Corps may independently, or at the request of the Federal resource agencies, impose other special conditions on a project authorized pursuant to this GP that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee to criminal, civil, or administrative penalties and/or an ordered restoration.

38. False or Incomplete Information. If the Corps makes a determination regarding the eligibility of a project under this GP and subsequently discovers that it has relied on false, incomplete, or inaccurate information provided by the permittee, the GP authorization shall not be valid and the U.S. government may institute appropriate legal proceedings.

39. Abandonment. If the permittee decides to abandon the activity authorized under this GP, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Corps.

40. Enforcement Cases. This GP does not apply to any existing or proposed activity in Corps jurisdiction associated with an on-going Corps or EPA enforcement action, until such time as the enforcement action is resolved or the Corps and/or EPA as appropriate determines that the activity may proceed independently without compromising the enforcement action.

41. Duration of Authorization. This GP expires on October 11, 2015. Activities authorized under this GP that have commenced (i.e., are under construction) or are under contract to commence before this GP expires will have until October 11, 2016 to complete the activity under the terms and conditions of the current GP.

42. Previously Authorized Activities.

(a) Projects that have received authorization (Category 1 or 2) from the Corps and that were completed under the previous PGPs, nationwide permits, regional general permits or letters of permission, shall remain authorized.

(b) Activities authorized pursuant to 33 CFR Part 330.3 ("Activities occurring before certain dates") are not affected by this GP.

(c) Any work not commenced nor completed that was authorized in a written letter from the Corps under the PGP in effect between October 11, 2005 and October 11, 2010 remains authorized subject to the terms and general conditions of this GP along with any special conditions in the authorizing written letter.

43. NEPA Compliance. The Maine PGP was authorized in full compliance with Council for Environmental Quality ("CEQ") NEPA regulations. The Corps has determined that individual permit actions taken under the terms and conditions of the PGP are not a major federal action significantly affecting the quality of the human environment.


District Engineer
10/12/10
Date

APPENDIX A: DEFINITION OF CATEGORIES

<p>A. INLAND WATERS AND WETLANDS</p>	<p>Inland Waters and Wetlands: Waters that are regulated under Section 404 of the Clean Water Act, including rivers, streams, lakes, ponds and wetlands, and excluding Section 10 Navigable Waters of the U.S. The jurisdictional limits are the ordinary high water (OHW) mark in the absence of adjacent wetlands, beyond the OHW mark to the limit of adjacent wetlands when adjacent wetlands are present, and the wetland limit when only wetlands are present. For the purposes of this GP, fill placed in the area between the mean high water (MHW) and the high tide line (HTL), and in the bordering and contiguous wetlands¹ to tidal waters are reviewed in the Navigable Waters section. (See II. Navigable Waters on page 4 below.)</p>
<p>ACTIVITY</p>	<p>Projects not meeting Category 1 require an application for review as a Category 2 or Individual Permit project. All Category 1 and 2 projects must comply with all of this GP's applicable terms (Pages 1 – 4) and general conditions (Pages 5–18).</p>
<p>(a) NEW FILL/ EXCAVATION DISCHARGES (You must reference (b) – (e) below for other thresholds that may be relevant to your project.)</p>	<p align="center">CATEGORY 1</p> <p>1. <15,000 square feet (SF) (in LURC or DEP territories) of inland waterway and/or wetland fill and associated secondary impacts² (e.g., areas drained, flooded, fragmented, mechanically cleared or excavated). Fill area includes all temporary and permanent fill, and regulated discharges associated with excavation. Construction mats are considered as fill. [See General Condition (GC) 18(g.) <u>Provided:</u></p> <ul style="list-style-type: none"> • Historic fill + proposed impact area <15,000 SF and subdivision fill complies with GC 5, Single and Complete Projects. • No work in special aquatic sites (SAS)⁴ other than wetlands. <p>2. Construction mats⁴ of any area necessary to conduct activities that were previously authorized, authorized under Category 1, or not subject to regulation (see Endnote 7). Authorized construction mats must be in place for <3 months, removed immediately upon work completion, and the wetlands must be restored (see GC 19).</p> <p>3. For work in Vernal Pool (VP) Management Areas (includes VPs)⁵:</p> <ul style="list-style-type: none"> • See GC 2 and Appendix C for VP delineation requirements. • See GC 28 to determine if work qualifies for Category 1 or 2. • See Appendix E, Page 3 for VP documents providing mitigation guidance.
<p>ACTIVITY</p>	<p align="center">CATEGORY 2</p> <p>1. ≥15,000 square feet (SF) (in LURC or DEP territories) to <3 acres of inland waterway and/or wetland fill and associated secondary impacts (e.g., areas drained, flooded, fragmented, or excavated). Fill area includes all temporary and permanent fill, and regulated discharges associated with excavation. Mechanical clearing without grubbing or other soil disturbance >3 acres as a secondary impact may still be eligible for Category 2 at the discretion of the Corps.</p> <p>2. Specific activities with impacts of any area ≥15,000 SF required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.</p> <p>3. Temporary structures, work, and discharges (including construction mats⁴) ≥15,000 SF necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps, authorized under Category 1, or not subject to Corps regulation. GCs 16 -19 are particularly relevant.</p> <p align="center">See GC 2 and Appendix C for wetland delineation requirements.</p>

ACTIVITY	CATEGORY 1	CATEGORY 2
<p>(b) BANK STABILIZATION PROJECTS</p>	<p>1. Inland bank stabilization <500 FT long and <1 CY of fill per linear foot below OHW, provided:</p> <ul style="list-style-type: none"> • ≤1 cubic yard of fill per linear foot placed along the bank waterward of ordinary high water. • Work complies with the GCs (GC 20 in particular), including: <ul style="list-style-type: none"> ○ No structures angled steeper than 1H:1V allowed. Only rough-faced stone or fiber roll revetments allowed. ○ No in-stream work involving fill or excavation in flowing waters (see GC 22(h)). • In-stream work limited to Jul 15 - Oct 1 [see GC 22 (l)]. • No work in vernal pools⁵ or SAS³. • GC 10 Endangered Species and GC 11 Essential Fish Habitat are particularly relevant. 	<p>1. Inland bank stabilization ≥500 FT long and/or ≥1 CY of fill per linear foot, or any amount with fill in wetlands.</p>
<p>(c) RIVER/ STREAM/ BROOK WORK & CROSSINGS and WETLAND CROSSINGS</p>	<p>1. River, stream and brook work and crossings:</p> <ul style="list-style-type: none"> • Must comply with GC 22 in particular, including: <ul style="list-style-type: none"> ○ No slip lining [see GC 22 (g)]. ○ No in-stream work involving fill or excavation in flowing waters [see GC 22(h)]. ○ In-stream work limited to Jul 15 - Oct 1 [see GC 22 (l)]. • No work in riffles and pools³. • No stream relocations. • No dams or dikes⁶. • Work in areas designated as Atlantic salmon critical habitat or occupied by listed Atlantic salmon, or any other area occupied by a listed species is not eligible for Category 1 (see GC 10). • No work in EFH streams except for the activities stated in GC 11. <p>2. Wetland crossings must comply with the particularly relevant GC 23.</p>	<p>1. Work not qualifying for Category 1.</p>

ACTIVITY	CATEGORY 1	CATEGORY 2
<p>(d) REPAIR, REPLACEMENT, & MAINTENANCE OF AUTHORIZED FILLS</p>	<p>1. Repair or maintenance of existing, currently serviceable, authorized fills with no expansion or change in use:</p> <ul style="list-style-type: none"> • Conditions of the original authorization apply • Minor deviations in fill design allowed.⁷ • The repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events is authorized, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. 	<p>2. Replacement of non-serviceable fills, or repair/maintenance of serviceable fill, with expansion <3 acres, or with a change in use.</p>
<p>(e) MISCELL-ANEOUS</p>	<p>1. Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. SAS³ must typically be restored in place at the same elevation.</p> <p>2. Scientific measurement devices whose purpose is to measure and record scientific data, such as staff gages, water recording devices, water quality testing and improvement devices, and similar structures. This excludes any biological sampling devices. Structures may not restrict movement of aquatic organisms.</p> <p>3. Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, and historic resources surveys (but not recovery). Exploratory trenches must be restored in accordance with GC 19. The construction of temporary pads is authorized provided the discharge doesn't exceed 25 CY. This doesn't authorize permanent structures or the drilling and the discharge of excavated material from test wells for oil and gas exploration (the plugging of such wells is authorized).</p> <p>4. Any work not commenced nor completed that was authorized in a written letter from the Corps under the PGP in effect between October 11, 2005 and October 11, 2010. The terms and general conditions of this GP apply along with any special conditions in the written authorization.</p>	<p>1. Aquatic habitat restoration, establishment, and enhancement of wetlands and riparian areas and the restoration and enhancement of streams and other open waters with impacts of any area $\geq 15,000$ SF, provided those activities result in net increase in overall aquatic resource functions and services.⁸</p> <p>2. Projects where an EIS is required by the Corps are not eligible for Category 2.</p>

<p>II. NAVIGABLE WATERS</p>	<p>Navigable Waters of the United States: Waters that are subject to the ebb and flow of the tide and/or the tidal and non-tidal portions of the Federally designated navigable waters (the Penobscot River, Kennebec River, and Lake Umbagog) (Section 10 Rivers and Harbors Act of 1899). The jurisdictional limits are the mean high water (MHW) line in tidal waters and the ordinary high water (OHW) mark in non-tidal portions of the federally designated navigable rivers. For the purposes of this GP, fill placed in the area between the mean high water (MHW) and the high tide line (HTL), and in the bordering and contiguous wetlands¹ to tidal waters are also reviewed in this Navigable Waters section.</p> <p>Projects not meeting Category 1 require an application for review as a Category 2 or Individual Permit project.</p> <p>All Category 1 and 2 projects must comply with all of this GP's applicable terms (Pages 1 - 4) and general conditions (Pages 5 - 18).</p>	
<p>ACTIVITY</p>	<p>CATEGORY 2</p>	
<p>(a) FILL</p>	<p>CATEGORY 1</p> <p>1. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the U.S., including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided the U.S. Coast Guard authorizes such discharges as part of the bridge permit or appropriate approval. Causeways and approach fills are not included in this category and require Category 2 or Individual Permit authorization.</p> <p>2. Bank stabilization projects <200 linear feet:</p> <ul style="list-style-type: none"> • ≤1 cubic yard of fill per linear foot placed along the bank waterward of high tide line. No fill or equipment will occur in SAS³. • Work conducted in the intertidal zone must be conducted in-the-dry during low water, or between Nov. 8 – Apr. 9. • No structures angled steeper than 1H:1V and only rough-faced stone or fiber roll revetments allowed. • No driving of piles or sheeting. <p>3. For 1 and 2 above:</p> <ul style="list-style-type: none"> • Project proponents must contact the USFWS for work on coastal beaches to ensure no impacts to piping plovers, roseate terns or their habitat [see GC 10(b)iii]. 	<p>CATEGORY 2</p> <p>1. <1 acre temporary or permanent fill, excavation and/or secondary impacts (e.g., areas drained, flooded, fragmented or mechanically cleared). Fill area includes all temporary and permanent waterway fills, provided:</p> <ul style="list-style-type: none"> • Temporary or permanent fill in eelgrass¹⁴ <1000 SF. • Permanent fill in SAS (excluding eelgrass¹⁴) <4300 SF.
<p>(b) STREAM WORK & CROSSINGS, and WETLAND CROSSINGS</p>	<p>1. No new fill for crossings allowed.</p>	<p>1. New crossings or replacement crossings that do not fit the (c) Repair and Maintenance activity below.</p>

ACTIVITY	CATEGORY 1	CATEGORY 2
<p>(c) REPAIR AND MAINTENANCE WORK</p>	<p>1. Repair, replacement in-kind, or maintenance⁷ of existing, currently serviceable⁷, authorized structures or fills:</p> <ul style="list-style-type: none"> • Conditions of the original authorization apply. • No substantial expansion or change in use. • Must be rebuilt in same footprint, however minor deviations in structure design allowed⁷. • The repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events is authorized, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. Minor deviations for work involving piles shall adhere to one of the 4 methods in a - d below: <ul style="list-style-type: none"> a. Piles installed in-the-dry during low water or in-water between Nov. 8th - Apr. 9th, or b. Must be drilled and pinned to ledge, or c. Vibratory hammers used to install any size and quantity of wood, concrete or steel piles, or d. Impact hammers limited to one hammer and <50 piles installed/day with the following: wood piles of any size, concrete piles ≤18-inches diameter, steel piles <12-inches diameter if the hammer is ≤3000 lbs and a wood cushion is used between the hammer and steel pile, and <ul style="list-style-type: none"> • For b – d above: <ul style="list-style-type: none"> ○ In-water noise levels shall not exceed >187dB SEL re 1μPa or 206dB peak re 1μPa at a distance >10m from the pile being installed, and ○ In-water noise levels >155dB peak re 1μPa shall not exceed 12 consecutive hours on any given day and a 12 hour recovery period (i.e., in-water noise below 155dB peak re 1μPa) must be provided between work days. • For a – d above: <ul style="list-style-type: none"> ○ Work is not eligible for Category 1 if conducted in tidal portions of the Penobscot river upstream of a line extending from Turner point in Castine to Moose Point (formerly squaw point) on Cape Jellison in Stockton Springs or in tidal portions of the Kennebec or Androscoggin Rivers upstream of a line extending from Doubling point in Arrowsic to Hospital Point in West Bath. 	<p>CATEGORY 2</p> <p>1. Replacement of non-serviceable structures and fills or repair/maintenance of serviceable structures or fills, with fill, replacement or expansion <1 acre, or with a change in use.</p>

ACTIVITY	CATEGORY 1	CATEGORY 2
<p>(d) DREDGING AND ASSOCIATED DISPOSAL</p>	<p>1. Maintenance dredging¹⁰ for navigational purposes <1,000 CY with upland disposal. Includes return water from upland contained disposal area, provided:</p> <ul style="list-style-type: none"> • Proper siltation controls are used. • Dredging & disposal operation limited to Nov. 8 – Apr. 9. • No impact to SAS³. • No dredging in intertidal areas. • No dredging in areas considered occupied by listed Atlantic salmon [see GC 10(b)(ii)]. • For dredging in waters outside of Atlantic salmon critical habitat, applicants must contact NMFS (Appendix D) to ensure no impacts to listed species such as shortnose sturgeon. • Project proponents must contact the USFWS for work on coastal beaches to ensure no impacts to piping plovers, roseate terns or their habitat [see GC 10(c)]. 	<p>1. Maintenance dredging¹⁰ ≥1,000 CY, new dredging <25,000 CY, or projects not meeting Category 1. Includes return water from upland contained disposal areas. Disposal includes:</p> <ul style="list-style-type: none"> • Upland. • Beach nourishment (above mean high water) of any area provided dredging's primary purpose is navigation or sand is from an upland source. • Open water & confined aquatic disposal, if Corps finds the material suitable. <p>2. Beach nourishment associated with dredging when the primary purpose is not navigation requires at least a Category 2 review.</p> <p>3. Maintenance or new dredging¹⁰ and/or disposal in or affecting a SAS³ requires an Individual Permit. See II(a) above for dredge disposal in wetlands or waters.</p>
<p>(e) MOORINGS</p>	<p>1. Private, non-commercial, non-rental, single-boat moorings, provided:</p> <ul style="list-style-type: none"> • Authorized by the local harbormaster/town. • Not associated with any boating facility.¹¹ • Boat or mooring not located in a Federal Navigation Project¹² other than a Federal Anchorage¹². Moorings in Federal Anchorage not associated with a boating facility¹¹ and are not for rent. • No interference with navigation. • No new moorings located in SAS³. Prior to installation of moorings, a site-specific eelgrass survey should be conducted to document that eelgrass is not present. • When existing, authorized moorings in SAS³ are going to be replaced, they shall be replaced with elastic mooring systems that prevent mooring chains from resting or dragging on the bottom substrate at all tides and helical anchors, or equivalent SAS protection systems where practicable. <p>2. Minor relocation of previously authorized moorings and moored floats, provided:</p> <ul style="list-style-type: none"> • Authorized by the local harbormaster/town. • Not located in SAS³ • No interference with navigation. • Cannot be relocated into a Federal Navigation Project¹² other than a Federal Anchorage¹² 	<p>1. Moorings associated with a boating facility¹¹. An eelgrass¹⁴ survey may be required.</p> <p>2. Moorings that don't meet the terms in Category 1 and don't require an Individual Permit. This includes private moorings with no harbormaster or means of local approval.</p> <p>3. Moorings located such that they, and/or vessels docked or moored at them, are within the buffer zone of the horizontal limits¹³ of a Federal Channel¹². (See Appendix F.) The buffer zone is equal to 3 times the authorized depth of that channel.</p> <p>4. An IP is required for moorings within the horizontal limits¹¹, or with moored vessels that extend, into the horizontal limits of a Federal Navigation Project¹², except those in Federal Anchorages¹².</p> <p>For 1-4 above, siting of new individual moorings in SAS³, including eelgrass¹⁴, should be avoided to the maximum extent practicable. If SAS³ cannot be avoided, plans should show elastic mooring systems that prevent mooring chains from resting or dragging on the bottom substrate at all tides and helical anchors, or equivalent SAS protection systems, where practicable.</p>

ACTIVITY (f) STRUCTURES AND FLOATS	CATEGORY 1	CATEGORY 2
	<p>1. Reconfiguration of existing, authorized structures or floats.</p> <p><u>Provided:</u></p> <p>a. Piles shall adhere to one of the 4 methods in (i) –(iv) below:</p> <ul style="list-style-type: none"> i. Piles installed in-the-dry during low water or in-water between Nov. 8th - Apr. 9th, or ii. Must be drilled and pinned to ledge, or iii. Vibratory hammers used to install any size and quantity of wood, concrete or steel piles, or iv. Impact hammers limited to one hammer and <50 piles installed/day with the following: wood piles of any size, concrete piles ≤18-inches diameter, steel piles <12-inches diameter if the hammer is ≤3000 lbs and a wood cushion is used between the hammer and steel pile. <p>b. For (ii) – (iv) above:</p> <ul style="list-style-type: none"> i. In-water noise levels shall not exceed > 187dB SEL re 1µPa or 206dB peak re 1µPa at a distance >10m from the pile being installed, and ii. In-water noise levels >155dB peak re 1µPa shall not exceed 12 consecutive hours on any given day and a 12 hour recovery period (i.e., in-water noise below 155dB peak re 1µPa) must be provided between work days. <p>c. For (i) –(iv) above:</p> <ul style="list-style-type: none"> i. Work is not eligible for Category 1 if conducted in tidal portions of the Penobscot river upstream of a line extending from Turner point in Castine to Moose Point (formerly squaw point) on Cape Jellison in Stockton Springs or in tidal portions of the Kennebec or Androscoggin Rivers upstream of a line extending from Doubling point in Arrowsic to Hospital Point in West Bath. 	<p>CATEGORY 2</p> <p>1. Private structures or floats, including floatways/skidways, built to access waterway (seasonal and permanent)</p> <p>2. Expansions to existing boating facilities¹¹.</p> <p>For 1 & 2 above, compliance with the following design standards is not required but recommended:</p> <ul style="list-style-type: none"> • Pile-supported structures <400 SF, with attached floats totaling ≤200 SF. • Bottom anchored floats ≤200 SF. • Structures are ≤4’ wide and have at least a 1:1 height:width ratio¹¹. • Floats supported a minimum of 18” above the substrate during all tides. • Structures & floats not located within 25’ of any eelgrass⁸. • Moored vessels not positioned over SAS⁴. • No structure located within 25’ of the riparian property boundary without written approval from the abutter(s). • No structure extends across >25% of the waterway width at mean low water. • Not located within the buffer zone of the horizontal limits¹³ of a Corps Federal Navigation Project (FNP) (App. F). The buffer zone is equal to three times the authorized depth of that FNP. <p>3. An Individual Permit is required for structures or floats, including floatways/skidways, located such that they and/or vessels docked or moored at them are within the horizontal limits¹³ of a Corps Federal Navigation Project¹² (see App. F).</p> <p>4. An Individual Permit is required for structures & floats associated with a new or previously unauthorized boating facility¹¹.</p>

ACTIVITY	CATEGORY 1	CATEGORY 2
<p>(g) MISCELL-ANEIOUS</p>	<p>1. Temporary buoys, markers, floats, etc. for recreational use during specific events, provided they are removed within 30 days after use is discontinued.</p> <p>2. The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard. (See 33 CFR 66, Chapter I, subchapter C).”</p> <p>3. Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. SAS³ must typically be restored in place at the same elevation.</p> <p>4. Fish and wildlife harvesting, enhancement, and attraction devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, and clam and oyster digging, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This does not authorize artificial reefs or impoundments and semi-impoundments of waters of the U.S. for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. No activity that results in a hazard to navigation. Note: A Category 1 Notification Form is not required for these devices and activities.</p> <p>5. Scientific measurement devices whose purpose is to measure and record scientific data, such as staff gages, water recording devices, water quality testing and improvement devices, and similar structures. Structures may not restrict movement of aquatic organisms. No activity results in a hazard to navigation.</p> <p>6. Survey activities such as exploratory drilling, surveying and sampling activities, excluding any biological sampling devices. Does not include oil and gas exploration and fill for roads or construction pads. No activity results in a hazard to navigation. Applicants must contact NMFS to ensure no impacts to listed species.</p>	<p>1. Structures or work in or affecting tidal or navigable waters, that are not defined under any of the previous headings listed above. Includes, but is not limited to, utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, floatways/skidways, bridges, tunnels and horizontal directional drilling activities seaward of the mean high water line.</p> <p>2. Shellfish/finfish (other than Atlantic salmon), or other aquaculture facilities with no more than minimal individual and cumulative impacts to environmental resources or navigation. –Aquaculture guidelines are provided at: www.maine.gov/dmr/aquaculture/index.htm.</p> <p>3. Specific activities with impacts of any area required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Wetlands must typically be restored in place at the same elevation to qualify.</p> <p>4. Aquatic habitat restoration, establishment and enhancement provided those activities are proactive and result in net increases in aquatic resource functions and services.⁸</p> <p>5. Projects where an EIS is required by the Corps are not eligible for Category 2.</p>

ACTIVITY	CATEGORY 1	CATEGORY 2
<p>(g) MISCELL-ANEIOUS (continued)</p>	<p>7. Shellfish seeding (brushing the flats⁹) projects.</p> <p>8. Marine railway work not eligible for maintenance⁷ (i.e. not currently serviceable⁷ or in non-compliance) may be replaced “in-kind” with minor deviations⁷ provided:</p> <ul style="list-style-type: none"> • Work is in the intertidal zone • No fill expansion below high tide line. • Work conducted in-the-dry during low water or in-water between Nov. 8 – Apr. 9. <p>9. Test plots <100 SF for the planting of wetland species native to the area. No grading, no structures, no plant growing devices and no interference with navigation, which require at least Category 2 review.</p> <p>10. Any work not commenced nor completed that was authorized in a written letter from the Corps under the PGP in effect between October 11, 2005 and October 11, 2010. The terms and general conditions of this GP apply along with any special conditions in the written authorization</p>	

Endnotes/Definitions

¹ **Bordering and Contiguous Wetlands:** A bordering wetland is immediately next to its adjacent waterbody and may lie at, or below, the ordinary high water mark (mean high water in navigable waters) of that waterbody and is directly influenced by its hydrologic regime. Contiguous wetlands extend landward from their adjacent waterbody to a point where a natural or manmade discontinuity exists. Contiguous wetlands include bordering wetlands as well as wetlands that are situated immediately above the ordinary highwater mark and above the normal hydrologic influence of their adjacent waterbody. Note, with respect to the federally designated navigable rivers, the wetlands bordering and contiguous to the tidally influenced portions of those rivers are reviewed under “II. Navigable Waters.”

² **Direct, Secondary, and Cumulative Impacts/Effects:**

Direct Impacts: The immediate loss of aquatic ecosystem within the footprint of the fill.

Secondary Impacts: These are effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material. Information about secondary effects on aquatic ecosystems shall be considered prior to the time final section 404 action is taken by permitting authorities. Some examples of secondary effects on an aquatic ecosystem are a) fluctuating water levels in all impoundment and downstream associated with the operation of a dam, b) septic tank leaching and surface runoff from residential or commercial developments on fill, and c) leachate and runoff from a sanitary landfill located in waters of the U.S. Put another way, secondary effects are those impacts outside the footprint of the fill that arise from and are associated with the discharge of dredged or fill material, including the operation of an activity or facility associated with the discharge. Examples may include habitat fragmentation; interruption of travel corridors for wildlife (for example, for amphibians that migrate to and from seasonal or vernal pools used as breeding habitat); hydrologic regime changes; and impacts from operation and maintenance activities for constructed facilities; such as noise/lighting, storm water runoff, and road kill of wetland dependent wildlife. Using the directions contained in the guidelines, we consider the circumstances of a proposed discharge and the project of which it is a part to evaluate the scope, extent, severity, and permanence of direct, secondary, and cumulative adverse effects upon the aquatic ecosystem.

Cumulative Impacts: The extent of past, present, and foreseeable developments in the area may be an important consideration in evaluating the significance of a particular project's impacts. Although the impacts associated with a particular discharge may be minor, the cumulative effect of numerous similar discharges can result in a large impact. Cumulative impacts should be estimated only to the extent that they are reasonable and practical.

³**Special Aquatic Sites:** Includes wetlands and saltmarsh, mudflats, riffles and pools, and vegetated shallows (predominantly comprised of eelgrass in Maine).

⁴**Construction Mats:** Constructions, swamp and timber mats (herein referred to as "construction mats") are generic terms used to describe structures that distribute equipment weight to prevent wetland damage while facilitating passage and providing work platforms for workers and equipment. They are comprised of sheets or mats made from a variety of materials in various sizes. A timber mat consists of large timbers bolted or cabled together. Corduroy roads, which are not considered to be construction mats, are cut trees and/or saplings with the crowns and branches removed, and the trunks lined up next to one another. Corduroy roads are typically installed as permanent structures. Like construction mats, they are considered as fill whether they're installed temporarily or permanently.

⁵**Vernal Pools:** A vernal pool, also referred to as a seasonal forest pool, is a temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools have no permanent inlet or outlet and no viable populations of predatory fish. A vernal pool may provide the primary breeding habitat for wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*), blue-spotted salamanders (*Ambystoma laterale*), and fairy shrimp (*Eubranchipus* sp.), as well as valuable habitat for other plants and wildlife, including several rare, threatened, and endangered species. A vernal pool intentionally created for the purposes of compensatory mitigation is included in this definition. For the purposes of this GP, the presence of any of the following species in any life stage in any abundance level/quantity would designate the waterbody as a vernal pool: fairy shrimp, blue spotted salamanders, spotted salamanders or wood frogs. The Corps may determine during a Category 2 review that a waterbody should not be regulated as a VP based on available evidence. For the purposes of this GP*, the VP Management Areas are the: Vernal Pool Depression (includes the vernal pool depression up to the spring or fall high water mark, and includes any vegetation growing within the depression), Vernal Pool Envelope (area within 100 FT of the VP Depression's edge) and Critical Terrestrial Habitat (area within 100-750 FT of the Vernal Pool Depression's edge). [*Note: Critical Terrestrial Habitat is defined as 100 -750 FT on page 243 of the document "Science and Conservation of Vernal Pools in Northeastern North America," Calhoun and deMaynadier, 2008, which is referenced in Appendix E, page 3, Paragraph 10(b).

⁶**Water Diversions:** Water diversions are activities such as bypass pumping or water withdrawals. Temporary flume pipes, culverts or cofferdams where normal flows are maintained within the stream boundary's confines aren't water diversions. "Normal flows" are defined as no change in flow from pre-project conditions.

⁷**Maintenance:** a) In accordance with 33 CFR 323.4(a)(2), any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under Section 404 of the CWA: "Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design." Otherwise, the following work is regulated and subject to the Category 1 or 2 thresholds in Appendix A above: The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3 – "Activities occurring before certain dates," provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification.

b) Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make repair, rehabilitation, or replacement are authorized. **c)** Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. **d)** No seaward expansion for bulkheads or any other fill activity is considered Category 1 maintenance. **e)** Only structures or fills that were previously authorized and are in compliance with the terms and condition of the original authorization can be maintained as a non-regulated activity under 33 CFR 323.4(a)(2), or in accordance with the Category 1 or 2 thresholds in Appendix A. **f)** The state's maintenance provisions may differ from the Corps and may require reporting and written authorization from the state. **g)** Contact the Corps to determine whether stream crossing replacements require a written application to the Corps for at least a Category 2 review.

⁸**Aquatic Habitat Restoration, Establishment and Enhancement:** The Corps will decide if a project qualifies and must determine in consultation with federal and state agencies that the net effects are beneficial. The Corps may refer to Nationwide Permit 27 published in the 3/12/07 Federal Register. Activities authorized here may include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement

of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands in inland waters; the construction of open water areas; the construction of native shellfish species habitat over unvegetated bottom for the purpose of habitat protection or restoration in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

⁹ **Brushing the Flats:** The placement of tree boughs, wooden lath structure, or small-mesh fencing on mudflats to enhance recruitment of soft-shell clams (*Mya arenaria*).

¹⁰ **Maintenance Dredging:** This includes only those areas and depths previously authorized by the Corps and dredged.

¹¹ **Boating Facilities:** Facilities that provide for a fee, rent, or sell mooring space, such as marinas, yacht clubs, boat clubs, boat yards, town facilities, dockminiums, etc.

¹² **Federal Navigation Projects (FNPs):** FNPs are comprised of Federal Channels and Federal Anchorages. See Appendix F for their location and contact the Corps for more information. “Horizontal Limits” is the outer edge of an FNP. “Buffer Zone” is equal to three times the authorized depth of that channel.

¹³ **Horizontal Limits:** The outer edge of a Federal Navigation Project (FNP). See Appendix F and contact the Corps for information on FNP’s.

¹⁴ **Eelgrass (*Zostera marina*):** A type of rooted aquatic vegetation that exists in intertidal and shallow subtidal areas known as vegetated shallows. See www.nero.noaa.gov/hcd/ for eelgrass survey guidance.

¹⁵ **Structures:** The height of structures shall at all points be equal to or exceed the width of the deck. For the purpose of this definition, height shall be measured from the marsh substrate to the bottom of the longitudinal support beam.



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Appendix B: Category 1 Notification Form
(for all Inland and Navigable Water Projects
in Maine subject to Corps jurisdiction)

Two (2) weeks **before** work commences, submit this to the following mailing address or complete the form at www.nae.usace.army.mil/reg, “State General Permits,” “Maine.” Call (207) 623-8367 with any questions.

Maine Project Office
U.S. Army Corps of Engineers
New England District
675 Western Avenue #3
Manchester, Maine 04351

State Permit Number: _____
Date of State Permit: _____
State Project Manager: _____

Permittee: _____
Address, City, State & Zip: _____
Phone(s) and Email: _____

Contractor: _____
Address, City, State & Zip: _____
Phone(s) and Email: _____

Consultant/Engineer/Designer: _____
Address, City, State & Zip: _____
Phone(s) and Email: _____

Wetland/Vernal Pool Consultant: _____
Address, City, State & Zip: _____
Phone(s) and Email: _____

Project Location/Description: _____
Address, City, State & Zip: _____
Latitude/Longitude Coordinates: _____
Waterway Name: _____
Work Description: _____

Provide any prior Corps permit numbers: _____
Proposed Work Dates: Start: _____ Finish: _____

Area of wetland impact: _____ SF (leave blank if work involves structures & no fill in Navigable Waters)
Area of waterway impact: _____ SF (leave blank if work involves structures & no fill in Navigable Waters)
Area of compensatory mitigation provided: _____ SF

Work will be done under the following Appendix A categories (circle all that apply):
I. Inland Waters and wetlands: a b c d e
II. Navigable Waters: a b c d e f g

Your name/signature below, as permittee, indicates that you accept and agree to comply with the terms, eligibility criteria, and general conditions of Category 1 of the Maine General Permit.

Permittee Printed Name: _____

Permittee Signature: _____ Date: _____



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Appendix C: Information Typically Required for Department of the Army Permits (Category 2 & Individual Projects)

The following information may not be necessary for all projects. For a more comprehensive checklist, go to www.nae.usace.army.mil/reg “Forms” and then “Application and Plan Guideline Checklist.” Please check with our Maine office for project-specific requirements at (207) 623-8367.

All Projects:

- Corps application form ([ENG Form 4345](#)) as appropriate.
- Photographs of wetland/waterway to be impacted.
- Purpose of the project.
- Legible, reproducible black and white (no color) plans no larger than 11”x17” with bar scale. Provide locus map and plan views of the entire property.
- Typical cross-section views of all wetland and waterway fill areas and wetland replication areas.
- In navigable waters, show mean low water (MLW) and mean high water (MHW) elevations. Show the high tide line (HTL) elevations when fill is involved. In other waters, show ordinary high water (OHW) elevation.
- On each plan, show the following for the project:
 - Vertical datum and the NAVD 1988 equivalent with the vertical units as U.S. feet. Don’t use local datum. In coastal waters this may be mean higher high water (MHHW), mean high water (MHW), mean low water (MLW), mean low lower water (MLLW) or other tidal datum with the vertical units as U.S. feet. MLLW and MHHW are preferred. Provide the correction factor detailing how the vertical datum (e.g., MLLW) was derived using the latest National Tidal Datum Epoch for that area, typically 1983-2001.
 - Horizontal state plane coordinates in U.S. survey feet based on the [insert state grid system] for the [insert state] [insert zone] NAD 83.
- Show project limits with existing and proposed conditions.
- Limits of any Federal Navigation Project in the vicinity of the project area and horizontal State Plane Coordinates in U.S. survey feet for the limits of the proposed work closest to the Federal Navigation Project;
- Volume, type, and source of fill material to be discharged into waters and wetlands, including the area(s) (in square feet or acres) of fill in wetlands, below the ordinary high water in inland waters and below the high tide line in coastal waters.
- Delineation of all waterways and wetlands on the project site, including vernal pools:
 - Use federal delineation methods and include Corps wetland delineation data sheets. See GC 2; Endnotes 1, 3 and 14 in Appendix A; and www.nero.noaa.gov/hcd for eelgrass survey guidance.
 - Appendix A, (e) Moorings, contains eelgrass survey requirements for the placement of moorings.
 - Labels on the plans should indicate whether the federal wetland is also a ME DEP “Wetlands of Special Significance,” i.e, coastal wetland, great pond, or one of the eight “Freshwater Wetlands of Special Significance” such as “Critically imperiled or imperiled community,” “Significant wildlife habitat,” etc. [see Appendix E, 10(a)].
- For activities involving discharges of dredged or fill material into waters of the U.S., include a statement describing how impacts to waters of the U.S. are to be avoided and minimized, and either a statement describing how impacts to waters of the U.S. are to be compensated for (or a conceptual or detailed mitigation plan) or a statement explaining why compensatory mitigation should not be required for the proposed impacts. Please contact the Corps for guidance.

- Provide information on secondary and cumulative effects associated with the project (see GC 3).
- Indicate that application materials were submitted to the Maine Historic Preservation Commission (MHPC) and the appropriate tribes (see Section 3(d) on Page 4).
- The name(s) of federal endangered and threatened “listed species or habitat” present in the action area (see GC 10 and Appendix E).
- Identify and describe potential impacts to Essential Fish Habitat (see GC 11).
- Invasive Species Control Plan (see GC 29).

Information typically required for dredging projects:

- Sediment testing, including physical (e.g., grain-size analysis), chemical and biological testing. For projects proposing open water disposal, applicants are encouraged to contact the Corps as early as possible regarding sampling and testing protocols. Sampling and testing of sediments without such contact should not occur and if done, would be at the applicant’s risk.
- The area in square feet and volume of material to be dredged below mean high water.
- Existing and proposed water depths.
- Type of dredging equipment to be used.
- Nature of material (e.g., silty sand).
- Any existing sediment grain size and bulk sediment chemistry data for the proposed or any nearby projects.
- Information on the location and nature of municipal or industrial discharges and occurrence of any contaminant spills in or near the project area.
- Shellfish survey.
- Location of the disposal site (include locus sheet).
- Identify and describe potential impacts to Essential Fish Habitat (see GC 11).
- Delineation of submerged aquatic vegetation (e.g., eelgrass beds).

Appendix D: Contacts and Tribal Areas of Interest

1. **FEDERAL**

U.S. Army Corps of Engineers

Maine Project Office
675 Western Avenue #3
Manchester, Maine 04351
(207) 623-8367; (207) 623-8206 (fax)

Federal Endangered Species

U.S. Fish and Wildlife Service
Maine Field Office
17 Godfrey Drive, Suite 2
Orono, Maine 04473
(207) 866-3344; (207) 866-3351 (fax)

Wild and Scenic Rivers

National Park Service
North Atlantic Region
15 State Street
Boston, Massachusetts 02109
(617) 223-5203

Bridge Permits

Commander (obr)
First Coast Guard District
One South Street - Battery Bldg
New York, New York 10004
(212) 668-7021; (212) 668-7967 (fax)

Federal Endangered Species

National Marine Fisheries Service
Maine Field Office
17 Godfrey Drive Suite 1
Orono, ME 04473
(207) 866-7379; (978) 866-7342 (fax)

Federal Endangered Species & EFH

National Marine Fisheries Service
55 Great Republic Drive
Gloucester, Massachusetts 01930
(978) 281-9102; (978) 281-9301 (fax)

2. **STATE OF MAINE**

Maine Department of Environmental Protection (for State Permits & Water Quality Certifications)

Division of Land Resource Regulation
Bureau of Land and Water Quality
17 State House Station
Augusta, Maine 04333
(207) 287-7688

Eastern Maine Regional Office
106 Hogan Road
Bangor, Maine 04401
(207) 941-4570

Southern Maine Regional Office
312 Canco Road
Portland, Maine 04103
(201) 822-6300

Northern Maine Regional Office
1235 Central Drive - Skyway Park
Presque Isle, Maine 04769
(207) 764-0477

Maine Land Use Regulation Commission (LURC) (www.maine.gov/doc/lurc/offices.html)

22 State House Station
Augusta, Maine 04333-0022
(207) 287-2631; (207) 287-7439 (fax)

106 Hogan Rd, Suite 7
Bangor, Maine 04401
(207) 941-4052; (207) 941-4222 (fax)

Lakeview Drive
P.O. Box 1107
Greenville, Maine 04441
(207) 695-2466; (207) 695-2380 (fax)

45 Radar Road
Ashland, ME 04732-3600
(207) 435-7963; (207) 435-7184 (fax)

191 Main Street
East Millinocket, ME 04430
(207) 746-2244; (207) 746-2243 (fax)

(For CZM Determinations)

State Planning Office
Coastal Program
184 State Street
State House Station 38
Augusta, Maine 04333
(207) 287-1009

(For Aquaculture Leases)

Maine Department of Marine Resources
P.O. Box 8
West Boothbay Harbor, Maine 04575
(207) 633-9500

(For Submerged Lands Leases)

Maine Department of Conservation
Bureau of Parks and Lands
22 State House Station
Augusta, Maine 04333
(207) 287-3061

3. HISTORIC PROPERTIES

Maine Historic Preservation Commission
(MHPC)

State House Station 65
Augusta, Maine 04333-0065
(207) 287-2132; (207) 287-2335 (fax)

Aroostook Band of Micmacs

Attn: Victoria Higgins, Chief
7 Northern Road
Presque Isle, Maine 04769
(207) 764-1972; (207) 764-7667 (fax)

Houlton Band of Maliseet Indians

Attn: Sharri Venno, Environmental Planner
88 Bell Road
Littleton, Maine 04730
(207) 532-4273, x215; (207) 532-1883 (fax)
envplanner@maliseets.com

Passamaquoddy Tribe of Indians

Indian Township Reservation
Attn: Donald Soctomah, THPO
P.O. Box 301
Princeton, Maine 04668
(207) 796-2301; (207) 796-5256 (fax)

Passamaquoddy Tribe of Indians

Pleasant Point Reservation
Attn: Donald Soctomah, THPO
P.O. Box 343
Perry, Maine 04667
(207) 853-2600; (207) 853-6039 (fax)

Penobscot Indian Nation

Indian Island Reservation
Attn: Ms. Bonnie Newsom, THPO
12 Wabanaki Way
Indian Island, Maine 04468
(207) 817-7471; (207) 817-7450 (fax)

4. ORGANIZATIONAL WEBSITES:

Army Corps of Engineers, N.E. District
Army Corps of Engineers, Headquarters
Environmental Protection Agency
National Marine Fisheries Service
U.S. Fish and Wildlife Service
National Park Service
State of Maine
Maine Department of Environmental Protection
Maine Land Use Regulation Commission
State of Maine -Aquaculture Guidelines

www.nae.usace.army.mil/reg
www.usace.army.mil/CECW/Pages/cecwo_reg.aspx
www.epa.gov/owow/wetlands
www.nmfs.noaa.gov
www.fws.gov/mainefieldoffice
www.nps.gov/rivers/index.html
www.maine.gov
www.maine.gov/dep
www.maine.gov/doc/lurc
www.maine.gov/dmr/aquaculture/index.htm

Appendix E: Additional References

1. GC 2: Federal Jurisdictional Boundaries.

(a) Corps Wetlands Delineation Manual, regional supplements, and Corps Wetland Delineation Data Sheets: www.nae.usace.army.mil/reg and then “Wetlands and Jurisdictional Limits.”

(b) The USFWS publishes the 1988 National List of Plant Species that Occur in Wetlands (www.nwi.fws.gov).

The Natural Resources Conservation Service (NRCS) publishes the current hydric soil definition, criteria and lists: <http://soils.usda.gov/use/hydric>. For the Field Indicators for Identifying Hydric Soils in N.E., see www.neiwpcc.org/hydricsoils.asp.

2. GC 5:

Single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. For example, if construction of a residential development affects several different areas of a headwater or isolated water, or several different headwaters or isolated waters, the cumulative total of all filled areas should be the basis for deciding whether or not the project will be covered by Category 1 or 2.

The *Independent utility* test is used to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

3. GC 10: Threatened and Endangered Species.

(a) The following NMFS site must be referenced to ensure that listed species or critical habitat are not present in the action area [GC 10(b)] or to provide information on federally-listed species or habitat [GC 10(e)]: www.nero.noaa.gov/prot_res/esp/ListE&Tspec.pdf. Contact the USFWS for information to check for the presence of listed species (see Appendix D for contact information).

(b) The Endangered Species Act Consultation Handbook – Procedures for Conducting Section 7 Consultations and Conferences, defines action area as “all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. [50 CFR 402.02].”

4. GC 11: Essential Fish Habitat.

As part of the PGP screening process, the Corps may coordinate with NMFS in accordance with the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act to protect and conserve the habitat of marine, estuarine and anadromous finfish, mollusks, and crustaceans. This habitat is termed “Essential Fish Habitat (EFH)”, and is broadly defined to include “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” There are EFH waters throughout inland and coastal waters in Maine. For additional information, see the EFH regulations 50 CFR 600 at www.nero.noaa.gov/hcd including the “Guide for EFH Descriptions” at www.nero.noaa.gov/hcd/list.htm. Additional information on the location of EFH can be obtained from NMFS (see Appendix D for contact information).

5. GC 16: Avoidance, Minimization and Compensatory Mitigation.

(a) See www.nae.usace.army.mil/reg and then “Mitigation” to view the April 10, 2008 “Final Compensatory Mitigation Rule” (33 CFR 332) and related documents. The Q&A document states: “In order to reduce risk and uncertainty and help ensure that the required compensation is provided, the rule establishes a preference hierarchy for mitigation options. The most preferred option is mitigation
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bank credits, which are usually in place before the activity is permitted. In-lieu fee program credits are second in the preference hierarchy, because they may involve larger, more ecologically valuable compensatory mitigation projects as compared to permittee-responsible mitigation. Permittee-responsible mitigation is the third option, with three possible circumstances: (1) conducted under a watershed approach, (2) on-site and in kind, and (3) off-site/out-of-kind.

(b) Compensatory mitigation may take the form of wetland preservation, restoration, enhancement, creation, and/or in lieu fee (ILF) for inclusion into the Natural Resources Mitigation Fund for projects in DEP and LURC territories. Avoidance of wetland impacts will reduce the ILF dollar total for applicants. The ILF compensation program was established to provide applicants with a flexible compensation option over and above traditional permittee responsible compensation projects. See the Maine ILF Agreement at www.nae.usace.army.mil/reg, “Mitigation” and then “Maine,” or www.maine.gov/dep/blwq/docstand/nrpa/ILF_and_NRCP/index.htm.

6. GCs 19 and 29: Invasive Species.

(a) Information on what are considered “invasive species” is provided in our “Compensatory Mitigation Guidance” document at www.nae.usace.army.mil/reg under “Mitigation.” The “Invasive Species” section has a reference to our “Invasive Species Control Plan (ISCP) Guidance” document, located at www.nae.usace.army.mil/reg under “Invasive Species,” which provides information on preparing an ISCP.

(b) The June 2009 “Corps of Engineers Invasive Species Policy” is at www.nae.usace.army.mil/reg under “Invasive Species” and provides policy, goals and objectives.

7. GC 20: Bank Stabilization.

This generally eliminates bodies of water where the reflected wave energy may interfere with or impact on harbors, marinas, or other developed shore areas. A revetment is sloped and is typically employed to absorb the direct impact of waves more effectively than a vertical seawall. It typically has a less adverse effect on the beach in front of it, abutting properties and wildlife. See the Corps Coastal Engineering Manual [EM 1110-2-1100](#) at www.nae.usace.army.mil/reg under “Useful Links and Documents” for design and construction guidance.

8. GC 22: Stream Crossings and Work.

(a) Projects should be designed and constructed to ensure long-term success using the most recent manual located at www.nae.usace.army.mil/reg under “Stream and River Continuity,” currently “Stream Simulation: An Ecological Approach to Providing Passage for Aquatic Organisms at Road-Stream Crossings, by the U.S. Forest Service.” Section 5.3.3 is of particular importance. Sections 7.5.2.3 Construction Methods and 8.2.11 Stream-Simulation Bed Material Placement both show important steps in the project construction.

(b) For more information on High-Quality Stream Segments and their components see:

i. High-Quality Stream Segments are shown at www.maine.gov/dep/gis/datamaps.

ii. Class A Waters or Class AA Waters:

www.mainelegislature.org/legis/statutes/38/title38sec465.html, and

www.mainelegislature.org/legis/statutes/38/title38sec467.html.

iii. Outstanding river segments www.mainelegislature.org/legis/statutes/38/title38sec480-P.html.

(c) The Massachusetts Dam Removal and the Wetland Regulations guidance may be used to evaluate the positive and negative impacts of culvert replacement, including the loss of upstream wetlands, which may be offset by the overall benefits of the river restoration. See www.nae.usace.army.mil/reg and then “Stream and River Continuity.”

(d) The ME DOT’s document “Waterway and Wildlife Crossing Policy and Design Guide for Aquatic Organism, Wildlife Habitat, and Hydrologic Connectivity,” 3rd Edition, July 2008, may be used to

evaluate impacts to aquatic, wildlife and surface water resources when designing, constructing, repairing and maintaining stream crossings. Note: Adherence to this DOT document does not ensure compliance with this GP. Projects must comply with the requirements of this GP including GC 22 and the Corps General Stream Crossing Standards contained therein.

www.maine.gov/mdot/environmental-office-homepage/fishpassage/3rd%20edition%20-%20merged%20final%20version%207-01-08a1.pdf.

(e) GC 22(f): The Skidder Bridge Fact Sheet at www.nae.usace.army.mil/reg under “Stream and River Continuity” may be a useful temporary span construction method.

9. GC 23: Wetland Crossings. The Maine DEP’s crossing standards are at 06-096 DEP, Chapter 305: Permit by Rule, 9) Crossings (utility lines, pipes and cables).

www.maine.gov/dep/blwq/rules/NRPA/2009/305/305_effective_2009.pdf

10. GC 28: Protection of Vernal Pools.

(a) The state’s Significant Wildlife Habitat rules ([Chapter 335](#), Section 9(C) “Habitat management standards for significant vernal pool habitat”) are located at

www.maine.gov/dep/blwq/docstand/nrpapage.htm#rule under “Rules.”

(b) The following documents provide conservation recommendations:

i. Best Development Practices: Conserving pool-breeding amphibians in residential and commercial development in the northeastern U.S., Calhoun and Klemens, 2002. Chapter III, Management Goals and Recommendations, Pages 15 – 26, is particularly relevant. (Available for purchase at www.maineaudubon.org/resource/index.shtml and on Corps website*.)

ii. Science and Conservation of Vernal Pools in Northeastern North America, Calhoun and deMaynadier, 2008. Chapter 12, Conservation Recommendations section, Page 241, is particularly relevant. (Available for purchase via the internet. Chapter 12 is available on Corps website*.)

* www.nae.usace.army.mil/reg under “Vernal Pools.”

(c) Cape Cod Curbing: For smaller roads and driveways, the most important design feature to consider is curbing. Granite curbs and some traditional curbing can act as a barrier to amphibian and hatchling turtle movements. Large numbers of salamanders have been intercepted in their migrations by curbs and catch basins. Use of Cape Cod curbs rather than traditional curbing may be one solution. Alternatively, where storm water management systems require more traditional curbing, it may be possible to design in escape ramps on either side of each catch basin. Cape Cod curbing is shown on Page 35 of the document cited in 10.b.i above. Bituminous material is not required; other materials such as granite are acceptable.

(d) The VP Directional Buffer Guidance document is located at www.nae.usace.army.mil/reg under: 1) “State General Permits” and then “Maine,” and 2) “Vernal Pools.”

11. GC 32: Maintenance. River restoration projects that are designed to accommodate the natural dynamic tendencies of the fluvial system are maintained in accordance with the project’s design objectives (Category 1) or the Corps authorization letter (Category 2). These projects are generally designed to support and implement channel assessment and management practices that recognize a stream’s natural dynamic tendencies.

Appendix F: Corps Projects in Maine

