



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

MELANIE LOYZIM
COMMISSIONER

PERMITTING GUIDANCE FOR STORM RECOVERY ACTIVITIES

NOTE: All landowners experiencing storm damage should document the damage to their properties with photographs. Measurements should be taken documenting the location of structures and protected natural resources. Repairs and restoration efforts should be documented in the same way once completed.

MAINTENANCE AND REPAIR

Maintenance and repair of structures and existing crossings in, on, over or adjacent to protected natural resources will typically fall under one of three exemptions in the [Natural Resources Protection Act](https://www.mainelegislature.org/legis/statutes/38/title38sec480-Q.html) (NRPA), found here <https://www.mainelegislature.org/legis/statutes/38/title38sec480-Q.html>, provided that the activity meets the statutory standards applicable to that exemption.

2. Maintenance and repair (applicable to everyone)

2. Maintenance and repair. Maintenance and repair of a structure, other than a crossing, in, on, over or adjacent to a protected natural resource if:

- A. Erosion control measures are taken to prevent sedimentation of the water; [PL 1995, c. 27, §1 (RPR).]
- B. [PL 2011, c. 205, §1 (RP).]
- C. There is no additional intrusion into the protected natural resource; and [PL 1995, c. 27, §1 (RPR).]
- D. The dimensions of the repaired structure do not exceed the dimensions of the structure as it existed 24 months prior to the repair, or if the structure has been officially included in or is considered by the Maine Historical Preservation Commission eligible for listing in the National Register of Historic Places, the dimensions of the repaired structure do not exceed the dimensions of the historic structure. [PL 1995, c. 27, §1 (RPR).]

This subsection does not apply to: the repair of more than 50% of a structure located in a coastal sand dune system; 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;

[PL 2019, c. 124, §1 (AMD).]

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

2-D. Existing stream crossings (applicable to everyone)

2-D. Existing crossings. A permit is not required for the repair and maintenance of an existing crossing or for the replacement of an existing crossing, including ancillary crossing installation activities such as excavation and filling, in any protected natural resource area, as long as:

A. Erosion control measures are taken to prevent sedimentation of the water; [PL 2011, c. 205, §3 (NEW).]

B. The crossing does not block passage for fish in the protected natural resource area; and [PL 2011, c. 205, §3 (NEW).]

C. For replacement crossings of a river, stream or brook:

(1) The replacement crossing is designed, installed and maintained to match the natural stream grade to avoid drops or perching; and

(2) As site conditions allow, crossing structures that are not open bottomed are embedded in the stream bottom a minimum of one foot or at least 25% of the culvert or other structure's diameter, whichever is greater, except that a crossing structure does not have to be embedded more than 2 feet. [PL 2011, c. 205, §3 (NEW).]

For purposes of this subsection, "repair and maintenance" includes but is not limited to the riprapping of side slopes or culvert ends; removing debris and blockages within the crossing structure and at its inlet and outlet; and installing or replacing culvert ends if less than 50% of the crossing structure is being replaced;

[PL 2019, c. 124, §2 (AMD).]

9. Public works (applicable to municipalities)

9. Public works. A permit is not required for 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 not apply to any activity on an outstanding river segment as listed in [section 480-P](#);

[PL 1989, c. 878, Pt. A, §111 (AMD).]

REPLACEMENT/RECONSTRUCTION

Permitting requirements for replacement/reconstruction of damaged structures in, on, over or adjacent to protected natural resources varies depending on the specific circumstances.

If the structure is located in, on, or over a coastal sand dune system, please see this document: <https://www.maine.gov/dep/land/nrpa/dunes/faq-sand-dune-storm-repai.pdf>. The most up-to-date maps of coastal sand dune systems may be found on the Maine Geological Survey website here: <https://www.maine.gov/dacf/mgs/pubs/digital/dunes.htm>.

If the structure is located in, on, or over a protected natural resource *other than a coastal sand dune system*, replacement of a structure may be permitted under a permit-by-rule (PBR), Section 4, if applicable standards are met. These standards include, but are not limited to, that the dimensions of the replacement structure may not exceed the dimensions, including height, of the previously existing structure, and may not extend any further into the water body or wetland (with some exceptions). See the Department's new PBR webpage here for more information: <https://www.maine.gov/dep/land/permits/pbr/index.html>.

If the structure is located adjacent to certain protected natural resources, it may be permitted under a PBR, Section 2, if applicable standards are met. These standards include, but are not limited to, that the replacement structure is not closer to the protected natural resource and conforms with the local shoreland zoning ordinance. See the Department's new PBR webpage here for more information: <https://www.maine.gov/dep/land/permits/pbr/index.html>.

Other replacement/reconstruction projects (located in, on, over, or adjacent to protected natural resources) that do not fit into these categories will likely require the submission of an individual NRPA permit application: <https://www.maine.gov/dep/land/nrpa/>.

OTHER STORM RECOVERY & CLEAN-UP ACTIVITIES

Other storm recovery and clean-up activities may qualify for PBR, such as removal of debris deposited by a storm into a protected natural resource (non-mineral materials such as wood, brush or flotsam). See the full list of PBR-eligible activities here: <https://www.maine.gov/dep/land/permits/pbr/index.html>.

Coastal shoreline stabilization projects (e.g., riprap) do not qualify for PBR. However, if your property is under immediate threat, please discuss your options with a Licensing staff member at the Department. (See the contact information below).

PREPARING FOR THE NEXT STORM

Coastal property owners may be looking ahead to the next storm.

Sand dune restoration and construction activities may provide some protection. These projects are generally eligible under PBR, Section 16-A: <https://www.maine.gov/dep/land/permits/pbr/index.html>. The Maine Geological Survey provides detailed best management practices for sand dunes here: https://digitalmaine.com/cgi/viewcontent.cgi?article=1629&context=mgs_publications.

Please note that no new seawalls (including riprap walls) may be built in coastal sand dune systems. For properties that have existing seawalls or riprap revetments, Section 480-W of the NRPA allows for emergency actions to threatened seawalls located in coastal sand dune systems. <https://www.mainelegislature.org/legis/statutes/38/title38sec480-W.html>

§480-W. Emergency actions to protect threatened property

1. Protective materials.

[PL 2005, c. 548, §2 (RP).]

2. Strengthening of structure.

[PL 2005, c. 548, §2 (RP).]

3. Emergency action exemption. Notwithstanding section 480-C, if the local code enforcement officer, a state-licensed professional engineer or a state-licensed geologist determines that the integrity of a seawall, bulkhead, retaining wall or similar structure in a coastal sand dune system is destroyed or threatened, the owner of property protected by the seawall, bulkhead, retaining wall or similar structure may perform or cause to be performed the following activities without obtaining a permit under this article:

A. Place riprap, sandbags or other heavy nonhazardous material to shore up the threatened structure and leave the material in place until a project designed to repair or replace the structure is permitted by the department. After such emergency action is taken and within 5 working days after the imminent threat, the property owner must provide written notice to the department of the date the emergency action was taken and a description of the emergency action taken. Within 6 months following placement of any material pursuant to this paragraph, the property owner must submit to the department an application to repair or replace the structure. The material placed pursuant to this paragraph must be removed within 18 months from the date a permit is issued by the department; or [PL 2005, c. 548, §2 (NEW).]

B. Make permanent repairs, to the extent necessary to alleviate the threat, to strengthen the seawall, bulkhead, retaining wall or other structure, to widen the footings or to secure the structure to the sand with tie-back anchors. A state-licensed geologist, state-licensed professional engineer or other qualified professional must make the determination that the actions taken by the property owner in accordance with this section are only those actions necessary to alleviate the imminent threat and do not include increasing the height or length of the structure. [PL 2019, c. 285, §16 (AMD).]

If a local code enforcement officer, state-licensed professional engineer or state-licensed geologist fails to determine within 6 hours of initial contact by the property owner whether the integrity of a structure is destroyed or threatened, the property owner may proceed as if the local code enforcement officer, state-licensed professional engineer or state-licensed geologist had determined that the integrity of the structure was destroyed or threatened.

[PL 2019, c. 285, §16 (AMD).]

4. Replacement after emergency action under permit by rule. Notwithstanding any other provision of this chapter, the department shall approve a permit by rule to repair or replace a seawall, bulkhead, retaining wall or similar structure that has been destroyed or threatened with a structure that is identical in all dimensions and location as long as a property owner files a completed permit-by-rule notification for the repair or replacement of the structure and the following standards are met:

A. 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, but is not limited to, American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine.

[PL 2005, c. 548, §2 (NEW).]

B. Sand may not be moved seaward of the frontal dune between April 1st and September 1st unless the owner has obtained written approval from the Department of Inland Fisheries and Wildlife. [PL 2005, c. 548, §2 (NEW).]

C. The replacement of a seawall may not increase the height, length or thickness of the seawall beyond that which legally existed within the 24 months prior to the submission of the permit-by-rule notification. The replaced seawall may not be significantly different in construction from the one that previously existed. [PL 2005, c. 548, §2 (NEW).]

[PL 2005, c. 548, §2 (NEW).]

SECTION HISTORY

PL 1995, c. 230, §1 (NEW). PL 2005, c. 548, §2 (AMD). PL 2019, c. 285, §16 (AMD).

For properties under immediate threat in a coastal sand dune system that do not have an existing seawall, temporary sandbags could be installed in a position no further seaward than the previously existing shoreline. If those sandbags are constructed with a biodegradable material, they could then provide the foundation for a restored sand dune in accordance PBR standards. If the material is not biodegradable, then the sandbags would need to be removed within 7 months. (Riprap should not be installed on properties that do not have existing seawalls or riprap. If riprap is the only option to shore up the property in an emergency situation, landowners must take notice that all riprap and other material placed, must be completely removed from the sand dune system within 7 months of the date installed.)

Coastal shoreline stabilization projects (e.g., riprap projects) outside of sand dune systems require an individual NRPA permit. This application has a processing time of 120 days. See the [NRPA application](#) and [instructions](#) (See page 45 of 80 which is titled: Part 3. Tier 3 freshwater wetland alteration (over 43,560 sq. ft) and individual natural resource protection act permit). Projects that fill protected natural resources may require compensation in accordance with [Chapter 310](#). Both PBR and NRPA application fees can be found on the [Department's Fee Schedule](#).

CONTACTING THE DEPARTMENT

Department staff may need to visit your site to provide guidance. If you have reviewed the above information and have questions or would like to request a site visit, please call your [regional DEP office](#) and/or send an email to the [Land On Call inbox](#). (Note that due to staffing constraints, this inbox and the on-call phone line are answered twice per week). The email sent must include: 1. Your name; 2. the address of the property in question; 3. a return phone number or email address; 4. a thorough description of the issue at hand and the proposed remedy, and 5. photograph(s) of the issue. (Incoming email has an upper limit of 20 MB). Department staff will contact you to schedule the appointment and meet you at the property, where you can show them the issue and discuss the remedy. They may not have all the answers at the time of the site visit; if that is the case, they will gather the information and research the issue at the office. They will respond to you as quickly as possible.

Contact information:

By email: <https://www.maine.gov/dep/contact/permit.html>

By phone (please call the nearest regional office):

- Augusta (Central Maine Regional Office): 207-287-7688; 800-452-1942
- Bangor (Eastern Maine Regional Office): 207-941-4570; 888-769-1137
- Portland (Southern Maine Regional Office): 207-822-6300; 888-769-1036
- Presque Isle (Northern Maine Regional Office): 207-764-0477; 888-769-1053