

Chapter 305: NATURAL RESOURCES PROTECTION ACT
PERMIT BY RULE



Section 13:
**Habitat creation or enhancement and water quality
improvement activities**

NOTE: This Section-by Section version of Permit By Rule is re-formatted to increase usability and includes additional guidance, annotations, and addendum. The entire rule, as published, is available below.

Official Chapter 305 Rule (all sections):

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

AMENDED:

May 25, 2005 – filing 2005-174 December 5, 2006 – filing 2006-496

February 25, 2008 – Section 20 only, filing 2008-88

July 15, 2009 – filing 2009-339

July 30, 2011 – Section 16 only, filing 2011-211 (Final adoption, major substantive)

June 8, 2012 – filing 2012-146 (Final adoption, major substantive)

December 27, 2022 – Section 16-A only, filing 2022-256

NRPA Permit By Rule Section 13

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](https://www.usace.army.mil/), 442 Civic Center Drive, Suite 350, Augusta, ME 04330. Tel. (207) 623-8367).

B. SUBMISSIONS

Submissions for all sections:



PBR Notification Form



Location Map

Submissions for Section 12:

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.

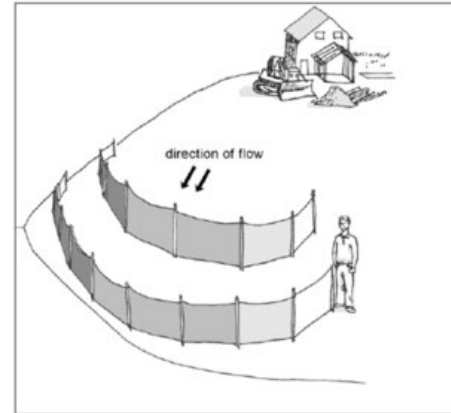
NRPA Permit By Rule Section 13

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 control consult the Maine DEP Erosion and Sediment Control Practices Field Guide for Contractors (2015):

https://www.maine.gov/dep/land/erosion/escbmps/esc_bmp_field.pdf

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.

NRPA Permit By Rule Section 13

C. STANDARDS (CONT.)

- 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*).

GUIDANCE & RESOURCES



Maine DEP Erosion Control Best Management Practices Field Guide

www.maine.gov/dep/land/erosion/escbmps/esc_bmp_field.pdf



Additional Manuals and Guides to Reduce Water Pollution

www.maine.gov/dep/land/watershed/materials.html