



JANET T. MILLS  
GOVERNOR

MELANIE LOYZIM  
COMMISSIONER

# PERMITTING GUIDANCE FOR STORM RECOVERY ACTIVITIES

## Updated January 19, 2024

**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/REPAIR OF STRUCTURES & CROSSINGS

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;

## 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;

## 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](#);

### **REPLACEMENT/RECONSTRUCTION OF STRUCTURES**

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

Replacement in-kind of a floating dock is exempt from NRPA permitting:

**2-B. Floating docks.** 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. In any action brought by the department against a person claiming an exemption under this subsection, the burden is on that person to demonstrate that the replacement dock satisfies the requirements of this subsection;

For other types of structures:

- If the structure you need to replace 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 PBR webpage here for more information: <https://www.maine.gov/dep/land/permits/pbr/index.html>.
  - NOTE: Permit-by-rule requires a 14-day waiting period for Department review, but may be approved sooner than 14 days.
  - **NOTE: As of today, elevating a structure higher over the water would require the submission of an individual NRPA permit application. However, the DEP has introduced a bill to the Legislature, [LD 2030](#), that would allow for the elevation of piers higher over the water without a DEP permit. The DEP is working quickly with the Legislature to amend this bill to ensure that communities will be able to rebuild all working waterfront infrastructure (not just piers) higher over the water without DEP review. The Department is recommending that this legislation should be passed on an emergency basis so that it will go into effect immediately.**
- 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 PBR webpage here for more information: <https://www.maine.gov/dep/land/permits/pbr/index.html>.
  - NOTE: If the structure is not water-dependent (e.g., if it is a house or other structure that does not depend on the water to function), the local Shoreland Zoning ordinance will require that the replacement structure be set back at least 75-feet from the high-water line, or set back to the greatest practicable extent (if 75 feet is not practicable on the property).
- 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 due to an unstable shoreline, 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. Here are some important requirements to keep in mind.

### RAISING STRUCTURES

To better withstand flooding, a structure adjacent to a protected natural resource may be elevated under a PBR, Section 2, if applicable standards are met. See the Department's PBR webpage here for more information: <https://www.maine.gov/dep/land/permits/pbr/index.html>. There will be local height restrictions for dwellings under the Shoreland Zoning ordinance. Please check with your municipal code enforcement officer regarding height restrictions.

A structure in a coastal sand dune system may be elevated on post or piling foundation without a NRPA permit, as long as the structure remains in the existing footprint and the post or piling foundation allows for the free flow of sand and water under the structure.

Currently, raising a structure such as a pier or wharf located in/over the water requires the submission of an individual NRPA permit application: <https://www.maine.gov/dep/land/nrpa/>.

- **NOTE: The DEP has introduced a bill to the Legislature, [LD 2030](#), that would allow for the elevation of piers higher over the water without a DEP permit. The DEP is working quickly with the Legislature to amend this bill to ensure that communities will be able to rebuild all working waterfront infrastructure (not just piers) higher over the water without DEP review. The Department is recommending that this legislation should be passed on an emergency basis so that it will go into effect immediately.**

### PROTECTING STRUCTURES

Sand dune restoration and construction may provide some protection to properties located in coastal sand dune systems. 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](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 coastal sand dune systems require the submission of an individual NRPA permit application:

<https://www.maine.gov/dep/land/nrpa/>.

### **CONTACTING THE DEPARTMENT**

If you have any 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](#). Please include in the email your name, address, a return phone number or email address, your questions, and, if possible, photos of the site. (Please make sure any attachments are less than 20 MB combined). Staff will respond 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