

STATE OF MAINE

 IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

 H.P. 738 - L.D. 983

An Act To Exempt from Natural Resources Protection Act Permit Requirements Certain Maintenance and Repairs of Nonhydropower Dams

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §480-Q, sub-§2, as amended by PL 2011, c. 205, §1, is further amended to read:

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;

C. There is no additional intrusion into the protected natural resource; 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, 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.

This subsection 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;

Sec. 2. 38 MRSA §480-Q, sub-§2-D, as enacted by PL 2011, c. 205, §3, is amended to read:

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;
- B. The crossing does not block passage for fish in the protected natural resource area; and
- 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.

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;

Sec. 3. 38 MRSA §480-Q, sub-§2-E is enacted to read:

2-E. Nonhydropower dams. Maintenance and repair of an existing nonhydropower dam, as long as:

- A. A long-term maintenance and repair plan for the dam has been submitted to the department prior to the commencement of any maintenance or repair activities;
- B. The maintenance and repair activities do not involve more than 50% of the surface area or volume of the dam;
- C. Erosion control measures are taken to prevent sedimentation of the water on either side of the dam as a result of the maintenance or repair activities;
- D. Resurfacing of the upstream or downstream vertical faces of the dam, retaining walls or associated structures does not exceed 4 inches in thickness;
- E. Precast concrete used for the repair or resurfacing of the dam is cured in air for a minimum of 3 weeks and fresh concrete poured in forms on site used for the repair or resurfacing of the dam is cured in air for a minimum of one week prior to use to prevent impacts to fish and other aquatic organisms from high pH levels associated with concrete;
- F. The maintenance and repair activities do not result in permanent changes to impounded water levels or to downstream flows;
- G. All necessary approvals from state and federal fisheries agencies for any temporary drawdown of the impounded waters needed to accomplish the maintenance and repair activities have been obtained prior to the commencement of those activities; and

H. Removal of accumulated materials from the upstream side of the dam, including natural sediment buildup, vegetative materials and woody debris, is limited to an area within 6 feet of the dam, measured perpendicularly from its upstream face, and is performed by hand only.

For the purposes of this subsection, "nonhydropower dam" means a water-impounding structure not used for the generation of hydroelectric power and includes any associated wing walls, abutments, spillways, gates and earthen embankments.