

Maine Revised Statutes

- ▼ [§480-B PDF](#)
- ▼ [§480-B MS-WORD](#)
- ▼ [STATUTE SEARCH](#)
- ◀ [CH. 3 CONTENTS](#)
- ◀ [TITLE 38 CONTENTS](#)
- ◀ [LIST OF TITLES](#)
- ▼ [DISCLAIMER](#)
- ◀ [MAINE LAW](#)
- ◀ [REVISOR'S OFFICE](#)
- ◀ [MAINE LEGISLATURE](#)

[§480-A](#)

Title 38: WATERS AND NAVIGATION

[§480-C](#)

Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS

Subchapter 1: ENVIRONMENTAL PROTECTION BOARD

Article 5-A: NATURAL RESOURCES PROTECTION ACT HEADING: PL 1987, C. 809, §2 (NEW); 2007, C. 290, §14

§480-B. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 809, §2 (NEW) .]

1. Coastal sand dune systems. "Coastal sand dune systems" means sand and gravel deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand and gravel areas deposited by wave or wind action. Coastal sand dune systems may extend into coastal wetlands.

[1997, c. 603, §1 (AMD) .]

1-A. Community public water system. "Community public water system" has the same meaning as "community water system" has in Title 22, section 2660-B, subsection 2.

[2007, c. 353, §6 (NEW) .]

1-B. Community public water system primary protection area. "Community public water system primary protection area" means:

A. The area within 250 feet, measured horizontally, of a great pond that is a source for a community public water system; [2007, c. 353, §7 (NEW) .]

B. The area within 250 feet, measured horizontally, of a river, stream or brook that is a source for a community public water system for a distance of 1/2 mile upstream from the intake of the public water supply; or [2007, c. 353, §7 (NEW) .]

C. A source water protection area identified and mapped by the Department of Health and Human Services as described under Title 30-A, section 2001, subsection 20-A. [2007, c. 353, §7 (NEW) .]

[2007, c. 353, §7 (NEW) .]

- ▼ [§480-B PDF](#)
- ▼ [§480-B MS-WORD](#)
- ▼ [STATUTE SEARCH](#)
- ◀ [CH. 3 CONTENTS](#)
- ◀ [TITLE 38 CONTENTS](#)
- ◀ [LIST OF TITLES](#)
- ▼ [DISCLAIMER](#)
- ◀ [MAINE LAW](#)
- ◀ [REVISOR'S OFFICE](#)
- ◀ [MAINE LEGISLATURE](#)

2. Coastal wetlands. "Coastal wetlands" means all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

[2005, c. 330, §13 (AMD) .]

2-A. Dredge spoils. "Dredge spoils" means sand, silt, mud, gravel, rock or other sediment or material that is moved from coastal wetlands.

[1989, c. 656, §2 (NEW) .]

2-B. Forest management activities. "Forest management activities" means timber stand improvement, timber harvesting activities, forest products harvesting and regeneration of forest stands. For the purposes of this definition, "timber harvesting activities" means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting, the mining of gravel used for the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. For the purposes of this definition, "timber harvesting" means the cutting or removal of timber for the primary purpose of selling or processing forest products.

[2011, c. 599, §11 (AMD) .]

2-C. Forested wetland. "Forested wetland" means a freshwater wetland dominated by woody vegetation that is 6 meters tall, or taller.

[1989, c. 838, §3 (NEW) .]

2-D. Floodplain wetland. "Floodplain wetland" means lands adjacent to a river, stream or brook that are inundated with floodwater during a 100-year flood event and that under normal circumstances support a prevalence of wetland vegetation typically adapted for life in saturated soils.

[1991, c. 214, §1 (NEW) .]

2-E. Footprint. "Footprint" means the outline of a structure on the ground, except that for a building "footprint" means the outline that would be created on the ground by extending the exterior walls of a building to the ground surface.

[2011, c. 538, §8 (AMD) .]

3. Fragile mountain areas. "Fragile mountain areas" means areas above 2,700 feet in elevation from mean sea level.

[1987, c. 809, §2 (NEW) .]

4. Freshwater wetlands. "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas that are:

- ▼ [§480-B PDF](#)
- ▼ [§480-B MS-WORD](#)
- ▼ [STATUTE SEARCH](#)
- ◀ [CH. 3 CONTENTS](#)
- ◀ [TITLE 38 CONTENTS](#)
- ◀ [LIST OF TITLES](#)
- ▼ [DISCLAIMER](#)
- ◀ [MAINE LAW](#)
- ◀ [REVISOR'S OFFICE](#)
- ◀ [MAINE LEGISLATURE](#)

A. [1995, c. 460, §12 (AFF); 1995, c. 460, §1 (RP).]

B. Inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and [1995, c. 460, §1 (AMD); 1995, c. 460, §12 (AFF).]

C. Not considered part of a great pond, coastal wetland, river, stream or brook. [1987, c. 809, §2 (NEW).]

[1995, c. 460, §1 (AMD); 1995, c. 460, §12 (AFF) .]

5. Great ponds. "Great ponds" means any inland bodies of water which in a natural state have a surface area in excess of 10 acres and any inland bodies of water artificially formed or increased which have a surface area in excess of 30 acres.

[1987, c. 809, §2 (NEW) .]

5-A. Mooring. "Mooring" means equipment, such as anchors, chains and lines, for holding fast a vessel, aircraft, floating dock or buoy.

[1993, c. 187, §1 (NEW) .]

5-B. Impervious area. "Impervious area" means an area that is a building, parking lot, roadway or similar constructed area. "Impervious area" does not mean a deck or patio.

[2011, c. 64, §2 (NEW) .]

5-C. Motorized recreational gold prospecting. "Motorized recreational gold prospecting" means the operation of small-scale, motorized equipment for the removal, separation, refinement and redeposition of sediments and other substrates occurring below the normal high-water mark of a stream for the noncommercial, recreational discovery and collecting of gold specimens. "Motorized recreational gold prospecting" includes, but is not limited to, the operation of a motorized suction dredge, sluice, pump, rocker box or winch, individually or together.

[2013, c. 536, §1 (NEW) .]

6. Normal high water line. "Normal high water line" means that line along the shore of a great pond, river, stream, brook or other nontidal body of water which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or from changes in vegetation and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of great ponds, all land below the normal high water line shall be considered the bottom of the great pond for the purposes of this article.

[1987, c. 809, §2 (NEW) .]

6-A. Offshore wind power project. "Offshore wind power project" means a project that uses a windmill or wind turbine to

- ▼ [§480-B PDF](#)
- ▼ [§480-B MS-WORD](#)
- ▼ [STATUTE SEARCH](#)
- ◀ [CH. 3 CONTENTS](#)
- ◀ [TITLE 38 CONTENTS](#)
- ◀ [LIST OF TITLES](#)
- ▼ [DISCLAIMER](#)
- ◀ [MAINE LAW](#)
- ◀ [REVISOR'S OFFICE](#)
- ◀ [MAINE LEGISLATURE](#)

convert wind energy to electrical energy and is located in whole or in part within coastal wetlands. "Offshore wind power project" includes both generating facilities as defined by Title 35-A, section 3451, subsection 5 and associated facilities as defined by Title 35-A, section 3451, subsection 1, without regard to whether the electrical energy is for sale or use by a person other than the generator.

[2009, c. 615, Pt. E, §6 (NEW) .]

7. Permanent structure. "Permanent structure" means any structure that is designed to remain at or that is constructed or erected with a fixed location or that is attached to a structure with a fixed location for a period exceeding 7 months within any 12-month period, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings.

[2007, c. 290, §2 (AMD) .]

8. Protected natural resource. "Protected natural resource" means coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds or rivers, streams or brooks, as these terms are defined in this article.

[RR 2007, c. 1, §20 (COR) .]

8-A. Transportation reconstruction or replacement project. "Transportation reconstruction or replacement project" means the improvement of an existing transportation facility to modern design standards without expanding its function or creating any additional roadways, facilities or structures. These projects are limited to:

- A. Highway or bridge alignment changes not exceeding a distance of 200 feet between the old and new center lines in any protected natural resource; [1989, c. 814, §1 (NEW).]
- B. Replacement or rehabilitation of the roadway base, pavement and drainage; [1989, c. 814, §1 (NEW).]
- C. Replacement or rehabilitation of bridges or piers; [1989, c. 814, §1 (NEW).]
- D. The addition of climbing lanes, and turning lanes of less than 1,000 feet in length in a protected natural resource; and [1989, c. 814, §1 (NEW).]
- E. Rehabilitation or repair of state-owned railroads. [1989, c. 814, §1 (NEW).]

[1989, c. 814, §1 (NEW) .]

9. River, stream or brook. "River, stream or brook" means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

- A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series

- ▼ [§480-B PDF](#)
- ▼ [§480-B MS-WORD](#)
- ▼ [STATUTE SEARCH](#)
- ◀ [CH. 3 CONTENTS](#)
- ◀ [TITLE 38 CONTENTS](#)
- ◀ [LIST OF TITLES](#)
- ▼ [DISCLAIMER](#)
- ◀ [MAINE LAW](#)
- ◀ [REVISOR'S OFFICE](#)
- ◀ [MAINE LEGISLATURE](#)

topographic map or, if that is not available, a 15-minute series topographic map. [1995, c. 92, §2 (NEW).]

B. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years. [2001, c. 618, §1 (AMD).]

C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water. [1995, c. 92, §2 (NEW).]

D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed. [1995, c. 92, §2 (NEW).]

E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation. [1995, c. 92, §2 (NEW).]

"River, stream or brook" does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.

[2001, c. 618, §1 (AMD) .]

9-A. Significant groundwater well. "Significant groundwater well" is defined as follows.

A. "Significant groundwater well" means any well, wellfield, excavation or other structure, device or method used to obtain groundwater that is:

- (1) Withdrawing at least 75,000 gallons during any week or at least 50,000 gallons on any day and is located at a distance of 500 feet or less from a coastal or freshwater wetland, great pond, significant vernal pool habitat, water supply well not owned or controlled by the applicant or river, stream or brook; or
- (2) Withdrawing at least 216,000 gallons during any week or at least 144,000 gallons on any day and is located at a distance of more than 500 feet from a coastal or freshwater wetland, great pond, significant vernal pool habitat, water supply well not owned or controlled by the applicant or river, stream or brook.

Withdrawals of water for firefighting or preoperational capacity testing are not applied toward these thresholds. [2009, c. 295, §1 (AMD).]

B. "Significant groundwater well" does not include:

- (1) A public water system as defined in Title 22, section 2601, subsection 8, except that "significant groundwater well" includes:
 - (a) A public water system used solely to bottle water for sale; and

- ▼ [§480-B PDF](#)
- ▼ [§480-B MS-WORD](#)
- ▼ [STATUTE SEARCH](#)
- ◀ [CH. 3 CONTENTS](#)
- ◀ [TITLE 38 CONTENTS](#)
- ◀ [LIST OF TITLES](#)
- ▼ [DISCLAIMER](#)
- ◀ [MAINE LAW](#)
- ◀ [REVISOR'S OFFICE](#)
- ◀ [MAINE LEGISLATURE](#)

(b) Any portion of a public water system that is:

- (i) Constructed on or after January 1, 2009;
- (ii) Used solely to bottle water for sale; and
- (iii) Not connected to another portion of the public water system through pipes intended to convey water.

For purposes of this paragraph, a public water system that is used solely to bottle water for sale includes a public water system that bottles water for sale and may provide a de minimus amount of water for other purposes, such as employee or other use, as determined by the department;

- (2) Individual home domestic supply;
- (3) Agricultural use or storage;
- (3-A) Dewatering of a mining operation;
- (4) A development or part of a development requiring a permit pursuant to article 6, article 7 or article 8-A; or
- (5) A structure or development requiring a permit from the Maine Land Use Planning Commission. [2009, c. 295, §1 (AMD); 2011, c. 682, §38 (REV).]

[2009, c. 295, §1 (AMD); 2011, c. 682, §38 (REV) .]

10. Significant wildlife habitat. "Significant wildlife habitat" means:

A. The following areas to the extent that they have been mapped by the Department of Inland Fisheries and Wildlife or are within any other protected natural resource: habitat, as defined by the Department of Inland Fisheries and Wildlife, for species appearing on the official state or federal list of endangered or threatened animal species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife; and critical spawning and nursery areas for Atlantic salmon as defined by the Department of Marine Resources; and [2009, c. 561, §37 (AMD).]

B. Except for solely forest management activities, for which "significant wildlife habitat" is as defined and mapped in accordance with section 480-I by the Department of Inland Fisheries and Wildlife, the following areas that are defined by the Department of Inland Fisheries and Wildlife and are in conformance with criteria adopted by the Department of Environmental Protection or are within any other protected natural resource:

- (1) Significant vernal pool habitat;

(2) High and moderate value waterfowl and wading bird habitat, including nesting and feeding areas; and

(3) Shorebird nesting, feeding and staging areas. [2005, c. 116, §2 (NEW).]

[2009, c. 561, §37 (AMD) .]

▼ [§480-B PDF](#)

▼ [§480-B MS-WORD](#)

▼ [STATUTE SEARCH](#)

◀ [CH. 3 CONTENTS](#)

◀ [TITLE 38 CONTENTS](#)

◀ [LIST OF TITLES](#)

▼ [DISCLAIMER](#)

◀ [MAINE LAW](#)

◀ [REVISOR'S OFFICE](#)

◀ [MAINE LEGISLATURE](#)

11. Working waterfront activity. "Working waterfront activity" means an activity that qualifies a parcel of land as working waterfront land. "Working waterfront activity" includes commercial fishing activities; commercial boat building and repair; commercial hauling, launching, storage and berthing of boats; marine construction; marine freight and passenger transportation; and other similar commercial activities that are dependent on the waterfront. As used in this subsection, "commercial fishing activities" has the same meaning as in Title 36, section 1132, subsection 3.

[2013, c. 231, §3 (NEW) .]

12. Working waterfront land. "Working waterfront land" means a parcel of land, or a portion thereof, abutting water to the head of tide, land located in the intertidal zone or submerged land that is used primarily or predominantly to provide access to or support the conduct of a working waterfront activity.

[2013, c. 231, §3 (NEW) .]

SECTION HISTORY

1987, c. 809, §2 (NEW). 1989, c. 430, §3 (AMD). 1989, c. 656, §2 (AMD). 1989, c. 814, §1 (AMD). 1989, c. 838, §3 (AMD). 1991, c. 214, §1 (AMD). 1991, c. 693, §1 (AMD). 1993, c. 187, §1 (AMD). 1993, c. 296, §1 (AMD). 1995, c. 92, §2 (AMD). 1995, c. 406, §13 (AMD). 1995, c. 460, §§1-3 (AMD). 1995, c. 460, §12 (AFF). 1995, c. 625, §A51 (AMD). 1997, c. 603, §1 (AMD). 1999, c. 243, §11 (AMD). 1999, c. 401, §BB17 (AMD). 2001, c. 618, §1 (AMD). 2005, c. 116, §§1, 2 (AMD). 2005, c. 330, §13 (AMD). RR 2007, c. 1, §20 (COR). 2007, c. 290, §2 (AMD). 2007, c. 353, §§6-8 (AMD). 2007, c. 399, §10 (AMD). 2009, c. 295, §1 (AMD). 2009, c. 561, §37 (AMD). 2009, c. 615, Pt. E, §6 (AMD). 2011, c. 64, §§1, 2 (AMD). 2011, c. 538, §8 (AMD). 2011, c. 599, §11 (AMD). 2011, c. 682, §38 (REV). 2013, c. 231, §3 (AMD). 2013, c. 536, §1 (AMD).

Data for this page extracted on 10/06/2014 09:08:36.

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