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No. 1387

H.P. 1020

House of Representatives, April 4, 2011

An Act To Restore Exemptions in the Natural Resources Protection Act

Submitted by the Department of Transportation pursuant to Joint Rule 204.
Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative CEBRA of Naples.
Cosponsored by Senator SAVIELLO of Franklin.

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

2 **Sec. 1. 38 MRSA §480-Q, sub-§2**, as amended by PL 2009, c. 460, §1, is further
3 amended to read:

4 **2. Maintenance and repair.** Maintenance and repair of a structure, other than a
5 road crossing, in, on, over or adjacent to a protected natural resource ~~and maintenance~~
6 ~~and repair of a private crossing of a river, stream or brook~~ if:

7 A. Erosion control measures are taken to prevent sedimentation of the water;

8 ~~B. Crossings do not block passage for fish or other aquatic organisms in water~~
9 ~~courses. Culverts and installation techniques utilized must achieve natural stream~~
10 ~~flow. This paragraph applies only to water courses containing fish;~~

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

12 D. The dimensions of the repaired structure do not exceed the dimensions of the
13 structure as it existed 24 months prior to the repair, or if the structure has been
14 officially included in or is considered by the Maine Historical Preservation
15 Commission eligible for listing in the National Register of Historic Places, the
16 dimensions of the repaired structure do not exceed the dimensions of the historic
17 structure.

18 This subsection does not apply to: the repair of more than 50% of a structure located in a
19 coastal sand dune system; the repair of more than 50% of a dam, unless that repair has
20 been approved by a representative of the United States Natural Resources Conservation
21 Service; or the repair of more than 50% of any other structure, unless the municipality in
22 which the proposed activity is located requires a permit for the activity through an
23 ordinance adopted pursuant to the mandatory shoreland zoning laws and the application
24 for a permit is approved by the municipality;

25 **Sec. 2. 38 MRSA §480-Q, sub-§2-A**, as amended by PL 2009, c. 460, §2, is
26 repealed.

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

28 **2-D. Existing road crossings.** A permit is not required for the repair and
29 maintenance of an existing road crossing or for the replacement of an existing road
30 crossing, including ancillary crossing installation activities such as excavation and filling,
31 in any protected natural resource area, as long as erosion control measures are taken to
32 prevent sedimentation of the water and to ensure that the crossing does not block passage
33 for fish or other aquatic organisms in the protected natural resource area and:

34 A. For replacement crossings of a river, stream or brook, the replacement crossing is
35 designed, installed and maintained to:

36 (1) Match the natural stream grade, not to exceed 2%, between the inlet and
37 outlet of the crossing structure to avoid drops or perching; and

1 (2) For crossing structures that are not open bottomed, be embedded in the
2 stream bottom a minimum of one foot and at least 25% of the culvert or other
3 structure's diameter.

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

8 For purposes of this subsection, "repair and maintenance" does not include the slip-lining
9 or invert lining of a crossing or any other alteration that results in reduced flow area
10 through the crossing structure.

11 **Sec. 4. Statewide aquatic restoration plan for stream crossings.** The
12 Department of Environmental Protection, the Department of Inland Fisheries and
13 Wildlife, the Department of Marine Resources and the Department of Transportation, in
14 conjunction with the Executive Department, State Planning Office and other interested
15 stakeholders, shall work collaboratively to develop a statewide aquatic conservation and
16 restoration strategy plan, referred to in this section as "the plan," designed to maintain and
17 restore the ecological health of the State's aquatic ecosystems and focusing on
18 maintaining and restoring dynamic ecological processes responsible for creating and
19 sustaining habitats over broad landscapes as opposed to individual projects or small
20 watersheds. The plan must improve upon best management practices for public and
21 private roads by including consideration of the Department of Transportation's Waterway
22 and Wildlife Crossing Policy and Design Guide, the Maine Interagency Stream
23 Connectivity Work Group's 2010 final report, Maine's Atlantic salmon recovery plan and
24 any other technical, policy and financial information that may help the process. The plan
25 must include, but not be limited to, using scientific data from stakeholders, establishing
26 active restoration priorities, refining existing and proposing additional best management
27 practices, reviewing statutory exemptions and regulatory standards to inform regulatory
28 decision making, establishing performance measures, proposing funding alternatives for
29 passive and active restoration, identifying gaps and overlaps with other pertinent issues
30 such as climate change and flood management and providing for education and outreach.
31 The Department of Environmental Protection, in cooperation with the Department of
32 Inland Fisheries and Wildlife, the Department of Marine Resources and the Department
33 of Transportation, shall present the final draft of the plan, which may include suggested
34 legislation, to the joint standing committee of the Legislature having jurisdiction over
35 natural resources matters no later than January 31, 2013. The committee may report out a
36 bill to the First Regular Session of the 126th Legislature.

37 **SUMMARY**

38 This bill amends the exemption for certain maintenance and repair activities in the
39 Natural Resources Protection Act. The bill eliminates a longstanding duplicate
40 exemption applying to stream crossings.

41 The bill replaces the exemption for certain existing road culverts in the Natural
42 Resources Protection Act. The bill also clarifies that slip or invert lining of existing

1 culverts is not considered a maintenance and repair activity, thus requiring a permit by
2 rule for those activities.

3 The bill requires that the Department of Environmental Protection, the Department of
4 Inland Fisheries and Wildlife, the Department of Marine Resources and the Department
5 of Transportation present the final draft of a statewide aquatic conservation and
6 restoration strategy plan to the joint standing committee of the Legislature having
7 jurisdiction over natural resources matters by January 31, 2013. The plan may include
8 recommended legislation, and the committee is authorized to report out a bill to the First
9 Regular Session of the 126th Legislature.