

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Ensure that Replacement Culverts Permit Fish Passage**

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

**Sec. 1. 38 MRSA §480-Q, sub-§2, ¶B,** as repealed and replaced by PL 1995, c. 27, §1, is amended to read:

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

**Sec. 2. 38 MRSA §480-Q, sub-§2-A,** as amended by PL 1993, c. 315, §2, is further amended to read:

**2-A. Existing road culverts.** In any protected natural resource area, a permit is not required for the repair and maintenance of an existing road culvert or for the replacement of an existing culvert, as long as the replacement culvert is:

B. Not more than 25% longer than the culvert being replaced; and

C. Not longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exemption. A person repairing, replacing or maintaining an existing culvert under this subsection shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block passage for fish passage in the water course or passage for other aquatic organisms in the water course if passage for fish is required under this subsection. Replacement culverts and techniques used in installing the culverts must achieve natural stream flow. This subsection applies only to water courses containing fish.

**Sec. 3. Fish passage rules.** The Department of Environmental Protection shall amend its rules, Chapter 305, Permit By Rule to require municipalities to achieve natural stream flow when they are repairing or maintaining roads or stream crossings. These rule changes apply only to water courses containing fish. The amendments must establish standards that ensure:

1. Adequate flow during high water conditions;
2. Upstream and downstream movement for aquatic organisms and downstream and lateral movement of materials;
3. Vertical gradient that matches up and down stream; and
4. Horizontal alignment that matches up and down stream.

**Sec. 4. Rules.** Rules adopted pursuant to or to implement the provisions of this Act are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A and must be submitted to the Legislature by January 1, 2011 for review by the joint standing committee of the Legislature having jurisdiction over natural resources matters.

**Sec. 5. Road construction; maintenance.** The provisions of this Act do not affect forestry management activities, including associated road construction or maintenance.

Effective September 12, 2009