

VEGETATION REMOVAL AND FORESTRY PRACTICES in MAINE

SHORELANDS- EXPANDED ARTICLE

Dave Stevens

Most citizens are aware that almost any construction, road building, land use conversion, or other significant changes to property require a permit from the town code enforcement officer (CEO). There seems to be less awareness, and/or confusion, when it comes to Maine law and town ordinances concerning vegetation removal. Several factors make this a complex issue:

- four different agencies potentially have jurisdiction over the cutting of vegetation adjacent to a body of water;
- depending on what type of body of water you are adjacent to, there are different distances for the required buffers/setbacks/cutting restrictions; and
- the regulations use technical terms that can confuse most people, like "basal area", "buffer zone", and a "point system for counting trees in well- distributed stands."

Because of the complexities involved you may want to get help or advice. Foresters are licensed in the State of Maine by the Board of Licensure of Foresters. Guidance on working with and selecting a forester is available at: [Selecting a Private Consulting Forester](#). A list of [current licensed foresters](#) is provided, or you can search by active licenses, by county, and other criteria using [the advanced search function](#).

A first practical step is to figure out which agencies have jurisdiction over cutting vegetation on the property. You can do this by asking yourself the following questions, and following the associated next steps:

1. Is the vegetation removal for the primary purpose of selling or processing forest products, **and** is the portion of the parcel to be harvested at least two acres in size?
 - a. If the answers are both "yes," then you (or your forester/wood harvest contractor) will need to work with the Maine Forest Service (MFS) by filing a Forest Operations Notification (FON).
 - i. The State has a number of great on-line resources to assist you: Go to the [Department of Agriculture, Conservation and Forestry website](#). To view these resources you can select *Woodland Owners* and/or *Rules and Regulations* on the left side of this webpage;
 - ii. See [The Forestry Rules of Maine 2017: A Practical Guide for Foresters, Loggers and Woodlot Owners - 2nd Edition \(PDF | 13.5 MB\)](#) also available on our [website](#)
 - iii. Contact your Maine Forest Service forester. Michael Jensen covers the towns around Taunton Bay: email: michael.p.jensen@maine.gov, phone number: 207-441-4924.
 - b. If either answer is "no", then proceed to question #2 below.

2. Is the parcel in question in an organized town? (Franklin, Hancock, Sullivan, and Waltham)
 - a. If the answer is yes, then proceed to #3 below.
 - b. If the parcel is in an *unorganized or de-organized town* (T9SD, T-10SD) then you will probably be subject to the rules and regulations of the [Land Use Planning Commission \(LUPC\)](#).
 - c. The LUPC restrictions are very similar to the Municipal restrictions described below. See the Land Use Planning Commission's [Clearing Brochure- General Standards for Vegetation Clearing](#) also on our website at [General Standards for Vegetation Clearing](#)
3. If you answered "yes" to question 2, then your vegetation removal project will probably be under the jurisdiction of your town's zoning ordinances, and specifically the Maine Mandatory Shoreland Zoning Act (MSZA). See section on MSZA below.
4. However, if the vegetation removal is part of a larger project (construction, road-building, seawalls, boat ramp, etc.), you may have to **first** obtain a permit from the Maine Department of Environmental Protection and perhaps from the U.S. Corps of Engineers (if the project impacts any "Navigable Water of the United States." Your contractor/town CEO can help you with this. See p. 5 below: Maine Department of Environmental Protection (DEP) - Summary of activities adjacent to bodies of water

So, what is allowed under the MSZA?

State Law: The Maine Mandatory Shoreland Zoning Act (MSZA) regulates land use activities in the shoreland zone. The shoreland zone is comprised of all land areas within:

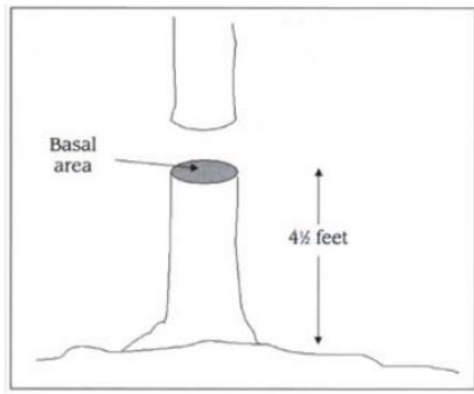
- **250 feet**, horizontal distance, of the
 - normal high-water line of any great pond (10 acres or more) or river;
 - upland edge of a coastal wetland, including all areas affected by tidal action (thus all land abutting Taunton Bay);
 - upland edge of defined freshwater wetlands; and/or
- **within 75 feet**, horizontal distance, of the normal high-water line of certain streams.

Franklin, Hancock, and Sullivan have all adopted the State standards, however Hancock and Sullivan require an additional permit from the town CEO for timber harvesting in a Resource Protection zone (RP). Since shoreland zoning regulations are administered and enforced by each municipality, the local code enforcement officer (CEO) is typically the best first contact for shoreland zoning questions. See your town's website for CEO names, contact information, and office hours.

Minimum State restrictions on clearing of vegetation in the shoreland zone:

There are three technical terms to know before you read on: "basal area", "buffer strip", and "well-distributed stand".

1. Basal area is a forestry term that refers to the surface area of the cross-section of a tree (or trees), measured on the stem(s) 4.5 feet above the highest point where the exposed root collar intersects the ground. (See diagram). So the basal area of a single large tree can be equivalent to that of numerous smaller trees.¹



2. Buffer strip is the area immediately adjacent to the water resource. For most water bodies it is the first 75 feet (measured horizontally) from the normal high-water line or the upland edge of a wetland. Adjacent to great ponds and rivers flowing to great ponds, the buffer strip extends for a distance of 100 feet from the normal high-water line.²

3. A well-distributed stand of trees and other vegetation is defined by a "point system." This system, which assigns values to trees down to two (2) inches in diameter, requires a certain total value of qualifying trees be maintained in each 25-foot by 50-foot square rectangular (1250 square feet) area within the buffer strip. For Great Ponds and rivers/streams flowing to Great Ponds this rating score (sum) is 24 (or greater), for other water bodies the rating score needs to be 16+.

Points are given according to the following table (diameters are measured 4.5' above the ground):

2 to <4 inches:	1 point each
4 to <8 inches	2 points each
8 to <12 inches	3 points each
12 inches +	4 points each

In most cases, 40% of the basal area of trees four inches or more in diameter, can be removed in any ten-year period. But no "clear-cut openings" (openings in the forest canopy greater than 250 square feet) are permitted. The cutting must be done such that a well-distributed stand of trees and other vegetation remains.

Beyond the buffer strip, vegetative cutting limitations are somewhat less restrictive. In this area cleared openings are permitted provided that such clearings do not exceed 25% of the lot area, or

¹ A single 20" diameter tree has the equivalent basal area as four 10" diameter trees, or twenty-five 4" diameter trees.

² A graphic of these buffer strips can be seen in this [Clearing Brochure: General Standards for Vegetation Clearing](#)

ten thousand square feet (23% of an acre), whichever is greater. In total, however, no more than 40% of the basal area of trees can be removed from the shoreland zone in any 10-year period .

For more detail on the MSZA restrictions see any of the Town's shoreland ordinances or the State MSZA guidelines. (Links provided below.)

Other restrictions:

- **Cutting of vegetation less than 2 inches in diameter:**
 - State law prohibits new cleared openings from being created within the buffer area.
 - If removal of vegetation less than two inches in diameter will create cleared openings (greater than 250 sq ft), enough vegetation must be retained to prevent the creation of such openings.
 - Also, if there aren't five saplings less than 2 inches in diameter in a 25-foot by 50-foot plot, no woody stems less than two (2) inches in diameter can be removed until five saplings are recruited into the plot.
 - Furthermore, in order to protect water quality, vegetation less than three (3) feet in height and other ground cover must be maintained within the buffer strip.
- **Areas where the cutting of vegetation is prohibited:** Except to remove safety hazards, vegetative cutting is prohibited abutting a great pond that has been zoned as Resource Protection³ for a distance of 75 feet inland of the normal high-water line.
- **Shoreline access in the buffer strip:** In most cases a footpath not to exceed six (6) feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created. In other words, the footpath must meander, rather than being a straight line to the water.
- **Pruning trees within the buffer strip:** Pruning of tree branches on the bottom 1/3 of the tree is permitted. Dead branches are permitted to be pruned without restriction.

Specific town ordinances:

Franklin: <https://www.franklinmaine.com/wp-content/uploads/2021/08/ShorelandZoningOrdinance.pdf>(starting on page 23)

Hancock: <https://hancockmaine.org/wp-content/uploads/2020/12/Environmental-Control-Ordinance.pdf> (starting on page 54).

Sullivan: <https://sullivanmaine.org/wp-content/uploads/2018/07/Shore-Zone-PDF.pdf>

³ See your town's or LUPC's zoning map

Maine Department of Environmental Protection (DEP) - Summary of activities adjacent to bodies of water:

The State defines Protected natural resources as coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, great ponds and rivers, streams or brooks under 38 MRSA 480-B.

The purpose section of the Natural Resources Protection Act (NRPA) provides, in part, that: "The Legislature finds and declares that the State's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dune systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State."

The law is focused on "protected natural resources". A permit is required when an "activity" will be:

- Located in, on or over any protected natural resource, or
- Located adjacent to (A) a coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland, or (B) certain freshwater wetlands.

An "activity" is (A) dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials; (B) draining or otherwise dewatering; (C) filling, including adding sand or other material to a sand dune; or (D) any construction, repair or alteration of any permanent structure.

The Maine DEP is administered by region and Downeast Maine is under the Eastern Maine region, headquartered in Bangor. The MDEP is also divided into functional groups and the section that handles this kind of project is entitled Land Resources. The number to call is: Eastern Maine Region -Land Resources - 207-446-1216

Permitting under the NRPA can be done in two ways, depending on the magnitude of the project:

1. Some projects of smaller scope can be permitted using Permit-by-Rule (PBR),
2. Projects not qualifying for PBR must submit and be approved through an Individual Permit.

A "permit by rule" or "PBR", when approved by the Department of Environmental Protection (DEP), is an approval for an activity that requires a permit under the Natural Resources Protection Act (NRPA). Only those activities described in chapter 305 may proceed under the PBR process. A PBR activity will (by definition) not significantly affect the environment if

carried out in accordance with chapter 305, and generally has less of an impact on the environment than an activity requiring an individual permit. A PBR satisfies the Natural Resources Protection Act (NRPA) permit requirement and Water Quality Certification requirement. Find it on the [Maine DEP website](#) or on our website at [Maine DEP Chapter 305 - Permit by Rule](#)

In addition, a permit will be required from the US Army Corps of Engineers (USACoE) for projects that include construction activity/fill/dredging below the ordinary highwater line of fresh waters or below the spring high tide line of tidal waters. USACoE is also divided by region and function. Maine is under the New England District and contact information is below:

Website: [US Army Core of Engineers Regulatory/ Permitting Division](#)

Regulatory Division

(CT, MA, NH, RI)

U.S. Army Corps of Engineers

New England District

696 Virginia Road

Concord, MA 01742-2751

978-318-8338

Maine Project Office

442 Civic Center Drive, Suite 350

Augusta, ME 04330

207-623-8367