Ch. 305 & Ch. 310 Proposed Revisions

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Goals

1. Reduce review time for shoreline stabilization applications
2. Better address individual and cumulative impacts from structural shoreline stabilization projects
3. Encourage nature-based solutions
4. Update rules for consistency with recent statutory changes and Department best practices

Summary of Proposed Changes

1. Reduce review time for shoreline stabilization applications
   - Add coastal shoreline stabilization to Ch. 305 (removed in 2009)
   - Establish clearer standards for structural shoreline stabilization under Ch. 310
     - Also clarify that Ch. 310 applies to non-PBR activities adjacent to wetlands and waterbodies
   - Allow for increasing the height of an existing vertical seawall up to BFE in Ch. 305

Summary of Proposed Changes

2. Better address individual and cumulative impacts from structural shoreline stabilization projects
   - Strengthen Ch. 305 § 8 standards
   - Establish clearer standards for structural shoreline stabilization projects under Ch. 310, *including instances when a project will not be permittable (due to unreasonable impact when balancing impact against benefit)*

Impacts from Shoreline Stabilization

Impact	NRPA standard
Scenic/aesthetic	§480-D(1)
Inhibition of the natural transfer of soil from the terrestrial to the marine or freshwater environment	§480-D(2)
Harm to aquatic habitat (direct impact; scouring; reduced sediment supply)	§480-D(3)
Harm to adjacent upland habitat (especially when vegetation is removed)	§480-D(3)
Flooding/erosion of adjacent properties	§480-D(6)

	PBR – Coastal Proposed Ch. 305 §8 (vs. pre-2009)	PBR – Inland Proposed Ch. 305 §8 (vs. current)	Individual - proposed Ch. 310 §5-A
Presence of threatened structure near shoreline when using riprap/structural stabilization	Water-dependent structure; septic within 25 feet; pre-2025 dwelling, commercial or public building, or road within 100 ft. of unstable or highly unstable bluff or bluff eroding at least 1' foot landward per year; publicly owned open space like park (structure within 100' of eroding bank, or ag land)	n/a (n/a)	Water-dependent structure; septic within 25 feet *or at-risk;* pre-2025 structure within 100 feet that is necessary to use parcel and can't be practicably moved; open space that serves the public; farmland; public health or safety (n/a)
Length	100' (same)	100' (same)	Proportionate to protected structure/area
Height	BFE (height of expected storm waves)	BFE or 2' above NHWL (same)	Same as PBR unless compelling need
Wetland fill	200 sf or less (n/a)	200 sf or less (n/a)	Avoid/minimize
Stabilization materials	Biodegradable stabilization materials, vegetation, riprap (vegetation, riprap)	Biodegradable stabilization materials, vegetation, riprap (vegetation, riprap)	Only applies to structural materials; gives more latitude for type of material
Engineering	Riprap must have approval of design professional, unless waived (n/a)	Riprap on stream or brook must have approval of PE, NRCS, or SWCD, unless waived (same)	Can require
Riprap proximity to abutting properties	Stop within 5 feet, some exceptions (n/a)	Stop within 5 feet, some exceptions (n/a)	Can require
Sand dunes	Not in or within 25 ft. (not in)	n/a (n/a)	n/a
SWH	Not in (n/a)	Not in (n/a)	n/a
Saltmarsh & eelgrass	Can't cover or destroy (can't cover or destroy saltmarsh OR be adjacent to saltmarsh or mudflat)	n/a (n/a)	Avoid/minimize
Upland vegetation removal	No trees >4" DBH w/ exceptions (applies only to areas where veg. is not present)	No trees >4" DBH w/ exceptions (applies only to areas where veg. is not present)	Avoid/minimize
Vegetation in riprap	If feasible (n/a)	On streams and brooks (same)	Can require
Vegetative buffer above riprap	10' wide w/ exceptions (25' for ag land)	10' wide w/ exceptions and 25' for ag land (25' for ag land)	10' wide w/ exceptions
Additional new standards (not exhaustive)	Riprap comparable color; place excavated sediment in riprap	Riprap comparable color	Riprap comparable color; place excavated sediment in riprap

Summary of Proposed Changes

3. Encourage nature-based solutions
   - Allow biodegradable stabilization materials in Ch. 305 §§ 8, 12, and 16-A to support shoreline stabilization, saltmarsh restoration, and dune restoration

Nature-based Solutions

Photo 1: *bluff face enhanced by pinned logs, lifts of coir filled with organics and plantings. Courtesy of Nathan Robbins.*

Nature-based Solutions

Photo credit: Carina Brown, PWD

Nature-based Solutions

Photo credit: Pete Slovinsky, MGS

Nature-based Solutions

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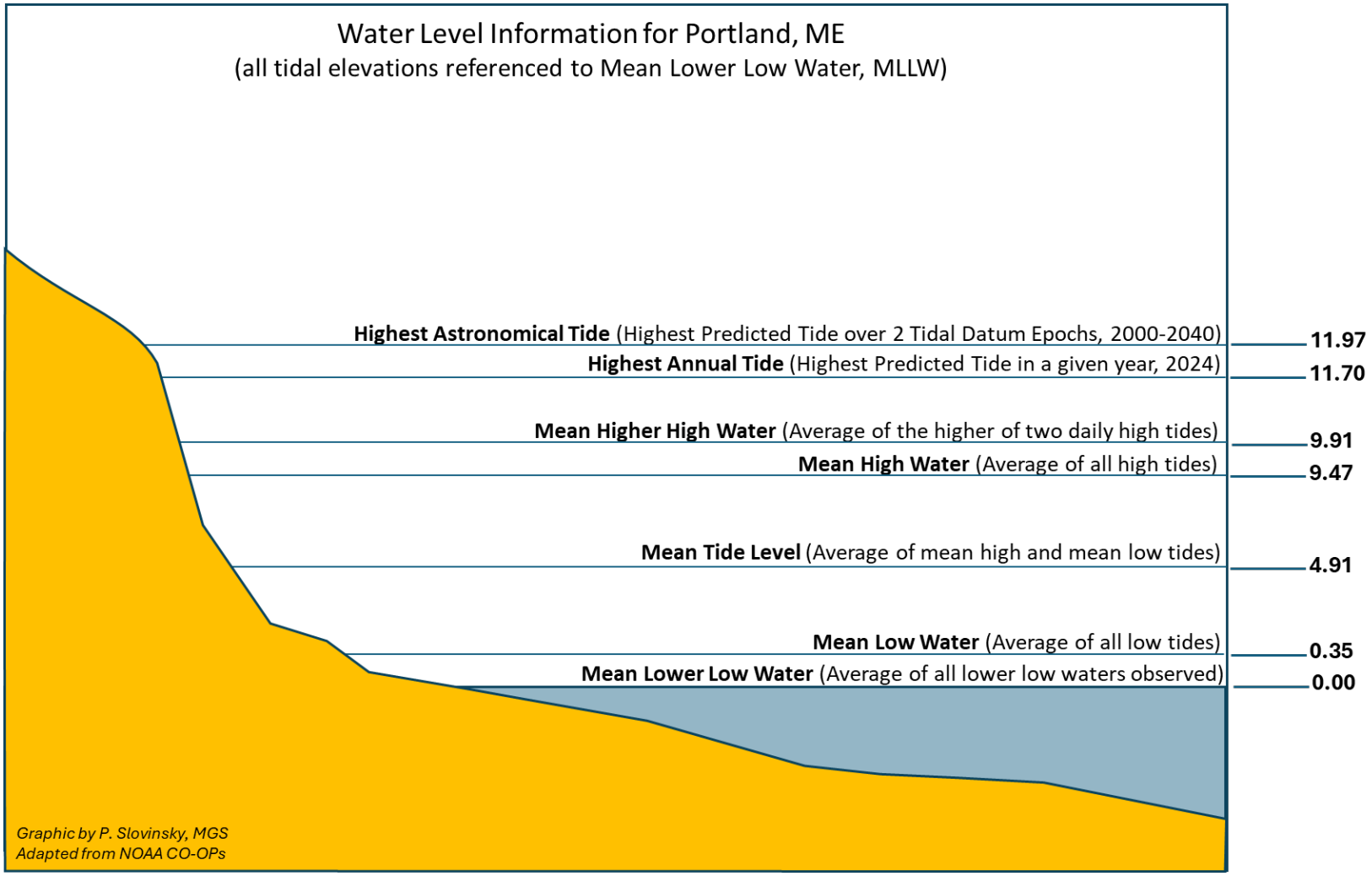
Summary of Proposed Changes

4. Update to incorporate statutory provisions, 2024 emergency rulemaking, best practices
   - Ch. 305 §16-A revisions:
     - Dune restoration: May use biodegradable materials (P.L. 2023 ch. 97) and any source of compatible sand and gravel
     - Add beach scraping
     - Add municipal seaweed removal
   - Replacement of piers, wharves and docks in §§ 4 and 16 (P.L. 2023 ch. 531)

Summary of Proposed Changes

- Other proposed substantive revisions to Ch. 305
  - Minor updates to Ch. 305 §§ 1 and 2
  - Switch from highest annual tide to highest astronomical tide
  - Update erosion and sedimentation control standards throughout
  - Extend DEP review timeline to 20 working days in accordance with 38 M.R.S. § 344-B

HAT vs. HAT


Water Level Information for Portland, ME
(all tidal elevations referenced to Mean Lower Low Water, MLLW)
Highest Astronomical Tide (Highest Predicted Tide over 2 Tidal Datum Epochs, 2000-2040)
11.97
Highest Annual Tide (Highest Predicted Tide in a given year, 2024)
11.70
Mean Higher High Water (Average of the higher of two daily high tides)
9.91
Mean High Water (Average of all high tides)
9.47
Mean Tide Level (Average of mean high and mean low tides)
4.91
Mean Low Water (Average of all low tides)
0.35
Mean Lower Low Water (Average of all lower low waters observed)
0.00
Graphic by P. Slovinsky, MGS
Adapted from NOAA CO-OPs