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# Buffer Options *for the* Bay

## New Hampshire's Regulatory Framework for Buffers

### OVERVIEW

The Policy Analysis seeks to address the challenges of buffer management and regulation by presenting a synthesis of the current regulatory framework regarding wetland protection, buffers, setbacks, and land use regulations in New Hampshire. It also includes non-regulatory options for management of areas containing buffers and innovative case studies from other states. There are many resources to facilitate understanding of wetland and shoreland regulations in New Hampshire; this report does not intend to duplicate those. Rather, its purpose is to connect available information to municipalities as they craft and enforce local ordinances related to buffer protection and also to connect the information to landholders as they navigate the complicated regulatory framework that governs use of their land.

This summary is from the [Association of State Wetland Managers \(ASWM\)](https://www.aswm.org/pdf_lib/state_summaries/new_hampshire_state_wetland_program_summary_090315.pdf) - [https://www.aswm.org/pdf\\_lib/state\\_summaries/new\\_hampshire\\_state\\_wetland\\_program\\_summary\\_090315.pdf](https://www.aswm.org/pdf_lib/state_summaries/new_hampshire_state_wetland_program_summary_090315.pdf)

And the New Hampshire Wetlands Bureau FAQ's <https://www.des.nh.gov/organization/divisions/water/wetlands/categories/faq.htm>

### How are Wetlands Regulated in New Hampshire?

#### **Prime Wetland Buffer and Tidal Buffer Zone**

Authorized by the [Fill and Dredge in Wetlands](#) law, RSA 482-A, the Wetlands Bureau setbacks include the prime wetland buffer and tidal buffer zone. The prime wetland buffer is the 100 foot upland buffer for wetlands that have been municipally designated as [prime wetlands](#) and at the time of their designation a 100-foot upland buffer was required and the tidal buffer zone is the area extending landward 100 feet from the highest observable tide line. This area can contain wetlands, transitional areas, and natural and developed upland. Impacting areas within prime wetlands, prime wetland buffers and tidal buffer zones often requires a permit from NHDES Wetlands Bureau.

#### **Primary Building and Accessory Structure Setback**

Authorized by the [Shoreland Water Quality Protection Act](#), RSA 483-B, the NHDES Shoreland Program requires a 50 foot setback for all new primary structures on [protected surface waters](#) and a 20 foot setback for accessory structures such as sheds, gazebos and patios. There are also limitations on removing vegetation adjacent to many surface waters and this is explained within the [Vegetation Maintenance FACT SHEET](#)..

### **Septic Systems**

Authorized by the [Water Pollution and Waste Disposal Act](#), RSA 485-A, the NHDES Subsurface Systems Bureau requires that septic systems are installed at least 75 feet from wetlands having very poorly drained soils and 50 feet from wetlands having poorly drained soils. When installing septic systems within the [protected shoreland](#), if the receiving soil of the septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback is at least 125 feet from the [reference line](#) of the waterbody.

Additionally, many municipalities have ordinances that are more stringent than state laws and often include wetland setbacks. Always ensure you meet local regulations when planning your proposed project.

New Hampshire regulates impacts to wetlands primarily under the [Fill and Dredge in Wetlands Act](#) (The Wetlands Act) RSA 482-A, which authorizes the state's permitting program to protect wetlands and surface waters. The state's wetland permitting program is the primary means of wetlands regulation in New Hampshire. The New Hampshire Department of Environmental Services, Water Division, Wetlands Bureau administers the state's wetland regulatory program. New Hampshire has a Section 401 certification program (under RSA 485-A:8), but the NHSPGP has a blanket 401 Water Quality Certification, so most water quality issues are handled as conditions to the State Wetlands Permit. Federal 404 permitting is mostly through the NHSPGP. The law also protects sand dunes and upland tidal buffer zones (100 feet above the highest observable tideline). Although the law was adopted in 1967 to protect tidal wetlands and waters, it was extended in 1969 to regulate activities in freshwater bodies. There is no minimum threshold of size for wetlands or wetland impacts under the Act; NHDES has jurisdiction over tidal wetlands, nontidal wetlands, and tidal buffer zones. New Hampshire Wetlands Statute, rules, and proposed rules are available [HERE](#).

In addition, the [Surface Water Quality Protection Act](#) (SWQPA), RSA 483-B, formerly known as the Comprehensive Shoreland Protection Act, regulates impacts to uplands adjacent to fourth-order streams and higher and public waters. Under the SWQPA, also administered by NHDES, projects and activities located within the regulated shoreland are subject to Minimum Shoreland Protection Standards. Protected shorelands include all land within 250-feet of waters listed in the state's *Official List of Public Waters*, fourth order and higher streams, rivers designated under RSA 483, the Rivers Management and Protection Program, and tidal waters subject to the ebb and flow of the tide. In 2007, the state legislature authorized the development of a permitting program for construction, excavation, and filling within the protected shoreland.

**Alteration of Terrain** – This law, RSA 485-A:17, requires a permit for any project that disturbs 100,000 or more square feet of land or 50,000 square feet of land within the protected shoreland. The permit is intended to limit the negative impacts associated with increased stormwater runoff at developed sites.

To the extent that projects requiring these permits are adjacent to wetlands, this law protects wetlands from indirect impacts caused by stormwater.

**For rivers** that have been designated by the Legislature for protection under the state's Rivers Management and Protection Program, local advisory committees routinely comment on permit applications for development projects. Because of co-occurrence of rivers and wetlands, this also serves to protect wetlands, although not through any specific regulatory or permitting authority.

**Large Groundwater Withdrawal Permitting Program** – This program is administered by DES and serves to prevent impacts to wetlands and other water resources from large withdrawals of groundwater from wells sited after July 1998.

Additionally, municipalities may designate wetlands as **“prime wetlands,”** which receive higher level protection under the Act. NHDES also has jurisdiction over areas within 100 feet of prime wetlands, although only seven wetlands still retain this designation at this time. Wetlands are evaluated for designation using the “New Hampshire Method” as detailed in two manuals, one for nontidal wetlands and the other for tidal wetlands. The designation process included a formal study which results in a ranking and identification of outstanding values. The proposed designation of these wetlands must then be adopted by the municipality by vote of the residents after undertaking a process comparable to the adoption of zoning ordinances. The mapping and a report of the evaluation of the wetland(s) is submitted to DES for acceptance. Once DES formally accepts the designation, the designated prime wetland and a 100 foot buffer around it are afforded special protection by DES under the wetlands law. Projects involving impacts to prime wetlands or the prime wetland buffer are classified as major impact projects, requiring a more stringent burden of proof that the project is the least impacting alternative and that the proposed activity, either alone or in conjunction with other human activity, will not result in the significant net loss of any of the values identified by law. The prime wetlands buffer provisions have returned to the prime wetlands limits only for older designations. A forest management waiver provision has been added allowing management within protected areas where the applicant can demonstrate mitigating design features.