
Buffer Options *for the* Bay

Model Buffer Ordinance Case Study from Rhode Island

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.

RHODE ISLAND'S APPROACH

Rhode Island offers an example of how a state with decentralized wetland policies can reclaim decision-making authority in a way that protects the interest of local communities and ecosystems and explore the use of variable width buffers based on surrounding land use. After an extensive review of the effectiveness of its former policies, Rhode Island underwent significant changes in its buffer regulations in 2017. These are the first major changes to the state's wetland laws in 40 years and follow several unsuccessful attempts to update the 1971 Wetlands Act. The review and subsequent changes were spurred by a shared feeling among management, business, and local communities that the existing regulatory framework was in need of improvement to address issues that included the following.

- State standards provide inadequate protection, prompting differing municipal standards.
- Various municipal standards result in diverse outcomes.
- Lack of uniform process is burdensome and unpredictable.
- Duplicative reviews and competing interests add costs to businesses and landowners.

To address these issues, the Rhode Island General Assembly charged the state's Division of Planning to create a Legislative Task Force to determine the adequacy of protection afforded to state wetlands or

waters under Rhode Island General Laws § 2-1-18-25 (Agricultural Functions of Department of Environmental Management), § 42-17.1 (Department of Environmental Management), and § 42-64.13-10 (The Rhode Island Regulatory Reform Act). The task force was also charged with identifying gaps in protection for septic setbacks and wetlands and recommending statutory or regulatory changes needed to protect wetlands statewide while streamlining permit reviews.

The task force reviewed Rhode Island's existing regulations, studied regulatory frameworks from other states, listened to local stakeholders, and compiled a detailed, scientific literature review that included presentations from wetland science and management. After 15 meetings over 14 months, the state Department of Planning compiled a findings report for the task force and submitted it to the Governor and Rhode Island General Assembly in 2014.

The findings confirmed that state standards did not offer enough protection for smaller wetlands and any protection to the areas surrounding wetlands that play an important role in protecting wetland health. They concluded that the 50-foot perimeter jurisdictional zone surrounding large wetlands—other than rivers and streams—was not sufficient. They also found that inconsistency in regulations was problematic for developers and property owners; leading to duplicative reviews, adding to the cost of the review process, and introducing uncertainty due to the way variances were introduced at the local level.

The report noted that municipalities generally lack the scientific expertise to implement their environmental ordinances and that expertise was present in state programs. While applicants typically had environmental scientists and or engineers to present evidence, local officials did not have that support. Ultimately, it recommended that “state authority for regulating development and other alterations in proximity to wetlands, including surface waters, should be expanded by modifying RI General Law and agency regulations to increase state jurisdiction and responsibilities, including critical wetlands, as nominated by municipalities.”

Their [final report](#) was reviewed by Rhode Island's General Assembly, which passed legislation to implement the report in 2015. This new legislation required the establishment of state standards for freshwater wetland buffers and setbacks, thus ending the promulgation of stricter municipal standards. It amended [Rhode Island General Laws § 2-1-1 through § 2-1-28: Agricultural Functions of Department of Environmental Management](#), as well as [Rhode Island General Laws § 45-24-27 through § 45-24-7: the Zoning Enabling Act](#).

As a result, municipalities can no longer use their local zoning ordinances to regulate setbacks for wetlands and buffers. The sole authority for regulating wetlands and buffers now lies with the State of Rhode Island, though the state does have to keep municipalities informed of wetland permitting proceedings in their jurisdiction. Municipalities cannot enact new buffer regulations and restrictions after Rhode Island's Department of Environmental Management (DEM) adopts new rules and regulations to enforce the Act, and any existing municipal setbacks must be rescinded.

It is now the responsibility of DEM to draft new regulations setting new standards to which all permit applicants will adhere. Local municipalities have the power to petition the state agencies who deal with

buffer protection (the Coastal Resources Management Council (CRMC) or DEM) if they want to increase buffer protections for a certain resource. All of these regulatory changes are designed to extend as much protection to wetlands and buffers as possible, streamline the permitting process where appropriate, and eliminate confusing instances of overlap and contradiction between state and local regulations.

As of spring of 2016, Rhode Island had been developing revised wetlands regulations that will be applied statewide. Currently, RIDEM and CRMC are considering a “tiered approach” to buffers and setback regulations that take into account a variety of environmental attributes, including watershed characteristics, existing land uses, vulnerability and extent of wetland resources, as well as wetland functions and values. The state has a unique opportunity to create cutting edge regulations, and the agencies responsible for developing these are interested in a dynamic approach that divides the landscape into different regions, potentially based on the following characteristics.

- Region A: High priority areas for fish and wildlife habitat conservation, as well as water quality
- Region B: Areas with a mix of land uses and watershed characteristics, including urban, suburban and rural characteristics
- Region C: Most densely developed areas, including metropolitan Providence and other urban centers

The state is considering using these classifications to determine the buffer width enforced in a given area. The goal is to establish maximum buffer widths in high-value watersheds, for example, watersheds with drinking water supply reservoirs or high-value habitat wetlands or rare wetland types. Other, more densely developed and populated areas may not require such strong protections due to their already degraded status and/or conflicting social and economic interests. Areas where minimum buffers could be applied might include small, isolated wetlands, wetlands within “Region C” urban cores, and wetlands in median strips of travel corridors. Though it may be unnecessary to enforce maximum buffer protections for all wetland areas, it is unlikely that any wetland area in Rhode Island will have a buffer width of zero once the new regulations are completed.

As with all regulatory development, the drafting of these regulations requires significant time and effort on the part of the state. DEM and CRMC continue to work to ensure that the final product delivers on its charge to create standards that are straightforward and effective. While revising these regulations has been a vast undertaking, the process has allowed the state to address many ecological and social problems that plague not just Rhode Island, but many other states as well, including New Hampshire.