



# NEW HAMPSHIRE

Original Wetland Acreage	Remaining Wetland Acreage	Acreage Lost	% Lost
220,000	200,000	20,000	-9%

**New Hampshire Wetlands:** The predominant wetland types in New Hampshire are palustrine forested and scrub-shrub. Forested and scrub-shrub wetlands that have organic-rich mineral soils are commonly referred to as swamps, whereas wetlands that have organic soils over mineral soils are called peatlands. Most of New Hampshire’s lakes and rivers have areas of shallow water where aquatic vegetation has become established. Estuarine and marine wetlands along New Hampshire’s 18-mile coastline are estimated at about 7,500 acres.

<a href="#">Summary</a>	<a href="#">Individual Features</a>	<a href="#">Regulation</a>	<a href="#">Water Quality Standards</a>	<a href="#">Mitigation</a>	<a href="#">Monitoring and Assessment</a>	<a href="#">Restoration</a>	<a href="#">Public/Private Partnerships</a>
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(Please click on heading above to go to that section.)

## SUMMARY

### Overall Program

The state has a comprehensive program involving direct state permitting for alteration of surface waters, tidal and nontidal wetlands and a variety of other jurisdictional areas. Permitting is centralized at the State level, but municipal conservation commissions are given a statutory intervention authority. The New Hampshire wetland regulatory program’s website is at <http://www.des.state.nh.us/wetlands>.

### Innovative Features and New Programs/Initiatives

The U.S. Army Corps of Engineers (Corps) revoked all Nationwide Permits in New Hampshire in June 1992, and replaced them with the New Hampshire State Programmatic General Permit (NHSPGP). The Corps comes to the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau once a week to review those projects that have received a New Hampshire wetland permit. Corps reviewers decide whether the project is federally jurisdictional and whether it qualifies, potentially qualifies (subject to a federal agency review), or does not qualify under the NHSPGP. Those projects that meet federal jurisdiction and do not qualify (less than 1% of those approved by the State) require an individual 404 permit in addition to the State permit.

### State Wetland Conservation Plan

New Hampshire Wetlands Priority Conservation Plan completed (1989).

## **No Net Loss/Net Gain Goal**

The goal in New Hampshire, by policy, is no net loss of environmental value. Protection of upland buffers around natural wetlands, and of uplands within a natural mosaic of wetlands and uplands is the preferred mode of mitigation where such systems exist in a healthy state. Such preservation provides a value gained, since there is considerable loss of wetland value whenever those unregulated upland areas are developed. The numbers vary from year to year, but during calendar year 2002, 104 acres of wetlands were approved for dredge or fill impacts, with most projects impacting 0.2 of an acre or less. Mitigation for impacts included 4.8 acres of wetlands creation, 41 acres of restoration, and 882 acres of land protection (through conservation easements. etc.).

## **INDIVIDUAL FEATURES:**

### **Regulation**

#### **Wetland Regulatory Statutes and Administrative Rules**

All wetlands and surface waters are regulated by state law (RSA 482-A) and almost all dredge and fill in jurisdictional areas require a State permit. Federal 404 permitting is mostly through the NHSPGP, and only 5 or 6 projects each year require an individual Corps permit in addition to the State Permit.

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. Occasionally a wetlands permit will be conditioned to require an individual 401 certification, and combined with those required for Corps individual permits, a total of about 10 individual 401 certifications are issued each year.

New Hampshire Wetlands Statute, rules, and proposed rules are available at <http://www.des.state.nh.us/wetlands/rule-law.htm>.

*Fill and Dredge in Wetlands*, N.H. Rev. Stat. Ann., 482-A:1 to :27 (was known as RSA 483-A prior to recodification in January, 1990). Permits are required for dredge, fill, or construction of structures in wetlands, surface waters, tidal buffer zones, sand dunes, and areas adjacent to municipally designated prime wetlands. Initial passage was in 1967.

*N.H. Administrative Code*, Chapters Wt 100-700 contain the wetlands administrative rules. <http://www.des.state.nh.us/Rules/wt100-800.pdf>.

The NHDES's water quality program is authorized under RSA 485-A:8 & 13 (*N.H. Water Pollution and Waste Disposal Act*). See [http://www.des.state.nh.us/wmb/section\\_401.htm](http://www.des.state.nh.us/wmb/section_401.htm)

#### **Wetland Definition and/or Delineation; Comparability With Federal Definition**

Administrative rule Wt 301.01 requires that wetlands be delineated using the 1987 *Corps of Engineers Wetlands Delineation Manual*, and the 1998 New England Interstate *Field Indicators for Identifying Hydric Soils in New England* (see <http://www.neiwpc.org/field%20indicators%20guide.pdf>).

Administrative rule Wt 101.88 defines "wetland" using the language of 33CFR 328.3 (Army Corps definition).

### **Evaluation Methodology**

There is no standard method for permitting purposes, and the bottom line for most evaluations is professional judgment. Various methodologies are used or borrowed from when there is a good fit to the site-specific situation. These include *The Highway Methodology Workbook Supplement: Wetlands*

*Functions and Values, a Descriptive Approach*, New England District Army Corps of Engineers, 1999, and the *Method for the Comparative Evaluation of Nontidal Wetlands in New Hampshire*, 1991.

## **Regulated and Exempted Activities**

Dredge, fill or construction (including excavation, removal of soil, and construction of structures) requires a permit. There is no minimum size threshold – all impacts require a permit.

The following activities have been exempted:

- a. Repair or replacement of an existing structure with no change in location or configuration is exempted if it does not involve excavation, removal, filling or dredging, or work in the water.
- b. Maintenance of nontidal ditches, culverts, catch basins, and manmade detention ponds that have been legally constructed, and that have been maintained with sufficient frequency that they are not dominated by hydrophytic vegetation.
- c. Maintenance dredge of legally constructed fire ponds and dry hydrants.

## **Special Provisions for Agriculture and Forestry**

There are no exemptions for agriculture or forest management, but special rules and best management practices have been developed to address the unique needs of each. A streamlined notification process is in place for timber harvesting that meets certain criteria.

## **Penalties and Enforcement**

NHDES is responsible for enforcement, and can impose administrative removal and administrative fines of up to \$2,000 per violation (multiple violations at a single site are possible). Acting through the Attorney General's Office, NHDES can seek civil penalties up to \$10,000 per violation per day and/or criminal penalties up to misdemeanor for private individuals and felony for corporations.

## **Permit Tracking**

Permits, enforcement and mitigation actions are all tracked using a database which also produces weekly reports of permitting activity which are posted on the Wetlands Bureau's web site (<http://www.des.state.nh.us/wetlands/dec-rpt.htm>). The Wetlands Bureau also has GIS data layers with locations of permits and enforcement actions, municipally designated prime wetlands, rivers designated under the state program, and buffered layers of threatened and endangered species and exemplary plant communities. Every incoming permit application is checked against the GIS layers so potential impacts to these resources may be evaluated during the permit review process.

## **State General Permit (PGP or SPGP) for 404**

Yes, see above. Text is at <http://www.des.state.nh.us/wetlands/pdf/nhgp.pdf>. Maximum impact in most cases is three acres, but that covers more than 99% of the permits issued in the State.

## **Assumption of Section 404 Powers**

No. The state sees no benefit to assumption given the success of the NHSPGP over the past 10 years.

## **Joint Permitting**

The State works jointly with the Corps on those few large transportation projects that do not qualify for the NHSPGP.

## **Special Area Management Plans and Advanced Identification Plans**

Municipalities can designate prime wetlands that receive additional protections under NH RSA 482 A:15 and Chapter Wt 700 of the rules (<http://www.des.state.nh.us/wetlands/rule-law.htm>).

## **Role of Local Governments**

Municipal conservation commissions have an advisory role in the state permitting process and can provide comments to the NHDES before a permitting decision is made. Some local governments have adopted wetland protection regulations, including the requirements for buffers to wetlands. State permits require as a condition that local permits be obtained.

## **Staffing**

The Wetlands Bureau consists of 30 full-time plus 5 or 6 seasonal/part-time staff; total funding is \$1.3 to 1.6 million.

## **Water Quality Standards**

### **Wetlands and Water Quality Standards**

Wetlands are defined as surface waters of the state by rule Env-Ws 403.20. By Env-Ws 1703.02, water quality standards apply to wetlands except "wherever the naturally occurring conditions are different from the criteria listed in these rules, the naturally occurring conditions shall be the applicable water quality criteria."

### **Wetland Definition**

Administrative rules Env-Ws 403-22 and Env-Ws 1702.53 are the same as Wt. 101.88 described above. They all define "wetland" using the language of 33CFR 328.3 (Corps definition).

### **Designated Uses**

None.

### **Narrative and/or Numeric Criteria**

None.

### **Antidegradation Policy**

None.

### **Other**

None.

## **Staffing**

Water quality staff are in another bureau of the NHDES Water Division, but none are considered wetlands staff.

## **Mitigation**

### **Mitigation Policy**

Mitigation is required on a function-by-function basis. The total package must provide equal or greater environmental value. Methodology varies. Up front mitigation has been required on some sites.

Draft mitigation rules have been posted on the web site, but are still in the review process.

<http://www.des.state.nh.us/wetlands/rule-law.htm>

### **Mitigation Banks**

There are no mitigation banks in New Hampshire, though regional not-for-profit banks have been considered as a possible planning tool to protect significant aquatic resources.

### **In Lieu Fee Program**

None, but there is interest because of the large number of very small projects that require mitigation.

### **Ad Hoc Arrangements**

Donations to nonprofits or other organizations are generally not accepted as mitigation for permitting, but occasionally such an arrangement is made as part of an enforcement settlement.

### **Mitigation Database**

Yes, as part of the permitting database.

## **Staffing**

One part-time person responsible for overseeing policy and compliance. Most evaluation and finalization of mitigation proposals is done by permit reviewers.

## **Monitoring and Assessment**

### **Mapping /Inventory**

LANDSAT telemetry data was converted to a statewide GIS based resource map in the early 1990s and was extensively ground-proofed. Since that time new USDA Natural Resources Conservation Service (NRCS) soils mapping has been digitized, as have National Wetland Inventory maps. No single source is considered particularly reliable, but in combination they give good landscape scale estimates.

### **Wetland Classification and Assessment**

Regulations place highest value on tidal wetlands, bogs, marshes, and swamps (in that order).

Administrative rule Wt 301.02 requires use of U.S. Fish and Wildlife Service (FWS) (Cowardin *et al.*, 1979) classification.

The State is still struggling with assessment issues.

### **Overall wetland gain and loss tracking system**

Yes. Data is based on the permitting database, but does not include restoration work by other parties such as NRCS, or FWS.

### **Staffing**

None

### **Restoration**

#### **Program Description**

There are several cooperative State/federal programs in the coastal section of the State, and at least one river restoration associated with improvement of cold-water fisheries. Most restoration is done as mitigation for permitting or to resolve an enforcement case.

#### **Restoration Program Goals**

None established.

#### **Eligibility Criteria**

Varies.

#### **Restoration Database**

Projects with the primary goal of restoration are tracked in the Wetlands Bureau's permitting database.

#### **Staffing**

Permitting staff do the evaluation and permitting of wetland restoration projects.

### **Public/Private Partnerships**

#### **Acquisition Program**

The Land and Community Heritage Investment Program (LCHIP) created under RSA 227-M acquires wetlands and other resources through easements and fee-simple purchases. However wetlands are only one of several resources of interest. <http://www.lchip.org/>

#### **Public Outreach/Education**

The NHDES Wetlands Bureau has a section with outreach responsibilities. Its duties include development and presentation of workshops, meetings, development and maintenance of guidance and publications,

maintenance of the web page at <http://www.des.state.nh.us/wetlands/> and responding to e-mail inquiries sent to [wetmail@des.state.nh.us](mailto:wetmail@des.state.nh.us). (See Wetlands Training and Education section below.)

### **Tax Incentives**

The State has a current use tax system which includes tax reductions for agriculture, forestry, and wetlands (but with a different definition than the regulatory one).

<http://www.state.nh.us/revenue/currentuse/currentuse.htm>

### **Technical Assistance**

In-office pre-application meetings with permitting staff are offered to landowners, consultants, and municipal conservation commissions to review proposed projects that may require a permit.

### **Other Nonregulatory Incentives for Private Landowners**

No additional programs identified.

### **Wetland Training and Education**

The NHDES Wetlands Bureau reaches about 5,000 people through 30 - 40 presentation or events each year, including multiple workshops offering continuing education credits to certified wetland and soils scientists, foresters, land surveyors, engineers, etc. Other groups reached include members of conservation commissions and other municipal boards, road agents, landowners, and the general public.

### **Watershed planning**

NHDES has begun to use impact tracking data from the permitting database in conjunction with the GIS information for coastal watersheds.

### **Special Problems**

New Hampshire is the fastest growing state in New England, and one of the 10 fastest-growing states in the country. The result of this situation is that the development pressures are increasing, and land previously considered undesirable is now being proposed for development.

### **Coordination**

The NHDES centralizes regulatory activities in New Hampshire. The NHDES works in cooperation with other State agencies, federal agencies, and municipal conservation commissions on a regular basis.

### **Contact Person(s)**

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## Contact Points

<http://www.des.state.nh.us/wetlands/>  
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## Guidebooks, Brochures, Websites, Other Educational Materials

The web site at <http://www.des.state.nh.us/wetlands/> contains reference materials, presentations and links to other sites.

### Websites:

Main Page/Contacts: <http://www.des.state.nh.us/wetlands/>

A Guidebook explaining how to apply for a wetlands permit in New Hampshire:  
<http://www.des.state.nh.us/wetlands/Guidebook/>

Scientific Studies relating to New Hampshire wetlands:  
<http://www.des.state.nh.us/wetlands/fundedstudies.htm>

The New Hampshire Department of Environmental Services homepage is located at  
<http://www.des.state.nh.us/>

The State of New Hampshire homepage: <http://www.state.nh.us/>

The State of New Hampshire Legislative Page: <http://gencourt.state.nh.us/ie/>