

ENVIRONMENTAL Fact Sheet



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Wetlands Permitting: Protected Species and Habitat

The New Hampshire Department of Environmental Services (NHDES) Wetlands Rules (Env-Wt 100 through Env-Wt 900) categorize certain, high-value wetland resources as “Priority Resource Areas” (PRAs). A PRA, as defined by Wetlands Rule Env-Wt 103.65, is a jurisdictional area under RSA 482-A (Fill and Dredge in Wetlands) that meets one or more of the following criteria:

- 1) Is a documented occurrence of protected species or habitat.
- 2) Is a bog.
- 3) Is a floodplain wetland contiguous to a Tier 3 or higher watercourse.
- 4) Is a designated prime wetland.
- 5) Is a duly-established 100-foot buffer to a prime wetland.
- 6) Is a sand dune, tidal wetland, tidal water, or undeveloped tidal buffer zone.

The documented occurrence of a protected species or habitat on a potential project site may affect the project classification for permitting. This fact sheet describes the state and federal regulations regarding, protected species and habitat, and the wetland permitting requirements for areas with a documented occurrence of a protected species or habitat. This fact sheet also describes the online tools available to conduct screening for protected species and habitat as part of the “Required Planning for All Projects” called for under Wetlands Rule Env-Wt 306.05.

State and Federal Regulations

Under state and federal laws and rules, no activity shall jeopardize the continued existence of protected species and habitat. Protected species and habitat include any threatened or endangered species, eagle species, habitat of such species that is determined to be critical by the executive director of the New Hampshire Fish and Game Department (NHFG), and any exemplary natural community as identified by the Natural Heritage Bureau (NHB). Moreover, activities must not jeopardize the continued existence of a species proposed for listing as threatened or endangered, or designated or proposed critical habitat under one of the following:

- Federal Endangered Species Act, administered by U.S. Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries).
- State Endangered Species Conservation Act, administered by NHFG.
- New Hampshire Native Plant Protection Act, administered by New Hampshire Division of Forests and Lands, Department of Natural and Cultural Resources.



Figure 1: Bald eagles are protected.

Wetlands Permitting

The NHB maintains data on known locations of protected species and habitat and exemplary natural communities. The required planning for a project that will impact jurisdictional areas under the Wetlands Rules, includes obtaining review by NHB. The [NHB DataCheck Tool](#) is an online screening tool available to identify these known locations. This tool allows anyone planning a project that requires a permit to find out if there are NHB records in the vicinity of the project. By

using this tool the NHB review will be more efficient. The results are valid for one year from the date indicated on the NHB DataCheck Results Letter. Please note:

- If the NHB DataCheck Results Letter indicates the presence of protected species or habitat in the vicinity of a proposed project, the letter may direct the applicant to contact NHB, NHFG and/or USFWS.
- A wetlands permit will not be issued or a wetlands registration or notification will not be accepted if the applicant does not provide sufficient evidence to NHDES that a NHB DataCheck was completed and the results.
- A wetlands permit will not be issued if the applicant does not provide evidence to NHDES that NHB, NHFG and/or USFWS were contacted if directed to do so in the NHB DataCheck Results Letter, and that recommendations from these agencies were (or would be) followed by the applicant (if applicable).
- Projects under a statutory permit-by-notification (Forestry, Trails, Utility Culvert Repair/Replacement or Seasonal Dock SPNs) or under a registration for routine roadway maintenance activities may only proceed if recommendations from NHB and/or NHFG, as applicable, have been obtained.
- NHDES requires submission of the NHB- ID number, to verify that the NHB DataCheck has been used to screen your project for protected species or habitat.
- NHDES requires submission of the NHB and NHFG recommendations as part of the Expedited and Standard application review processes.

More information regarding the effect of a PRA on the wetlands permitting process can be found in the [Wetlands Permitting: Priority Resource Area](#) Fact Sheet and the [Wetlands Rules](#).

Definitions

“Threatened species” means any species of wildlife which appears likely, within the foreseeable future, to become endangered or any species of plant likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the state. The term also includes any species of wildlife or plant determined to be a threatened species pursuant to the Endangered Species Act (RSA 212-A).

“Endangered species” means any species of native wildlife whose continued existence as a viable component of the state’s wild fauna is determined to be in jeopardy or any species of plant that is in danger of extinction throughout all or a significant portion of its range within the state. The term also includes any species of wildlife or plant determined to be an endangered species pursuant to the Endangered Species Act (RSA 212-A).

“Exemplary natural community” means a viable occurrence of a rare natural community type or a high-quality example of a more common natural community type as designated by the NHB based on community size, ecological condition and landscape context (RSA 217-A).

References

NH Fish and Game Department. 2015. [Wildlife Action Plan](#) (WAP). Concord, NH.