TITLE L
WATER MANAGEMENT AND PROTECTION

CHAPTER 482-A
FILL AND DREDGE IN WETLANDS

Section 482-A:1

482-A:1 Finding of Public Purpose. – It is found to be for the public good and welfare of this state to protect and preserve its submerged lands under tidal and fresh waters and its wetlands, (both salt water and fresh-water), as herein defined, from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for finfish, crustacea, shellfish and wildlife of significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate groundwater levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels, and will otherwise adversely affect the interests of the general public.

Source. 1989, 339:1, eff. Jan. 1, 1990.

Section 482-A:2

482-A:2 Definitions. –
In this chapter:
I. "Commissioner" means the commissioner of environmental services.
I-a. "Council" means the wetlands council established in RSA 21-O:5-a.
I-b. "Department" means the department of environmental services.
II. "Division" means the division of water resources, department of environmental services.
II-a. "Local governing body" means "local governing body" as defined in RSA 672:6.
III. "Local legislative body" means "local legislative body" as defined in RSA 672:8.
IV. "Mean high tide" shall be determined according to the published tables and standards of the United States Coast and Geodetic Survey, adjusted to the locality from such tables.
V. "Municipality" shall include cities, towns, and village districts.
VI. "Person" shall mean any natural person, firm, partnership, association, corporation, company, organization or legal entity of any kind including municipal corporations, governmental departments and agencies, or their subdivisions.
VII. "Sand dune" shall mean a hill or ridge of sand piled up by the wind and commonly found on the seacoast.
VIII. "Boat slip" means:
(a) On water bodies over 10,000 acres, means a volume of water 25 feet long, 8 feet wide, and 3 feet deep as measured at normal high water and located adjacent to a structure to which a watercraft may be secured.
(b) On water bodies of 10,000 acres or less, a volume of water 20 feet long, 6 feet wide, and 3 feet deep as measured at normal high water mark and located adjacent to a structure to which a watercraft may be secured.
IX. "Structure" means, notwithstanding any other provision of law, something installed, erected, or constructed, but shall not include a bench, landing with dimensions no larger than 10 feet wide by 10 feet long, or stairs with a width not exceeding 6 feet, provided that such benches, landings, or stairs are installed, erected, or constructed without regrading or recontouring of the shoreline and are not over water. Structures include, but are not limited to, the following: fence, dock, breakwater, post, pile, building, bridge, culvert, and wall.
X. "Wetlands" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation

typically adapted for life in saturated soil conditions.
XI. "Wetland functions" means the practical measurable values of wetlands. The 12 primary wetland functions are ecological integrity, wetland-dependent wildlife habitat, fish and aquatic life habitat, scenic quality, educational potential, wetland-based recreation, flood storage, groundwater recharge, sediment trapping, nutrient trapping/retention/transformation, shoreline anchoring, and noteworthiness.

Source. 1989, 225:2; 339:1. 1991, 20:1, 2. 1996, 296:12, 39. 2002, 272:14. 2004, 243:1. 2012, 235:4, eff. Aug. 17, 2012.

Section 482-A:3

482-A:3 Excavating and Dredging Permit; Certain Exemptions. –
I. (a) No person shall excavate, remove, fill, dredge, or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department. Unless otherwise specified in rules adopted by the commissioner pursuant to RSA 482-A:11, any person seeking to obtain a permit shall submit to the department:
(1) A complete application form that has been signed by the town or city clerk of the municipality in which the property is located or, if the property is located in more than one municipality, by the city or town clerk of each such municipality, certifying that the municipality has received 4 copies of the form and attachments as provided in subparagraph (a)(2). The town or city clerk shall send a copy of the form and attachments to the local governing body, the municipal planning board, if any, and the municipal conservation commission, if any, and shall retain one copy to be made reasonably accessible to the public. Applications and fees for projects by agencies of the state may be filed directly with the department, with 4 copies of the application, plan, and map filed at the same time with the town or city clerk.
(2) Such other information as required by rules adopted by the commissioner pursuant to RSA 482-A:11, which may include maps and plans.
(3) A nonrefundable application fee as specified in subparagraphs (b) or (c), as applicable.
(b) The application fee for shoreline structure projects shall be $200 plus an amount based on the area of dredge, fill, or dock surface area proposed, or a combination thereof, which shall be $2 per square foot for permanent dock surface area; $1 per square foot for seasonal dock surface area; and $.20 per square foot for dredge or fill surface area or both. For projects involving only the repair, reconstruction, or reconfiguration of an existing docking structure, the application fee shall be $200.
(c) The application fee shall be $200 for minimum impact dredge and fill projects under this chapter. The application fee for all projects under this chapter which are not covered by subparagraph (b) or (c) or paragraphs IV-a, V, X through XII, XV, XVI, or XVII through XIX shall be $.20 per square foot of proposed impact, with a minimum fee of $200 for all such projects that impact fewer than 1,000 square feet.
(d) At the time the applicant files the application with the department, the applicant shall provide written notice of the proposed project to:
(1) All abutters, as defined in the rules of the department, unless exempted in such rules, which shall be provided by certified mail or other delivery method that provides proof of receipt. The applicant shall retain such receipts and provide copies to the department upon request. The department shall have no obligation to verify the identity of abutters or their receipt of notice. Any abutter who has actual notice of the filing of an application shall have no cause to challenge the application based on failure to receive written notice. Nothing in this subparagraph shall prevent the department from taking appropriate action in the event an applicant fails to provide the required notice or provides false information.
(2) The local river management advisory committee if the project is within a river corridor as defined in RSA 483:4, XVIII, or a river segment designated in RSA 483:15. Such notice shall be sent by certified mail or other delivery method that provides proof of receipt. The applicant shall retain such receipts and provide copies to the department upon request. The local river management advisory committee shall, under RSA 483:8-a, III(a)-(b), advise the commissioner and consider and comment on the permit application.
(e) Beginning October 1, 2007, the department shall submit an annual report to the house and senate finance committees, the house resources, recreation and development committee, and the senate energy and natural resources committee relative to administration of the wetlands fees permit process established by this section.
I-a. Notwithstanding any law or rule to the contrary, in reviewing requests proposed, sponsored, or administered

by the department of transportation, there shall be a rebuttable presumption that there is a public need for the requested project, and that the department of transportation has exercised appropriate engineering judgment in the project's design.
II. (a) The department shall submit to the governor and council all requests for permits approved by the department which meet the definition of major projects located in great ponds or public-owned water bodies under the rules of the department which have been approved by the department.
(b) The governor and council shall consider the request for permit transmitted by the department. The governor and council may approve as transmitted or deny the submitted request. Following action by the governor and council the requests shall be returned to the department for permitting, if approved, or filing, if denied.

[Paragraph III effective until January 1, 2019; see also paragraph III set out below.]

III. The filing fees collected pursuant to paragraphs I, V(c), XI(h), and XII(c) are continually appropriated to and shall be expended by the department for paying per diem and expenses of the public members of the council, hiring additional staff, reviewing applications and activities relative to the wetlands of the state and protected shorelands under RSA 483-B, conducting field investigations, and holding public hearings. Such fees shall be held by the treasurer in a nonlapsing fund identified as the wetlands and shorelands review fund.

[Paragraph III effective January 1, 2019; see also paragraph III set out above.]

III. The filing fees collected pursuant to paragraphs I, V(c), XI(h), XII(c), and X are continually appropriated to and shall be expended by the department for paying per diem and expenses of the public members of the council, hiring additional staff, reviewing applications and activities relative to the wetlands of the state and protected shorelands under RSA 483-B, conducting field investigations, and holding public hearings. Such fees shall be held by the treasurer in a nonlapsing fund identified as the wetlands and shorelands review fund.
IV. (a) The replacement or repair of existing structures in or adjacent to any waters of the state which does not involve excavation, removal, filling, or dredging in any waters or of any bank, flat, marsh, or swamp is exempt from the provisions of this chapter.
(b) Man-made nontidal drainage ditches, roadside and railroad ditches, detention basins, ponds, and wetlands that have been legally constructed to collect, convey, treat, or control storm water and spring run-off, legally constructed ponds on active farms, erosional features caused by proximate human activity, fire ponds and intake areas of dry hydrants that have been legally constructed to provide water for municipal firefighting purposes as approved by a local fire chief, and aggregate wash ponds, sluiceways, and other legally constructed man-made water conveyance systems that are used for the commercial or industrial purpose of collecting, conveying, storing, and recycling water, may be maintained, repaired, replaced, or modified as necessary to preserve their usefulness without a permit under this chapter; provided, that the exempted facility, area, or feature is not extended into any area of wetlands jurisdiction of the department of environmental services, dredged spoils are deposited in areas outside wetlands jurisdiction of the department of environmental services, wetlands or surface waters outside the limits of the exempted facility, area, or feature are neither disturbed nor degraded, the exempted facility, area, or feature was not constructed as mitigation under a wetlands permit or as part of a settlement agreement, best management practices are followed, and the work does not infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.
(c) Legally constructed culverts may be cleaned as necessary to preserve their usefulness without a permit under this chapter provided the conditions of subparagraph (b) are met, however any repair, replacement or modification of a culvert must be made in accordance with RSA 482-A:3, XVI.
IV-a. Temporary seasonal docks installed on any lake or pond shall be exempt from the permitting requirements of this section, provided that a notification is sent to the department by the owner of property that includes the name and address of the property owner, the municipality, the waterbody, and tax map and lot number on which the proposed dock will be located. To qualify for an exemption under this paragraph, a temporary seasonal dock shall be:
(a) The only docking structure on the frontage;
(b) Constructed to be removed during the non-boating season;

(c) Removed from the lake bed for a minimum of 5 months of each year;
(d) Configured to be narrow, rectangular, and erected perpendicular to the shoreline;
(e) No more than 6 feet wide and no more than 40 feet long if the water body is 1,000 acres or larger, or no more than 30 feet long if the water body is less than 1,000 acres;
(f) Located on a parcel of land that has 75 feet or more of shoreline frontage;
(g) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water;
(h) Installed in a manner which requires no modification, regrading, or recontouring of the shoreline, such as installation of a concrete pad for construction of a hinged dock;
(i) Installed in a manner which complies with RSA 483-B; and
(j) Installed in a location that is not in, or adjacent to, an area that has been designated as a prime wetland in accordance with RSA 482-A:15.
V. (a) Persons who have complied with notice of intent to cut wood requirements under RSA 79:10, and who have filed an appropriate notice of intent with the department and the department of natural and cultural resources, shall have satisfied the permitting requirements of this section for minimum impact activities only as defined by rules adopted by the commissioner. Minimum impact notifications issued by the department shall be valid for 2 years.
(b) Appropriate notice to the department and the department of natural and cultural resources shall include the following information:
(1) Name and address of property owner;
(2) Name and address of logger or forester;
(3) Town, tax map, number and lot number of job site; and
(4) A copy of the appropriate United States Geological Survey topographic map, or a copy of the appropriate United States Natural Resources Conservation Service soils map, with the type and location of all wetland and waterbody crossings clearly indicated.
(c) A $25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.
(d) The filing of an intent to cut form under RSA 79:10 shall be considered as permission to the department or the department of natural and cultural resources, or their agents, to enter the property for determining compliance with this chapter.
(e) The certificate issued under RSA 79:10 shall be posted upon receipt. Prior to receipt of such certificate, a copy of the intent to cut form, signed by the appropriate municipal official, shall be available on the job site, and shall be shown to any person who asks to see it.
VI. The permittee shall record, in the registry of deeds for the county or counties in which the real estate is located, each permit granted under this chapter for the installation, construction, or repair of a dock, docking facility, or marina, or for alteration of wetlands associated with a subdivision of 4 or more lots. The permit shall not be effective until so recorded.
VII. No person shall destroy, raze, deface, reduce, alter, build upon or remove any sand or vegetation from any sand dune in this state without a permit from the department; provided, however, that any person may remove sand which blows or drifts onto any lawn, driveway, walkway, parking or storage area, or boat ramp, or which blows or drifts in, on, or around buildings or other structures owned by the person. Upon request of the property owner, the department shall provide a preapplication assessment of any lot of record located in sand dunes.
VIII. Except as set forth in paragraph IX, no person shall operate or ride any mechanized or off highway recreational vehicle on any sand dune in the state of New Hampshire.
IX. This section shall not apply to:
(a) Police vehicles or fire vehicles.
(b) Vehicles used in cases of emergency.
(c) Authorized maintenance vehicles when performing maintenance duties.
(d) Vehicles used by commercial fishermen or commercial lobstermen when engaged in activities related to fishing or lobstering.
X. (a) The maximum cash application fee for the New Hampshire department of transportation shall be $10,000 per application plus provisions for technical or consulting services or a combination of such services as necessary to meet the needs of the department. The department may enter into a memorandum of agreement with the New Hampshire department of transportation to accept equivalent technical or consulting services or a

combination of such services in lieu of a portion of their standard application fees.
(b) For tidal dredging projects with the primary purpose to improve navigation for a municipality, the maximum application fee for a municipality shall be $10,000 per application plus provisions for technical or consulting services or a combination of such services as necessary to meet the needs of the department. The department may enter into a memorandum of agreement with a municipality to accept equivalent technical or consulting services or a combination of such services in lieu of a portion of their standard application fees.
(c) For municipal dredging projects with the primary purpose to restore or reclaim a lake or pond, the maximum application fee for a municipality shall be $10,000 per application plus provisions for technical or consulting services or a combination of such services as necessary to meet the needs of the department. The department may enter into a memorandum of agreement with a municipality to accept equivalent technical or consulting services or a combination of such services in lieu of a portion of the standard application fees.
XI. (a) Small motor mineral dredging shall be limited to activities which are classified as minimum impact under rules adopted by the commissioner under RSA 482-A:11 and which do not exceed the following limits:
(1) Power equipment shall be limited to 5 horsepower.
(2) Suction dredges shall be limited to a single 4-inch diameter intake nozzle.
(3) Sluice and rocker boxes shall be limited to 10 square feet.
(b) Any person who wishes to engage in small motor mineral dredging shall obtain a permit from the department. A permit application shall be filed directly with the department, and the procedural requirements of RSA 482-A:3, I and RSA 482-A:11, III shall not apply. Any permit issued by the department under this paragraph shall expire at the end of the calendar year in which it is issued. Any person who engages in panning only shall not be required to obtain a permit but shall be subject to rules of the department. Panning shall include those activities associated with the manual search for minerals in a river bed without the use of motorized equipment.
(c) Any person wishing to engage in mineral dredging which in any way exceeds the limits of small motor mineral dredging shall first obtain, in addition to a wetlands permit, a mining permit from the department of natural and cultural resources pursuant to RSA 12-E.
(d) The commissioner shall adopt rules, under RSA 541-A, relative to:
(1) Small motor mineral dredging and panning.
(2) The issuance of statewide small motor mineral dredging permits.
(3) Any other matters relative to small motor mineral dredging and panning.
(e) The state shall retain the right to prohibit panning and mineral dredging activity at certain times or in certain locations when such activity would be detrimental to the public interest for reasons including, but not limited to, environmental and wildlife protection.
(f) Any person who has obtained a small motor mineral dredging permit from the department pursuant to this paragraph, or any person who intends to engage in any panning activity shall, prior to engaging in any small motor mineral dredging or panning activity, obtain the written permission to engage in such activity from the riverbed landowner on whose property the activity is to be conducted.
(g) The department may enter into a cooperative agreement with the fish and game department relative to enforcement of the provisions of this paragraph.
(h) Application fees shall be $25 for residents of the state of New Hampshire and $50 for out-of-state applicants. Fees shall be collected by the department and held in accordance with paragraph III.
XII. (a) Persons who construct and maintain recreational trails in accordance with the Best Management Practices for Erosion Control During Trail Maintenance and Construction published by the department of natural and cultural resources and who have filed an appropriate notice, as described in subparagraph (b), to construct or maintain such trails with the department and the department of natural and cultural resources shall have satisfied the permitting requirements of this section for minimum impact activities, as defined by rules adopted by the commissioner.
(b) Appropriate notice to the department and the department of natural and cultural resources shall include the following information:
(1) Name and address of organization constructing or maintaining the recreational trail.
(2) Name and address of property owner.
(3) Town, tax map number, and lot number of property.
(4) A copy of the appropriate United States Geological Survey topographic map with the type and location of all wetland and waterbody crossings clearly indicated.

(c) A $25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.
XIII. (a) All boat docking facilities shall be at least 20 feet from an abutting property line in non-tidal waters, and at least 20 feet in tidal waters.
(b) Boat docking facilities may be perpendicular or parallel to the shoreline or extend at some other angle into a water body, depending on the needs of the landowners, factors related to safe navigation, and the difficulty of construction. However, any boat secured to such a dock shall not extend beyond the extension of the abutter's property line.
(c) Notwithstanding the provisions of subparagraph (a), boat docking facilities may be located closer than 20 feet from an abutter's property line in non-tidal waters and 20 feet in tidal waters, if the owner of the boat docking facility obtains the written consent of the abutting property owner. Such consent shall be signed by all parties, notarized and filed with the dock application with the department of environmental services.
(d) Abutters may apply for a common dock on or near their common property line. Any application for a common dock shall be accompanied by a notarized written agreement which shall be signed by all property owners. Such agreement shall be filed at the registry of deeds and attached to the deed of each property owner.

[Paragraph XIV effective until January 1, 2019; see also paragraph XIV set out below.]

XIV. (a) In processing an application for permits under this chapter, except for a permit by notification, the department shall:
(1) Within 14 days of receipt by the department, issue a notice of administrative completeness or send notice to the applicant, at the address provided on the application, identifying any additional information required to make the application administratively complete and providing the applicant with the name and telephone number of the department employee to whom all correspondence shall be directed by the designated department employee regarding incompleteness of the application. Each receipt of additional information in response to any notice shall re-commence the 14-day period until the department issues a notice of administrative completeness. Any notice of incompleteness sent under this subparagraph shall specify that the applicant or authorized agent shall submit such information as soon as practicable and shall notify the applicant or authorized agent that if the requested information is not received within 60 days of the notice, the department shall deny the application.
(2) Within 75 days of the issuance of a notice of administrative completeness for projects where the applicant proposes under one acre of jurisdictional impact and 105 days for all other projects, request any additional information that the department is permitted by law to require to complete its evaluation of the application, together with any written technical comments the department deems necessary. Such request and technical comments may be sent by electronic means if the applicant or authorized agent has indicated an agreement to accept communications by electronic means, either by so indicating on the application or by a signed statement from the applicant or authorized agent that communicating by electronic means is acceptable. Any request for additional information under this subparagraph shall specify that the applicant submit such information as soon as practicable and shall notify the applicant that if the requested information is not received within 60 days of the request, the department shall deny the application. The department may grant an extension of this 60-day time period upon request of the applicant.
(3) Where the department requests additional information pursuant to subparagraph (a)(2), within 30 days of the department's receipt of a complete response to the department's information request:
(A) Approve the application, in whole or in part, and issue a permit; or
(B) Deny the application and issue written findings in support of the denial; or
(C) Schedule a public hearing in accordance with this chapter and rules adopted by the commissioner; or
(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant; or
(4) Where no request for additional information is made pursuant to subparagraph (a)(2), within 75 days from the issuance of the notice of administrative completeness for proposed projects under one acre of jurisdictional impact, or 105 days for all others:
(A) Approve the application, in whole or in part, and issue a permit; or
(B) Deny the application and issue written findings in support of the denial; or
(C) Schedule a public hearing in accordance with this chapter and rules adopted by the commissioner; or

(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.
(5) Where the department has held a public hearing on an application filed under this chapter, within 60 days following the closure of the hearing record, approve the application in whole or in part, and issue a permit or deny the application and issue written findings in support of the denial.
(b)(1) The time limits prescribed by this paragraph shall supersede any time limits provided in any other provision of law. If the department fails to act within the applicable time frame established in subparagraphs (a)(3), (a)(4), and (a)(5), the applicant may ask the department to issue the permit by submitting a written request. If the applicant has previously agreed to accept communications from the department by electronic means, a request submitted electronically by the applicant shall constitute a written request.
(2) Within 14 days of the date of receipt of a written request from the applicant to issue the permit, the department shall:
(A) Approve the application, in whole or in part, and issue a permit; or
(B) Deny the application and issue written findings in support of the denial.
(3) If the department does not issue either a permit or a written denial within the 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the project as presented in the application. The authorization provided by this subparagraph shall not relieve the applicant of complying with all requirements applicable to the project, including but not limited to requirements established in or under this chapter, RSA 485-A relating to water quality, and federal requirements.
(4) Upon receipt of a written request from an applicant, the department shall issue written confirmation that the applicant has a permit by default pursuant to subparagraph (b)(3), which authorizes the applicant to proceed with the project as presented in the application and requires the work to comply with all requirements applicable to the project, including but not limited to requirements established in or under this chapter, and RSA 485-A relating to water quality, and federal requirements.
(c) If extraordinary circumstances prevent the department from conducting its normal function, time frames prescribed by this paragraph shall be suspended until such condition has ended, as determined by the commissioner.
(d) The time limits prescribed by this paragraph shall not apply to an application filed after the applicant has already undertaken some or all of the work covered by the application, or where the applicant has been adjudicated after final appeal, or otherwise does not contest, the department's designation as a chronic non-complier in accordance with rules adopted pursuant to this chapter.
(e) Any request for a significant amendment to a pending application or an existing permit which changes the footprint of the permitted fill or dredge area shall be deemed a new application subject to the provisions of RSA 482-A:3, I and the time limits prescribed by this paragraph. "Significant amendment" means an amendment which changes the proposed or previously approved acreage of the permitted fill or dredge area by 20 percent or more, relocates the proposed footprint of the permitted fill or dredge area, includes a prime wetland or surface waters of the state, includes a wetland of a different classification as classified by the department, or includes non-wetland areas requiring permits for filling and dredging. This meaning of "significant amendment" shall not apply to an application amendment that is in response to a request from the department.
(f) The department may extend the time for rendering a decision under subparagraphs (a)(3)(D) and (a)(4)(D), without the applicant's agreement, on an application from an applicant who previously has been determined, after the exhaustion of available appellate remedies, to have failed to comply with this chapter or any rule adopted or permit or approval issued under this chapter, or to have misrepresented any material fact made in connection with any activity regulated or prohibited by this chapter, pursuant to an action initiated under RSA 482-A:13, RSA 482-A:14, or RSA 482-A:14-b. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application, but shall not exceed 30 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.
(g) The department may suspend review of an application for a proposed project on a property with respect to which the department has commenced an enforcement action against the applicant for any violation of this chapter, RSA 483-B, RSA 485-A:17, or RSA 485-A:29-44, or of any rule adopted or permit or approval issued pursuant to this chapter, RSA 483-B, RSA 485-A:17, or RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and completion of any remedial actions the department may require to address the violation; provided, however, that the department may resume its review of the application sooner if doing so will facilitate resolution of the violation. The department shall resume its review of the application at

the point the review was suspended, except that the department may extend any of the time limits under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of this subparagraph, "enforcement action" means an action under RSA 482-A:13, RSA 482-A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.

[Paragraph XIV effective January 1, 2019; see also paragraph XIV set out above.]

XIV. (a) In processing an application for permits under this chapter, except for a permit by notification, the department shall:
(1) Within 10 days of receipt by the department, issue a notice of administrative completeness or send notice to the applicant, at the address provided on the application, identifying any additional information required to make the application administratively complete and providing the applicant with the name and telephone number of the department employee to whom all correspondence shall be directed by the designated department employee regarding incompleteness of the application. Each receipt of additional information in response to any notice shall re-commence the 10-day period until the department issues a notice of administrative completeness. Any notice of incompleteness sent under this subparagraph shall specify that the applicant or authorized agent shall submit such information as soon as practicable and shall notify the applicant or authorized agent that if the requested information is not received within 60 days of the notice, the department shall deny the application.
(2) Within 50 days of the issuance of a notice of administrative completeness for projects where the applicant proposes under one acre of jurisdictional impact and 75 days for all other projects, request any additional information that the department is permitted by law to require to complete its evaluation of the application, together with any written technical comments the department deems necessary. Such request and technical comments may be sent by electronic means if the applicant or authorized agent has indicated an agreement to accept communications by electronic means, either by so indicating on the application or by a signed statement from the applicant or authorized agent that communicating by electronic means is acceptable. Any request for additional information under this subparagraph shall specify that the applicant submit such information as soon as practicable and shall notify the applicant that if the requested information is not received within 60 days of the request, the department shall deny the application. The department shall grant an extension of this 60-day time period upon request of the applicant.
(3) Where the department requests additional information pursuant to subparagraph (a)(2), within 30 days of the department's receipt of a complete response to the department's information request:
(A) Approve the application, in whole or in part, and issue a permit; or
(B) Deny the application and issue written findings in support of the denial; or
(C) Schedule a public hearing within 30 days in accordance with this chapter and rules adopted by the commissioner; or
(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant; or
(4) Where no request for additional information is made pursuant to subparagraph (a)(2), within 50 days from the issuance of the notice of administrative completeness for proposed projects under one acre of jurisdictional impact, or 75 days for all others:
(A) Approve the application, in whole or in part, and issue a permit; or
(B) Deny the application and issue written findings in support of the denial; or
(C) Schedule a public hearing within 30 days in accordance with this chapter and rules adopted by the commissioner; or
(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.
(5) Where the department has held a public hearing on an application filed under this chapter, within 45 days following the closure of the hearing record, approve the application in whole or in part, and issue a permit or deny the application and issue written findings in support of the denial.
(b)(1) The time limits prescribed by this paragraph shall supersede any time limits provided in any other provision of law. If the department fails to act within the applicable time frame established in subparagraphs (a)(3), (a)(4), and (a)(5), the applicant may ask the department to issue the permit by submitting a written request. If the applicant has previously agreed to accept communications from the department by electronic means, a

request submitted electronically by the applicant shall constitute a written request.
(2) Within 14 days of the date of receipt of a written request from the applicant to issue the permit, the department shall:
(A) Approve the application, in whole or in part, and issue a permit; or
(B) Deny the application and issue written findings in support of the denial.
(3) If the department does not issue either a permit or a written denial within the 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the project as presented in the application. The authorization provided by this subparagraph shall not relieve the applicant of complying with all requirements applicable to the project, including but not limited to requirements established in or under this chapter, RSA 485-A relating to water quality, and federal requirements.
(4) Upon receipt of a written request from an applicant, the department shall issue written confirmation that the applicant has a permit by default pursuant to subparagraph (b)(3), which authorizes the applicant to proceed with the project as presented in the application and requires the work to comply with all requirements applicable to the project, including but not limited to requirements established in or under this chapter, and RSA 485-A relating to water quality, and federal requirements.
(c) If extraordinary circumstances prevent the department from conducting its normal function, time frames prescribed by this paragraph shall be suspended until such condition has ended, as determined by the commissioner.
(d) The time limits prescribed by this paragraph shall not apply to an application filed after the applicant has already undertaken some or all of the work covered by the application, or where the applicant has been adjudicated after final appeal, or otherwise does not contest, the department's designation as a chronic non-complier in accordance with rules adopted pursuant to this chapter.
(e) Any request for a significant amendment to a pending application or an existing permit which changes the footprint of the permitted fill or dredge area shall be deemed a new application subject to the provisions of RSA 482-A:3, I and the time limits prescribed by this paragraph. "Significant amendment" means an amendment which changes the proposed or previously approved acreage of the permitted fill or dredge area by 20 percent or more, relocates the proposed footprint of the permitted fill or dredge area, includes a prime wetland or surface waters of the state, includes a wetland of a different classification as classified by the department, or includes non-wetland areas requiring permits for filling and dredging. This meaning of "significant amendment" shall not apply to an application amendment that is in response to a request from the department.
(f) The department may extend the time for rendering a decision under subparagraphs (a)(3)(D) and (a)(4)(D), without the applicant's agreement, on an application from an applicant who, within the 5 years preceding the application, has been determined, after the exhaustion of available appellate remedies, to have failed to comply with this chapter or any rule adopted or permit or approval issued under this chapter, or to have misrepresented any material fact made in connection with any activity regulated or prohibited by this chapter, pursuant to an action initiated under RSA 482-A:13, RSA 482-A:14, or RSA 482-A:14-b. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application, but shall not exceed 20 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.
(g) The department may suspend review of an application for a proposed project on a property with respect to which the department has commenced an enforcement action against the applicant for any violation of this chapter, RSA 483-B, RSA 485-A:17, or RSA 485-A:29-44, or of any rule adopted or permit or approval issued pursuant to this chapter, RSA 483-B, RSA 485-A:17, or RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and completion of any remedial actions the department may require to address the violation; provided, however, that the department may resume its review of the application sooner if doing so will facilitate resolution of the violation. The department shall resume its review of the application at the point the review was suspended, except that the department may extend any of the time limits under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of this subparagraph, "enforcement action" means an action under RSA 482-A:13, RSA 482-A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.
XIV-a. (a) With the exception of permits issued under subparagraph (b), all permits issued pursuant to this chapter shall be valid for a period of 5 years. Requests for extensions of such permits may be made to the department. The department shall grant one extension of up to 5 additional years, provided the applicant demonstrates all of the following:

(1) The permit for which extension is sought has not been revoked or suspended without reinstatement.
(2) Extension would not violate a condition of law or rule.
(3) The project is proceeding towards completion in accordance with plans and other documentation referenced by the permit.
(4) The applicant proposes reasonable mitigation measures to protect the public waters of the state from deterioration during the period of extension.
(b) Any permit issued to repair or replace shoreline structures to maintain the integrity and safety of such structures including, but not limited to docks, sea walls, breakwaters, riprap, access ramps and stairs, that are damaged by storms or ice, shall expire 10 years from the date the permit was issued as long as any work performed after the initial permitted work complies with the following:
(1) The work is not in violation of the original permit or subparagraphs (a)(1)-(4).
(2) All structures are repaired or replaced to the original permitted location and configuration.
(3) All significant work is reported to the department in accordance with the reporting requirements for the original permit.
XIV-b. A permit issued under this chapter that is associated with the excavation or mining of construction aggregate materials and quarry stone from the earth shall not expire for the life of the project identified in the permit application, provided that the permit holder submits revised project plans and a written update of the project's status every 5 years from the date of the permit issuance using a form obtained from the department as specified in department rules. Permitted impacts to aquatic resources shall be postponed until such impacts become necessary for the operation of the excavation or mining area. If there has not been excavation or mining of construction aggregate materials and quarry stone during any 5 year period, the project shall be deemed abandoned and the permit deemed expired. When or if a new proposal to develop the property for a different use is proposed, a new application shall be submitted.
XV. (a) Utility providers who maintain and repair existing utility services within existing rights of way under the Best Management Practices Manual for Utility Maintenance in and Adjacent to Wetlands and Waterbodies in New Hampshire published by the department of natural and cultural resources, and who have complied with subparagraphs (b)-(e) shall satisfy the permitting requirements of this section, including any portion located in or adjacent to a prime wetland, for minimum impact activities as defined by rules adopted by the commissioner.
(b) Appropriate notice to the department shall include the following information:
(1) The name and address of the person, employed by the utility provider responsible for overseeing the maintenance.
(2) A brief written description of the nature of the work to be conducted.
(3) A copy of the appropriate United States Geological Survey topographic map with the locations of the projects indicated.
(c) Appropriate notice to the town clerk of each municipality in which work will occur shall include the name of a utility provider contact and a brief description of the work to be conducted.
(d) A one-time annual filing fee of $200 per town, not to exceed a maximum of $10,000, shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.
(e) No additional fee shall be required for amendments to the notification as long as additional towns are not included in the amendment. Additional towns included in the amendment shall be subject to an additional fee of $200 per town, not to exceed the annual maximum under subparagraph (d).
XVI. (a) Except as provided in paragraph XVII, any person or political subdivision that repairs or replaces culverts or stream crossing structures in accordance with the best management practices for routine roadway maintenance in New Hampshire published by the department of transportation, including culverts up to and including 48 inches in diameter or the functional hydraulic equivalent, and files an appropriate notice under subparagraph (b), shall satisfy the permitting requirements of this section for minimum impact activities, as defined by rules adopted by the commissioner.
(b) Appropriate notice to the department shall include a completed routine roadway notification form as outlined in rules adopted by the commissioner pursuant to RSA 541-A including, at a minimum, the following information:
(1) Name and mailing address of the applicant or authorized person.
(2) Name and mailing address of the applicant or authorized agent, if any, representing the political subdivision.
(3) Telephone number, and email address and fax number if available.
(4) A copy of the appropriate United States Geological Survey topographic map at its original scale on 81/2 x 11

sheets with the project locations clearly labeled.
(5) Town tax map, number, and lot number, if any, of the project sites.
(6) Project location including street name and address or distance from the nearest intersection to the project.
(7) Information regarding the existing and proposed structure shown on plan sheets or equivalent plans as shown in the best management practices for routine roadway manual and a listing of the best management practices to be used during construction.
(8) Color photographs depicting the proposed work sites showing existing structures, surrounding land, and jurisdictional areas in and adjacent to the work location.
(9) A signed certification that information is accurate and correct and that work will conform to the best management practices for routine roadway maintenance.
(c) Appropriate notice to the department under subparagraphs (a) and (b) shall be mailed and received by department at least 5 days prior to the start of construction.
XVII. State and municipal public works employees who have fulfilled the requirements of a certification program developed by the department may maintain, repair, replace, or modify culverts up to a maximum diameter of 48 inches, or the hydraulic equivalent, as long as the structure can pass flows from the contributing watershed without causing damage to upstream or downstream properties, and in accordance with best management practices to protect water quality, without prior notification to the department. Federal employees who otherwise meet the requirements of the program developed by the department may maintain, repair, replace, or modify culverts as specified in this paragraph on any land within the state that is owned or managed by the federal government.
XVIII. The department shall develop an installer's certification program, in accordance with paragraph XVII, and shall determine the educational requirements for certification, including continuing education requirements. Professional engineers who are duly licensed by the New Hampshire board of professional engineers are exempt from the program requirements of this section. All certified individuals who perform such work shall submit a quarterly report to the department fully identifying work that they performed during each quarter and documentation of continuing education requirements.
XIX. The department shall issue an installer's permit to any individual who submits an application provided by the department, and has satisfactorily completed the program in accordance with paragraphs XVII and XVIII. Permits shall be issued from January 1 and shall expire December 31 of every other year. Permits shall be renewable upon proper application, and documentation of compliance with the continuing education requirement of paragraph XVIII. The installer's permit may be suspended, revoked, or not renewed for just cause, including, but not limited to, the installation of culverts in violation of this chapter or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke, or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend, or not renew a permit may be taken pursuant to RSA 21-O:14.

[Paragraph XX effective January 1, 2019.]

XX. (a) The department shall develop a voluntary certified application preparer program for submission of applications for all qualifying minimum impact projects. The commissioner shall adopt rules to establish the qualifications to become a certified application preparer and to identify qualifying minimum impact projects. The qualifications established shall include that the individual is a permitted septic system designer or is licensed or certified by the office of professional licensure and certification as a certified wetland scientist, certified soil scientist, professional engineer, licensed land surveyor, or any other professional designated by the department, and shall include training and continuing education requirements. Qualifying minimum impact projects shall include, but not necessarily be limited to, all projects which the department has designated as minimum impact projects in its wetlands rules.
(b) Applications for qualifying minimum impact projects submitted by a certified application preparer shall not require technical review by the department and the department shall issue a permit within 10 days of receipt of a complete application.
(c) The department may revoke a certificate for good cause after notification to the certificate holder and opportunity for an adjudicative proceeding under RSA 541-A:31 and rules adopted by the department.
(d) The certification shall be valid for one year from the date of issuance and may be renewed every year. The

initial fee for certification shall be $200 and the fee for renewal shall be $50. The department shall not issue a certification or a renewal certification if the required fee is not paid. All fees shall be deposited into the wetlands and shoreland review fund established in RSA 482-A:3, III.

Source. 1989, 339:1. 1990, 3:84, 85; 83:2. 1991, 20:3; 273:1. 1992, 37:2, 3; 278:3, 6. 1994, 26:1. 1995, 206:2; 236:1, 2. 1996, 250:2; 296:40-42. 1997, 212:1-3. 1998, 224:1. 2001, 144:1. 2002, 272:15. 2003, 224:1-3. 2004, 2:1; 116:4. 2005, 29:1. 2007, 211:1; 263:32, 33; 269:3, 7. 2008, 5:24; 363:1. 2009, 185:1; 201:1, 2. 2010, 295:1-3. 2011, 114:1, 2; 143:1; 195:1-3. 2012, 145:1, eff. Aug. 6, 2012; 273:1, 2, eff. June 19, 2012. 2013, 151:1, eff. July 1, 2013. 2014, 124:1-3, eff. June 16, 2014. 2015, 236:4, eff. Sept. 11, 2015. 2017, 156:14, I, eff. July 1, 2017. 2018, 279:1-3, eff. Jan. 1, 2019.

Section 482-A:4

482-A:4 Definition. –
Without limiting RSA 482-A:3, the waters and adjacent areas within this state to which this chapter applies are defined as follows:
I. Wherever the tide ebbs and flows, this chapter shall apply to all lands submerged or flowed by mean high tide as locally determined, any sand dune or vegetation thereon in the state of New Hampshire, and, in addition, to those areas within 100 feet of the highest observable tide line which border on tidal waters, such as, but not limited to, banks, upland areas, bogs, salt marsh, swamps, meadows, flats or other lowlands subject to tidal action.
II. Wherever fresh water flows or stands and in all areas above tidal waters not included in paragraph I of this section, it shall apply (in addition to great ponds or lakes of 10 acres or more in natural area as provided for in RSA 482-A:16-20 and RSA 482-A:21-25) to those portions of great ponds or lakes created by the raising of the water level of the same, whether by public or private structure, and to all surface waters of the state as defined in RSA 485-A:2 which contain fresh water, including the portion of any bank or shore which borders such surface waters, and to any swamp or bog subject to periodical flooding by fresh water including the surrounding shore.

Source. 1989, 339:1. 1990, 83:3, eff. April 10, 1990.

Section 482-A:5

482-A:5 Establishment of Wetlands Board. – [Repealed 1996, 296:33, eff. Aug. 9, 1996.]

Section 482-A:6

482-A:6 Powers of Department. –
I. The department may deny the petition or may require the installation of bulkheads, barriers, proper retention or containment structures, or both, to prevent subsequent fill runoff back into waters or other protective measures.
II. To perform its duties under this chapter, it shall be lawful for the department, its agents or employees to enter upon any lands in the state.
III. Whenever it is found that a wetlands is at immediate risk from dredging, filling, or other activity in violation of this chapter, the department may issue an emergency order in writing requiring the immediate cessation of such activity. Any person to whom such an order is directed shall comply immediately, but may appeal as provided in RSA 482-A:10.
IV. The department may issue an order to any person in violation of this chapter, a rule adopted under this chapter or any condition in a permit issued under this chapter to comply with this chapter, the rule or the permit, and require such remedial measures as may be necessary. Any person to whom such an order is directed may appeal as provided in RSA 482-A:10.

Source. 1989, 339:1. 1996, 296:43. 2012, 246:7, eff. June 18, 2012.

Section 482-A:7

482-A:7 Gifts, Grants or Donations. – The department is authorized to solicit and receive any gifts, grants or donations made for the efforts of the department under the provisions of this chapter and to disburse and administer the same through the department.

Source. 1989, 339:1. 1996, 296:44, eff. Aug. 9, 1996.

Section 482-A:8

482-A:8 Public Comment and Hearing. – The department shall provide a reasonable opportunity for public comment on proposals under RSA 482-A:3 and shall hold a public hearing for projects with significant impact on the resources protected by this chapter or of substantial public interest. The department shall notify by mail, the applicant and the property owner if different, the local governing body of the municipality involved, the planning board, if any, and the municipal conservation commission, if any, of the hearing. The department shall maintain a chronological file of all applications received under RSA 482-A:3, which shall be available for public review during normal business hours. The hearing requirement in this section may not apply to such minor projects and to such minor improvements of the shoreline of those waters subject to the jurisdiction of this chapter as the department may by reasonable rule provide.

Source. 1989, 339:1. 1991, 20:4. 1996, 296:44, eff. Aug. 9, 1996. 2013, 43:1, eff. Aug. 3, 2013.

Section 482-A:9

482-A:9 Notice to Abutters. – Like notice shall be mailed to all known abutting landowners, supplemented by reasonable notice by newspaper publications to those unknown, as may be ordered by the department.

Source. 1989, 339:1. 1996, 296:44, eff. Aug. 9, 1996.

Section 482-A:10

482-A:10 Appeals. –

I. Any person aggrieved by a decision made by the department under RSA 482-A:3 may appeal to the wetlands council and to the supreme court as provided in RSA 21-O:14, including the provisions relative to requesting mediated or unmediated settlement discussions. A person aggrieved under this section shall mean the applicant and any person required to be noticed by mail in accordance with RSA 482-A:8 and RSA 482-A:9.

II. Any person subject to an order of the department under RSA 482-A:6 may appeal to the wetlands council and to the supreme court as provided in RSA 21-O:14, including the provisions relative to requesting mediated or unmediated settlement discussions.

III. An appeal from a decision of the department under RSA 482-A:3 or an appeal from an order issued by the department under RSA 482-A:6, shall be filed in accordance with the applicable provisions of RSA 21-O:14 and rules adopted by the council pursuant to RSA 541-A regarding the number of copies to be filed, the address to which the notice of appeal must be sent or delivered, and the method of delivery.

IV. A notice of appeal to the council shall contain a detailed description of the land involved in the department's decision and shall set forth fully every ground upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal shall be considered by the council.

V. Any appeal hearing held by the council shall be an adjudicative hearing as provided in RSA 541-A and the council's rules. The hearing shall be noticed in accordance with RSA 541-A:31, III. For appeals of department decisions under RSA 482-A:3, the notice shall also be sent to all persons entitled to notice of applications under RSA 482-A:8 and RSA 482-A:9. The burden of proof shall be on the party seeking to set aside the department's decision to show that the decision is unlawful or unreasonable. On appeal of requests proposed, sponsored, or administered by the department of transportation, there shall be a rebuttable presumption that there is a public

need for the requested project, and that the department of transportation has exercised appropriate engineering judgment in the project's design. All findings of the department upon all questions of fact properly before it shall be prima facie lawful and reasonable.
V-a. Any person whose rights will be directly affected by the outcome of the appeal may appear and become a party to the appeal. Any person whose rights may be directly affected by the outcome of the appeal may file a request to intervene as provided in RSA 541-A:32.
VI. On appeal, the council may affirm the decision of the department or may remand to the department with a determination that the decision complained of is unlawful or unreasonable. The council shall specify the factual and legal basis for its determination and shall identify the evidence in the record created before the council that supports its decision.
VII. Any party aggrieved by a decision of the council may apply to the council for reconsideration as specified in RSA 541.
VIII. Any party aggrieved by a decision of the council after reconsideration may appeal to the supreme court as specified in RSA 541.
IX. In the case of a remand to the department by the council, the department may accept the council's determination and reissue a decision or order, imposing such conditions as are necessary and consistent with the purposes of this chapter, or may appeal as provided in paragraphs VII and VIII.
X. [Repealed.]
XI. [Repealed.]
XII. [Repealed.]
XIII. [Repealed.]
XIV. [Repealed.]
XV. [Repealed.]
XVI. [Repealed.]
XVII. [Repealed.]
XVIII. If a permit is granted with respect to any activity proposed to be undertaken in or adjacent to a prime wetland as mapped, designated, and filed pursuant to RSA 482-A:15, the conservation commission or local governing body may appeal said decision to the wetlands council and the supreme court in the manner prescribed in this section. The filing of a request for reconsideration under paragraph VII shall automatically stay the effectiveness of the council's decision relating to said prime wetland. Said stay shall remain in force until the council has issued its decision after reconsideration.

Source. 1989, 339:1. 1991, 20:5. 1996, 296:45. 2004, 2:2, 3; 243:3. 2008, 171:6, 7, 16; 363:5. 2012, 246:8, 9, eff. June 18, 2012. 2013, 43:2, eff. Aug. 3, 2013.

Section 482-A:10-a

482-A:10-a Damages. –
I. If, upon appeal of the landowner, the superior court determines that the decision appealed from so exceeds the bounds of the police power as to constitute the equivalent of taking without compensation and that the land as so regulated meets the public purpose standards of this chapter, and if such ruling is affirmed on appeal or becomes the law of the trial by failure of the state to appeal, the superior court shall then proceed to the assessment of the landowner's damages. Unless the department, at this stage, consents to the reversal or modification of its decision by the superior court, that court shall first determine all questions of land title, after notice to all persons interested in the land, including notice by publication to any unknown owners, and then shall assess the damages of the landowner or landowners proceeding as provided in RSA 482:35-38, inclusive, and RSA 498-A:27, and may enter judgment against the state accordingly. The interest acquired by the state by virtue of such proceedings shall be a perpetual negative easement that the privately-owned land or interest in the land described in the proceedings shall not thereafter be excavated, removed, filled, dredged, canalized or ditched, subject to any such reasonable reservations to the landowner as the department may have stipulated to prior to the assessment of damages. The state may, in the alternative, purchase the land or interest in the land in fee simple or other acceptable title, or subject to acceptable reservations and exceptions, by agreement with the landowner. To satisfy any judgment or purchase agreement under this section, the governor and council, in their discretion, may draw their warrant on the marine fisheries fund, the fish and game fund, any other available

appropriation for such purpose, or on any money in the treasury not otherwise appropriated, or any combination of such funds, as they may determine to be just and reasonable, or, in the alternative, they may certify a judgment to the next session of the general court for the passage of an appropriation of money sufficient to satisfy the same. The department may, in the name of the state, accept gifts of land or interests in land for the purposes of this chapter.
II. The use of the marine fisheries fund or the fish and game fund under paragraph I shall require a finding that the expenditure will be of substantial benefit to marine fisheries or to fish and wildlife, as the case may be, and the governor and council shall request the prior opinion of the fish and game commission in each such case.

Source. 1996, 296:46, eff. Aug. 9, 1996.

Section 482-A:11

482-A:11 Administrative Provisions. –
I. The commissioner shall adopt reasonable rules, pursuant to the rulemaking provisions of RSA 541-A, to implement the purposes of this chapter.
II. Decisions of the department or council under this chapter shall be consistent with the purposes of this chapter as set forth in RSA 482-A:1. Before granting a permit under this chapter, the department may require reasonable proof of ownership by a private landowner-applicant. If a permit is granted, the decision of the department may contain reasonable conditions designed to protect the public good. No permit to dredge or fill shall be granted if it shall infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.

[Paragraph III(a) effective until January 1, 2019; see also paragraph III(a) set out below.]

III. (a) Upon written notification to the department by a municipal conservation commission that it intends to investigate any notice received by it pursuant to RSA 482-A:3, the department shall not make its decision on the application that is the subject of the notice until it has received and acknowledged receipt of a written report from such commission, or until 40 days from the date of filing with the municipal clerk of such notice, whichever occurs earlier, subject to an extension as permitted by the department. In connection with any local investigation, a conservation commission may hold a public informational meeting or a public hearing, the record of which shall be made a part of the record of the department. Where the department grants an extension, the time limits prescribed by RSA 482-A:3, XIV(b) shall be suspended until a date agreed to by the applicant and the department. If a conservation commission makes a recommendation to the department in its report, the department shall specifically consider such recommendation and shall make written findings with respect to each issue raised in such report which is contrary to the decision of the department. If notification by a local conservation commission pursuant to this paragraph is not received by the department within 14 days following the date the notice is filed with the municipal clerk, the department shall not suspend its normal action, but shall proceed as if no notification has been made.

[Paragraph III(a) effective January 1, 2019; see also paragraph III(a) set out above.]

(a) Upon written notification to the department by a municipal conservation commission, a local river management advisory committee, or the New Hampshire Rivers Council that it intends to investigate any notice received by it pursuant to RSA 482-A:3, the department shall not make its decision on the application that is the subject of the notice until it has received and acknowledged receipt of a written report from such commission, local river management advisory committee, or the council, or until 40 days from the date of filing with the municipal clerk of such notice, whichever occurs earlier, subject to an extension of up to 40 days, as permitted by the commissioner, for good cause shown. In connection with any local investigation, a conservation commission may hold a public informational meeting or a public hearing, the record of which shall be made a part of the record of the department. Where the commissioner grants an extension, the time limits prescribed by RSA 482-A:3, XIV(b) shall be suspended for up to 40 days as agreed to by the applicant and the department. If a

conservation commission, a local river management advisory committee, or the New Hampshire Rivers Council makes a recommendation to the department in its report, the department shall specifically consider such recommendation and shall make written findings with respect to each issue raised in such report which is contrary to the decision of the department. If notification by a local conservation commission, local river management advisory committee, or the New Hampshire Rivers Council pursuant to this paragraph is not received by the department within 14 days following the date the notice is filed with the municipal clerk, the department shall not suspend its normal action, but shall proceed as if no notification has been made.
(b) Relative to any expedited permit under paragraph VI, the provisions of subparagraph (a) shall be modified as follows:
(1) The 40-day suspended action limit is reduced to 21 days; and
(2) The notification by a municipal conservation commission of intended investigation shall be assumed unless the application filed under RSA 482-A:3 was signed by the conservation commission, or, if one has not been established in the municipality, by the local governing body, in which case the provisions of subparagraph (a) shall not apply.
IV. (a) The department shall not grant a permit with respect to any project to be undertaken in an area mapped, designated, and filed as a prime wetland pursuant to RSA 482-A:15, or within 100 feet of any prime wetland where a 100 foot buffer was required at the time of designation, unless the department first notifies the local governing body, the planning board, if any, and the conservation commission, if any, in the municipality within which the wetlands lie, either in whole or in part, of its decision. Any such permit shall not be issued unless the department is able, specifically, to find clear and convincing evidence on the basis of all information considered by the department, and after a public hearing, if a public hearing is deemed necessary under RSA 482-A:8, that the proposed project, either alone or in conjunction with other human activity, will not result in the significant net loss of any of the values set forth in RSA 482-A:1. This paragraph shall not be construed so as to relieve the department of its statutory obligations under this chapter to protect wetlands not so mapped and designated.
(b)(1) A property owner may request from the department a waiver from subparagraph (a), under rules adopted by the department, to perform forest management work and related activities in the forested portion of a prime wetland or its 100-foot buffer, where such buffer was required at the time of designation, that do not qualify under the notification of forest management or timber harvest activities having minimum wetlands impact process. The request for the waiver shall include, but not be limited to:
(A) A sketch of the property depicting the best approximate location of each prime wetland and its 100-foot buffer, where such buffer was required at the time of designation, in which work is proposed and the location of proposed work, including access roads;
(B) A written description of the work to be performed and a copy of the notice of intent to cut, if applicable; and
(C) A list of the prime wetland values as identified by the municipality in designating each prime wetland under RSA 482-A:15.
(2) A waiver shall be issued only when the department is able to determine there will be no significant net loss of wetland values as identified in subparagraph (b)(1)(C) and RSA 482-A:1. If the department determines that the proposed work may cause a significant net loss of wetland values, the department may require the submittal of additional information. The department may place conditions on the waiver that it deems necessary to protect the prime wetland resource and shall set the term of the permit.
(3) At the time that the waiver request is submitted to the department, the applicant shall also submit a copy of the waiver request and all supporting documentation, via certified mail, to the local governing body, the planning board, if any, and the conservation commission, if any, of the municipalities in which any prime wetlands associated with the application are located. Where a prime wetland associated with the application extends into an abutting property, the property owner requesting the waiver shall provide notice to the owner of that abutting property. A waiver shall not be issued by the department prior to 14 days from its receipt of the waiver request. A municipal conservation commission may request an extension on such waiver issuance, not to exceed 14 days.
(4) The department shall adopt rules under RSA 541-A relative to:
(A) The process and criteria for considering and granting waiver requests made pursuant to RSA 482-A:11, IV(b)(1), including:
(i) Methods for determining whether a proposed forest management project may result in a significant net loss of wetland values.
(ii) Conditions that may be placed on a waiver when deemed necessary to protect the prime wetland resource.
(iii) Criteria for granting extensions of waiver issuances pursuant to RSA 482-A:11, IV(b)(3).

(iv) Specified criteria for identifying abutters and subsequent notification.
(B) Filing fees for waiver applications.
(c) A property owner may request a waiver from the department, under rules adopted by the department under RSA 541-A, from the provisions of this chapter to perform work not addressed under subparagraph (b) within a portion of any 100-foot buffer of a prime wetland on his or her property as provided in subparagraph (a). At the time of the waiver request, the property owner shall notify, by certified mail, the local governing body, the planning board, if any, and the conservation commission, if any, of the municipalities in which the waiver is being sought that a waiver is being sought from the department. Where a buffer associated with the application extends into an abutting property, the property owner requesting the waiver shall provide notice to the owner of that abutting property.
V. Notwithstanding any rules adopted by the commissioner defining minor projects, a series of minor projects undertaken by a single developer or several developers over a period of 5 years or less may, when considered in the aggregate, amount to a major project in the opinion of the department; all such related projects shall be subject to a public hearing as provided in RSA 482-A:8. A series of minor projects shall be considered in the aggregate if they abut or if they are a part of an overall scheme of development or are otherwise consistent parts of an eventual whole.
VI. The commissioner shall adopt rules pursuant to RSA 541-A establishing an expedited application and permitting process for certain minimum impact projects. The provisions of RSA 482-A:3, I and paragraph III of this section shall apply.
VI-a. The commissioner shall adopt rules pursuant to RSA 541-A establishing a permit by notification process for certain minimum impact projects. The provisions of RSA 482-A:3, I(a) and (c) shall apply.
VII. The commissioner shall adopt rules, pursuant to RSA 541-A, identifying those activities within the jurisdiction of RSA 482-A that may be conducted without obtaining a permit and those that may be conducted without a permit if the project is registered with the department, consistent with the provisions of this chapter.
VIII. The commissioner shall adopt rules pursuant to RSA 541-A relative to the waiver of existing standards provided for in RSA 482-A:26, III(b). Such rules shall list the specific criteria to be used by the commissioner in determining whether a waiver will be granted.
IX. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the circumstances under which the commissioner may grant a waiver of rules adopted pursuant to this chapter. Such rules shall list the specific criteria to be used by the commissioner in determining whether a waiver will be granted.
X. The department shall have the authority to grant permits, in accordance with the rules adopted under RSA 482-A:11, VI for expedited application and permitting, for any projects funded through the Emergency Watershed Protection Program of the Natural Resources Conservation Service, United States Department of Agriculture, when such projects are necessary to safeguard lives and property from floods and the products of erosion when a natural disaster is causing or has caused a sudden impairment of the watershed.

Source. 1989, 339:1. 1991, 20:6; 28:1. 1993, 30:1. 1996, 296:47. 2002, 272:17, 18. 2004, 116:5. 2007, 211:1; 278:1. 2008, 363:3. 2009, 185:2. 2012, 235:1, 3, eff. Aug. 17, 2012. 2015, 236:5, 6, eff. Sept. 11, 2015. 2018, 279:4, eff. Jan. 1, 2019.

Section 482-A:12

482-A:12 Posting of Permits and Reports of Violations. – Project approval by the department shall be in the form of a permit, a copy of which the applicant shall post in a secured manner in a prominent place at the site of the approved project. The department shall mail a copy of such permit to the local governing body of the municipality where the project is located. Any person proceeding without a posted permit shall be in violation of this chapter. All state, county and local law enforcement officers are directed to be watchful for violations of the provisions of this chapter and to report all suspected violations to the department.

Source. 1989, 339:1. 1991, 20:7. 1996, 296:47, eff. Aug. 9, 1996.

Section 482-A:13

482-A:13 Administrative Fine. – The commissioner, after notice and hearing in accordance with the procedures set forth in RSA 541-A, is empowered to impose an administrative fine of up to $5,000 for each violation, irrespective of the duration of violation, upon any person who violates any provision of this chapter. This fine is appealable under RSA 541. Any administrative fine imposed under this section will not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines levied pursuant to this section shall be placed in the nonlapsing fund authorized in RSA 482-A:14, III.

Source. 1989, 339:1. 1996, 296:47. 2010, 295:4, eff. Sept. 11, 2010.

Section 482-A:14

482-A:14 Penalties. –
I. Whoever recklessly or knowingly fails, neglects or refuses to comply with this chapter, rules adopted under this chapter, an order or condition of a permit issued under this chapter, or recklessly or knowingly misrepresents any material fact in connection with any activities regulated or prohibited by this chapter, whether or not the owner of the land in question, shall be guilty of a misdemeanor if a natural person and guilty of a felony if any other person.
II. State and local law enforcement officials may prosecute any violation of this chapter as a violation. This provision shall not limit the state's enforcement authority under this chapter.
III. Failure, neglect or refusal to comply with this chapter or rules adopted under this chapter, or an order or condition of a permit issued under this chapter, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by this chapter shall be deemed violations of this chapter. The court may, upon separate petition of the attorney general, or in connection with a petition for equity relief, levy upon any person who violates this chapter, whether or not the owner of the land in question, a civil penalty in an amount not to exceed $10,000 per violation. Each day of a continuing violation shall constitute a separate violation. The proceeds of any civil penalty levied pursuant to this chapter shall be placed in a nonlapsing fund held by the treasurer, which may be expended by the department, subject to the approval of the governor and council, for the purpose of restoration, research, investigation and enforcement relative to wetlands.

Source. 1989, 339:1. 1996, 296:22, eff. Aug. 9, 1996.

Section 482-A:14-a

482-A:14-a Cease and Desist Orders; Penalty. – The director of the division of forests and lands, department of natural and cultural resources, or his authorized agents, may issue a written cease and desist order against any timber operation in violation of this chapter. Any such violation may be enjoined by the superior court, upon application of the attorney general. A person failing to comply with the cease and desist order shall be guilty of a violation.

Source. 1989, 214:20. 1990, 29:3, eff. May 22, 1990. 2017, 156:14, I, eff. July 1, 2017.

Section 482-A:14-b

482-A:14-b Removal; Restoration; Equity Relief. –
I. Whoever fails, neglects or refuses to comply with this chapter or rules adopted under this chapter, or an order or condition of a permit issued under this chapter, or misrepresents any material fact made in connection with any activity regulated or prohibited by this chapter, whether or not the owner of the land in question, shall be liable for the removal of fill, spoil or structure placed pursuant to such a violation and the restoration of any wetlands disturbed in connection with the violation. The superior court shall have jurisdiction to order such relief and such additional relief in equity as may be appropriate.
II. Municipalities may apply to a justice of the superior court for injunctive relief against existing or impending violations of this chapter, or any rule or order issued under this chapter. The municipality shall give notice of any

such action to the attorney general and the commissioner of environmental services, who may take such steps as they deem necessary to ensure uniform statewide enforcement, including but not limited to joining the action, assuming sole prosecution of the action, or, as of right, dismissing the action without prejudice. Such notice shall be given at least 30 days prior to the commencement of any such action, unless more immediate action is necessary to prevent irreparable environmental damage or other serious public harm, in which case such notice shall be given as soon as practicable, but in no event later than the date of commencement of the action. This paragraph shall not be construed to affect, in any manner, existing authority of municipalities to act based upon the provisions of other statutes or local ordinances.
III. A landowner shall not be liable for violations of this chapter caused by persons operating OHRVs, as defined in RSA 215-A:1, V, or snowmobiles, as defined in RSA 215-C:1, in a location or in a manner not authorized by the landowner.

Source. 1989, 225:7. 1991, 340:2. 2004, 122:1. 2005, 210:62, eff. July 1, 2006.

Section 482-A:14-c

[RSA 482-A:14-c effective until Jan. 1, 2019; see also RSA 482-A:14-c set out below.]

482-A:14-c Limitation on Enforcement Action. – No person who acquires property, by any means, more than 5 years after an activity constituting a violation of this chapter has been completed, shall be subject to an enforcement action under this chapter for such violation, provided such person allows restoration of impacted areas, unless the person knew of the existence of the violation at the time that the person acquired the property. Nothing in this section shall limit any enforcement action for violation of this chapter, including injunctive relief requiring restoration of impacted areas, against the person who committed the violation. Nothing in this section shall limit any enforcement action with respect to any violation of this chapter, including injunctive relief requiring restoration of impacted areas, for which written notice of the violation has been provided to the owner by the department prior to January 1, 2013. In addition to any common law remedy, any person who suffers damages as a result of a violation of this chapter committed by another may seek compensation from the person who committed the violation, including diminution in property value and reasonable attorney's fees.

[RSA 482-A:14-c effective January 1, 2019; see also RSA 482-A:14-c in the main volume.]

482-A:14-c Limitation on Enforcement Action. –
No person who acquires property, by any means, more than 2 years after an activity constituting a violation of this chapter has been completed, shall be subject to an enforcement action under this chapter for such violation, provided such person allows restoration of impacted areas, unless the person knew of the existence of the violation at the time that the person acquired the property. Nothing in this section shall limit any enforcement action for violation of this chapter, including injunctive relief requiring restoration of impacted areas, against the person who committed the violation. Nothing in this section shall limit any enforcement action with respect to any violation of this chapter, including injunctive relief requiring restoration of impacted areas, for which written notice of the violation has been provided to the owner by the department prior to January 1, 2013. In addition to any common law remedy, any person who suffers damages as a result of a violation of this chapter committed by another may seek compensation from the person who committed the violation, including diminution in property value and reasonable attorney's fees.

Source. 2012, 55:1, eff. Jan. 1, 2013. 2018, 279:5, eff. Jan. 1, 2019.

Section 482-A:15

482-A:15 Local Option; Prime Wetlands. –
I. (a) Any municipality, by its conservation commission, or, in the absence of a conservation commission, the planning board, or, in the absence of a planning board, the local governing body, may undertake to designate, map, and document prime wetlands lying within its boundaries, or if such areas lie only partly within its

boundaries, then that portion lying within its boundaries. The conservation commission, planning board, or governing body shall give written notice to the owner of the affected land and all abutters 30 days prior to the public hearing, before designating any property as prime wetlands.
(b) Prior to municipal vote under paragraph II, maps that depict wetland boundaries shall be prepared and landowners having proposed prime wetlands on their property shall be informed of the boundary delineation. The acceptance of any prime wetland designation by the department prior to the effective date of this paragraph shall remain in effect; however, any revision to the boundary shall be delineated using wetland delineation methods as adopted by the department and by the standards of this section.
I-a. For the purposes of this chapter, "prime wetlands" shall mean any contiguous areas falling within the jurisdictional definitions of RSA 482-A:2, X and RSA 482-A:4 that, because of their size, unspoiled character, fragile condition, or other relevant factors, make them of substantial significance. A prime wetland shall be at least 2 acres in size, shall not consist of a water body only, shall have at least 4 primary wetland functions, one of which shall be wildlife habitat, and shall have a width of at least 50 feet at its narrowest point. The boundary of a prime wetland shall coincide, where present, with the upland edge of any wetland, as defined in RSA 482-A:2, X, that is part of the prime wetland. On-site verification of proposed prime wetland boundaries shall be performed where landowner permission is provided.
I-b. The commissioner shall adopt rules under RSA 541-A relative to the form, criteria, and methods that shall be used to designate, map, and document prime wetlands, determine boundaries in the field, and amend maps and designations once filed and accepted by the department under paragraph II.
II. Any municipal conservation commission or that local body which has mapped and designated prime wetlands in accordance with paragraph I may, after approval by any town or city council meeting, file such maps and designations with the department, which shall accept and maintain them and provide public access to such maps during regular business hours. The procedure for acceptance by the local legislative body of any prime wetland designations as provided in paragraph I shall be the same as set forth in RSA 675:2 or RSA 675:3, as applicable.

Source. 1989, 339:1. 1991, 20:8. 1996, 296:48. 2009, 185:3. 2012, 235:2, eff. Aug. 17, 2012.

Section 482-A:15-a

482-A:15-a Wetlands Program Annual Report. – The department shall report annually to the wetlands council on the wetlands program. The report shall include, but not be limited to, the status of the wetlands program including program performance, rules, and funding and the status of the Clean Water Act section 404 program in New Hampshire.

Source. 2003, 224:4, eff. July 1, 2003.

Placing Fill in Public Waters

Section 482-A:16

482-A:16 Artificial Fill; Exemptions. – No person shall place or cause to be placed any fill in any area below the mean high water level of any public waters or below the artificially-created high water level of publicly-owned bodies of water in this state with the intent or with the effect of creating or forming filled land adjacent to such bodies of water, except as provided in this subdivision. For the purposes of this subdivision, "public waters" means all natural ponds of more than 10 acres, and "publicly-owned bodies of water" or "public-owned water bodies" means those bodies of water whose artificial high water level is maintained by the state's exercise of its flowage rights on these ponds. The provisions of this subdivision shall not apply to such minor improvements of shorelines as the department, by rules adopted by the commissioner under RSA 541-A, may allow.

Source. 1989, 339:1. 1996, 296:48, eff. Aug. 9, 1996.

Section 482-A:17

482-A:17 Grant of Right. – The governor and council, upon petition and only upon the recommendation of the department, may, for just consideration, grant to an owner of shoreline on public waters the right to place fill in the bed of such pond before the owner's shoreline. Every petition to place fill in the bed of public waters shall be filed with the department. The department, after 30 days' notice to abutters, to the local governing body of the municipality in which the property is situated, and to the department of health and human services, shall hold a public hearing. Notice of the hearing shall be published twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the municipality, and notice posted in 2 public places in the municipality, and upon appropriate investigation shall make its recommendations to the governor and council with regard to such petition. If the department recommends that the petition be granted, in whole or in part, such recommendation shall include appropriate specifications and conditions necessary to the protection of public rights and to the protection of the rights and privileges of persons owning land in the vicinity of the area to be filled by the petitioner. The grant of the governor and council shall be evidenced by an instrument in writing, executed by the governor and council, attested by the secretary of state, and recorded in the county where the right is to be exercised. Land created by fill in accordance with the grant of the governor and council shall belong to the owner of the natural shoreline as if it were formed by natural accretion. The owner of a shoreline on a public-owned water body may petition the department for the right to place fill below the artificially-created high water level of a public-owned water body to the extent that the flowage rights owned by the state allow.

Source. 1989, 339:1. 1991, 20:9. 1995, 310:181. 1996, 296:48, eff. Aug. 9, 1996.

Section 482-A:18

482-A:18 Procedure for Removal of Fill. – If any person places fill in the bed of public waters or below the artificially-created high water level of public-owned water bodies except as provided in this subdivision, such person shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Any person may be compelled to remove the same by the superior court upon a petition brought by the attorney general.

Source. 1989, 339:1. 1996, 296:48, eff. Aug. 9, 1996.

Section 482-A:19

482-A:19 Fees. – Any payment received by the state as determined by the governor and council under the provisions of RSA 482-A:17 for the grant of the right to place fill in the bed of a great pond shall be paid over to the state treasurer and shall be available for general revenue of the state.

Source. 1989, 339:1, eff. Jan. 1, 1990.

Section 482-A:20

482-A:20 Costs for Hearing. – The petitioner for a right to place fill in public waters shall make a deposit to the department of $50 with each such petition. This payment shall be for expenses of publication, mailing and posting of notices by the department and for the expenses of hiring a hearing site, if a hearing outside of Concord is necessary. If the expenses amount to more than $50, the department shall require the petitioner to pay the additional amount before it sends its recommendations to the governor and council with regard to the petition.

Source. 1989, 339:1. 1996, 296:49, eff. Aug. 9, 1996.

Excavating and Dredging in Public Waters

Section 482-A:21

482-A:21 Excavating and Dredging. –
I. No person shall excavate, remove, or dredge any bank, flat, marsh, swamp, or lake bed that lies below the natural mean high water level of any public waters of this state, except as provided in this subdivision. For the purposes of this subdivision, "public waters" are defined as all natural ponds of more than 10 acres. Upon the request of the owner of land abutting any public waters, the division shall determine the natural mean high water level of the abutting public water.
II. The provisions of this subdivision shall not apply to:
(a) Any land above the natural mean high water level of public waters.
(b) Any land below any artificially created high water level of any body of water.
(c) Projects classified as minor or minimum impact under rules adopted by the commissioner under RSA 482-A:11 which exclusively involve excavation or dredging within a great pond, and no other associated major project activities requiring a permit pursuant to RSA 482-A.

Source. 1989, 339:1. 1996, 296:25, eff. Aug. 9, 1996.

Section 482-A:22

[RSA 482-A:22 effective until January 1, 2019; see also RSA 482-A:22 set out below.]
482-A:22 Grant of Right. – The governor and council, upon petition and upon the recommendation of the department, may, for just consideration, grant to an owner of a shoreline on public waters the right to excavate, remove, or dredge any bank, flat, marsh, swamp or lake bed before the owner's shoreline. Every petition to excavate or dredge said areas shall be filed with the department. The department, after 30 days' notice to abutters, the local governing body of the municipality in which the property is situate, and the department of health and human services shall hold a public hearing. Notice of the hearing shall be published twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the municipality. The notice shall also be posted in 2 public places in the municipality. Upon appropriate investigation the department shall make its recommendations to the governor and council with regard to such petition. If the department recommends that the petition be granted, in whole or in part, such recommendation shall include appropriate specifications and conditions necessary to the protection of public rights and to the protection of the rights and privileges of persons owning land in the vicinity of the area to be excavated or dredged by the petitioner.

[RSA 482-A:22 effective January 1, 2019; see also RSA 482-A:22 in the main volume.]

482-A:22 Grant of Right. –
The governor and council, upon petition and upon the recommendation of the department, may, for just consideration, grant to an owner of a shoreline on public waters the right to excavate, remove, or dredge any bank, flat, marsh, swamp or lake bed before the owner's shoreline. Every petition to excavate or dredge said areas shall be filed with the department. The department, after 30 days' notice to abutters and within 60 days of receipt of a petition, the local governing body of the municipality in which the property is situate, and the department of health and human services shall hold a public hearing. Notice of the hearing shall be published twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the municipality. The notice shall also be posted in 2 public places in the municipality. Upon appropriate investigation and within 30 days of a public hearing, the department shall make its recommendations to the governor and council with regard to such petition. If the department recommends that the petition be granted, in whole or in part, such recommendation shall include appropriate specifications and conditions necessary to the protection of public rights and to the protection of the rights and privileges of persons owning land in the vicinity of the area to be excavated or dredged by the petitioner.

Source. 1989, 339:1. 1991, 20:10. 1995, 310:181. 1996, 296:50, eff. Aug. 9, 1996. 2018, 279:7, eff. Jan. 1, 2019.

Section 482-A:22-a

482-A:22-a Grant in Right for Submerged Logs; Exemption. –
I. The governor and council, upon petition and upon the recommendation of the department, may grant to the governing body of a municipality the right to remove submerged logs from the portion of the bed of any great pond that is located within the municipality's boundaries as delineated in the NH Granit database, Complex Systems Research Center, University of New Hampshire.
II. Every petition to remove such submerged logs shall be filed by the governing body of the municipality with the department as an application under RSA 482-A:3, I, and shall demonstrate that:
(a) Removing the submerged logs will have minimal or no adverse environmental impact, based on considerations including whether the logs were treated with hazardous or toxic chemicals and whether the logs are providing important aquatic habitat as determined by the department of fish and game; or
(b) The submerged logs to be removed are interfering with navigation or otherwise adversely affecting public safety or the environment.
III. The application filed pursuant to paragraph II shall:
(a) Identify the manner in which the logs will be removed, the measures to be taken to minimize any adverse environmental impact, and the formula by which the net proceeds of the use or sale of the removed logs will be determined; and
(b) Include the results of such testing as the department may require to determine the environmental impact of the logs in place and of removing the logs.
IV. A municipality that receives a permit under this section may enter into a commercially reasonable private contract to undertake the log removal after publicly requesting bids for such work.
V. The net proceeds of any use or sale of the removed logs shall accrue directly to the benefit of the municipality.
VI. The municipality shall hold a public hearing on the application in conjunction with the department. The municipality shall send direct notice of the application and the public hearing to the department of fish and game and to each person owning land within 150 feet of the area from which the logs will be removed. The municipality also shall post notice of the hearing in 2 public places in the municipality, one of which may be the municipality's website, and shall publish notice of the hearing twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the municipality. The department shall post notice of the hearing and of the deadline for submission of written comments on the department's website, which deadline shall be not less than 10 days following the public hearing.
VII. After appropriate consideration of the application and any comments received, the department shall make its recommendations to the governor and council with regard to such petition. If the department recommends that the petition be granted, in whole or in part, such recommendation shall include appropriate specifications and conditions necessary to protect public rights and the rights and privileges of persons owning land within 150 feet of the area from which the logs will be removed, which shall include requirements for testing the submerged logs prior to and during removal to determine proper handling and disposal.
VIII. Notwithstanding the provisions of this section, if a submerged log presents a safety hazard, the state police may remove the submerged log or logs.

Source. 2013, 96:1, eff. Aug. 19, 2013.

Section 482-A:23

482-A:23 Penalty. – Any person who violates any provision of this subdivision shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Any person may be compelled to return said land to its original condition by the superior court upon a petition brought by the attorney general.

Source. 1989, 339:1. 1996, 296:50, eff. Aug. 9, 1996.

Section 482-A:24

482-A:24 Fees. – Any payment received by the state as determined by the governor and council under the provisions of this subdivision shall be paid over to the state treasurer and shall be deposited in the general funds of the state.

Source. 1989, 339:1, eff. Jan. 1, 1990.

Section 482-A:25

482-A:25 Hearing Costs. – The petitioner shall make a deposit of $50 with each petition to pay for the expenses of publication, mailing, and posting of notices, and for the expenses of hiring a hearing site, if a hearing outside of Concord is necessary. If these expenses are more than $50, the department shall require the petitioner to pay the additional expenses before it sends its recommendations to the governor and council with regard to the petition.

Source. 1989, 339:1. 1996, 296:51, eff. Aug. 9, 1996.

Restrictions on Use of Structures Built Over the Waters of the State

Section 482-A:26

482-A:26 Dwellings Over Water. –
I. No person shall construct any structure suitable for use as a dwelling if the structure or any part of the structure extends beyond the shoreline of any public water or publicly-owned water body.
II. No person shall convert or modify any existing structure in order to make the structure suitable as a dwelling if the structure or any part of the structure extends beyond the shoreline of any public water or publicly-owned water body.
III. (a) Existing dwellings over water which were constructed or converted to be made suitable for use as a dwelling in accordance with the law in effect at the time of construction or conversion, may be repaired or reconstructed, for maintenance purposes only, using any modern technologies, provided the result is a functionally equivalent use. Such repair or reconstruction may alter the interior design or existing cribwork, but no expansion of the existing footprint or outside dimensions shall be permitted. A condition of RSA 482-A:3 approval shall be the existence or installation of a sewage disposal system which has been approved pursuant to RSA 485-A:29-44. No permit shall be required for routine maintenance that does not involve work in the water.
(b) Without otherwise limiting the provisions of this section, where the effect of repair or reconstruction of a structure subject to the provisions of this section represents greater protection of public water or the environment and where such repair or reconstruction does not change a recreational, water-based activity to a land-based, residential or commercial activity, the commissioner may waive the existing standards, provided that there shall be no expansion of the existing footprint, outside dimensions, and square footage of floor space; and there shall be a net reduction in the total square footage of kitchen, bathroom, shower, and toilet facilities.
IV. For the purpose of this section:
(a) "Dwelling over water" means any structure suitable for use as a dwelling which extends in any part beyond the shoreline of any public water or public-owned water body.
(b) "Shoreline" means that shoreline which exists when the surface of the water is at the mean high water level.
(c) "Suitable for use as a dwelling" means any structure which is used for residential purposes by one or more persons, or which contains kitchen, bathroom, shower, or toilet facilities.
V. The provisions of RSA 482-A:10, relative to appeals, and RSA 482-A:10-a, relative to takings without compensation, shall apply to all decisions of the department made under paragraph III.

Source. 1989, 339:1. 1998, 23:1, 2. 2002, 272:16, eff. May 18, 2002. 2013, 43:3, eff. Aug. 3, 2013.

Section 482-A:27

482-A:27 Penalty. – Any person who violates any provision of RSA 482-A:26 shall be required to remove the structure or portion of the structure constructed, reconstructed, repaired, converted, or modified in violation of said section and shall be subject to the civil, criminal, and other penalties set forth in RSA 482-A:13, 14, and 14-b. Any criminal fine collected for a violation of RSA 482-A:26 shall accrue to the use of the municipality in which the structure is located.

Source. 1989, 339:1. 1998, 23:3, eff. Jan. 1, 1999.

Aquatic Resource Compensatory Mitigation

Section 482-A:28

482-A:28 Aquatic Resource Compensatory Mitigation. – In lieu of other forms of compensatory mitigation, the department may accept payment for an unavoidable loss of aquatic resource functions and values from impacts to resources protected under this chapter.

Source. 2006, 313:1. 2009, 303:1, eff. Sept. 29, 2009.

Section 482-A:29

482-A:29 Fund Established. –

I. There is hereby established the aquatic resource compensatory mitigation fund into which payments made under this subdivision shall be deposited. The fund shall be a separate, nonlapsing fund continually appropriated to the department to be used only as specified in this subdivision for costs related to wetlands creation or restoration, stream and river restoration, stream and river enhancement, preservation of upland areas adjacent to wetlands and riparian areas, and the subsequent monitoring and maintenance of such areas.

II. A separate, non-lapsing account shall be established within the fund into which all administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be placed. Such account moneys shall only be used to support up to 2 full-time positions for administration of the fund and related projects. No other fund moneys shall be used for state personnel costs.

III. The state treasurer shall invest the fund as provided by law. Interest received on such investment shall be credited to the fund.

IV. The wetlands council, established by RSA 21-O:5-a, shall approve disbursements of the aquatic resource compensatory mitigation fund based on recommendations provided by the site selection committee established under RSA 482-A:32, and in accordance with rules adopted by the commissioner.

Source. 2006, 313:1. 2009, 303:2, 5, 6. 2010, 16:1, eff. July 1, 2010 at 12:01 a.m.

Section 482-A:30

482-A:30 Payment for Freshwater and Tidal Wetlands Losses. –

For freshwater and tidal wetlands losses, the in lieu payment shall be the sum of:

I. The cost that would have been incurred if a wetland of the same type was constructed at the ratios adopted by the department based on a price of $65,000 per acre of wetland created, to be adjusted at the beginning of the calendar year according to the annual simple rate of interest on judgments established by RSA 336:1;

II. The area of wetlands, as used in the calculation performed under paragraph I, times the cost of land in the municipality where the impact is occurring as calculated by the total assessed land values in the municipality, as determined by the department of revenue administration, which are equalized, divided by the number of acres in the municipality to yield a per acre equalized land value; and

III. An administrative assessment which equals 20 percent of the sum of paragraphs I and II.

Source. 2006, 313:1. 2010, 16:2. 2011, 171:1, eff. July 1, 2011; 171:2, eff. July 1, 2015.

Section 482-A:30-a

482-A:30-a Payment for Stream or Shoreline Losses. –
For stream or shoreline resource losses, the in lieu payment shall be the sum of:
I. The cost that would have been incurred if a stream of the same type was restored at the ratios adopted by the department, based on a price of $200 per linear foot of channel or bank impacts or both, to be adjusted at the beginning of the calendar year according to the annual simple rate of interest on judgments established by RSA 336:1; and
II. An administrative assessment equal to 20 percent of the amount in paragraph I.

Source. 2009, 303:3. 2010, 16:4. 2011, 171:3, eff. July 1, 2011; 171:4, eff. July 1, 2015.

Section 482-A:31

482-A:31 Rulemaking. –
The commissioner shall adopt rules under RSA 541-A relative to:
I. Identification of appropriate situations under which in lieu payments may be made. The criteria in RSA 482-A:28 shall be the minimum requirements for projects eligible for in lieu payments.
II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river construction, or such other mitigation actions as would have been required by the department and incurred by the applicant in the absence of making such payments. An administrative assessment of 20 percent of the total cost shall be added as part of the calculation method.
III. Criteria to use in selecting projects that would compensate for the lost aquatic resource functions or values.
(a) Tidal aquatic resources shall be compensated by the selection of qualifying tidal projects.
(b) An emphasis shall be given to selecting from among the qualifying projects those that are nearer to the site of the lost aquatic resource.
(c) No project shall be funded with in lieu payments from losses that occurred outside the service area in which the project is located. A service area may be a hydrologic unit code 8 watershed, as developed by the United States Geological Survey, or a modification of a hydrologic unit code 8 watershed by the department as approved by the United States Army Corps of Engineers.
(d) Such criteria shall be adopted in consultation with the site selection committee established under RSA 482-A:32.
IV. Requests for extensions of excavating and dredging permits.
V. The certification program for municipal culvert installers under RSA 482-A:3, XVIII.

Source. 2006, 313:1. 2009, 303:4. 2010, 16:6. 2011, 143:2; 171:5, 6. 2012, 74:2, eff. July 22, 2012; 273:3, eff. June 19, 2012.

Section 482-A:32

482-A:32 Site Selection Committee Established. –
I. There is established a site selection committee for the purpose of identifying projects to be funded from the aquatic resource compensatory mitigation fund.
II. The committee shall consist of the following members:
(a) The commissioner of the department of environmental services, or designee.
(b) The executive director of the fish and game department, or designee.
(c) The director of the office of strategic initiatives, or designee.
(d) The commissioner of the department of natural and cultural resources, or designee.
(e) Five members of the public, appointed by the governor and council for a term of 3 years or until a successor is chosen. The members of the public shall be as follows:
(1) A member of a municipal conservation commission at the time of appointment, who shall be one of 3 nominees submitted by the New Hampshire Association of Conservation Commissions.

(2) A natural resource scientist, who shall be one of 3 nominees submitted by the New Hampshire Association of Natural Resource Scientists.
(3) A person with experience in environmental protection and resource management at the time of appointment, who shall be one of 3 nominees submitted by the Nature Conservancy.
(4) A person with experience in environmental protection and resource management at the time of appointment, who shall be one of 3 nominees submitted by the Society for the Protection of New Hampshire Forests.
(5) A person with experience in stream restoration work, who shall be nominated jointly by the Northeast Region of American Rivers and the New Hampshire Rivers Council.
III. The members of the committee shall elect a chairperson annually.
IV. Each public member of the committee shall receive $50 per meeting. The other members of the site selection committee shall receive no compensation other than their regular state salaries but shall receive mileage paid at the rate set for state employees.

Source. 2006, 313:1, eff. Aug. 18, 2006. 2016, 68:1, eff. May 5, 2016. 2017, 156:14, I, 64, eff. July 1, 2017.

Section 482-A:33

482-A:33 Report. – The department shall submit a biennial report 60 days after the close of each odd-numbered fiscal year, to the fiscal committee of the general court, the chairperson of the house resources, recreation and development committee, and the chairperson of the senate environment and wildlife committee summarizing all receipts and disbursements of the aquatic resource compensatory mitigation fund, including a description of all projects undertaken and the status of the administrative assessment account. Each report shall be in such detail with sufficient information to be fully understood by the general court and the public. After submission to the general court, the report shall be available to the public.

Source. 2006, 313:1. 2010, 16:8. 2012, 247:30, eff. Aug. 17, 2012. 2015, 259:11, eff. July 1, 2015.

Wetland Mitigation Banks

Section 482-A:34

482-A:34 Wetland Mitigation Banks Authorized. – Any individual or public or private entity may establish a wetland mitigation bank, provided such bank complies with all federal and state regulations and all requirements of the Army Corps of Engineers.

Source. 2012, 74:1, eff. July 22, 2012.

Structures on Non-tidal Public Waterways Commission

Section 482-A:35

[RSA 482-A:35 repealed by 2018, 95:2, effective November 30, 2019.]

482-A:35 Structures on Non-tidal Public Waterways Commission. –
I. There is established a commission to study the effectiveness of the current statutes related to management of non-tidal public waterways and the construction or placement of structures within them.
II. The members of the commission shall be as follows:
(a) One member of the senate, appointed by the president of the senate.
(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.
(c) The commissioner of the department of environmental services, or designee.
(d) The director of the division of state police, marine patrol unit, or designee.
(e) A representative of the New Hampshire Lakes Association, appointed by such association.

(f) Two members of the public who are waterfront property owners, one from a lake or pond greater than 1,000 acres in size, and one from a lake or pond less than 1,000 acres in size, appointed by the governor.
(g) A representative of the New Hampshire Association of Realtors, appointed by the New Hampshire Association of Realtors.
(h) A representative of a waterfront community, appointed by the New Hampshire Municipal Association.
(i) A representative of the New Hampshire Rivers Council, appointed by the New Hampshire Rivers Council.
(j) A representative of the business community, appointed by Business and Industry Association.
(k) A member from the New Hampshire Marine Trades Association, appointed by the New Hampshire Marine Trades Association.
(l) A representative of the tourism industry, appointed by the division of travel and tourism development.
(m) A representative from the sport angling community, appointed by the New Hampshire fish and game commissioners.
(n) A member of the public water access advisory board, established in RSA 233-A:2, appointed by such board.
(o) A representative of the recreational boating community that is not a waterfront property owner, appointed by the Commander of Flotilla 2-8, station Portsmouth Harbor, United States Coast Guard Auxiliary.
(p) A representative of the natural resource science community, appointed by the New Hampshire Association of Natural Resource Scientists.
III. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.
IV. The commission shall:
(a) Assess impacts around the state's non-tidal public waters.
(b) Explore and review the current interest groups that utilize the state's non-tidal public waters, the ways in which they use those waters, and the extent to which those uses complement or compete with one another.
(c) Review all current statutes and standards for the construction or placement of both permanent and temporary structures within non-tidal waters and all other applicable laws.
(d) Review current structures and preexisting structure standards and make recommendations to revise and/or clarify these standards.
(e) Explore funding options for the management and enforcement of statutes and rules pertaining to the use of non-tidal public water spaces and the construction or placement of structures within them.
(f) Assess current definitions and size, type, and location standards pertaining to structures within public waters as outlined in all current statues, and make recommendations to revise and/or clarify these standards.
(g) Recommend options, suggestions, or alternatives to the management and enforcement of laws on the use of non-tidal public water spaces and the construction or placement of structures within them and determine whether it should be merged or detached from other existing laws.
(h) Review current structural shape, size, and setback requirements relative to the construction or placement of structures within non-tidal public waters and make recommendations to revise and/or clarify these requirements.
(i) Review all current laws and rules to insure that individual property rights are maintained, that the environment is not harmed, and that safety, recreation, and economic interests of the public are maintained.
(j) Review current permitting and enforcement provisions relevant to the construction or placement of structures and make recommendations to revise and/or clarify these provisions.
V. The members of the commission shall elect a chairperson and secretary from among the members. The first meeting of the commission shall be called by the by the first-named member of the house. The first meeting of the commission shall be held within 45 days of the effective date of this section. Subsequent meetings shall be at the call of the chair, or at the request of 3 or more commission members. The commission shall make an interim report of its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the governor, the commissioner of the department of environmental services, the senate clerk, the house clerk, and the state library on or before November 1, 2018. The commission shall make a final report of its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the governor, the commissioner of the department of environmental services, the senate clerk, the house clerk, and the state library on or before November 30, 2019.

Source. 2018, 95:1, eff. May 25, 2018.