



SUMMARY OF NEW RIDEM FRESHWATER WETLANDS RULES

RIDEM Freshwater Wetland Rules – Fully in Effect July 1, 2022

The Rhode Island Department of Environmental Management (RIDEM) promulgated new Freshwater Wetlands Rules that will be fully effective on July 1, 2022. The new Rules are referred to as the “Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act” and are referenced as 250-RICR-150-15-3 in the Rhode Island Code of Regulations. During the transition up to July 1, the existing Rules (250-RICR-150-15-1) remain in place and applicable to all new applications filed before July 1, 2022.

Background

Rhode Island’s freshwater wetlands resources include its rivers, streams, lakes and ponds as well as swamps, marshes, bogs, and vernal pools. About sixteen percent (16%) of Rhode Island’s land area consists of freshwater wetlands (including lakes and ponds) which are distributed throughout the state. In 2015, state law pertaining to freshwater wetlands (R.I. Gen. Laws §§ 2-1-18 through 2-1-28) was amended to strengthen the protection of freshwater wetland resources while streamlining the regulatory framework applicable to projects and activities proposed near wetlands. Implementation of the law required both the RI Department of Environmental Management (DEM) and the RI Coastal Resources Management Council (CRMC) to undertake rulemaking within their respective programs. The amended state law was based on the findings and recommendations of a Legislative Task Force (LTF) previously established by the Regulatory Reform Act (R.I. Gen. Laws § 42-64.13-10). The LTF was composed of a variety of stakeholders and charged with evaluating the adequacy of protection of Rhode Island freshwater wetlands considering both the state and municipal level, evaluating if gaps in that protection existed based on current scientific data and recommending changes in state law or regulations that could foster a business climate to grow the economy while ensuring better protection of our natural resources.

The amended state law acknowledged the important functions and values of freshwater wetlands and their buffers, the need to strengthen state wetland protection and the need to protect and regulate the areas adjacent to wetlands. The law also establishes a single set of wetland protection standards administered only at the state level. Key provisions of the new law include:

- Strengthens wetland protection administered at the state level.
- Expands the jurisdiction of state agencies and requires the promulgation by rule of standards for freshwater wetland buffers and setbacks.
- Re-defines and clarifies terminology and promotes common terminology among DEM and CRMC programs.
- Maintains the existing definition of “Farmer” and applicable regulatory procedures, as codified in state law, and associated permitting exemptions.
- Establishes new requirements for state agencies to share information with municipalities.

Freshwater Wetlands Regulations - Overview

This document highlights the major new provisions of the Freshwater Wetlands Rules. The statutory changes in definitions affect the wording in all sections of the Rules and result in a new framework for the regulatory process. The major new changes involve the designation of “jurisdictional area” and specifying requirements for freshwater wetland buffers and setbacks within the jurisdictional area. To support regulatory process improvements, the Rules also introduce a general permit process, new exempt activities, expand or clarify certain other exemptions, and simplify the application fee schedule. The Rules were restructured to list the performance standards and the review criteria in a single Section 3.7. Portions of the Rules were restructured to improve organization for the reader, but have not been substantively modified, e.g., review criteria and significant alteration procedure. Rules related to agricultural activities are grouped into its own Section 3.13 and Rules related to coordination with municipalities are specified. Existing rule language related to the municipal veto has been eliminated to be consistent with the amended state law.

Section 3.4 Definitions:

The Rules include new or revised definitions required by state law that provide greater consistency among DEM and CRMC programs as well as clarity for applicants and the public. Key terms include:

Freshwater wetlands: The definition of freshwater wetlands was changed and now refers to the resources to be protected under the Freshwater Wetlands Act. This includes vegetated wetlands and flowing and standing water wetlands. The new definition is broadly applicable with a limited exception for certain farming activities. The terms “perimeter wetland” and “riverbank wetland” are no longer used in the Rules. [Rule 3.4(A)(33)]

Jurisdictional Area: This new term defines the land and waters that are subject to regulation. It includes freshwater wetlands, buffers, floodplains, areas subject to storm flowage, areas subject to flooding and contiguous areas extending 200 feet outward from the edge of a river, stream or drinking water supply reservoir and 100 feet outward from all other wetlands. Persons planning new projects or regulated activities within the Jurisdictional Area will need to obtain a permit unless otherwise exempt. [Rule 3.4(A)(39)]

Buffer Zone: This new term is used to refer to the land that is contiguous to a freshwater wetland and within which vegetated buffer should be protected or in some situations created. Buffer zones are designated within or up to the limit of the jurisdictional area. Land within the buffer zones includes a range of land uses as well as areas qualifying as “buffer” (see below). [Rule 3.4(A)(11)]

Buffer: This new term refers to an area of undeveloped vegetated land that is to be retained in its natural undisturbed condition or created to resemble a naturally occurring vegetated area. [Rule 3.4(A)(10)]

Section 3.5 Applicability and Regulated Activities:

The amended law expanded the jurisdictional authority of the Agencies. (See definition of Jurisdictional Area above.) DEM Freshwater Wetlands Rules apply to most of Rhode Island with the exception of those areas associated with “freshwater wetlands in the vicinity of the coast” which are within the jurisdiction of and are regulated by the Coastal Resources Management Council (CRMC).

Section 3.6 Exempt Activities:

Within the Jurisdictional Area, the Rules include the following new exemptions and expansion or clarification of approximately 16 other existing exemptions. All exemptions are subject to certain conditions and limitations specified in the Rules.

- Cutting or maintenance of vegetation within lawns or landscaped areas consistent with other approvals;
- Forest management practices in response to an event-specific emergency in consultation with the Division of Forest Environment;
- Cutting within a floodplain that is located outside of all freshwater wetlands and their 100/200-foot contiguous jurisdictional areas;
- Cutting of vegetation for routine maintenance of approved landfill or remediation caps;
- Maintenance or repaving of existing parking lots with size limits;
- Addition of gates or barriers at existing or approved driveways or access roads;
- The installation of small signs associated with conservation activities;
- Crossing of or relocating an area subject to storm flowage;
- Restoration of wetlands resulting from unauthorized alterations associated with an enforcement action; and
- Establishment of new pedestrian trails outside of wetlands and buffer zones.

Section 3.7 Protection Standards and Variance Procedures:

This new section of rules consolidated the wetland protection standards and review criteria. This section also specifies buffer protection standards.

Overall Approach to Buffer Standards: Rhode Island has adopted a tiered protection approach to establishing buffer standards. Consistent with state law, in developing the requirements, including buffer zone widths, the agencies considered the resource characteristics, watershed protection needs and existing land uses. All wetlands are designated with a buffer zone ranging between 25 feet and 200 feet. Buffer zones fall within or are equivalent to the jurisdictional area and are a mechanism used in the Rules to identify those areas in which alteration of buffer (naturally vegetated areas) should be avoided. The buffer standard specifies that projects and activities shall be designed and carried out to avoid alteration of **buffer** within the buffer zone. It is important to note due to existing land use not all land within a designated buffer zone consists of buffer. When alteration of buffer vegetation is deemed unavoidable, an applicant is required to comply with requirements for a variance from the buffer standard including demonstration of avoidance and minimization of impacts to the buffers and the freshwater wetlands.

Regional Framework for Tiered Protection: Under the tiered approach, the state has been divided into regions to facilitate the application of a range of buffer standards that reflect a gradient of watershed conditions. The regions consist of urban areas and non-urban areas – the latter of which is further divided into two regions to distinguish certain river buffer zones. In addition, requirements in drinking water supply watersheds are incorporated as an overlay in the non-urban regions. (See map.) The tiered protective buffer zone distances were based on assessments of watershed resource protection needs, wetland resource characteristics and existing land use. About 19% of vegetated wetland resources were prioritized for the greatest protection (100-foot buffer zones).

River Protection Region 1 - This Region includes watershed areas that are generally the highest priorities for conservation of fish and wildlife habitat. The region encompasses areas in the western and southeast portions of the state as well as Block Island. The watersheds exhibit low density of development, lower percentages of impervious cover and contain larger tracts of unfragmented habitat. Within this Region, in March 2019, a number of river segments in the Wood-Pawcatuck River watershed were federally designated as “wild and scenic.” River Protection Region 1 covers 52% of Rhode Island’s area (coastal waters excluded).

River Protection Region 2 - This Region includes areas of the state that exhibit a mix of land uses and watershed characteristics including urban, suburban and rural settings. Existing land use patterns have resulted in greater fragmentation of buffers within the jurisdictional areas in this region including crossings of rivers. The region includes much of the suburban development that exists adjacent to the Urban Region areas. River Protection Region 2 covers 40 % of Rhode Island’s area (coastal waters excluded).

Urban Region – This Region includes densely developed, urbanized areas of the state including portions of watersheds that contain high percentages of impervious cover and areas that are already highly developed or altered. This includes the Providence metropolitan area as well as portions of Woonsocket, Newport, Middletown, North Kingstown, West Warwick and Westerly. The Urban Region covers 8% of Rhode Island (excluding coastal waters).

Within the Regions, buffer zones were designated as follows and further described below:

- On a statewide basis, the most sensitive vegetated wetland types were identified and designated the highest level of protection (100 feet). These include less common wetland types that are often sensitive to disturbance such as bogs, fens and marshes as well as evergreen swamps, swamps with Rhododendron understory and most vernal pools.
- On a statewide basis, buffers zones were increased to strengthen protection in water supply reservoir watersheds.
- In River Protection Regions 1 and 2, protection was strengthened by (1) increasing the buffer zones for headwater rivers, including cold water rivers as recognized as a need in the LTF Report; (2) increasing the buffer zone on larger lakes and ponds that provide high recreational value and habitat function and that currently have large amounts of intact shoreline buffer; and (3) increasing the buffer zone around larger swamps, some of which are also part of valuable wetland complexes providing multiple habitats.
- As practicable, buffer zone requirements were reduced in areas where existing land use have already resulted in the alteration or loss of vegetated buffer. This applies primarily in the Urban Region.

Section 3.23 Statewide Buffer Zone Designations:

Rivers and Streams:

The agencies are authorized to regulate the area within 200 feet of rivers and streams as part of the jurisdictional area. Rivers are defined as perennial streams as mapped by the United States Geological Survey (USGS). Under these Rules, streams include those other flowing bodies of freshwater that maintain a channel. These include streams not mapped as rivers by USGS as well as intermittent streams. Within these areas, buffer zones of varying widths have been designated in accordance with the following criteria.

Region	Buffer Zone Width as measured from the river or stream edge
River Protection Region 1 (Non-urban)	<ul style="list-style-type: none"> • 200 feet for rivers within watersheds of public drinking water supply reservoirs named in Rule 3.23(H)(1) • 200 feet for named rivers in the table in Rule 3.23 (H)(5) • 150 feet for all other rivers • 100 feet for streams
River Protection Region 2 (Non-urban)	<ul style="list-style-type: none"> • 200 feet for rivers within watersheds of public drinking water supply reservoirs named in Rule 3.23(H)(1) • 200 feet for named rivers in the table in Rule 3.23(H)(5) • 150 feet for named rivers in the table in Rule 3.23(H)(6) • 150 feet for rivers designated as cold water fisheries in RI State Water Quality Regulations • 100 feet for any river not listed or identified above • 100 feet for streams
Urban Region	<ul style="list-style-type: none"> • 150 feet for rivers named in the table in Rule 3.23(I)(4): Blackstone River and a segment of the South Branch of the Pawtuxet River • 100 feet for named rivers in the table in Rule 3.23(I)(5) • 50 feet for other rivers not identified above • 50 feet for streams
Drinking Water Supply Reservoir Watershed	<ul style="list-style-type: none"> • 200 feet for rivers which are within the watersheds of the named public drinking water supply reservoirs in the Non-urban Region. See overlay on Region Map.

Lakes and Ponds:

The agencies are authorized to regulate the contiguous jurisdictional area within 100 feet of lakes and ponds of any size and within 200 feet of drinking water reservoirs.

Region	Buffer Zone Width as measured from the lake or pond edge
River Protection Regions 1 and 2 (Non-urban)	<ul style="list-style-type: none"> • 100 feet for ponds contiguous to a river within the watershed of a public drinking water supply reservoir named in Rule 3.23(H)(1) • 100 feet for lakes and ponds ≥ 10 acres excluding those named in the table in 3.23(H)(2)(b) • 50-foot buffer zone for lakes and ponds $\geq \frac{1}{4}$ acre and < 10 acres • 25-foot buffer zone on small ponds ($< \frac{1}{4}$ acre) and highway ponds of any size
Urban Region	<ul style="list-style-type: none"> • Maintain the 50-foot buffer zone for listed lakes and ponds in the table in Rule 3.23(I)(1). • Designate a 25-foot buffer zone for all other ponds and highway ponds of any size.

Drinking Water Supply Reservoirs (Non-urban)	<ul style="list-style-type: none"> • 200 feet around named public drinking water supply reservoirs in the table in Rule 3.23(H)(1)
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Other Freshwater Wetlands Resources: Swamps, Marshes, Bogs and Vernal Pools

Freshwater wetlands have been mapped in Rhode Island (RIGIS 1993) using a standardized classification scheme. Due to limitations in the aerial photographic mapping methods, the available data are used for planning and large-scale assessment purposes, but are not suitable for accurately identifying the location or extent of a regulated wetlands on a specific site. The mapping does reveal that the most common wetland type in Rhode Island is deciduous swamp, which is found throughout the state. Other wetland types are much less common including bogs, marshes and vernal pools. The Rules include a provision for proposing an alternative configuration around a vernal pool. (Unless otherwise noted, the table below applies statewide.)

Type of Wetlands Resource	Buffer Zone Width as measured from wetland edge
Bogs Marshes Evergreen forested swamps ≥ 1 acre Swamps with Rhododendron ≥ 1 acre	<ul style="list-style-type: none"> • 100 feet with some exceptions for <i>Phragmites</i> marshes and wet meadows • 25 feet for swamps with Rhododendron ≥ 1 acre in Urban Region.
Vernal Pools	<ul style="list-style-type: none"> • 100 feet where 50% or more of the land around the pool is undeveloped vegetated land • 50 feet where less than 50% of the land is undeveloped vegetated land
Shrub Swamps ≥ 1 acre	<ul style="list-style-type: none"> • 75 feet for shrub swamps • 25 feet for swamps in Urban Region
Deciduous Swamps ≥ 1 acre	<ul style="list-style-type: none"> • 75 feet for swamps of 10 acres or more in the Non-urban Regions • 50 feet for smaller swamps in the Non-urban Regions (≥ 1 to <10 acres) • 25 feet for swamps in Urban Region
Small swamps < 1 acre	<ul style="list-style-type: none"> • 25 feet statewide
Wetland complexes where 1 or more differing wetland types or subtypes are present within 50 feet inward of a wetland edge	<ul style="list-style-type: none"> • 25 feet additional buffer zone is added to the buffer zone widths specified above

Sections 3.8 – 3.12 Application Types and Permitting Process:

The Freshwater Wetlands Rules establish the following categories of applications for the identification of freshwater wetlands, for new projects and activities and for administrative purposes.

Decisions related to applicability of the Rules without proposing a project:

- **Request to Determine the Presence of Jurisdictional Area**
- **Request to Verify Freshwater Wetland Edges**

Permits related to new projects and activities:

- **Request for Regulatory Applicability** – this is a simplified application intended to find out if a proposed project or activity requires a permit. It is appropriate for applicants seeking written confirmation that their proposed project or activity is exempt under Rule 3.6 or outside of known jurisdictional area, or otherwise would not alter the character of any freshwater wetland.
- **General Permit** – appropriate for projects and activities of predictable and limited potential impacts proposed with minimal or no alteration of buffer. (Rule 3.10). The issuance of general permits will occur at a future date and involve specifying the eligible projects and activities and requirements and conditions under which such a permit would apply. The general permit application process will provide for a simplified application and streamlined review.
- **Freshwater Wetlands Permit** - Applicants that meet all standards (Rule 3.7.1), including the buffer standard, will have reduced submittal requirements from the current Preliminary Determination Application (Rule 3.11). An in-fill lot standard acknowledges constraints on certain existing lots of record and allows processing of an application without a variance (Rule 3.7.1(B)(5)).
- **Freshwater Wetlands Permit with Variance Request** – Applies to new projects and activities in situations in which a standard cannot be met and the impacts do not constitute a significant alteration. Variance requirements are specified in Rule 3.7.3. This category may include projects that propose limited intrusions into existing vegetated buffer.
- **Significant Alteration Permit** - Applies to proposed projects and activities that contemplate a significant alteration to freshwater wetlands as described in Rule 3.11.3(C). This application process includes a detailed evaluation and a Public Notice to solicit comments.
- **Application for Permit Modification** – Applicable to holders of valid wetlands permits who propose minor changes to their project (Rule 3.14.3). Such project modifications cannot result in an increase in impacts beyond what may already have been permitted.
- **Emergency Alteration Permit:** This is an accelerated approval process for a wetlands alteration necessary to protect the public health or safety from imminent harm.

Applications Related to Administration of Issued Permits:

- Application for Permit Renewal
- Application for Permit Transfer (transfer of ownership)

Agricultural Activities:

For clarity the Rules pertaining to agricultural activities have been grouped into their own Section 3.13. Note that per state law, the regulatory oversight of normal farming and certain related activities for farmers as qualified under the law has not changed; e.g., the new expanded jurisdictional area does not apply.

* Application Relating to Farmers: Applications for certain projects proposed by applicants that meet the definition of a “farmer” in the Rules are submitted to RIDEM’s Division of Agriculture and Forest Environment.

Municipal Coordination (Rule 3.8.11):

The Rules have provisions to strengthen coordination with municipalities including the following:

- Notification of designated municipal officials of when applications for permits are filed with state agencies;
- Requires applicants for major land development projects to obtain municipal master plan approval, pursuant to R.I. Gen. Laws § 45-23-40, prior to filing for a state freshwater wetlands permit. Applicants are encouraged to obtain verified wetland edges as part of project planning.

A complete copy of the RIDEM Freshwater Wetlands Rules, fully effective on July 1, 2022, can be found at the RIDEM website at <http://www.dem.ri.gov/newwetlandrules>. They may also be obtained from the RIDEM Office of Customer and Technical Assistance located at the Foundry Corporate Office Complex at 235 Promenade Street, Providence (401 222-6822).

Disclaimer: This Fact Sheet is for general information purposes and is not meant to be used as a substitute for the Freshwater Wetlands Act (R.I. Gen. Laws §§ 2-1-18 et. seq.) or the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (250-RICR-150-15-3).

Figure 1: Freshwater wetlands buffer regions map (2020)

