

Legislative Wetlands Study Committee
Comparison of Wetlands Law Exemptions in Other States
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Wetlands Law Exemptions in Other States

State	Applicable State Law	Association of State Wetlands Managers: Summary of State Exemptions
<p>California</p> <p>State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State</p> <p>[For Inclusion in the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California]</p> <p>State Water Resources Control Board</p> <p>Adopted April 2, 2019</p>	<p>D. Activities and Areas Excluded from Application Procedures for Regulation of Discharges of Dredged or Fill Material to State Waters</p> <p>The application procedures specified in Secs. IV.A and IV.B do not apply to proposed discharges of dredged or fill material to waters of the state from the following activities or to the following areas. These exclusions do not affect the Water Board's authority to issue or waive waste discharge requirements (WDRs) or take other action for the following activities or areas to the extent authorized by the Water Code.</p> <p>1. Activities excluded from application procedures in sections IV.A and IV.B:</p> <p>a. Activities that are exempt under CWA §404(f) (33 USC §1344(f)). The permitting authority shall use 33 CFR § 323.4 and 40 CFR § 232.3 to determine whether certain activities are exempt under CWA § 404(f). These regulations are hereby incorporated by reference and shall apply to all waters of the state. Consistent with CWA § 404(f)(2) and 40 CFR § 232.3, any discharge of dredged or fill material to a water of the state incidental to any of these activities is not exempt under CWA § 404(f) and shall be subject to the application procedures set forth in sections IV.A and IV.B, if (1) the purpose of the activity is bringing a water of the state into a use to which it was not previously subject, where the flow or circulation of water of the state may be impaired or the reach of such waters be reduced, or (2) the discharge contains any toxic pollutant listed in CWA § 307.</p> <p>b. Suction dredge mining activities for mineral recovery regulated under CWA section 402.</p> <p>c. Routine and emergency operation and maintenance activities conducted by public agencies, water utilities, or special districts that result in discharge of dredged or fill material to artificial, existing waters of the state:</p> <p>i. currently used and maintained primarily for one or more of the purposes listed in section II.3.d.(ii), (iii), (iv), (x), or (xi); or</p> <p>ii. for the purpose of preserving the line, grade, volumetric or flow capacity within the existing footprint of a flood control or stormwater conveyance facility.</p> <p>This exclusion does not relieve public agencies, water utilities or special districts of their obligation to submit an application for a water quality certification consistent with Cal. Code of Regs., title 23, §3856 or waste discharge requirements consistent with Water Code sec. 13260, whichever is applicable, to the permitting authority for these activities; or their responsibility to avoid and minimize adverse impacts to aquatic resources and beneficial uses from these activities. The permitting authority has full discretion to determine whether an activity described above qualifies for this exclusion based on the application submitted and other relevant information. If the permitting authority determines that an activity qualifies for this exclusion, the permitting authority retains full authority and discretion under the Porter-Cologne Water Quality Control Act to determine how to regulate the discharge of dredged or fill material. Where a permitting authority has already determined it appropriate to regulate these types of activities in specific instances, this exclusion in no way disturbs or limits the permitting authority's current regulation of these types of activities. This exclusion does not apply to the discharge of dredged or fill material to a water of the state approved by an agency as compensatory mitigation.</p> <p>d. Routine operation and maintenance activities that result in discharge of dredged or fill material to artificially-created waters currently used and maintained primarily for one or more of the purposes listed in section II.3.d. (i), (ii), (iii), (vi), (vii), (x), or (xi). This exclusion does not apply to the discharge of dredged or fill material to (a) a water of the U.S., (b) a water specifically identified in a water quality control plan, (c) a water created by modification of a state water, or (d) a water approved by an agency as compensatory mitigation.</p> <p>2. Areas excluded from application procedures in sections IV.A and IV.B:</p> <p>a. Wetland areas that qualify as prior converted cropland (PCC) within the meaning of 33 CFR §328.3(b)(2). The applicant may establish that the area is PCC by providing relevant documentary evidence that the area qualifies as PCC and has not been abandoned due to five consecutive years of non-use for agricultural purposes, or by providing a current PCC certification by the NRCS, the Corps, or the U.S. EPA to the permitting authority.</p> <p>b. Wetlands that are, or have been, in rice cultivation (including wild rice) within the last five years as of April 2, 2019 and have not been abandoned due to five consecutive years of non-use in rice production.</p> <p>c. The following features used for agricultural purposes:</p> <p>i. Ditches with ephemeral flow that are not a relocated water of the state or excavated in a water of the state;</p> <p>ii. Ditches with intermittent flow that are not a relocated water of the state or excavated in a water of the state, or that do not drain wetlands other than any wetlands described in sections (iv) or (v);</p> <p>iii. Ditches that do not flow, either directly or through another water, into another water of the state;</p> <p>iv. Artificially irrigated areas that would revert to dry land should application of waters to that area cease; or</p> <p>v. Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, and settling basins.</p> <p>The exclusions in sec. IV.D.2 do not apply to discharges of dredged or fill material that convert wetland areas to a non-agricultural use. For requests for approvals from the Division of Water Rights for activities associated with (1) an appropriation of water subject to Part 2 (commencing with §1200) of Division 2 of the Water Code, (2) a hydroelectric facility where the proposed activity requires a FERC license or amendment to a FERC license, or (3) any other diversion of water for beneficial use where approval by the Division of Water Rights is required, the Division of Water Rights will inform the applicant whether the application procedures in sections IV.A and IV.B will apply to the application.</p>	<p>Not summarized on ASWM site.</p>

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<p>Connecticut</p> <p>C.G.S. § 22a-40</p>	<p>Sec. 22a-40. Permitted operations and uses.</p> <p>(a) The following operations and uses shall be permitted in wetlands and watercourses, as of right:</p> <p>(1) Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less essential to the farming operation, and activities conducted by, or under the authority of, the Department of Energy and Environmental Protection for the purposes of wetland or watercourse restoration or enhancement or mosquito control. The provisions of this subdivision shall not be construed to include road construction or the erection of buildings not directly related to the farming operation, relocation of watercourses with continual flow, filling or reclamation of wetlands or watercourses with continual flow, clear cutting of timber except for the expansion of agricultural crop land, the mining of top soil, peat, sand, gravel or similar material from wetlands or watercourses for the purposes of sale;</p> <p>(2) A residential home (A) for which a building permit has been issued, or (B) on a subdivision lot, provided the permit has been issued or the subdivision has been approved by a municipal planning, zoning or planning and zoning commission as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a or as of July 1, 1974, whichever is earlier, and further provided no residential home shall be permitted as of right pursuant to this subdivision unless the permit was obtained on or before July 1, 1987;</p> <p>(3) Boat anchorage or mooring;</p> <p>(4) Uses incidental to the enjoyment and maintenance of residential property, such property defined as equal to or smaller than the largest minimum residential lot site permitted anywhere in the municipality, provided in any town, where there are no zoning regulations establishing minimum residential lot sites, the largest minimum lot site shall be two acres. Such incidental uses shall include maintenance of existing structures and landscaping but shall not include removal or deposition of significant amounts of material from or onto a wetland or watercourse or diversion or alteration of a watercourse;</p> <p>(5) Construction and operation, by water companies as defined in section 16-1 or by municipal water supply systems as provided for in chapter 102, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in sections 22a-401 and 22a-403;</p> <p>(6) Maintenance relating to any drainage pipe which existed before the effective date of any municipal regulations adopted pursuant to section 22a-42a or July 1, 1974, whichever is earlier, provided such pipe is on property which is zoned as residential but which does not contain hydrophytic vegetation. For purposes of this subdivision, "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine, while the pipe remains in place; and</p> <p>(7) Withdrawals of water for fire emergency purposes.</p> <p>(b) The following operations and uses shall be permitted, as nonregulated uses in wetlands and watercourses, provided they do not disturb the natural and indigenous character of the wetland or watercourse by removal or deposition of material, alteration or obstruction of water flow or pollution of the wetland or watercourse:</p> <p>(1) Conservation of soil, vegetation, water, fish, shellfish and wildlife;</p> <p>(2) Outdoor recreation including play and sporting areas, golf courses, field trials, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing where otherwise legally permitted and regulated; and</p> <p>(3) The installation of a dry hydrant by or under the authority of a municipal fire department, provided such dry hydrant is only used for firefighting purposes and there is no alternative access to a public water supply. For purposes of this section, "dry hydrant" means a non-pressurized pipe system that: (A) Is readily accessible to fire department apparatus from a proximate public road, (B) provides for the withdrawal of water by suction to such fire department apparatus, and (C) is permanently installed into an existing lake, pond or stream that is a dependable source of water.</p> <p>(c) Any dredging or any erection, placement, retention or maintenance of any structure, fill, obstruction or encroachment, or any work incidental to such activities, conducted by a state agency, which activity is regulated under sections 22a-28 to 22a-35, inclusive, or sections 22a-359b to 22a-363f, inclusive, shall not require any permit or approval under sections 22a-36 to 22a-45, inclusive.</p>	<p><u>Exempted Activities</u></p> <ul style="list-style-type: none"> The state does not look to federal exemptions. Instead, the state has certain limited exemptions are provided for agriculture, forestry, residential property maintenance, water companies, conservation, outdoor recreation uses, and mosquito control. <p><u>Special Provisions for Agriculture and Forestry</u></p> <ul style="list-style-type: none"> As stated above, certain limited exemptions are provided for agriculture, forestry, property maintenance, water companies, conservation, recreation uses, and mosquito control. <p>https://www.aswm.org/pdf_lib/state_summaries/connecticut_state_wetland_program_summary_083115.pdf</p>

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<p>Florida</p> <p>Florida Statutes §§ 373.406, 403.927</p>	<p>373.406 Exemptions.—The following exemptions shall apply:</p> <p>(1) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any natural person to capture, discharge, and use water for purposes permitted by law.</p> <p>(2) Notwithstanding s. 403.927, nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land, including, but not limited to, activities that may impede or divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the normal and customary practice of such occupation in the area. However, such alteration or activity may not be for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands. This exemption applies to lands classified as agricultural pursuant to s. 193.461 and to activities requiring an environmental resource permit pursuant to this part. This exemption does not apply to any activities previously authorized by an environmental resource permit or a management and storage of surface water permit issued pursuant to this part or a dredge and fill permit issued pursuant to chapter 403. This exemption has retroactive application to July 1, 1984.</p> <p>(3) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to be applicable to construction, operation, or maintenance of any agricultural closed system. However, part II of this chapter shall be applicable as to the taking and discharging of water for filling, replenishing, and maintaining the water level in any such agricultural closed system. This subsection shall not be construed to eliminate the necessity to meet generally accepted engineering practices for construction, operation, and maintenance of dams, dikes, or levees.</p> <p>(4) All rights and restrictions set forth in this section shall be enforced by the governing board or the Department of Environmental Protection or its successor agency, and nothing contained herein shall be construed to establish a basis for a cause of action for private litigants.</p> <p>(5) The department or the governing board may by rule establish general permits for stormwater management systems which have, either singularly or cumulatively, minimal environmental impact. The department or the governing board also may establish by rule exemptions or general permits that implement interagency agreements entered into pursuant to s. 373.046, s. 378.202, s. 378.205, or s. 378.402.</p> <p>(6) Any district or the department may exempt from regulation under this part those activities that the district or department determines will have only minimal or insignificant individual or cumulative adverse impacts on the water resources of the district. The district and the department are authorized to determine, on a case-by-case basis, whether a specific activity comes within this exemption. Requests to qualify for this exemption shall be submitted in writing to the district or department, and such activities shall not be commenced without a written determination from the district or department confirming that the activity qualifies for the exemption.</p> <p>(7) Nothing in this part, or in any rule or order adopted under this part, may be construed to require a permit for mining activities for which an operator receives a life-of-the-mine permit under s. 378.901.</p> <p>(8) Certified aquaculture activities which apply appropriate best management practices adopted pursuant to s. 597.004 are exempt from this part.</p> <p>(9) Implementation of measures having the primary purpose of environmental restoration or water quality improvement on agricultural lands are exempt from regulation under this part where these measures or practices are determined by the district or department, on a case-by-case basis, to have minimal or insignificant individual and cumulative adverse impact on the water resources of the state. The district or department shall provide written notification as to whether the proposed activity qualifies for the exemption within 30 days after receipt of a written notice requesting the exemption. No activity under this exemption shall commence until the district or department has provided written notice that the activity qualifies for the exemption.</p> <p>(10) Implementation of interim measures or best management practices adopted pursuant to s. 403.067 that are by rule designated as having minimal individual or cumulative adverse impacts to the water resources of the state are exempt from regulation under this part.</p> <p>(11) Any district or the department may adopt rules to exempt from regulation under this part any system for a mining or mining-related activity that is described in or covered by an exemption confirmation letter issued by the district pursuant to applicable rules implementing this part that were in effect at the time the letter was issued, and that will not be harmful to the water resources. Such rules may include provisions for the duration of this exemption.</p> <p>(12) An overwater pier, dock, or a similar structure located in a deep water port listed in s. 311.09 is not considered to be part of a stormwater management system for which this chapter or chapter 403 requires stormwater from impervious surfaces to be treated if:</p> <p>(a) The port has a stormwater pollution prevention plan for industrial activities pursuant to the National Pollutant Discharge Elimination System Program; and</p> <p>(b) The stormwater pollution prevention plan also provides similar pollution prevention measures for other activities that are not subject to the National Pollutant Discharge Elimination System Program and that occur on the port's overwater piers, docks, and similar structures.</p> <p>(13) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, applies to construction, alteration, operation, or maintenance of any wholly owned, manmade excavated farm ponds, as defined in s. 403.927, constructed entirely in uplands. Alteration or</p>	<p><u>Exempted Activities</u></p> <ul style="list-style-type: none"> • Certain activities have been exempted by statute and rule from the need for regulatory permits under state law or by agency rule. Anything that does not specifically qualify for an exemption or noticed general permit generally requires an ERP permit. To be exempt by rule, the activities have been previously determined by the agencies to be capable of causing no more than minimal individual and cumulative adverse impacts to wetlands and other surface waters. Examples of exempt activities include: construction, repair, and replacement of certain private docking facilities below certain size thresholds; maintenance dredging of existing navigational channels and canals; construction and alteration of boat ramps within certain size limits; construction, repair, and replacement of seawalls and rip rap in artificial waters; repair and replacement of structures; and construction of certain agricultural activities. In addition, the state has issued a number of general permits for activities that are slightly larger than those that qualify for the above exemptions and that otherwise have been determined to have the potential for no more than minimal individual direct and secondary impacts. <p><u>Special Provisions for Agriculture and Forestry</u></p> <ul style="list-style-type: none"> • Sections 373.406 and 403.927, F.S., exempt certain agricultural activities from the need for Environmental Resource. Certified aquaculture activities that apply appropriate best management practices adopted under section 597.004 are exempt from the need for permits under part IV of chapter 373, F.S. <p>https://www.aswm.org/pdf_lib/state_summaries/florida_state_wetland_program_summary_11615.pdf</p>

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	<p>maintenance may not involve any work to connect the farm pond to, or expand the farm pond into, other wetlands or other surface waters. This exemption does not apply to any farm pond that covers an area greater than 15 acres and has an average depth greater than 15 feet, or is less than 50 feet from any wetlands.</p> <p>(14) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, may require a permit for activities affecting wetlands created solely by the unauthorized flooding or interference with the natural flow of surface water caused by an unaffiliated adjoining landowner. Requests to qualify for this exemption must be made within 7 years after the cause of such unauthorized flooding or unauthorized interference with the natural flow of surface water and must be submitted in writing to the district or department. Such activities may not begin without a written determination from the district or department confirming that the activity qualifies for the exemption. This exemption does not expand the jurisdiction of the department or the water management districts and does not apply to activities that discharge dredged or fill material into waters of the United States, including wetlands, subject to federal jurisdiction under s. 404 of the federal Clean Water Act, 33 U.S.C. s. 1344.</p> <p>403.927 Use of water in farming and forestry activities.—</p> <p>(1) The Legislature recognizes the great value of farming and forestry to this state and that continued agricultural activity is compatible with wetlands protection. In order to avoid unnecessary expense and delay from duplicative programs, it is the intent of the Legislature to provide for the construction and operation of agricultural water management systems under authority granted to water management districts and to control, by the department or by delegation of authority to water management districts, the ultimate discharge from agricultural water management systems.</p> <p>(2) Agricultural activities and agricultural water management systems are authorized by this section and are not subject to the provisions of s. 403.087 or 1ss. 403.91-403.929. Except for aquaculture water management systems located within waters of the state, the department shall not enforce water quality standards within an agricultural water management system. The department may require a stormwater permit or appropriate discharge permit at the ultimate point of discharge from an agricultural water management system or a group of connected agricultural water management systems. Impacts of agricultural activities and agricultural water management systems on groundwater quality shall be regulated by water management districts.</p> <p>(3) If land served by a water management system is converted to a use other than an agricultural use, the water management system, or the portion of the system which serves that land, will be subject to the provisions of this chapter. However, mitigation under chapter 373 or this chapter to offset any adverse effects caused by agricultural activities that occurred before the conversion of the land is not required if the activities occurred on the land in the last 4 years preceding the conversion.</p> <p>(4) As used in this section, the term:</p> <p>(a) “Agricultural activities” includes all necessary farming and forestry operations which are normal and customary for the area, such as site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, cultivating, harvesting, fallowing, leveling, construction of access roads, placement of bridges and culverts, and implementation of best management practices adopted by the Department of Agriculture and Consumer Services or practice standards adopted by the United States Department of Agriculture’s Natural Resources Conservation Service, provided such operations are not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.</p> <p>(b) “Agricultural water management systems” means farming and forestry water management or irrigation systems and farm ponds which are permitted pursuant to chapter 373 or which are exempt from the permitting provisions of that chapter.</p> <p>(c) “Farm pond” means a pond located on a farm, used for farm purposes, as determined by water management district rule.</p>	

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<p>Indiana</p> <p>Indiana Code § 13-18-22-1</p>	<p>Sec. 1 . Permit for wetland activity; exceptions; goal of permitting</p> <p>(a) Except as provided in subsection (b), a person proposing a wetland activity in a state regulated wetland must obtain a permit under this chapter to authorize the wetland activity.</p> <p>(b) A permit is not required for the following wetland activities:</p> <p>(1) The discharge of dirt, sand, rock, stone, concrete, or other inert fill materials in a de minimis amount.</p> <p>(2) A wetland activity at a surface coal mine for which the department of natural resources has approved a plan to:</p> <p>(A) minimize, to the extent practical using best technology currently available, disturbances and adverse effects on fish and wildlife;</p> <p>(B) otherwise effectuate environmental values; and</p> <p>(C) enhance those values where practicable.</p> <p>(3) Any activity listed under Section 404(f) 1 of the Clean Water Act, including:</p> <p>(A) normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;</p> <p>(B) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;</p> <p>(C) construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;</p> <p>(D) construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the navigable waters; and</p> <p>(E) construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices, to assure that:</p> <p>(i) flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired;</p> <p>(ii) the reach of the navigable waters is not reduced; and</p> <p>(iii) any adverse effect on the aquatic environment will be otherwise minimized.</p> <p>(c) The goal of the permitting program for wetland activities in state regulated wetlands is to:</p> <p>(1) promote a net gain in high quality isolated wetlands; and</p> <p>(2) assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program.</p>	<p><u>Exempted Activities</u></p> <ul style="list-style-type: none"> • Indiana has lower thresholds than federal exemptions. Exempt activities include drainage of wetlands and the same exemptions as federal for normal agricultural practices. For State Regulated Wetlands, all exemptions under Section 404(f) of the Clean Water Act apply (agriculture and silvaculture), as well as discharges of fill materials in a de minimis amount. <p><u>Special Provisions for Agriculture and Forestry</u></p> <ul style="list-style-type: none"> • Provisions are comparable to federal. Indiana’s State Regulated Wetlands law exempts all activities subject to the USDA Swampbuster provisions on agricultural lands. Indiana also uses the Section 404(f) exemptions for normal agricultural activities in both the Section 401 program and the State Regulated Wetland Program. <p>https://www.aswm.org/pdf_lib/state_summaries/indiana_state_wetland_program_summary_083115.pdf</p>

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<p>Maine</p> <p>38 Maine Revised Statutes § 480-Q(6)</p>	<p>§480-Q. ACTIVITIES FOR WHICH A PERMIT IS NOT REQUIRED</p> <p>A permit is not required for the following activities if the activity takes place solely in the area specified below:</p> <p>1. Water lines and utility cables. In an area which affects a great pond, the placement of water lines to serve a single-family house or the installation of cables for utilities, such as telephone and power cables, provided that the:</p> <p>A. Excavated trench for access to the water is backfilled and riprapped to prevent erosion;</p> <p>B. Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion; and</p> <p>C. Bureau of Parks and Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction;</p> <p>2. Maintenance and repair. Maintenance and repair of a structure, other than a crossing, in, on, over or adjacent to a protected natural resource if:</p> <p>A. Erosion control measures are taken to prevent sedimentation of the water;</p> <p>B. [2011, c. 205, §1 (RP).]</p> <p>C. There is no additional intrusion into the protected natural resource; and</p> <p>D. The dimensions of the repaired structure do not exceed the dimensions of the structure as it existed 24 months prior to the repair, or if the structure has been officially included in or is considered by the Maine Historical Preservation Commission eligible for listing in the National Register of Historic Places, the dimensions of the repaired structure do not exceed the dimensions of the historic structure.</p> <p>This subsection does not apply to: the repair of more than 50% of a structure located in a coastal sand dune system; the repair of more than 50% of a dam, unless that repair has been approved by a representative of the U.S. NRCS; or the repair of more than 50% of any other structure, unless the municipality in which the proposed activity is located requires a permit for the activity through an ordinance adopted pursuant to the mandatory shoreland zoning laws and the application for a permit is approved by the municipality;</p> <p>2-A. Existing road culverts.</p> <p>2-B. Floating docks. Replacement of a floating dock with another floating dock if the dimensions of the replacement dock do not exceed those of the dock being replaced and the configuration of the replacement dock is the same as the dock being replaced. In any action brought by the department against a person claiming an exemption under this subsection, the burden is on that person to demonstrate that the replacement dock satisfies the requirements of this subsection;</p> <p>2-C. Transportation reconstruction or replacement project within a community public water system primary protection area. A transportation reconstruction or replacement project located within a community public water system primary protection area as long as a permit is not required due to the presence of any other type of protected natural resource;</p> <p>2-D. Existing crossings. A permit is not required for the repair and maintenance of an existing crossing or for the replacement of an existing crossing, including ancillary crossing installation activities such as excavation and filling, in any protected natural resource area, as long as:</p> <p>A. Erosion control measures are taken to prevent sedimentation of the water;</p> <p>B. The crossing does not block passage for fish in the protected natural resource area; and</p> <p>C. For replacement crossings of a river, stream or brook:</p> <p>(1) The replacement crossing is designed, installed and maintained to match natural stream grade to avoid drops or perching; and</p> <p>(2) As site conditions allow, crossing structures that are not open bottomed are embedded in the stream bottom a minimum of one foot or at least 25% of the culvert or other structure's diameter, whichever is greater, except that a crossing structure does not have to be embedded more than 2 feet.</p> <p>For purposes of this subsection, "repair and maintenance" includes but is not limited to the riprapping of side slopes or culvert ends; removing debris and blockages within the crossing structure and at its inlet and outlet; and installing or replacing culvert ends if less than 50% of the crossing structure is being replaced.</p> <p>3. Peat mining.</p> <p>4. Interstate pipelines. Alteration of freshwater wetlands associated with the construction, operation, maintenance or repair of an interstate pipeline, subject to article 6, where applicable;</p> <p>5. Gold panning. Notwithstanding section 480-C, a permit shall not be required for panning gold, provided that stream banks are not disturbed and no unlicensed discharge is created;</p>	<p><u>Exempted Activities</u></p> <p>Maine's exemptions are similar to the federal exemptions, but slightly less restrictive:</p> <ul style="list-style-type: none"> • Projects affecting less than 4,300 square feet (approximately 1/10 of an acre) of wetland area, as long as the affected area is not within a shoreland zone (based on Municipal Shoreland Zoning Act requirements), is not peatland, does not contain 20,000 sq.ft. of open water or emergent vegetation, maintains a setback of at least 25 feet from all other natural resources, and constitutes a single, complete project; • Forest management activities in forested wetlands only, including associated road construction or maintenance, and conducted under specific restrictions as defined in the NRPA; • Normal farming activities such as the clearing of vegetation for agricultural purposes (if there is no alteration of land topography) including: plowing, seeding, cultivating, minor drainage and harvesting; construction or maintenance of farm or livestock ponds or irrigation ditches; maintenance of drainage ditches; and construction or maintenance of farm roads; and • Activities adjacent to a freshwater wetland unless the wetland contains either peatlands or at least 20,000 square feet of marsh vegetation or open water, (excluding artificial ponds or impoundments unless they are alterations of other protected resources such as streams). <p><u>Special Provisions for Agriculture and Forestry</u></p> <ul style="list-style-type: none"> • Provisions are comparable to federal for agriculture. However, the state has additional silviculture exemptions that apply to forested and harvested forested wetlands (see above). <p>https://www.aswm.org/pdf_lib/state_summaries/maine_state_wetland_program_summary_111615.pdf</p>

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	<p>5-A. Motorized recreational gold prospecting. Notwithstanding section 480-C, a permit is not required for motorized recreational gold prospecting as long as the provisions of this subsection are met.</p> <p>A. A person may perform motorized recreational gold prospecting only from June 15th to September 15th and only with written permission of the relevant landowner.</p> <p>B. A person may not perform motorized recreational gold prospecting that causes an undue adverse effect on natural resources. The area in which the motorized recreational gold prospecting is performed must be kept free of litter, trash and any other materials that may constitute a hazardous or nuisance condition.</p> <p>C. The following provisions limit the use of equipment in motorized recreational gold prospecting.</p> <ol style="list-style-type: none"> (1) Equipment may not have any fuel, oil or hydraulic leaks or cause any unlicensed discharge. (2) Motorized equipment may not exceed 7 horsepower. (3) The inside diameter of a suction dredge intake nozzle and hose may not exceed 4 inches. (4) The area of a sluice may not exceed 10 square feet. (5) A flume may not be used to transport water outside of a stream channel. [<p>D. A person may not use mercury, nitric acid or other chemicals for extraction in motorized recreational gold prospecting.</p> <p>E. A person may not perform motorized recreational gold prospecting in a manner that:</p> <ol style="list-style-type: none"> (1) Disturbs a stream bank, including but not limited to digging into the bank or dredging or altering water flow within a stream channel in a manner that causes the bank to erode or collapse; (2) Removes or damages vegetation or woody debris such as root wads, stumps or logs within a stream channel, on the bank or on nearby upland, including cutting or abrasion of trees; (3) Diverts, dams or otherwise obstructs a stream; (4) Deposits soil, rocks or any other foreign material from outside of the channel into a stream; or (5) Deposits stream bottom sediments or rocks onto the bank or upland. <p>F. Upon completion of one or more consecutive days of motorized recreational gold prospecting, a person who performed the motorized recreational gold prospecting shall smooth out dredge spoils and refill dredge holes below the normal high-water mark of the stream in order to restore the approximate original contours of the stream bottom and not deflect the current.</p> <p>G. Motorized recreational gold prospecting is prohibited within the following areas:</p> <ol style="list-style-type: none"> (1) Waters closed to motorized recreational gold prospecting in the unorganized territories identified in rules adopted by the Department of Agriculture, Conservation and Forestry, Maine Land Use Planning Commission; (2) Waters closed to motorized recreational gold prospecting identified in rules adopted by the Department of Environmental Protection; (3) Waters defined as Class AA waters pursuant to section 465; and (4) The following areas of critical or high-value brook trout or Atlantic salmon habitat: <ol style="list-style-type: none"> (a) Bemis Stream and tributaries in Township D and Rangeley Plantation; (b) Bond Brook in the City of Augusta and the Town of Manchester; (c) Bull Branch of Sunday River and tributaries in Grafton Township and Riley Township; (d) Carrabassett River and tributaries in the Town of Carrabassett Valley, Freeman Township, the Town of Kingfield, Mount Abram Township and Salem Township; (e) Cold Stream tributaries, including Tomhegan Stream, in Chase Stream Township, Johnson Mountain Township and West Forks Plantation; (f) Enchanted Stream in Upper Enchanted Township and Lower Enchanted Township; (g) Magalloway River and tributaries, including Little Magalloway River, in Bowmantown Township, Lincoln Plantation, Lynchtown Township, Magalloway Plantation, Oxbow Township, Parkertown Township and Parmachenee Township; (h) Rapid River in the Town of Upton and Township C; (i) Sheepscot River and tributaries, including the West Branch, in the Town of Alna, the Town of China, the Town of Freedom, the Town of Liberty, the Town of Montville, the Town of Palermo, the Town of Somerville, the Town of Whitefield and the Town of 	

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	<p>Windsor;</p> <p>(j) South Bog Stream in Rangeley Plantation;</p> <p>(k) Spencer Stream and Little Spencer Stream tributaries, including Kibby Stream in Kibby Township, Skinner Township, T.3, R.5 B.K.P. W.K.R., T.4, R.5 B.K.P. W.K.R., King and Bartlett Township and T.5, R.6 B.K.P. W.K.R.; and</p> <p>(l) Togus Stream in the Town of Chelsea and the Town of Randolph.</p> <p>6. Agricultural activities. Subject to other provisions of this article that govern other protected natural resources, altering a freshwater wetland for the purpose of normal farming activities such as clearing of vegetation for agricultural purposes if the land topography is not altered, plowing, seeding, cultivating, minor drainage and harvesting, construction or maintenance of farm or livestock ponds or irrigation ditches, maintenance of drainage ditches and construction or maintenance of farm roads;</p> <p>7. Forestry.</p> <p>7-A. Forestry. Forest management activities, including associated road construction or maintenance, in or adjacent to an existing forested wetland or a harvested forested wetland or adjacent to a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B, as long as:</p> <p>A. [Repealed.]</p> <p>B. The activity meets permit-by-rule standards in rules adopted pursuant to this article for any road crossing of a river, stream or brook or for any soil disturbance adjacent to a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B and the commissioner is notified before the forest management activity commences;</p> <p>C. The protected natural resource is not mapped as a significant wildlife habitat under section 480-I; and</p> <p>D. Any road construction is used primarily for forest management activities that do not constitute a change in land use under rules adopted by the Department of Agriculture, Conservation and Forestry, Bureau of Forestry concerning forest regeneration and clear-cutting and is not used primarily to access development, unless the road is removed and the site restored to its prior natural condition. Roads must be the minimum feasible width and total length consistent with forest management activities. This exemption does not apply to roads within a subdivision as defined in Title 30-A, section 4401, subsection 4, for the organized portions of the State, or Title 12, section 682, subsection 2-A, including divisions of land exempted by Title 12, section 682-B, for portions of the State under the jurisdiction of the Maine Land Use Planning Commission;</p> <p>8. Hydropower projects. Hydropower projects are exempt from the provisions of this article to the extent provided in section 634. Alteration of a freshwater wetland associated with the operation of a hydropower project, as defined in section 632, is exempt from the provisions of this article, but is subject to chapter 5, subchapter I, article 1, subarticle 1-B, where applicable;</p> <p>9. Public works. A permit is not required for emergency repair or normal maintenance and repair of existing public works which affect any protected natural resource. An activity which is exempt under this subsection shall employ erosion control measures to prevent sedimentation of any surface water, shall not block fish passage in any water course and shall not result in any additional intrusion of the public works into the protected natural resource. This exemption does not apply to any activity on an outstanding river segment as listed in section 480-P;</p> <p>9-A. Community public water systems. Community public water systems are exempt from the provisions of this article for activities within their community public water system primary protection areas as long as the activities are conducted in a manner that protects the quality and quantity of water available for the system;</p> <p>10. Aquaculture. Aquaculture activities regulated by the Department of Marine Resources under Title 12, § 6072, 6072-A, 6072-B or 6072-C. Ancillary activities, including building or altering docks or filling of wetlands, are not exempt from the provisions of this article;</p> <p>11. Soil evaluation. Borings taken to evaluate soil conditions in or adjacent to a great pond, river, stream or brook, coastal wetland, freshwater wetland or sand dune are exempt from the provisions of this article provided that no area of wetland vegetation is destroyed or permanently removed;</p> <p>12. Existing access ways. Normal maintenance and repair or reconstruction of existing access ways in freshwater or coastal wetlands to residential dwellings as long as:</p> <p>A. The applicant shows evidence that the access way in disrepair is the existing route of access to the residential dwelling;</p> <p>B. Erosion control measures are used;</p> <p>C. Intrusion of the access way into the freshwater or coastal wetland is minimized and allows for proper drainage where necessary;</p> <p>D. The access way, if in a coastal wetland, is traditionally dry at mean high tide; and</p>	

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	<p>E. A notice of intent to maintain, repair or reconstruct the access way and the description of the work to be completed are submitted to the commissioner and to the municipal reviewing authority at least 20 days before the work is performed; and</p> <p>13. Moorings. The placement of a mooring in any area regulated by this article.</p> <p>14. Lawful harvesting of marine organisms or vegetation in coastal wetlands. A person lawfully engaged in the harvesting of marine organisms or vegetation under the provisions of Title 12, chapter 605 is not required to obtain a permit to engage in those activities in a coastal wetland or a coastal wetland containing a high or moderate value waterfowl or wading bird habitat or shorebird feeding or staging area. Within a coastal wetland or a coastal wetland containing a high or moderate value waterfowl or wading bird habitat or shorebird feeding or staging area, the removal of vegetation or displacement of soil associated with or authorized by those lawful activities is not a violation of this article; and</p> <p>15. Subsurface wastewater disposal systems.</p> <p>15-A. Subsurface wastewater disposal systems. Installation, removal or repair of a subsurface wastewater disposal system, as long as the system complies with all requirements of the subsurface wastewater disposal rules adopted by the Department of Health and Human Services under Title 22, section 42, subsection 3. This subsection takes effect on March 1, 1995.</p> <p>16. Alterations in back dunes of coastal sand dune systems.</p> <p>17. Minor alterations in freshwater wetlands. Activities that alter less than 4,300 square feet of freshwater wetlands, as long as:</p> <ul style="list-style-type: none"> A. The activity does not occur in, on or over another protected natural resource; B. A 25-foot setback from other protected natural resources is maintained and erosion control measures are used; C. The activity is not located in a shoreland zone regulated by a municipality pursuant to chapter 3, subchapter I, article 2-B or in the wetland or water body protected by the shoreland zone; D. The activity does not occur in a wetland normally consisting of or containing at least 20,000 square feet of open water, aquatic vegetation or emergent marsh vegetation, except for artificial ponds or impoundments; E. The activity does not take place in a wetland containing/consisting of peat land dominated by shrubs, sedges and sphagnum moss; F. The entire activity constitutes a single, complete project; and G. The activity does not occur in a significant wildlife habitat. <p>An activity does not qualify for exemption under this subsection if that activity is part of a larger project, including a multiphase development, that does not qualify as a whole project. Activities authorized or legally conducted prior to September 29, 1995 may not be considered in calculating the size of the alteration.</p> <p>18. Service drops for telephone or electrical service. Vegetative clearing of a freshwater wetland for the installation of telephone or electrical service, if:</p> <ul style="list-style-type: none"> A. The line extension does not cross or run beneath a coastal wetland, river, stream or brook; B. The placement of wires or installation of utility poles is located entirely upon the premises of the customer requesting service, upon a roadway right-of-way or, in the case of telephone service, on existing utility poles; and C. The total length of the extension is less than 1,000 feet. <p>19. Displacement or bulldozing of sediment within a lobster pound. Displacement or bulldozing of sediment within a lobster pound, provided the sediment is not removed from the area inundated as a result of the impoundment.</p> <p>20. Constructed ponds. Alteration of legally created constructed ponds that are not considered part of a great pond, coastal wetland, river, stream or brook, as long as the constructed pond is not expanded beyond its original size.</p> <p>21. Removal of beaver dams. Removal of a beaver dam as authorized by a game warden, as long as:</p> <ul style="list-style-type: none"> A. Efforts are made to minimize erosion of soil and fill material from disturbed areas into a protected natural resource; B. Efforts are made to minimize alteration of undisturbed portions of a wetland or water body; and C. Wheeled or tracked equipment is operated in the water only for the purpose of crossing a water body to facilitate removal of the beaver dam. Where practicable, wheeled or tracked equipment may cross a water body only on a rock, gravel or ledge bottom. <p>This exemption includes the draining of a freshwater wetland resulting from removal of a beaver dam. It does not include removal of a beaver house.</p> <p>22. Archaeological excavation. Archaeological excavation adjacent to a great pond, freshwater wetland, coastal wetland, sand dune system, river, stream or brook as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Commission level 1 or</p>	

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	<p>level 2 approved list and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.</p> <p>23. Cutting or clearing subject to mandatory shoreland zoning laws. Cutting or clearing of upland vegetation adjacent to those protected natural resources listed in section 480-C, subsection 1, paragraph A or B for a purpose other than forest management as long as:</p> <p>A. The cutting or clearing is subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter 1, article 2-B; or</p> <p>B. If the cutting or clearing is not subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter 1, article 2-B, vegetation within the adjacent area is maintained as follows:</p> <p>(1) There is no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown, except that a footpath may be established for the purpose of access to water if it does not exceed 6 feet in width as measured between tree trunks and has at least one bend in its path to divert channelized runoff;</p> <p>(2) Any selective cutting of trees within the buffer strip leaves a well-distributed stand of trees and other natural vegetation.</p> <p>(a) For the purposes of this subparagraph, a "well-distributed stand of trees" is defined as maintaining a rating score of 16 or more points in a 25-foot by 50-foot rectangular area as determined by the following rating system.</p> <p>(i) A tree with a diameter at 4 1/2 feet above ground level of 2.0 to less than 4.0 inches has a point value of one.</p> <p>(ii) A tree with a diameter at 4 1/2 feet above ground level of 4.0 inches to less than 8.0 inches has a point value of 2.</p> <p>(iii) A tree with a diameter at 4 1/2 feet above ground level of 8.0 inches to less than 12.0 inches has a point value of 4.</p> <p>(iv) A tree with a diameter at 4 1/2 feet above ground level of 12.0 or more inches has a point value of 8.</p> <p>(b) In applying this point system:</p> <p>(i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;</p> <p>(ii) Each successive plot must be adjacent to, but may not overlap, a previous plot;</p> <p>(iii) Any plot not containing the required points may have no vegetation removed except as otherwise allowed by this subsection;</p> <p>(iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this subsection; and</p> <p>(v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.</p> <p>(c) For the purposes of this subparagraph, "other natural vegetation" is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4 1/2 feet above ground level for each 25-foot by 50-foot rectangular area. If 5 saplings do not exist, the landowner or lessee may not remove any woody stems less than 2 inches in diameter until 5 saplings have been recruited into the plot;</p> <p>(3) In addition to the requirements of subparagraph (2), no more than 40% of the total volume of trees 4.5 inches or more in diameter, measured 4 1/2 feet above ground level, is selectively cut in any 10-year period;</p> <p>(5) Tree branches are not pruned except on the bottom 1/3 of the tree as long as tree vitality will not be adversely affected; and</p> <p>(6) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings in excess of 250 sq ft., these openings are replanted with native tree species unless there is existing new tree growth.</p> <p>Cleared openings legally in existence on September 1, 2002 may be maintained but may not be enlarged.</p> <p>This subsection applies to an area with vegetation composed primarily of shrubs, trees or other woody vegetation without regard to whether the area was previously cut or cleared;</p> <p>24. Existing lawns and gardens. Maintenance, but not enlargement, of lawns and gardens in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter 1, article 2-B;</p> <p>25. Existing agricultural fields and pastures. Maintenance, but not enlargement, of agricultural fields and pastures in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter 1, article 2-B;</p> <p>26. Overboard wastewater system. Installation, maintenance or removal of a licensed overboard discharge treatment system, including the outfall pipe, if:</p> <p>A. Erosion control measures are taken to prevent sedimentation of the water;</p>	

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	<p>B. Effects of construction activity on the protected natural resource are minimized; and</p> <p>C. The activity is approved by the department as provided in the department's rules concerning overboard discharges adopted pursuant to section 414-A;</p> <p>27. Fishways. Erection, maintenance, repair or alteration of a fishway in a dam or other artificial obstruction when required by the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources pursuant to Title 12, section 12760 or by the Commissioner of Marine Resources pursuant to Title 12, section 6121;</p> <p>28. Release of water from dam after petition by owner for release from dam ownership or water level maintenance. Activity associated with the release of water from a dam pursuant to an order issued by the department pursuant to section 905;</p> <p>29. Dam safety order. Activity associated with the breach or removal of a dam pursuant to an order issued by the Commissioner of Defense, Veterans and Emergency Management under Title 37-B, chapter 24;</p> <p>30. Lobster trap storage. The storage of lobster traps and related trap lines, buoys and bait bags on docks in, on, over or adjacent to a coastal wetland. For purposes of this subsection, "dock" means a dock, wharf, pier, quay or similar structure built in part on the shore and projected into a harbor and used as a landing, docking, loading or unloading area for watercraft; and</p> <p>31. Minor expansions of structures in a coastal sand dune system. Expansion of an existing residential or commercial structure in a coastal sand dune system if:</p> <ul style="list-style-type: none"> A. The footprint of the expansion is contained within an existing impervious area; B. The footprint of the expansion is no further seaward than the existing structure; C. The height of the expansion is within the height restriction of any applicable law or ordinance; and D. The expansion conforms to the standards for expansion of a structure contained in the municipal shoreland zoning ordinance adopted pursuant to article 2-B. <p>For purposes of this subsection, "structure" does not include a seawall, retaining wall, closed fence or other structure used to stabilize the shoreline or to prevent the movement of sand or water. For purposes of this subsection, expansion of an existing structure does not include a change from one type of structure to another.</p> <p>32. Placement of wood in streams. The placement of wood in stream channels to enhance cold water fisheries habitat in accordance with Title 12, section 8867-C and rules adopted to implement that section.</p>	

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<p>Massachusetts MGL ch. 131, § 40</p>	<p>Section 40: Removal, fill, dredging or altering of land bordering waters</p> <p>Section 40. No person shall remove, fill, dredge or alter any bank, riverfront area, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on the ocean or on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to tidal action, coastal storm flowage, or flooding, other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, sewer, water, telephone, telegraph and other telecommunication services, without filing written notice of his intention to so remove, fill, dredge or alter, including such plans as may be necessary to describe such proposed activity and its effect on the environment and without receiving and complying with an order of conditions and provided all appeal periods have elapsed. Said notice shall be filed by delivery in hand to the conservation commission or its authorized representative or by certified mail, return receipt requested, to said commission, or, if none, to the board of selectmen in a town or the mayor of a city in which the proposed activity is to be located. Upon such filing, the receipt of such notice shall be acknowledged in writing on the face thereof and shall include the time and date so received. A person delivering said notice by hand shall be given a receipt in writing acknowledging the time and date of such filing. Copies of such notice shall be sent at the same time by certified mail to the department of environmental protection. To defray state and local administrative costs each person filing such a notice shall pay a filing fee, determined on a sliding scale basis by the commissioner of administration after consultation with the secretary of environmental affairs. Fifty percent of any filing fee in excess of twenty-five dollars shall be made payable to the department of environmental protection, in a manner to be determined by the commissioner of environmental protection, at the same time as the copies of the notice are sent to the department of environmental protection. The remainder of said fee shall be made payable to the city or town; provided, that said remainder shall be expended solely by the local conservation commission for the performance of its duties under this chapter and shall accompany the copy of the notice sent to the city or town. No such notice shall be sent before all permits, variances, and approvals required by local by-law with respect to the proposed activity, which are obtainable at the time of such notice, have been obtained, except that such notice may be sent, at the option of the applicant, after the filing of an application or applications for said permits, variances, and approvals; provided, that such notice shall include any information submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the environment. Upon receipt of any notice hereunder the department of environmental protection, hereinafter called the department, shall designate a file number for such notice and shall send a notification of such number to the person giving notice to the conservation commission, selectmen or mayor to whom the notice was given. Said notification shall state the name of the owner of the land upon which the proposed work is to be done and the location of said land.</p> <p>Any person filing a notice of intention with a conservation commission shall at the same time give written notification thereof, by delivery in hand or certified mail, return receipt requested, to all abutters within one-hundred feet of the property line of the land where the activity is proposed, at the mailing addresses shown on the most recent applicable tax list of the assessors, including, but not limited to, owners of land directly opposite said proposed activity on any public or private street or way, and in another municipality or across a body of water. When a notice of intent proposes activities on land under water bodies and waterways or on a tract of land greater than 50 acres, written notification shall be given to all abutters within 100 feet of the proposed project site. For the purposes of this section, "project site" shall mean lands where the following activities are proposed to take place: dredging, excavating, filling, grading, the erection, reconstruction or expansion of a building or structure, the driving of pilings, the construction or improvement of roads or other ways and the installation of drainage, sewerage and water systems, and "land under water bodies and waterways" shall mean the bottom of, or land under, the surface of the ocean or an estuary, creek, river stream, pond or lake. When a notice of intent proposes activity on a linear shaped project site longer than 1,000 feet in length, notification shall be given to all abutters within 1,000 feet of the proposed project site. If the linear project site takes place wholly within an easement through another person's land, notice shall also be given to the landowner. Said notification shall be at the applicant's expense, and shall state where copies of the notice of intention may be examined and obtained and where information regarding the date, time and place of the public hearing may be obtained. Proof of such notification, with a copy of the notice mailed or delivered, shall be filed with the conservation commission.</p> <p>Within twenty-one days of the receipt by a conservation commission of a written request made by any person and sent by certified mail, said commission shall make a written determination as to whether this section is applicable to any land or work thereon. When such person is other than the owner, notice of any such determination shall also be sent to the owner.</p> <p>The term "applicant" as used in this section shall mean the person giving notice of intention to remove, fill, dredge or alter.</p> <p>The term "person" as used in this section shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof, administrative agency, public or quasipublic corporation or body, or any other legal entity or its legal representative, agents or assigns.</p> <p>The term "bogs" as used in this section shall mean areas where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss (Sphagnum) and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all, of the following plants or groups of plants: aster (Aster nemoralis), azaleas (Rhododendron canadense and R. viscosum), black spruce (Picea mariana), bog cotton (Eriophorum), cranberry (Vaccinium macrocarpon), high-bush blueberry (Vaccinium corymbosum), larch (Larix laricina), laurels (Kalmia angustifolia and K. polifolia), leatherleaf (Chamaedaphne calyculata), orchids (Arethusa, Calopogon, Pogonia), pitcher plants (Sarracenia purpurea), sedges (Cyperaceae), sundews (Droseracae), sweet gale (Myrica gale), white cedar (Chamaecyparis thyoides).</p>	<p><u>Exempted Activities</u></p> <ul style="list-style-type: none"> • The Wetlands Protection Act exempts those activities undertaken in the course of maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, sewer, water, telephone, telegraph and other telecommunication services. The corresponding Wetland Regulations (310 CMR 10.00) exempt certain minor activities (310 CMR 10.02(2) related to certain residential, utility, and transportation activities, as well as, 310 CMR 10.02(3)(b) related to the maintenance of certain stormwater management systems. <p><u>Special Provisions for Agriculture and Forestry</u></p> <ul style="list-style-type: none"> • Many farming and forestry activities are exempt from regulation under the Wetlands Protection Act. The Wetlands Protection Act exempts "work performed for the normal maintenance or improvement of land in agricultural and aquacultural use" from review. The statute explicitly limits the exemption to normal activities that occur on land currently in agricultural use and does not include activities that would bring new land into agricultural use. In 1991, a Farmland Advisory Committee was established to advise MassDEP on clarifying the limits of the agricultural exemption. A resultant publication: Farming in Wetland Resource Areas - A Guide to Agriculture and the Massachusetts Wetland Protection Act (1996) provides a more detailed discussion on this issue. http://www.mass.gov/eea/docs/dep/water/laws/a-thru-h/farman.pdf, available at https://www.aswm.org/pdf_lib/state_summaries/massachusetts_state_wetland_program_summary_083115.pdf <p>https://www.aswm.org/pdf_lib/state_summaries/massachusetts_state_wetland_program_summary_083115.pdf</p>

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	<p>The term "coastal wetlands", as used in this section, shall mean any bank, marsh, swamp, meadow, flat or other lowland subject to tidal action or coastal storm flowage.</p> <p>The term "freshwater wetlands", as used in this section, shall mean wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.</p> <p>The term "swamps", as used in this section, shall mean areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders (<i>Alnus</i>), ashes (<i>Fraxinus</i>), azaleas (<i>Rhododendron canadense</i> and <i>R. viscosum</i>), black alder (<i>Ilex verticillata</i>), black spruce (<i>Picea mariana</i>), button bush (<i>Cephalanthus occidentalis</i>), American or white elm (<i>Ulmus americana</i>), white Hellebore (<i>Veratrum viride</i>), hemlock (<i>Tsuga canadensis</i>), highbush blueberry (<i>Vaccinium corymbosum</i>), larch (<i>Larix laricina</i>), cowslip (<i>Caltha palustris</i>), poison sumac (<i>Toxicodendron vernix</i>), red maple (<i>Acer rubrum</i>), skunk cabbage (<i>Symplocarpus foetidus</i>), sphagnum mosses (<i>Sphagnum</i>), spicebush (<i>Lindera benzoin</i>), black gum tupelo (<i>Nyssa sylvatica</i>), sweet pepper bush (<i>Clethra alnifolia</i>), white cedar (<i>Chamaecyparis thyoides</i>), willow (<i>Salicaceae</i>).</p> <p>The term "wet meadows", as used in this section where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all, of the following plants or groups of plants: blue flag (<i>Iris</i>), vervain (<i>Verbena</i>), thoroughwort (<i>Eupatorium</i>), dock (<i>Rumex</i>), false loosestrife (<i>Ludwigia</i>), hydrophilic grasses (<i>Gramineae</i>), loosestrife (<i>Lythrum</i>), marsh fern (<i>Dryopteris thelypteris</i>), rushes (<i>Juncaceae</i>), sedges (<i>Cyperaceae</i>), sensitive fern (<i>Onoclea sensibilis</i>), smartweed (<i>Polygonum</i>).</p> <p>The term "marshes", as used in this section, shall mean areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums (<i>Araceae</i>), bladder worts (<i>Utricularia</i>), bur reeds (<i>Sparganiaceae</i>), button bush (<i>Cephalanthus occidentalis</i>), cattails (<i>Typha</i>), duck weeds (<i>Lemnaceae</i>), eelgrass (<i>Vallisneria</i>), frog bits (<i>Hydrocharitaceae</i>), horsetails (<i>Equisetaceae</i>), hydrophilic grasses (<i>Gramineae</i>), leatherleaf (<i>Chamaedaphne calyculata</i>), pickerel weeds (<i>Pontederiaceae</i>), pipeworts (<i>Eriocaulon</i>), pond weeds (<i>Potamogeton</i>), rushes (<i>Juncaceae</i>), sedges (<i>Cyperaceae</i>), smartweeds (<i>Polygonum</i>), sweet gale (<i>Myrica gale</i>) water milfoil (<i>Halragaceae</i>), water lilies (<i>Nymphaeaceae</i>), water starworts (<i>Callitrichaceae</i>), water willow (<i>Decodon verticillatus</i>).</p> <p>The term "Densely developed areas", as used in this section shall mean, any area of ten acres or more that is being utilized, or includes existing vacant structures or vacant lots formerly utilized as of January first, nineteen hundred and forty-four or sooner for, intensive industrial, commercial, institutional, or residential activities or combinations of such activities, including, but not limited to the following: manufacturing, fabricating, wholesaling, warehousing, or other commercial or industrial activities; retail trade and service activities; medical and educational institutions; residential dwelling structures at a density of three or more per two acres; and mixed or combined patterns of the above. Designation of a densely developed area is subject to the secretary of the executive office of environmental affair's approval of a city or town's request for such designation. Land which is zoned for intensive use but is not being utilized for such use as of January first, nineteen hundred and ninety-seven or which has been subdivided no later than May first, nineteen hundred and ninety-six shall not be considered a densely developed area for the purposes of this chapter.</p> <p>The term "Mean annual high-water line", as used in this section, shall mean with respect to a river, the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water and which distinguishes between predominantly aquatic and predominantly terrestrial land. The mean high tide line shall serve as the mean annual high water line for tidal rivers.</p> <p>The term "River", as used in this section, shall mean a natural flowing body of water that empties to any ocean, lake, or other river and which flows throughout the year.</p> <p>The term "Riverfront area", as used in this section, shall mean that area of land situated between a river's mean annual high-water line and a parallel line located two hundred feet away, measured outward horizontally from the river's mean annual high-water line. This definition shall not create a buffer zone, so-called, beyond such riverfront area. Riverfront areas within municipalities with (i) a population of ninety thousand or more persons or (ii) a population density greater than nine thousand persons per square mile, as determined by the nineteen hundred and ninety federal census; (iii) that are within densely developed areas as defined herein; (iv) land in Waltham between the Charles river on the north, and the Crescent street and Pine street on the south, and the intersection of the Charles river and a line extended from the center line of Walnut street on the west, and the railroad right-of-way now or formerly of the Boston and Maine Railroad on the east; or (v) property located in the town of Milton shown on Milton assessors Map G, Block 56, Lot 13, located on 2 Granite Avenue shall be defined as that area of land situated between a river's mean annual high-water line and a parallel line located twenty-five feet away, measured outward horizontally, from the river's mean annual high-water line. The riverfront area shall not include land now or formerly associated with historic mill complexes including, but not limited to, the mill complexes in the Cities of Holyoke, Taunton, Fitchburg, Haverhill, Methuen and Medford in existence prior to nineteen hundred and forty-six and situated landward of the waterside facade of a retaining wall, building, sluiceway, or other structure existing on the effective date of this act. The riverfront area shall not apply to any mosquito control work done under the provisions of clause (36) of section five of chapter forty, of chapter two hundred and fifty-two or of any special act or to forest harvesting conducted in accordance with a cutting plan approved by the department of environmental management, under the provisions of sections forty to forty-six, inclusive, of chapter one hundred and thirty-two; and shall not include any area beyond one</p>	

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	<p>hundred feet of river's mean annual high water mark: in which maintenance of drainage and flooding systems of cranberry bogs occurs; in which agricultural land use or aquacultural use occur; to construction, expansion, repair, maintenance or other work on piers, docks, wharves, boat houses, coastal engineering structures, landings, and all other structures and activities subject to licensing or permitting under chapter ninety-one and its regulations; provided that such structures and activities shall remain subject to statutory and regulatory requirements under chapter ninety-one and section forty of chapter one hundred and thirty-one or is the site of any project authorized by special act prior to January first, nineteen hundred and seventy-three.</p> <p>The term "Riverfront area boundary line", as used in this section, shall mean the line located at the outside edge of the riverfront area.</p> <p>The conservation commission, selectmen or mayor receiving notice under this section shall hold a public hearing on the proposed activity within twenty-one days of the receipt of said notice. Notice of the time and place of said hearing shall be given by the hearing authority at the expense of the applicant, not less than five days prior to such hearing, by publication in a newspaper of general circulation in the city or town where the activity is proposed and by mailing a notice to the applicant and to the board of health and the planning board of said city or town. The conservation commission and its agents, officers and employees and the commissioner of environmental protection and his agents and employees, may enter upon privately owned land for the purpose of performing their duties under this section. No conditions shall be imposed, nor shall any determination be rendered by a conservation commission, in reference to this section, unless the conservation commission meets with a quorum present.</p> <p>If after said hearing the conservation commission, selectmen or mayor, as the case may be, determine that the area on which the proposed work is to be done is significant to public or private water supply, to the groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, to the protection of wildlife habitat or to the protection of fisheries or to the protection of the riverfront area consistent with the following purposes: to protect the private or public water supply; to protect the ground water; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries, such conservation commission, board of selectmen or mayor shall by written order within twenty-one days of such hearing impose such conditions as will contribute to the protection of the interests described herein, and all work shall be done in accordance therewith. If the conservation commission, selectmen or mayor, as the case may be, make a determination that the proposed activity does not require the imposition of such conditions, the applicant shall be notified of such determination within twenty-one days after said hearing. Such order or notification shall be signed by the mayor or a majority of the conservation commission or board of selectmen, as the case may be, and a copy thereof shall be sent forthwith to the applicant and to the department.</p> <p>If a conservation commission has failed to hold a hearing within the twenty-one day period as required, or if a commission, after holding such a hearing has failed within twenty-one days therefrom to issue an order, or if a commission, upon a written request by any person to determine whether this section is applicable to any work, fails within twenty-one days to make said determination, or where an order does issue from said commission, the applicant, any person aggrieved by said commission's order or failure to act, or any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which said land is located, may, by certified mail and within ten days from said commission's order or failure to act, request the department of environmental protection to determine whether the area on which the proposed work is to be done is significant to public or private water supply, to the groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, to the protection of wildlife habitat or to the protection of fisheries or to the protection of the riverfront area consistent with the following purposes: to protect the private or public water supply; to protect the ground water; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries. The commissioner of environmental protection or his designee also may request such a determination within said ten days. The party making any such request shall at the same time send a copy thereof by certified mail to the conservation commission, board of selectmen or mayor which conducted the hearing hereunder. If such party is other than the applicant, a copy of such request shall also be sent at the same time by certified mail to the applicant. Upon receipt of such request the department shall make the determination requested and shall by written order issued within seventy days of receipt of such request and signed by the commissioner or his designee, impose such conditions as will contribute to the protection of the interests described herein; provided, however, that said department shall notify the applicant within thirty days of the receipt of such request if his application or request is not in proper form or is lacking information or documentation necessary to make the determination. Such order shall supersede the prior order of the conservation commission, board of selectmen or mayor, and all work shall be done in accordance therewith, but in no event shall any work commence until ten days have elapsed following the issuance of said order. In the case of riverfront areas, no order issued by a conservation commission, board of selectmen, mayor, or the department shall permit any work unless the applicant, in addition to meeting the otherwise applicable requirements of this section, has proved by a preponderance of the evidence that (1) such work, including proposed mitigation measures, will have no significant adverse impact on the riverfront area for the following purposes: to protect the private or public water supply; to protect the ground water; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries, and (2) there is no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on such purposes. An alternative is practicable and substantially economically equivalent if it is available and capable of being done after taking into consideration: costs, and whether such costs are reasonable or prohibitive to the owner; existing technology; the proposed use; and logistics in light of overall project purposes. For activities associated with access for one dwelling unit, the area under consideration for practicable alternatives will be limited to the lot; provided, that said lot shall be on file with the registry of deeds as of the August first, nineteen hundred and ninety-six. For other activities including, but not limited to, the creation of a real estate subdivision, the area under consideration shall be the subdivided lots, any parcel out of which the lots were created, and any other parcels that are adjacent to such parcel or adjacent through other parcels formerly or presently</p>	

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	<p>owned by the same owner at any time on or after August first, nineteen hundred and ninety-six or any land which can reasonably be obtained; provided, that an ownership interest can reasonably be obtained after taking into consideration: cost, and whether such cost is reasonable or prohibitive to the owner; existing technology; the proposed use; and logistics in light of overall project purposes. At any time prior to a final order of determination by the department, any party requesting a determination may in writing withdraw the request, and such withdrawal shall be effective upon receipt by the department. Notwithstanding the withdrawal, the commissioner or his designee may continue the determination if he notifies all parties within ten days of receipt of the withdrawal. A copy of such order shall be sent to the applicant, to the conservation commission, board of selectmen or mayor which conducted the hearing hereunder. As used in this section the words "wildlife habitat" shall mean those areas subject to this section which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide important food, shelter, migratory or overwintering areas, or breeding areas for wildlife.</p> <p>No work proposed in any notice of intention shall be undertaken until the final order, determination or notification with respect to such work has been recorded in the registry of deeds, or if the land affected thereby be registered land, in the registry section of the land court for the district wherein the land lies. If the final order, determination or notification requires the recording of a plan which (1) shows the location of the work, (2) is prepared by a registered professional engineer or land surveyor and (3) is in recordable form, no work proposed in the notice of intention shall be undertaken until such plan has been recorded in the registry of deeds or, if the land affected thereby is registered land, in the registry section of the land court for the district wherein such land lies.</p> <p>Within twenty-one days of the receipt of a written request, by the applicant or the owner of the property, for a certificate of compliance, the issuer of the final order shall grant such request if the activity, or portions thereof, complies with such final order. The certificate of compliance shall state that the activity, or portions thereof, has been completed in accordance with such order.</p> <p>Any site where work is being done which is subject to this section shall display a sign of not less than two square feet or more than three square feet bearing the words, "Massachusetts Department of Environmental Protection File Number...." and the sign shall display the file number assigned to the project.</p> <p>If the department of environmental protection finds that any proposed work would violate the provisions of chapter ninety-one, it shall proceed immediately to enforce the provisions of said chapter.</p> <p>The provisions of this section shall not apply to any mosquito control work done under the provisions of clause (36) of section five of chapter forty, of chapter two hundred and fifty-two or of any special act; to maintenance of drainage and flooding systems of cranberry bogs, to work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use; or to any project authorized by special act prior to January first, nineteen hundred and seventy-three.</p> <p>Within one hundred and twenty days of the effective date of this act, the department, upon the advice and consent of the Commissioner of the Department of Food and Agriculture, shall promulgate rules and regulations pursuant to this section which shall establish definitions for the term "normal maintenance or improvement of land in agricultural, or in aquacultural use", for each agricultural commodity, or where appropriate because of similarities in cultural practices, groups or commodities in the Commonwealth. The department shall create a farmland advisory board to be appointed by the commissioner consisting of five persons one a member of the cooperative extension service, one a member of the USDA soil conservation service, one a member of a municipal conservation commission who has demonstrated expertise in agricultural issues, and two commercial farmers with expertise in different agricultural commodities to assist the department in the drafting of rules and regulations pursuant to this paragraph.</p> <p>The notice of intention required in the first paragraph of this section shall not apply to emergency projects necessary for the protection of the health or safety of the commonwealth which are to be performed or which are ordered to be performed by an agency of the commonwealth or a political subdivision thereof. An emergency project shall mean any project certified to be an emergency by the conservation commission of the city or town in which the project would be undertaken, or if none, by the mayor of said city or the selectmen of said town. If the conservation commission, mayor, or selectmen, as the case may be, fail to act favorably within twenty-four hours of receipt of a request for certification of an emergency project, said project may be so certified by the commissioner or his designee. In no case shall any removal, filling, dredging, or alteration authorized by such certification extend beyond the time necessary to abate the emergency. The permitting and emergency provisions in this paragraph shall not apply to severe weather emergencies as declared by the commissioner of environmental protection following a destructive weather event requiring widespread recovery efforts, debris cleanup or roadway or utility repair. A severe weather emergency declaration shall allow for emergency related work to occur as necessary for the protection of the health or safety of the residents of the commonwealth. A severe weather emergency declaration by the commissioner shall describe the types of work allowed without filing a notice of intent, any general mitigating measures to condition the work that may be required in performing such work, any notification or reporting requirements, the geographic area of the declaration's effect and the period of time the declaration shall be in effect which, in no event, shall be longer than 3 months unless extended by the commissioner. A severe weather emergency declared by the commissioner shall be sent electronically to all conservation commissions in the geographic area of the severe weather emergency and shall be made widely available to the general public through appropriate channels for emergency communications. A declaration of a severe weather emergency by the commissioner shall not impact the department's ability to enforce any general or special law or rule or regulation that is not altered by the commissioner's declaration.</p> <p>Notwithstanding the provisions of section fourteen of chapter twenty-one A or any other provision of law to the contrary, the notice of intention</p>	

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	<p>required in the first paragraph of this section shall not apply to a maintenance dredging project for which a license has been previously issued within ten years by the division of waterways of the department of environmental protection. A person intending to fill or dredge under such previously issued license shall file a written notice by certified mail to the conservation commission or if none, to the board of selectmen in a town or mayor of a city in which the land upon which such dredging project is located. Such notice shall contain the name and address of the applicant.</p> <p>If the conservation commission, the board of selectmen or mayor fails to notify the applicant at the applicant's address within twenty days of the receipt of such notice of the specific objections to the commencement of such dredging fill or maintenance dredging contemplated under said license, the applicant may commence such work without any further notice to other agencies of the commonwealth. Notwithstanding failure to notify an applicant, as hereinbefore provided, the conservation commission, the board of selectmen or mayor may at any time designate an area at which spoilage from the dredging may be placed and may require the relocation of shellfish before such maintenance dredging takes place.</p> <p>If the conservation commission, the board of selectmen or mayor cites specific objections to the notice of intention, such conservation commission, board of selectmen or mayor may order a hearing as provided in this section and all other pertinent provisions of this section shall apply.</p> <p>Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this section or in violation of any order issued under this section shall forthwith comply with any such order or restore such real estate to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of the death by which such real estate was acquired by such person. Any court having equity jurisdiction may restrain a violation of this section and enter such orders as it deems necessary to remedy such violation, upon the petition of the attorney general, the commissioner, a city or town, an owner or occupant of property which may be affected by said removal, filling, dredging or altering, or ten residents of the commonwealth under the provisions of section seven A of chapter two hundred and fourteen.</p> <p>Rules and regulations shall be promulgated by the commissioner to effectuate the purposes of this section. However, failure by the commissioner to promulgate rules and regulations shall not act to suspend or invalidate the effect of this section. In addition to the other duties provided for in this section, a conservation commission and its agents, officers, and employees; the commissioner, his agents and employees; environmental officers, and any officer with police powers may issue enforcement orders directing compliance with this section and may undertake any other enforcement action authorized by law. Any person who violates the provisions of this section may be ordered to restore property to its original condition and take other actions deemed necessary to remedy such violations.</p> <p>No person shall remove, fill, dredge or alter any area subject to protection under this section without the required authorization, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an enforcement order issued pursuant to this section. Each day such violation continues shall constitute a separate offense except that any person who fails to remove unauthorized fill or otherwise fails to restore illegally altered land to its original condition after giving written notification of said violation to the conservation commission and the department shall not be subject to additional penalties unless said person thereafter fails to comply with an enforcement order or order of conditions.</p> <p>Whoever violates any provision of this section, (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both such fine and imprisonment; or (b), shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation.</p>	

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<p>Minnesota</p> <p>Minnesota Revised Statutes §103.2241</p>	<p>103G.2241 EXEMPTIONS.</p> <p>Subdivision 1. Agricultural activities.</p> <p>A replacement plan for wetlands is not required for:</p> <p>(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grass or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;</p> <p>(2) activities in a type 1 wetland on agricultural pasture land that remains in the same use, except for bottomland hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural pasture land that remains in the same use;</p> <p>(3) activities in a wetland conducted as part of normal farming practices. For purposes of this clause, "normal farming practices" means farming, silvicultural, grazing, and ranching activities such as plowing, seeding, cultivating, and harvesting for the production of feed, food, and fiber products, but does not include activities that result in the draining of wetlands;</p> <p>(4) soil and water conservation practices approved by the soil and water conservation district, after review by the Technical Evaluation Panel;</p> <p>(5) aquaculture activities including pond excavation and construction and maintenance of associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or expansion of buildings;</p> <p>(6) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344; or</p> <p>(7) agricultural activities on agricultural land that is subject to the swampbuster provisions of the federal farm program restrictions consistent with a memorandum of understanding and related agreements between the board and the United States Department of Agriculture, Natural Resources Conservation Service.</p> <p>Subd. 2. Drainage.</p> <p>(a) For the purposes of this subdivision, "public drainage system" means a drainage system as defined in section 103E.005, subdivision 12, and any ditch or tile lawfully connected to the drainage system.</p> <p>(b) A replacement plan is not required for draining of type 1 wetlands, or up to five acres of type 2 or 6 wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:</p> <p>(1) during the 20-year period that ended January 1, 1992:</p> <p>(i) there was an expenditure made from the drainage system account for the public drainage system;</p> <p>(ii) the public drainage system was repaired or maintained as approved by the drainage authority; or</p> <p>(iii) no repair or maintenance of the public drainage system was required under section 103E.705, subdivision 1, as determined by the public drainage authority; and</p> <p>(2) the wetlands are not drained for conversion to:</p> <p>(i) platted lots;</p> <p>(ii) planned unit, commercial, or industrial developments; or</p> <p>(iii) any development with more than one residential unit per 40 acres, except for parcels subject to local zoning standards that allow for family members to establish an additional residence on the same 40 acres.</p> <p>If wetlands drained under this paragraph are converted to uses prohibited under clause (2) during the ten-year period following drainage, the wetlands must be replaced under section 103G.222.</p> <p>(c) A replacement plan is not required for draining or filling of wetlands, except for draining types 3, 4, and 5 wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing public drainage systems.</p> <p>(d) A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems other than public drainage systems.</p> <p>(e) A replacement plan is not required for draining agricultural land that: (1) was planted with annually seeded crops before July 5, except for crops that are normally planted after that date, in eight out of the ten most recent years prior to the impact; (2) was in a crop rotation seeding of pasture grass, cover crop, or legumes, or was fallow for a crop production purpose, in eight out of the ten most recent years prior to the impact; or (3)</p>	<p><u>Exempted Activities</u></p> <ul style="list-style-type: none"> • Minnesota’s exemptions are more extensive than the federal exemptions. While they are similar to the federal, they include additional exclusions for treatment waters in water quality statutes. The WCA contains several exemptions for certain activities like silviculture, utilities, agricultural practices and drainage maintenance. Various categories of small (deminimis) impacts are also exempt. The Public Waters Permit Program provides exemptions for 14 activities, including riprap, debris removal, and seasonal docks. Special Provisions for Agriculture and Forestry <p><u>Special Provisions for Agriculture and Forestry</u></p> <ul style="list-style-type: none"> • Each program contains exemptions or other provisions to allow for certain agricultural and silvicultural activities within wetlands of the state similar to those found in the federal CWA. Under each program, wetlands may be used for the purposes of pasture or cropland during periods of drought provided it does not result in draining, filling or excavating wetlands. Additionally, WCA provides exemptions for those wetlands enrolled in and receiving federal farm program benefits, as these wetlands are regulated by the U.S. Department of Agriculture through the Swampbuster provisions of the federal farm bill. WCA also provides an exemption for the construction of forest roads necessary to conduct silvicultural activities. However, activities conducted under this and all exemptions must limit the impact on the hydrologic and biologic characteristics of the wetland. <p>https://www.aswm.org/pdf_lib/state_summaries/minnesota_state_wetland_program_summary_111815.pdf</p>

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	<p>was enrolled in a state or federal land conservation program and met the requirements of clause (1) or (2) before enrollment.</p> <p>(f) The public drainage authority may, as part of the repair, install control structures, realign the ditch, construct dikes along the ditch, or make other modifications as necessary to prevent drainage of the wetland.</p> <p>(g) Wetlands of all types that would be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve under section 103F.516. The board shall give priority to acquisition of easements on types 3, 4, and 5 wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.</p> <p>Subd. 3.Federal approvals.</p> <p>A replacement plan for wetlands is not required for activities authorized under the federal Clean Water Act, § 404, or the Rivers and Harbors Act, section 10, regulations that meet minimum state standards under this chapter and sections 103A.202 and 103B.3355 and that have been approved by the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency.</p> <p>Subd. 4.Wetland restoration.</p> <p>A replacement plan for wetlands is not required for:</p> <p>(1) activities in a wetland restored or created for conservation purposes under a contract or easement providing the landowner with the right to drain the restored or created wetland; or</p> <p>(2) activities in a wetland restored or created by a landowner without any assistance or financing from public agencies or private entities other than the landowner and the wetland has not been used for wetland replacement or deposited in the state wetland bank.</p> <p>Subd. 5.Incidental wetlands.</p> <p>A replacement plan for wetlands is not required for activities in a wetland created solely as a result of:</p> <p>(1) beaver dam construction;</p> <p>(2) blockage of culverts through roadways maintained by a public or private entity;</p> <p>(3) actions by public or private entities that were taken for a purpose other than creating the wetland; or</p> <p>(4) any combination of clauses (1) to (3).</p> <p>Subd. 6.Utilities; public works.</p> <p>(a) A replacement plan for wetlands is not required for:</p> <p>(1) new placement or maintenance, repair, enhancement, or replacement of existing utility or utility-type service, including pipelines, if:</p> <p>(i) the direct and indirect impacts of the proposed project have been avoided and minimized to the extent possible; and</p> <p>(ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;</p> <p>(2) activities associated with operation, routine maintenance, or emergency repair of existing utilities and public work structures, including pipelines, provided the activities do not result in additional wetland intrusion or additional draining or filling of a wetland either wholly or partially; or</p> <p>(3) repair and updating of existing subsurface sewage treatment systems necessary to comply with local, state, and federal regulations.</p> <p>(b) For maintenance, repair, and replacement, the local government unit may issue a seasonal or annual exemption certification or the utility may proceed without local government unit certification if the utility is carrying out the work according to approved best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the local government unit after the emergency work has been completed.</p> <p>Subd. 7.Forestry.</p> <p>A replacement plan for wetlands is not required for:</p> <p>(1) temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters; or</p> <p>(2) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch, or tile line; filling is avoided wherever possible; and</p>	

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	<p>there is no drainage of the wetland or public waters.</p> <p>Subd. 8. [Repealed, 2007 c 57 art 1 s 170]</p> <p>Subd. 9.De minimis.</p> <p>(a) Except as provided in paragraphs (d), (e), (f), (g), (h), and (i), a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project outside of the shoreland wetland protection zone:</p> <ul style="list-style-type: none"> (1) 10,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, in a greater than 80 percent area; (2) 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, in a 50 to 80 percent area, except within the 11-county metropolitan area; (3) 2,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, in a less than 50 percent area, except within the 11-county metropolitan area; or (4) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland. <p>(b) Except as provided in paragraphs (e), (f), (g), (h), and (i), a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project within the shoreland wetland protection zone beyond the shoreland building setback zone:</p> <ul style="list-style-type: none"> (1) 400 square feet of type 1, 2, 6, or 7 wetland; or (2) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland. <p>In a greater than 80 percent area, the de minimis amount allowed under clause (1) may be increased up to 1,000 square feet if the wetland is isolated and is determined to have no direct surficial connection to the public water or if permanent water runoff retention or infiltration measures are established in proximity as approved by the shoreland management authority.</p> <p>(c) Except as provided in paragraphs (e), (f), (g), (h), and (i), a replacement plan for wetlands is not required for draining or filling up to 20 square feet of wetland as part of a project within the shoreland building setback zone, as defined in the local shoreland management ordinance. The amount in this paragraph may be increased to 100 square feet if permanent water runoff retention or infiltration measures are established in proximity as approved by the shoreland management authority.</p> <p>(d) Except as provided in paragraphs (b), (c), (e), (f), (g), (h), and (i), a replacement plan is not required for draining or filling amounts of wetlands as part of a project:</p> <ul style="list-style-type: none"> (1) 2,500 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area within the 11-county metropolitan area; or (2) 1,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area within the 11-county metropolitan area. <p>For purposes of this subdivision, the 11-county metropolitan area consists of the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright.</p> <p>(e) The amounts listed in paragraphs (a), (b), and (c) may not be combined on a project.</p> <p>(f) This exemption no longer applies to a landowner's portion of a wetland when the cumulative area drained or filled of the landowner's portion since January 1, 1992, is the greatest of:</p> <ul style="list-style-type: none"> (1) the applicable area listed in paragraph (a), (b), or (c), if the landowner owns the entire wetland; (2) five percent of the landowner's portion of the wetland; or (3) 400 square feet. <p>(g) This exemption may not be combined with another exemption in this section on a project.</p> <p>(h) Property may not be divided to increase the amounts listed in paragraph (a).</p> <p>(i) If a local ordinance or similar local control is more restrictive than this subdivision, the local standard applies.</p> <p>Subd. 10.Wildlife habitat.</p> <p>A replacement plan for wetlands is not required for:</p>	

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	<p>(1) deposition of spoil resulting from excavation within a wetland for a wildlife habitat improvement project, if:</p> <ul style="list-style-type: none"> (i) the area of deposition does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded to prevent erosion; (ii) the project does not have an adverse impact on any species designated as endangered or threatened under state or federal law; and (iii) the project will provide wildlife habitat improvement as certified by the soil and water conservation district; or <p>(2) duck blinds.</p> <p>Subd. 11.Exemption conditions.</p> <p>(a) A person conducting an activity in a wetland under an exemption in subdivisions 1 to 10 shall ensure that:</p> <ul style="list-style-type: none"> (1) appropriate erosion control measures are taken to prevent sedimentation of the water; (2) the activity does not block fish passage in a watercourse; and (3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H. <p>(b) An activity is exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.</p> <p>(c) Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government unit's designee for advice on minimizing wetland impacts.</p> <p>(d) The board shall develop rules that address the application and implementation of exemptions and that provide for estimates and reporting of exempt wetland impacts, including those in section 103G.2241, subdivisions 2, 6, and 9.</p>	

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<p>New Hampshire RSA §482-A(IV)-(V)</p>	<p>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.</p> <p>(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.</p> <p>(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.</p> <p>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:</p> <p>(a) The only docking structure on the frontage;</p> <p>(b) Constructed to be removed during the non-boating season;</p> <p>(c) Removed from the lake bed for a minimum of 5 months of each year;</p> <p>(d) Configured to be narrow, rectangular, and erected perpendicular to the shoreline;</p> <p>(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;</p> <p>(f) Located on a parcel of land that has 75 feet or more of shoreline frontage;</p> <p>(g) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water;</p> <p>(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;</p> <p>(i) Installed in a manner which complies with RSA 483-B; and</p> <p>(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.</p> <p>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.</p>	<p><u>Exempted Activities</u></p> <ul style="list-style-type: none"> • The following activities have been exempted: a) Repair or replacement of an existing structure with no change in location or configuration is exempted if it does not involve excavation, removal, filling or dredging, or work in the water; b) maintenance of nontidal ditches, culverts, catch basins, and manmade detention ponds that have been legally constructed, and that have been maintained with sufficient frequency that they are not dominated by hydrophytic vegetation; and c) maintenance dredge of legally constructed fire ponds and dry hydrants. <p><u>Special Provisions for Agriculture and Forestry</u></p> <ul style="list-style-type: none"> • There are no special exemptions for agriculture or forest management, but special rules and best management practices have been developed to address the unique needs of each. A streamlined notification process is in place for timber harvesting that meets certain criteria. <p>https://www.aswm.org/pdf_lib/state_summaries/new_hampshire_state_wetland_program_summary_090315.pdf</p>

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<p>New York NY Environmental Conservation Law, Art. 24, § 24-0701 Permits.</p>	<p>1. After issuance of the official freshwater wetlands map of the state, or of any selected section or region thereof, any person desiring to conduct on freshwater wetlands as so designated thereon any of the regulated activities set forth in subdivision two of this section must obtain a permit as provided in this title.</p> <p>2. Activities subject to regulation shall include any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; and any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, roads, the driving of pilings, or placing of any other obstructions whether or not changing the ebb and flow of the water; any form of pollution, including but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland; and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom which are set forth in section 24-0105 of this article. These activities are subject to regulation whether or not they occur upon the wetland itself, if they impinge upon or otherwise substantially affect the wetlands and are located not more than one hundred feet from the boundary of such wetland. Provided, that a greater distance from any such wetland may be regulated pursuant to this article by the appropriate local government or by the department, whichever has jurisdiction over such wetland, where necessary to protect and preserve the wetland.</p> <p>3. The depositing or removal of the natural products of the freshwater wetlands by recreational or commercial fishing, shell-fishing, aquaculture, hunting or trapping shall be excluded from regulated activities, where otherwise legally permitted and regulated.</p> <p>4. The activities of farmers and other landowners in grazing and watering livestock, making reasonable use of water resources, harvesting natural products of the wetlands, selectively cutting timber, draining land or wetlands for growing agricultural products and otherwise engaging in the use of wetlands or other land for growing agricultural products shall be excluded from regulated activities and shall not require a permit under subdivision one hereof, except that structures not required for enhancement or maintenance of the agricultural productivity of the land and any filling activities shall not be excluded hereunder, and provided that the use of land designated as a freshwater wetland upon the freshwater wetlands map at the effective date thereof for uses other than those referred to in this subdivision shall be subject to the provisions of this article.</p> <p>5. Public health activities, orders, and regulations of the department of health shall be excluded from regulated activities. Copies of all such public health orders and regulations affecting wetlands shall be filed with the department of environmental conservation. The commissioner may request modification of such orders or regulations if he deems such necessary to implement the policy of this article.</p> <p>6. The commissioner shall review all current mosquito control projects to determine whether they are having any adverse impact on freshwater wetlands. Where any adverse impact is found, the commissioner may require modification of such projects if he deems such necessary for the implementation of the policies of this article.</p> <p>7. Where dredging or filling is in navigable waters of the state or is for the reconstruction or repair of certain dams and docks, and where such activity also affects freshwater wetlands, any person undertaking such activity must seek permission under this article as well as under any other applicable law.</p> <p>8. On any land that is being developed pursuant to a planned unit development ordinance or local law where freshwater wetlands are to remain as open space, development activities shall be permitted in areas contiguous to such wetlands if the local government affirms that such activities will not despoil said wetland.</p>	<p><u>Exempted Activities</u></p> <ul style="list-style-type: none"> • Tidal Wetlands Act: Exemptions include fishing, shellfishing, aquaculture, hunting, trapping, mosquito control (partial), maintenance of functional structures. • Freshwater Wetlands Act: Regulated activities and exemptions are similar to those for tidal wetlands. However, the Act exempts most normal agriculture activities (including draining, applying fertilizers and pesticides, pasturing livestock, and erecting necessary structures such as fences), but does not exempt agricultural filling (including side-cast ditched material) and clear-cutting. The law clearly requires that subsequent non-exempt use of the land be regulated as wetland. There is also an exemption for selective harvesting of trees, but not for clear-cutting. Farmers and other landowners may also make reasonable use of water resources. <p><u>Special Provisions for Agriculture and Forestry</u></p> <ul style="list-style-type: none"> • Activities of farmers and other landowners in grazing and watering livestock, making reasonable use of water resources, harvesting natural products of the wetlands, selectively cutting timber, and draining for growing agricultural products are exempt from regulation. See web citation above. <p>https://www.aswm.org/pdf_lib/state_summaries/new_york_state_wetland_program_summary_083115.pdf</p>

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<p>New Jersey N.J.S.A. § 13:9B-4</p>	<p>13:9B-4 Exemptions from permit, transition area requirements.</p> <p>4. The following are exempt from the requirement of a freshwater wetlands permit and transition area requirements unless the United States Environmental Protection Agency's regulations providing for the delegation to the state of the federal wetlands program conducted pursuant to the Federal Act require a permit for any of these activities, in which case the department shall require a permit for those activities so identified by that agency:</p> <p>a. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food and fiber, or upland soil and water conservation practices; construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches; the installation of temporary farm structures with only a dirt or fabric floor, including hoophouses and polyhouses, and any grading or land contouring associated therewith on lands that were actively cultivated on or before July 1, 1988, have been in active agricultural use since then, were in active agricultural use at the time that the temporary farm structures were or are to be erected, and are identified as "ModAg" farmed wetlands on the Wetland Maps promulgated by the Department of Environmental Protection in 1988; maintenance of cranberry bogs and blueberry fields including, but not limited to, periodic flooding, sanding, control or suppression of weeds or brush in or around the bog or field, and pest control or suppression; maintenance, repair, or cleaning of dams, ditches, underdrains, floodgates, irrigation systems, or other drainage or water control facilities for cranberry bogs or blueberry fields; activities for the renewal or rehabilitation of a cranberry bog, including, but not limited to, removal of undesirable soil or vegetation, grading and leveling, installation, reconfiguration, repair or replacement of water control or supply systems or facilities, removal, relocation, or construction of internal dams, and planting of new vines in an appropriate soil layer; construction or maintenance of farm roads or forest roads constructed and maintained in accordance with best management practices to assure that flow and circulation patterns and chemical and biological characteristics of freshwater wetlands are not impaired and that any adverse effect on the aquatic environment will be minimized;</p> <p>b. Normal harvesting of forest products in accordance with a forest management plan approved by the State Forester;</p> <p>c. Areas regulated as a coastal wetland pursuant to P.L.1970, c.272 (C.13:9A-1 et seq.);</p> <p>d. Projects for which (1) preliminary site plan or subdivision applications have received preliminary approvals from the local authorities pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) prior to the effective date of this act, (2) preliminary site plan or subdivision applications have been submitted prior to June 8, 1987, or (3) permit applications have been approved by the U.S. Army Corps of Engineers prior to the effective date of this act, which projects would otherwise be subject to State regulation on or after the effective date of this act, shall be governed only by the Federal Act, and shall not be subject to any additional or inconsistent substantive requirements of this act; provided, however, that upon the expiration of a permit issued pursuant to the Federal Act any application for a renewal thereof shall be made to the appropriate regulatory agency. The department shall not require the establishment of a transition area as a condition of any renewal of a permit issued pursuant to the Federal Act prior to the effective date of this act. Projects not subject to the jurisdiction of the United States Army Corps of Engineers and for which preliminary site or subdivision applications have been approved prior to the effective date of this act shall not require transition areas;</p> <p>e. The exemptions in subsections a. and b. of this section shall not apply to any discharge of dredged or fill material into a freshwater wetland incidental to any activity which involves bringing an area of freshwater wetlands into a use to which it was not previously subject, where the flow or circulation patterns of the waters may be impaired, or the reach of the waters is reduced. f. For the purposes of the exemptions in subsection a. of this section, a cranberry bog, blueberry field, or portion thereof, on which any of the activities specifically pertaining to cranberry bogs or blueberry fields listed in that subsection has occurred within the prior five years shall be considered an established, ongoing farming operation, and shall not be deemed abandoned. The lack of a commercial harvest or production of a crop on or from the bog or field shall not be a determining factor as to whether the agricultural use has been abandoned.</p>	<p><u>Exempted Activities</u></p> <ul style="list-style-type: none"> • Same as Exemptions Provided under the Federal 404 Program Different from the Exemptions Provided under the Federal 404 Program. Yes, the Freshwater Wetlands Protection Act regulates: fills, driving of pilings, excavation, drainage and disturbance of the water table, and destruction of wetland vegetation. Exemptions include activities associated with farming and forestry which do not bring an area of wetlands into a use to which it had not previously been subjected. These exemptions are identical to those provided under the Federal 404 program. • Different from the Exemptions Provided under the Federal 404 Program. Additionally, The Wetlands Act of 1970 regulates: draining, dredging, excavation, and placement of structures or other obstructions. Production of salt hay and mosquito control activities are exempted. <p><u>Special Provisions for Agriculture and Forestry.</u></p> <ul style="list-style-type: none"> • Forestry activities with an approved forest management plan are exempt from the FWPA. The State law also provides an agricultural exemption that is the same as the current 404 exemption. <p>https://www.aswm.org/pdf_lib/state_summaries/new_jersey_state_wetland_program_summary_090415.pdf</p>

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<p>North Carolina</p>	<p>15A NCAC 02H .1301SCOPE AND PURPOSE</p> <p>(a) The provisions of this Section shall apply to Division of Water Quality (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require state review after the effective date of this Rule and which require a Division determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Section, discharge shall be the deposition of dredged or fill material including but not limited to fill, earth, construction debris and soil.</p> <p>(b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters which have been listed in 15A NCAC 02B .0300. If the US Army Corps of Engineers or its designee determines that a particular water or wetland is isolated and not regulated under Section 404 of the Clean Water Act, then discharges to that water or wetland shall be covered by this Section (15A NCAC 02H .1301 -.1305).</p> <p>(c) Activities which result in a discharge may be authorized by the issuance of either an Individual Permit or a Certificate of Coverage to operate under a General Permit. Individual Permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These Individual Permits do not require approval by the U.S. Environmental Protection Agency. Certificates of Coverage for General Permits may be issued for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General Permits include but are not limited to activities such as maintenance, utility lines, and road crossings. General Permits shall be given public notice at least 45 days before the proposed effective date of the General Permit. These General Permits do not require approval by the U.S. Environmental Protection Agency. Individual Permits and Certificates of Coverage for General Permits shall be issued for a period of five years after which time the Permit shall be void unless the discharge is complete or an extension is granted as described in 15A NCAC 02H .1304(e).</p> <p>(d) Discharges resulting from activities which receive an Individual Permit or Certificate of Coverage under a General Permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated surface waters.</p> <p>(e) The following are exempt from this Section:</p> <p>(1)Activities that are described in 15A NCAC 02B .0230;</p> <p>(2)Discharges to isolated, man-made ponds or isolated ditches except for those wetlands or waters constructed for compensatory mitigation or for on-site stormwater management;</p> <p>(3)Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities which receive NPDES Permits or State Non-Discharge Permits;</p> <p>(4)Discharges for water dependent structures as defined in 15A NCAC 02B .0202(67);(5)A discharge resulting from an activity if:</p> <p>(A)The discharge resulting from the activity requires a 401 Certification and 404 Permit and these were issued prior to the effective date of this Rule;</p> <p>(B)The project requires a state permit, such as landfills, NPDES discharges of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that has begun construction or are under contract to begin construction and have received all required state permits prior to the effective date of this Rule;</p> <p>(C)The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to the effective date of this Rule; or</p> <p>(D)The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project which has established a Vested Right under North Carolina law prior to the effective date of this Rule.</p> <p>15A NCAC 02B .0230ACTIVITIES DEEMED TO COMPLY WITH WETLANDS STANDARDS</p> <p>(a) The following activities for which Section 404 permits are not required pursuant to Section 404(f)(1) of the Clean Water Act and which are not recaptured into the permitting process pursuant to Section 404(f)(2) are deemed to be in compliance with wetland standards in 15A NCAC 2B .0231 provided that they comply with the most current versions of the federal regulations to implement Section 404 (f) (US Environmental Protection Agency and US Army Corps of Engineers including 40 C.F.R. 232.3) and the Sedimentation Pollution Control Act, G.S. 113A, Article 4:</p> <p>(1)normal, on-going silviculture, farming and ranching activities such as plowing, seeding, cultivating, minor drainage and harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices, provided that relevant silvicultural activities must comply with U.S. Environmental Protection Agency and U.S. Army Corps of Engineers Memorandum to the Field entitled "Application of Best Management Practices to Mechanical Silvicultural Site Preparation Activities for the Establishment of Pine Plantations in the Southeast", November 28, 1995 which is hereby incorporated by reference including any subsequent amendments and editions;</p> <p>(2)maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees,</p>	<p><u>Exempted Activities</u></p> <ul style="list-style-type: none"> • The ASWM State Summary Page for North Carolina does not summarize the exemptions for inland wetlands. <p><u>Special Provisions for Agriculture and Forestry</u></p> <ul style="list-style-type: none"> • North Carolina's exemptions are the same as the federal exemptions. <p>https://www.aswm.org/pdf_lib/state_summaries/north_carolina_state_wetland_program_summary_083115.pdf</p>

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	<p>groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures, and other maintenance, repairs or modification to existing structures as required by the NC Dam Safety Program;</p> <p>(3)construction and maintenance of farm or stock ponds or irrigation ditches. In addition, new pond construction in designated river basins with riparian buffer protection regulations also must comply with relevant portions of those regulations;</p> <p>(4)maintenance of drainage ditches, provided that spoil is removed to high ground, placed on top of previous spoil, or placed parallel to one side or the other of the ditch within a distance of 20 feet and spoils are placed in a manner that minimizes damages to existing wetlands; and ditch maintenance is no greater than the original depth, length and width of the ditch;</p> <p>(5)construction of temporary sediment control measures or best management practices as required by the NC Sediment and Erosion Control Program on a construction site, provided that the temporary sediment control measures or best management practices are restored to natural grade and stabilized within two months of completion of the project and native woody vegetation is reestablished during the next appropriate planting season and maintained;</p> <p>(6)construction or maintenance of farm roads, forest roads, and temporary roads for moving mining equipment where such roads are constructed and maintained in accordance with best management practices, as defined in 40 C.F.R. 232.3(c)(6)(i-xv), to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of navigable waters is not reduced, and that any adverse effects on the aquatic environment will be otherwise minimized.</p> <p>(b)Where the Director determines, in consultation with the US Army Corps of Engineers or the US Environmental Protection Agency, and considering existing or projected environmental impact, that an activity is not exempt from permitting under Section 404(f), or where the appropriate Best Management Practices are not implemented and maintained in accordance with Paragraph (a) of this Rule, the Director may require restoration of the wetlands as well as imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties) and G.S. 143-215.6C (injunctive relief)</p>	

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<p>Virginia</p> <p>§ 62.1-44.15:21.</p>	<p>§ 62.1-44.15:21. Impacts to wetlands.</p> <p>A. Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.</p> <p>B. Permits shall contain requirements for compensating impacts on wetlands. Such compensation requirements shall be sufficient to achieve no net loss of existing wetland acreage and functions and may be met through (i) wetland creation or restoration, (ii) purchase or use of mitigation bank credits pursuant to § 62.1-44.15:23, (iii) contribution to the Wetland and Stream Replacement Fund established pursuant to § 62.1-44.15:23.1 to provide compensation for impacts to wetlands, streams, or other state waters that occur in areas where neither mitigation bank credits nor credits from a Board-approved fund that have met the success criteria are available at the time of permit application, or (iv) contribution to a Board-approved fund dedicated to achieving no net loss of wetland acreage and functions. The Board shall evaluate the appropriate compensatory mitigation option on a case-by-case basis with consideration for which option is practicable and ecologically and environmentally preferable, including, in terms of replacement of acreage and functions, which option offers the greatest likelihood of success and avoidance of temporal loss of acreage and function. This evaluation shall be consistent with the U.S. Army Corps of Engineers Compensatory Mitigation for Losses of Aquatic Resources (33 C.F.R. Part 332). When utilized in conjunction with creation, restoration, or mitigation bank credits, compensation may incorporate (a) preservation or restoration of upland buffers adjacent to wetlands or other state waters or (b) preservation of wetlands.</p> <p>C. The Board shall utilize the U.S. Army Corps of Engineers' "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" as the approved method for delineating wetlands. The Board shall adopt appropriate guidance and regulations to ensure consistency with the U.S. Army Corps of Engineers' implementation of delineation practices. The Board shall also adopt guidance and regulations for review and approval of the geographic area of a delineated wetland. Any such approval of a delineation shall remain effective for a period of five years; however, if the Board issues a permit pursuant to this article for an activity in the delineated wetland within the five-year period, the approval shall remain effective for the term of the permit. Any delineation accepted by the U.S. Army Corps of Engineers as sufficient for its exercise of jurisdiction pursuant to § 404 of the Clean Water Act shall be determinative of the geographic area of that delineated wetland.</p> <p>D. The Board shall develop general permits for such activities in wetlands as it deems appropriate. General permits shall include such terms and conditions as the Board deems necessary to protect state waters and fish and wildlife resources from significant impairment. The Board is authorized to waive the requirement for a general permit or deem an activity in compliance with a general permit when it determines that an isolated wetland is of minimal ecological value. The Board shall develop general permits for:</p> <ol style="list-style-type: none"> 1. Activities causing wetland impacts of less than one-half of an acre; 2. Facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or State Corporation Commission, except for construction of any natural gas transmission pipeline that is greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). No Board action on an individual or general permit for such facilities shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval. The Board and the State Corporation Commission shall develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1, and 56-580 to ensure that consultation on wetland impacts occurs prior to siting determinations; 3. Coal, natural gas, and coalbed methane gas mining activities authorized by the Department of Mines, Minerals and Energy, and sand mining; 4. Virginia Department of Transportation or other linear transportation projects; and 5. Activities governed by nationwide or regional permits approved by the Board and issued by the U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not be limited to, filing with the Board any copies of preconstruction notification, post construction report, and certificate of compliance required by the U.S. Army Corps of Engineers. <p>E. Within 15 days of receipt of an individual permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. Within 120 days of receipt of a complete application, the Board shall issue the permit, issue the permit with conditions, deny the permit, or decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such a proceeding, and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing. In addition, for an individual permit application related to an application to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity pursuant to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) for construction of any natural gas transmission pipeline greater than 36 inches inside diameter, the Board shall complete its consideration within the one-year period established under 33 U.S.C. § 1341(a).</p> <p>F. Within 15 days of receipt of a general permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. A determination that an application is complete shall not mean the Board will issue the permit but means only that the applicant has submitted sufficient information to process the application. The Board shall deny, approve,</p>	<p><u>Exempted Activities</u></p> <ul style="list-style-type: none"> • Virginia's exemptions are comparable to the federal exemptions. For a list of activities exempt from the requirement for a VWPP, but may require other permits under state and federal law, go to: http://register.dls.virginia.gov/details.aspx?id=2379 <p><u>Special Provisions for Agriculture and Forestry</u></p> <ul style="list-style-type: none"> • State exemptions for agriculture and silviculture follow the federal exemptions. <p>https://www.aswm.org/pdf_lib/state_summaries/virginia_state_wetland_program_summary_092115.pdf</p>

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	<p>or approve with conditions any application for coverage under a general permit within 45 days of receipt of a complete preconstruction application. The application shall be deemed approved if the Board fails to act within 45 days.</p> <p>G. No Virginia Water Protection Permit shall be required for impacts to wetlands caused by activities governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 or normal agricultural activities or normal silvicultural activities. This section shall also not apply to normal residential gardening, lawn and landscape maintenance, or other similar activities that are incidental to an occupant's ongoing residential use of property and of minimal ecological impact. The Board shall develop criteria governing this exemption and shall specifically identify the activities meeting these criteria in its regulations.</p> <p>H. No Virginia Water Protection Permit shall be required for impacts caused by the construction or maintenance of farm or stock ponds, but other permits may be required pursuant to state and federal law. For purposes of this exclusion, farm or stock ponds shall include all ponds and impoundments that do not fall under the authority of the Virginia Soil and Water Conservation Board pursuant to Article 2 (§ 10.1-604 et seq.) of Chapter 6 pursuant to normal agricultural or silvicultural activities.</p> <p>I. No Virginia Water Protection Permit shall be required for wetland and open water impacts to a stormwater management facility that was created on dry land for the purpose of conveying, treating, or storing stormwater, but other permits may be required pursuant to local, state, or federal law. The Department shall adopt guidance to ensure that projects claiming this exemption create no more than minimal ecological impact.</p> <p>J. An individual Virginia Water Protection Permit shall be required for impacts to state waters for the construction of any natural gas transmission pipeline greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)). For purposes of this subsection:</p> <ol style="list-style-type: none"> 1. Each wetland and stream crossing shall be considered as a single and complete project; however, only one individual Virginia Water Protection Permit addressing all such crossings shall be required for any such pipeline. Notwithstanding the requirement for only one such individual permit addressing all such crossings, individual review of each proposed water body crossing with an upstream drainage area of five square miles or greater shall be performed. 2. All pipelines shall be constructed in a manner that minimizes temporary and permanent impacts to state waters and protects water quality to the maximum extent practicable, including by the use of applicable best management practices that the Board determines to be necessary to protect water quality. 3. The Department shall assess an administrative charge to any applicant for such project to cover the direct costs of services rendered associated with its responsibilities pursuant to this subsection. This administrative charge shall be in addition to any fee assessed pursuant to § 62.1-44.15:6. 	

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<p>Washington</p>	<p>The State of Washington provides wetlands protection under numerous state laws, none of which provide wetlands protection as their primary purpose: State Water Pollution Control Act; Growth Management Act; Shoreline Management Act; State Hydraulic Code; and Forest Practices Act. In general, the state emphasizes a local approach to wetlands protection and regulation. Most state laws authorize local municipalities to plan and regulate their lands, including wetlands, with state agencies often playing an advisory role. Section 401 certification is the primary mechanism of wetlands regulation at the state level. However, wetland government regulation is the primary mechanism in the state overall. The state provides guidance to wetland regulation, but implementation is provided at the local level. Most influential wetland-related regulation in the state comes at the local level, as land use management is generally perceived as the most effective mechanism for protecting wetland functions and values. Under the Washington State Water Pollution Control Act, Washington State is able to issue Administrative Orders for all wetlands, regardless of whether or not they are under federal jurisdiction. This means that the state may issue an Administrative Order without any 404 permit action. The Washington Department of Ecology takes an assistance role in this process. Washington State's Shoreline Management Act provides the state with control over shoreline protection and veto authority for wetlands in the Shoreline Master Program if the state feels that plans are inadequate to protect the wetlands under consideration. A Tribal Treaties and Rights at Risk document submitted to and supported by the federal government has led to the guarantee of rights to salmon and other traditionally-utilized species and the requirement for co-management by tribes. This has led to shifts towards stronger riparian and wetland protections (those that are related to estuaries critical for salmon, etc.), as well as protection of overwintering areas for these species. Consequently, salmon drives very specific non-voluntary restoration projects in the state.</p> <p>https://www.aswm.org/pdf_lib/state_summaries/washington_state_wetland_program_summary_090315.pdf</p>	<p><u>Exempted Activities</u></p> <ul style="list-style-type: none"> • (Comparable to federal)Some activities are exempt from the permit requirements of the Shoreline Management Act (SMA), but must still comply with the goals and policies of the Act and the Local Shoreline Master Program. These activities include: development with a total value of less than \$2,500; normal maintenance or repair of existing structures; “construction and practices normal or necessary for agriculture”; construction or modification of navigational aids, and construction on wetlands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family. <p><u>Special Provisions for Agriculture and Forestry</u></p> <ul style="list-style-type: none"> • Agriculture activities do not, in general, require permits. A memorandum of understanding has been signed between the Department of Ecology and the local conservation districts to assist farmers with implementing Best Management Practices to comply with water quality regulations. Forest activities are permitted exclusively under the Forest Practices Act (FPA). The FPA includes provisions requiring compliance with the SMA and water quality regulations. In 2011, a joint group of agriculture, environmental groups and tribes advocated for and the legislature approved a Volunteer Stewardship Program (VSP) which states that in agricultural areas, local wetland regulations do not apply. The VSP instead relies on the adoption of voluntary practices.