

**NHDES Wetlands Program Rulemaking & Process Improvement Effort
2014 Spring Listening Session – NH Association of Natural Resource Scientists
April 25, 2014**

Comments from Participants

- 5-day limit for discovery and addressing storm damage under an emergency permit is not appropriate; should be able to address a high-risk issue when discovered under emergency authorization even after 5-day limit.
- Avoid duplication between Federal and state - at a certain point a project just has to default to following the Federal requirements
- Be conscientious about personal property rights - prevent the loss of ability to develop one's property
- Be consistent with new Federal programmatic general permit (e.g., on definition of "important resources"
- Be flexible on what is allowed and counts as mitigation, particularly for smaller projects. E.g., allow created wetlands, upland protection.
- Clarify the resolution of data that is to be used (i.e., a minimum resolution). Federal data is coarser than some other data that is available (e.g., LIDAR data for coast)
- Consider a minimum size threshold to be considered "jurisdictional," like MA. Allow small, isolated wetlands to be "non-jurisdictional." Clarify what does not count as "jurisdictional," e.g., man-made ditches.
- Consider covering all shoreline/shoreland activities on lakes and ponds and tidal under the Shoreland Water Quality Protection Act and all river-related activities under Wetlands (eliminate overlapping jurisdiction).
- Consider how to address the diversion of water from one property to another that ends up creating a wetland on a neighboring property. This is a form of "trespass" that diminishes the use of the neighboring property.
- Consider impacts and decisions at multiple scales: site, watershed, landscape.
- Continue to involve NHANRS and others in next steps of drafting rules

- Coordinate with Shoreland Protection: an alternative to a beach (e.g., deck) should be allowed
- Coordinate with the Water Quality Standards Advisory Committee - make sure standards are consistent with direction of wetlands rules and program
- Could NH be delegated Federal Army Corps authority? what if applicant has to meet Federal Army Corps requirements anyhow?
- Direction and comments from the preliminary meeting should be carried through to the technical review (e.g., questions and options raised, answered, or dismissed at pre-application stage should not be asked again during technical review). Input from other agencies should be part of the pre-application review step.
- Do not impact the timeframes for review of current applications in the process of undertaking this effort
- Eliminate the duplicative and inconsistent overlap for tidal buffer
- Evaluate "least impacting alternative" differently - from a landscape perspective. Consider that least impacting alternative to functions and values of wetlands might not be the one with the minimum square feet of impact.
- Expand "allowed" activities to recognize and clarify when/where/what exceptions are allowable
- Figure out how to account for cumulative impacts to an ecosystem over time (evaluate as total impacts to a wetland complex versus individual projects). See CT.
- Figure out how to make communication with municipalities work. Work with the NH Association of Conservation Commissions and NH Municipal Association
- Have a dedicated, assigned contact at sister agencies just for wetlands permitting
- Improve the communication across all DES bureaus, particularly during the pre-application review stage
- Include more site visits as part of application review
- Incorporate the integrated permitting process
- It is good to align mitigation requirements with lost functions and values. Allow for self-mitigating projects under defined situations.
- Keep cost in check for applicants, particular consider municipal applicants. Costs (application preparation & mitigation) should be proportional to the scale of the project and potential impacts.
- Move forward with e-data; provide better resources and information for applicants to use in evaluating projects and developing applications

- Need a better way to address mitigation with a multi-phased project and coordinate the review and acceptance with the Federal partners. Should allow "wetlands banking," support local "ARM" funds for conservation projects as viable mitigation option, collect mitigation funds at each phase of a project, and count on-site improvements/ restoration/ conservation.
- Need definitions of wetland classifications. Now, consultants don't delineate the edges of individual classifications and many wetlands are not a unique classification. How to better capture this information.
- Need good follow-up and reporting on work performed under an emergency permit
- Need to ensure timely response from other agencies on permit applications (e.g., DOT, Fish and Game)
- Notification submission requirements should be comparable across various types of notifications
- Public safety-related activities should be covered by the permit-by-notification process
- Recognize and distinguish between smaller, homeowner scale projects and larger scale, commercial/municipal projects. Be as clear and efficient as possible for larger, commercial, development projects. Too many issues and topics get co-mingled and complicated between small and larger projects.
- Regulatory requirements and application/review path need to be clarified for utilities: e.g., when is mitigation required, what exemptions apply
- Relate functions and values of different resources to the level of protection afforded to the resource (and mitigation required). E.g., Florida UMAM ensures that mitigation is related to the impacts incurred to the functions and values
- Routine maintenance activities (e.g., for dams, stormwater management facilities, drainage swales) are listed under permit-by-notification (PBN) but were deemed to not qualify (they should be covered under a PBN level). Be clearer about what qualifies and what does not.
- Spread/locate staff around the state with regional authority for quick, experienced review/approval
- Standardize definitions and interpretations across various state statutes and programs as well as with Federal agencies
- Stormwater management practices and changes in hydrology can affect wetlands functions and values. Need to clarify jurisdiction to address stormwater management within wetlands permit.
- There is inconsistency on what counts as an impact for Federal versus state regulators with respect to when mitigation is required - this creates uncertainty and confusion.
- Threshold for notification versus permit level of review should not be based on the size of the impact but on the impact to functions and values, particularly of important resources. Consider impact on ecosystem stability (e.g., changes in the flow and quality of water), emerging issues and impacts/value under changing climate conditions.

