

From: John Wilson <[REDACTED]>
Sent: Tuesday, March 21, 2017 4:56:11 PM
To: Smagula, Amy
Subject: Fw: Rule interpretation for DES

Amy,

It appears to me that most at DES assumed that both conditions should be met in the rule mentioned below. **Would there be any chance that this rule could be amended to replace the "or" with an "and", or are we stuck with this almost meaningless rule for eternity?**

John

From: Smagula, Amy
Sent: Wednesday, December 07, 2016 4:02 PM
To: 'John Wilson'
Subject: FW: Rule interpretation for DES

John,

Please see below for comments from our attorney general's office. Gretchen Hamel, who the attorney general refers to, is our in house attorney, but she has not yet responded to several emails I sent her way. I hope the information below is helpful for now. I will continue to try to get a reply from in house legal on this, but ultimately input from the Attorney General's office is final.

Amy

~~~~~

Amy P. Smagula  
Limnologist/Exotic Species Program Coordinator NH DES  
29 Hazen Drive  
Concord, NH 03301  
Phone: 603-271-2248  
Email: [Amy.Smagula@des.nh.gov](mailto:Amy.Smagula@des.nh.gov)  
<http://des.nh.gov/organization/divisions/water/wmb/exoticspecies/index.htm>

From: Noether, Lauren [<mailto:Lauren.Noether@doj.nh.gov>]  
Sent: Wednesday, December 07, 2016 3:39 PM  
To: Smagula, Amy  
Subject: RE: Rule interpretation for DES

Hi Amy,

I think this was mainly answered by Stefanie M. Giallongo below. You may also want Gretchen Hamel to look it over since she is expert at rules.

I would say that Mr. Wilson is obviously correct about the use of the word "or" not "and" in the rule: Env-Wt 303.05 Projects That Do Not Require a Permit. The following activities shall not require a permit or, unless explicitly stated, a notification to the department:

(h) Hand raking of leaves or other organic debris from the shoreline or lakebed provided that:

(1) At the time raking is done, the area raked is exposed by drawdown; or

(2) Raking does not disturb vegetative roots and is limited to 900 square feet of area

The direct answer to the question is that raking leaves from the lakebed is ok without a permit provided it is done when the area is exposed by drawdown (not under water) Or The raking is limited to an area of 900 square feet AND does not disturb vegetative roots.

I do not know how one can be assured that raking under water does not disturb vegetative roots, but the plain meaning of the words allows such underwater raking without a permit IF it is limited to 900 square feet in area AND does not disturb vegetative roots.

That is my best advice. To me the safest thing for a person to do is to call DES and get a permit to do this underwater if there is a chance that vegetative roots may be disturbed. Please call me if you wish to discuss it further.

Lauren (x 3657)

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Lauren Noether  
Senior Assistant Attorney General  
33 Capitol Street  
Concord, NH 03301  
Phone (603) 271-3679  
Fax (603) 271-2110

The information contained in this electronic message and any attachments to this message may contain confidential or privileged information and is intended for the exclusive use of the addressee(s). Please notify the Attorney General's Office immediately at (603) 271-3658 or reply to [justice@doj.nh.gov](mailto:justice@doj.nh.gov) if you are not the intended recipient and destroy all copies of this electronic message and any attachments.

**From:** John Wilson [<mailto:lanesend2@tds.net>]

**Sent:** Wednesday, April 18, 2018 3:34 PM

**To:** Tilton, Mary Ann

**Subject:** Re: wetland rule comment

Mary Ann,

I am sorry that some family health issues have prevented me from applying myself to reviewing these rules. I am working on them and hope to have something to you by the end of this week. But, in reviewing your proposed rule changes, you still do not address 303.05(h) which is discussed in detail in the enclosed thread. In fact you do not seem to address anything prior to 305. This should be fixed.

John Wilson

**From:** Tilton, Mary Ann  
**Sent:** Friday, March 30, 2018 6:05 PM  
**To:** 'lanesend2@tds.net'  
**Cc:** Pelletier, Rene; Adams, Collis ; Smagula, Amy ; Forst, Darlene  
**Subject:** wetland rule comment

Dear Mr. Wilson;

It was great to talk to you tonight and hear your concerns about the draft wetland rules and your suggestions for improving the rules. We have placed your suggested change from “or” to “and” on the raking provision referenced below as a **public comment on the draft wetland rules**.

As indicated - NHDES is planning to hold a stakeholder session on lakes/shoreline issues. NHDES is first looking to receive public comments **by April 20** as this will help guide our next draft rules and our plans for additional stakeholder meetings.

NHDES has set up a website on the draft wetland rules here:

<https://www.des.nh.gov/organization/divisions/water/wetlands/process-improvement.htm>

With your interest in lakes issues, please see the following sections of draft rules of interest:

**510 Aquatic Vegetation Control; 511 Beach Construction; 512 Breakwaters; 513 Docking Structures; 514 Commercial Docks; 515 Accessory Structures; 516-518 Bank Stabilization; 519 Boathouses**  
<https://www.des.nh.gov/organization/divisions/water/wetlands/documents/env-wt-500.pdf>

Additionally, please see **Chapter 12; p. 71** in the new draft BMP Manual  
<http://1o44jeda9yq37r1n61vqlgly.wpengine.netdna-cdn.com/wp-content/uploads/2018/01/draft-wetlands-bmp-manual.pdf>

Thank you for your interest in participating in a future stakeholder meeting. I am glad to hear that the NH Lakes Association is planning to submit comments.

Thank you for your work as Vice President of the Pleasant Lake Protective Association in New London.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

Mary Ann  
Mary Ann Tilton  
Assistant Bureau Administrator  
Wetlands Bureau  
Land Resources Management Program  
NH Department of Environmental Services  
29 Hazen Drive, P.O. Box 95  
Concord, NH 03302-0095

ph: 603-271-2929  
fax:603-271-6588

Visit [DES Land Resources Management](#) for helpful tools & information!



NHDES is proud to have been awarded the:



-----Original Message-----

From: John Wilson [**REDACTED**]  
Sent: Thursday, March 29, 2018 2:02 PM  
To: Pelletier, Rene  
Cc: Smagula, Amy; Tom O'Brien  
Subject: Fw: Rule interpretation for DES

Rene,

We talked about this last year. Since you are going through rule revisions, I think that it would be appropriate that this be cleaned up.

John Wilson  
[**PHONE # REDACTED**]

-----Original Message-----

From: Smagula, Amy  
Sent: Wednesday, March 22, 2017 11:28 AM  
To: Pelletier, Rene  
Cc: 'John Wilson' ; Adams, Collis  
Subject: FW: Rule interpretation for DES

Hi Rene,

Please see this thread below, relative to a Wetland's rule interpretation I requested on behalf of a lake resident on Pleasant Lake in New London last fall.

Immediately below, Mr. Wilson is requesting a rule change to help make this rule clearer and more inclusive. The rest of the thread outlines communications from Wetlands Staff and from the AG's office.

Because I am not involved in Wetland Rule changes, I wanted to bring you in on this discussion, so that you can work with appropriate Wetlands Bureau staff to make a determination on this.

By way of this email I am putting you and Mr. Wilson in touch to further discuss what Wetlands may do relative to clarifying this rule.

Amy

~~~~~

Amy P. Smagula
Limnologist/Exotic Species Program Coordinator NH DES
29 Hazen Drive
Concord, NH 03301
Phone: 603-271-2248
Email: Amy.Smagula@des.nh.gov
<http://des.nh.gov/organization/divisions/water/wmb/exoticspecies/index.htm>

From: John Wilson <[REDACTED]>
Sent: Tuesday, March 21, 2017 4:56:11 PM
To: Smagula, Amy
Subject: Fw: Rule interpretation for DES

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John

From: Smagula, Amy
Sent: Wednesday, December 07, 2016 4:02 PM
To: 'John Wilson'
Subject: FW: Rule interpretation for DES

John,

Please see below for comments from our attorney general's office. Gretchen Hamel, who the attorney general refers to, is our in house attorney, but she has not yet responded to several emails I sent her

way. I hope the information below is helpful for now. I will continue to try to get a reply from in house legal on this, but ultimately input from the Attorney General's office is final.

Amy

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Amy P. Smagula  
Limnologist/Exotic Species Program Coordinator NH DES  
29 Hazen Drive  
Concord, NH 03301  
Phone: 603-271-2248  
Email: [Amy.Smagula@des.nh.gov](mailto:Amy.Smagula@des.nh.gov)  
<http://des.nh.gov/organization/divisions/water/wmb/exoticspecies/index.htm>

From: Noether, Lauren [<mailto:Lauren.Noether@doj.nh.gov>]  
Sent: Wednesday, December 07, 2016 3:39 PM  
To: Smagula, Amy  
Subject: RE: Rule interpretation for DES

Hi Amy,

I think this was mainly answered by Stefanie M. Giallongo below. You may also want Gretchen Hamel to look it over since she is expert at rules.

I would say that Mr. Wilson is obviously correct about the use of the word "or" not "and" in the rule: Env-Wt 303.05 Projects That Do Not Require a Permit. The following activities shall not require a permit or, unless explicitly stated, a notification to the department:

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That is my best advice. To me the safest thing for a person to do is to call DES and get a permit to do this underwater if there is a chance that vegetative roots may be disturbed. Please call me if you wish to discuss it further.

Lauren (x 3657)

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Lauren Noether  
Senior Assistant Attorney General

33 Capitol Street  
Concord, NH 03301  
Phone (603) 271-3679  
Fax (603) 271-2110

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From: Smagula, Amy [<mailto:Amy.Smagula@des.nh.gov>]  
Sent: Wednesday, December 07, 2016 10:07 AM  
To: Noether, Lauren  
Subject: Rule interpretation for DES

Hi Lauren,

I was referred to you for a rule interpretation. The thread below outlines the inquiry and input from the DES Wetlands Bureau. It seems there is still some confusion about the intent of this rule.

Please let me know your thoughts on this interpretation, so that I can pass along a final determination on this to the local entities.

Amy

~~~~~

Amy P. Smagula
Limnologist/Exotic Species Program Coordinator NH DES
29 Hazen Drive
Concord, NH 03301
Phone: 603-271-2248
Email: Amy.Smagula@des.nh.gov
<http://des.nh.gov/organization/divisions/water/wmb/exoticspecies/index.htm>

From: John Wilson **[[REDACTED]]**
Sent: Wednesday, November 16, 2016 7:15 PM
To: Smagula, Amy
Subject: Fw: Phone Calls

Amy,

I am coming back to you because we don't seem to have resolution on the bottom raking question. Kim Hallquist, our Town Administrator, and I are still seeking the answer of whether a lake bottom covered with water can be raked without a permit.

Stefanie's explanation below says to me that the bottom cannot be raked unless the bottom is exposed and shall be limited to 900 square feet, which seems very straight forward, except that it does not seem to fit with Env-Wt

303.05 which has an "or" between stipulations 1 and 2 and not an "and" which seems to imply that as long as one of these stipulations is met the other need not be and no permit is required. In the succeeding thread that I will send you, she seems to back off of that position somewhat saying that "It is best to simply conduct this activity during drawdown" On a subsequent email from Mary Ann Tilton, which I also am sending you, we seem to be circling back to "go". Is it "or" or is it "and". I would have to say as Mary Ann has stated the rule, I have no clue and in my mind find the rule unenforceable. I really believe that no submerged raking should be allowed and believe that you do also.

I am sorry to dump this on you but we have great respect for you and believe if anyone can get to the bottom of this, you can. Kim Hallquist and I would like a simple resolution so that the rule can be properly enforced going forward.

Thanks,

John

From: Giallongo, Stefanie
Sent: Friday, October 21, 2016 8:27 AM
To: 'John and Kittie Wilson'
Subject: RE: Phone Calls

Our pleasure! For some reason, my signature block didn't come through on the last message so... here's my contact info should you have any other questions -

Stefanie M. Giallongo
Wetlands Specialist
NH Dept. of Environmental Services
29 Hazen Drive PO Box 95
Concord, NH 03302-0095
Phone: (603) 271-4064

From: John and Kittie Wilson [REDACTED]
Sent: Thursday, October 20, 2016 5:37 PM
To: Giallongo, Stefanie; Smagula, Amy
Cc: Tilton, Mary Ann
Subject: Re: Phone Calls

Thank you both for your help and good counsel.

From: Giallongo, Stefanie

Sent: Thursday, October 20, 2016 3:15 PM
To: Smagula, Amy ; 'John and Kittie Wilson'
Cc: Tilton, Mary Ann
Subject: RE: Phone Calls

Good afternoon John,

Stefanie Giallongo, from the DES Wetlands Bureau. To address your comments below:

How do you ever know that you are not disturbing root structure. Also, activity #2 seems to imply that this raking can be done under water. Is this so?

- "Raking" is to remove loose debris from the surface of the lakebed. Doing so should not remove root systems from aquatic vegetation. That said, it still shall only be conducted when the bed is exposed during draw down and shall be limited to 900 square feet. Otherwise, a permit is required.

- If you had pictures of the actual activity that's being conducted, I could better guide you to the appropriate permitting pathway.

- Any activity that removes/disturbs the root structures and/or mobilizes bottom sediments will elevate the project into a higher permitting category and warrant more detailed review of methods and proposed impacts.

- One thing to be careful of is in identifying the actual resource that's being impacted. In many cases, a vegetated lake bed along a shoreline is actually classified as an emergent marsh, serving as a marginal wetland between the upland and the open water, if any of the activities described above were to occur in such an environment, then the project would be elevated into a higher category, warranting further review.

I hope this helps to clear up some of the 'mirk'. I understand sometimes the rules do require clarification, so please don't hesitate to contact me with any additional questions, my direct line is listed below.

Kindly,

From: Smagula, Amy
Sent: Thursday, October 20, 2016 1:50 PM
To: 'John and Kittie Wilson'
Cc: Tilton, Mary Ann; Giallongo, Stefanie
Subject: RE: Phone Calls

Mary Ann/Stefanie,

Can you see below and reply back with some interpretation of the rules that John is asking about?

Amy

~~~~~

Amy P. Smagula  
Limnologist/Exotic Species Program Coordinator NH DES  
29 Hazen Drive  
Concord, NH 03301  
Phone: 603-271-2248  
Email: [Amy.Smagula@des.nh.gov](mailto:Amy.Smagula@des.nh.gov)  
<http://des.nh.gov/organization/divisions/water/wmb/exoticspecies/index.htm>

From: John and Kittie Wilson [REDACTED]  
Sent: Thursday, October 20, 2016 12:24 PM  
To: Smagula, Amy  
Subject: Re: Phone Calls

Thanks for the reply. So, activity #1 seems quite straight forward but activity #2 seems quite murky. How do you ever know that you are not disturbing root structure. Also, activity #2 seems to imply that this raking can be done under water. Is this so?

John

Sent from my iPad

On Oct 20, 2016, at 9:07 AM, Smagula, Amy <[Amy.Smagula@des.nh.gov](mailto:Amy.Smagula@des.nh.gov)> wrote:  
John,

Apologies, I have not gotten your voicemails yet. I've been swamped with meetings of late.

This falls under the prevue of the Wetlands Bureau, so I am copying someone from that group so they can respond as well. Generally raking the lake bottom with a hand rake is only legal when the area is "in the dry" during drawdown. There should be no raking of the lake bottom when water covers the bottom.

The specific rule is this:

Env-Wt 303.05 Projects That Do Not Require a Permit. The following activities shall not require a permit or, unless explicitly stated, a notification to the department:

(h) Hand raking of leaves or other organic debris from the shoreline or lakebed provided that:

- (1) At the time raking is done, the area raked is exposed by drawdown; or
- (2) Raking does not disturb vegetative roots and is limited to 900 square feet of area

If the conditions are not those outlined above, a Wetlands Permit would be needed for such work, and the individual should call Wetlands at

603-271-2147 for details. Stefanie Giallongo is the permitter for the New London area. She is also copied here, and her email address is [Stefanie.giallongo@des.nh.gov](mailto:Stefanie.giallongo@des.nh.gov).

Amy

~~~~~

Amy P. Smagula
Limnologist/Exotic Species Program Coordinator NH DES
29 Hazen Drive
Concord, NH 03301
Phone: 603-271-2248
Email: Amy.Smagula@des.nh.gov
<http://des.nh.gov/organization/divisions/water/wmb/exoticspecies/index.htm>

From: John Wilson [REDACTED]
Sent: Thursday, October 20, 2016 8:35 AM
To: Smagula, Amy
Subject: Phone Calls

Amy,

As you could probably tell by my calls yesterday, a member of our board had taken exception with a lake resident raking the leaves off of the bottom of the lake in front of his home. The leaves were under water. He claimed that he had been told by the then zoning administrator that this was permissible as long as mechanized tools were not employed. On Monday, at the NHLakes gathering, you made a comment about this very thing. My question is, is this illegal to do or is it just poor treatment of the lake?

John Wilson