

Hoyle, Tanner & Associates, Inc.
Comments to Draft NHDES Wetlands Rules
April 9, 2018

101.01	Could these be incorporated here so the applicant/agent doesn't have to go to the RSAs?
102.10	Suggest include having an easement to complete such work, although it is implied, this could cause confusion and possibly lead to missing information.
102.14	Confusing, shoreline and bank are not synonymous.
102.24, 102.25 and 102.26	The cross reference to the rules in other sections could be avoided if you want to make the rules clearer. These category designations don't seem to add value to the process, they don't have thresholds listed, and reference back to low impact, minor and major levels, so why not just clarify those definitions and thresholds better and remove the CAT levels?
102.47	Man-made drainage swales can hold water long enough to support wetland vegetation, but are still non-jurisdictional as they are man-made and only there to convey stormwater
103.52	Please clarify this for streams, particularly if it is to be used under 407.03
103.58 (b)	Please put some reference date here so that if the only NHNHB record is over 10 years old (for example) will not kick the project to a CAT 3, or add a waiver process in cases where the habitat around the area has changed substantially since the last record.
306.01	If CAT 1 and Low Impact are interchangeable, suggest using one and not the other, suggest removing the CAT categories.
306.02	By making the citation to 310, you're asking the reader to jump forward in the rules, why not include 310 here?
307	Reducing the abutter distance is welcomed!
307.03(b)	Better definition of the widths required here would be helpful, 25', 50', 75'? Up to the NHDES reviewer?
307.04(a)	What does "as applicable" mean- is this a NHF&G determination? It seems like most wetlands are spawning or nursery areas for amphibians or migratory birds.
307.04(e, f and g)	Are there specific processes you are looking for here- i.e., not removing shade trees? How do we determine what will/will not change DO or temp? This seems vague.
307.06(a)	How does this work with the "may affect, not likely to adversely affect" determination for tree removal for NLEB?
307.07(b)	This seems to be overlap with Shoreland, is the planting matrix referred to the grid that is used for SWQPA waters? Does this mean any project impacting any Shoreland needs to have this grid calculated? This will be a big change for transportation projects.
307.12 (d)	Is this intended for areas of temporary impact? The first section is confusing. This seems excessive for transportation projects or stream crossings which need temporary impacts to the bank for site access, or have already disturbed bank areas. Requesting replacement of shrubs and trees/saplings will increase substantially the cost of these projects.
308.04(f)	Why not move section 309.05-309.07 to right after this so that it is easily referred to? Or, the section is so short, just place it here instead of so far down in the document.
309.02(i)	Isn't this exempt already since no jurisdictional impact will occur?
309.10	In general, this seems like a long list of information to be submitted for a PBN
311(e)	Requiring a pre-application meeting before filing the application will be difficult to fit into the project schedule, and we are doubtful that every Con Com wants to see a presentation on every project, particularly in some of the smaller Towns that only meet once a month. To what extent does the applicant have to address their comments, and who decides what comments merit being addressed? Con Coms can have non-technically educated members who raise questions that are outside the scope of the project and cannot be addressed within the project's scope.

Hoyle, Tanner & Associates, Inc.
Comments to Draft NHDES Wetlands Rules
April 9, 2018

311.05(b) (2 and 3)	Does this mean the wetland scientist cannot locate the flags by GPS? This is a common practice and would make timing difficult, as survey would then have to be coordinated to occur after delineation.
311.13(b)(2) and (3)(a) and 314.07(b)	This seems excessive, any change in the location of proposed fill or any application that includes any sized surface water requires a new permit application? This will elevate most revisions to a new application, especially stream crossing projects, resulting in more work for your reviewers and the applicant, more cost, and more delay.
313.03(b) and (c)	This does not fit for stream crossings that are not NHDOT projects. Many Town-owned culverts are failing and need to be upgraded, and it is almost impossible to do this without some impact to the resource, and in most situations we have permitted, the project will improve hydrologic function, AOP, water quality, etc. because it has to meet the Stream Crossing Guidelines where possible.
313.03	In general, this seems like a very big list of information needed to defend a project's need.
315	One week after the discovery of an event is still a very short period of time to get a permit application prepared, depending on the amount of engineering needed and how the project will be funded.
406.01(a)	Shouldn't it state NH Certified wetlands scientist, or is this leaving the door open for reciprocity from other states, and if so, do they need to be pre-approved by DES based on qualifications, experience, what?
406.01 (b)	Needs to state "at the discretion of NHDES" or similar, as who will get to decide if a delineation should be redone earlier than 5 yrs?
406.01(b)(3)	This is very controversial, delineation is more of an art than a science, different CWS can lay lines differently, maybe reference something about being censured by NHANRS for misconduct or something like that to use them as a sounding board for when a CWS has been consistently making mistakes.
406.02 (a-d)	Add language to allow for updates to these manuals listed so that the most recent publications should be used
406.04	This is confusing, TOB and OHW should be better clarified, or reference 103.68 and 103.16. These match the USACE definitions and are more clear. And there is a missing reference to identifying the OHW line. Clarification could be added if this has to be done by a CWS or if the surveyor or qualified professional can do it- for many smaller stream crossing and culvert projects, the only jurisdictional resources are the stream, and the surveyor can pick up TOB and OHW, so why do we need the CWS? The CWS often gives us a Designated Wetland (DW) line that follows the bank vegetation, and it's not useful in calculating impacts.
406.06 (c)	We are unclear as to how is this helpful- what is the intent of this requirement?
406.06 (d)	Seems excessive, how do we map natural communities? Can we get shapefiles from NHHNB or GRANIT- if so, can you please reference those contacts?
407.01	It is unclear how these terms tie together, which is more important, being a low impact or LSA project or the CAT level? I don't think these terms help the process, it seems more confusing.
407.02	The floodplain and riverine wetlands listed would make most perennial stream crossings a CAT 3 project, there has to be a waiver if you are trying to streamline culvert replacement. How far do we have to chase "wetlands hydrologically connected to a Tier 3 stream"? As long as there is any tree removal then isn't that impacting habitat for a federally-listed species, northern long-eared bat, so is any tree removal a CAT 3? Can't the LRAC waive this

Hoyle, Tanner & Associates, Inc.
Comments to Draft NHDES Wetlands Rules
April 9, 2018

	if it's in a Designated River corridor? Most wetlands would fall under (m), and most streams would fall under (o). This section seems overly restrictive, this will make more projects scrutinized at a higher level than they are now, there should be some waiver process added to this.
407.03 (b)(2)	How the lengths are measured along banks and channel is a continual question for us, and permit reviewers vary in how and where they make these measurements, this should be clarified/standardized, maybe add a figure here. Example, is the length of the bank impact measured along the TOB or at the OHW line where the bank "starts"? Please clarify this.
407.04	We are not sure what this is trying to achieve, since it is still unclear to us how the CAT levels fit into the picture of all of it if we still also classify projects a minimum, minor, major, low impact, LSA, etc. But it is good to see it recognized that repair of stream crossings should be exempted since these projects can often be very small but end up becoming a major project.
408.05 (a)	How is one to know this? And which applicant will end up having their project elevated to a CAT 3 if several are ongoing together? Many wetlands are connected, is there a size range that can limit the search for other projects impacting the wetland complex, say if it is more than a mile away, are they still applicable?
516	In general, many stream crossing projects also have bank stabilization as a piece of the project, particularly where a bridge needs new abutments and/or wingwalls, and in many cases the situation cannot allow for vegetative stabilization. Please clarify "clear and convincing language" needed to defend this statement. Often Towns cannot afford to install new infrastructure and not protect it with armoring, hoping that the vegetated bank will grow in and stabilize over time. These types of designs are often costly and need to be monitored and maintained. Towns need to reduce project costs in order to resolve as many problem crossings as possible, so there should be some acknowledgement that going through an extensive process to prove that vegetative stabilization is not a feasible option is counter to the State's goal of safe transportation. If it is stamped by a PE and we provide H&H calculations then isn't that enough?
516.03 (a)(1)	All causes of erosion are difficult to identify without extensive stream studies.
516.03 (c)(6-10)	Seems excessive for a smaller stream, this adds time, cost and engineering to what could be a simple crossing replacement or repair if bank stabilization has to be included and these kinds of projects have to meet this.
516.05 (a)(2)	Angular riprap holds together better and is more stable, if we fill in the spaces with small rounded gravel we typically satisfy NH F&G concerns.
517.02(b)(3)	Sometimes stream crossing projects need to happen in these areas, since the crossing exists and is failing; if all stream crossing projects are included as bank stabilization projects then this has to be waived for projects that meet these criteria, since bank impacts can be minimized but it's impossible to eliminate all of them for all crossings.
518.02 (c)	It is very hard to prove this, sometimes the bank needs to be stabilized to protect the new or repaired structure and the project reach does not go far enough upstream or downstream to allow bank work that will not result in redirection of energy. Agreed that sending the erosion problem down the river is not fixing the problem but how far does one project have to reach to solve an issue when soils are unstable? And wouldn't this require an extensive stream analysis to provide support that it is not taking place?
518.03(d)	Clarify how the LF of riprap is calculated, along TOB, along OHW, bank + bank + channel?

Hoyle, Tanner & Associates, Inc.
Comments to Draft NHDES Wetlands Rules
April 9, 2018

518.04(d)	This is not always possible, creating steeper slopes to reduce the footprint can result in less stability and is not always feasible or practicable.
520	Does this apply to stormwater structures such as culverts?
523	Clarify that stormwater detention basins are not ponds- unless they are of a certain size, for example- meeting these requirements seems excessive for smaller basins.
524.02(a)	Expand to include forestry for tree removal for public health and safety around airports where FAA requires tree removal for clear airspace navigation, but this isn't technically forestry as an agricultural use.
525	Suggest either define utility or add it as a definition in Chapter 100. Are roads, bridges, or culverts a utility? Or, does this section apply to road and bridge projects in the ROW?
525.04 (a)	Transportation projects such as bridge/culvert construction projects almost always require some sort of temporary access or work within soils. We are concerned about this requirement. If enforced, would this type of project be able to obtain a waiver of some sort? Please define organic soils, per NRCS?
529.04(e) and 532.04(c)	How wide, is there a tiering to the sizes of these based on the size of the impact or the resource?
529.04(f,g,l)	How is this determined and by whom? Wildlife habitat and connectivity is especially difficult, as most development results in a loss of habitat for some species, how do you determine when that loss is significant?
530	Overlaps too much with what is in Chapter 800, consider how to merge these sections better to remove the cross-referencing in the rules which can really be confusing and difficult to follow.
531.01(b)(2)	Can't we define Dam here too as opposed to quoting RSA?
532.01	It would be easier if you included stream crossing projects here too. If you are going to make a section specific to public highways, making it comprehensive so agents don't have to work between sections is helpful and there is less change of something being missed in the shuffle.
532.03(a)	Are you saying this is not applicable to Town roads that are not NHDOT roads? Please explain.
532.03(f)2	This is a high degree of liability to place on the PE.
532.04(a)	What are high value wetlands?
532.04(g)	Requesting that the area be revegetated with similar species composition is excessive; unless that vegetation is unique or exceptional, asking for planting of shrubs or trees would increase construction, monitoring and maintenance costs.
603.04(a)	Is this asking for agency coordination during application development? This can conflict with project development timing.
603.05 (a and b) and 610.02(b)(4 and 5)	As determined by whom? This is vague and should be nailed down so that opposing views of climate change and sea level rise cannot be taken into account.
603.07 (b)	Define coastal storm surge protection and shoreline stability function
603.11	Does not seem necessary for all projects, suggest a waiver or exemption process for projects that would not affect navigation.
702	Someplace it should be added that for projects require delineation of the prime wetland boundary, the applicant should be required to submit that delineation (maybe digitally but at least on a map) to the Town and/or NHDES so that the prime wetland boundary maps

Hoyle, Tanner & Associates, Inc.
Comments to Draft NHDES Wetlands Rules
April 9, 2018

	are updated when that information becomes available. I know it would be included in the project file, but sometimes these boundaries shift and are not updated.
702.01 (c)	Our preference would be stating them in 702.02 rather than asking the reader to cross-reference to the RSA.
703.01	Suggest submitting a shapefile so that the later can be digitized into GRANIT?
703.03(d)(2)	Include all of this also on the map, and maybe merge these sections into one for Map and Report.
801.01	Stream channel is defined in 902.08, suggest cross-reference
801.03	It would help to have some clarity as to how many times you have to go back to the Con Com if they don't have an existing list. The effort you have to go through to get to the point of being allowed to pay the ARM fee should be very clear for the applicant and the Town, and there should be consideration of the Town asking for use of the in-lieu fee or stating that they would prefer this be done for certain projects. This would prevent any Con Com from delaying a project with trying to put forward ideas that will not work just to try to keep the funds in the Town.
901.01(a)	Suggest substitute "reduce" for "lessen"
901.03(a)	Refers to what is allowed under 309.05, but 309.05 is how you file for projects under 309.03, suggest refer to that instead.
902.25	Thank you, this was needed, but please go more in-depth or add text to allow for "at the discretion of NHDES" since some of the qualifications we have been told to use as self-mitigating are not included here, and we have been told that just widening the hydraulic opening does not make it self-mitigating, so are there certain parameters that need to be met in regard to the increased opening, or improve AOP, or connectivity? Making this more definitive would save you from having to have this discussion with every crossing, although they are all different.
Table 903.01	Most stream crossings are going to be located within a 100-yr floodplain, so this would make all of those a Tier 3.
Table 903.01 and 903.02	There has to be a better way to show all of this, having two tables to reference is really confusing.
Table 903.02	We do not see how creating the CAT level is helpful to figuring out how to permit a project, if they are going to align with Low Impact, Minor and Major, why not just use those terms?
903.02(b) and (c)	These two contradict each other, which takes control, the Tier classification or Low, Minor or Major?
903.02	In general, there are so many cross-references in this section that could be eliminated, it's this as long as it meets this but not that...this is not any clearer than what we have.
903.04(e) and (f) and 903.05 (d) and (e)	The contractors are responsible for the dewatering and erosion control plans, as this is a part of means and methods, and dictating it to them will increase costs. Submittal of these plans is typically a condition of the permit.
904.05(a)(3)	Most stream crossing projects are within a 100-yr floodplain, this is very restrictive
904.05(f)(1)(d) and 904.06(d)(4)	Most stream crossings need an alternative design request, but can still be designed to increase hydraulic capacity, improve AOP and connectivity, and so should be considered self-mitigating.
904.07(c)(4)	It is difficult, at best, to put a vegetated bank or wildlife shelf in all but the largest stream crossing structures, this is usually not practicable
904.10(c)(1)(a)	Providing a "detailed financial comparison" is difficult, how do we determine what level of detail is enough? How many in the range of alternatives?

Hoyle, Tanner & Associates, Inc.
Comments to Draft NHDES Wetlands Rules
April 9, 2018