April 19, 2018

NH Department of Environmental Services  
Attention: Mary Ann Tilton  
29 Hazen Drive  
Concord, NH 03302

**COMMENTS ON DRAFT WETLAND RULES**

Dear Ms. Tilton:

The Society for the Protection of New Hampshire Forests appreciates this opportunity to comment on the comprehensive set of draft wetland rules released by the Department on January 31, 2018.

Our principle concern with the new proposed rules is that any set of new rules – once in effect – should lead to a greater protection of wetland resources than is the case under present rules. While we believe it may be possible to both streamline the regulatory process in the current rules and provide greater protection of wetland resources, it is not clear to us that the new rules as drafted achieve this objective.

What is clear is that the remaining inventory of undeveloped land in New Hampshire – particularly in the southern and central parts of the State – includes a considerably higher percentage of wetlands than was the case in 1991 when the DES wetland rules were last rewritten in their entirety. This is one reason why we believe it is important that the next rewrite of the DES wetland rules should be more protective of the State’s (remaining) wetland resources.

The new rules must also be clear to those who must comply with them. From the feedback you’ve received at the five public meetings you have hosted in February and March, and from comments that have been shared with us by a variety of stakeholders, we believe that the Department needs to invest more time in reviewing the proposed rules with all stakeholders who have an interest before initiating formal rulemaking.

Your March 23rd e-mail to stakeholders suggests a more comprehensive review process with stakeholders before taking that step to start formal rule making. We believe this is wise. We would suggest that after receiving the public comments due April 20 that DES host “focused input sessions” with interested stakeholders so DES can do a “deep dive” with each group of stakeholders interested in such an opportunity. We recommend that you consider landowners, foresters and the conservation community as three distinct stakeholder groups as you organize the post April 20 review. We also recommend that once you complete these focused input sessions, you create a new draft proposal that provides at least three months for the public to review, digest and comment on before any formal rule-making is initiated.
Our general observations on the new draft rules:

- the definitions section is a great improvement over the definitions section in current rules, but there is terminology used in the new draft rules that is not defined in the new definition section that should be;
- there is no user friendly map to guide would-be applicants on how to navigate the new rules; given the complexity of the rules, we believe such a map will be critical to any set of new Administrative Rules;
- if the effect of “streamlining” is to simply make it easier for applicants to apply, without also adding further protection to wetland resources themselves, the new rules will fail to serve the public purpose statement of RSA 482-A;
- the avoidance and minimization sections of the new draft rules need to be further clarified and strengthened;
- the Department should consider creating a separate section in the rules for forestry operations, so that it is clear to landowners, foresters and loggers what is expected of them when harvesting timber. We believe a separate section for forestry in the wetland rules would also:
  - enhance compliance with the rules by those conducting timber harvests which directly leads to greater protection of wetland resources;
  - acknowledge that the impacts on wetland resources from sustainable forestry operations are considerably less impactful on wetland resources than permanent development of land;
  - enable forestry rules to be more directly aligned with Good Forestry in the Granite State and with Best Management Practices established by the NH Division of Forest and Lands, which specifically address practices for road construction and stream crossing from a forestry perspective;
  - enable DES to honor the expectation of forest land owners that NHB collection and maintenance of the database of rare natural resources would 1) remain private and not be available for the public to obtain on private lands and 2) would not be used as a regulatory lever in timber harvesting projects.

The Forest Society is prepared to work with the Department and other stakeholders to address these and other issues that will improve the capacity of the Department to more effectively regulate dredging and filling of wetland resources. We look forward to the opportunity to take a deeper dive on the issues of concern to us with you in more focused stakeholder sessions.

Sincerely,

Will Abbott
Vice President for Policy & Reservation Stewardship