

Comment and suggested changes of proposed Wetland rules January 17, 2019.

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1- The Rules as proposed are difficult to research and understand.

I'm a forester by profession here in NH since 1986, and a volunteer for a few recreational trail clubs constructing and maintaining trails for foot, atv and snowmobile travel. I regularly file Wetlands Forestry Notifications, and Wetlands Trails Notifications in an attempt to comply with the laws and rules. I do not find the rules as proposed to be easy to understand. Do you have anyone helping draft the rules that actually does work to implement them? I spent hours trying to determine the rules related to timber sale crossing and Exemplary Natural Communities, and in the end my understanding of the rules is different than the published and stated at the hearings. The rules need to be simple and clear with minimal cross referencing, and not subject to interpretation.

2. - Exemplary Natural Community regulations need clarity.

Rules appear to require that a wetland crossing of a Exemplary Natural Community as listed in Natural Heritage cannot be processed as a SPN (Special Permit by Notification) for forestry timber operations Env-Wt 308.05 (b) (2) (a) - But it is stated at the hearing that all Forestry, Trails and Routine Roadway projects sized as Minimum Impact are eligible for SPN.

Env-Wt 308.05 (b) (2) (a)

*a. The project, other than activities that meet the requirements of Env-Wt 308.04(e), is not located in a **priority resource area**, except as provided for in Env Wt-407;*

A "priority resource area" is defined as an Exemplary Natural Community in Env-Wt 103.52 (a) and Env-Wt 103.55 (b)

Env-Wt 308.04(e) is about repairs and maintenance for utilities.

Env-Wt 407.02 (d) would appear to me that a project that would otherwise qualify as an SPN would instead be a minimum impact. I'm not sure what the difference is, It's not clear.

Env-Wt 407.02 (d)

*A project that is classified as a major project based solely on the documented occurrence of protected species or habitat **shall be processed as a minimum impact project where the project would otherwise qualify as an SPN**, only if the person responsible for the SPN project obtains recommendations from NHB and the fish and game department regarding the impacted species or habitat.*

This appears again in the Env-Wt 520 Forestry section If all wetlands crossings eligible for SPN are not impacted by a protected species habitat, why is Env-Wt 520.05 (a) (3) (b) listed?

Env-Wt 520.05 (a) (3) b.

*Is not located in a **protected species habitat** unless authorized under Env-Wt 407 or Env-Wt 308.05;*

3. Clarity is needed regarding the NHB DataCheck.

It appears to require that the NHB DataCheck recommendations be given to DES with the SPN permit. But at the hearing it is stated that NHB DataCheck recommendations do not need to be given to DES.

Env-Wt 308.05 (a) (2) (a)

(2) *Proof that the project conforms to the statutory requirements and limitations, including but not necessarily limited to the following:*

a. *The identification number of an NHB DataCheck, including any recommendations that are necessary for the project to proceed as an SPN or affirmation that recommendations have been received in (b) (2)(b) below;*

Why is the highlighted lines included in the rules if there is no reason to send them with the SPN?

4. NHB DataCheck - Rare and endangered species and Exemplary Natural Communities.

Restricting what a landowner can do on a property when it is listed in the NHB DataCheck as having a rare or endangered species or Exemplary Natural Community is detrimental to the Natural Heritage program. If we wish to protect and enhance rare and endangered species and Exemplary Natural Communities here in New Hampshire, a landowner needs to be rewarded for having them on their property instead of being penalized. As long as a landowner feels threatened by restrictions or loss of property value when they are subject to having a listing by Natural Heritage, the landowner will resist allowing review of their property for documentation, and has incentive to take action to remove them from their property. Opposite of what the law is trying to accomplish.

With this, Natural Heritage Data Checks are only required when doing a Forestry Notification or other wetlands permit. Landowners should be made aware of records affecting their properties, in the event that they are harvesting timber or other activities that don't require a wetlands permit, but that could have a negative impact on a rare or endangered species or exemplary natural community.

5. Copy of Forestry Notification to Town Clerks.

We have not with the current Forestry Notifications given the Town Clerks a copy of the notice submitted to DES. I don't understand why this is necessary, or why the Town Clerk would need it. It just adds one more thing to the list of things that must be done.

Env-Wt 308.05 (c)

(c) The person responsible for the project shall provide the clerk of each town or city in which work on the project under the SPN will occur, with a copy of the notice submitted to the department.

6. Notification of DES when an operation is complete.

We currently do not notify DES when an operation is complete. We do file a report of Cut when the timber harvesting is complete, but this is not always the same as completion of the removal of crossing structures and other ground clean up. Often the ground is frozen or sensitively wet when the harvest is complete, and we need the ground to thaw, and or dry out, before completing the close out work. And sometimes we even return a year or two later to fix a problem spot. Hopefully without the Notification being expired. Filing additional paperwork does not help us do a better job of minimizing impacts to wetlands.

Env-Wt 308.07 (b)

(b) Within 10 days following completion of the work covered by the SPN, the person responsible for the project shall submit to the department confirmation of completion of the project, either by paper copy or electronically.

7- Following BMP manuals should not be mandatory.

The rules require that all SPN projects follow the BMPs. Although this would appear to be a good idea, it falls short of meeting the goals of the BMPs. The BMP are meant as recommendations, not regulations. Regulations set the BMPs in stone and don't allow for improvements in technology and methods. Most of our currently practices of BMPs, as listed in the books, were created by loggers and foresters on the ground coming up with a better way of crossing a wetland using the resources available to them. Requiring that a manual be followed when a better alternative may be available retards the creative process of developing new and better methods that minimizes impacts to wetlands. I would suggest wording be changed to requiring impacts to either follow the BMP guide, or use other techniques that are equal to or better than those listed in the BMP guide, that best minimize erosion, sediment transfer to surface waters or wetlands, and minimize turbidity in surface waters and wetlands in each situation.

Env-Wt 307.03 (b), Env-Wt 308.08 (d), Env-Wt 520.03, Env-Wt 520.04.

(b) All work shall be conducted so as to minimize erosion, minimize sediment transfer to surface waters or wetlands, and minimize turbidity in surface waters and wetlands using techniques described in the following manuals, available as noted in Appendix B:

(2) For forestry projects, the New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations (2016) (Logging BMPs);

(4) For SPN trails projects, NH Best Management Practices Manual for Trail Maintenance and Construction (2018); and

8 – Machinery to remove beaver dams.

Machinery is not allowed to be used in removing beaver dams, and removed beaver dam materials must be placed outside of wetlands. With the removal of beaver dams, I don't understand why machinery cannot be used. Do town road agents know this when unplugging road culverts? Nor, why the sticks and mud in the wetlands created by the beavers need to be placed out of wetlands. It appears the rules are only making the process of protecting property from beaver damage without trapping more difficult and expensive. Appropriately used equipment can release water gradually and safely, and there is no benefit to moving dredged sticks, vegetation and mud from the wetlands.

Env-Wt 308.01 (g)

(g) As provided in RSA 210:9, II, the destruction or removal of a beaver dam or the installation of beaver pipes or beaver fences as defined in RSA 210:9, II-a by a landowner, the landowner's agent, or any town or municipal or state official or employee on property under that person's control to protect property, public highways, or bridges from damage or submersion, subject to the following conditions:

(1) Removal of the dam shall be done in a gradual manner such that it does not allow a sudden release of impounded water so as to cause erosion, siltation, or a safety hazard downstream;

(2) No machinery shall enter the water or otherwise create any disturbance by filling or dredging in or adjacent to surface waters, wetlands, or the banks thereof; and

(3) *All dredged materials shall be placed out of jurisdictional areas.*

9. Additional information required that is not related to wetland impacts.

Env-Wt 520.03 (a) (1) (b) requires a listing of all the surface water types within a project area. If Forestry operation is not crossing or impacting these areas I don't understand where it is within the Department's jurisdiction to require this information. Similarly Env-Wt 520.03 (a) (1) (c) requires the location of the landing be shown, which again, if not located within a wetland, is not within the Department's jurisdiction. Neither of these are listed at requirement under RSA 482-A:3 (V) (b).

Env-Wt 520.03 Forestry Notice and Application Requirements.

(a) *For an SPN forestry project, the applicant shall submit the following to the department:*

(1) *A forestry operation plan that shows:*

a. *Crossing locations;*

b. *Wetland or surface water types, such as marsh, swamp, bog, or stream, within the project area; and*

c. *Proposed log landing areas; and*

10. Prime Wetland requirements

A waiver is required to harvest timber in wetland designated as A Prime Wetland and on dry ground within 100 feet of the designated Prime Wetland. To obtain a waiver, the landowner must provide maps, written descriptions, list of the wetland values to prove that there would be no significant net loss of wetland values (very subjective) and a fee ranging from \$200 to \$1,250 depending on the crossing impact classification. This added time and expense will likely prevent timber harvesting on areas near prime wetlands, and or takes, or reduces the value of timber in these areas. If a waiver is denied the landowner loses the timber value altogether. There appears to be no compensation to the landowner for the cost of applying for a waiver and the devaluing of their property from a Prime Wetland designation that is a result of a Town vote. If property value is taken away by a Town, County, State, or Federal government, the owner should be compensated for that value.

Env-Wt 520.03 (a) (3)

(3) *For any work proposed to be performed within a designated prime wetland or duly established 100-foot buffer, a waiver issued in accordance with Env-Wt 706.*

Env-Wt 706.02 Requirements for Waiver Requests for Forestry Activities.

(a) *The applicant for a waiver under Env-Wt 706.01 shall submit a written request for a waiver to the department at the same time the applicant submits the notification or permit application, as applicable.*

(b) *The waiver request shall include the following:*

(1) *The information required by RSA 482-A:11, IV(b)(1), as follows:*

a. *A sketch of the property depicting the best approximate location of each prime wetland/buffer in which work is proposed and the location of proposed work, including access roads;*

b. *A written description of the work to be performed and a copy of the notice of intent to cut, if applicable; and*

c. *A list of the prime wetland values as identified by the municipality in designating each prime wetland under RSA 482 A:15;*

- (2) Such information as is required to demonstrate that there will be no significant net loss of wetlands values identified by the municipality when the prime wetland/buffer was designated; and
- (3) As authorized by RSA 482-A:11, IV(b)(4)(B), a filing fee of:
 - a. \$200 for projects that would otherwise qualify for a minimum impact forestry notice if it was not located in or near a designated prime wetlands/buffer;
 - b. \$500 for minor impact projects that do not qualify under a., above, and are not major projects; and
 - c. \$1,250 for major impact projects classified regardless of prime wetland designation; and
- (4) Written comments on the application from the conservation commission or local governing authority, as applicable, stating that:
 - a. The members have no objections to the requested waiver;
 - b. The members have no objections to a waiver if the conditions specified in the comments are met; or
 - c. The members object to the waiver for the reason(s) stated in the comments.

11. – Foresters delineating wetlands

A forester’s ability to prepare Standard Wetland permits needs to be clearly defined. Env-Wt 520.03 (b) says that a licensed forester can prepare a Standard permit when it does not qualify for a SPN. However, Env-Wt 311 requires that all areas be delineated and classified by a certified wetland scientist, and functional assessment be performed by a wetland scientist.

Env-Wt 520.03 (b)

(b) An applicant for a standard permit for a forestry project that does not qualify for a SPN shall be prepared by a licensed forester or a certified wetland scientist and shall include the following:

(1) Wetland delineation, functional assessment, and impact assessment as required by Env-Wt 311 and Env-Wt 313;

Env-Wt 311.01 Application Preparation for All Projects. Prior to finalizing the details of a proposed project for which a standard permit for a minor or major impact project is needed, the applicant shall:

(a) Have all jurisdictional areas delineated and classified by a certified wetland scientist, who also shall identify the predominant resource functions of each jurisdictional area;

12. Defining a minimum impact Winter Road through wetlands

Env-Wt 520.05 (a) (1) appears to describe a winter roads but does not name it. That it is a winter road made from frozen snow and ice, and is not in the 2016 BMP guide.

Env-Wt 520.05 (a) (1)

(a) The following forestry projects shall be considered minimum impact and are eligible for SPN, LSA, or EXP in accordance with Env-Wt 407 and as follows:

(1) Roadway construction through forested wetlands for the purpose of conducting forest management activities, only if:

- a. Activities are conducted only during frozen conditions;
- b. Roads are cleared only by felling timber in and adjacent to the roadway;
- c. The road base is constructed using no fill other than:

1. Snow pushed on and frozen over the road base; or
2. Stumps inverted in places where support of the road base is necessary.

13. Are truck roads crossings permanent or temporary?

It is not clearly stated in Env-Wt 520.05 (a) (2) as to whether the access roads crossings are permanent or temporary. Env-Wt 520.05 (a) (3) indicates temporary vehicle access which implies Env-Wt 520.05 (a) (2) may be referring to permanent crossings. Permanent crossings lessen impacts by not needing to be reinstalled again for each use or timber harvest and provide access anytime needed for access without fording the wetland. Temporary crossings need no maintenance and have no risk of plugging or washing out. Both have their place. This should be defined so to not leave the reader guessing.

Env-Wt 520.05 (a) (2)

(2) Installation of a culvert, pole, or rock ford, and associated fill, to permit vehicular access to a parcel for forest management, only if:

- a. Access is not used for subdivision, development, or other land conversion to non-forestry uses, except that forestry uses may be combined with normal agricultural operations or trail construction or maintenance, or both;
- b. Roadway width at the crossing does not exceed 20 feet;
- c. Fill width, measured at the toe of the roadway side slopes shall be minimized and not exceed 50 feet;
- d. Fill for any single wetland crossing does not exceed 50 feet in length, measured along the proposed access way;
- e. Wetland crossings shall be limited to those that:
 1. Do not impact any bogs, marshes, sand dunes, tidal wetlands, or undisturbed tidal buffer zone;
 2. Are not located in a prime wetlands or duly-established 100-foot buffer unless a prime wetlands waiver has been obtained in accordance with Env-Wt 700;
 3. Only cross a swamp or wet meadow if such swamp or wet meadow has no standing water for 10 months per year or more; and
 4. Are not located in a protected species habitat unless authorized under Env-Wt 407 or Env-Wt 308.05; and
- f. For stream crossings, the scoured stream width is no wider than 8 feet; and

14. Landclearing for development and non forestry uses.

Clearing for development often is best done with temporary wetland crossings the same style and type usual of logging operations. And, often the best location for skid road crossings to minimize wetland impacts is not where the development wetland impacts will be located. Allowing the clearing of trees for development and conversion non forestry or non agriculture uses to utilize SPN permitted crossing would minimize wetland impacts for the site clearing and allow better access to the wetland sites which as well will minimize wetland impacts during construction.

Env-Wt 520.05 (a) (2) (a)

(2) Installation of a culvert, pole, or rock ford, and associated fill, to permit vehicular access to a parcel for forest management, only if:

- a. Access is not used for subdivision, development, or other land conversion to non-forestry uses, except that forestry uses may be combined with normal agricultural operations or trail construction or maintenance, or both;