



**New Wetlands Rules and Processes:
An Overview of the Changes**
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September 26, 2019




Thank you
To all who assisted in the development of the rules, provided public comments, participated in workgroups and BMP review and revisions!!

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Agenda

Background

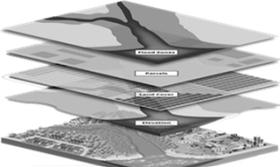
Terms

Process & Forms

Organization

Tools

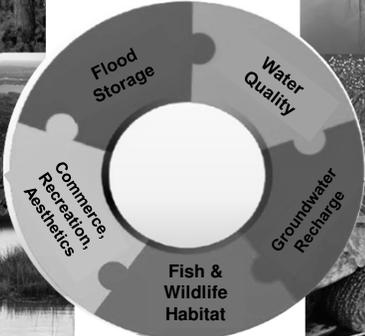
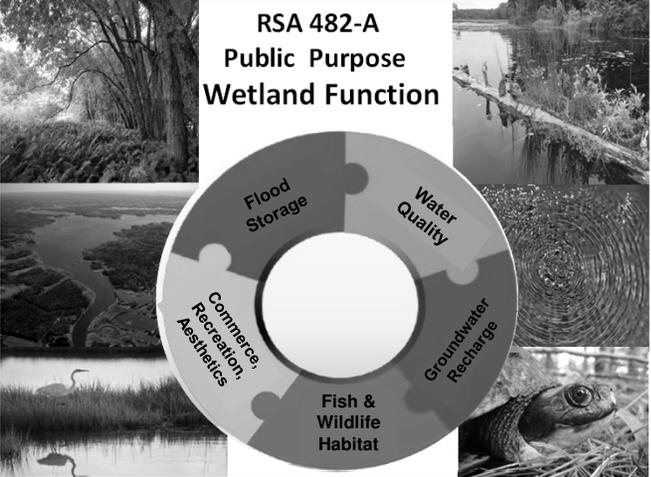
Other Changes

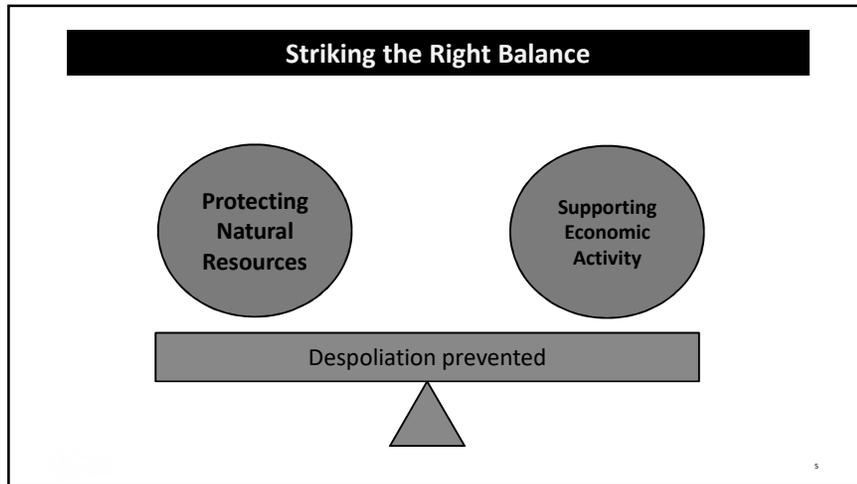






**RSA 482-A
Public Purpose
Wetland Function**



Why the Wetland Rules Update?

- New rules incorporate many statutory changes.
- Establish rules that reflect what has been done operationally.
- Reflect best available science.
- Increase Streamlining of projects with temporary or minimum impact.
- Establish Project Specific Criteria and objective standards
 - For consistent interpretation of the rules.
 - With other DES and sister state agency programs.
 - With US Army Corps of Engineers Programmatic General Permit.



Changes to the Wetlands Dredge and Fill Law

- Exemption changes.
- Statutory turnaround time mandate.
- Amendment as 20% change.
- Time extensions.
- New statutory notices – Utilities, Routine Roadway.
- New prime wetland waiver, buffer change.
- New PBN: MIE and permit by rule.
- LAC Right of Intervention/ LAC notice



Changes to Other State Programs

- New Shoreland standards and rules.
- New surface water quality standards.
- Designated River Local Advisory Committees and
- LAC process expanded.
- Invasive species law and grant program.
- Certified wetland scientist (RSA 310-A).
- New Alteration of Terrain rules.
- New Subsurface rules.



Organization Changes		
Env-Wt	Current	Proposed
100	Definitions	Definitions
200	Practice & Procedure	Hearings, Appeals & Waiver requests
300	Delineation, Evaluation, Project Classification, Permit Conditions	Permit Types & Procedure, Standard Conditions, Criteria for Standard Permits
400	Shoreline Structures	Delineation & Classification of jurisdictional areas & <u>General</u> Project Classification
500	Permit Procedure	<u>Project Specific Requirements</u> (e.g. docks, utility, forestry, residential, commercial)
600	Tidal Wetlands	Coastal Lands & Tidal Waters/ Wetlands
700	Prime Wetlands	Prime Wetlands
800	Compensatory Mitigation	Compensatory Mitigation
900	Stream Crossings	Stream Crossings



New Terminology

- Priority Resource Area (PRA).
- Avoidance and Minimization (A/M).
- Native aquatic vegetation (NAV).
- Exotic aquatic weeds (EAW).
- Duly-established 100-foot buffer.
- Wetland Permit Planning Tool (WPPT).
- Coastal Functional Assessment (CFA).
- Project type exceptions (PTE).
- Statutory Permit By Notification (SPN).
- Lower Scrutiny Approval (LSA).
- Expedited (EXP).
- Registrations.
- LAC jurisdiction.

Where do I find all of the Definitions?

5 Locations of Definitions

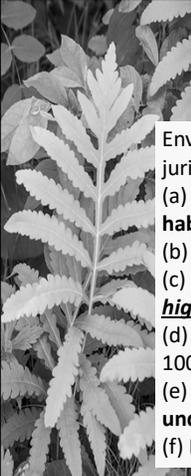
Env-Wt 100 (overall)

- Env-Wt 602 (coastal)
- Env-Wt 701 (primes)
- Env-Wt 802 (mitigation)
- Env-Wt 902 (stream crossing)

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Avoidance and Minimization

- **Avoid and minimize** - to avoid impacts to the maximum extent practicable and then minimize those impacts that cannot be avoided. (Env-Wt 102.14)
- **Minimization measures** means design techniques, **construction techniques, and project timing adjustments, together or in any combination**, that relocate or reduce unavoidable adverse impacts, taking into account the purpose of the proposed project, the functions and values of the impacted resources, and practicability. (Env-Wt 103.39)



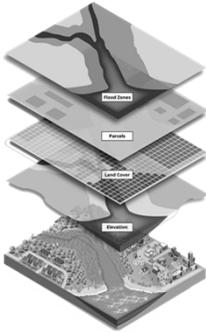
New Definition

Env-Wt 103.65 “Priority resource area (PRA)” means a jurisdictional area that:

- (a) Has documented occurrences of **protected species or habitat** for such species;
- (b) Is a **bog**;
- (c) **Is a floodplain wetland contiguous to a tier 3 or higher watercourse**;
- (d) Is a designated **prime wetlands** or a duly-established 100-foot buffer;
- (e) Is a **sand dune, tidal wetland, tidal water, or undeveloped tidal buffer zone**; or
- (f) Is any combination of (a) through (e), above.

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Tools

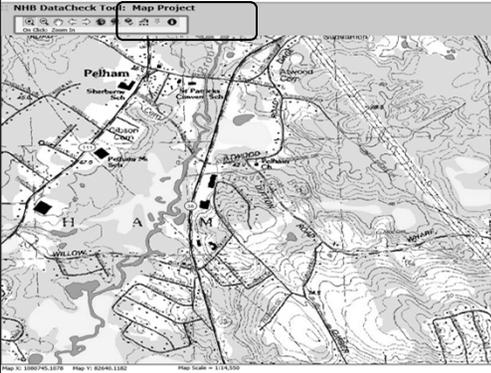


Env-Wt 306.05 Required Planning for All Projects

- ❖ To determine Project impact classification
- ❖ To determine Type of Approval

- ✓ Determine if property contains a PRA
- ✓ Coastal resources; LAC jurisdiction; watershed size; contaminated sites; impaired waters
- ✓ Use Database or other sources to find required Information

NHB DataCheck Tool



Contains any documented occurrences of protected species or habitat for such species, using the DataCheck tool at:

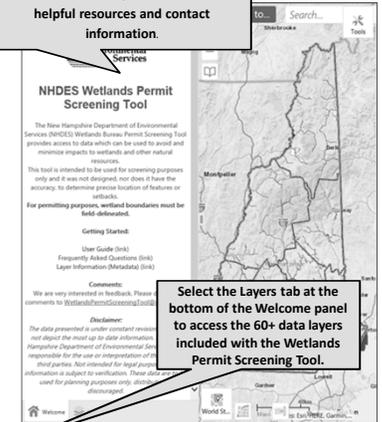
<https://www2.des.state.us/nhb/datacheck>

The Welcome panel, on the left hand side of the screen, contains links to helpful resources and contact information.

NHDES Wetland Permit Planning Tool (WPPT) centralizes:

- ✓ Designated Rivers.
- ✓ Shoreland
- ✓ Floodplain.
- ✓ Permit locations.
- ✓ Prime wetlands.
- ✓ Coastal/Inland.
- ✓ Mitigation.
- ✓ Priority Resource areas (PRAs).

See Env-Wt 306.05.



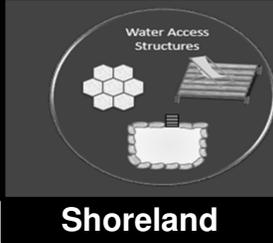
Select the Layers tab at the bottom of the Welcome panel to access the 60+ data layers included with the Wetlands Permit Screening Tool.



Streamlined Processes



Process & Forms



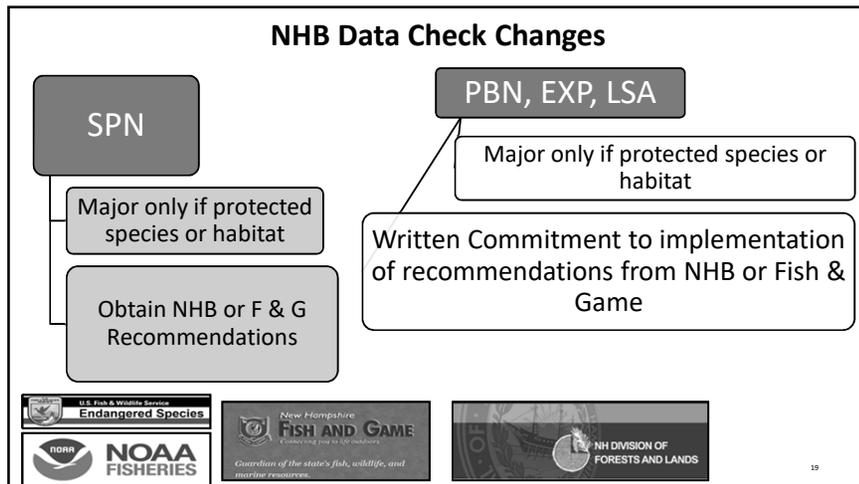
Shoreland



LAC

Group	General project type	Impact classification	DES max rev. time (bus. days)	RFMI issued?	LAC waiver of intervention req'd in LAC jurisdiction?
Routine Roadway Registrations (RRR)	Culvert maintenance Ditch maintenance Scaffolding RR1 – RR9 (w/ RR SPN form)	Minimum	A/ 5 days	No	Yes
Statutory Permit by Notification (SPN)	Minimum: forestry, trails, utilities, Routine Roadway (culvert maintenance only), seasonal dock	Minimum	A/ 5 days	No	except for RR on lands used for Agriculture (not for Forestry or Trails)
Permit by Notification (PBN)	21 Projects, which include Agriculture and Routine Roadway	Minimum	A/ 5 days	No	Yes
EXPedited (EXP)	Minimum	Minimum	T/ 30 days	No	Yes
Standard	Any minor or major project	Minor, Major (Any project type or classif)	T/ 50 or 75 days	Yes	W/in 1/4 mile of designated river corridor

DES Review: A= Administrative; T= Technical¹⁸



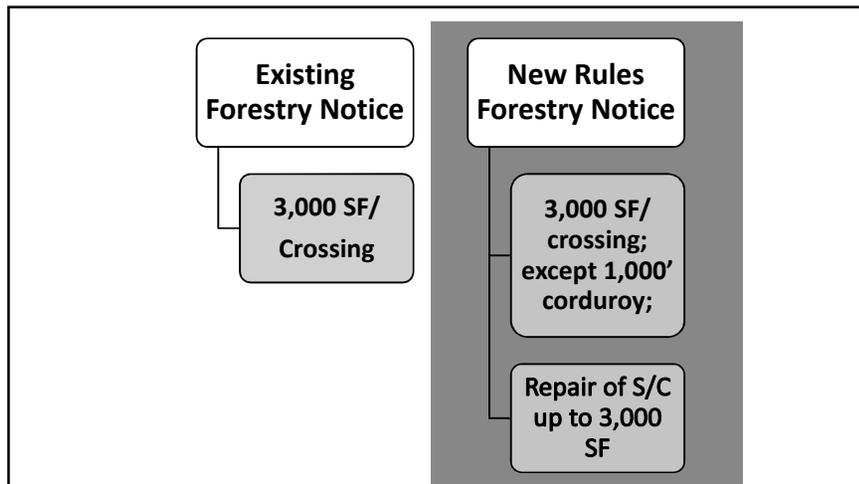
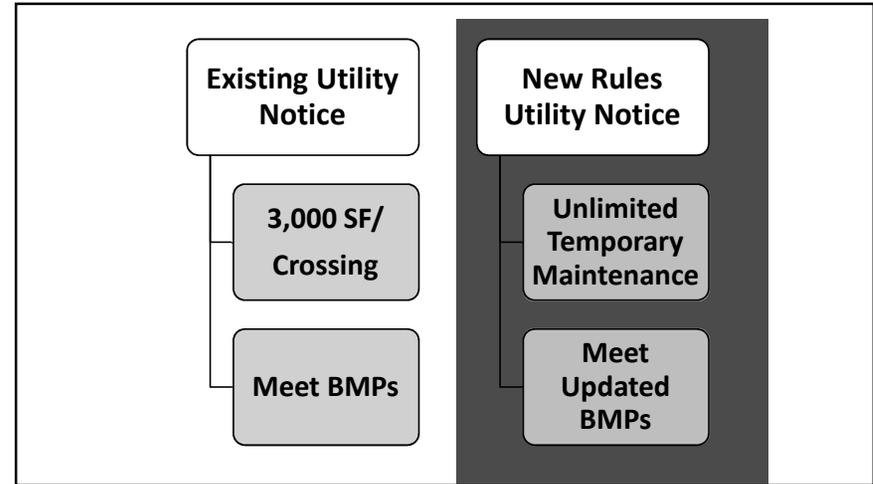
- ### Statutory Permit by Notification (SPN)
- SPN
 - Temporary Seasonal Dock
 - Timber Harvesting (Minimum impact)
 - SPN
 - Recreational Trails (Minimum impact)
 - SPN
 - Utility maintenance & repair (Minimum)
 - Routine Roadway up to 48" culvert

Statutory Permit by Notification (SPN) (Env-Wt 308.04 - 308.08)

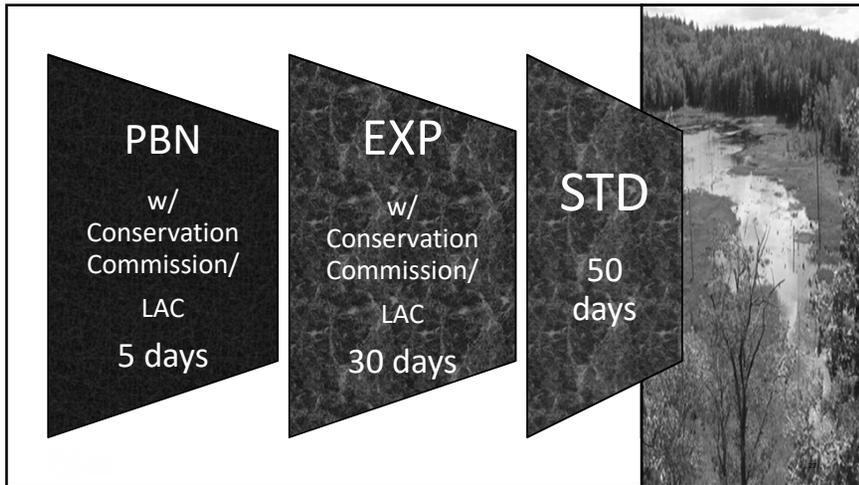
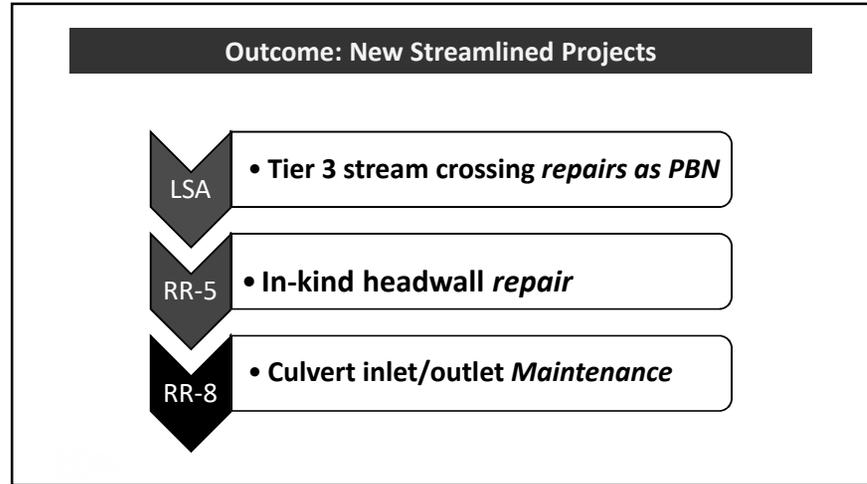
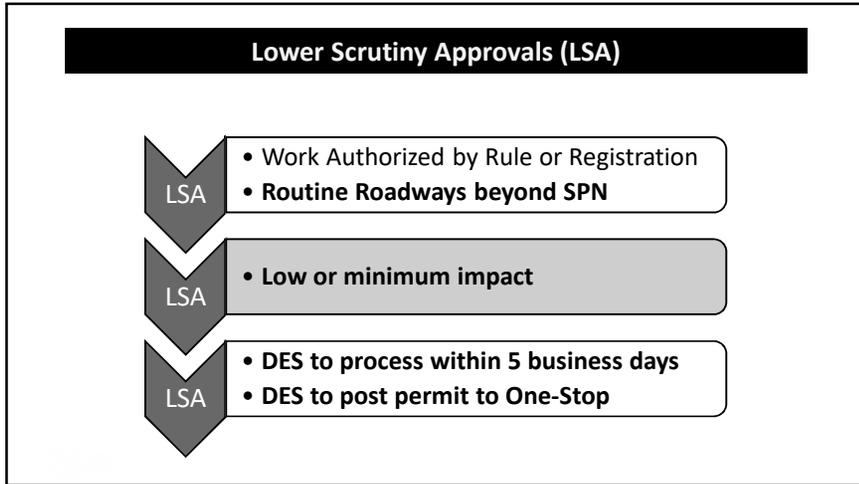


- DES Completeness review conducted within 5 days (posted on website or for Forestry, a hard copy for posting is issued) (new processing times established).
- SPN requires NHB DataCheck (as in the current practice).
- LAC signoff exemption for forestry, trails (to capture recent law change).
- Post-work notification now required for all except Utility Maintenance.





Registration for Routine Roadway Maintenance Activities	
Activity	Registration
Replacement/repair (culvert diameter ≤48")	Registration RR-1:
Culvert extension (culvert diameter ≤48")	Registration RR-2:
Culvert relocation (culvert diameter ≤48")	Registration RR-3:
Embankment stabilization	Registration RR-4:
 In-kind headwall repair only	Registration RR-5:
 Headwall construction/repair/replacement (culvert diameter ≤48")	Registration RR-6:
Roadside ditch maintenance	Registration RR-7:
Culvert inlet/outlet maintenance (culvert diameter ≤48")	Registration RR-8:
 Temporary scaffolding	Registration RR-9:

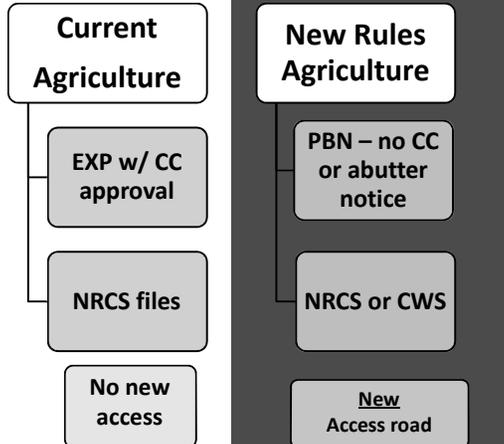


- ### PBN /LSA Project Types (Env-Wt 309.05)
- (that complies with criteria (...) noted in rules) *= New
- | | |
|--|--|
| (1)*Exotic aquatic weed control activities not exceeding one acre...
(2) Replenishment of an existing beach...
(3)*Repair of a deck or patio...
(4) Installation of a new seasonal dock...
(5) Repair of an existing legal docking structure...
(6) Installation of a dock anchoring pad...
(7) Installation of a watercraft lift...
(8) Installation of a new canopy...
(9) Repair of an existing wall...
(10)*Maintenance or repair of a legally-existing boathouse...
(11) Dry hydrant... | (12) Forestry activities...
(13) Utility activities (maintenance)...
(14) Residential utilities to a single-family home...
(15)**Agricultural activities., including access...
(16) A temporary coffer dam...
(17) Maintenance of a tidal docking structure ...
(18)*Repair of a legally-existing tier 1 or tier 2 stream crossing...
(19)** Repair of a legally-existing tier 3 stream crossing...
(20) Replacement of a tier 1 stream crossing...
(21)*Installation of a temporary tier 1 or tier 2 crossing... |
|--|--|

Outcome: Increased Streamlining

Current Permit by Notice (PBN)	New PBNs
14 projects -10 days - Abutter notice - Technical review - RMIs - CC approval - No permit issued	21 projects - 5 days - <u>No Abutter notice</u> - Administrative - Denial if incomplete - CC sign off req'd - Posting Permit

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EXPedited projects

New types of projects:

- Bioengineering stream bank projects (Env-Wt 514; 514.07).
- Wildlife pond (Env-Wt 519).
- Restoration projects (Env-Wt 525).
- Coastal living shoreline (Env-Wt 600).
- Small Motor Mineral Dredge (Env-Wt 310.04).
 –Location information required.

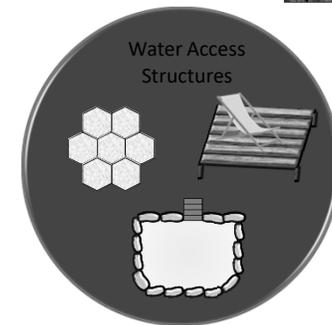


Water Access Structures

Water Access Structure Design Requirements (Env-Wt 511.04(b))

Tidal Buffer Zone projects

Inland projects w/ Pre-Application meeting



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Designated Rivers and LAC process

Local River Advisory Committee (LAC)

Right of Intervention
NHDES to consider & make findings on each issue contrary to LAC

Process Category	SPN Statutory Notice	Routine Roadway Registration	PBN Permit by Notice	EXP EXPEDITED	Standard
DES max Review time (days)	N/A	5	5	30	50 /75
LAC waiver of intervention required when project is...	w/in LAC jurisdiction <i>except for Routine Roadway on lands used for Agriculture (& <u>not</u> Forestry or Trails)</i>	w/in LAC jurisdiction	w/in LAC jurisdiction	w/in LAC jurisdiction	Not required, but subject to ¼ mile Designated River corridor
Minimum = Flat fee	✓ YES		✓ YES	✓ YES	X
Minor SF impact	X		X	X	✓ YES
Major	X		X	X	✓ may require mitigation & or G & C ³⁴

- Outcome: Standardize Process - New Forms**
- ✓ Emergency Authorization Form.
 - ✓ Request for Routine Roadway Registration Forms (9 activities).
 - ✓ Minimum Impact Expedited Application Form.
 - ✓ Request for Application/ Permit Amendment.
 - ✓ Request for Wetland Rules Waiver.
 - ✓ Request for Prime Wetland Waiver.
 - ✓ Notification of Commencement of Construction.
 - ✓ Notification of Construction Completion.

Other rule changes

Other Changes

Outcome: Standardize Conditions to Protect ...



Water Quality
 Env-Wt 307.03

Fisheries & Breeding areas
 Env-Wt 307.04

Threatened/endangered species, critical habitat
 Env-Wt 307.06

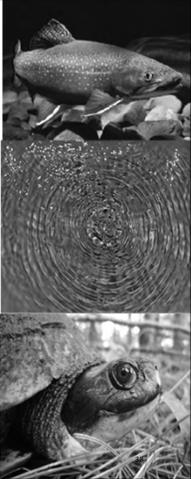
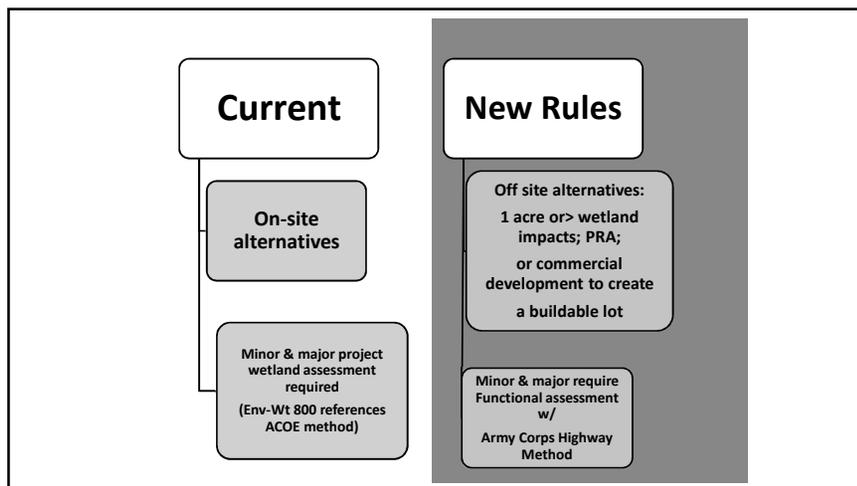
Designated Prime Wetlands
 Env-Wt 307.08

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Standard Projects

Env-Wt 311

- Application contents.
- Functional assessment required.
 - US ACE Highway Methodology Workbook and Supplement, OR
 - Alternative scientifically supported method.
- Demonstration of Avoidance and Minimization.
 - For a **minimum** impact project, certification signed by a certified wetland scientist that the project is located and designed to minimize impacts to wetlands functions and values is an option.
- Complete Mitigation Proposal Components (Env-Wt 312.04).

32 New Project-Specific Standards

- Applicability.
- Approval Criteria.
- Design Criteria.
- Project Classification.
- Construction R'qmts.
- Maintenance.



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Chapter 500 - Non-tidal - NEW CHAPTER 18 Project-Specific Requirements

Consistent sub-headings for each project type

- Applicability
- Approval Criteria
- Application Requirements
- Design Requirements
- Construction Requirements
- Project Classification

Project-Specific
Criteria
Worksheet



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Outcome: Standardize Project Criteria

	Trails & Paths	Env-Wt 517	
	Ponds	Env-Wt 519	
	Forestry	Env-Wt 520	
	Utility	Env-Wt 521	
	Agriculture	Env-Wt 522	
	Residential /Commercial	Env-Wt 524	
	Restoration/Enhancement	Env-Wt 525	

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Coastal Changes

- Robust new Tidal Chapter.
- Resource & Vulnerability Assessment.
- Flood tolerance and address sea-level rise.
- 8 project specific standards.
- New Tidal Mitigation criteria.



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Outcome: Consolidate & Standardize Tidal Requirements

COASTAL LAYERS
• EEL GRASS
• SHELLFISH
• SALT MARSH MIGRATION
• SEA LEVEL RISE
• TIDAL WATERS



Data screen/assessment/plan	603
General Criteria	604
Avoid/Minimization/Mitigation	605
Overwater Structures	606
Dredge 607	Tidal beach 608
Tidal buffer zone/Shoreland	609

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Env-Wt 609 Tidal Shoreline Stabilization

HOW GREEN OR GRAY SHOULD YOUR SHORELINE SOLUTION BE?

GREEN - SOFTER TECHNIQUES
GRAY - HARDER TECHNIQUES

Living Shorelines



VEGETATION ONLY - Provides a buffer to upland areas and breaks small waves. Suitable only for low wave energy environments.



EDGING - Added structure holds the toe of existing or vegetated slope in place.



SILLS - Parallel to existing or vegetated shoreline, reduces wave energy, and prevents erosion. Suitable for most areas except high wave energy environments.



BREAKWATER - (vegetation optional) - Offshore structures intended to break waves, reducing the force of wave action, and encourage sediment accretion. Suitable for most areas.



REVETMENT - Lays over the slope of the shoreline and protects it from erosion and waves. Suitable for sites with pre-existing hardened shoreline structures.



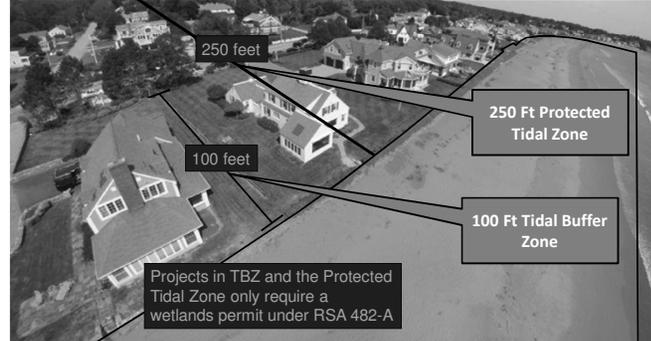
BULKHEAD - Vertical wall parallel to the shoreline intended to hold soil in place. Suitable for areas highly vulnerable to storm surge and wave forces.

Coastal Structures

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New Rules

“Tidal Buffer Zone” (TBZ) extend 100 ft from the highest observable tide line & Protected Tidal Zone extends 250 ft from the HOTL.



Projects in TBZ and the Protected Tidal Zone only require a wetlands permit under RSA 482-A

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Outcome: Reflect Statutory Changes Env-Wt 700 Prime Wetlands



Definitions

Maps & documents

Notice & Appeal

Criteria/ Procedures

Criteria for Approval

Prime Wetland Waivers

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Outcome: Clarify & Streamline Env-Wt 900 Stream Crossing rules



Project classification

Info Required

Repair, Rehabilitation, Replacement

Tier 4 - Tidal crossings

Alternative Design

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Updated and New BMPs

- Avoidance and Minimization
- BMWP for Agriculture
- Trail Construction and Maintenance
- Routine Roadway Maintenance
- Utility Maintenance
- Timber Harvesting Operations

Background

Wrap up

Terms

Process & Forms

Organization

Tools

Other Changes

Any Questions ?

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