

General Comments on Overall Draft Wetlands Rules:

- 1) The draft rules have missed the mark on simplifying the permitting process for an applicant.
- 2) The level of detail/information required in an application has increased, and is more burdensome for the applicant. In general practice, when looking to simplify and streamline a process requirements should be eliminated and/or reduced...not increased.
- 3) Clarity is lacking throughout. It's difficult to understand when and what an activity should be classified as. (i.e. CAT1, CAT2, CAT3, Major, Minor, Minimum, LSA, SPN etc.) So many "if this/than that provisional kick outs it's hard to know what your proposed work is classified as.
- 4) There are definitions for words that are then never used in the rules.
- 5) There are words that would still benefit from having a definition.
- 6) There is an overwhelming amount of new acronyms to learn.
- 7) Consistent page numbering throughout the entire rule set would be helpful.
- 8) A goal was to have more activities qualify as minimum impact/LSA type activities...with the new Special resource areas and resource disqualifications (RDQ's) being as broad and far reaching as they are I think there will be an increase of CAT3/major impact projects and less LSA/CAT1/Minimum impact projects because almost any conceivable activity will be elevated.
- 9) Many of the added rules will come with a higher cost burden on the applicants (i.e. higher consultant costs, more plan work required, etc.
- 10) The inclusion of the applicable RSA's within the rules is good in concept but visually overwhelming.
- 11) throughout the draft rules several sections are left as needing more stakeholder input. It's difficult to get the full picture when these sections of the rules have not been completed.
- 12) The overall flow the rules is awkward.
- 13) Missed the opportunity to tackle the "low hanging fruit" instead added more to the complexity and confusion.
- 14) The idea of the Special resource areas has been taken from the wetlands buffer workgroup and has since been modified/stretched beyond it's intended purpose. Should not be used the way the rules are currently using it.
- 15) The opportunity to address concerns pertaining to the delineation of Top of Bank were not addressed. This is something that the wetland science community has expressed desired improvement for so that the information that's collected in the field is done consistently by all.
- 16) No real mention of vernal pools. There is opportunity to improve/make it more clear when a vernal pool should or shouldn't be considered such...multiple eggmasses vs 1 mass??? 1 fairy shrimp vs many?...one wood frog in a pool with no egg masses.. Etc....

Rule Specific Comments :

Rule #:	Questions/Comments/Concerns/Hardships:
Env-Wt 101.01	The statutory definitions in table 101-1 should just be incorporated in with the other definitions so user doesn't have to go look them up.
Env-Wt 102.06	This definition is not used anywhere else in the rules...is there a need for it?

Env-Wt 102.24 & 103.07	CAT1 - Term includes Minimum - Confusing to mix terms. Should pick one and stick with it.
Env-Wt 102.25 & 103.08	CAT2 - Term includes Minor - Confusing to mix terms. Should pick one and stick with it.
Env-Wt 102.26 & (103.??major project not defined?)	CAT3 - Term includes Major - Confusing to mix terms. Should pick one and stick with it.
Env-Wt 102.37	Including links might be a bad idea...several of the links throughout the draft rules have been tested and are proving to already have broken links to the site and do not work.
Env-Wt 103.21	Pier - DOT has other definition such as bridge piers...could be confusing
Env-Wt103.34	Definition was left open ended....
Env-Wt103.37 & 902.21	Same word two different definitions (not consistent)
Env-Wt 103.38 & 902.22	Same word two different definitions (not consistent). "Repair" when applied to any structure <u>except a stream crossing....(Why?)</u>
Env-Wt 103.41	Revetment - not used anywhere else in the rules... Is it necessary to define?
Env-Wt 103.42	"Rip-Rap" being described as " <u>cobble sized and boulder sized rocks</u> "...this could use some additional clarification and be better defined.
Env-Wt 103.45	Department of Transportation should be capitalized. 2017 should be 2018.
Env-Wt 103.50 & 902.25	"Self Mitigating" Same word two different definitions (not consistent). The 103.05 definition may be interpreted in a broader sense than what is intended...in this scenario a slight upgrade vs. a fully compliant crossing would still be self mitigating...Might get abused.
Env-Wt-103.56	DOT uses the term sluice in a different way than defined. DOT will sometimes control storm water runoff that we don't want to sheet flow onto vegetated embankments by conveying the storm water runoff down a "sluice" (paved or half metal pipe).
Env-Wt-103.58	(c) Marsh with area of 1 acre or larger...what's the science behind this size? (should be exemptions for roadside transportation related fringe impacts and or replacements of existing culverts...(really wanted this in routine roadway but faced resistance).

Env-Wt-103.58	(d) scrub shrub on very poorly drained soils....this seems broader reaching than what the intention was when the draft rule committees had discussed it. the intent was to protect this high value scrub shrub wetlands. Targeting any scrub shrub on very poorly drained soils includes massive areas statewide. (should be exemptions for roadside transportation related fringe impacts and or replacements of existing culverts) This is going to result in more projects being deemed as major and is opposite of trying to streamline and make more things qualify for "minimum"
Env-Wt 103.58	(f) Floodplains on very poorly drained soils....this seems to be jurisdictional creep.
Env-Wt 103.58	(j) is this even necessary?
Env-Wt 307.04	Protection of Fisheries and Breeding Areashow are breeding areas determined? Who makes the determination? How does the rule section for avoidance and minimization in combination with NHB and fish and game coordination not already address this?
Env-Wt 308.03 (f)	Why speak so technical ??? This is an example of why people complain about the rules being confusing...the reader has to go to the web or flip to another section to look up the RSA's to try and figure out what this rule is trying to convey. Just say it in plain terms... for example , Activities covered in the Routine Roadway Maintenance Manual are classified as Statutory Permits By Notifications.
Env-Wt 308.05	Activation of SPN - The Department wants to be clear and make sure that the form included within the drafted routine roadway manual meets the "activation submission requirements of a SPN" because the intent of the routine manual is to be a self sufficient process (one stop shopping that does not require additional steps outside of the manual process.) Routine Roadway should be able to stand on its own without the rules adding more to what's already been incorporated into the manual.
Env-Wt 309.02	This appears to be the former 305.04 rules and (a)(4) is a new requirement that is taking away from the "applicants" ability to do what was previously done and is now adding more complexity to the situation rather than simplifying the process to do maintenance work which is counter intuitive to the goals that the rule re-write set out to achieve.

Env-Wt 309.02(d)	This rule is taking jurisdiction on ephemeral streams and requiring a permit for work on an ephemeral stream...traditionally, this type of work on an ephemeral stream did not require a permit....requiring one now does not simplify the permitting process.
Env-Wt 309.06, Env-Wt 309.06(a), & Env-Wt309.08	<p>309.06 - Why is there a split for some activities in the routine manual not being subject to SPN and some are?... There should be a way that the routine manual stands on its own two feet. 309.06(a) strongly disagrees additional information "Registration Forms" should be required for the routine roadway maintenance manual.</p> <p>909.08 - Don't agree with registration forms- The intent of the manual was to be simple and have it so the user would only need to submit one form from the manual without requiring these additional hoops to jump through. Also why is the routine roadway manual the only manual that is being singled out in this way? why was this added step and scrutiny not added to the other maintenance manuals? Need to be consistent in how everyone is regulated.</p>
Env-Wt 309.07	This section is not consistent with what was written in the draft manual. Specifically, 309.07(d)(3). Refer to manual for language that was mutually agreed upon. This is something DOT feels strongly about, and is another reason the manual should only be referenced in the rules in a way that lets it stand on it's own.
Env-Wt 310-01(b)(6)	Indicating that photos should be "mounted" is a relic to how photos used to be developed. Now in the digital age this should be updated to say something like: "Digital photos, clearly showing the area/s to be impacted, no more than two images per page on 8 1/2" x 11" paper, annotated to explain impact"
Env-Wt 311-01(a)	Functional assessments were not previously required for "All" wetland delineations. This adds cost and hardship to the Department if one is going to be required for every delineation.
Table 311-1	For a long time a bone of contention and frustration for many applicants has been the accuracy (or inaccuracy) of prime wetlands in GIS/the screening layer. The Department suggests DES invest time and money to improve the accuracy of the existing layers so that they can be directly overlaid onto impact plans with confidence. Any new prime wetland designation requests from a Town should not be accepted by DES without an accurate GIS shapefile depicting the boundary of the prime wetland that will be regulated.

Env-Wt 311.01 (e) & (f)	Requiring the applicant to submit and coordinate with the con comm and LAC's 30 days prior to filing with DES adds burden to the applicant. Additionally, it's not clear if the applicant can file in less than 30 days if they get concurrence/sign off/ or approval from those groups before the 30 day timeframe has elapsed. For the Department, we coordinate throughout NEPA and then as the wetlands application comes together and is considered final we simply submit and send cc's to all. We would now be delaying all of our projects by 1 month under this new process.
Env-Wt 311.02 (a)(b)(c)	The Department has the Natural Resource Agency Meetings as a substitute for the pre-app mitigation requirements... that should be referenced in the rules because we don't follow the exact steps outlined in the rules. (also...shouldn't this whole section be moved to the 800 section since it pertains to mitigation?)
Env-Wt 311.02(d)	"30-90 days only" seems limiting. Larger projects may need to get input from the pre-app meeting and then may need more than 90 days to make plan adjustments, etc.
Env-Wt 311.03(b)(9)	Functional assessment on all wetlands on a project is an added hardship that will require the State to spend additional time and money on projects that previously did not require a functional assessment.
Env-Wt 311.05 (a)(1)	DOT is often still working through the ROW process, acquiring permanent and temporary construction or drainage easements at the time wetland plans are submitted. This requirement would be burdensome to our process, which to date, has not caused complications. DOT should be exempt from this requirement.
Env-Wt 311.05(a)(4)	Providing the name and license number of who did the survey is not something the DOT is interested in doing. DOT does not require all of our survey crews to be licensed. This complicates how we do business.
Env-Wt 311.05(a)(7)	This requirement is not realistic for small localized projects. Often our District plans are hand drawn, drawn to scale, without station numbers. Also, I think roadway stations may need to be defined because not everyone will know what that means.
Env-Wt 311.05(a)(17)	Isn't this the purpose of the legend in #(11) seems duplicative to state it again in #(17).

Env-Wt 311.05(b)(1)&(2)	Showing every data plot and each individual wetland boundary flag is going to create very cluttered plans that will be difficult to read. (It makes sense that this data be collected and available upon request...but it does not make sense to require it to be shown on every plan all the time.
Env-Wt 311.05(b)(3)	NHDOT has only 1 NH licensed land surveyor. Our survey crews have years of experience but have not previously been required to carry a NH license. For this reason we do not support this plan requirement and would like to see some sort of exemption from this requirement for DOT survey.
Env-Wt 311.05(c)(2)	Plan sheets on 8.5 x 11 or 22x34.....why not 11"x17"? (I don't think 8.5 x 11 will be clear.....If we submitted 8.5 x 11 we would probably get an RFMI requesting plans that are more clear on larger paper.
Env-Wt 311.06 (b)(1)&(2)	Indicating that photos should be "mounted" is a relic to how photos used to be developed. Now in the digital age this should be updated to say something like: "Digital photos, clearly showing the area/s to be impacted, no more that two images per page on 8 1/2" x 11" paper, annotated to explain impact"
Env-Wt 311.07 (a)(b)	Avoidance and Minimization Narrative: DOT Does NEPA and Env.Reviews for all projects....an exemption from providing this narrative should be made for DOT projects.
Env-Wt 311.09(b)(1)	"full water body elevation" should use correct defined terms: Ordinary High Water, Normal High Water, Reference Line....
Env-Wt311.09(c)	What's the intent for duplicating information that is required on shoreland impact plans? Are the two rule sets being merged? Adding more information to the plans continues to clutter the plan and makes it harder to read.
Env-Wt 311.10 (c)	"For any project that would impact jurisdictional areas having <u>significant</u> wetlands functions....." What does significant function mean? Seems subjective. Needs clarification.
Env-Wt311.10(c)(1)(2)	Isn't this already inferred from Env-Wt311.07 "avoidance and minimization? Rules are confusing when you say similar things in different sections.
Env-Wt 311.13 (b)(2)	Don't nearly all amendments require possible relocation of the dredge or fill? Requiring a new application submittal seems drastic. Suggest this line is completely deleted.

Env-Wt 311.13(b)(3)a.	Similar to above the requirement to submit a new application for revisions to surface waters of the state seems drastic as well. It's common to amend stream, river, lake, pond impacts... this should not be an issue so long as the impacts don't exceed 20%I suggest you delete this rule as well and stick with just (b)(1) (i.e. changes greater than 20%).
Env-Wt 311.13(b)(3)b.	Requiring a new application for changing a wetland classification is also absurd. (As an applicant, if the plan was mislabeled as PEM1E and I went to change the plan to read PFO1E I should not be required to resubmit my entire application) Delete this rule.
Env-Wt 311.13(b)(3)c.	What is meant by Non-Wetland areas? If it's non wetland what's the jurisdiction? Is this even needed? Is the intent for TBZ? If so, same previous comments apply...delete this rule.
Env-Wt 312.03	Who at DES is doing the mitigation completeness determination? Seems slightly beyond the expectation of administrative staff and should be a technical determination. (Also it's confusing that this isn't with the rest of the mitigation rules in the 800 section.)
Env-Wt313.03	The concept of "need" can be subjective. Not sure that it's a good idea for DES to determine if someone's need for impact is justified...DES should only be looking to regulate that the impacts have been avoided and minimized. DES may be setting itself up for appeals if an application is denied based on the permitting officers determination of need worthiness.
Env-Wt 316.03(f)	the reference to (d)(2)above should be (e)(2)
Env-Wt 313.03(f)(1)	To say that need for impact shall only be found if the applicant demonstrates no less impacting alternative for using the subject property is shortsighted of other design constraints an applicant may be facing and regulated on....(for example, perhaps there is a less impacting alternative that could reduce impacts to a wetland...but it requires impacting contaminated soils, requires the demolition of a federal registered historic building that northern long eared bats use as their hibernacula....The point I am trying to make is that an applicant should not be denied a permit if they need to impact more wetlands is a result of avoiding other valuable resources. The way the rule is currently written does not acknowledge other non-jurisdictional design constraints.

Env-Wt 313.03(g)(1)-(6)	It seems like these are the former questions from the (20Q's) that were removed from the new Env-wt313.05 ("12 Questions"). Seems like questions that were removed were just moved to another section of the rules and then still be addressed...so did we really reduce the 20 Q's (feels like smoke and mirrors).
Env-Wt313.04 (c)	This is basically saying mitigation is not required for Temporary Impacts, which is defined, so just say "temporary impacts".
	Also, on a recent DOT project we were made to mitigate temporary impacts. We were told it's required if a Federal Agency requests its... which is fine, but I think the DES rules need to clarify this point...we were pointed to the ACOE mitigation guidance to calculate the amount of mitigation required...reference this in the rules. Without doing so I still read the rules as DES not be able to accept/requiring mitigation for the temporary impacts. Clarification on this matter is needed.
Env-Wt 313.05(a)(2)	We are noting that this has replaced the former threatened and Endangered species section of the former question 7 from the 20 Q's with the now broader term Special Resource Areas. DOT has concerns with the Special Resource Area section of the rules.
Env-Wt 314.07	This whole sections seems duplicative of the Env-Wt 311.13 section of the draft rules. My similar comments for the Env-Wt 311.13 section of the rules are the same for this section....should not be requiring a new application for anything with the exception of env-Wt314.07(b)(1).
Env-Wt 404	Shows as reserved... what's going here? Also, this was the former rules section for rip-rap stabilization. I think that the requirement for a PE stamp for rip-rap in excess of 100 LF needs to be clarified. (is the 100 LF measured cumulatively or contiguously?
Env-Wt 406.04(a)	Should this section reference delineating the OHW and the TOB more clearly?
Env-Wt 406.05(b)	This indicates that lakes and ponds shall be delineated by "ordinary high water mark" shouldn't this be Normal High Water for lakes and ponds as defined in Env-Wt 103.13 ?
Env-Wt 407.02	In general we have concerns for some of the RDQ's that have been created.

Env-Wt 407.02 (b)	(b) flood plain wetland system disqualification? How is this determined? Mapped floodplains? Delineated floodplains...seems like this will be a very common and broad disqualification that will make it hard form many projects to be classified as CAT1 or CAT2.
Env-Wt 407.02 (c)	(c) Riverine wetlands disqualification? Same comment as above.
Env-Wt 407.02 (e)	(e) TBZ impacts within 75' of a salt marsh...there should be exceptions for certain types of activities, such as pavement resurfacing that doesn't expand the impervious footprint.
Env-Wt 407.02 (g)	(g)non-tidal marsh over 1 acre or very poorly drain scrub shrub wetlands of any size. Again, there should be exemptions for roadside fringe impacts to marsh where the fringe does not have the same value as the greater marsh complex.... As for very poorly drained scrub shrub wetlands, the intent as I remember it was that this was an attempt to protect high value scrub shrub wetlands...as this is written it encompasses more than just the high value scrub shrub wetlands and is broader reaching than the intended purpose.
Env-Wt 407.02 (i)	(i) Impacts within the Designated River Corridor should be given the opportunity to avoid disqualification if Coordination and agreement on the project can be made with the RMAC.
Env-Wt 407.02 (j)	(j) the inclusion of any wetland hydrological connected to a tier 3 stream is far reaching, and may be difficult to determine. (What is meant by hydrologic ally connected?)
Env-Wt 407.02 (k)	(k) how is Habitat for (1)(2)(3) determined? What is DES's jurisdiction here?
Env-Wt 407.02 (l)	(l) forested wetlands 10 Acers or greater where at least 50% of wetland is very poorly drained. What's the science behind this? Parsing out 50% soils of a wetland boundary may be difficult for some to do without GIS abilities. How do you envision an applicant figuring this out?
Env-Wt 407.02 (m)	(m)(1-5) any wetland that provides one of the following.... It seems like all wetlands would provide at least one of these...so your saying all wetlands are disqualified.

Env-Wt 407.02 (n)	(n) implies every wetland will require a functional assessment...As previously indicated in prior comments DOT does not think a functional assessment should be required for every wetland that's delineated.
Env-Wt 407.02 (o)	(o) Similar to (m) above one might argue that this describes all streams therefore all streams are disqualified. Seems over reaching/over regulating.
Env-Wt 407.03	Table 407-1 ... It appears the threshold for CAT3 (Major) has been reduced from 20,000 SF to 10,000 SF. What's the reasoning for this? By reducing the threshold you will be forcing more project to CAT3(major) that formerly could have been minor. This goes opposite of the goal to get more projects to qualify for easier permitting process requirements.
Env-Wt 408.05 (a)	This puts burden and seems punitive on an applicant for someone else's past permitted activities... How does an applicant know what was permitted in the past 10 years? How does an applicant know what other application impacts are pending? This shouldn't have an influence on how a project is classified? (scenario...10 acre wetland complex that crossed two towns...one side of the wetland someone impacts a acre...while on the other side of the wetland complex someone proposed 10 square feet of impactthat person is held to the CAT3 regulations????seems very punitive.
Env-Wt 516.02	Engineers should be able to determine what's appropriate without having to justify themselves. Sometimes a natural vegetation, landscaping, or bioengineered solution may be appropriate and will be considered, but the rip-rap (hardscape) may be the only option that engineers have determined will provide the highest level of protection. So while other stabilization methods may be achievable they may not make the most sense for several other factors.
Env-Wt 516.03(a)(1)	It's not always possible to identify <u>all</u> causes as not all causes are always evident.
Env-Wt 516.03(c)(1-10)	For bank stabilization projects it seems somewhat excessive/ burdensome to require the applicant to complete a full stream assessment.
Env-Wt 516.04(a) & Env-Wt517.04(a)	It is unclear if this statement is describing a temporary measure to allow for the construction of the stabilization or if this is intended for a permanent BMP measure.

Env-Wt 516.05(h)	This rule references low flow as May thru Sept....is this consistent with how other rule sets and manuals reference low flow? I believe the definition provided for low flow in the Routine Roadway manual indicated June to Aug.....we like May thru September more but this should be consistent on all fronts within DES rule sets. Does AOT or Shoreland define it? perhaps a definition for low flow should be added.
Env-Wt 518.03(a)	"description of sheer stress" For rip-rap proposals less than 50LF that do not require a PE, how will "joe homeowner" know what sheer stress is and how to describe it?
Env-Wt 518.03(d)	How is the 100 LF being calculated and determined? Cumulatively or contiguously? Clarification is needed.
Env-Wt 518.04 (b)	This requirement for geotextile fabric is not always appropriate. DOT has found that this fabric is sometimes the cause for future embankment failures...should be left to the engineer to determine if its appropriate to use or not....but not be a requirement that its always included.
Env-Wt 520	What are intake and outflow structures? Definition?
Env-Wt 522.10(c)	Typo : size should be size
Env-Wt 523.02(a)	"ponds shall not be constructed on very poorly drained soils" Why is this? Are all poorly drained soils assumed to be wetlands? If not what's the jurisdiction? If all very poorly drained soils are considered wetlands isn't this already covered in 523.02(c) whereby not being necessary?
Env-Wt 523.02 (c)&(d)	These two rules are very similar...why not just merge the two together?
Env-Wt 523.04 (a)	I suspect DOT does not use this manual to design stormwater treatment ponds. Should there be an exception listed?
Env-Wt 523.04 (b)	"ponds shall be located 100 feet from very poorly drained soils" What jurisdiction does DES have on non wetland land ? Again, are all very poorly drain soils also assumed to be wetlands??? Not sure if that's a true assumption?
Env-Wt 523.05 (b)	If ponds are not allowed to be constructed in wetlands...what's the point of this rule? Wouldn't it be safe to assume there is no need to perform a drawdown or dewatering? Seems strange?

Env-Wt 523.06(a)(1)	Again, what's the significance of poorly drained and very poorly drained soils in this context? It seems like poorly drain soils term is being used in lieu of saying wetlands...if that's the case just say wetlands. I question the jurisdiction DES has over very poorly drained soils because I don't know if they are all considered wetlands.
Env-Wt 523.07	Maintenance and Repair - indicates more stakeholder input is needed....my thought is that there is already an existing exemption in RSA 482 that allows for maintenance, repair, and reconfiguration of existing man made ponds to preserve their usefulness.
Env-Wt 528	"Dredging" IS this section intended for any and all dredging or just large scale dredging? Seems like a lot of information required for small scale dredging like cleaning out the inlet and outlet of pipes.
Env-Wt 528.03(a)(3)	What type of material description are you looking for from the applicant? Unclear how this should be answered appropriately.
Env-Wt 528.03 (a)-(k)	It seems like this is all similar information that DOT would cover in the SWPPP that we have contractors prepare...can there be some sort of DOT exemption based on our current practice for showing erosion controls then having a contractor prepare the SWPPP ?
Env-Wt 528.06 (a)	What is an active dredge cycle? Definition needed?
Env-Wt 530.02 (b)	"Not include stream channelization" - aren't all stream channelized naturally and by design....I think what your trying to imply is that you don't want to see is un-natural channel straightening. I think you should be more clear here.
Env-Wt 530.03 (b) & (c)	While I understand the benefit in some of the information provided in the 805.03 & 806.04 rules, an applicant may feel discouraged to try and do a good thing such as restoration and enhancement because the requirements to do so adds a level of application complexity. If the requirements could be simplified for what an applicant must provide more restoration proposals would likely occur.
Env-Wt 531.01(b)(2)	Definitions like "Dam means Dam" are not helpful.
Env-Wt 532.01	Why is this section not applicable to highway project that are stream related?
Env-Wt 532.02 (d)	If this section is not applicable to stream related work, why does this rule go on to reference stream flow diversion?
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Env-Wt 532.03 (a)	The requirement to include a " NHDOT inter-department cover memo " adds confusion because only NHDOT does this type of memo...Towns, DPW's don't...should just say a cover memo ..
Env-Wt 532.03 (b)(3)	? Interval - DOT suggests 1' to 2' intervals
Env-Wt 532.03 (f) & (f)	There are two (f's) listed.
Env-Wt 532.03 (f)#2	I suspect that DOT PE's will be reluctant to want to sign something such as this statement.
Env-Wt532.03(g)	Seems excessive ...treating entire floodplain as floodway if it hasn't been previously mapped.
Env-Wt532.03 (h)	What constitutes offsite...(if a floodplain mitigation location is deemed part of our project it's "onsite" even if that location for floodplain mitigation may be away from our other primary project impacts.)
Env-Wt 532.04 (a)	What's is considered "High Value Wetlands" haven't seen this defined.
Env-Wt532.05 (a)	DOT doesn't dictate contractors means and methods of work...this type of information is typically addressed in the SWPPP we have the contractor prepare. Would like to see a DOT exemption from this requirement based on our current practice of submitting erosion control plans.
Env-Wt 600	This entire chapter is adds more requirements, assessments, reports, etc. than was previously required of an applicant for tidal wetlands. I also don't believe any of the prior draft rules workgroup sessions included discussions on the tidal rules. All the "new" requirements goes opposite of the intent to reduce an simplify the rules for an applicant. Significant extra cost and design is proposed with these draft rules in the form of data screening, coastal function assessments, public trust fore and management, land surveyor services, and rating of existing coastal structures by engineers or Qualified Coastal Professionals. Limited empirical guidance exists for the long term life cycle cost and performance of living shores that are preferred with these rules.
Env-Wt 603.04	The CFA report adds burden to applicant. This adds cost to the Department where this type of report was not previously required and will likely require a consultant to prepare the report.
Env-Wt 603.06	Ganite should be Granit

Env-Wt 603.07 (b)	What's expected for this type of functional assessment? Again, adds to the requirements not previously submitted by an applicant.
Env-Wt 603.09(b)(6)b.	What does "qualified coastal professional mean" is there a certification? License?
Env-Wt 603.10 (a)	The requirement to sit through 3 tide cycles to delineate is going to add substantial cost.
Env-Wt 603.10 (a)	NAVD88 - DOT typically works with NAD83 Not sure how this would effect DOT. Additionally, the requirement for a licensed land surveyor will be an issue for DOT. Most of our survey teams don't carry this license. Exemption for DOT would be good. This also limits, our environmental staff from doing our own delineations. Also, Are the water level naming conventions consistent with the ACOE?
Env-Wt 607.02 (e)(3)d.	What is an SAV? Define?
Env-Wt 603.10 (b)(2)	Similar to above, the requirement for a licensed land surveyor will cause conflict for the DOT. Would like an exemption from this requirement.
Env-Wt 603.11 (a)	Letter from Pease Development Authority is a new requirement. Not sure how this many cause delay for DOT pending the turnaround time for a letter from DP&H.
Env-Wt 607.05	Are overwater structures intended to include bridges or only docks and piers. Needs clarification.
Env-Wt 609.01 (d)	This should be expanded to include DOT, who often helps DNCR with beach work...DOT is also responsible for maintaining several stretches of breakwater DNCR has no jurisdiction on, we would like to be able to regrade for maintenance and continued usefulness of the break walls.
Env-Wt610.10 and Env-Wt610.11	Similar concerns expressed under Env-Wt 516.02. Also there could be an opportunity to discuss scenarios such as low energy, Moderate energy, and high energy coastal environments to allow more flexibility.
Env-Wt 612.04	Should add a section under here that does not require a permit for DOT doing projects that do not expand the existing impervious footprint such as roadway resurfacing.

Env-Wt 703.01	Recommend you add a (c) that requires the inclusion of a GIS shapefile for the prime wetland boundary that can then be used dredge and fill applicants on their plans.
Env-Wt 703.05	Challenges to prime wetland boundaries - this puts an excessive burden on the applicant for potentially shoddy prime wetland delineations. The whole process could take many months, especially if it's initiated when there is snow cover.
Env-Wt704.03	This challenges the current mitigation requirement for prime wetland impacts, which is based on functions and values and enables applicants to propose certain design elements as mitigation (especially for culverts). As now proposed, the standard mitigation process will be required for prime wetland impacts, resulting in additional projects that require conservation commission coordination and in-lieu fees.
Env-Wt 901.02(b)	We recommend you include Lakes, Ponds, and Wetland Crossings to this as additional scenarios that the stream crossing rules don't apply. DOT has argued in the past that this should not apply to the structures at the outlet of a Lake or Pond...(a case could be made for crossings that inlet/contribute to a lake or pond, but not the outletting structures, it doesn't make sense using the stream crossing protocol.)
Env-Wt 901.03 (a)	DOT disagrees, we feel <u>All</u> Routine Roadway activities shall be exempt from this section of the rules...not just "low Impact" , saying it the way its currently written implies some of the activities aren't considered low impact DOT would argue they all are, so just say all activities.
Env-Wt 901.03(f)	According to this rule temporary crossing do not require a permit....however, this contradicts what is implied in table 903-2 that has an entire row dedicated to Temporary Crossings and how they are classified.
Env-Wt 902.07	This new definition is better than the old one, but the term "hydraulically uninterrupted" is not well defined. Connectivity has been used to require elimination of all perched inlets and outlets, regardless of severity. There are many examples of vertical discontinuities in unaltered streams.
Env-Wt 902.25	The way this definition is written might allow someone to argue that any slight upgrade is self-mitigating. I don't think this is DES's intent...one could always argue a slight upgrade (not compliant size) doesn't require mitigation....DES may want to think about how some might take advantage of how this is currently written.

Env-Wt 902.31	Why is a temp crossing limited to 2 yrs.? Should be 5 which is consistent with the life of the permit.
Env-Wt 902.09	This definition is similar to the old one however, it requires comparison to reference reach. Evaluation at a "variety of flows" is not well defined.
Env-Wt 902.14	This new term should include "rock" in addition to earth, wood, and concrete.
Env-Wt 902.27	This revised definition precludes disturbance of any other jurisdictional area. Disturbance of other areas is not relevant to the type and function of a structure. In addition, temporary disturbance of banks for the purpose if installing foundations, drainage, etc. should be allowed, if the finished structure does not obstruct the channel. This would include former abutment removal and recontouring the banks to fill the voids and match upstream and downstream contours.
Table 903-2	This table is confusing to understand. Do all CAT1 projects qualify for the LSA process? (trying to understand how the low impact bridge maintenance activities fall into this...) Also, I see Temp Crossings are referenced in the table...does this include temporary water diversion pipes?
Env-Wt 903.02 (b)	Confusing to reference Low impact with the Minor and Majorit's like having 3 naming conventions for the same thing: (Low impact, Minimum, and CAT1)
Env-Wt 903.02(g)(5)	Not clear on what this rule is trying to say.... A crossing that is part of a larger crossing ?
Env-Wt 903.04 (b)(3)	Showing the centerline is not something DOT typically shows. This has potential to add clutter to the plans. Road edges is sufficient, especially when you start considering multiple lanes and
Env-Wt 903.04(c)	The new requirement to submit hydraulic capacity information for existing and proposed crossings will be an added cost and adds time to project development
Env-Wt 903.05 (b)(1)	3 cross sections outside of construction disturbance is a weird way to say this... might be more clear to just say 3 reference reach cross sections. Also, DOT typically does not show these cross sections on the plans per say. We have always kept them with the stream crossing assessment report.

Env-Wt 903.05 (d)&(e)	This is information that's typically provided within a SWPPP. Suggest DOT have an exemption to this requirement based on our current practice for showing erosion controls and then having the contractor prepare the swppp.
Env-Wt 903.05 (f)(1-3)	This should just be deleted. What information does this provide DES from an environmental regulatory perspective. Shouldn't there be a presumption of sound engineering where this does not have to be provided?
Env-Wt 903.05 (h)	Folks reviewing the draft rules have indicated that the new requirement to submit the design features used to improve AOP and the expected distance, in linear feet, of downstream and upstream improvement for AOP or fish passage - Sounds hard to estimate/determine and prove.
Env-Wt 903.06 (d)(1)	This should just be deleted. What information does this provide DES from an environmental regulatory perspective. Shouldn't there be a presumption of sound engineering where this does not have to be provided?
Env-Wt 903.07 & 904.04(e) & 904.05(g) & 904.06(e)	Requirement for hydraulic reports. This is new requirement adds time & cost to the Department for projects that may not previously have required hydraulic reports.
Env-Wt 904.01 (a)(5)	This is a new general design requirement that may not always be achievable...Specifically in regards to c.
Env-Wt 904.05(d)	Span Structures: suggest language for how large bridges with piers can still considered a compliant tier 3 crossings provided they meet all the other tier 3 design requirements except for "span". Example: Consider an 800' long bridge over a river...a pier in the channel will not disrupt AOP or geomorphic condition. Currently any design that includes a pier gets kicked out to alternative design....doesn't pass straight face test.
Env-Wt 904.06(e)(2)	The new requirement that the PE stamps the plans for tier 4 crossings have "specific expertise in tidal hydraulics and tidal hydrology" This is not well defined and would likely severely limit the personnel "qualified" to stamp plans for these projects.... In discussions with consultants they too feel like they wouldn't even meet the qualifications of this "tidal expert". That said...who in the state can do this?

Env-Wt 904.07 (d)	The new requirement that tier 4 crossing be designed and constructed based on a hydraulic analysis that accounts for daily fluctuating tides , bidirectional flows, tidal inundation, and coastal storm surge; to prevent creating a restriction on tidal flows; and to account for tidal channel morphology and potential impact due to sea level rise.This seems to include repairs which seems overburdensome as an exercise for an outcome that we know will not likely address the results of such analysis. Additionally, there are many different sea level rise scenarios and the level of rise differs between sources and the future date under consideration...year 2050?, 2100? If SLR stays in this rule, it should specify the NH model to use and it should be based on the design year of the structure.
Env-Wt904.08 (b)	Rehabilitation should not be limited to methods listed since other methods are known to exist (such as spray on liners) and the potential for new technologies. The requirement that sliplining not occur more than once should be reconsidered since there might be cases where relining of a previous liner is still the most practicable and cost effective alternative.
Env-Wt 904.08 (c)	This is a new requirement that requires a PE certify that the crossing does not have a history of flooding or contributing to flooding or damage to "human infrastructure", adds "damage to protected species habitat" to the requirement, and requires the PE to certify that the design meets all the listed requirements. This change assumes a PE is qualified to make environmental based determinations on impact to protected species habitat....not something they should be required to do. project impact should be coordinated with F&G and USFWS they will make a determination of habitat damage...not the PE.
Env-Wt 904.10(b)(2)	new requirement that the request for an alternative design be prepared by a PE with "specific expertise in tidal hydraulics and tidal hydrology"very few in existence....this also takes away DOT environmental staffs ability to request the alternative design and/or environmental consultants. (What makes someone an expert in this area of tidal hydraulics?...are there certifications? licenses?)
Env-Wt 904.10(c)(1)a.	This rule requires: "A Detailed financial comparison of the costs of a compliant structure, the proposed structure, and an alternative proposed structure that requires fewer waivers than the proposed structure, with a range of costs estimates for each" What is considered detailed? Detailed is subjective. The wording about including a proposed alternative that requires fewer waivers is weird...implies waivers were needed when they may not have been.

Env-Wt 904.10(c)(1)b.	This new rule requires a detailed description of the physical limitations of the site. This is redundant of information required in other sections of the rules such as "avoidance and minimization", as well as "need". Another concern is that it does not recognize non-physical design constraints...zoning, contamination, noise.
Env-Wt 904.10(c)(1)c.	This new rule requires a hydraulic analysis to show that the proposed stream crossing can convey the applicable design storm or that the crossing, together with the associated roadway and roadway embankment, can safely convey overtopping flows.... This revised rules are overwhelming with the new requirements for providing hydraulic reports and analysis....Does DES have adequate /qualified staff who will understand, interpret, and know if there are issues in a hydraulic report? Perhaps the requirements to provide all these reports should be eliminated and there should be a reasonable presumption that engineers are completing the necessary evaluations to appropriately account for hydraulic needs of a structure to design something that is structurally sound and safe.