

Legislative Study Committee on Wetlands – September 17, 2019

- I would like to start this afternoon with a bit of a reminder about the important role that wetlands play on the landscape, and the direct contributions of wetland areas to the public good.
- Wetlands are a critical part of our natural environment. Often when folks think of wetlands images of thriving marshes come to mind, and that it with good reason.
 - Wetlands provide critical habitat for fish, animals and plants and many contain a wide diversity of life that are found nowhere else.
 - 80% of US bird species rely on wetlands for breeding habitat
 - 43% of rare species in the U.S. rely on wetlands for survival.
 - Wetlands host 31% of the world's plants.
- But there are also pieces of wetland that may have a far less iconic look, while playing an equally important role in the environment. These wetlands primary function may be to reduce the impacts of floods and maintaining surface water flow during dry periods, absorb pollutants and improve water quality and protect lakeshores from wave action.
 - As much as 90% of sediments in water may be removed by the filtration by natural wetlands.
 - Wetlands are the vital link between land and water.
- Currently, our best estimate is about 4% of Vermont's land area is wetland (based on mapping)
- Wetlands are dynamic, living systems subject to a broad array of changes on a variety of time scales. Rivers change their course as a result of ongoing erosion and deposition; shrub scrub wetlands grow into forested wetlands; beavers create impoundments that expand wetlands; and human activities can have direct and indirect impacts on hydrology that dry-out or create wetlands over time.
- This is a critical time for wetland regulation and conservation at the state level- just last week the EPA repealed the 2015 "Waters of the United States" rule,

removing Clean Water Act protection from thousands of acres of wetlands and thousands of miles of waterways. The 2015 WOTUS Rule repeal is the first step towards substantially weakening federal protection of wetlands

- EPA's proposed WOTUS definition basically only covers traditionally navigable waters, their tributaries, and wetlands adjacent to traditionally navigable waters
- 10 V.S.A. § 905b(18) gives ANR statutory authority to administer Vermont's state wetlands program. This includes the authority to identify wetlands that merit protection, and administer a permitting program for proposed impacts to wetlands and their buffers.
- The Wetland Rules are difficult to administer, and this is a significant program.
- Currently:
 - Average number of projects reviewed each year
 - 408 projects per year (2011-2015)
 - Average for 2016-18 was 762 projects per year.
 - Average number of ag-related projects reviewed each year:
 - Most projects involving agricultural land are for conversion to some other land use such as solar or a sub-development.
 - < 10 projects a year which are agricultural projects. Most of those are referred by NRCS staff.
 - Average number of projects each year ultimately requiring a permit
 - 96/year (2011-2015)
 - In the past three years – 126/year.
 - Average number of acres of wetland impacted thru permitted activities annually: ~4 acres
- **Last session, the Administration introduced a proposal in the legislature that was intended to increase the clarity and consistency of the Agency's wetland permitting program, addressing some of the administrative aspects of the program that are most burdensome to both staff and the regulated community, through a few statutory changes:**

- Revise the definition of “wetland” to be scientifically-based and consistent with the definition used by the Army Corps of Engineers,
- Redefine “Class II” wetlands based on objective physical characteristics (e.g., size) rather than a narrative standard,
- Clearly define those activities that trigger permitting jurisdiction, consistent with the Army Corps of Engineers, and
- Clearly define activities exempt from state permitting jurisdiction, including replacing the agricultural “exclusion” and silvicultural “allowed use” with an exemption
- These changes were intended to allow Agency staff to focus more energy on proactive protection and restoration of wetlands.
 - The proposed language did not pass...
- Effective wetlands protection is critically important.
- The state relies on the flood storage and water quality protection provided by wetlands, both to protect property and to meet our water goals. The Agency works incredibly hard to manage and protect this complex and sensitive resource.
- Wetlands protection and enhancement – “natural resources restoration projects” – is core to both the Lake Champlain and Lake Memphremagog TMDL.
 - About 1/3 of the total phosphorus reductions needed are anticipated to come from NRR projects
- As a result, we are investing heavily in restoration:
 - For example, FWD acquired 60.6 acres of wetland habitat within the last year. We also carried out a restoration project at Mallets Creek WMA which was roughly 20 acres of hydrologic restoration and 10 acres of buffer plantings.
 - NRCS easements as of July 1st:

Combined Wetland Programs (WRP + ACEP-WRE)

Total Wetland Easements to Date	Federal Dollars on Closed Easements	Closed Acres
61	\$4,645,237	4,488

WRP*

Number of Easements Closed	Federal Dollars On Closed Easements	Closed Acres
53	\$3,124,434	3,382

* Numbers are locked

ACEP-WRE

Number of Easements Closed	Federal Dollars on Closed Easements	Number of Acres
8	\$1,520,803	1,106

- When the official numbers are updated after October 1 there will be two more easements with over 200 additional acres.
 - The wetland-in-lieu program administered by Ducks Unlimited on behalf of the US Army Corps acquired two sites for wetland conservation and restoration in 2019 totaling 427.29 acres. They also completed the wetland restoration on a site conserved in 2018 totaling 134 acres at the confluence of the Middlebury River and Otter Creek. This site will be donated to the FWD by the end of 2019 for management as a WMA.
- ANR understands that Act 64 (H.525) directs AAFM to “amend the required agricultural practices to include requirements for activities occurring in areas **that are excluded from regulation by the Agency of Natural Resources under 10 V.S.A. § 902 because the area is used to grow food or crops in connection with farming activities.**”
 - We understand that AAFM has (or will shortly) initiate the rulemaking process to update the RAPs and looks forward to reviewing AAFM’s proposal