

Fish and Game Items for House Finance Division II

Environmental Review:

HB2 and RSA212

Fish and Game (NHFG) is supportive of the Governor's initiative to implement efficient and effective government processes. However, there are concerns over the proposed change in authority and process established through HB2 pertaining to environmental review for threatened and endangered wildlife with respect to Department of Environmental Services permits and Department of Transportation projects.

If it is determined that the Department of Environmental Services will conduct reviews for threatened and endangered wildlife in the future, we feel this change in process can be accomplished through a more limited statutory change that focuses on those permits issued by the Department of Environmental Services. Please see the section titled "Alternate language for HB2 RSA212 (below).

Environmental Review Staffing

NHFG currently uses 5 dedicated staff members to fully perform the duties of environmental review, with technical assistance from numerous biological staff to provide site specific or species-specific information.

- Three full-time temporary staff positions are responsible for executing the review for projects and permits through the process,
- One full-time temporary staff manages the data systems and the coordination of team tasks and deadlines,
- One full-time permanent position oversees the program and administers the operations of the team, while actively enhancing the program and its processes.

Note: four of these positions have been funded only through ARPA funds as temporary status positions. NHFG has experienced frequent turnover due to the temporary status of the four full-time temporary positions. Full-time permanent staffing is needed to perform the necessary environmental reviews and implement advances in the program.

Reducing NHFG to zero positions will have a negative impact on the department. NHFG has estimated current non-DES related environmental reviews require staffing 1.5-1.7 people. It would benefit NHFG to have at least one full-time staff person remain within the department after the transition.

Summary

- The proposed changes are direct deviations to the NH Endangered Species Conservation Act.
- There is concern that the approach may reduce safeguards for wildlife species and open the state to potential litigation.
- While the approach will provide a “one-stop shop” for the applicant, this feat can be achieved without relocating positions or databases.
- NHFG, DES, and DNCR have been working to implement improvements over the past few months and it is uncertain if any efficiencies will result that would not have occurred otherwise.
- DES will still need to come to NHFG for more impactful projects and/or highly sensitive species reviews.
- NHFG will not be able to offer pre-application review.
- If the action moves forward NHFG and DES have discussed transferring 3 of the 4 ARPA funded positions to DES when the funding is scheduled to end but no later than to January 1, 2026. Leaving 1 position with Fish and Game - permanently.
- Mitigation funds should only be use as a last resort not in lieu of impact avoidance.

Alternate language for HB2 RSA 212.

The existing RSA 212-A 9: III language allows flexibility in approach. Existing statutory language indicates the following

‘they [meaning other agencies] shall take such action is reasonable and prudent to ensure that actions authorized, funded, or carried out by them ...’.

The long-standing practice has been for NH Fish and Game to conduct all reviews, recognizing that our staff have the expertise to make such determinations. That said, the current RSA 212-A language doesn’t prohibit other departments from taking similar actions under their authorities assuming they are in compliance with standards of RSA 212-A:9 III. Details could be identified in an updated signed MOA between NHFG and DES.

Based on language proposed in HB2, we suggest alternative edits to achieve the Governor’s desired process modification (see below).

~~2 New Paragraphs; Fish and Game; Endangered Species Conservation Act; Definitions. Amend~~

~~RSA 212-A:2 by inserting after paragraph V the following new paragraphs:~~

~~VI. "Commissioner" means the commissioner of the department of environmental services.~~

~~VII. "Department" means the department of environmental services.~~

- **NHFG Note:** Given that RSA 212-A is much broader than permitting and the majority of the Act refers to the Fish and Game Department, we feel like it is unnecessary to add these definitions given their limited mention in the statute. We feel the intent can be accomplished by identifying the department of environmental services and associated commissioner where referenced.

212-A:9 Conservation Programs.

III. All other state departments and agencies, to the extent possible, consistent with their authorities and responsibilities, shall assist and cooperate with the executive director in the furtherance of the purposes of this chapter for the conservation of endangered or threatened species. They shall take such action as is reasonable and prudent to insure that actions authorized, funded, or carried out by them do not appreciably jeopardize the continued existence of such species or result in the destruction or modification of habitat of such species which is determined by the executive director to be critical, by requiring that all such action is designed to avoid and, minimize, **and mitigate** harm to such species and habitat designated as critical.—For the purpose of this statute, "appreciably jeopardize the continued existence of such species" shall be defined in rules adopted by the executive director pursuant to RSA 541-A. The provisions of RSA 212-A or any rule promulgated under this chapter shall not be applicable to a state department or agency when that state department or agency, in the process of undertaking an action, is required by federal law or regulation to address the environmental impact on wildlife or wildlife habitat, of that action.

- **NHFG Note:** We propose that the only change to the existing approved language in RSA 212-A:9, section III is the addition of 'and mitigate' as proposed in HB2. We removed the other changes proposed in HB2.

[Add New Section]

IV. Any reviews conducted to fulfill the requirements of paragraph III for any permit, approval, or written authorization shall be conducted as follows:

(a) The ~~department~~ executive director shall develop rules to administer this section;

(b) Reviews of any permit, approval, or written authorization shall not exceed

60 days from receipt of all information as required by rules developed pursuant to

subparagraph (a);

(c) The time to review a pending application may be extended with written authorization from the applicant;

(d) If the department requests additional information from the applicant necessary to complete a review of a submitted application the time it takes the applicant to

respond shall not count against the 60-day timeline in subparagraph (b); and

(e) If the review period passes 60 days, except as provided for in subparagraph

(d), without a determination by the department then the permit, approval, or written

authorization shall be deemed approved subject to all conditions and obligations on the

applicant as included in the submitted application and materials.

- **NHFG Note:** We maintained all of the proposed language from HB2 above but switched the order from V to IV to apply to all permits applied under section III. This would apply to both NHFG and NHDES conducting reviews under this section. NHFG new proposed text is identified with underline.

[Add New Section]

V. The department of environmental services in consultation with the executive director shall adopt rules under RSA 541-A to implement the requirements of paragraphs III and IV for projects authorized, funded, or carried out by the department of environmental services and establish a fee schedule for any reviews necessary to carry out those requirements. Such rulemaking shall commence within 30 days of the effective date of this paragraph. The revenue collected from this section shall be deposited into the water resources fund established in RSA 482-A:3, III. The department of environmental services in consultation with the executive director shall adopt rules under RSA 541-A regarding when mitigation is required for impacts to threatened and endangered wildlife or the habitats of threatened and endangered species and mitigation options such as payments to the Mitigation Fund pursuant to RSA 206:33-q II and 212-A:16, resulting from the issuance of a permit by the department of environmental services, and the calculation of those payments.

~~VI. The provisions of paragraph V(a) through (f) shall apply to permits, approvals,~~

~~or written authorizations in the following chapters:~~

~~(a) RSA 485-A;~~

~~(b) RSA 482-A;~~

~~(c) RSA 483-B;~~

~~(d) RSA 485-A; and~~
~~(e) RSA 236.~~

- **NHFG Note:** Given the proposed edits to Paragraph V, the addition of paragraph VI seems unnecessary, but we are not opposed to listing the NHDES statutes if NHDES feels necessary. NHFG new proposed text is identified with underline.

212-A:16 Threatened and Endangered Species Compensatory Mitigation Fund.

I. There is hereby established in the state treasury a separate fund to be known as the threatened and endangered species compensatory mitigation fund into which payments made pursuant to this section shall be credited. The fund shall be non-lapsing and continually appropriated to the ***fish and game*** department, for the purpose of funding projects that facilitate a net conservation benefit to threatened and endangered species, including, but not limited to critical habitat protection, creation or restoration and the monitoring and maintenance of such areas. The state treasurer shall invest the fund as provided by law and any interest received on such investment shall be credited to the fund.

Notwithstanding any other provision of law to the contrary, the executive director may accept payment for deposit into the fund for unavoidable ***harm to threatened or endangered species*** or loss of critical habitat from a proposed activity without the approval of the governor, the governor and council, or the commission. The executive director shall approve disbursements from the fund following consultation with the commissioner ***of the department of environmental services***. The ~~department~~ ***executive director*** shall submit an annual report by October 1, 2022, and every year thereafter, to the fiscal committee, the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library, summarizing all deposits and expenditures from the fund. The report shall include, but not be limited to a description of all projects undertaken.

II. The executive director shall adopt rules under RSA 541-A for the ***disbursement of money from the*** threatened and endangered species compensatory mitigation fund no later than one year following the effective date of this section. ***Those rules shall establish an administrative fee that the executive director may collect from payments made to the fund to cover the cost of operation of the fund.***

- **NHFG Note:** Proposed changes from HB2 above acceptable. We also propose adding reference to '***harm to threatened or endangered species***' to make consistent with RSA 212-A:9 III reference. We propose to move section RSA 212-A:16 III (new) proposed under HB2 to the newly proposed section RSA 212-A:9 V to keep all the NHDES aspects together. NHFG new proposed text is identified with underline.

Salary information and Funding Source for each position

The four full-time non-permanent positions are funded through ARPA/GOFERR funds until December 2025.

- 3 positions are funded through a direct grant from GOFERR,
- 1 position is funded through an MOU with NHDES using ARPA funds
- Total budget

Description	Approved Budget	Expected Expenditure by 12/31/2024	Estimated Costs CY 2025	Estimated Remaining Funds CY2026
Fulltime Temp Personnel (n=4)	\$331,263.00	\$86,940.00	\$223,834.00	\$20,489.00
Full-time Temp Benefits (n=4)	\$225,319.00	\$41,514.00	\$106,881.00	\$76,924.00
TOTAL	\$556,582.00	\$128,454.00	\$330,715.00	\$97,413.00

- This table reflects the funding by calendar year due to the Federal requirements of ARPA. The column Estimated Costs Calendar Year 2025 provides the estimated costs to maintain all 4 positions per calendar year. The APRA funds remaining for personnel are estimated to fund these positions through December 2025 and do not carry through the state fiscal year. Approval from Governor and Council is required to allocate the funds beyond June 30, 2025.
- Calendar year 2026 reflects the estimated remaining ARPA funds for personnel. These remaining funds are a direct result of staff vacating positions during previous years. These funds, if allocated by Governor and Council will only carry these positions for approximately one month or less. To adequately fund the positions for FY 2025-2027, an estimated \$400k is needed.

Anticipated Impact of Loss of General Funds from Law Enforcement

The removal of the 2.6 million dollar general fund contribution used for law enforcement we have received for the past few budget cycles. When the legislature made their decision to provide this added funding from the General Funds a few years ago it was granted to assist us with funding Conservation Officer positions.

Possible Consequences:

- This has a negative effect on our ability to fill our five current vacant Conservation Officer Positions.
- This funding has been used to support payroll and benefits for those positions.
- We currently have 38 field officers and 4 officers serving as administrative staff in headquarters and these five vacant positions are open patrol areas that other officers are trying to serve along with their assigned patrols.
- These patrol areas can encompass multiple towns and numerous calls for service. When patrol areas are open, this only increases workloads for Officers already responsible for covering large patrol areas.
- Our current demands for Search and Rescue responses, OHRV patrols and accident investigations are on the increase within the state, and we strain to make sure we have adequate staff working each day to address these demands.
- When staff numbers are lower our injury rate during search and rescue calls increases as we are forced to continually use the same officers to participate in long arduous carry out each weekend.
- We now struggle to maintain several specialized teams to address the demands we continue to see growing in the field. These teams include an Advanced Search and Rescue Team, five specialized search K-9 Teams, the states only rescue Dive Team, Side Scan Sonar Team and Drone search team. The training requirements to maintain the certifications for these various teams take officers out of the field each year and having these added positions filled would greatly assist us during these extensive trainings.
- Conservation Officers are responsible to patrol from the Canadian border to the Massachusetts border and from Maine over to Vermont and having less than 40 officers to accomplish this with officers on days off, vacation time and illness or injury has been challenging. These vacant positions are critical to provide essential services to our state.
- Just as an example the city of Concord has a roster of more than 60 officers to patrol the city limits of Concord, we are trying to cover the entire state with just 38 positions currently.

