

MFPC Response to Recent EPA WOTUS Revised Rules

July 2, 2015

- National Perspectives:
 - MFPC supports November, 2014 comments prepared jointly by American Forest & Paper Association (AF&PA) and National Alliance of Forest Owners (NAFO). These comments reflected perspectives of our mills and landowners in Maine.
 - NAFO response to rules has not been encouraging: *“Rather than provide more clarity, the final rule is riddled with caveats and exceptions that expand rather than reduce uncertainty.... it does little if anything to restore confidence to forest owners over their regulatory and legal exposure.”* From my perspective this interpretation is concerning.
- Maine specific concerns:
 - Over half the state of Maine (9 million acres) is in private commercial forestland with an extensive private road system (estimated at 20,000 miles). In reality we have extensive groundwater resources with streams, rivers, ponds and lakes throughout the land base. Permanent trucking roads and temporary logging trails all deal with working around these resources and using best management practices to protect water quality, even while crossing these features.
 - The State of Maine has extensive regulatory control of watersheds¹, regulating stream crossings and road construction, but federal authority has been limited to what has been traditionally identified as navigable waters. State regulations have been written to recognize forest harvesting operations adopt protections that have been well researched and both protect the environment and provide operational flexibility.

For example:
 - Maine recognizes only “significant vernal pools” as requiring protection, and the forest operations activities are “exempt from restrictions” with use of best management practices (BMP’s). We understand Army Corps regulations are prescriptive and may not differentiate between the threats of development activities verses forest harvesting activities.
 - Stream crossings in Maine law are not prescriptive, but more outcome-based. Forestry crossings are based on a permit-by-rule streamlined process and temporary crossings just require BMPs. In fact considerable progress has been

¹ State Shoreland zoning, Delegated authority under Natural Resources Protection Act (NRPA)

made in working with the ENGO community in building volunteer programs to improve water quality and stream passage for fish. We have an excellent Eastern Brook Trout fishery in the middle of an actively managed industrial forest.

I would be concerned that rigid federal requirements² will set back habitat improvements and increase costs by using a one-size-fits-all approach.

- Critical Habitat for Atlantic salmon has been established (3 million acres) on the major rivers of Maine, and it is not clear how the movement of the CWA into tributaries of navigable waters will affect federal regulatory control? We may be creating a federal nexus that could be very restrictive (requires more research).
- New water quality standards that require total maximum daily loads (TMDLs) in CWA Section 303 would be impossible to measure and regulate in the working forest. It's not clear if these provisions would apply?
- The increased exposure to citizen suit litigation only plays into the hands of those that want to turn the working forest into a national park!

² We have reviewed Army Corps requirements for stream crossings and can demonstrate their ineffectiveness.