

Readopt and renumber Ncr 1101, effective 7-10-19 (Document #12825 Interim), as Ncr 301, cited and to read as follows:

CHAPTER Ncr 300 NATURAL HERITAGE PROGRAM

PART Ncr 301 PURPOSE

Ncr 301.01 Purpose. The rules have been established to provide protective measures and requirements necessary for the survival of all species of native plants in the state, as well as to investigate and develop information pertaining thereto. The rules implement, at the state level, programs created as a result of the Endangered Species Act of 1973, Public Law 93-205, as amended.

Readopt with amendment and renumber Ncr 1102 through Ncr 1107, effective 7-10-19 (Document #12825 Interim), as Ncr 302 through Ncr 311 to read as follows:

PART Ncr 302 DEFINITIONS

Ncr 302.01 Definitions.

(a) "Commissioner" means "commissioner" as defined in RSA 217-A:3, II, namely "the commissioner of the department of natural and cultural resources."

(b) "DataCheck" means the results of using the DataCheck tool or a request submitted in accordance with Ncr 308.02 (b).

(c) "DataCheck tool" means an online data screening tool provided by the department of environmental services and the natural heritage bureau where the public can screen for known locations of rare species and exemplary natural communities.

(d) "Data sharing agreement" means a formal understanding that articulates the data that is being shared, how the data is allowed to be used, and for how long that data is allowed to be used.

(e) "Department" means "department" as defined in RSA 217-A:3, III, namely "the department of natural and cultural resources."

(f) "Ecological integrity assessment" means an assessment of the current status of the composition, structure, processes, and connectivity of a particular occurrence of an ecosystem type.

(g) "Endangered species" means "endangered species" as defined in RSA 217-A:3, IV, namely "any species of plant that is in danger of extinction throughout all or a significant portion of its range within the state, or any species determined to be an endangered species pursuant to the Endangered Species Act."

(h) "Endangered Species Act" means "Endangered Species Act" as defined in RSA 217-A:3, V, namely "the Endangered Species Act of 1973, Public Law 93-205, as amended."

(i) "Environmental review" means a natural heritage bureau review of potential impacts to protected species, exemplary natural communities, and natural community system occurrences to enable planning, permitting, and funding.

(j) "Exemplary natural community" means "exemplary natural community" as defined in RSA 217-A:3, VII, namely "a viable occurrence of a rare natural community type or a high quality example of a more

common natural community type as designated by the natural heritage bureau based on community size, ecological condition, and landscape context.”

(k) “Natural community” means an interactive assemblage of organisms, their physical environment, and the natural processes that affect them.

(l) “Natural community system” means more than one natural community co-occurring on the landscape and having a common set of characteristics such as climate, landforms, disturbance, nutrients, soils, bedrock, and hydrology.

(m) "Natural heritage bureau" means "natural heritage bureau" as defined in RSA 217-A:3, XII, namely " the bureau, administered within the division of forests and lands of the department which collects and analyzes data on the status, location, and distribution of native plant species and natural communities in the state, and develops and implements measures for the protection, conservation, enhancement and management of native New Hampshire plants."

(n) “Natural heritage bureau database” means the database that has records of current or formerly rare, threatened, endangered, and tracked plant and wildlife species, and exemplary natural communities.

(o) "Natural heritage inventory" means "natural heritage inventory" as defined in RSA 217-A:3, XIII, namely "the list of protected species developed in accordance with RSA 217-A:5, I and II."

(p) "Person" means "person" as defined in RSA 217-A:3, XIV, namely "an individual, corporation, company, association, society, firm, partnership, joint stock company, or any department or instrumentality of the federal government, of any state or its political subdivisions, or of any foreign government."

(q) "Plant" means "plant" as defined in RSA 217-A:3, XV, namely "any member of the plant kingdom, including seeds, roots, and other parts of plants."

(r) "Protect" and "protection" means "protect" and "protection" as defined in RSA 217-A:3, XVI, namely "to use and the use of all methods and procedures that are necessary to bring any species to the point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition, and maintenance."

(s) "Protected species" means "protected species" as defined in RSA 217-A:3, XVII, namely "any plant species designated as endangered or threatened under this chapter."

(t) "Species" means "species" as defined in RSA 217-A:3, XVIII, namely "any species, subspecies, or variety of plant."

(u) "Threatened species" means "threatened species" as defined in RSA 217-A:3, XX, namely "any species of plant likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the state, or any species of plant to be determined to be a threatened species pursuant to the Endangered Species Act."

PART Ncr 303 CRITERIA FOR THE NATURAL HERITAGE INVENTORY

Ncr 303.01 Endangered Species.

(a) The natural heritage inventory of endangered species shall contain the following types of species:

- (1) All species occurring in New Hampshire determined to be an endangered species pursuant to the Endangered Species Act; [and] or
 - (2) Native plants species having 5 or fewer occurrences in the state observed within the last 20 years, or plants with more than 5 occurrences which are, in the judgment of botanical experts, vulnerable to extirpation due to other rarity and endangerment factors.
- (b) Any plant found to comply with (a) above, for which a petition conforming to Ncr 304 has been submitted, shall be added to this natural heritage inventory.

Ncr 303.02 Threatened Species.

- (a) The natural heritage inventory of threatened species shall contain the following types of species:
- (1) All species occurring in New Hampshire determined to be a threatened species pursuant to the Endangered Species Act;
 - (2) Federal candidate species occurring in New Hampshire which are not contained in the natural heritage inventory of endangered species; [and] or
 - (3) Native plant species having 6 to 20 natural occurrences observed within the last 20 years or species with more than 20 occurrences which are, in the judgement of botanical experts, vulnerable to becoming endangered due to other rarity and endangerment factors.
- (b) Any plant found to comply with (a) above, for which a petition conforming to Ncr 304 has been submitted, shall be added to this natural heritage inventory.

PART Ncr 304 PETITIONS FOR NATURAL HERITAGE INVENTORY

Ncr 304.01 Petitions for Adding and Deleting Species from the Natural Heritage Inventory. All petitions for adding and deleting species from the natural heritage inventory as “endangered” or “threatened” shall conform to the requirements set out in Ncr 304.02.

Ncr 304.02 Petition Requirements.

- (a) The petitioner shall provide the following in a written petition:
- (1) Petitioner's name and address;
 - (2) Date of petition;
 - (3) Scientific and common name of species;
 - (4) Taxonomic distinctiveness/taxonomic problem;
 - (5) Petitioner’s reason(s) for the request;
 - (6) Documentation of occurrence by herbarium specimens or good quality, diagnostic photographs;

- (7) Locality of occurrence; and
- (8) Signature of petitioner.
- (b) All information shall be legible.
- (c) The petition shall be emailed, mailed, or hand-delivered to:

Department of Natural and Cultural Resources
NHB Administrator
172 Pembroke Road
Concord, New Hampshire 03301
nhb@dncr.nh.gov

(d) The natural heritage bureau shall request additional information necessary to make a reasonable determination.

Ncr 304.03 Notification. After submitting a petition in accordance with Ncr 304.02, the following procedure shall occur:

(a) All petitions shall be reviewed according to the criteria set forth in Ncr 303.01 and Ncr 303.02 and either be approved or denied within 60 days after receipt of petition; and

(b) Should the petition be denied, the department shall notify the petitioner in writing of the specific reason(s) the petition does not meet the requirements of Ncr 303.01, Ncr 303.02, or Ncr 304.02.

Ncr 304.04 [Waiver] Extension of 60-Day Review Period.

(a) If the natural heritage bureau [shall waive] cannot make a reasoned determination within the 60-day review period [of this part if such waiver does not contradict the objective or intent of the rule and statute and:] as specified in Ncr 304.03 (a), a request for an extension shall be made.

[(1) There are specific circumstances unique to the situation such that strict compliance with the rule would be onerous without promoting the objective or intent of the rule provision.]

(b) [No requirement prescribed by statute shall be waived unless expressly authorized by law.]

[(c)] The natural heritage bureau shall:

(1) Make a request to the petitioner in writing[.];

(2) Specify the [basis for the request] reason the bureau cannot make a reasoned decision on the petition within the 60-day review period; and

(3) Specify the additional time needed.

[(d) A request for waiver shall specify the basis for the waiver and proposed alternative, if any.]

Ncr 304.05 Failure to Comply. Failure to provide any of the information required under Ncr 304.02 shall result in denial of a petition unless corrections are made within 10 days of notification by the natural heritage bureau of any missing information.

PART Ncr 305 EXEMPLARY NATURAL COMMUNITIES

Ncr 305.01 Procedures for Identifying and Designating Exemplary Natural Communities.

(a) The natural heritage bureau shall assign exemplary natural community types a quality rank, ranging from A to D, a measure of ecological integrity, based upon:

- (1) Size;
- (2) Ecological condition; and
- (3) Landscape context.

(b) The natural heritage bureau shall designate natural communities based on an ecological integrity assessment as exemplary natural communities if they are:

- (1) Fair or better quality occurrences of less common natural communities; or
- (2) High quality examples of more common natural communities.

(c) Any exemplary natural community found to comply with (a) and (b) above, for which a petition conforming to Ncr 306 has been submitted, shall be designated as an exemplary natural community.

PART Ncr 306 PETITIONS FOR AN EXEMPLARY NATURAL COMMUNITY

Ncr 306.01 Petitions for Designating an Exemplary Natural Community. All petitions for designating exemplary natural communities shall conform to the requirements set out in Ncr 306.02.

Ncr 306.02 Petition Requirements.

(a) The petitioner shall provide the following in a written petition:

- (1) Petitioner's name and address;
- (2) Date of petition;
- (3) Natural heritage classification for the community;
- (4) Petitioner's reason(s) for the request;
- (5) Documentation of vegetation, mapped extent, and quality rank;
- (7) Locality of occurrence; and
- (8) Signature of petitioner.

(b) All information shall be legible.

(c) The petition shall be emailed, mailed, or hand-delivered to:

Department of Natural and Cultural Resources
NHB Administrator
172 Pembroke Road
Concord, New Hampshire 03301
nhb@dncr.nh.gov

(d) The natural heritage bureau shall request additional information necessary to make a reasonable determination.

Ncr 306.03 Notification. After submitting a petition in accordance with Ncr 306.02, the following procedure shall occur:

(a) All petitions shall be reviewed according to the criteria set forth in Ncr 305.01 and either be approved or denied within 60 days after receipt of application; and

(b) Should the application be denied, the department shall notify the petitioner in writing of the specific reason(s) the petition does not meet the requirements of Ncr 305.01 (c), or Ncr 306.02.

Ncr 306.04 Failure to Comply. Failure to provide any of the information for review shall result in denial of a petition unless corrections are made within 10 days of notification by the natural heritage bureau of any missing information.

PART Ncr 307 RELEASE OF INFORMATION

Ncr 307.01 Release of Information. Information regarding the location and population of a plant species or natural community shall be exempt from disclosure pursuant to RSA 217-A:4, with the exception of specific location information released to:

- (a) Landowners;
- (b) A person affirming release of information at the request of the landowner; or
- (c) A person who has signed a data sharing agreement.

PART Ncr 308 CONSERVATION PROGRAMS AND PROCEDURES

Ncr 308.01 Conservation Programs.

(a) The natural heritage bureau shall establish programs for the protection of species listed under RSA 217-A:6 and for exemplary natural communities.

(b) Functions of conservation programs shall be at a minimum, but are not limited to:

- (1) Acquisition of land and interests in land;
- (2) Agreements with federal agencies, other states, agencies or political subdivisions of New Hampshire, or with individuals or private organizations for administration and management of any program; and
- (3) Receipt and expenditure of funds, donations, grants, or other moneys, gifts, or bequests not exceeding \$5,000, or exceeding \$5,000 with the approval of the governor and council.

Ncr 308.02 Environmental Reviews.

(a) Each project proponent shall submit a DataCheck request to the natural heritage bureau conforming to the requirements set out in (c) below.

(b) Projects funded or implemented by state agencies which involve changes in land use or which would otherwise impact plant life shall be submitted by the project proponent to the natural heritage bureau which shall assess the potential impact on protected species contained in Ncr 312 and exemplary natural communities.

(c) The requester shall provide all of the following in a written request:

- (1) Landowner's name and email address;
- (2) Project contact person's name and email address;
- (3) Date;
- (4) Detailed description of proposed project, including:
 - a. Address of project, if applicable;
 - b. Types of permits required for project, if applicable; and
 - c. Any and all earth disturbance or tree clearing in the project area, if applicable;
- (5) Map identifying project area at a scale of 1:24,000 or closer; and
- (6) Proposed timetable of project.

(d) All information shall be legible.

(e) The request shall be emailed, mailed, or hand-delivered to:

Department of Natural and Cultural Resources
NHB Administrator
172 Pembroke Road
Concord, New Hampshire 03301
nhb@dncr.nh.gov

(f) The natural heritage bureau shall request additional information necessary to make recommendations.

[(f)](g) The natural heritage bureau shall review the information supplied[, and report on the actual or potential presence of protected species contained in Ncr 312 within 30 days of receiving an administratively complete request and:]

[(1) The natural heritage bureau may request additional information; and]

[(2)] and assess any potential impact on these species or exemplary natural communities. If there is probable cause to believe that species listed on the natural heritage inventory or exemplary natural communities would be impacted by the project, the natural heritage bureau shall make recommendations based on the known biology and ecology of the species and natural communities in question to provide for the survival of these species and persistence of these natural communities at the project site.

(h) The natural heritage bureau shall report on the actual or potential presence of protected species contained in Ncr 312 within 30 days of receiving an administratively complete request.

PART Ncr 309 AGREEMENTS AND ACQUISITION OF REAL PROPERTY

Ncr 309.01 Data Sharing Agreements. Data sharing agreements with persons, state or federal agencies regarding protected species or exemplary natural communities shall be in the form of a written agreement [acceptable to all parties].

Ncr 309.02 Acquisition of Real Property. Pursuant to RSA 4:29, the department shall acquire real property by purchase or gift for the purposes of protecting species listed under Ncr 312 or exemplary natural communities.

PART Ncr 310 ACCEPTANCE OF FUNDS AND FEES FOR SERVICES

Ncr 310.01 Receipt and Acceptance of Funds.

(a) Pursuant to the department of administrative services' manual of procedures, the department shall receive and expend funds for the purpose of establishing programs regarding protected species or exemplary natural communities.

(b) Programs provided shall include, but not be limited to, conservation and resource management, environmental reviews, data sharing agreements, inventories, information services, publications, and reports.

(c) Funds collected shall be:

- (1) Deposited into the natural heritage bureau fund;
- (2) Administered by the department; and
- (3) Non-lapsing and continually appropriated.

Ncr 310.02 Fees for Services.

(a) The natural heritage bureau shall collect fees as specified in Ncr 310.03 to accomplish the purposes of RSA 217-A:7-a.

(b) Fees collected from applicants where the project is deemed to be beneficial to the natural heritage bureau shall be negotiated based on the scope of the project.

(c) Fees charged to governmental agencies pursuant to Ncr 310.03 [might] shall be negotiated based upon the scope of the project and documented in writing in a memorandum of agreement or a data sharing agreement pursuant to Ncr 307.01 (c).

Ncr 310.03 Fee Schedule. The following fees shall apply as cited in Tables 310-1, 310-2 and 310-3 below:

Table 310-1 DataCheck and Environmental Review Screening Fees

DataCheck Request, Web Tool Screening (Records Found)	\$25
DataCheck Request, Web Tool Screening (No Records Found)	No Charge
DataCheck Request, No Web Tool Screening (Map Mailed or Emailed)	\$25
Hardcopy Request	\$25
Environmental Review Screening of Large Projects (Linear Projects Longer Than One Mile in Length, or Project Segments of Any Length Separated by One Mile or More)	\$60/hour

Table 310-2 Processing Fees

Data Sharing Agreements (Minimum 2 Hours at \$60/hour)	\$120
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Table 310-3 Data Sharing Fees per Record

Federal Species (Precise Location and Full Taxonomy)	\$10
Federal Species (General Location and Full Taxonomy)	\$5
State Species (Precise Location and Full Taxonomy)	\$2
State Species (General Location and Full Taxonomy)	\$0.50
Federal Species (Precise Location and Taxonomic Group Only)	\$5
Federal Species (General Location and Taxonomic Group Only)	\$2.50
State Species (Precise Location and Taxonomic Group Only)	\$1
State Species (General Location and Taxonomic Group Only)	\$0.25

Ncr 310.04 No Fee Required. The natural heritage bureau shall not require a fee for:

- (a) DataCheck tool screenings with no known record of protected species or exemplary natural community found in the vicinity; or
- (b) Processing landowner requests for information unrelated to permit or funding applications.

PART Ncr 311 WAIVERS

Ncr 311.01 Waivers. As authorized by RSA 217-A:10, III, the department [might] shall grant [exceptions] waivers to these rules for the following reasons:

- (a) To conduct scientific investigations; [and]
- (b) To enhance the propagation or survival of a protected species[.]; or
- (c) For the conservation of exemplary natural communities.

Ncr 311.02 Permit for Waiver Required.

(a) All parties seeking [an exception] a waiver as authorized by RSA 217-A:10, III, shall apply for a permit pursuant to (b)-(d) below.

(b) All applicants shall provide the following information:

- (1) Applicant's name and address;
- (2) Date of application;
- (3) Applicant's affiliation, such as business, college or organization;
- (4) If applicant is a student, name of faculty advisor;
- (5) Purpose of permit request;
- (6) Duration of study;
- (7) Location of study area; and
- (8) Signature of applicant.

(c) All information shall be legible.

(d) The application shall be emailed, mailed or hand-delivered to:

Department of Natural and Cultural Resources
NHB Administrator
172 Pembroke Road
Concord, New Hampshire 03301
nhb@dncr.nh.gov

Ncr 311.03 Notification. After submitting an application in accordance with Ncr 311.02 (b), the following procedure shall occur:

(a) All applications shall be reviewed according to the reasons set forth in Ncr 311.01 and either be approved if it falls under the reasons specified in Ncr 311.01 or denied within 60 days after receipt of application; and

(b) Should the application be denied, the department shall provide written reasons explaining how the application does not comply with Ncr 311.01.

Ncr 311.04 Failure to Comply. Failure to provide any of the information for review shall result in denial of an application unless corrections are made within 10 days of notification by the natural heritage bureau of any missing information.

Ncr 311.05 Exceptions. The natural heritage bureau shall grant exceptions to Ncr 301-Ncr 311 to the extent that such action [provides a degree of protection equivalent to that provided under RSA 217-A] meets the requirements of Ncr 311.01.

APPENDIX I

Rule	Specific State or Federal Statutes or Regulations the Rule Implements
Ncr 301	RSA 217-A:2, III RSA 217-A:4 RSA 217-A:5, II RSA 217-A:6, I RSA 217-A:7 RSA 217-A:9, III RSA 217-A:10, I
Ncr 302	RSA 217-A:3 RSA 541-A:7
Ncr 303	RSA 217-A:2, II and III RSA 217-A:5, II and IV
Ncr 304	RSA 217-A:5, IV
Ncr 305 and Ncr 306	RSA 217-A:2, I
Ncr 307	RSA 217-A:4
Ncr 308	RSA 217-A:2, III RSA 217-A:5, II RSA 217-A:6 RSA 217-A:7
Ncr 309	RSA 217-A:6, I, II, and IV
Ncr 310	RSA 217-A:7-a
Ncr 311	RSA 217-A:10, III