

Scope, No-Loss, and Exemptions – Draft Framework

Current WCA process:

- All wetlands as defined in the 87 Manual are within the scope of the WCA.
- Certain activities in certain types of wetlands are specifically spelled out as not being within the scope of the WCA.
- Certain activities in certain types of wetlands are specifically “exempt” from replacement requirements, but still within the scope of the WCA.

Issues:

- There is no recognizable reason for some activity/type combinations being in scope and some being exempt from replacement but still within scope. Including some activities that do not result in wetland loss under an exemption and some that do under scope is confusing.
- Exempt activity/type combinations are typically lumped together and considered as activities that result in wetland loss (functions, acres), which is not true for all exemptions, incidental in particular. This results in inaccurate wetland loss estimations due to exemptions. It also negatively effects some policy decisions that apply to the use of exemptions. In particular, the road replacement program does not use exemptions per current policy, which is based on assumption that all exemptions result in wetland loss.

Solution:

- Make clear distinctions between what should be in scope versus an exemption versus a no-loss. The following in BWSR staff’s proposed basis for division:
 - Exemptions should be limited to impacts to wetlands that are exempt from the replacement requirements of WCA.
 - No-Loss should be limited to activities in wetlands that do not typically impact wetlands or result in a permanent loss in wetland functions, but could if conducted differently. For example, removal of debris from a wetland typically does not result in a loss, but if that removal results in fill or changes the wetland cross section, a loss could result.
 - Scope should contain those features that may be wetland but are not regulated by WCA (i.e. road ditches in upland). Likewise, scope should contain activities in certain wetland types that are not regulated because statute does not allow it, the activities do not fit into the above exemption and no-loss categories, or because they simply cannot be effectively regulated. In essence, scope should contain wetlands and activities that are “non-jurisdictional” to WCA.

Implications:

- The above solutions provide a consistent framework for dealing with wetlands and activities in wetlands that are not regulated or do not require replacement.
- Probably the most notable result of this type of arrangement would be relocating the incidental wetlands exemption to the no-loss and scope sections. It is not the intent of WCA to regulate ditches excavated in uplands.
- Items currently in scope such as “wetland fill for wheeled irrigation devices” could be moved to an exemption (i.e. include in the agriculture exemption) in this type of framework.