



# NEW YORK

Original Wetland Acreage	Remaining Wetland Acreage	Acreage Lost	% Lost
2,562,000	1,025,000	1,537,000	-60%

**New York Wetlands:** The five most common freshwater-wetland cover types in New York, in order of area, are flooded deciduous trees (palustrine forested wetland); flooded shrubs (palustrine scrub-shrub wetland); flooded coniferous trees (palustrine forested wetland); drained muckland, which is not considered wetland under the Cowardin and others (1979) classification system; and emergents (palustrine emergent wetlands or lacustrine or riverine nonpersistent-emergent wetlands).

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## SUMMARY

### Overall Program

New York has a comprehensive statewide program for all tidal wetlands regardless of size, and freshwater wetlands over 12.4 acres or any smaller wetlands determined to be of unusual local importance. Inside the Adirondack Park, the Adirondack Park Agency regulates freshwater wetlands down to one acre in size, or regardless of size if contiguous with open water.

### Innovative Features and New Programs/Initiatives

The program incorporates a number of innovative features including a classification system, buffer requirements (100 feet for freshwater wetlands, up to 300 feet for tidal wetlands), and the opportunity for cooperative efforts with landowners.

New York prepares and maintains relatively detailed maps of jurisdictional wetlands, and provides boundary delineations for affected property owners.

Article 24 provides for an independent appeals board to review Department of Environmental Conservation and local government decisions.

### State Wetland Conservation Plan

The state has a completed plan. Although never formally “adopted,” the State Wetland Conservation Plan (SWCP) historically provided direction and context for wetlands conservation efforts.

## **No Net Loss/Net Gain Goal**

There is no formal goal in statute, but there is a goal embodied in the SWCP to maintain the quality and quantity of the state's freshwater wetland resource. Further it is the goal of the state to increase the quantity and quality of the tidal wetlands resource, and where feasible and desirable, its freshwater wetlands resource.

## **INDIVIDUAL FEATURES:**

### **Regulation**

#### **Wetland Regulatory Statutes and Administrative Rules**

Tidal Wetlands Act (TWA): NY Environmental Conservation Law, Art. 25 (Tidal Wetlands Act) Tidal Wetlands Regulations, NY Admin. Code tit. 6, sec. 661. A permit is required from the New York Department of Environmental Conservation (DEC) for regulated activities in tidal wetlands.

For text of the TWA, see: <http://assembly.state.ny.us/leg/?cl=37&a=116>.

Freshwater Wetlands Act (FWA): NY Environmental Conservation Law, Art. 24. Freshwater Wetlands Regulation NY Admin. Code tit. 6 sec. 662-665. A permit is required from the DEC for regulated activities in freshwater wetlands 12.4 acres or larger in size or in smaller wetlands of unusual local importance. A buffer area of 100 feet is also regulated. Local governments may assume state permitting authority if they meet standards set forth in regulations (6NYCRR Part 665); only three have done so.

For text of the FWA, see: <http://assembly.state.ny.us/leg/?cl=37&a=106>.

Adirondack Park Agency. NY Environmental Commission Laws Art. 24-0801 to 24-0805. NY Admin. Code tit. 9 sec. 578. Permits are required from the Adirondack Park Agency for activities in jurisdictional wetlands inside the Adirondack Park.

Waterfront Revitalization and Coastal Resource Act. NY Executive Law sec. 910-920. NY Department of State sets policies for New York state agencies within the coastal zone and encourages adoption of local government programs. Coastal areas include tidal and Great Lake areas, the St. Lawrence and Niagara Rivers, and selected portions of other rivers.

Protection of Waters: NY Env. Cons. Laws, Art. 15--5-5 (Prot. of navigable waters). NY Admin. Code tit. 6 sec. 608.4. A permit is required from DEC to fill or dredge in wetlands (of any size) below mean high water.

Permits or other authorizations are required from the appropriate state agency for the above programs, regardless of authority under the Clean Water Act. Where a section 401 water quality certification is required, the state permit/authorization typically serves that function. Where no other state authorization is required, a separate 401 is then reviewed and issued/denied/conditioned.

#### **Wetland Definition and/or Delineation; Comparability With Federal Definition**

Tidal Wetlands Act: The TWA regulates lands bordering on or lying beneath tidal waters including those now or formerly connected to tidal waters with listed vegetation. Adjacent areas are also regulated (150-300 feet).

Freshwater Wetlands Act: §24-0107. FWA regulates lands and waters shown on freshwater wetland maps supporting hydrophytic vegetation, and that rely on hydrology or hydric soils to be competitive, and that are over 12.4 acres in size. Smaller areas of unusual local importance may be included. The act also regulates a 100 foot adjacent area, although that buffer may be extended, where necessary to protect the integrity of the wetland.

Wetlands are delineated to provide a more precise boundary. DEC prepared a freshwater wetlands delineation manual, which is based in part on the federal delineation manual, adjusted to accommodate New York definition. In general, federal and state boundaries align. DEC will either perform a delineation for landowners or can field-check one performed by consultants or other agencies. The manual can be found online at <http://www.dec.state.ny.us/website/dfwmr/habitat/wdelman.pdf>.

## **Evaluation Methodology**

DEC has not adopted nor does it endorse a particular evaluation methodology. There are very few impacts authorized in wetlands and few projects of such scope as to justify elaborate assessments and evaluations. Applicants are simply expected to avoid and minimize impacts. When applicants employ consultants and use formal assessment methodologies, staff will review them as appropriate.

## **Regulated and Exempted Activities**

Tidal Wetlands Act: Regulated activities include: Draining, dredging, excavation, filling, polluting, construction, changing the ebb and flow of the tide are regulated. Exemptions include fishing, shellfishing, aquaculture, hunting, trapping, mosquito control (partial), maintenance of functional structures.

Freshwater Wetlands Act: Regulated activities and exemptions are similar to those for tidal wetlands. However, the Act exempts most normal agriculture activities (including draining, applying fertilizers and pesticides, pasturing livestock, and erecting necessary structures such as fences), but does not exempt agricultural filling (including side-cast ditched material) and clear-cutting. The law clearly requires that subsequent non-exempt use of the land be regulated as wetland. There is also an exemption for selective harvesting of trees, but not for clear-cutting. Farmers and other landowners may also make reasonable use of water resources. See 24-0701, and permit standards at 6NYCRR Part 663 (<http://www.dec.state.ny.us/website/regs/663.htm>). See also <http://www.dec.state.ny.us/website/dfwmr/habitat/fwwprog4.htm#Exempt>.

## **Special Provisions for Agriculture and Forestry**

Activities of farmers and other landowners in grazing and watering livestock, making reasonable use of water resources, harvesting natural products of the wetlands, selectively cutting timber, and draining for growing agricultural products are exempt from regulation. See web citation above.

## **Penalties and Enforcement**

Civil - up to \$3,000 per violation per day and restoration.

Criminal - \$500-\$1,000 fine and up to 15 days imprisonment.

## **Permit Tracking**

The DEC has a sophisticated GIS-linked electronic tracking database (DART) for permits administered under the Uniform Procedures Act (including wetlands and stream protection permits). In addition, the agency is currently (spring 2004) engaged in expanding that database to track: freshwater wetlands permit compliance, delineations, permitted impacts to resources, and mitigation. Tracking of administrative aspects of enforcement actions is currently handled under a separate tracking system, but does not yet include resource impacts.

## **State General Permit (PGP or SPGP) for 404**

Some Nationwide General Permits, including #26, received 401 certification. The agency and the U.S. Army Corps of Engineers (Corps) explored options for SPGPs in the past, but due to lack of concurrent jurisdiction, abandoned the concept years ago.

## **Assumption of Section 404 Powers**

The state has not assumed the Section 404 program. The Agency lacks concurrent geographic jurisdiction, and the freshwater wetlands program is administered by two agencies. Also, lack of funding has precluded assumption as a serious option.

## **Joint Permitting**

There is a joint permit application with separate processing. Staff from both agencies typically coordinate on larger projects.

## **Special Area Management Plans and Advanced Identification Plans**

Adirondack Park Agency is doing some watershed based mapping and cumulative impact assessment.

No Corps-defined SAMPs or AdIds are in place or contemplated. Wetlands are included, however, as resources of concerns in a variety of other planning efforts at watershed or regional level via a plethora of programs, by sundry partners, across the state. The agencies believe it is better to integrate them into broader conservation initiatives than to separate them out.

## **Role of Local Governments**

Local governments, pursuant to Title 5 of the FWA, may assume the Article 24 permitting authority for wetlands after meeting certain standards set forth in regulation. Three local governments have done so to date: Town of Union (Broome County), Town of Hempstead (Nassau County) and the Village of Southampton (Suffolk County). Notwithstanding, a few dozen localities have adopted local wetlands ordinances that regulate wetlands concurrently with DEC and the Corps; these are located mostly in the lower Hudson Valley and on Long Island. Furthermore, there is a trend for local governments to integrate wetlands into land use decision making via master plans, subdivision approvals, open space preservation plans, and other approaches that put wetlands into context in the local setting and protects/conserves them as part of the suite of natural resources.

## **Staffing**

DEC does not have specific wetlands regulatory staff. Many of the biologists who do wetlands and stream protection also do other fish and wildlife conservation. Annually, there are about 14 full time employees spent on freshwater wetlands permit reviews, delineations, compliance monitoring, and wetland map maintenance. An additional nine full time employees are spent on stream protection work. In addition to biologists, there are analysts in the Division of Environmental Permits, who coordinate and review some wetlands and stream permits. Forest Rangers assist in compliance checks on stream crossings in portions of the state. Environmental Conservation Officers and Regional Attorneys participate in enforcement activities. Wetlands protection is the responsibility of an agency, not a subset of staff.

## **Water Quality Standards**

### **Wetlands and Water Quality Standards**

The state implements a 401 program; an anti-degradation policy exists, but is not specifically applied to wetlands. The state developed narrative water quality standards for wetlands but they have not been adopted.

## **Wetland Definition**

Wetlands are considered to be “waters of the state.”

## **Designated Uses**

There are none specific to wetlands.

## **Narrative and/or Numeric Criteria**

Those that exist for other surface waters apply to wetlands as well, however there are none specific to wetlands.

## **Antidegradation Policy**

No information.

## **Other**

No information.

## **Staffing**

None.

## **Mitigation**

### **Mitigation Policy**

Mitigation for impacts to freshwater wetlands is addressed in the permit regulations, 6NYCRR Part 663 (see <http://www.dec.state.ny.us/website/regs/663.htm>). In addition, there are guidelines on use of compensatory mitigation (see <http://www.dec.state.ny.us/website/dfwmr/habitat/wetlmit.pdf>). There are no mitigation ratios prescribed; mitigation is determined based on impacts to the resource. Little mitigation is actually required under the Article 24 program because relatively little wetland is lost to permitted activities.

### **Mitigation Banks**

There is no mitigation banking “program,” per se. DEC is an active participant in discussions of banking and is a member of the Mitigation Banking Review Teams. However the agency does not take the administrative lead; that falls to the Corps. Banking is viewed by the agency as one more form of off-site mitigation that is contemplated along with other mitigation options when it is determined that a project meets permit standards for avoidance and minimization, that there are no other on-site mitigation options preferred, and that the bank offers appropriate mitigation for the authorized impacts. Banking is a means of offsetting impacts; it is not an end, not a program.

Currently there are only two authorized banks in the state. The Rochester Cornerstone Group bank is located near Rochester, New York. The other is a bank built by the Department of the Army at Fort Drum for their own purposes at the facility. A number of other entrepreneurial banks have been proposed over the years but failed to come to fruition. New York State Department of Transportation (NYSDOT) is currently developing one for their use in the Rochester, New York area; it will be done in cooperation with DEC, who owns the land on which the NYSDOT bank will be built.

## **In Lieu Fee Program**

No formal, authorized in-lieu fee program exists in the state.

## **Ad Hoc Arrangements**

NYS DOT and DEC entered into an arrangement in the Utica-Marcy highway extension to avoid replacing low-quality wetlands in the right-of-way of the highway. Instead, a fund was created to support wetland restoration and creation projects in the surrounding area.

## **Mitigation Database**

The agency is developing the capacity to track mitigation projects, and to link them to the project for which they were established. This is being done as a component of the agency's geo-referenced DART permit tracking database.

## **Staffing**

None.

## **Monitoring and Assessment**

### **Mapping/Inventory**

State tidal wetland maps have been completed for all coastal wetlands in the Long Island and New York City area. Freshwater wetland maps have been promulgated for all counties outside the Adirondack Park. Approximately 25,000 acres of tidal wetlands and 1.2 million acres of freshwater wetlands (outside the Adirondack Park) have been mapped. DEC updates maps as funding and staffing allow. Significant updates to wetland maps are being done inside the watersheds that support the drinking water reservoirs for New York City; funding is being provided by the Safe Drinking Water Act. Freshwater wetlands maps are required by statute and DEC must follow strict protocols for adoption, including certified mail notification of both landowners of record and affected local governments, publication in two newspapers, an opportunity for public comment, and filing of maps in the office of the local government clerks. Maps are available digitally through Cornell University: <http://cugir.mannlib.cornell.edu/>.

National Wetlands Inventory (NWI) maps are highly variable in the state. Coastal areas were originally mapped in the 1970s, many others in the mid- to late- 1980s. Some gaps still exist, particularly in the Adirondack Park. Using Federal Highway Administration grant dollars, and in collaboration with NYS DOT, DEC has contracted with the NWI to complete digitization of maps in the Finger Lakes (done); to complete maps for the Capital District (in draft) and to update maps for the Lake Plains region (in draft).

### **Wetland Classification and Assessment**

New York has 6 NYCRR664 Freshwater Wetlands Mapping and Classification Regulations. See <http://www.dec.state.ny.us/website/regs/664.htm>.

### **Overall Wetland Gain and Loss Tracking System**

Using U.S. Environmental Protection Agency grant funds, DEC undertook a Freshwater Wetlands Status and Trends analysis comparing a sample of aerial photographs from the mid-1980s and mid-1990s. The state was stratified into 5 ecological regions, and gains, losses, and changes in covertype were assessed, along with causative factors. Highlights of the study can be found at <http://www.dec.state.ny.us/website/dfwmr/habitat/fwwprog3.htm>. Most noteworthy is that during the assessment period, there was a net gain of approximately 15,500 acres of freshwater wetlands. This resulted from a gross gain of approximately 37,900 acres of freshwater wetlands and a gross loss of

approximately 22,500 acres of wetlands. DEC anticipates updating this study when mid-00 aerial photos are available.

DEC's Tidal Wetlands Program is undertaking a more intensive status and trends assessment for the coastal area of Long Island and New York City, and the Adirondack Park Agency recently completed a status and trends analysis for the Park.

## **Staffing**

There is no staff dedicated solely to freshwater wetlands monitoring and assessment.

## **Restoration**

### **Program Description**

There is no specific "wetlands restoration" program. Wetlands are restored through a variety of venues, for a variety of reasons, with an array of partners. One of the major restoration efforts in the state is through the USDA Natural Resources Conservation Service Wetlands Reserve Program, which has been responsible for restoration of thousands of acres of wetlands, mostly in the Lake Plains region to help meet goals of the North American Waterfowl Management Plan. Corresponding efforts by regional DEC staff in the Northern Montezuma focus area have used both WRP and a variety of other funding sources to restore wetlands in currently-depleted muck farm areas – historic wetlands. Wetlands also have been restored under the State's Clean Water/Clean Air bond act. Wetlands restoration is an important component of the Long Island Sound Estuary Plan, the New York-New Jersey Harbor Plan, the Hudson River Estuary Plan, and the Lake Champlain Basin Plan. Wetlands have also been restored in the Niagara River, for habitat purposes; and in the Susquehanna River basin, for flood protection and water quality purposes. It is one of the conservation tools employed to meet a suite of natural resources goals.

### **Restoration Program Goals**

Depends on the program that's undertaking the restoration.

### **Eligibility Criteria**

Depends on the program.

### **Restoration Database**

None currently available; none anticipated in the near future. There are many agencies and people doing things and it will be a challenge to coordinate them all.

## **Staffing**

None specifically targeted for restoration.

## **Public/Private Partnerships**

### **Acquisition Program**

Wetlands are a component of the state's comprehensive Open Space Plan, the guiding document for acquisition by the state of New York (see: <http://www.dec.state.ny.us/website/opensp/index.html>).

## **Public Outreach/Education**

Wetlands are one component of a broad environmental education program of the agency. No specific wetlands outreach or education efforts are underway.

## **Tax Incentives**

None.

## **Technical Assistance**

Insufficient staff to provide this service.

## **Other Nonregulatory Incentives for Private Landowners**

Section 24-0905 Tax Abatement-Property taxes evaluated on remaining uses.

## **Wetland Training and Education**

Training has been provided to DEC staff on soils, hydrology, botany, and erosion control.

## **Watershed Planning**

No information.

## **Special Problems**

No information.

## **Coordination**

No information.

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## **Contact Points**

<http://www.dec.state.ny.us/index.html>

## **Guidebooks, Brochures, Websites, Other Educational Materials**

New York State Department of Environmental Conservation. 1978. Getting a DEC Permit. Albany, New York.

New York State Department of Environmental Conservation. 1989. New York State's Freshwater Wetlands Controls: A Resource in Jeopardy. Albany, New York.

New York State Department of Environmental Conservation. 1991. Freshwater Wetlands Program Applicants' Guide. Albany, New York.

New York State Department of Environmental Conservation. Adopt A Wetland Stewardship Program. Albany, New York.

New York State Department of Environmental Conservation. Freshwater Wetlands. Albany, New York.

New York State Department of Environmental Conservation. Wetlands and Real Property Valuation. Albany, New York.

Riexinger, P. 1985. Local Government Implementation of the Wetlands Act. New York State Department of Environmental Conservation. Albany, New York.

The Conservationist. 1984. Special section: Wetlands and Waterfowl. Latham, New York.