



# TENNESSEE

Original Wetland Acreage	Remaining Wetland Acreage	Acreage Lost	% Lost
1,937,000	787,000	1,150,000	-59%

**Tennessee Wetlands:** Palustrine wetlands are the predominant wetlands in Tennessee. These include bottom-land hardwood forests and upland swamps (forested wetlands), scrub-shrub wetlands, beaver ponds (unconsolidated-bottom, aquatic-bed, or emergent wetlands), wet meadows and marshes (emergent wetlands), and highland bogs (forested, scrub-shrub, or emergent wetlands that have organic soils). Lacustrine and Riverine systems consist of aquatic beds consisting of floating and submersed aquatic plants, such as water lily and coontail, and nonpersistent-emergent wetlands consisting of plants such as pickerelweed and American lotus are associated with Tennessee’s rivers, lakes, and reservoirs.

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## SUMMARY

### Overall Program

The state provides protection for wetlands through its Section 401 Water Quality Certification efforts and state Aquatic Resource Alteration Permits.

The state considers wetlands “waters” of the state and requires water quality permits for any activity that affects wetlands. This program covers many activities that do not require 404 permits (draining, ditching, etc.). Since the definition of waters of the state in *The Tennessee Water Quality Control Act of 1977* is much broader than the federal definition of waters of the U.S., many wetlands not subject to federal regulation are still protected by state law and regulations.

Tennessee also has a wetlands acquisition program implemented by the Tennessee Wildlife Resources Agency (TWRA). The program has been funded by a real estate transfer tax since the mid-1980’s. Funding was eliminated last year as a result of state budget problems, but some funding has recently been restored to the program.

## **Innovative Features and New Programs/Initiatives**

Since the mid-1990's Tennessee has established a wetlands mitigation banking system that has provided an alternative to permit applicants when suitable compensatory mitigation cannot be provided on-site. There has been much recent activity in the area of mitigation for stream impacts. A statewide Stream Mitigation Program (In Lieu Fee) has been established within the Tennessee Wildlife Resources Foundation, a private, not-for-profit organization. There is also interest in the establishment of private stream mitigation banks.

In 2000, rules for implementation of the Tennessee §401 Certification and state Aquatic Resource Alteration Permit program were formally adopted. The rules specifically define wetlands as a category of waters of the state and establish a "no net loss of water resource value" standard for permitting.

## **State Wetland Conservation Plan**

The Tennessee Wetlands Conservation Strategy developed by the Governor's Interagency Wetlands Committee was adopted in February 1994, and revised and updated in 1996 and 1998. The plan has served as a good tool for guiding state wetlands policy and coordinating the actions of the various state and federal programs involved in the management of Tennessee's wetland resources. Many of the measures identified in the strategy have been implemented and there is interest in the current state administration in reviewing and continuing with implementation of the strategy.

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

The Tennessee Wetlands Conservation Strategy established a goal of restoring 70,000 acres of wetlands by the year 2000. No good tracking and reporting system was ever established to track progress towards this goal. While some gains were certainly achieved, it is doubtful that the targeted 70,000-acre gain was met. That goal depended in part on reformulating an old river channelization program into one that would work on "restoring floodplain integrity" where opportunities existed. That program has failed to progress significantly, although efforts are ongoing. The Strategy also established a goal of achieving no overall net loss of the wetland acreage and functions in each U.S. Geological Survey hydrologic units.

The Rules of the Tennessee Water Quality Control Board (Chapter 1200-4-7) establish a standard of no net loss of water resource value in permitting alterations of streams and wetlands through either §401 Certifications or state Aquatic Resource Alteration Permits.

## **INDIVIDUAL FEATURES:**

### **Regulation**

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

The state provides protection for wetlands through its Section 401 Water Quality Certification efforts and state Aquatic Resource Alteration Permits.

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

Wetlands are defined in rule (Chapter 1200-4-7) as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas". As a matter of policy, Tennessee uses the Corps 1987 manual for wetlands determination/delineation. *The Tennessee Water Quality Control Act of 1977* defines waters of the state as "any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee

or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.”

### **Evaluation Methodology**

When detailed evaluation is necessary the hydrogeomorphic (HGM) method is used. However, detailed HGM models have not been developed for all wetland types.

### **Regulated and Exempted Activities**

Agricultural and forestry activities are exempted; any other activities that affect wetlands must receive a permit.

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

See above.

### **Penalties and Enforcement**

State has assessed civil penalties for violations of state Water Quality Act for activities in wetlands (unpermitted fill, drainage, etc., violation of 401 or W.Q. permit conditions, etc.). *The Tennessee Water Quality Control Act of 1977* establishes penalties of up to \$10,000/day for violations of the act, and provides for criminal penalties for knowing violation.

### **Permit Tracking**

The Division of Water Pollution Control uses an Access database called “Premstat” to track the status of a permit application. Permstat includes other information such as a brief description of the proposed activity, latitude and longitude, and affected stream. With the information that has so far been input, it does not readily produce compilations of permitted acreage lost or gained through mitigation.

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

Tennessee currently has 17 General Aquatic Resource Alteration Permits that can be used to authorize a variety of minor impact activities in streams and wetlands. The current general permits were issued in 1999 and are coming due for reissuance soon.

### **Assumption of Section 404 Powers**

State has explored assumption. State has no plans to assume 404 program.

### **Joint Permitting**

Tennessee has rules in place, which allow the U.S. Army Corps of Engineers (Corps) to issue joint public notices that serve as notice for the state’s potential permit action as well as the Corps’.

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

None.

### **Role of Local Governments**

None.

## **Staffing**

Eighteen, including administrative, clerical, and field.

## **Water Quality Standards**

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

Wetlands are not specifically addressed in the state water quality standards. The standards are applicable to all waters of the state, which includes wetlands. Wetlands are defined in rule under Chapter 1200-4-7 governing the Tennessee §401 Certification and Aquatic Resource Alteration permitting program.

### **Wetland Definition**

See above.

### **Designated Uses**

See above.

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

None wetlands-specific.

### **Antidegradation Policy**

The Tennessee antidegradation policy applies to wetlands as a category of waters of the state. The water quality standards specifically name Reelfoot Lake and adjacent wetlands as ORNWs.

### **Other**

No information.

## **Staffing**

See above.

## **Mitigation**

### **Mitigation Policy**

The Rules of the Tennessee Water Quality Control Board (Chapter 1200-4-7) establish mitigation requirements. Applicants must *consider* alternatives to a proposed activity that would result in a net loss of water resource value in wetlands and other waters of the state. If there would be a loss with the activity as proposed, then the applicant must propose mitigation sufficient to achieve no net loss of water resource value. The rules suggest ratios for the various common mitigation measures and establish an alternative of an appropriate resource value assessment.

## **Mitigation Banks**

There are seven wetland mitigation banks operating in the state. Two are operated by state agencies, two by private not-for-profit organizations, and three by private, for profit organizations. Banks are established through a Memorandum of Agreement signed by state and federal agencies. The Mitigation Bank Review Team consists of representatives of the Corps, U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), TWRA and Tennessee Department of Environment and Conservation.

## **In Lieu Fee Program**

Tennessee has an in lieu fee program for mitigation of stream impacts. Permittees pay \$200 per permitted foot of stream loss into the Tennessee Stream Mitigation Program. The program is administered by the Tennessee Wildlife Resources Foundation.

## **Ad Hoc Arrangements**

No information.

## **Mitigation Database**

See above.

## **Staffing**

No staff designated specifically for mitigation work.

## **Monitoring and Assessment**

### **Mapping/Inventory**

National Wetlands Inventory (NWI) maps have been done for Tennessee based on the Cowardin classification. The inventory was based on 1980 aerial photography. No detailed status and trends study has been conducted.

### **Wetland Classification and Assessment**

Tennessee has collaborated with Tennessee Technological University and EPA to develop HGM methodology for some wetland classifications. This method has been used some to determine quality and function of wetlands proposed for alteration.

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

See above under permit trading. (not in an integrated manner)

### **Staffing**

No staff dedicated specifically wetland monitoring and assessment.

## **Restoration**

### **Program Description**

None.

### **Restoration Program Goals**

Not applicable.

### **Eligibility Criteria**

Not applicable.

### **Restoration Database**

Not applicable.

### **Staffing**

Not applicable.

## **Public/Private Partnerships**

### **Acquisition Program**

Tennessee's Acquisition Program is administered by TWRA. The program has been funded by a real estate transfer tax since mid-1980's. Recent state budget problems have resulted in elimination of the program. Some funding has recently been restored from a projected state budget surplus.

### **Public Outreach/Education**

No consistent program exists - only periodic efforts.

### **Tax Incentives**

None.

### **Technical Assistance**

TWRA, FWS, Ducks Unlimited and others cooperate in a Partners for Wildlife program.

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

None.

### **Wetland Training and Education**

No regular program is offered by the state. Staff could benefit from additional technical training. Approval for travel out-of-state is difficult to obtain.

## **Watershed Planning**

The Division of Water Pollution Control has established a watershed approach to permitting and water resource planning. The watershed plans currently include the limited information available on wetlands resources in a format that can be used. Although NWI information has been digitized, attribute data is such that it cannot be meaningfully utilized in the current planning process.

## **Special Problems**

No information.

## **Coordination**

The Governor's Interagency Wetlands Committee has served this function, but has been inactive for the last few years. There has been recent interest in renewing this approach.

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## **Contact Points**

[www.state.tn.us/environment](http://www.state.tn.us/environment)

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

No information provided.