



# DELAWARE

Original Wetland Acreage	Remaining Wetland Acreage	Acreage Lost	% Lost
479,785	223,000	256,785	-54%

**Delaware Wetlands:** Palustrine wetlands are the most abundant wetlands in Delaware. Palustrine wetlands are distributed throughout the State in topographic depressions and in riparian zones along rivers and streams.

<a href="#">Summary</a>	<a href="#">Individual Features</a>	<a href="#">Regulation</a>	<a href="#">Water Quality Standards</a>	<a href="#">Mitigation</a>	<a href="#">Monitoring and Assessment</a>	<a href="#">Restoration</a>	<a href="#">Public/Private Partnerships</a>
-------------------------	-------------------------------------	----------------------------	---	----------------------------	---	-----------------------------	---

(Clicking on heading above will move to corresponding section below.)

## SUMMARY

### Overall Program:

Main Delaware Wetland Page: <http://www.dnrec.state.de.us/dnrec2000/Wetlands.asp>

Delaware has an estimated 125,000 acres of tidal wetlands and 225,000 acres of freshwater nontidal wetlands (new, more accurate mapping has increased former totals from NWI). Tidal wetlands are regulated at the state level under the Wetlands Act; no direct state regulation is currently provided for nontidal wetlands.

Lands under tidal and nontidal waterways (streams, rivers, lakes, bays) are regulated pursuant to the Subaqueous Lands Act.

<http://www.dnrec.state.de.us/water2000/Sections/Wetlands/regulations/SubaqueousRegs19921.pdf>

### Innovative Features and New Programs/Initiatives:

Permits for the (Tidal) Wetlands Act have been classified with type 1 and type 2 permits based on proposed activity type. Jurisdictional tidal wetlands are indicated on regulatory maps.

Changes to Delaware's Wetlands Act are under consideration presently, to cover the loss of regulation at the federal level of isolated nontidal wetlands.

## **State Wetland Conservation Plan**

Plan completed in draft form in 1995 needs revisitation/updating.

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

No specific goal is stated in any existing statutes although working policy is applicable.

## **INDIVIDUAL FEATURES:**

### **Regulation**

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

(Tidal) Wetlands Act of 1973. 7 Del. Code Chapter 66. Sec. 6601-6620 (primarily tidal wetlands). Permits are required from the Delaware Department of Natural Resources and Environmental Control (DNREC).

Subaqueous Lands Act of 1986, Del. Code Ann., tit. 7 Chapter 72 sec. 7201-72-16

<http://www.dnrec.state.de.us/water2000/Sections/Wetlands/regulations/SubaqueousRegs19921.pdf>

Coastal Zone Management Act of 1972. Del. Code Ann., tit. 7 Chapter 70 sec. 7001-7013

Beach Preservation Act, Del. Code Ann., tit. 7 Chapter 68 sec. 6801-6812

401 Water Quality Certification, Clean Water Act

<http://www.dnrec.state.de.us/water2000/Sections/SurfWater/Library/RGCWP.pdf>

Application form for Wetlands and Subaqueous lands:

<http://www.dnrec.state.de.us/water2000/Sections/Wetlands/Originals/basic.htm>

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

The (Tidal) Wetlands Act. Lands subject to tidal action which are above the mean low water elevation and at or below an elevation of 2 feet above the local mean high water which are capable of growing certain listed species including any bank, marsh, swamp, meadow, flat or other low land. Also included are nontidal wetlands consisting of 400 acres or more of contiguous swamp, bog or marsh (exclusive of narrow stream valleys and lands currently used for agricultural purposes) where freshwater stands most, if not all of the time, which contribute significantly to groundwater recharge and which would require extensive artificial drainage. These areas are delineated on jurisdictional maps.

Subaqueous Lands Act. Submerged lands and tidelands. Submerged lands include lands lying below the line of the mean low tide in the beds of all tidal waters within the boundaries of the state, together with the beds of rivers, streams, lakes, bays, and inlets. Tidelands include lands lying between the line of mean high water and the line of mean low water.

#### **Evaluation Methodology**

None currently; researching and developing suitable nontidal methodology. Anticipated completion by 2004.

#### **Regulated and Exempted Activities**

The (Tidal) Wetlands Act. Dredging, filling, bulkheading, plowing, and construction of any kind are regulated. Exceptions include certain mosquito control, construction of navigational aids, duck blinds, foot bridges, wildlife nesting structures, grazing, haying, hunting, fish and trapping.

Subaqueous Lands Act. Deposit of materials or removal or extraction of materials, or construction, repair, or reconstruction of structures.

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

Areas currently used for agriculture are excluded from regulation.

### **Penalties and Enforcement**

All statutes contain civil and criminal penalty sections. The Superior Court and Justice of Peace Courts have jurisdiction of offenses.

### **Permit Tracking**

Permit conditions and enforcement are tracked by computer. Routine aerial and ground surveillance.

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

Two SPGPs for Section 10 waters. None for Section 404.

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

No full assumption is being pursued at this time. Attempts to enact a freshwater wetlands bill were unsuccessful in the early 1990s.

### **Joint Permitting**

Monthly meetings conducted with U.S. Army Corps of Engineers (Corps), U.S. Environmental Protection Agency, U.S. Fish & Wildlife Service, and National Marine Fisheries Service. Also quarterly enforcement meetings.

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

None.

### **Role of Local Governments**

Freshwater wetlands are indirectly regulated through local planning and zoning and other land use decisions.

### **Staffing (Regulatory Staff)**

Administrative staff: 3; Technical staff: 10; Clerical staff: 3.

### **Water Quality Standards**

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

Del. Code Ann., tit. 7 Chapter 60. The State has adopted a 401 program.

401 Water Quality Certification Program - wetlands water quality standards and administrative rules are currently (1993) under revision.

## **Wetland Definition**

Wetlands are defined as Waters of the State in the August 11, 1999 Surface Water Quality Standards. "Wetlands are 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, bog and similar areas."

## **Designated Uses**

None at this time.

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

None at this time.

## **Antidegradation Policy**

Degradation of water quality in such a manner that results in reduced number, quality, or river or stream mileage of existing uses shall be prohibited.

## **Other**

N/A

## **Staffing (Wetland Water Quality Staff)**

Administrative staff: 2; technical staff: 2; clerical staff : 1.

## **Mitigation**

### **Mitigation Policy**

Some mitigation happens for projects permitted under the Wetlands Act permit review process. Ratios are project dependent and generally follow Corps requirements.

### **Mitigation Banks**

None as of yet. Delaware Department of Transportation has multiple compensation sites which act as a bank.

### **In Lieu Fee Program**

No in lieu fee program.

### **Ad Hoc Arrangements**

Minimal ad hoc arrangements for mitigation. Conservation easements are extensively used to protect existing wetlands.

### **Mitigation Database**

No tracking system.

### **Staffing (Mitigation Staff)**

Administrative staff: 1; technical staff: 1; clerical staff: 1.

### **Monitoring and Assessment**

#### **Mapping /Inventory**

Tidal wetlands maps have been prepared by the state. The National Wetlands Inventory is complete for Delaware. Most recent maps of Delaware are the Statewide Wetlands Mapping Project (SWMP) completed in 1992 for all of Delaware. Updated wetlands mapping will most likely take place at 10-year intervals.

#### **Wetland Classification and Assessment**

Under discussion is a proposed isolated, nontidal bill. Two classes would be established with the Class 1 being unique wetland types.

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

N/A

#### **Staffing (Monitoring and Assessment Staff)**

N/A

### **Restoration**

#### **Program Description**

Delaware's Division of Fish and Wildlife and Division of Soil and Water Conservation are involved with wetlands restoration. Generally involved restoration of marshes that have been invaded by Phragmites. Coordinate with U.S. Fish and Wildlife Service under the Partners for Wildlife Program.

#### **Restoration Program Goals**

Restore functions and values.

#### **Eligibility Criteria**

All land is eligible but projects normally deal with restoring degraded wetland systems.

#### **Restoration Database**

No existing database is being developed.

#### **Staffing (Wetland Restoration Program Staff)**

Administrative staff: 1; technical staff: 1.

## **Public/Private Partnerships**

### **Acquisition Program**

Delaware's Division of Parks and Recreation has an Open-Space Program for purchasing environmentally sensitive areas and also has easements on property containing wetlands. The Division of Fish and Wildlife also purchases wetlands for management purposes. The Department of Agriculture administers an agriculture preservation program.

Conservation Easement Act of 1978 provides property tax reduction for donation of conservation easements.

### **Public Outreach/Education**

Departments Office of Education and Outreach publishes wetlands information and runs several wetland education programs in the school system.

### **Tax Incentives**

Parks and Recreation's Conservation Easement Program.

### **Technical Assistance**

Local Conservation Districts and NRCS.

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

The Nature Conservancy and the Delaware Nature Society.

### **Wetland Training and Education**

Delaware Wetlands Workgroup established in 2001.

### **Watershed Planning**

N/A

### **Special Problems**

If a court rules that a tidal wetland permit denial is a taking without compensation, DNREC is empowered to initiate condemnation proceedings in lieu of the court issuance of the permit.

### **Coordination**

N/A

### **Contact Person(s)**

William Moyer  
DE Dept. of Natural Resources and Environmental Control  
89 Kings Highway, P.O. Box 1401  
Dover, DE 19903  
(302) 736-4691

Mark Biddle  
DE Dept. of Natural Resources and Environmental Control  
820 Silver Lake Boulevard, Suite 220  
Dover, DE 19904  
(302) 739-4590

### **Contact Points**

Delaware Division of Water Resources Contacts: <http://www.dnrec.state.de.us/water2000/DWRStaff1.asp>

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

Delaware Department of Natural Resources and Environmental Control. Wetlands of Delaware. Dover, Delaware.

Delaware State Planning Office. 1976. Wetlands. Lewes CCD Pilot Study, Working Paper Number 9. Delaware's Coastal Zone Management Program.

Environmental Law Institute. Citizens Guide to Delaware's Non-Tidal Wetlands. Draft report. Washington, D.C.

### **Websites:**

State Home Page: <http://delaware.gov/>

Delaware Department of Natural Resources and Environmental Control:  
<http://www.dnrec.state.de.us/dnrec2000/>

Delaware Coastal Programs: <http://www.dnrec.state.de.us/dnrec2000/Divisions/Soil/dcmp/index.htm>

Searchable Database of Delaware Codes: <http://www.delcode.state.de.us/>

Delaware Legislative Page: <http://www.legis.state.de.us/Legislature.nsf/?Opendatabase>