



# NEW JERSEY

Original Wetland Acreage	Remaining Wetland Acreage	Acreage Lost	% Lost
1,500,000	915,960	584,040	-39%

**New Jersey Wetlands:** Nearly 99 percent of New Jersey’s wetlands are palustrine or estuarine. Palustrine wetlands generally are swamps and freshwater lowlands, whereas estuarine wetlands are marshes and associated saltwater wetlands. New Jersey’s most common palustrine wetland types are swamps (forested wetland), shrub swamps (scrub-shrub wetland), and freshwater marsh and wet meadow (emergent wetland), Bogs (wetlands that have organic soils) are less common. Nearly three-fourths of New Jersey’s estuarine wetlands is salt and brackish marsh.

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## SUMMARY

### Overall Program

New Jersey has a comprehensive state level program for freshwater and tidal wetlands administered pursuant to four statutes. It is one of two states nationally that have assumed the Section 404 program under the Clean Water Act.

The wetland management program is implemented by the Department of Environmental Protection on a regional basis in conjunction with the Coastal Zone Management Program and the Flood Hazard Area Program. Permits are issued jointly for a particular site whenever possible.

### Innovative Features and New Programs/Initiatives

New Jersey’s program includes: direct and exclusive state permitting for activities in freshwater wetlands and water areas; an assumed Section 404 program; upland buffer requirements; in lieu fee and mitigation banking; and a stormwater review component. Special area management plans exist for the Pinelands and the Hackensack Meadowlands.

### State Wetland Conservation Plan

The State does not have a State Wetland Conservation Plan.

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

When the State of New Jersey entered into the Environmental Partnership agreement with the U.S. Environmental Protection Agency to assume the Section 404 program, it adopted a No Net Loss/Net Gain Goal.

## **INDIVIDUAL FEATURES:**

### **Regulation**

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

The Freshwater Wetlands Protection Act (FWPA) provides a comprehensive permitting program that regulates all activities in freshwater wetlands, as well as in "transition areas" — upland buffers adjacent to the wetlands. (N.J.S.A. 13:9B-1 et seq.). The FWPA is not based on 401 certification and water quality standards but establishes its own authority. New Jersey has assumed the federal Clean Water Act's Section 404 program and thereby issues State permits that satisfy both State and Federal requirements. The Federal 404 program is suspended throughout most of the State. The Hackensack Meadowlands Development Commission (HMDC) region of the State was not deemed assumable by the U.S. Army Corps of Engineers (Corps) and therefore remains under Federal jurisdiction. The State reviews wetlands activities in the HMDC using 401 certification and rules on Coastal Zone Management (CZM). In general the State standards for the issuance of 401 certification parallel the standards for receiving a permit under the FWPA and the standards for issuance under CZM. The State's wetland permit serves as the 401 certification for all activities regulated under the FWPA.

The Pinelands Protection Act (N.J. S.A. 13:18A-1 to 13:18A-29) provides protections and land use restrictions for areas within the Pinelands National Reserve. This includes wetlands protection (including wetland buffers) that is separate from, but in addition to the protections provided via the FWPA.

The Wetlands Act of 1970 N.J.S.A.13:9A-1et seq. requires permits for activities proposed within tidal and estuarine wetlands. All wetlands to be protected are shown on regulatory maps. Unmapped wetland areas are regulated by the FWPA.

The HMDC requires permits for activities within the District boundaries. The Hackensack Meadowlands district is exempt from the provisions of the FWPA. However, the State reviews Corps permits for 401 Water Quality Certification and uses the State's wetland standards and the rules on CZM for this review.

The Highlands Water Protection and Planning Act (2004), N.J.S.A. 13:20-1 et seq. requires approval for activities in a 400,000 acre region of the state designated for preservation. Within the Preservation Area, the Act regulates "Highlands Open Waters." "Highlands Open Waters" is defined to include springs, perennial and intermittent streams, wetlands and bodies of surface water whether natural or artificial. The Act requires a 300-foot buffer adjacent to all Highlands open waters and limits the activities that may encroach to linear projects and right-of-way therefore, for which there is no alternative.

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

Freshwater Wetlands Protection Act: A definition of wetland comparable to the federal definition (1977) was adopted by regulation. The 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands with subsequent amendments was adopted by statute. In addition, the Department has authority over transition areas adjacent to wetlands of exceptional resource value (75 - 150 feet) and of intermediate resource value (25 - 50 feet).

Wetlands Act of 1970: Land subject to tidal action in specified areas including areas formally connected to tidal waters whose surface is at or below an elevation of one foot above extreme high water upon which may grow or is capable of growing some of the listed plants.

## **Evaluation Methodology**

New Jersey is currently evaluating HGM and a unique method designed to evaluate the success of mitigation sites in New Jersey.

## **Regulated and Exempted Activities**

The Freshwater Wetlands Protection Act regulates: fills, driving of pilings, excavation, drainage and disturbance of the water table, and destruction of wetland vegetation. Exemptions include activities associated with farming and forestry which do not bring an area of wetlands into a use to which it had not previously been subjected. These exemptions are identical to those provided under the Federal 404 program.

The Wetlands Act of 1970 regulates: draining, dredging, excavation, and placement of structures or other obstructions. Production of salt hay and mosquito control activities are exempted.

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

Forestry activities with an approved forest management plan are exempt from the FWPA. The State law also provides an agricultural exemption that is the same as the current 404 exemption.

## **Penalties and Enforcement**

Penalties of up to \$10,000 per day per violation are possible under the FWPA. The FWPA provides for civil and criminal penalties. The State has two regional enforcement offices that handle all complaints and violations under the State's wetlands program.

## **Permit Tracking**

New Jersey has a comprehensive permit and enforcement tracking database to track all permitting and enforcement actions, including types of activities to be permitted and resulting wetland acreage impacts. The State also has a separate mitigation database to track compliance with mitigation conditions. Upon receipt of a permit application it is assigned an identifying number and entered into the database. Upon completion of the review (and at several steps along the way) the reviewer enters information regarding whether or not the permit was approved or denied, and the approved level of wetlands filled, excavated or cleared. The same database is used to enter enforcement information (if the need arises). When mitigation is required, the mitigation database contains the details including timing, types and quantity of mitigation to be performed.

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

Blanket general permits are in place for working in man-made lagoons and for docks and piers in coastal waters. The state is pursuing a programmatic general permit for coastal wetland areas.

## **Assumption of Section 404 Powers**

The state assumed the Section 404 Program in 1994. The program functions smoothly and efficiently and has proven beneficial not only for applicants but also for wetland protection in the State.

## **Joint Permitting**

Because the State has assumed the Section 404 program, the Federal Section 404 program has been suspended throughout most of the State. The only areas where the State and the Corps share jurisdiction, and both agencies must review activities for permits, are those areas below the head of tide and wetlands adjacent to those waters up to 1000 feet inland. Also, interstate wetlands and waters (such as the Delaware River, which forms the border between New Jersey and Pennsylvania, Greenwood Lake, on New Jersey's border with New York State) remain under dual jurisdiction. However, the State performs all jurisdictional determinations for wetlands and Corps accepts them. In addition, joint coastal, floodplain and wetland permits are issued whenever possible.

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

The Pinelands Area of the State has unique rules and regulations established to protect the "preservation area" while directing development elsewhere. These regulations include strict prohibitions against wetland disturbance. At this time, the State is contemplating similar regulations for an area in the northern part of the State designated as "the Highlands."

## **Role of Local Governments**

The State's Freshwater Wetlands Protection Act specifically focuses all regulatory authority for wetlands at the State level. Local government, together with neighbors and interested members of the public are afforded an opportunity to comment on state permit applications.

## **Staffing**

Approximately eighty professional staff are employed to operate the combined permitting process. Staff is responsible for processing permits under five land use statutes including the two wetland statutes and for performing 401 water quality certifications for the Hackensack Meadowlands. The additional statutes are the State's Coastal Area Facility Review Act and Waterfront Development Law (that together comprise most of the standards for the State's Coastal Zone Management Program), and the Flood Hazard Area Control Act that regulates floodplains and riparian corridors.

## **Water Quality Standards**

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

The State is currently evaluating the establishment of water quality standards for wetlands.

### **Wetland Definition**

Wetlands are defined via the FWPA. The State did add the definition of wetlands to the surface water quality standards in anticipation of establishing standards.

### **Designated Uses**

The State has not designated uses.

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

The State has not identified narrative or numeric criteria that apply to wetlands.

## **Antidegradation Policy**

The State has not applied antidegradation policies to wetlands.

## **Other**

Not applicable.

## **Staffing**

Not applicable.

## **Mitigation**

### **Mitigation Policy**

Mitigation is required for all wetland and water impacts permitted under an Individual permit as well as for three general permits: hazardous waste cleanup and remediation, landfill closures and redevelopment of brownfields.

In New Jersey, mitigation is required based upon "equal ecological value." Mitigation ratios have been developed for the creation of wetlands in place of the Equal Ecological Value standard. For wetland disturbances other than temporary, mitigation is required at a 2:1 ratio (two acres created or restored for every one acre lost).

### **Mitigation Banks**

As of May 18, 2004, there are ten approved private wetland mitigation banks but there are no publicly owned wetland mitigation banks. For additional information, please see <http://www.nj.gov/dep/landuse/fww/mitigate/banks.html>.

### **In Lieu Fee Program**

In accordance with the mitigation hierarchy identified in the State's regulations, the State accepts cash contributions as a form of mitigation. Monetary contributions are deposited into a Wetland Mitigation Fund that is administered by the Freshwater Wetlands Mitigation Council (an entity whose composition and responsibilities are prescribed by the FWPA). With the funds, the Council has the power; to purchase land to provide areas for enhancement or restoration of degraded freshwater wetlands; to engage in the enhancement or restoration of degraded freshwater wetlands on any public lands, including public lands other than those acquired by the Council; and to preserve freshwater wetlands and transition areas determined to be of critical importance in protecting freshwater wetlands.

For more information see <http://www.nj.gov/dep/landuse/fww/mitigate/mcouncil.html>.

### **Ad Hoc Arrangements**

None.

## **Mitigation Database**

To account for wetland gains, the State has a Geographic Information System (GIS) compatible mitigation database that includes information such as the amount of mitigation required, status of the mitigation monitoring, quality assessment of the mitigation area, and graphic files showing the extent of wetlands achieved.

To account for wetland losses, see information under Permit Tracking at 10 above.

## **Staffing**

As of 2004, the State has five staff assigned to mitigation.

## **Monitoring and Assessment**

### **Mapping/Inventory**

Many years ago, state maps at the scale of 1/200 were prepared for all coastal wetlands. Those maps have not recently been updated.

State maps for freshwater wetlands were prepared in the early half of the 1990s at a scale of 1:12,000 (1"=1000'). Currently these maps and a more comprehensive land use/land cover mapping system have been prepared via the State's GIS system.

### **Wetland Classification and Assessment**

In New Jersey certain wetlands may receive different levels of protection with respect to buffers. Wetlands with threatened or endangered State or Federally-listed species, and those adjacent to high quality waterways (trout production waters) are provided with added protection through large (150 feet) upland buffers. Some highly altered wetlands are provided with no upland buffer.

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

The State tracks wetland losses and wetland gains via its permit and mitigation databases, respectively. There are other programs within the State Department of Environmental Protection that work to acquire environmentally sensitive land that may include wetlands. They conduct their own tracking.

## **Staffing**

Not applicable.

## **Restoration**

### **Program Description**

New Jersey does not have a voluntary restoration program. Restoration is an option under the State programs permitting program as a mitigation option. In addition, the Mitigation Council seeks restoration under its in lieu fee program.

### **Restoration Program Goals**

Not applicable.

## **Eligibility Criteria**

Not applicable.

## **Restoration Database**

Not applicable.

## **Staffing**

Not applicable.

## **Public/Private Partnerships**

### **Acquisition Program**

FWPA allows tax reduction for unbuildable wetlands. The State's Environmental Infrastructure Trust Program provides low interest grant funding for the purchase of land that will improve or protect water quality. Wetlands are eligible purchases with this funding. The State's Natural Resources Damages program takes funding received from environmental damage cases and uses it to purchase and/or restore wetlands and other land valuable for environmental protection. The State's Natural Lands Trust has some funding for the purchase of environmentally important properties. The State's Green Acres program also provides funding to towns, counties and non-profits for the purchase of land for open space, which may include environmentally sensitive lands.

### **Public Outreach/Education**

Rutgers (the State University of New Jersey) provides training programs and continuing education to the public on wetlands, mitigation, endangered species and other related aspects of wetlands protection. The Association of New Jersey Environmental Commissions (a non-profit organization that provides support for local Environmental Commissions throughout the state) has written a manual on freshwater wetlands protection for local officials. The State's Watershed Protection Program (a sister program to Land Use Regulation) does public outreach and provides grant programs for watershed protection including wetlands protection.

### **Tax Incentives**

The State of New Jersey provides tax incentives for the preservation of open space, but does not specifically target wetlands. In addition, the FWPA provides for a reduction of taxes on properties that are deemed by the State to be comprised of freshwater wetlands.

### **Technical Assistance**

The FWPA provides for the Department to perform a jurisdictional determination to determine the presence and extent of wetlands, waters and buffers on a property. For a fee, the State delineates wetlands on properties that are less than one acre in size.

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

There are several other programs in New Jersey that tangentially affect the wetland resource. These include the Department of Agriculture (both State and Federal), State Watershed program, the State's Division of Fish and Wildlife (that provides a landowner incentive program for endangered species protection) and the U.S. Fish and Wildlife Service's Partners for Wildlife Program.

## **Wetland Training and Education**

The State has a working agreement with Rutgers, (New Jersey's State University) to provide wetland education programs for municipal construction officials, consultants, health officers, real estate professionals, planners and builders.

## **Watershed Planning**

The Department has been making new efforts to coordinate its stormwater, water allocation and water quality management planning efforts with wetland protection. The State wetlands program has incorporated the State's stormwater provisions within its permitting program. In addition, the State's water allocation program considers wetland impacts through a coordination process with the wetland program, before approving new or increased ground or surface water withdrawals.

## **Special Problems**

New Jersey is the most densely populated State in the nation. At current development rates, the State could reach "build out" in less than 50 years. Consequently, there is intense development pressure throughout the State on every remaining undeveloped property and these properties are often undeveloped because they contain wetlands or other environmental constraints.

## **Coordination**

The State Department of Environmental Protection was reorganized in 2002 to bring the agencies responsible for wetlands, watershed management and water supply under the same Assistant Commissioner. Consequently, activities within the Department that could indirectly involve or affect wetlands are reviewed in a more comprehensive manner.

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## **Contact Points**

[www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse)

<http://www.state.nj.us/dep/landuse/fww/fww.html>

<http://www.state.nj.us/dep/landuse/contact/contact.html>

<http://www.njleg.state.nj.us/legislativepub/auditor/42542.pdf>

<http://www.state.nj.us/dep/landuse/njsa/njsa.html>

<http://www.state.nj.us/agriculture/rural/natrsrc.htm>

<http://www.state.nj.us/dep/>

<http://www.state.nj.us/>

<http://www.njleg.state.nj.us/>

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

NJDEP. 2003. Freshwater Wetlands Technical Manual with amendments through October 20, 2003. Trenton, New Jersey.

Fair, Abigail. 2004. Freshwater Wetlands in New Jersey. A Manual for Local Officials. Association of New Jersey Environmental Commissions (ANJEC). Mendham, New Jersey - [www.anjec.org/pdfs/wetlands\\_res.pdf](http://www.anjec.org/pdfs/wetlands_res.pdf).

Citizen's Guide to Wetlands and the New Jersey Wetland Rules – [http://www.thewatershed.org/WSM/SBMWA\\_wetland\\_guide.pdf](http://www.thewatershed.org/WSM/SBMWA_wetland_guide.pdf)