

A Brief Description of THE FRESHWATER WETLANDS LAW and What It Means for Wetlands Landowners



What Are Freshwater Wetlands?

Wetlands are transition areas between uplands and aquatic habitats. They are known by many names, such as marshes, swamps, bogs, and wet meadows. Standing water is only one clue that a wetland may be present. The Freshwater Wetlands Law identifies wetlands on the basis of vegetation because certain types of plants outcompete others when they are in wet soils, and so are good indicators of wet conditions over time. These characteristic plants include wetland trees and shrubs, such as willows and alders; emergent plants such as cattails and sedges; aquatic plants, such as water-lily, and bog mat vegetation, such as sphagnum moss.

To be protected under the Freshwater Wetlands Law, a wetland must be 12.4 acres (5 hectares) or larger. Wetlands smaller than this may be protected if they are considered of unusual local importance. If small wetland areas with functional connections are separated by less than a 50 meters (165 feet), they may also be regulated, if their combined acreage is 12.4 acres or more. Around every wetland is an “adjacent area”, 100 feet wide, that is also regulated to provide a protective buffer around the wetland.

The U.S. Army Corps of Engineers also protects wetlands under Section 404 of the Clean Water Act, irrespective of size. Although the definition is slightly different than the state definition, the Clean Water Act protects basically the same thing -- areas of water or wet soils that support typical wetland plants.

Why Are They Valuable?

For many years, people did not recognize the value of wetlands. Consequently, New York has lost almost half of its wetlands to such activities as filling and draining. However, wetlands are valuable to the people and environment of New York State. These are some of the functions and benefits that wetlands perform:

Flood and Storm Water Control: Wetlands are important in how water moves in a watershed. They absorb, store, and slow down the movement of rain and melt water, minimizing flooding and stabilizing water flow.

Surface and Groundwater Protection: Wetlands often serve as groundwater discharge sites, maintaining base flow in streams and rivers and supporting ponds and lakes. In some places, wetlands are very important in recharging groundwater supplies.

Erosion Control: Wetlands slow water velocity and filter sediments, protecting reservoirs and navigational channels. They also buffer shorelines and agricultural soils from water erosion.

Pollution Treatment and Nutrient Cycling: Wetlands cleanse water by filtering out natural and many man-made pollutants, which are then broken down or immobilized. In wetlands, organic materials are also broken down and recycled back into the environment, where they support the food chain.

Fish and Wildlife Habitat: Wetlands are one of the most productive habitats for feeding, nesting, spawning, resting and cover for fish and wildlife, including many rare and endangered species.

Public Enjoyment: Wetlands provide areas for recreation, education and research. They also provide valuable open space, especially in developing areas where they may be the only green space remaining.

Freshwater Wetlands Law

The State Legislature passed the Freshwater Wetlands Law (Law) in 1975 with the intent to preserve, protect and conserve freshwater wetlands and their benefits, consistent with the general welfare and beneficial economic, social and agricultural development of the state. Certain activities are exempt from regulation; other activities that could have negative impact on wetlands are regulated. To conduct any regulated activity in a protected wetland or its adjacent area, a permit is required. The permit standards in the regulations require that impacts to wetlands be avoided and minimized. If the proposed activity will not seriously affect the wetland, a permit with various conditions is usually issued. If the proposed activity will affect the wetland, the benefits gained by allowing the action to occur must outweigh the wetland benefits lost, in order for a permit to be issued. Compensatory mitigation often is required for significant impacts to wetlands. This may include creating or restoring wetlands to replace the benefits lost by the proposed project.

Wetlands Are Mapped

The Law requires DEC to map all those wetlands protected by the Law so that affected landowners can be notified and as a means for other interested parties to know where jurisdictional wetlands exist. DEC prepares draft maps, notifies landowners whose property may contain protected wetlands, and provides an opportunity for a public hearing on the accuracy of the maps. DEC then reviews the comments received from the hearing, adjusts the maps if necessary, and then officially files the final maps with the clerks of all local governments. Wetlands are a changing resource, and the law makes provisions for amending the maps. However, any changes to the maps are subject to the same notice and review procedures used to prepare the initial maps.

There are no regulatory maps identifying wetlands protected by the U.S. Army Corps of Engineers under the Clean Water Act. Wetlands shown on the DEC maps usually are also protected by the Corps, but there are additional wetlands not shown on the DEC maps that are protected by the Corps but not DEC because they are smaller than 12.4 acres in size. The National Wetlands Inventory, prepared by the U.S. Fish and Wildlife Service, is a good source of information about where these smaller wetlands occur, but they are not regulatory maps and landowners should not rely on them exclusively.

Not All Wetlands Are Equal

Different wetlands provide different functions and benefits in varying degrees. The Law requires DEC to rank wetlands in one of four classes ranging from Class I, which represents the greatest benefits and is the most restrictive, to Class IV. The permit requirements are more stringent for a Class I wetland than for a Class IV wetland. Because of this, wetland classifications are important and are subject to public comment during the map hearing process.

Regulation of Wetlands

According to the Freshwater Wetlands Law, certain activities are specifically exempt from regulation and do not require a permit, whereas other activities specifically require a permit. The following lists describe the regulatory status of some common activities:

Exempt Activities- These activities do not require a wetlands permit, and include, among others:

- normal agricultural practices (except filling and clear cutting)
- recreational activities such as fishing, hunting, hiking, swimming, camping or picnicking
- ordinary, routine maintenance of existing structures, existing lawns, and similar facilities
- selectively cutting trees and harvesting fuel wood, but not clear cutting trees or wetland vegetation

Regulated Activities with minor impacts

- installing utilities to a residence (exempt in an adjacent area)
- drilling an individual water well in an adjacent area
- replacing existing, functional bulkheads
- installing docks, piers, or wharfs

Regulated Activities with major impacts

- filling (including filling for agricultural purposes) and grading
- erecting buildings, including houses, barns, garages, commercial and industrial facilities
- restoring, modifying, or expanding existing structures
- draining (except for agriculture), dredging, or otherwise changing water levels in wetlands, including breaching of beaver dams, constructing or removing bulkheads, dikes, or dams
- constructing roads
- applying pesticides in wetlands
- clear cutting trees or other vegetation
- mining

The Clean Water Act regulates activities in a similar manner, but has slightly different requirements. Landowners are encouraged to contact the U.S. Army Corps of Engineers if they anticipate undertaking activities in or near wet areas.

Contact the Buffalo Office of the U.S. Army Corps of Engineers at (716) 879-4330

Contact the DEC at (716) 851-7010 (Buffalo Office) or (716) 372-0645 (Allegany Sub-Office)

The **Environmental Resource Mapper** provides an easy way to locate freshwater wetlands regulated by the DEC. It is available on the DEC web site at <http://www.dec.ny.gov/imsmaps/ERM/viewer.htm>

More information about DEC wetlands, regulated activities, & required state permits is available at: <http://www.dec.ny.gov/permits/6058.html>