

Citizen's Guide to Wetlands And the New Jersey Wetland Rules



This guide provides an informational overview of federal and New Jersey wetland policies and regulations but is not comprehensive. For more detailed information please refer to the listed resources and websites at the end.

What are Wetlands?

Wetlands normally exhibit three essential characteristics:

- *wet conditions*
- *wet soils, and*
- *plants that prefer these wet habitats.*

Why Are Wetlands Important?

Wetlands are unique and diverse. They include swamps, bogs, tidal marshes, wet meadows and forested areas. Wetlands provide essential ecological benefits that no other land type can, including:

1. **Flooding is controlled.** Soil and plants in wetlands act as a sponge to capture, slow and store water; reducing the volume and velocity of floodwaters.

2. **Water quality is improved.** When sediments and/or pollutants settle out of the water column, the soil, plants and microorganisms can act to filter, biodegrade and reduce concentrations of nutrients, bacteria, metals, organics, and pesticides.
3. **Base flows to streams and recharge of ground water are maintained.** Water is stored and allowed to infiltrate and replenish subsurface aquifers, or ground water supplies.
4. **Critical habitats are provided.** Wetlands support a great diversity of plants and wildlife species by providing necessary food, shelter, and spawning, or nesting sites. Nationally, approximately 80% of all breeding birds; 50% of the protected endangered or threatened animal species; 25% of endangered or threatened plants species; and 75% of all commercial fish and shellfish are dependent on wetland habitats.
5. **Recreation and Education needs are met.** Millions of citizens enjoy the serenity and recreational uses provided by wetlands, including hiking, photography, fishing, birding, hunting, canoeing, and nature observations for fun and educational purposes.

Economic contributions are significant. Commercial fishing, shell fishing, and cranberry bogs, that are dependent on wetlands, contribute significantly to economic growth in New Jersey. Approximately \$34 million was attributed to recreational uses such as birding, annually in New Jersey.

Why Do We Protect Wetlands?

Wetlands are protected because *they benefit all citizens*, by storing floodwaters, filtering pollutants and improving water quality, controlling erosion, and providing wildlife habitat and recreational opportunities. These benefits have only recently become recognized and appreciated. By the 1980s more than half of the nation's wetlands were already destroyed by draining, ditching, farming, dredge and fill activities, and development.

Wetlands are usually found in flood prone areas, low-lying areas near streams and rivers. Wetlands can also be found along hillsides where

surface water or ground water collects, or perched above clay or rock. Dry seasons can mask wetlands identifications.

Who Regulates Wetlands?

In 1994, New Jersey joined Michigan in becoming the only two states to be delegated regulatory authority over wetlands from the US Environmental Protection Agency (US EPA). Both the US EPA and the US Army Corps of Engineers (US ACOE) regulate wetlands in all other states. The New Jersey Department of Environmental Protection (NJDEP) adopted the Freshwater Wetlands Protection Act Rules (NJAC 7:7A) in 1988, and they were recently revised in 2001. The Wetland Rules and permits are administered by the NJDEP, Land Use Regulation Program (LURP), and are coordinated with several other offices, including:

- The *US ACOE* regulates interstate and navigable waters (i.e. Delaware River) and coastal areas.
- The *Hackensack Meadowlands Development Commission and Pinelands Commission* oversee these areas and work with federal agencies.
- The *US EPA*, and the *US Fish & Wildlife* agencies participate on major projects where wetland disturbances may be over 5 acres.

Wetland Disturbance - Can They Do That?

Wetlands are regulated... but this does not guarantee protection.

Federal and New Jersey regulations encourage *minimal* disturbance of wetlands, and promote a "No Net Loss Policy." However, 39% of the wetlands in New Jersey have already been lost to farming, roads and development, and *wetlands can still be disturbed*, drained or filled under current regulations.

- The NJDEP approves over 1,000 **General Permits** each year to accommodate the most common wetland disturbances, such as: construction of roads or driveways, utility installations or maintenance, stormwater outfalls, and minor stream crossings. NJ Wetland Rules include 27 different **General Permits** for these wetland disturbances.
- The NJDEP approves approximately 40 **Individual Permits** each year for complex projects. *Individual Permits require a more extensive review,*

and require an evaluation of alternative designs, in order to minimize the disturbance to wetlands. Individual Permits may be required for sites where rare species are present, or when extensive wetland acreage may be disturbed.

- *To achieve **No Net Loss** of wetlands, NJ Regulations require compensation when disturbing greater than 1 acre of wetlands, which is called Wetland Mitigation. Developers are required to provide 2 acres for each acre disturbed. However, New Jersey continues to lose approximately 150 acres of wetlands each year to development, and filling wetlands less than 1 acre in size, accounted for the greatest wetland loss. This policy is under review.*

New Jersey Wetland Permit Process

Step 1 - Wetland Delineation & Letter of Interpretation

*Before a property can be developed, the owner is required by federal and state law to determine whether wetlands are present, and to identify or delineate the extent of these wetland borders. A 3 Parameter Approach is used to identify wetlands: 1) wet conditions, 2) wet or hydric soils with mottling or gray layers, and 3) vegetation that is adapted to wet soils. The wetland delineation maps, soil data, and plant & wildlife reports are submitted to the NJDEP in a Letter of Interpretation (LOI) Application. *LOI Applications can be reviewed at your town hall.**

Step 2 - Wetland Classification

*The NJDEP Land Use Regulation Program (LURP) administers the Wetland Rules and permits. NJDEP reviews the applications to determine the Wetland Resource Value Classification and to determine the widths of the required *buffers areas*. Buffers are officially called *Transition Areas*, and they extend around the wetland perimeter to ensure that the proposed development does not impact the wetland functions, such as habitat and flood control.*

NJDEP has established three Wetland Classifications:

1. *Exceptional wetlands include sites with the documented habitat or presence of threatened or endangered species; or discharges to trout production waters; and requires a 150 ft transition area buffer.*

2. Intermediate wetlands require a 50 ft transition area buffer.
3. Ordinary wetlands include altered drainage features such as ditches, swales, and detention basins; and do not require a transition area buffer. This category also includes *Isolated Wetlands* near developed areas.

Step 3 - Permit Review Process

NJDEP provides checklists to ensure that the wetland permit applications are complete. The review of *General Permits* can take over 3 months, and the *Individual Permit* review process is much longer. Public comment on these permits is encouraged by NJDEP and should be submitted early in the review process, and hearings can be requested. Permits are authorized for 5 years.

- Property owners located within 200 feet of a *proposed* wetland disturbance will receive notices inviting them to review and comment on the permit applications.
- When NJDEP approves the LOI application this officially determines the classification of the wetlands, and its' boundaries and buffers.

The Wetland Rules and Checklists can be viewed at:

www.state.nj.us/dep/landuse or call NJDEP for a copy at 609-984-0058. To check the status of a wetland permit click onto the DEP Bulletin at www.state.nj.us/dep/bulletin or call the Wetland Application Support Unit at 609- 777-0456.

Step 4- Wetland Mitigation 2 to 1 Compensation

Compensation or *Mitigation* for freshwater wetland disturbances normally requires providing 2 acres for each acre disturbed. This Mitigation can be provided through wetland creation, restoration, land or dollar contributions, or *banking*. *New regulations* encourage developers to provide compensation by *banking*, or purchasing credits at privately created *Wetland Mitigation Banks*. Mitigation Banks include large wetland tracts that are created or restored, and are monitored. Unfortunately, the few available Mitigation Banks are likely to be located miles away from the disturbed site. Communities can provide input to NJDEP on mitigation decisions.

What Can Citizens and Officials Do To Protect Wetlands?

Wetland Protection Begins With Citizen Interest

Public notification and input on permit applications is a major component of the New Jersey Wetland Rules, and is encouraged by NJDEP. Applications are filed with the towns and citizens can submit comments and concerns to the NJDEP and their Municipal Officials and Planning Board members regarding impacts to local wetlands and wetland mitigation decisions. One thoughtful and credible letter from a citizen can help NJDEP better understand site conditions and impact the decision process.

Communities Can Impact Wetland Decisions!

Wetland protection begins in the local community, when citizens and local officials know and appreciate their local water resources, and work to conserve them. Local officials cannot regulate wetlands but they can ensure that development plans maintain wetland buffers, minimize disturbances, and comment on wetland mitigation decisions. Towns can encourage conservation easements, prioritize and acquire open space, incorporate data on rare species and critical habitats into municipal Master Plans, and enact ordinances that are protective of sensitive environmental areas.

NJDEP Wetland Protection Tools

The NJDEP website is a great place to learn about Wetland Protection Tools!

- *Natural Heritage Database* includes information on the distribution, status, and preservation needs of rare plants, animals, and natural communities in New Jersey. Lists of rare species and natural communities can be viewed by county on:
www.natureserve.org/nhp/us/nj/county.html
www.state.nj.us/dep/fgw/ensphome.htm

- *Wildlife Sighting Report Forms* can be submitted to the NJDEP by any citizen, to help record rare species. Forms can be downloaded from the NJDEP website: <http://www.state.nj.us/dep/fgw/ensp/rprtform.htm>
- *Vernal Pool Habitats* are typically small pools found in wooded areas in the spring, and are recognized by NJDEP as critical habitats for frogs and salamanders. Disturbing these pools is restricted, and citizens can submit data to NJDEP on their locations. Information is available at:
Vernal Pool Protocols - <http://www.state.nj.us/dep/landuse/forms/forms.html>
Vernal Pool Mapping - <http://www.state.nj.us/dep/landuse/fww/vernal/index.html>
Amphibian & Reptile Field Guide - <http://www.state.nj.us/dep/fgw/herpordr.htm>
- *Landscape Project maps* incorporates the location of sensitive habitats and reported wildlife sightings. These maps should be available from the NJDEP in 2002. <http://www.state.nj.us/dep/fgw/tandespp.htm>
- *New Jersey Freshwater Wetlands maps* are available at each municipal and county clerk's office for public review, or contact 609-711-1038.

Who to Contact for More Wetland Information

Association of State Wetland Managers: Monthly e-newsletter, registry of wetland professionals <http://www.aswm.org/>

Audubon Society's WETNET Project: Citizens Guide to Wetland Protection, local events and projects
<http://www.audubon.org/chapter/wa/wa/wetnet/index.html>

Chesapeake Bay Program: Interactive website focused on watersheds, with lots of wetlands information.
<http://www.chesapeakebay.net/>

EPA Office of Wetlands, Oceans & Watersheds: Comprehensive site on wetlands identification, regulation, volunteer monitoring, and other water resources.

<http://www.epa.gov/owow>

<http://www.epa.gov/owow/wetlands/monitor/volmonitor>

New Jersey Department of Environmental Protection: Comprehensive site on wetland regulations, permits, mapping, rare species listings.

NJDEP Land Use Regulation Program

NJDEP Natural Heritage Database

NJDEP Fish & Wildlife

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

National Wildlife Federation; field guides including birds, butterflies, mammals, reptiles/amphibians, wildflowers.

<http://www.enature.com/>

NY/NJ Estuary Program: Teachers' Guide to Water Education Resources in the NY-NJ Harbor Estuary Region,

<http://www.harborestuary.org/>

Stony Brook-Millstone Watershed Association: Education and advocacy information on watersheds and wetlands

<http://www.thewatershed.org/>

<http://www.giscenter.org/>

<http://www.beesinc.org/>

USGS National Wetlands Research Center; "Fragile Fringe" Education guide, maps & database <http://www.ssc.nbs.gov/>

