



NEW YORK CITY AUDUBON

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Comments are presented on behalf of New York City Audubon Society

Re: TESTIMONY FOR RESOLUTION TO ENACT
THE CLEAN WATER PROTECTION/FLOOD PREVENTION ACT

I, Ellen Kracauer Hartig, am a certified Professional Wetlands Scientist (PWS). I am here to offer wetlands expertise on behalf of New York City Audubon Society. As an environmental consultant in the Northeast, I have conducted wetlands work in New York, New Jersey, Connecticut, Pennsylvania, Vermont and Maine. In New York City I was involved in some of the early Bluebelt projects in the Prince's Bay section of Staten Island. I have also conducted wetlands research in the City's other boroughs including work at Jamaica Bay on salt marsh loss there. For more than fifteen years I have been involved in research, teaching, and consulting. My undergraduate degree is in biology from Lehman College, City University of New York. I hold a Master's Degree in Geography from Columbia University. From 1998 to 2000 I was a Research Associate at Columbia University. More recently I was with FEMA as Environmental Specialist and with Great Eastern Ecology Inc. as Senior Scientist.

In considering the resolution to enact The Clean Water Protection/Flood Prevention Act, please note the following:

SWANCC and recent federal guidance: As a result of the 2001 SWANCC decision by the Supreme Court, and the January 2003 U.S. Environmental Protection Agency / Army Corps of Engineers joint policy guidance, the jurisdiction and enforcement capability of federal agencies charged with protecting wetlands across the country was severely reduced. In many states isolated wetlands were left unprotected. For example, in the Dakotas and Minnesota prairie pothole wetlands (by definition isolated and not interconnected with streams or rivers) were no longer under federal jurisdiction. However, huge numbers of this nation's ducks and other waterfowl are dependent on the protein rich, intermittently wet wetlands for their survival. Many urban wetlands, already much reduced in size were left without government protection. Under the new federal guidance, many of these and other wetlands, became immediate targets of development. A number of states have been in the forefront of enacting new legislation that would

compensate for this recent reduction in federal oversight including many that previously did not have their own legislation but previously depended solely on federal regulations.

New York State regulations since 1975: Proudly, New York State has had its own wetland regulations since 1975. In the 1970s New York State was among the states leading the way in passing protective wetlands legislation. Article 24 (protecting NYS freshwater wetlands) preceded the Clean Water Act of 1977, Section 404. In addition, New York State regulations offered something that the federal wetland legislation did not cover—they required a buffer area around each wetland that for freshwater wetlands extended up to 100 feet beyond wetland boundary (Article 24 of the Environmental Conservation Law). However, and this is what we are discussing today, Article 24 was limited to protecting wetlands primarily 12.4 acres in size or larger. Unless the site had unique or unusual features the size limitation prevented protection of all wetlands found to be smaller than 12.4 acres (equivalent to 5 hectares).

Currently New York State is lagging behind the other states in the Northeast due to the size limitation. While New York State regulates wetlands only 12.4 acres in size or larger, other states have no actual size threshold. In New York State the exception to the 12.4 acre size rule is in regard to wetlands that have unique or unusual features. The proposed legislation will substantially strengthen protection, both state wide and here in New York City by bringing the size limitation from 12.4 acres to one acre. In comparison with other Northeastern states the following table indicates size differences as regulated.

Table 1: Adapted from *Protecting Wetlands: A Survey of Northeast States' Laws* http://www.riverkeeper.org/document.php/285/Wetlands_Protec.doc, Riverkeeper, 2005.

State	Size	Isolated Wetland Protection
Connecticut	No size threshold	Yes
Maine	No size threshold	Yes*
Massachusetts	No size threshold	Yes
New Hampshire	No size threshold	Yes
New Jersey	No size threshold	Yes
New York	12.4 acres	Limited, due to size criteria**
Pennsylvania	No size threshold	Yes
Rhode Island	No size threshold	Yes
Vermont	No size threshold	Yes

*Maine’s documentation and review is size-dependent, and is given here as a sample of such legislation. Filling of less than ~0.1 acre of wetlands requires no reporting. Projects impacting between ~0.1 and 0.3 acres of wetlands have an expedited review process (Tier I). Projects impacting from ~0.3 to one acre are reviewed in greater detail (Tier II). Projects impacting greater than 1 acre require more documentation and review (Tier III).

**New York State only regulates isolated wetlands greater than 12.4 acres in size or if they are considered of unusual local importance. In addition, in order to be regulated they must be on the official map of State-regulated wetlands.

Wetlands Science: The extent of wetlands on a site is usually determined by having a professional wetlands scientist (a consultant or government agent) conduct a wetlands delineation onsite. Tools that the scientist uses in making a determination are federal maps (National Wetland Inventory maps), state maps, soil surveys, and topographic maps. The scientist examines three parameters: the vegetation, soils and hydrology. The wetland boundary is then flagged and surveyed. Once approved the boundary line becomes jurisdictional. The boundary is considered valid usually for a limited time because wetlands are not static and depend on the amount of water flowing in or through them. Wetland maps can and should be a tool in making a wetlands determination; however, onsite investigations are crucial to accurately determine the extent of a wetland. Wetlands mapped for a whole town, state or country are frequently based on aerial photos and were not based on a full wetland delineation. It should be noted that:

- New York State wetlands appearing on state maps have not necessarily been based on actual wetlands delineation using a three parameter approach.
- Mapped under pressure, the wetlands of New York City emphasize private lands leaving public wetlands in city parks under-mapped. This has led to filling of wetlands for park projects.
- Wetlands are not static and mapped wetlands from the 1970s, 1980s and 1990s may have meanwhile changed in extent.

Implications for New York City: New York City depends on federal and state wetlands regulations as we do not have our own wetland ordinances. While other New York State municipalities have their own wetland ordinances, the five boroughs of New York City do not. We therefore depend on federal and state regulation for protecting our wetlands from development. Most of our remaining freshwater wetlands are located in Staten Island. This borough has seen a high rate of development and already many smaller wetlands have been subject to fill activity.

The proposed legislation is especially relevant to New York City for several reasons:

- Our urban wetlands in Staten Island, The Bronx, Queens and Brooklyn have become reduced in size due to development, dredge and fill activity and other factors. Many are smaller than 12.4 acres and are considered neither unique or unusual, however; they perform many functions and values such as:
 - Flood protection
 - Providing habitat for birds, fish and other wildlife
 - Filtering pollutants
 - Absorbing flood and storm waters
 - Offering aesthetics
 - Recreation such as walking, photography, painting, canoeing and rowing, and fishing
 - Education and scientific research
- The proposed legislation will help improve water quality and reduce sediment loads by increasing protection of the wetlands in the upstate watershed lands where the city gets its potable water supply.

Again, on behalf of New York City Audubon Society, thank you for your time, effort and concern in protecting the wetland resources of New York City and New York State.