

Stream and Wetland Conservation: State and Federal Jurisdiction and Opportunities for Local Action

September 2023

State and Federal Wetland Jurisdiction

New York State and the federal government have jurisdiction over certain streams and wetlands. The table below summarizes some of the state and federal laws that restrict physical disturbance of streams and wetlands. New York State is in the process of extending its jurisdiction to more wetlands. Federal regulations recently changed to restrict jurisdiction.

	<i>Resource</i>	<i>Statute</i>	<i>Protected Resources</i>	<i>Area Covered</i>	<i>Status</i>
New York State	Streams	Protection of Waters ECL Art. 15	<ul style="list-style-type: none"> • Class AA, A, B, C(T), and C(TS) streams and perennial tributaries thereof 	<ul style="list-style-type: none"> • Bed and banks • No additional buffer 	<ul style="list-style-type: none"> • No change
	Wetlands	Freshwater Wetlands ECL Art. 24	<ul style="list-style-type: none"> • Mapped wetlands >12.4 ac • Smaller wetlands of “unusual local importance” 	<ul style="list-style-type: none"> • Wetland • 100-foot adjacent area 	<ul style="list-style-type: none"> • Law was amended 2022 to cover more wetlands; new regulations are being developed • 2025 changes: <ul style="list-style-type: none"> ○ Jurisdiction no longer based on maps ○ New criteria for smaller wetlands of “unusual importance” • 2028 change: <ul style="list-style-type: none"> ○ Size threshold reduces to 7.4 ac
Federal	Streams & Wetlands	Clean Water Act § 404	<ul style="list-style-type: none"> • Waters of the United States <ul style="list-style-type: none"> ○ Navigable waters ○ Tributaries ○ Adjacent wetlands 	<ul style="list-style-type: none"> • Stream (to high water mark) • Wetland • No buffer 	<ul style="list-style-type: none"> • New regulation in August 2023 to change definition of Waters of the US <ul style="list-style-type: none"> ○ Streams that are “relatively permanent” ○ Adjacent wetlands with “continuous surface connection” to stream

State stream and wetland programs are administered by the NYS Department of Environmental Conservation. Federal Clean Water Act Section 404 regulations are administered by the US Army Corps of Engineers.

This training is offered through a partnership with Cornell University and the New York State Department of Environmental Conservation Hudson River Estuary Program with funding from the New York State Environmental Protection Fund.



Department of
Environmental
Conservation

Hudson River
Estuary Program



Cornell University

Local Protection of Streams and Wetlands

Many wetlands and streams are subject to neither state nor federal jurisdiction, but municipalities can take action to protect these resources. Local regulation is authorized by the Freshwater Wetlands Act as well as Municipal Home Rule Law. Municipalities can adopt local laws to regulate disturbance of streams and wetlands, can add buffers to those resources, and can establish permit standards and enforcement measures.

Choosing a regulatory approach

- Find out if there are already municipal regulations and whether they are being implemented.
- Consider which resources are important and what threats they face.
- Consider political will and enforcement capacity.

Popular models for local regulation

- Wetland and watercourse protection law – This type of law provides comprehensive regulation of construction and other activities in designated streams, wetlands, and their buffers.
- Zoning approaches
 - Zoning setbacks – The zoning code can require that new construction is set back a required distance from designated resources.
 - Overlay zoning – Overlay zoning can be used to add extra protection to resources in a designated area of the community.
- Conservation planning process – Subdivision or site plan review can require a design process in which conservation areas are identified first before building areas to protect sensitive resources.

Thorough SEQR review

- SEQR (State Environmental Quality Review) is a state law that is implemented by local boards when reviewing proposed projects.
- SEQR requires consideration of all natural resources, not just those that are regulated.
- Improve effectiveness by proactively collecting data and ensuring officials and consultants are educated on local resources and priorities.

Layers of protection

- Effective conservation may require a combination of approaches.
- Use municipality-scale planning to select areas for higher-intensity growth and lower-intensity uses.
- The tools above can be used for site-scale planning and protection of individual resources.

For more information...

NYS Department of State's publication "Model Laws to Increase Resilience" provides sample laws:

<https://dos.ny.gov/model-local-laws-increase-resilience>

The Hudson River Estuary Program Conservation and Land Use Program website features links to webinars and guidance documents on local resource protection:

<https://www.dec.ny.gov/lands/5094.html>

**GORDON
& SVENSON** LLP
ATTORNEYS AT LAW

42 Catharine Street
Poughkeepsie, NY 12601
www.gordonsvenson.com
(845) 470-2027

This summary sheet is intended for general information and education purposes and does not constitute legal advice.