

Weakening the Clean Water Act: What it Means for New York



The purpose of the Clean Water Act is “to restore the chemical, physical, and biological integrity of the nation’s waters.” Over the past 31 years, the Act has led to great improvements in our water quality and protection of our water resources. In spite of this, last year the Bush Administration issued guidelines that eliminate Clean Water Act protection for many of our country’s important wetlands, streams, and other waters. These waters provide tremendous benefits to people and wildlife across the nation—benefits that will be lost forever if the Administration continues on its current path.

The U.S. Environmental Protection Agency estimates that the new guidelines remove Clean Water Act protection from 20 million acres, or 20 percent of the wetlands remaining in the lower 48 states. Loss of federal safeguards leaves these wetlands and other threatened waters subject to an incomplete patchwork of state and local protection. In the many areas where no state or local safeguards exist, it leaves these waters completely exposed to unlimited destruction and pollution.

Federal Clean Water Act Changes:

The Bush Administration claims that its new guidelines are necessary to implement a 2001 Supreme Court ruling limiting Clean Water Act protections for some “isolated” ponds and wetlands.



However, the guidelines go beyond the narrow scope of the so-called “SWANCC” decision, and needlessly put at risk millions of acres of wetlands, streams, ponds, lakes and other waters.

While the Administration had

also asked for public comment on whether the rules of the Clean Water Act itself needed changing, it abandoned this effort after an enormous outpouring of opposition to this plan from Congress, 39 state agencies, conservation and environmental groups, hunters and anglers, and the public. But the guidance remains in effect and is causing unnecessary damage to many wetlands, rivers, lakes, and ponds.

Why Do We Need Federal Protections?

The removal of wetlands protections at the federal level has prompted many to look at state-level protections that could “plug the gap” left by the guidance and the 2001 Supreme Court decision. Only about one-third of the states have any independent protection programs against dredge and fill activities in these types of waters, and most are substantially weaker than the Clean Water Act. In general, state water protection programs have evolved to work in conjunction with the federal law and heavily rely on federal funding and personnel to effectively protect waters.

Another concern is the nature of water resources. Since many states can share one common river, lake, or stream, protections in one state can be undermined by a lack of protections in a neighboring state. A lack of protection at the federal level could lead to a “race to the bottom” where states deregulate, making it cheapest to pollute locally in an attempt to attract industries from out of state. Additionally, some internationally important resources are now threatened, such as North America’s waterfowl, half of which breed in the prairie pothole wetlands of the northern Great Plains states where no state-level wetlands protections exist.

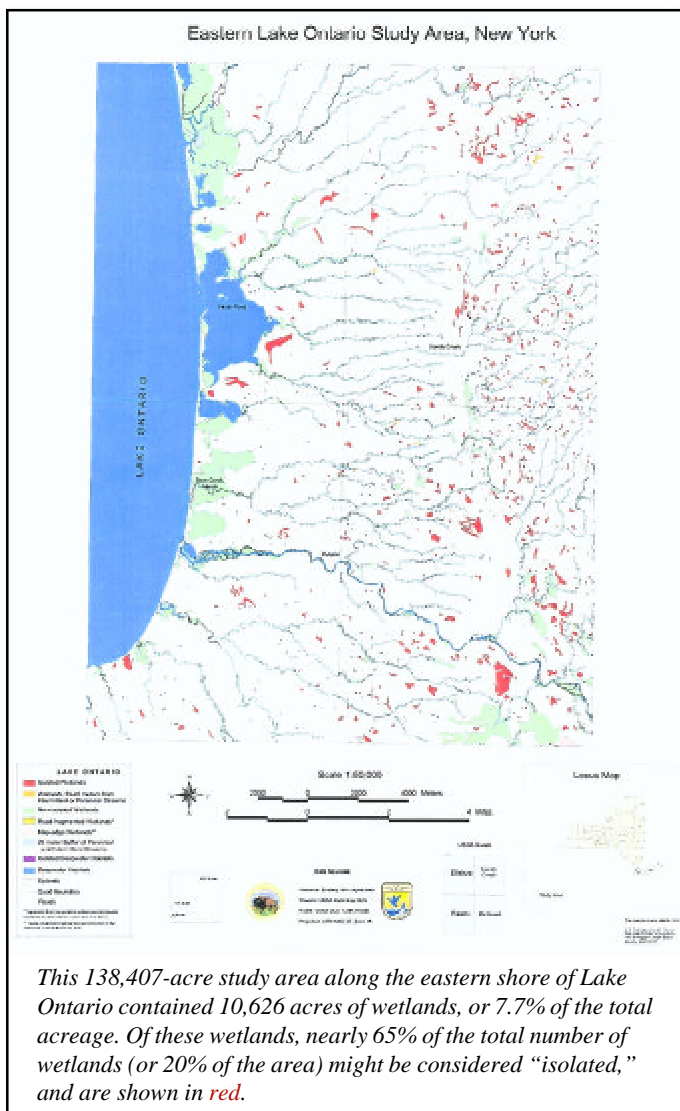


Current Protections In New York:

While many of New York's wetlands and streams will not be left completely unprotected, many of the State's smaller wetlands (the wetlands that have lost federal protections) are now at high risk of being developed. The State of New York generally only protects wetlands larger than 12.4 acres, some smaller wetlands of unusual local importance, and all wetlands greater than one acre within the Adirondack State Park. Agricultural drainage is generally exempt from New York's wetlands protection law. This Clean Water Act rollback has removed the federal "floor" that supports New York's wetlands protection program, potentially exposing it to political attempts to weaken state protections.

New York law requires a permit for dredging, filling, or other alterations to most of the State's streams, but

development often goes unnoticed by the State and/or the state laws are not aggressively enforced. Also, with the enormous deficit New York is currently experiencing, it will not likely take on the additional regulatory responsibilities needed to protect waters that the Federal Government is no longer protecting. In recent years, the State has even lost many of its regulatory staff due to budget cuts.



Wetlands at Risk:

Many of New York's wetlands are now at risk under the new guidelines. The most vulnerable are small, forested wetlands such as vernal pools and kettlehole bogs.

Vernal pools are shallow areas that often dry up and disappear from year to year or season to season. They can range in size from a hundred square feet to several acres.

These ecosystems are ideal habitats for amphibians to breed. In New York, they support several species of salamanders and frogs. Vernal pool wetlands provide significant habitat for a wide variety of other wildlife. Endangered song birds such as the golden winged warbler and the olive sided flycatcher, as well as the American woodcock often choose New York's wetlands as their home. Furthermore, these same types of wetlands are a critical component of the landscape that supports populations of large mammals such as moose, bear and deer.

Streams and Waterways at Risk:

According to the EPA, New York's total stream mileage is 52,337. Of these, 10% (5,075 miles) are intermittent (they run only part of the year). Due to the confusing language in the guidance, regulators may decide not to protect some of these streams.

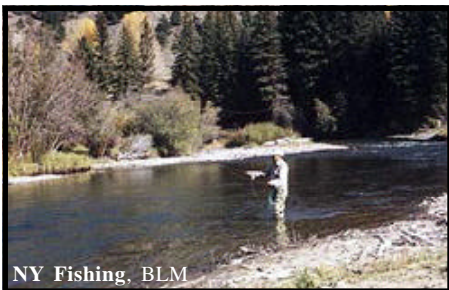
Services Wetlands Provide to New Yorkers

Flood Water Storage:

Wetlands and streams are crucial to regulating water levels during heavy rains and snowmelt. Wetlands have the ability to hold amazing amounts of excess water (up to 1.5 million gallons per acre) that they then slowly distribute back into the watershed. These wetlands help to reduce flooding damages to downstream and lakefront communities.

Recreational Opportunities:

Streams, wetlands, and their dependent wildlife help make New York a beautiful place and provide it with a lucrative source of income. In the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, it was found that over 1.5 million people participated in recreational fishing activities in New York in 2001, spending over \$1.3 billion. Moreover, over 4 million individuals participated in wildlife watching activities spending close to \$1.4 billion in the State.



New York's small streams and wetlands are crucial to the maintenance of healthy fish populations. The clear, cold water of these streams is ideal for sport fish such as brook trout, which require very specific conditions for breeding and early development. Unfortunately, trout habitat is declining drastically in the state of New York. Development on stream banks has caused the waters to silt-in and has changed their channel characteristics.

The short-term benefit a restriction of CWA jurisdiction may provide to a few special interests is dwarfed by the much greater, longer term and broader-based benefits of maintaining CWA jurisdiction over all waters with any physical, chemical, or biological connection to traditional navigable waters.

-New York Attorney General's Office

Water Quality Improvements:

Small streams make up approximately 85% of the total drainage network in a basin and collect most of the water and dissolved nutrients from the surrounding terrestrial ecosystem. Small wetlands and streams act as a sieve for larger water bodies, capturing nutrients, debris, and pollutants as water flows toward rivers and lakes. Destruction of these wetlands and streams seriously affects the levels of stormwater runoff, allowing large amounts of rainwater to go straight into lakes and rivers unfiltered by wetlands. This situation can cause bank erosion and excess turbidity which then disrupts the vegetation and habitat of both aquatic and terrestrial species. New York's clean water supply is maintained by healthy headwaters. The upper reaches of the watershed make downstream water safe for drinking and more appealing for recreation.



What You Can Do:

Log on to <http://www.nwf.org/ourprograms> (click on [wetlands conservation](#) under National Programs) to get more information and to see if your legislators have taken action to protect our Nation's waters.

Ask President Bush, Senators Clinton and Schumer, and your representative to:

- work for the withdrawal of the harmful guidelines
- fully enforce the Clean Water Act to ensure protections for all our valuable wetlands and streams
- support the passage of the **Clean Water Authority Restoration Act of 2003** (H.R.962 and S.473)

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