

Wetland Definition Subcommittee of the Wetlands Regulatory Advisory
Committee

10:00 AM - 11:30 AM Friday October 02, 2026

Division of Water / Natural Resources and Environmental Control

Hello, I am [REDACTED] from Middletown, Delaware. Thank you for this opportunity to share input that reflects how most Delawareans feel about tidal and nontidal wetlands, as well as the Delaware coastline. I want to begin by stressing that several laws exist regarding defining and protecting wetlands in addition to manuals.

Also, please do not concede when you are uncomfortable because your decisions affect future populations significantly. The group can recommend an independent body be formed for the long-term; however, the Committee cannot recommend to extend itself.

Through the Delaware Wetlands Act of 1973, the Subaqueous Lands Act, the Coastal Zone Act, the Beach Preservation Act, as well as State law and regulations, “wetlands” have been well defined through an ongoing basis for over fifty years.

Additionally, through agencies and organizations such as Delaware Department of Natural Resources and Environmental Control, Division of Water Resources (DWR), Division of Fish and Wildlife (DFW), and Division of Soil and Water Conservation (DSWC), wetlands, beaches, and coastlines have been strictly protected for decades.

It's concerning that the Home Builders Association is included in creating definitions and manuals meant to protect wetlands. Equally so, the fact that the Delaware Homeowners Association and Realtor Association is determining which Delaware Wetland has

exceptional value is significantly concerning. In the first meeting, it was made clear that this is about housing and off-shore wind.

Currently, one qualifying factor in determining if a wetland in Delaware is considered valuable is if it has the potential to be a habitat one day. Moreover, Delaware wetlands are considered valuable through code simply if residents like to look at it. As stated in the Wetlands Act of 1974, “there are other quantifiable values in the aesthetic and recreational uses of wetlands for an increasingly urban society.”

Furthermore, it is clear through Delaware Code that our coastline and beaches are not open for development by a longshot. **The Coastal Zone Act** “prohibits new heavy industry uses anywhere in Delaware’s Coastal Zone, as well as offshore bulk product transfer facilities in the Zone outside the Port of Wilmington.”

For these reasons, I am left wondering why we have a full taskforce that is charged to meet for a year in order to define and place values on existing wetlands that are currently already defined, protected, and assessed through five different measures.

My concern is immeasurable because at the first full task force meeting, it was stated that only some of Delaware wetlands will be protected; this statement came after we recognized the fact that Delaware has already lost more than 50% of its wetlands and that concerns began in the late 1960s.

Furthermore, at the first meeting, it was stated that species and habitats of concern are simply concerning, not protected. Sidewalks through marshlands were also mentioned at the first meeting; my question is “what is everyone thinking?”

To me, it is important to mention that SB9 was signed in the last hours of the legislative session. Additionally, when the governor

signed the bill in July, the headlines read “Expanded Wetland Protection in Delaware”.

The RAC admittedly plans to reduce wetlands in Delaware; meanwhile, SB9 was signed at Russell Peterson Wildlife Refuge, making the document official under the guise of expansion and protection of Delaware wetlands.

Therefore, I created this lengthy report that details the many definitions and protections that are currently in place so that everyone will see that **Delawareans care about our marsh lands, wetlands, coastline, and beaches; we are not willing to sacrifice these areas from future generations for the benefit of housing developers or other state’s wind projects.**

I am asking you to recognize, through your recommendations, that **we are unwilling to add new definitions that diminish predetermined value of our lands; such as saying current valuable wetlands are disposable because they are not “exceptionally valuable”.**

I urge you to focus on what has already been written, and in the spirit of which, place your efforts into protecting more land in lieu of devaluing property for the sake of lining someone’s pockets or for someone’s political gain.

Current law states that when a wetland’s quality becomes poor for habitation, it is our duty to “nurse” the waters and surrounding area back to good health. This reflects how taxpayers feel quite eloquently.

We find exceptional value in aesthetics, recreation, research, future potential, and historical significance as well. I sincerely urge you to make decisions that reflect how the majority has felt for documented decades.

All presumptions may be rebutted through a “Presence/Probable Absence Study” that will, using standardized field methods and survey efforts, determine whether any particular **species** of concern is detected or, if not detected, **can be treated as probably absent.**

EDIT TO ADD - Based on an extensive off-shore wind study in Europe - habits, sealife, and wildlife are significantly affected by the construction of off-shore wind projects. The sound affects the aforementioned for many years beyond the construction period. In some cases, the lasting detrimental effects are consistently ongoing, making them seemingly immeasurable. Lastly, through public meetings such as Land-Use Plus, the fact that new construction housing projects in Delaware are too often not categorized as affordable by Developers is unambiguous. We are approving high cost housing in every county all the time while destroying beloved open space under the guise of helping people.

Delawareans want our forests, state parks, coastline, beaches, and wetlands protected from housing and solar farms. Developers should be practicing demolition & rehabilitation for housing; furthermore, capped landfills and rooftops should be utilized for solar farms; especially since new housing construction is far from affordable.

Respectfully,



() “Exceptional Value Wetlands” shall be defined by regulations, and shall include: wetlands that are: (i) Unique or high functioning; (ii) wetlands that, based upon documented and appropriate habitat criteria, support flora or fauna listed as endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq. or listed as endangered pursuant to § 601 of this title (iii) wetlands located in public water supply Source Water Protection Areas; and (iv) wetlands located within designated natural areas. With regard to the second listed criteria, the regulations shall provide guidance on how a landowner can rebut any presumption that a particular wetland supports any given species of concern. This presumption may be rebutted through a “Presence/Probable Absence Study” that will, using standardized field methods and survey efforts, determine whether any particular species of concern is detected or, if not detected, can be treated as **probably absent.**

1. Delaware State Wetland Program Summary

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A. State Definition of Wetlands

1. **Wetlands Act of 1973.** Tidal wetlands are regulated at the state level under the Wetlands Act of 1973 (7 Del. Code Chapter 66. Sec. 6601-6620).

A. TITLE 7 NATURAL RESOURCES & ENVIRONMENTAL CONTROL DELAWARE ADMINISTRATIVE CODE

7500 Wetlands and Subaqueous Lands

7502 Wetlands Regulations

4.0 Wetlands Data

4.1 Compared to agricultural plants, marsh plants capture a high percentage of the sun's energy reaching the surface of the marsh. During the summer months, when Spartina is active, this figure is about six percent compared to about two percent for a cornfield at the height of its growth and three percent for a coral reef.

4.2 Expressed in tons of organic production per acre per year, the salt marsh, on the average, produces over 9 tons; a wheat field produces one and one-half tons (including stems and leaves); the best hay lands in this country produce about four tons; coastal continental shelf waters produce one and one-half tons. The marsh production is achieved without the cost of added fertilizer.

4.3 Tidal marshes serve as spawning or nursery areas for over 60 species of fish in the Delaware River Estuary and as the vehicle for the net transport of nutrients into the bay and coastal waters. The extent of nutrient release has a strong influence on biological productivity in the Delaware Bay.

4.4 While organisms are more abundant in the spring and summer, there are year-round species furnishing food for the higher organisms. For example, the phytoplankton and the detritus (dead organic particles) is eaten by the zooplankton which is eaten by small fish of the shore zone. These small forage fish provide food for larger species such as the weakfish and the striped bass. A decline in the quantity of food present in the lower levels of the food chain will harm the production of the larger species. In general, to produce one pound of striped bass or weakfish requires 10 pounds of forage fish which requires 100 pounds of zooplankton which in turn requires 1,000 pounds of

phytoplankton. Menhaden are another important resource to Delaware that depend on the wetland areas.

4.5 The importance of the wetlands is well documented. The marshes and streams through the wetlands are home to muskrats and nutria and provide feeding, nesting and resting areas for waterfowl, shore and wading birds. Deer, rabbits and raccoons share in the abundant food production of the wetlands.

4.6 Economic and recreational returns from this area can be estimated from the following data:

4.6.1 In 1973-74 13,066 duck stamps were issued in Delaware by the U. S. Department of Interior.

4.6.2 27,235 hunting licenses were issued in 1973-74 by the Department.

4.6.3 A hunter's survey conducted by the Department shows an estimated 163,988 waterfowl hunter days during 1973-74. Much of this hunting would not be possible without the wetlands.

4.7 A substantial function is performed by the wetlands as an absorber of flood waters and siltation. **There are other quantifiable values in the aesthetic and recreational uses of wetlands for an increasingly urban society.**

5.0 Definitions

“Activity” means any dredging, draining, filling, bulkheading, construction of any kind, including but not limited to, construction of a pier, jetty, breakwater, boat ramp, or mining, drilling, or excavation.

“Board” means the Wetlands Appeal Board. **“Commercial Projects”** means those activities undertaken that benefit more than one family or for which a fee will be charged. **“Department”** means the Department of Natural Resources and Environmental Control.

“Division” means the Division of Water Resources of the Department of Natural Resources and Environmental Control.

“Dock” shall mean a structure used to secure a boat or to provide access to a boat from upland areas.

“Economic Effect” means the net results of both direct and secondary effects, comparing expenditures and revenues generated by the proposed activity.

“Emergencies” means those events which could not reasonably have been foreseen and which would have serious consequences if not promptly corrected.

“Foot Bridge” means a structure, no wider than three (3) feet that does not project into open water and is not a dock.

“Maintenance Dredging” means restoration of a channel to a depth no greater than allowed by a previous project or permit.

“Mean High Water Mark” means the average height of the high waters over a 19 year period as determined by the Department, using standard methods and collected data of the National Ocean Survey (formerly U. S. Coast and Geodetic Survey).

“Neighboring Land Uses” means uses on land within 1000 feet of the project as measured in a straight line from the edge of the project activity upon which the proposed activity may be expected to have an impact.

“Private Projects” means those activities which benefit only one owner and for which no fee is charged.

“Productive Wetlands” means those wetlands which are functioning to produce one or more of the following wetlands values: **(a) sources,**

indirect or direct, of nutrients to finfish, crustacea, and shellfish of significant economic and ecological value; **(b)** habitats for animals of significant economic and ecological value; **(c)** marine commerce, recreation, and aesthetic enjoyment; **(d)** flood control; **(e)** erosion control; **(f)** traps for suspended sediments, including silts and clays; **(g)** biological purification of river, bay, and estuary waters.

“Secretary” means the Secretary of the Department of Natural Resources and Environmental Control.

“Structure” means any pier, jetty, breakwater, boat ramp or other piece of work built by humans.

“Wetlands” means those lands above the mean low water elevation including any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of Delaware along the Delaware Bay and Delaware River, Indian River Bay, Rehoboth Bay, Little and Big Assawoman Bays, the coastal inland waterways, or along any inlet, estuary or tributary waterway or any portion thereof, including those areas which are now or in this century have been connected to tidal waters, whose surface is at or below an elevation of two feet above local mean high water, and upon which may grow or is capable of growing any but not necessarily all of the following plants: Eelgrass (*Zostera marina*), Widgeon Grass (*Ruppia maritima*), Sago Pondweed (*Potamogeton pectinatus*), Saltmarsh Cordgrass (*Spartina alterniflora*), Saltmarsh Grass (*Spartina cynosuroides*), Saltmarsh Hay (*Spartina patens*), Spike Grass (*Distichlis spicata*), Black Grass (*Juncus gerardii*), Switch Grass (*Panicum virgatum*), Three Square Rush (*Scirpus americanus*), Sea Lavender (*Limonium carolinianum*), Seaside Goldenrod (*Solidago sempervirens*), Seablite (*Suaeda maritima*), Seablite (*Suaeda linearis*), Perennial Glasswort (*Salicornia virginica*), Dwarf Glasswort (*Salicornia Bigelovii*), Samphire (*Salicornia europaea*), Marsh Aster (*Aster Tenuifolius*), Saltmarsh Fleabane (*Pluchea purpurascens* var. *succulenta*), Mock Bishop’s Weed (*Ptilimnium capillaceum*), Seaside Plantain (*Plantago oliganthus*), Orach (*Atriplex patula* var. *hastata*), Marsh Elder (*Iva frutescens* var. *oraria*), Groundsel Bush (*Baccharis halimifolia*), Bladderwrack (*Fucus vesiculosus*), Swamp Rose Mallow, Seaside Hollyhock or Marsh Mallow (*Hibiscus palustris*), Torrey Rush (*Scirpus torreyi*), Narrow-leaved Cattail (*Typha angustifolia*), and Broad-leaved Cattail (*T. latifolia*) and those lands not used for agricultural purposes in 1973, containing four hundred (400) acres or more of contiguous non-tidal swamp, bog, muck, or marsh exclusive of narrow stream valleys and tax ditches where fresh water stands most, if not all of the time due to high water table, which contribute significantly to ground water recharge, and which would require intensive artificial drainage

using equipment such as pumping stations, drain fields or ditches for the production of agricultural crops

2. **Subaqueous Lands Act:** Lands under tidal and non-tidal waterways (streams, rivers, lakes, bays) are regulated pursuant to the Subaqueous Lands Act)

a. **TITLE 7 Conservation Natural Resources**

CHAPTER 72. Subaqueous Lands

(g) "Subaqueous lands" means submerged lands and tidelands.

(h) "Submerged lands" means:

(1) Lands lying below the line of mean low tide in the beds of all tidal waters within the boundaries of the State;

(2) Lands lying below the plane of the ordinary high water mark of nontidal rivers, streams, lakes, ponds, bays and inlets within the boundaries of the State as established by law; and

(3) Specific manmade lakes or ponds as designated by the Secretary.

(i) "Tidelands" means lands lying between the line of mean high water and the line of mean low water.

(4) Where the authority of the Department under this chapter overlaps with another statute, including but not limited to **shellfish grounds** (Chapter 19 of this title), **wetlands** (Chapter 66 of this title) or **beach preservation** (Chapter 68 of this title) provided that the following criteria are met:

a. If, in the opinion of the Secretary, equal environmental impact review and regulation of the activity would be provided by either statute; and

b. Waiver of these regulations would not be contrary to the purposes of this chapter.

3. • **Coastal Zone Act.** The Coastal Zone Act **prohibits new heavy industry uses anywhere in Delaware's Coastal Zone**, as well as offshore bulk product transfer facilities in the Zone outside the Port of Wilmington

A. TITLE 7 NATURAL RESOURCES & ENVIRONMENTAL
CONTROL DELAWARE ADMINISTRATIVE CODE 1
DEPARTMENT OF NATURAL RESOURCES AND

ENVIRONMENTAL CONTROL DIVISION OF CLIMATE,
COASTAL, AND ENERGY Delaware Coastal Programs
2201 Delaware Coastal Management Program Federal
Consistency Policies and Procedures

1.0 Delaware Coastal Management Program Summary

1.1 Forward

1.1.1 The Coastal Zone Management Act (CZMA) was signed in 1972 (P.L. 92-583). It has since been amended, most recently in 2005. The Act and its amendments affirmed a national interest in the effective protection and development of the coastal zone. The CZMA authorized the Federal Grant-in-aid program to be administered by the Secretary of Commerce. They in turn appointed the National Oceanic and Atmospheric Administration (NOAA) as the responsible authority for the federal CZMA.

1.1.2 In response to the CZMA of 1972, Delaware prepared a Final Environmental Impact Statement (FEIS) for the development of a coastal program and submitted it to NOAA. **In 1979, the Delaware Coastal Management Program was approved by NOAA under authority of the CZMA (15 CFR Part 923).** The FEIS established the Delaware Coastal Management Program (DCMP), as well as its goals and policies and became Delaware's Program Document. **This document was subsequently updated. The Department of Natural Resources and Environmental Control (DNREC) is the agency responsible for administering the State's Coastal Management Program.**

5.0 Delaware Coastal Management Program Policies

5.1 Wetlands Management

5.1.1 The productive public and private wetlands in the State shall be preserved and protected to prevent their depoliation and destruction consistent with the historic right of private ownership of lands. [7 Del.C. §6602]

5.1.2 Activities in or adjacent to wetlands shall be conducted so as to minimize wetlands destruction or degradation, to preserve the natural and beneficial values of wetlands, and to protect the public interest therein. [7 Del.C. §§6602, 6603(a)(2), 6119, 4001]

5.1.3 Each State agency shall minimize the adverse effects to freshwater wetlands and conserve and enhance the environmental values and functions of freshwater wetlands in carrying out the agency's responsibilities. [Delaware Executive Order 56, May 26, 1988]

5.1.4 Each State agency, to the extent permitted by law, shall avoid undertaking or providing financial assistance for construction located in freshwater wetlands which will substantially degrade or destroy for long or permanent duration the use and function of an altered area as a

wetland environment, unless the head of the agency, through consultation with the DNREC, files written findings with DNREC that:

5.1.4.1 There is no reasonable alternative to such construction, and that the proposed action includes all practicable measures to minimize undesirable impacts to freshwater wetlands which may result from such use, or

5.1.4.2 The request is consistent with the procedures and provisions of the following paragraph. In making this finding the head of the agency and DNREC may take into account social, economic, environmental and other pertinent factors. [Delaware Executive Order 56, May 26, 1988]

5.1.5 Any requests for new authorizations, appropriations, or grants of State operating or capital funds, or for State loan assistance or guarantees shall indicate, based on best available information, if an action to be proposed will be located in or will adversely affect freshwater wetlands, whether the proposed action is in accord with Delaware Executive Order Number 56. [Delaware Executive Order 56, May 26, 1998]

5.1.6 When State-owned freshwater wetlands are proposed for lease, easement, right-of-way or disposal to nonState public or private parties, the State agency shall:

5.1.6.1 Attach restrictions appropriate to Delaware Executive Order Number 56 to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or

5.1.6.2 Withhold such properties from disposal. [Delaware Executive Order 56, May 26, 1998]

5.1.7 Wetlands to be managed by the DNREC are those lands above the mean low water elevation any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State, including those areas which are now or in this century have been connected to tidal waters, whose surface is at or below an elevation of 2 feet above local mean high water, and upon which may grow or is capable of growing obligate or facultative wetland vegetation and those lands not currently used for agricultural purposes containing 400 acres or more of contiguous nontidal swamp, bog, muck or marsh exclusive of narrow stream valleys where fresh water stands most, if not all, of the time due to high water table, which contribute significantly to ground water recharge, and which would require intensive artificial

drainage using equipment such as production of agricultural crops. [7 Del.C. §6603(h)]

5.1.8 The conservation and protection of non-tidal wetlands shall be given consideration in development of land acquisition plans and comprehensive land use development plans. [Delaware Executive Order 43, August 15, 1996; Delaware Executive Order 56, May 26, 1988; 22 Del.C. Ch. 7; 9 Del.C. §§2656, 4956, 6956]

5.1.9 Activities which may adversely affect wetlands shall require State approval pursuant to the policy statements below. The CMP, however, requires no such approval for the following activities: construction of foot bridges, duck blinds, wildlife nesting structures, boundary markers, or aids to navigation that do not prevent the ebb and flow of the tide; mosquito control activities authorized by the DNREC; and hunting, fishing, haying, trapping, and grazing of domestic animals. [7 Del.C. §§6604, 6606; 7 DE Admin. Code 7502 subsection 6.1.4]

5.1.10 In order to assure that any activity in the wetlands is appropriate, State approval shall be required prior to the initiation of such activities, except no such approval shall be required for the activities identified in policy statement number **5.1.9**. The following factors shall be considered prior to such approval: the environmental impact of the proposed use; the number and type of supporting facilities required and their impact; the effect of the activity on neighboring land uses; the appropriate State and local comprehensive plans for the general area; the economic impact of the activity in terms of jobs, taxes generated, and land area required; and the aesthetic impact of the proposed activity. Alternative methods of construction shall also be considered prior to permit approval. [7 Del.C. §6604 7 DE Admin. Code 7502]

5.1.11 The cumulative impact of individual projects shall be considered when evaluating the environmental impacts of a proposed activity in wetlands. [Delaware Executive Order 43, August 15, 1996]

5.1.12 No permit will be issued to:

5.1.12.1 Dredge any channel through the wetlands deeper than the existing depth or the control channel depth specified by the Corps of Engineers at the point of connection to the adjacent navigable waterway to which the dredge channel is directly connected. A lesser depth may be specified by the Secretary of the DNREC in furtherance of the purposes of the Act.

5.1.12.2 Dredge any channel through the wetlands that has only one outlet to navigable water through which the

normal daily tide ebbs and flows unless the channel is equipped, by aerators or other means, to maintain the Water Quality Standards for Streams that are issued by the DNREC.

5.1.12.3 Dredge channels through wetlands with sides more nearly vertical than a slope that rises one foot vertically for each three feet of horizontal distance except where conditions of soil composition prevent slope stabilization, so that bulkheading must be used.

5.1.12.4 Utilize wetlands for any activity unless it:

5.1.12.4.1 Requires water access for the central purpose of the activity; and

5.1.12.4.2 Has no alternative on adjoining non-wetland property of the owner.

5.1.12.5 Building bulkheads on wetlands higher in elevation than the surface of the natural land.

Navigational aids that do not prevent the ebb and flow of the tide may be higher.

[7 DE Admin. Code 7502 Section 7.0]

5.2 Beach Management

5.2.1 The public and private beaches of the State shall be preserved, protected, and enhanced to mitigate beach erosion and to prevent their destruction and despoliation. [7 Del.C. §§6801, 6803, 6810]

5.2.2 Publicly owned beaches and shorelines shall be managed and maintained to assure adequate and continued public access to these areas within the carrying capacity of the resource. [7 Del.C. §4701(c)]

5.2.3 Beaches are the areas from the Delaware/Maryland line at Fenwick Island to the Old Marina Canal north of Pickering Beach, which extend from the Mean High Water line of the Atlantic Ocean and Delaware Bay seaward 2,500 feet, and landward 1,000 feet. [7 Del.C. §6802(1)]

5.2.4 No person shall, without first having obtained a permit or letter of approval from the Department, undertake any activity:

5.2.4.1 To construct, modify, repair or reconstruct any structures or facility on any beach seaward of the building line.

5.2.4.2 To alter, dig, mine, move, remove or deposit any substantial amount of beach or other materials, or cause the significant removal of vegetation, on any beach seaward of the building line which may affect the enhancement, preservation or protection of beaches. [7 Del.C. §6805(a)]

5.2.5 Construction activities landward of the building line on any beach, including construction of any structure or the alteration, digging, mining, moving, removal or deposition of any substantial amount of beach or other materials, shall be permitted only under a letter of approval from the DNREC. [7 Del.C. §6805(c)]

5.2.6 The Department shall grant or deny a permit or letter of approval required by Policies 5.2.4 and 5.2.5 in accordance with duly promulgated regulations. If any structure proposed to be built in whole or in part seaward of the building line could reasonably be reduced in size or otherwise altered in order to eliminate or diminish the amount of encroachment over the building line, the Department shall require such reduction or alteration as a condition of granting the permit or letter of approval. [7 Del.C. §6805(d)]

5.2.7 By definition, the Building Line means a line generally paralleling the coast, set forth on maps prepared by the DNREC with reference to the National Geodetic Vertical Datum (NGVD) and the Delaware State Plane Coordinate System, and based upon information provided by topographic surveys. The Building Line is located as follows:

5.2.7.1 Along beaches extending from the Delaware/Maryland line to the tip of Cape Henlopen - 100 feet landward of the adjusted seawardmost 10-foot elevation contour above NGVD;

5.2.7.2 Along beaches extending from the tip of Cape Henlopen to the southernmost limit of Primehook Beach - 100 feet landward of the adjusted seawardmost 7-foot elevation contour above NGVD;

5.2.7.3 Along beaches extending from the southernmost limit of Primehook Beach to the Old Marina Canal north of Pickering Beach - 75 feet landward of the adjusted seawardmost 7-foot elevation contour above NGVD; or

5.2.7.4 At the landward limits of the beach, as defined in the Regulations Governing Beach Protection and the Use of Beaches dated December 27, 1983, whichever is most seaward. [7 DE Admin. Code 5102 Section 1.0]

5.2.8 If a structure located seaward of the Building Line is completely destroyed, no person shall undertake any restoration or reconstruction of the destroyed structure before the DNREC issues the person a permit or letter of approval pursuant to the Regulations Governing Beach Protection and the Use of Beaches. [7 DE Admin. Code 5102 subsection 3.3.1]

5.2.9 All structures, devices and facilities existing now or in the future which are devoted to the enhancement, preservation and protection of beaches shall be

managed by the Department of Natural Resources and Environmental Control. [7 Del.C. §6803(b)]

5.2.10 No person shall commence or conduct, without a permit therefore from the DNREC, construction of any structure or facility on any beach seaward of the Building Line, the primary function of which is beach erosion control or shore protection including, but not limited to, groins, jetties, seawalls, revetments, dikes, bulkheads, and beach nourishment; except that ordinary dune maintenance, as determined by the DNREC, including the proper installation of sand fence and the planting and fertilization of stabilizing vegetation, shall not require a permit. [7 DE Admin. Code 5102 subsection 4.3.1]

5.2.11 No person shall commence or conduct without a permit therefore from the DNREC, construction seaward of the Building Line, of any pipeline, dock, pier, wharf, ramp or other harbor work. [7 DE Admin. Code 5102 subsection 4.4.1]

5.2.12 If a structure is to be either constructed or reconstructed following the complete destruction of the original structure, and such a structure does not have to be located seaward of the Building Line in order to achieve its intended purpose, then such a structure shall be required to be located entirely landward of the Building Line. However, if the DNREC determines that there is inadequate space available entirely landward of the Building Line for the construction or reconstruction of a completely destroyed structure, said constructed or reconstructed structure shall be physically located as far landward as possible on the parcel of real property in question, taking into consideration all federal, state, and local laws, rules, regulations, and zoning and building ordinances. [7 DE Admin. Code 5102 subsection 3.4.1]

5.2.13 The following activities are prohibited:

5.2.13.1 The operation of any motorized vehicle or machine on, over or across the primary dune on any State-owned beach except at those locations specified by the Department for such use;

5.2.13.2 Pedestrian traffic on, over or across the primary dune on any State-owned beach except at those locations specified by the Department for such use;

5.2.13.3 The alteration, moving or removal of any facility, improvement or structure installed or maintained by the DNREC for enhancement, preservation or protection of any beach; and

5.2.13.4 The damaging, destruction or removal of any trees, shrubbery, beach grass or other vegetation growing on any State-owned or maintained beach

seaward of the Building Line. [7 DE Admin. Code 5102 subsection 3.7.1]

5.2.14 State Action to reduce shoreline recession on private beaches may be taken, but only under the following conditions:

5.2.14.1 Where dangerous conditions exist on any privately owned beach which constitute an emergency;

5.2.14.2 In those instances where owners of private beaches allow free public use of such beaches in return for the assistance; or

5.2.14.3 Whenever two thirds or more of the property owners in the project area along the private beach have petitioned the Department to undertake the work. [7 Del.C. §§6801, 6804, 6810]

5.2.15 To the maximum extent possible the following system of priorities shall be utilized for the expenditure of limited beach preservation funds:

5.2.15.1 First priority shall be given to those beaches which suffer substantial and chronic erosion due to the presence of public navigation works;

5.2.15.2 Second priority shall be given to those intensely used, publicly owned beaches undergoing critical erosion. This category will be subdivided further according to the degree of public use, ease of access, rate of erosion, value of the area to the economy, and possible beneficial effects protection efforts may have on downdrift Delaware beaches. Protection of private beachfront structures will not be an overriding consideration;

5.2.15.3 Third priority shall be given to all remaining publicly owned recreational beaches;

5.2.15.4 Fourth priority shall be given to intensely used, publicly accessible private beaches;

5.2.15.5 Fifth priority shall be given to sparsely used, publicly accessible beaches; and

5.2.15.6 The last priority shall be given to privately owned, restricted beaches. In fact, all beach protection funds and State disaster-related reconstruction aid shall be restricted unless and until the beaches are opened to public use. [Delaware Executive Order 43, August 15, 1996]

5.2.16 All bonds issued for beach preservation projects shall not be issued for a period longer than the expected useful life of the work being financed. [Delaware Executive Order 43, August 15, 1996]

5.2.17 Efforts shall be made to utilize shoreline erosion control methods that best provide for the conservation of aquatic nearshore habitat, maintain water quality, and avoid other adverse environmental effects. Nonstructural

erosion control methods are preferred. However, structural erosion control measures may be allowed where it can be shown, through a review of site conditions and generally accepted engineering standards, that nonstructural measures would be ineffective in controlling erosion. [7 DE Admin. Code 7504 subsection 4.10.1.1]

5.3 Coastal Waters Management

5.3.1 General

5.3.1.1 The development and utilization of the land and water resources of the State shall be regulated to ensure that water resources are employed for beneficial uses and not wasted, to protect beneficial uses of water resources, and to assure adequate water resources for the future. [7 Del.C. §6001 (a)(2)(3)]

5.3.1.2 The water resources of the State shall be protected from pollution which may threaten the safety and health of the general public. [7 Del.C. §§6001 (a)(5), (c)(2)]

5.3.1.3 The coastal water resources of the State shall be protected and conserved to assure continued availability for public recreational purposes and for the conservation of aquatic life and wildlife. [7 Del.C. §6001(a)(4)]

5.3.1.4 It is the policy of the DNREC to maintain within its jurisdiction surface waters of the State of satisfactory quality consistent with public health and public recreation purposes, the propagation and protection of fish and aquatic life, and other beneficial uses of the water. [7 DE Admin. Code 7401 subsection 1.1]

5.3.1.5 The designated uses applicable to the various stream basins represent the categories of beneficial use of waters of the State which must be maintained and protected through application of appropriate criteria. Such uses shall include public water supply; industrial water supply; primary contact recreation involving any waterbased form of recreation, the practice of which has a high probability for total body immersion or ingestion of water such as swimming and water skiing; secondary contact recreation involving a water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of water such as wading, boating and fishing; maintenance, protection and propagation of fish, shellfish, aquatic life and wildlife preservation; agricultural water supply; and waters of exceptional recreational or ecological significance

(ERES waters). [7 DE Admin. Code 7401 Sections 2.0 and 3.0]

5.3.1.6 Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Degradation of water quality in such a manner that results in reduced number, quality, or river or stream mileage of existing uses shall be prohibited. Degradation shall be defined for the purposes of this section as a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols. [7 DE Admin. Code 7401 subsection 5.1]

5.3.1.7 Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that water quality shall be maintained and protected. In the case of E.R.E.S. waters, existing quality shall be maintained or enhanced. Limited degradation may be allowed if the DNREC finds, after review, that allowing lower water quality would result in a substantial net environmental or public health benefit and does not impede existing uses in the area in which the waters are located while allowing for full protection of existing uses. [7 DE Admin. Code 7401 subsections 5.2 and 5.6]

5.3.1.8 Where high quality waters constitute an outstanding national resource, such as waters of national parks and wildlife refuges, existing quality shall be maintained and protected. [7 DE Admin. Code 7401 subsection 5.3]

5.3.1.9 In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Water Quality Act of 1987. [7 DE Admin. Code 7401 subsection 5.4]

5.3.1.10 All surface waters of the State shall be free from substances that are attributable to wastes of industrial, municipal, agricultural or other human-induced origin. Examples include but are not limited to the following:

5.3.1.10.1 Floating debris, oil, grease, scum, foam, or other materials on the water surface that may create a nuisance condition, or that may in any water interfere with attainment and maintenance of designated uses of the water.

5.3.1.10.2 Settlable solids, sediments, sludge deposits, or suspended particles that may coat or cover submerged surfaces and create a nuisance condition, or

that may in any way interfere with attainment and maintenance of designated uses of the water.

5.3.1.10.3 Any pollutants, including those of a thermal, toxic, corrosive, bacteriological, radiological, or other nature that may interfere with attainment and maintenance of designated uses of the water, may impart undesirable odors, tastes, or colors to the water or to aquatic life found therein, may endanger public health, or may result in dominance of nuisance species. [7 DE Admin. Code 7401 subsection 4.1]

5.3.1.11 Regulatory mixing zones shall not impinge upon areas of special importance, including but not limited to drinking water supply intakes, nursery areas for aquatic life or waterfowl, approved or conditional shellfish areas or heavily utilized primary contact recreation areas.

Zones shall not be located in such a manner as to interfere with passage of fishes or other organisms.

Shorehugging plumes should be avoided to the maximum extent practicable. In areas where multiple discharges are located in proximity, overlapping discharge plumes may occur. In such instances, the thermal mixing zone, which is not to exceed 25% of the cross-sectional area of the receiving water as measured from the point of discharge to the opposite shore, may be reduced to preclude acute toxicity in the overlap areas, or to ensure an adequate zone of passage for fish. [7 DE Admin. Code 7401 subsections 6.2 and 6.4]

5.3.1.12 Streams with a designated use of public water supply shall provide waters of acceptable quality for use for drinking, culinary or food processing purposes after application of approved treatment equivalent to coagulation, filtration, and disinfection (with additional treatment as necessary to remove naturally occurring impurities). Water shall be free from substances (except natural impurities) that, alone or in combination with other substrates, result in:

5.3.1.12.1 Unacceptable levels of taste or odor in the treated water;

5.3.1.12.2 Significant disruption of the treatment processes at the treatment facility; or

5.3.1.13 Designated exceptional recreational or ecological significance (ERES) waters shall be accorded a level of protection and monitoring in excess of that provided most other waters of the State. These waters are recognized as special natural assets of the State, and must be protected and enhanced for the benefit of

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4. • **Beach Preservation Act (Del. Code Ann., tit. 7 Chapter 68 sec. 6801-6812).** Some wetland areas are mapped.

§ 6801. Purposes.

Beaches of the Atlantic Ocean and Delaware Bay shoreline of Delaware are hereby declared to be valuable natural features which furnish recreational opportunity and provide storm protection for persons and property, as well as being an important economic resource for the people of the State. Beach erosion and shoreline migration occur due to the influence of waves, currents, tides, storms and rising sea level. These natural forces have created, and will continue to alter, the beaches of the State. Development and habitation of beaches must be done with due consideration given to the natural forces impacting upon them and the dynamic nature of those natural features. The purposes of this chapter are to enhance, preserve and protect the public and private beaches of the State, to mitigate beach erosion, to create civil and criminal remedies for acts destructive of beaches, to prescribe the penalties for such acts and to vest in the Department of Natural Resources and Environmental Control ("the Department") the authority to adopt such rules and regulations it deems necessary to effectuate the purposes of this chapter.

7 Del. C. 1953, § 6801; 58 Del. Laws, c. 566, § 2; 64 Del. Laws, c. 361, § 1;

B. "State-regulated" wetlands protected by law are defined as *"those lands lying at or below two feet above local mean high water which support or are capable of supporting" certain plant species that are listed in the law and regulations.* The location of these State-regulated wetlands can be found on a set of official State Wetland Maps that were adopted as part of the Regulations. For the purposes of the (Tidal) Wetlands Act, Delaware defines "wetlands" as *"those lands above the mean low water elevation including any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State along the Delaware Bay and Delaware River, Indian River Bay, Rehoboth Bay, Little and Big Assawoman Bays, the coastal inland waterways, or along any inlet, estuary or tributary waterway or any portion thereof, including those areas which are now or in this century have been connected to tidal waters, whose surface is at or below an elevation of 2 feet above local mean high water, and upon which may grow or is capable of growing [any but not necessarily all of a series of wetland plants]"*

"Wetlands" also include: *"those lands not currently used for agricultural purposes containing 400 acres or more of contiguous non-tidal swamp, bog, muck or marsh exclusive of narrow stream valleys where fresh water stands most, if not all, of the time due to high water table, which contribute significantly to ground water recharge, and which would require intensive artificial drainage*

using equipment such as pumping stations, drain fields or ditches for the production of agricultural crops.”

Section B. Regulation How are Wetlands Regulated in Delaware?

Delaware regulates all of its tidal wetlands as well as those non-tidal wetlands that include 400 or more contiguous acres. Delaware requires §401 certification for all activities that require a federally issued permit, such as a §404 permit, to ensure that projects will not violate Delaware's surface water quality standards (WQS). *There is no direct state regulation currently provided for non-tidal wetlands.*

In addition to protections offered under §401/404 of the CWA, Delaware protects tidal wetlands under the Wetlands Act and submerged lands and tidelands under the Subaqueous Land Act. “State-regulated” wetlands protected by law are defined as “those lands lying at or below two feet above local mean high water which support or are capable of supporting” certain plant species that are listed in the law and regulations. *The location of these State-regulated wetlands can be found on a set of official State Wetland Maps that were adopted as part of the Regulations.*

Within the Delaware Department of Natural Resources and Environmental Control numerous divisions conduct wetland-related activities, including the Division of Water Resources (DWR), Division of Fish and Wildlife (DFW), and Division of Soil and Water Conservation (DSWC). *The DDNREC's Division of Water Resources (DWR), Wetlands and Subaqueous Lands Section operates the state's wetland regulatory and protection programs. The Division of Soil and Water Conservation's Coastal Management Program (CMP) issues consistency determinations for all federal actions, federal licenses or permits, and projects proposed in the coastal area.*

• **Wetlands Act of 1973.** *Tidal wetlands are regulated at the state level under the Wetlands Act of 1973 (7 Del. Code Chapter 66. Sec. 6601-6620). The Act regulates “lands subject to tidal action which are above the mean low water elevation and at or below an elevation of 2 feet above the local mean high water which are capable of growing certain listed species including any bank, marsh, swamp, meadow, flat or other low land. Also included are nontidal wetlands consisting of 400 acres or more of contiguous swamp, bog or marsh (exclusive of narrow stream valleys and lands currently used for agricultural purposes) where freshwater stands most, if not all of the time, which contribute significantly to groundwater recharge and which would require extensive artificial drainage. These areas are delineated on jurisdictional maps. The Act*

requires permits from the Delaware Department of Natural Resources and Environmental Control (DNREC). Permits for the (Tidal) Wetlands Act have been classified with type 1 and type 2 permits based on proposed activity type. Jurisdictional tidal wetlands are indicated on regulatory maps. Changes to Delaware's Wetlands Act are under consideration presently, to cover the loss of regulation at the federal level of isolated non-tidal wetlands. If a court rules that a tidal wetland permit denial is a taking without 4 compensation, DNREC is empowered to initiate condemnation proceedings in lieu of the court issuance of the permit.

• **Subaqueous Lands Act:** Lands under tidal and non-tidal waterways (streams, rivers, lakes, bays) are regulated pursuant to the Subaqueous Lands Act. Submerged lands include lands lying below the line of the mean low tide in the beds of all tidal waters within the boundaries of the state, together with the beds of rivers, streams, lakes, bays, and inlets. Tidelands include lands lying between the line of mean high water and the line of mean low water

<http://www.dnrec.state.de.us/water2000/Sections/Wetlands/regulations/SubaqueousRegs19921.pdf> Application form for Wetlands and

Subaqueous lands:

<http://www.dnrec.state.de.us/water2000/Sections/Wetlands/Originals/basic.htm>

• **Coastal Zone Act.** The Coastal Zone Act prohibits new heavy industry uses anywhere in Delaware's Coastal Zone, as well as offshore bulk product transfer facilities in the Zone outside the Port of Wilmington. For the purposes of the State Coastal Zone Act, the Coastal Zone is an approximately four-mile wide strip along Delaware's coastline. The Act also establishes the Coastal Zone Act permit program for industrial development other than that of heavy industry in the coastal zone of Delaware.

• **Beach Preservation Act (Del. Code Ann., tit. 7 Chapter 68 sec. 6801-6812).** Some wetland areas are mapped

Description: Delaware is one of three states that use wetland maps for delineation purposes (DE, NY and VT). Jurisdictional wetland delineation under the Wetlands Act is based on a series of regulatory wetlands boundary maps that have been adopted by the state pursuant to the statute. The maps, created from aerial photographs, depict the extent of wetlands that are regulated by the state. These maps have "regulatory status." Wetland areas' jurisdiction under the state water quality regulations (and CWA §401) are delineated according to state regulations and the U.S. Army Corps of Engineers' 1987 Wetlands Delineation Manual.

Exempted Activities Because of the use of regulatory maps, the state looks at regulated/non-regulated instead of exemptions. The state's exemptions are more than the federal exemptions, and quite different. Exemptions to the Tidal Lands Act include certain mosquito control, construction of navigational aids, duck blinds, foot bridges, wildlife nesting structures, grazing, haying, hunting, fish and trapping.

TITLE 7

Conservation

Natural Resources

CHAPTER 68. Beach Preservation

§ 6801. Purposes.

Beaches of the Atlantic Ocean and Delaware Bay shoreline of Delaware are hereby declared to be valuable natural features which furnish recreational opportunity and provide storm protection for persons and property, as well as being an important economic resource for the people of the State. Beach erosion and shoreline migration occur due to the influence of waves, currents, tides, storms and rising sea level. These natural forces have created, and will continue to alter, the beaches of the State. Development and habitation of beaches must be done with due consideration given to the natural forces impacting upon them and the dynamic nature of those natural features. The purposes of this chapter are to enhance, preserve and protect the public and private beaches of the State, to mitigate beach erosion, to create civil and criminal remedies for acts destructive of beaches, to prescribe the penalties for such acts and to vest in the Department of Natural Resources and Environmental Control ("the Department") the authority to adopt such rules and regulations it deems necessary to effectuate the purposes of this chapter.

§ 6803. Authority to enhance, preserve and protect beaches.

(a) Authority to enhance, preserve, and protect public and private beaches within the State is vested solely in the Department, except as pertains to archaeological resources on beaches, which are regulated by the Department of State, Division of Historical and Cultural Affairs pursuant to Chapter 53 of this title.

(b) The Department shall prevent and repair damages from erosion of public beaches. To this end, the Department shall, when it deems necessary, provide, construct, reconstruct and maintain groins, jetties, banks, dikes, dunes, bulkheads, seawalls, breakwaters and other facilities or make any other repairs or take any other measures along or upon any public beach or shoreline area in this State. All structures, devices and facilities existing now or in the future which are devoted to the enhancement, preservation and protection of beaches shall be under the sole jurisdiction, management and control of the Department.

(c) The Secretary of the Department shall promulgate rules and regulations to effectuate the purposes of this chapter.

(d) Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board or bureau of the State, aggrieved by any decision of the Secretary, may appeal as provided by law to the Superior Court in and for the county in which the activity in question is wholly or principally located by filing a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Any such appeal shall be on the record and shall be perfected within 30 days of the receipt of the decision of the Secretary.

(e) The Court may affirm, reverse or modify the Secretary's decision. The Secretary's findings of fact shall not be set aside unless the Court determines that the record contains no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court may remand the case to the Secretary for completion of the record.

7 Del. C. 1953, § 6803; [58 Del. Laws, c. 566, § 2](#); [62 Del. Laws, c. 211, § 1](#); [64 Del. Laws, c. 361, § 1](#); [75 Del. Laws, c. 153, § 11](#);

Wetland Assessment: Delaware employs three different assessment approaches for wetlands.

1) Delaware Rapid Assessment Procedure (DERAP) is a rapid assessment method for determining the condition of a wetland based on a short site visit: http://www.dnrec.delaware.gov/Admin/DelawareWetlands/Documents/DERAP_Field_Protocol The DERAP was developed to meet the needs of users that require a rapid assessment of the general condition of a wetland that is based on current site conditions. The DERAP uses a 2-page checklist of stressors and other site features to produce an overall score of wetland condition.

2) The Delaware Comprehensive Assessment Procedure (DECAP) is a comprehensive assessment method for determining the condition of a wetland site relative to reference condition:

<http://www.dnrec.delaware.gov/Admin/DelawareWetlands/Documents/DECAP%20Protocol%20v5.2%20July%2009.pdf> The DECAP and associated assessment models have been developed and refined by both regional and national wetland scientists following standard HGM development guidelines. Protocols for the DECAP can be obtained by contacting DNREC Watershed Assessment Section. DERAP is coordinated with DECAP.

3) The state also has a Mid-Atlantic Tidal Wetland Rapid Assessment Method

http://www.dnrec.delaware.gov/Admin/DelawareWetlands/Documents/Tidal%20Rapid_Protocol%203.0%20Jun10.pdf . The overall formatting follows that of CRAM to depict the major wetland attributes including Plant Community (biotic and physical structure), Hydrology, and Buffer.

4) Intensive assessment involves the direct measure of specific wetland functions, processes and ecosystem services. Intensive assessments are performed to validate landscape, rapid, and comprehensive assessments and to determine long term changes in wetlands. Currently, the WMAP is working to establish permanent monitoring stations in wetlands throughout the State to collect baseline data on healthy and impacted wetlands and to determine how they are responding to different stressors and changing overtime.

- Statewide Wetland Monitoring Plan The Department has a Delaware Wetland Monitoring Strategy which was developed in 2011.
http://water.epa.gov/type/wetlands/upload/delaware_wpp.pdf
- Primary State Wetlands Webpage State of Delaware Wetlands Page
<http://www.dnrec.delaware.gov/Admin/DelawareWetlands/Pages/Portal.aspx>
- Wetlands and Subaqueous Lands Permitting Webpage
<http://www.dnrec.delaware.gov/wr/Information/Permits/Pages/WetlandsandSubaqueousLandsPermittingInfo.aspx>
- State Wetland Program Plan Delaware Wetland Monitoring Strategy
http://water.epa.gov/type/wetlands/upload/delaware_wpp.pdf

Landowner Guides and Handbooks to Assist with Voluntary Wetland Restoration Efforts

- State website to support voluntary restoration efforts by citizens:
<http://www.dnrec.delaware.gov/Admin/DelawareWetlands/Pages/LandownerProtectionOptions.aspx>
- Wetland Restoration in Delaware: A Landowner's Guide – Part 1: Restoration Stories
<http://www.dnrec.delaware.gov/Admin/DelawareWetlands/Documents/restoration%20guidebook%20part%201%20all%2024%20pages.pdf>
- Wetland Restoration in Delaware: A Landowner's Guide – Part 1: Resources for Restoration
<http://www.dnrec.delaware.gov/Admin/DelawareWetlands/Documents/restoration%20guidebook%20part%201%20all%2024%20pages.pdf>
- Land Use Decision Making and Wetland Protection: A Guide for Public Participation
<http://www.dnrec.delaware.gov/Admin/DelawareWetlands/Documents/Delaware%20Wetlands%20Public%20Participation%20Guidebook%20Final.pdf>
- **The state's Ecological Restoration and Protection Team (ERPT)**
<http://www.dnrec.delaware.gov/swc/district/Pages/Restoration.aspx> is a coalition of state and federal agencies and organizations that works to restore and protect

streams, drainage ditches, wetlands, and riparian corridors in a coordinated effort to ensure that the maximum level of environmental results are being derived to enhance water quality, provide stream-bank protection and reduce erosion, and establish wildlife habitat. ERPT's wetland restoration takes place in a variety of settings from marginal agricultural fields to school yards to create additional wildlife habitat, improve water quality and increase the efficiency of farming operations.

***Important note:** Delaware does not have wetland-specific water quality standards; however, the state provides all- encompassing coverage of wetlands under existing subaqueous water quality standards.

CHAPTER 213

FORMERLY

SENATE SUBSTITUTE NO. 1

FOR SENATE BILL NO. 217

AS AMENDED BY SENATE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 7, DELAWARE CODE, BY ADDING A NEW CHAPTER TO BE DESIGNATED AS CHAPTER 66 TO ALLOW THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL TO REGULATE THE USE OF DELAWARE'S WETLANDS AND THEIR UPLAND BORDER TO PROVIDE PENALTIES FOR VIOLATION OF THE PROVISIONS THEREOF AND TO PROVIDE AN APPROPRIATION THERETO.

Be it enacted by the General Assembly of the State of Delaware:

Section 1. Title 7, Delaware Code, is hereby amended by a new chapter thereto to be designated as Chapter 66 to read as follows:

CHAPTER 66 WETLANDS

§6601. Short title

This Act shall be known and may be cited as The Wetlands Act.

§6602. Purpose

It is declared that must of the wetlands of this State have been lost or despoiled by unregulated dredging, dumping, filling and like activities and that the remaining wetlands of this State are in jeopardy of being lost or despoiled by these and other activities; that such loss or despoliation will adversely affect, if not entirely eliminate, the value of such wetlands as sources of nutrients to finfish, crustacea and shellfish of significant economic value; that such loss or despoliation will destroy such wetlands as habitats for plants and animals of significant economic and ecological value and will eliminate or substantially reduce marine commerce, recreation and aesthetic enjoyment; and that such loss or despoliation will, in most cases, disturb the natural

ability of wetlands to reduce flood damage and adversely affect the public health and welfare; that such loss or despoliation will substantially reduce the capacity of such wetlands to absorb silt and will thus result in the increased silting of channels and harbor areas to the detriment of free navigation.

It is hereby determined that the coastal areas of Delaware are the most critical areas for the present and future quality of life in the State and that the preservation of the coastal wetlands is crucial to the protection of the natural environment of these coastal areas. Therefore, it is declared to be the public policy of this State to preserve and protect the productive public and private wetlands and to prevent their despoliation and destruction consistent with the historic right of private ownership of lands.

§6603. Definitions

"Activity" means any dredging, draining, filling, bulkheading, construction of any kind, including but not limited to, construction of a pier, jetty, breakwater, boat ramp, or mining, drilling or excavation.

"Authorized Activity" includes any activity allowed after receipt of a permit from the Department.

"Board" means the Wetlands Appeals Board.

"Department" means the Department of Natural Resources and Environmental Control.

"Person" means any individual, group of individuals, contractor, supplier, installer, user, owner, partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, administrative agency, public or quasi-public corporation or body, or any other legal entity, or its legal representative, agent or assignee.

"Pre-Existing Use" means any use of land, or water, or subaqueous lands, or of a structure or any combination of these which was lawfully in existence prior to and in active use on the date of enactment of this Chapter, or any temporary or seasonal use in active use for ten (10) consecutive weeks within the last twelve (12) months previous to enactment of this Chapter.

"Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

"Wetlands" shall mean those lands above the mean low water elevation including any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of Delaware along the Delaware Bay and Delaware River, Indian River Bay, Rehoboth Bay, Little and Big Assawoman Bays, the coastal inland waterways, or along any inlet, estuary or tributary waterway or any portion thereof, including those areas which are now or in this century have been connected to tidal waters, whose surface is at or below an elevation of two feet above local mean high water, and upon which may grow or is capable of growing any but not necessarily all of the following plants:

Eelgrass (*Zostera marina*), Wedgeon Grass (*Ruppia maritima*), Sago Pondweed (*Potamogeton pectinatus*), Saltmarsh cordgrass (*Spartina Alterniflora*), Saltmarsh Grass (*Spartina cynosuroides*), Saltmarsh Hay (*Spartina Patens*), Spike Grass (*Distichlis spicata*), Black Grass (*Juncos gerardii*), Switch Grass (*Panicum virgatum*), Three Square Rush (*Scirpus americanus*), Sea Lavendar (*Limonium carolinianum*), Seaside Goldenrod (*Solidago sempervirens*), Sea Blite (*Suaeda maritima*), Sea Blite (*Suaeda linearis*), Perennial Glasswort (*Salicornia virginica*), Dwarf Glasswort (*Salicornia bigelovii*), Samphire (*Salicornia europaea*), Marsh Aster (*Aster tenuifolius*), Salt-marsh Fleabane (*Pluchea purpurascens* var. *succulenta*), Mock Bishop's Weed (*Ptilimnium capillaceum*), Seaside Plantain (*Plantago oliganthos*), Orach (*Atriplex patula* var. *hastata*), March Elder (*Iva frutescens* var. *oraria*), Goundsel Bush (*Baccharis halmifolia*), Bladder Wrack (*Fucus*

vesiculosis), Swamp Rose Mallow, Seaside Hollyhock or Marsh Mallow (*Hibiscus palustris*), Torrey Rush (*Scirpus torreyi*), Narrow-leaved Cattail (*Typha angustifolia*), and Broad-leaved Cattail (*T. latifolia*) and those lands not currently used for agricultural purposes containing four hundred (400) acres or more of contiguous non-tidal swamp, bog, muck, or marsh exclusive of narrow stream valleys where fresh water stands most, if not all, of the time due to high water table, which contribute significantly to groundwater recharge, and which would require intensive artificial drainage using equipment such as pumping stations, drain fields or ditches for the production of agricultural crops.

§6601. Permit required

(a) Any activity in the wetlands requires a permit from the Department except the activity or activities exempted by this Chapter and no permit may be granted unless the county or municipality having jurisdiction has first approved the activity in question by zoning procedures provided by law.

(b) The Secretary shall consider the following factors prior to issuance of any permit : (1) Environmental Impact, including but not limited to, likely destruction of wetlands and flora and fauna; impact of the site preparation on tidal ebb and flow and the otherwise normal drainage of the area in question, especially as it relates to flood control; impact of the site preparation and proposed activity on land erosion; effect of site preparation and proposed activity on the quality and quantity of tidal waters, surface, ground and subsurface water resources and other resources. (2) Aesthetic effect, such as the impact on scenic beauty of the surrounding area. (3) The number and type of public and private supporting facilities required and the impact of such facilities on all factors listed in this subsection. (4) Effect on neighboring land uses, including but not limited to, public access to tidal waters, recreational areas and effect on adjacent residential and agricultural areas. (5) State, county and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction. (6) Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of the jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to the state, county and local governments.

(c) The Secretary may require a bond in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations, if any, set forth in the permit. The particular amount and the particular conditions of the bond required shall be consistent with and in furtherance of the purposes of this Act. The Secretary shall state for the record, the basis for the bonding requirements imposed with each permit granted. In the event of a breach of any condition of any such bond, the Attorney General may institute an action in Superior Court upon such bond and prosecute the same to judgment and execution.

§6605. Pre-existing use

Any expansion or extension of a pre-existing use requires a permit and no permit may be granted under this Chapter unless the County or municipality having jurisdiction has first approved the use in question by zoning procedures provided by law.

§6606. Exemptions

Any of the following activities are exempt from permit requirements: mosquito control activities authorized by the Department, construction of directional aids to navigation, duck blinds, foot bridges, the placing of boundary stakes, wildlife nesting structures, grazing of domestic animals, haying, hunting, fishing and trapping.

§6607. Procedures, regulations and application fees

(a) The Secretary shall administer this Chapter.

(b) The Secretary shall inventory, as promptly as he is able, all wetlands within the State and prepare suitable maps. Such maps shall be filed with the Secretary of State and made available for public inspection at the offices of the Department. On completion of a wetlands boundary map for an area, the Secretary shall propose that wetlands within the area be designated as such in accordance with the map. Wetlands designation on the maps shall be conclusive for the purpose of this Chapter upon adoption by the Secretary, subject to the outcome of any appeals taken under this Section. After such designation, the two foot elevation above local mean high water specified in §6603 of this Chapter shall not apply to any land outside the designated area.

(c) The Secretary shall adopt a wetlands designation or any other regulation only after holding a public hearing in accordance with §6609.

(a) The Secretary shall, in furtherance of the purpose of this Chapter, adopt regulations

(i) setting forth procedures, including provision for fees, which shall govern the processing of permit applications and the conduct of hearings;

(ii) elaborating standards consistent with Section 6604 by which each permit application will be reviewed and acted upon;

(c) controlling or prohibiting activities on lands designated or proposed for designation as wetlands, which regulations may vary from area to area according to the ecological value of the subject wetlands and the threat to the health and welfare of the people of this State which their alteration would pose.

§6608. Permit applications

(a) Any person desiring to obtain a permit required by §6604 of this Chapter shall submit an application in such form and accompanied by such plans, specifications and other information as required by applicable regulations.

(b) Upon receipt of an application in proper form, the Secretary shall advertise in a daily newspaper of statewide circulation and in a newspaper of general circulation in the County in which the activity is proposed (i) the fact that the application has been received and (ii) a brief description of the nature of the application. The Secretary may hold a public hearing with respect to any application if it is deemed to be in the best public interest. The Secretary shall hold a public hearing if he receives a written meritorious objection within twenty (20) days of advertisement. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

§6609. Public hearings

Any public hearing held by the Secretary or the Board concerning a regulation, permit applications or alleged violation or appeal shall be conducted as follows:

(a) Notification shall be served upon the applicant, alleged violator, or appellant as summonses are served by registered or certified mail not less than twenty (20) days before the time of said hearing. Not less than twenty (20) days notice shall also be published in a daily newspaper of general circulation throughout the state and a newspaper of general circulation in the county in which the activity is

proposed. Such notice shall also be sent by mail simultaneously to persons who have listed their names and addresses with the Secretary to be notified. Such notice shall also be sent by mail simultaneously to all adjoining property owners. Notice shall outline the area concerned, activity involved, and the location where the application for a permit or other pertinent material is available for inspection.

(b) The permit applicant, alleged violator, or appellant may appear personally or by counsel at the hearing and produce any competent evidence in his behalf. The Secretary or his duly authorized designee or the Board or its duly authorized designee may administer oaths, examine witnesses and issue, in the name of the Department or the Board, notices of hearings or subpoenas requiring the testimony of witnesses and the production of books, records, or other documents relevant to any matter involved in such a hearing; and subpoenas shall also be issued at the request of the applicant or alleged violator. In case of contumacy or refusal to obey a notice of hearing or subpoena under this section, the Superior Court in the county in which the hearing is held shall have jurisdiction, upon application of the Secretary or the Chairman of the Board, to issue an order requiring such person to appear and testify or produce evidence as the case may require.

(c) A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The Secretary or his duly authorized designee or the Board or its duly authorized designee shall make findings of fact based on the record. The Secretary or the Board shall then enter such order as will best further the purpose of this Chapter, and shall state reasons. The Secretary or the Board shall promptly give written notice to the persons affected by such order.

§6610. Wetlands Appeals Board created; composition, quorum; conflict of interest

(a) There is hereby created a Wetlands Appeals Board which shall consist of seven (7) voting Delaware residents, appointed by the Governor with the advice and consent of the Senate. The Chairman shall be appointed by the Governor and serve at his pleasure. Of the remaining six (6), one (1) shall be engaged in farming, one (1) shall be engaged in a recreational activity, one (1) shall be engaged in contracting and/or developing land and one (1) shall be engaged in conservation efforts. Of those six members, two (2) members shall also represent each of the three counties. The term of two (2) appointed members shall be for one (1) year, two (2) for two years and two (2) for three (3) years. Thereafter, all regular members shall be appointed for three (3) year terms. Registered members of either major political party shall not exceed registered members of the other major political party by more than one (1). The members shall have broad based interest in the well-being of the total environment and the economic welfare of the State.

(b) Vacancies in Board membership shall be filled by the Governor for the remainder of the unexpired term.

(c) A simple majority of the Board shall constitute a quorum. A simple majority of the Board shall be required for overriding the decision of the Secretary.

(d) Any member of the Board with a personal or private interest in a matter in question shall disqualify himself from any consideration of that matter.

(e) Each Board member shall be compensated for such reasonable expense as travel and meals for each meeting and hearing attended.

§6611. Appeal

- (a) Any person whose interest is substantially affected by any action of the Secretary may appeal to the Wetlands Appeals Board within twenty (20) days after the Secretary has announced the decision. The Board may affirm or reverse the decision of the Secretary.
- (b) Whenever a decision of the Secretary concerning a permit is appealed, the Board shall hold a public hearing in accordance with §6609.
- (c) If the Secretary is overruled by the Board, then the Board shall state its reasons.
- (d) Any decision of the Board shall be signed by a minimum of five (5) members.
- (e) There shall be no appeal against the Secretary's denial of a use of any State-owned land.
- (f) If the Board fails to act on any appeal within ninety (90) days following receipt of the appeal, the decision of the Secretary shall be taken to have been affirmed for purposes of this Act.

§6612. Appeal from Board's decision

- (a) Any person or persons, jointly or severally affected by any decision or non-decision of the Board, or any taxpayer, or any officer, department, board or bureau of the State, may appeal to the Superior Court in and for the county in which the use in question is wholly or principally located by filing a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Any such appeal shall be perfected within thirty (30) days of the decision of the Board.
- (b) The Court may affirm, reverse or modify the Board's decision. The Board's findings of fact shall not be set aside unless the Court determines that the record contains no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court may remand the cause to the Board for completion of the record.

§6613. Taking without just compensation

If the Superior Court finds that the action appealed from constitutes a taking without just compensation, it shall invalidate the order and grant appropriate relief, unless the Secretary at this stage, consents to the reversal or modification of his decision. However, the Secretary may, through negotiation or condemnation proceedings under 10 Del. C., Chapter 61, acquire the fee simple or any lesser interest, including but not limited to, a perpetual negative easement or other interest which assures that the affected land shall not thereafter be altered, dredged, dumped upon, filled or otherwise altered subject to any reasonable reservations to the land owner as the Secretary may have stipulated to prior to assessment of damages. A decision of the Superior Court that the action appealed from constitutes a taking without just compensation shall not become effective for two (2) years of the date of decision and shall not become effective at all if within that period the Secretary has initiated action to acquire fee simple or any lesser interest in the wetlands in question. A finding of the Superior Court that the denial of a permit or the restrictions imposed by a granted permit constitutes a taking without just compensation shall not affect any land other than that of the petitioning land owner. If the Secretary has not initiated action to acquire fee simple or any lesser interest in the wetlands in question within two (2) years from the date of a final court ruling, the permit must be granted as applied.

§6614. Cease and desist orders

The Secretary shall have the power to issue an order to any person violating any rule, regulation or order or permit condition or provision of this Chapter to cease and desist from such violation. Provided, that any cease and desist order issued pursuant to this Section shall expire (1) after thirty (30) days of its issuance, or (2) upon withdrawal of said order by the Secretary, or (3) when the order is suspended by an injunction, whichever occurs first.

§6615. Injunction

Action for injunctive relief may be brought by the Secretary to prevent a violation of this Act or a permit condition. The Court of Chancery may, at its discretion, require bond in the appropriate amount.

§6616. Right of entry

The Secretary or his duly authorized designee, in regulating any activity over which he has jurisdiction pursuant to this Chapter, may enter, at reasonable times, upon any private or public property for the purpose of determining whether a violation exists of a statute or regulation enforceable by him, upon giving written notice, and after presenting official identification to the owner, occupant, custodian or agent of said property.

§6617. Penalties

(a) Any person who violates any rule, regulation, order, permit condition or provision of this Chapter shall be fined not less than five hundred (500)~~dollars~~*or more than ten thousand*(10,000) dollars for each offense. Continuance of an activity prohibited by this Chapter during any part of a day shall constitute a separate offense. Any person found guilty of violating any cease and desist order of the Secretary shall be fined for each offense, starting from the date of receipt of the order. The Superior Court shall have jurisdiction of offenses under this part.

(b) In addition to any fines imposed under subsection (a), a person who effects or permits any activity in wetlands in violation of this Chapter may be liable to the State for the cost of restoration of the affected wetland to its condition prior to such violation insofar as that is technically feasible. The Attorney General of the State, upon complaint of the Secretary, shall institute a civil action to recover such damages.

§6618. Inconsistent laws superseded; all other laws unimpaired

All laws or ordinances inconsistent with any provision of this Chapter are hereby superseded to the extent of the inconsistency. Provided that present and future zoning powers of all counties and municipalities, to the extent that said powers are not inconsistent with this Chapter, shall not hereby be impaired; and provided that a permit granted under this Chapter shall not authorize an activity in contravention of county or municipal zoning regulations.

§6619. Liberal construction

This Chapter, being necessary for the welfare of the State and its inhabitants, shall be liberally construed in order to preserve the wetlands of the State.

§6620. Federal Aid; other funds

The Department may cooperate with and receive monies from the Federal government, state or local government or any industry or other source. Such monies received are appropriated and made available for the study and preservation of the wetlands.

§6621. Severability

If any provision of this Chapter or the application of any provision of this Chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this Chapter shall not be affected thereby.

§6622. Appropriations

(a) A sum of one hundred thousand dollars (\$100,000) is hereby appropriated to the Department to perform the requirements of §6607 (b), which include surveying for disputed wetland boundaries, staff processing and clerical help.

(i) A sum of two thousand dollars (\$2,000) is hereby appropriated to the Department to pay the expenses of the Board members.

(a) A sum of thirty-five thousand dollars (\$35,000) is hereby appropriated to the Department to carry out the provisions of this Chapter.

Approved July 17, 1978.