



Riverkeeper's 2021 Legislative Memorandum

Support - S5116 (Harckham) - Support

Riverkeeper strongly supports this legislation to expand protections to New York's threatened freshwater wetlands. New York has the opportunity to protect these fragile ecosystems that provide an array of benefits, contributing to drinking water sources, wildlife habitat and flood mitigation. New York's wetland's law is outdated and several provisions are unworkable. This legislation would modernize New York's wetland law to recognize advances in wetland delineation and grant the DEC Commissioner the discretion to protect wetlands of "unusual importance" if circumstances and conditions warrant protection.

New York's wetlands are currently under threat as development pressures accelerate in exurban and rural communities. Protecting wetlands, marshes, bogs and fens are important to preserve community resilience in the face of climate change; mitigate the impacts of flooding; filter surface waters of some pollutants; protect quality drinking water supplies and provide habitat to fish, birds, insects, amphibians and mammals.

While all tidal wetlands are regulated under Section 24-0301 of the Freshwater Wetlands Act, New York governs activity in only those freshwater wetlands greater than 12.4 acres in size mapped by DEC, unless designated as a wetland of "unusual local importance." Many of the DEC wetlands maps have not been updated in decades and therefore do not identify all wetlands that meet current regulatory thresholds. Wetlands tend to shift and change over time, especially with climate change, and methods of wetland delineation have improved. Thus, in order for existing wetlands to receive adequate protection, the law must be updated. State law directs the Commissioner of the DEC to identify and map individual wetlands. This legislation removes the requirement for identification on outdated DEC maps as a prerequisite for the protection of large wetlands across New York. A wide range of federal, state, local, academic, and conservation organizations' data would then become relevant to the DEC and communities seeking to protect wetlands previously ineligible for protections due to New York's antiquated regulations.

Changes in Clean Water Act jurisdiction pursuant to the Supreme Court decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* narrowed the federal government's ability to protect freshwater wetlands. That means that isolated wetlands in New York previously protected under the prior interpretation of the Clean Water Act lost federal protections if they are smaller than 12.4 acres and therefore are not included in DEC's official wetlands maps. These conditions are entirely arbitrary and limit the ability of local communities and DEC to protect our vanishing wetlands.

We urge swift passage of S5116. While Riverkeeper would favor even greater protections than this legislation offers, this legislation is the best opportunity New York has had in a generation to strengthen wetlands protections.

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