

Environmental Conservation

ARTICLE 25 TIDAL WETLANDS

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TITLE 1 GENERAL PROVISIONS AND PUBLIC POLICY

- Section 25-0101. Short title.
- 25-0102. Declaration of policy.
- 25-0103. Definitions.

§ 25-0101. Short title.

This article shall be known as the "Tidal Wetlands Act".

§ 25-0102. Declaration of policy.

It is declared to be the public policy of this state to preserve and protect tidal wetlands, and to prevent their despoliation and destruction, giving due consideration to the reasonable economic and social development of the state.

§ 25-0103. Definitions.

1. "Tidal wetlands" shall mean and include the following:

(a) those areas which border on or lie beneath tidal waters, such as, but not limited to, banks, bogs, salt marsh, swamps, meadows, flats or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters;

(b) all banks, bogs, meadows, flats and tidal marsh subject to such tides, and upon which grow or may grow some or any of the following: salt hay (*Spartina patens* and *Distichlis spicata*), black grass (*Juncus Gerardi*), saltworts (*Salicornia ssp.*), sea lavender (*Limonium carolinianum*), tall cordgrass (*Spartina pectinata* and *Spartina cynosuroides*), hightide bush (*Iva frutescens*), cattails (*Typha angustifolia* and *Typha latifolia*), groundsel (*Baccharis halmilifolia*), marsh mallow (*Hybiscus palustris*) and the intertidal zone including low marsh cordgrass (*Spartina alterniflora*).

2. "Commissioner" shall mean the commissioner of environmental conservation.

3. "Pollution" shall mean the presence in the environment of conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant, or marine life, wildlife, or other animal life, or to property, or which unreasonably interfere with the comfortable enjoyment of life and property throughout such tidal

wetlands as may be affected thereby.

4. "Person" shall mean any individual, public or private corporation, political subdivision, government agency, department or bureau of the state, bi-state authority, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

5. "Municipality" shall mean a village, town, city or county.

TITLE 2
WETLANDS INVENTORY

Section 25-0201. Inventory of tidal wetlands.

25-0202. Moratorium on alteration of tidal wetlands.

§ 25-0201. Inventory of tidal wetlands.

1. The commissioner shall as soon as practicable make an inventory of all tidal wetlands in the state of New York. This inventory, and any restrictive orders issued pursuant to section 25-0302 of this act, shall comprise a part of the statewide environmental plan as provided for in section 3-0303 of the environmental conservation law.

2. The inventory shall set forth the boundaries of such wetlands using such photographic and cartographic standards and techniques as the commissioner may deem reasonable and appropriate in order to provide clear and accurate maps of the tidal wetlands of the state for the purpose of effectuating the policies and provisions of this act. Said boundaries shall generally delineate all tidal wetlands in the state as defined in section 25-0101 of this act. At least sixty days prior to the commencement of the inventory the commissioner shall file with the secretary of state a detailed description of the technical methods and requirements to be utilized in compiling the inventory, and he shall afford the public an opportunity to submit written comments thereon.

3. Upon completion of a tentative tidal wetlands boundary map for a particular area, the commissioner or his designated hearing officer shall hold a public hearing in order to afford an opportunity for any person to propose additions or deletions from such map. The commissioner shall give notice of such hearing to each owner of record of all lands designated as such wetland as shown on such maps, and also to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located, by certified mail, return receipt requested, not less than thirty days prior to the date set for such hearing. The commissioner shall also cause notice of such hearing to be published at least once, not more than thirty days nor fewer than ten days before the date set for such hearing, in at least two newspapers having a general circulation in the area where such wetlands are located.

4. After considering the testimony given at such hearing and any other facts which may be deemed pertinent and after considering the rights of affected property owners and the policy and purposes of this act, the commissioner shall establish by order the final bounds of each such wetland. A copy of the order, together with a copy of the map depicting such final boundary lines, shall be filed in the office of the clerk of the county in which each such wetland is located. The commissioner shall simultaneously give notice of such order to each owner of all lands designated as such wetlands by mailing a copy of such order to such owner. The commissioner shall also simultaneously give notice of such

order by certified mail to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located. The commissioner shall also cause a copy of such order to be published in at least two newspapers having a general circulation in the area where such wetlands are located.

5. Any person aggrieved by such order may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetlands are located, within thirty days after the date of the filing of the order with the clerk of the county in which such wetlands are located.

6. The commissioner shall supervise the maintenance of such boundary maps, which shall be available to the public for inspection and examination. The statewide inventory shall be readjusted from time to time as may be necessary to reflect such natural changes as have occurred through erosion, accretion, and otherwise and also to reflect such other changes as have occurred as a result of the granting of permits pursuant to section 25-0403 of this act.

§ 25-0202. Moratorium on alteration of tidal wetlands.

1. No person shall alter the state of any tidal wetland or of any area immediately adjacent to such wetland as the commissioner may reasonably deem necessary to preserve in order to effectuate the policies and provisions of this act, prior to the effective date of the land-use regulations adopted by the commissioner pursuant to this act, unless a permit for such alteration shall have been obtained pursuant to section 15-0505 of the environmental conservation law. This moratorium shall not restrict in any way any summary action taken by the commissioner under section 71-0301 of the environmental conservation law.

2. Any person, upon a showing of hardships caused by this moratorium, may petition the commissioner for a review of the application of the moratorium to any tidal wetland or any area immediately adjacent thereto. Within thirty days of the petition being received, the commissioner shall provide the petitioner and any other person an opportunity to be heard. Notice of such hearing shall be published in at least two newspapers having a general circulation in the area where the wetlands are located, and notice of such hearing shall also be given by registered mail to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located. If the proposed alterations of the tidal wetlands are not contrary to the policy or any provision of this act, the commissioner may permit the alteration to continue during the moratorium, provided that permission may be revoked by the commissioner if its terms are violated and that the permission ends upon completion of the inventory for the area in which the affected wetlands are located, and provided further that any such hardship permit issued by the commissioner shall be in addition to, and not in lieu of, such permit or permits as may be required by any municipality within whose boundary such wetland or portion thereof is located.

3. Within thirty days after such permission has been granted or denied, any aggrieved person may seek judicial review of such decision pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which such wetlands are situated.

TITLE 3
PROGRAM AND LAND-USE REGULATION FOR TIDAL WETLANDS

Section 25-0301. Program and cooperative agreements for the protection of tidal wetlands.

25-0302. Land-use regulation of tidal wetlands.

§ 25-0301. Program and cooperative agreements for the protection of tidal wetlands.

1. Upon completion of the inventory with respect to tidal wetlands, the commissioner shall confer with the local government officials involved to establish a program for the protection of such tidal wetlands.

2. The commissioner may enter into cooperative agreements with any village, town, city or county, or with any one or more of them, for the purpose of preserving, maintaining and enhancing, in accordance with the policies of this act, those tidal wetlands included within the boundaries of such villages, towns, cities and counties.

3. A cooperative agreement with any such village, town, city or county may provide for the development by personnel and facilities of the department of environmental conservation, or the payment out of funds appropriated for the purpose, of the cost of preserving, maintaining or enhancing such tidal wetlands in accordance with the policies of this act, and for the furnishing of such personnel, facilities or funds as may be agreed upon within the cooperative agreement.

4. The cooperative agreement shall provide that the tidal wetlands be preserved and maintained in their natural or enhanced state, provided, however, that a reservation in any such agreement by a village, town, city or county of the right to operate or lease for operation shellfish beds lying within the area, and a reservation of the income from such operation or lease for the village, town, city or county shall be allowed and not considered a violation of preservation and maintenance of a natural state.

5. This section shall not prevent any tidal wetlands from being designated as portions of the state's natural and historic preserves, nor shall it prevent the dedication of any such lands as state parks. The office of parks and recreation shall outline to the commissioner its plans to preserve tidal wetlands in parklands as soon as practicable.

§ 25-0302. Land-use regulation of tidal wetlands.

1. Upon completion of the inventory the commissioner shall adopt land-use regulations governing the uses of said inventoried wetlands. In preparing such regulations the commissioner shall be guided by factors including, but not limited to, the public policy set forth in this act as well as the present and potential value of the particular wetland for marine food production, as a wildlife habitat, as an element of flood and storm control, and as a source of recreation, education and research. The commissioner shall determine what uses of inventoried wetlands may be compatible with any or all of the foregoing, and he shall prepare such appropriate land-use regulations as may permit only such compatible uses. These regulations shall be filed with the secretary of state and shall take effect thirty days after such filing. A copy of such regulations shall also be simultaneously forwarded by certified mail to the chief administrative officer of each municipality

within whose boundary any such wetland or portion thereof is located. No permits may be granted by any local body, nor shall any construction or activity take place at variance with these regulations.

2. The placing of any tidal wetlands under a land-use regulation which restricts its use shall be deemed a limitation on the use of such wetlands for the purposes of property tax valuation, in the same manner as if an easement or right had been acquired under the general municipal law. Assessment shall be based on present use under the restricting regulation.

TITLE 4 REGULATED ACTIVITIES

Section 25-0401. Regulated activities.

25-0402. Application for permits.

25-0403. Granting of permits.

25-0404. Judicial review.

25-0405. Payments for extractions from or filling in wetlands.

§ 25-0401. Regulated activities.

1. After completion of the inventory prescribed in title 2 of this article with respect to any tidal wetland, no person may conduct any of the activities set forth in subdivision 2 of this section unless he has obtained a permit from the commissioner to do so. The permit issued by the commissioner shall be in addition to, and not in lieu of, such permit or permits as may be required by any municipality within whose boundary such wetland or portion thereof is located.

2. Activities subject to regulation hereunder include any form of draining, dredging, excavation, and removal either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate from any tidal wetland; any form of dumping, filling, or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind; the erection of any structures or roads, the driving of any pilings or placing of any other obstructions, whether or not changing the ebb and flow of the tide, and any other activity within or immediately adjacent to inventoried wetlands which may substantially impair or alter the natural condition of the tidal wetland area.

3. The depositing or removal of the natural products of the tidal wetlands by recreational or commercial fishing, shellfishing, aquaculture, hunting or trapping, shall be excluded from regulation hereunder, where otherwise legally permitted.

4. Activities, orders, and regulations of the department of health or of units of local government with respect to matters of public health shall be excluded from regulation hereunder, except as hereinafter provided. Copies of all such public health orders and regulations affecting tidal wetlands shall be filed with the department of environmental conservation. The commissioner may require modification of such orders or regulations if he deems it necessary to implement the policy of this act.

5. The commissioner shall review all current mosquito control projects to determine whether they are having any adverse impact on tidal wetlands. Where any adverse impact is found, the commissioner following a public hearing, may require modification of such projects if he deems it necessary to implement the policy of this act.

6. Where the dredging or filling is in the navigable waters of the state or is for the reconstruction or repair of certain dams and docks, and where such activity also substantially affects tidal wetlands, any person undertaking such activity must seek permission under this act as well as under any other applicable law.

§ 25-0402. Application for permits.

1. Any person proposing to conduct or cause to be conducted an activity regulated under this act upon any inventoried tidal wetland shall file an application for a permit with the commissioner, in such form and containing such information as the commissioner may prescribe. The applicant shall have the burden of demonstrating that the proposed activity will be in complete accord with the policy and provisions of this act. Such application shall include a detailed description of the proposed work and a map showing the area of tidal wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent lands and the known claimants of water rights in or adjacent to the tidal wetlands of whom the applicant has notice. The commissioner shall cause a copy of such application to be mailed to the chief administrative officer in the municipality where the proposed work or any part of it is located.

2. The rules and regulations adopted by the department to implement this article and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this article.

§ 25-0403. Granting of permits.

1. In granting, denying or limiting any permit under this act, the commissioner shall consider the compatibility of the proposed activity with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, flood and hurricane and storm dangers, and the land-use regulations promulgated pursuant to section 25-0302 of this act.

2. Notice that the state or any agency or subdivision thereof is in the process of acquisition of any tidal wetlands by negotiation or condemnation shall be sufficient basis for denial of any permit under this section.

3. In granting a permit, the commissioner may impose such conditions or limitations as may be necessary to carry out the public policy set forth in this act. The commissioner may require a bond in an amount and with surety and conditions satisfactory to him securing to the state compliance with the conditions and limitations set forth in the permit.

§ 25-0404. Judicial review.

Any person aggrieved by the issuance, denial, suspension, or revocation of a permit may within thirty days from the date of the commissioner's order seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetlands affected are located. In the event that the court may find that the determination of the commissioner constitutes the equivalent of a taking without compensation, and the land so regulated otherwise meets the interest and objectives of this act it may, at the election of the commissioner, either set aside the

order or require the commissioner to acquire the tidal wetlands or such rights in them as have been taken, proceeding under the power of eminent domain.

§ 25-0405. Payments for extractions from or filling in wetlands.

1. Any applicant for a permit to dredge, excavate, or remove soil, mud, sand, shells, gravel or other aggregate from any publicly-owned tidal wetland shall be required to pay to the public owner thereof such amount, which shall not be nominal, as the office of general services or its local equivalent body shall determine to be the value of the aggregate extracted. Any person aggrieved by such determination may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetland is located.

2. Any applicant for a permit to dump, fill, or deposit any soil, stones, sand, gravel, mud, rubbish, or fill of any kind onto or in any publicly-owned tidal wetlands shall be required to pay to the owner such amount, which shall not be nominal, as the office of general services or its local equivalent shall determine. Any person aggrieved by such determination may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetland is located.

3. Monies paid to the state under this section shall be used by the commissioner for preservation of the tidal wetlands.

TITLE 6
MISCELLANEOUS PROVISIONS

Section 25-0601. Severability.

§ 25-0601. Severability.

The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.