



Natural Areas Conservancy
1234 Fifth Avenue, New York, NY 10029

September 10, 2024

Commissioner Sean Mahar
New York State Department of Environmental Conservation
Division of Fish and Wildlife
625 Broadway
Albany, NY 12233
WetlandRegulatoryComments@dec.ny.gov

RE: Advanced Notice of Proposed Rule Making for Potential Revisions to Freshwater Wetlands Regulations 6 NYCRR Part 664

Dear Commissioner Mahar,

The Natural Areas Conservancy (NAC) welcomes the opportunity to provide comment in response to the New York State Department of Environmental Conservation's (DEC) Advanced Notice of Proposed Rule Making (ANPRM).

As the champion for urban natural areas in New York City (NYC), the NAC works to increase the health and resilience of our urban forests and wetlands, and we applaud the DEC for putting forward the proposed changes to statewide regulations that will increase protections for our freshwater wetlands and, for the first time, vernal pools. This issue is of acute importance in NYC, where we have lost 99 percent of our freshwater wetland habitat since the arrival of Europeans to this region in the 1600s.

We urge the state to use this opportunity to maximize the protection of these precious and vital spaces to prevent further loss and degradation of our freshwater wetlands and vernal pools. To that end, we offer the following recommendations for consideration:

- With respect to vernal pools in New York City, we ask that the DEC consider removing the productivity requirement for urban vernal pools and vernal pool complexes, and ask that all urban vernal pools existing in the five boroughs of New York City be regulated. The historic loss of 99% of NYC's freshwater wetlands means that vernal pools and amphibian populations located within NYC are particularly vulnerable relative to other parts of NYS, and may not meet the proposed quantity thresholds for protection (Swadek et al. 2021). We believe that stronger and more broad protections for our urban vernal pools will help ensure the protection of these vital habitats for our urban amphibian populations.



Natural Areas Conservancy
1234 Fifth Avenue, New York, NY 10029

- The timeline for jurisdictional determination requests, wetland delineation requisitions, and permitting remains unclear in the regulations as written. We request further clarification of whether the 90 day determination period includes the jurisdictional determination, wetland delineation, and determination of whether a permit is required.
- We applaud and support the increased protection of an 800-foot adjacent area near vernal pools, which will offer increased protection to a number of amphibian and obligate species. We do however ask that the DEC consider issuing a general permit to facilitate forest restoration and ecosystem health. This is of critical importance to ensure the protection of vernal pool complexes and to address management for surrounding forests.
- We request more clarity on the datasets to be used for jurisdictional determination. In a 2014 study on urban ecological cover-mapping using Light Detection and Ranging (LiDAR) data (O'Neil-Dunne et al), our research found that the producer's accuracy for Forested Wetlands was only 28%. We are concerned that there will be an over-reliance on LiDAR data to classify forested wetlands and vernal pools. DEC should share more information about the criteria that will be used to accept data, and the frequency of dataset updates that will be used in conjunction with the updated regulations.
- We ask that the State ensure the DEC has the staffing resources required for maximal protection and enforcement of these regulations once they go into effect. We recognize that new regulatory regimes often require increased organizational capacity, and believe that the success of these new regulations will require investing in the agency's capacity to do this work as appropriate.

We thank you again for the opportunity to provide comment on the ANPRM, and the draft regulations. These changes represent an exciting moment for the State's ability to best protect our freshwater wetlands in this era of climate instability, and we look forward to continuing to work with the DEC on the successful implementation of these updated regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "SCP".

Sarah Charlop-Powers
Executive Director, Natural Areas Conservancy



Natural Areas Conservancy
1234 Fifth Avenue, New York, NY 10029

REFERENCES

O'Neil-Dunne, J.P.M., S.W. MacFaden, H.M. Forgione, and J.W.T. Lu. 2014. Urban ecological land-cover mapping for New York City. Final report to the Natural Areas Conservancy. Spatial Informatics Group, University of Vermont, Natural Areas Conservancy, and New York City Department of Parks & Recreation. 22 pp.

<https://naturalareasnyc.org/wp-content/uploads/2024/01/NYC-Urban-Ecological-Map-2014-Report.pdf>

Swadek, R.K., M. Larson, G. Cullman, K.L. King, J. Greenfeld, S. Charlop-Powers, and H.M. Forgione. (2021). Wetlands Management Framework for New York City. Natural Areas Conservancy and NYC Parks. New York, NY.

<https://naturalareasnyc.org/wp-content/uploads/2024/01/NAC-WMF-Final-Mar-17.pdf>