

# WHAT DOES THE REVISED FRESHWATER WETLANDS ACT MEAN FOR CHAUTAUQUA LAKE?



Department of  
Environmental  
Conservation

## What are the main changes to the Freshwater Wetlands Act?

The following list summarizes the primary changes to the Freshwater Wetlands Act in 2022, with associated dates:

1. Jan. 1, 2025 - The current NYS Freshwater Wetlands Maps will no longer limit New York State Department of Environmental Conservation (DEC) regulatory jurisdiction to wetlands depicted on those maps. Instead, maps will become informational, and any wetland that meets the applicable definition and criteria will be regulated by DEC and subject to permitting, regardless of whether the wetlands appear on the informational maps.
2. Jan. 1, 2025 - Smaller wetlands will be regulated if they meet one of 11 newly established criteria listed in the legislation. These smaller wetlands are referred to as wetlands of “unusual importance” in the statute.
3. Jan. 1, 2028 - The default size threshold of regulated wetlands will decrease from 12.4 acres to 7.4 acres.

## What areas of Chautauqua Lake will DEC regulate?

The Freshwater Wetlands Act states that contiguous areas of wetland vegetation, including submergent vegetation, that meet the minimum acreage described in No. 3 above are regulated wetlands. The law regulates certain activities located in the wetland and adjacent areas within 100 feet of the wetland. The precise extent of regulated wetlands in and near Chautauqua Lake will be guided by yet-to-be-finalized regulations.

## Why will DEC regulate more areas of Chautauqua Lake?

Changes to the Freshwater Wetlands Act that break the link between regulatory jurisdiction and maps take effect in January 2025. At that point DEC’s wetlands jurisdiction will expand beyond those wetlands previously mapped at the Chadakoin River outlet, Prendergast Point, and Toms Point to include all existing wetlands, including large offshore wetlands dominated by submergent vegetation (please see the acreage thresholds described in No. 3 above).

## Why will DEC regulate adjacent areas within 100 feet of the wetland?

The Freshwater Wetlands Act has always regulated a 100-foot adjacent area, commonly known as a buffer zone, outside the boundary of the wetland to protect it. Buffer zones surrounding a wetland help to maintain the wetland’s health so it can provide valuable functions such as flood retention, water purification, and fish and wildlife habitat.

## What activities are not regulated?

Permits are not required for continuing existing uses, ordinary maintenance and repair of existing functional structures, seasonal installation and removal of existing docks, boating, or fishing.

## What activities are regulated?

In jurisdictional wetlands and their 100-foot adjacent areas, DEC wetland permits will be required to construct new structures, expand existing structures, cut or clear vegetation, including harvesting submergent vegetation, excavate and deposit fill, apply pesticides, and dredge.

## How will the new regulations impact development of vacant property along Chautauqua Lake?

The impact on vacant properties depends on the scope of the proposed project and the extent of the wetland on the property or within the adjoining Lake (within 100 feet). It is possible that development on a parcel containing a wetland may not need a permit if all activities are undertaken more than 100 feet from the wetland. Individuals interested in developing a site should contact the DEC and a wetlands consultant early in their process or before purchasing a parcel to ensure a fulsome understanding of the regulations.

## **How will the new regulations impact expansion or modification of previously developed properties?**

The effect of the new wetland regulations on expansions or modifications of previously developed properties will depend on the scope of the expansion/modification and the potential negative impact on the wetland. In general, in-kind replacement of preexisting structures and minor expansions/modifications may be covered under general permits that have a streamlined process for issuance. More extensive projects will need individual permits, which require a longer processing time for issuance. DEC will be working with Chautauqua Lake stakeholders to develop general permits that provide an efficient path for landowners in all municipalities surrounding the lake to comply with the new wetland regulations.

## **Will DEC issue multiyear freshwater wetland permits?**

Individual and general freshwater wetland permits can be valid for multiple years. However, applications of herbicides in regulated wetlands within Chautauqua Lake will require both a wetlands permit and a pesticides permit. Since New York State's pesticide laws prohibit multiyear permits, herbicides permits must be obtained yearly.

## **How will the new regulations impact what can be done to manage aquatic vegetation in Chautauqua Lake?**

DEC has long regulated herbicide applications on Chautauqua Lake, while vegetation harvesting has only been regulated in or near mapped areas such as the wetlands at the Chadakoin River outlet. Beginning in 2025, these activities will be regulated by the Freshwater Wetlands Act on many portions of the lake currently functioning as wetland with submergent vegetation beds that meet the wetland size criteria of greater than 12.4 acres.

## **How will the new regulations impact using herbicides to control nuisance aquatic vegetation and invasive species?**

Herbicide treatments and vegetation harvesting are regulated activities pursuant to the Freshwater Wetlands Act and supporting regulations. Proposals to conduct these activities require a freshwater wetlands permit and must ultimately meet DEC's permit issuance standards. DEC will be working with Chautauqua Lake stakeholders to develop freshwater wetlands general permits that provide an efficient path for landowners in all municipalities surrounding the lake to comply with the new wetlands regulations. Regardless of multiyear general permits to address wetlands permitting requirements, herbicide treatments will continue to require 6 NYCRR Part 327 pesticide application permits annually.

## **Is DEC trying to create 1 million new acres of wetlands?**

No, the change to the Freshwater Wetlands Act, and resulting regulations, will not physically create any new wetlands. It will extend regulatory coverage to an estimated 1 million acres of existing, although previously unmapped and unregulated, wetlands.

## **How will a landowner determine if they have regulated wetlands on their property?**

The changes to the Freshwater Wetlands Act that take effect in 2025 will result in changes to the process for stakeholders to determine if regulated wetlands are located on a parcel. Until 2025, regulated wetlands must be shown on regulatory maps. In 2025, regulatory maps will be replaced with informational maps. While informational maps will be available on DEC's website during fall 2024, stakeholders will need to contact the Bureau of Ecosystem Health in Albany for a jurisdictional determination of whether a parcel is regulated. DEC is developing protocols for conducting jurisdictional determinations. Responses to the Advance Notice of Proposed Rulemaking that was circulated in January 2024 are being used to inform development of the formal regulatory proposal that will clarify provisions contained in changes to the Freshwater Wetlands Act.

## **Why are wetlands important? Why must we protect them?**

Wetlands have numerous functions and benefits that no other ecosystem can provide, such as preventing soil erosion and flooding. In these times of increased severe storms, this function is particularly important. Wetland vegetation purifies water by filtering sediments and absorbing pollutants from surface waters. Wetlands are home to hundreds of animal and plant species and act as a nursery for young wildlife and fish. Chautauqua Lake is an important home to important freshwater mussels and turtles. The NYS Legislature realized the need to enhance protection for wetland ecosystems to ensure that New Yorkers will benefit from their functions for many generations to come.