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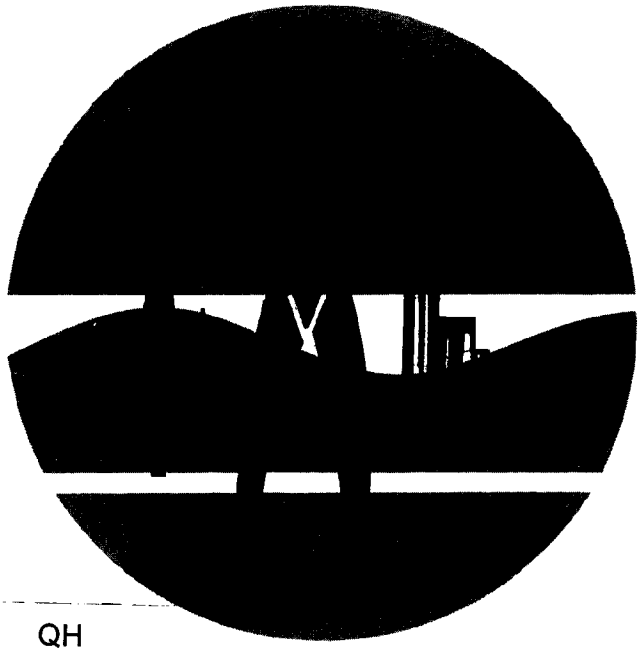

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Status of Wetlands Identification and Regulation in New York State

(TASK 7.1)

New York State Department of Environmental Conservation
Division of Land Resources and Forest Management
Coastal Zone Management Study Program

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The preparation of this report plus accompanying maps was financially aided through a Federal Grant from the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, under the Coastal Zone Management Act of 1972.

This report plus accompanying maps was prepared under the Coastal Zone Management Act of 1972 for the New York State Department of State

July 1977

Grant Number: 04-6-158-44069

N.Y. State. Dept. of Environmental Conservation
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*Appendices to this status report may be obtained from the Coastal Zone Management Section, Division of Land Resources and Forest Management (Room 422), New York State Department of Environmental Conservation, 50 Wolf Road, Albany, N.Y. 12233. Copies of Freshwater and Tidal Wetland maps may be seen at the various Department of Environmental Conservation regional offices.

Introduction

The Tidal Wetlands Act and Freshwater Wetlands Act, added to the New York State Environmental Conservation Law in 1973 and 1975 respectively (ECL Articles 24 and 25), are fundamental to the management of very significant portions of the New York State coastline. Thus, the identification and analysis of both tidal and freshwater wetlands are major first steps in the development of such programs.*

Mapping

During the second year of work under the New York State Coastal Management Program, mapping has been completed for all freshwater wetland areas on New York's coast (although some inland counties remain for the entire DEC statewide wetland identification program). Freshwater wetlands overlays for approximately 170 U.S. Geological Survey quadrangle maps (1" = 2000') along the coast have been prepared and are available to the public. While extremely useful for planning purposes, these maps are considered preliminary for application under the Freshwater Wetlands Law because they are based on aerial photo interpretation which is subject to DEC field confirmation and local review and public hearings. As of June 30, 1977, public hearings have been held in only two of the state's 28 coastal counties, a legal requirement before the maps can officially be adopted under the regulatory portion of the program.

Appendix A describes the technical methods and procedures followed by DEC during the freshwater wetlands inventory.

The tidal wetlands mapping and analysis is essentially complete, covering all of Long Island, New York City and Westchester and Rockland counties north to the Tappan Zee Bridge on the Hudson. A small amount of work remains on a few photomaps which are presently subject to contract litigation through the State Attorney General's Office. It is anticipated that these legal technicalities with the

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*Interim memoranda on Tidal Wetlands (Appendix G) and Freshwater Wetlands (Appendix H) were prepared by DEC at the end of the first year of CZM work (Task 7.1) Both describe the progress of inventory and analysis work for their respective type of wetlands as of May 1976.

mapping contractor will be resolved sufficiently by the end of July 1977, to allow for the official filing of approximately 730 of the photomaps, thereby putting into effect final DEC Tidal Wetland regulations for the mapped areas. Another 35 maps will be implemented at a later date. The maps are all at a scale of 1" = 200 feet and inexpensive diazo prints will be available to the public. A final report by Earth Satellite Corporation, the tidal wetlands mapping contractor, may be found in Appendix B.

In addition to the completion of mapping and analysis of both kinds of wetlands, significant steps have been taken by DEC toward establishment of regulations and development of criteria for regulating activities which would permanently impact these wetlands.

Tidal Wetlands Regulations

The Tidal Wetlands Law establishes a moratorium upon development or other disturbances within such wetlands during the interim while their final identification and regulations are being effectuated. Interim regulations (NYCRR Part 660, Appendix C) were adopted by DEC through the State Environmental Board and filed, effective July 1, 1974. These regulations established a procedure under which development within tidal wetland areas may be permitted under hardship situations. The moratorium restrictions of the law have resulted in several court cases, not yet settled, with respect to limitation of development.

However, in compliance with ECL Article 25, DEC has continued with the promulgation of permanent tidal wetland land use regulations (NYCRR Part 661, Appendix D). From the completed tidal wetland photo maps, approximately 10,000 land owners have been identified and notified that the law and its regulations may apply to their land. Public hearings were held and final regulations have been adopted, but cannot become effective until the associated Tidal Wetland Maps are officially filed. It is expected that these final regulations will take effect about September 1, 1977. They have already been approved by the State Environmental Board and filed with the

legislature. When they go into effect, the present moratorium will lapse. A more detailed system of allowable development and uses of land in and near identified tidal wetlands will then be applicable (see Appendix D).

Freshwater Wetlands Regulations

Because the Freshwater Wetlands Act (ECL Article 24) was passed two years after the Tidal Wetlands Act, and its implementation requires greater involvement of local government, DEC is less close to development of a final on-going program than with the Tidal Wetlands Program. Nevertheless, the freshwater wetlands mapping program has reached the local review stage in several counties and interim regulations exercised directly by DEC have been in effect statewide under NYCRR Part 662 (Appendix E) since June of 1976.

Such regulations apply to wetlands of 12.4 acres or larger or to those of lesser size which the Commissioner of Environmental Conservation finds to be of unusual local importance. Until final maps are adopted identifying the freshwater wetlands subject to regulation, DEC must respond as to whether an area in question is likely to be included as a mapped wetland; if it is, the interim regulations are applied to it. Under these temporary regulations, interim permits are required before such wetlands may be disturbed. Such permits are granted only if hardship can be demonstrated by the landowner if he is constrained from making a change affecting a freshwater wetland.

Features of this law not covered in the Tidal Wetlands Law include:

1. minimum wetland identification size (12.4 acres or 5 hectares);
2. classification of all such wetlands to their most appropriate uses, with minimum land use regulations provided by DEC for subsequent adoption; and
3. administration by local governments.

In addition, a special appeal and review process is established through a Freshwater Wetlands Appeals Board. Normal agricultural operations, including draining (but

not filling) wetlands are exempt from this law. As in the case of the Tidal Wetlands Law, certain public health activities are also exempt. Fishing shellfishing, aquaculture, hunting and trapping are all legally permitted, subject to existing protective regulations.

Final regulations for freshwater wetlands must be adopted based on DEC guidelines. (A preliminary version of such guidelines may be found in Appenxid F). Option may be exercised by counties to adopt and implement a wetlands law, if local governments fail to do so. Failure by local and county government leaves responsibility with the state. While wetland maps are completed for many counties, they do not become official until after local review and hearings which DEC will hold county-by-county (Albany and Ulster counties have been held). After the maps are official minimum land use regulations are then promulgated upon local or county regulations must be based. It is anticipated that the land use regulations will be similar to those for tidal wetlands. DEC has draft versions in preparation, but these will be subject to changes as more county hearings are held.

Some changes are anticipated in the Freshwater Wetland Law during the 1977 legislative session. This is because the present version has foreclosed the exercise of local administration of the program if, as in the case of many municipalities, they failed to adopt their own freshwater wetland ordinance within a year of the Law's effective date (September 1, 1975). A time extension is expected.

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