



Department of  
Environmental  
Conservation

# Proposed Revisions to Wetland Regulations

## Changes to Part 664 and the Advanced Notice of Proposed Rule Making

NYS Wetlands Forum  
April 17, 2024

# Overview

Changes to Article 24

Advanced Notice of Proposed Rule Making

Comments

Projects in Pipeline

Moving Forward

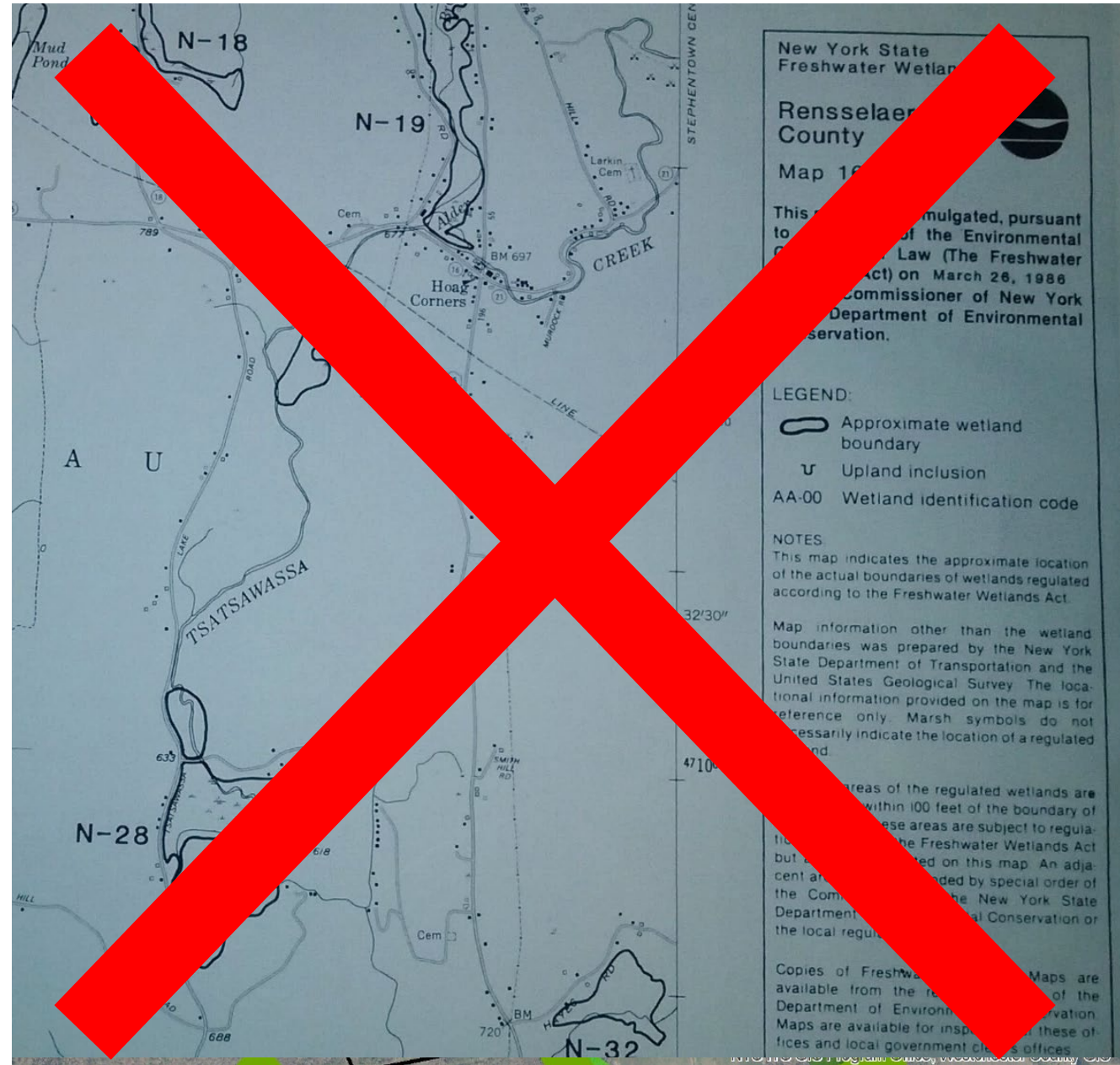


# Significant Statutory Changes to Freshwater Wetlands Act Passed in 2022

# 2025

## Regulatory Maps Are Gone

## Informational Maps – No Connection with Extent of Regulation



# Acreage Threshold

Maintain default 12.4 acre threshold until 2028

Default threshold decreases to 7.4 acres in 2028



# Smaller Wetlands

“Unusual Importance” shall mean a freshwater wetland, regardless of size, that possesses one or more of the following characteristics as determined by the department pursuant to regulations:



24-0107(9)

- 1) Urban areas
- 2) Rare plants
- 3) Previously designated as a wetland of Unusual Local Importance (ULI)
- 4) Wetlands in floodways
- 5) Previously mapped
- 6) Habitat for essential behavior of Endangered/threatened/special concern/species of greatest conservation need
- 7) Watershed with significant flooding
- 8) Productive vernal pools
- 9) Class I wetland
- 10) Regional or local significance
- 11) Significant for protecting state's water quality



# Advanced Notice of Proposed Rulemaking

Solicit public comment to guide development of the Notice of Proposed Rule Making

Provide efficient mechanism for incorporating good ideas while meeting January 2025 statutory deadline.



# ANPRM Contents

## 8 Provisions with Specific Questions

- 1) UI – Significant Flooding
- 2) UI – Rare Animals
- 3) UI – Vernal Pools
- 4) UI – Local/Regional Significance
- 5) UI – Class I
- 6) Extending Adjacent Areas
- 7) JD Procedures
- 8) JD Review

Include link to draft express terms

### Advanced Notice of Proposed Rule Making For Potential Revisions to Freshwater Wetlands Regulations 6 NYCRR Part 664

#### Introduction

New York's 2022-2023 budget included landmark amendments to the state's Freshwater Wetlands Act, Article 24 of the Environmental Conservation Law ("ECL") that contained three fundamental changes. First, existing maps depicting freshwater wetlands will no longer be regulatory beginning on January 1, 2025. Second, state wetlands of "unusual importance" will be regulated beginning on January 1, 2028. Third, the default threshold for regulated wetlands will decrease from 12.4 acres to 7.4 acres in 2028. Implementation of these statutory changes requires replacing the existing Freshwater Mapping and Classification regulations (6 NYCRR Part 664). The new amendments, which replace the mapping requirement for freshwater wetlands, mean that beginning on January 1, 2025, DEC will be relying primarily on available aerial imagery and available remote sensing data to determine whether there are state-regulated freshwater wetlands on a particular parcel.

#### Purpose

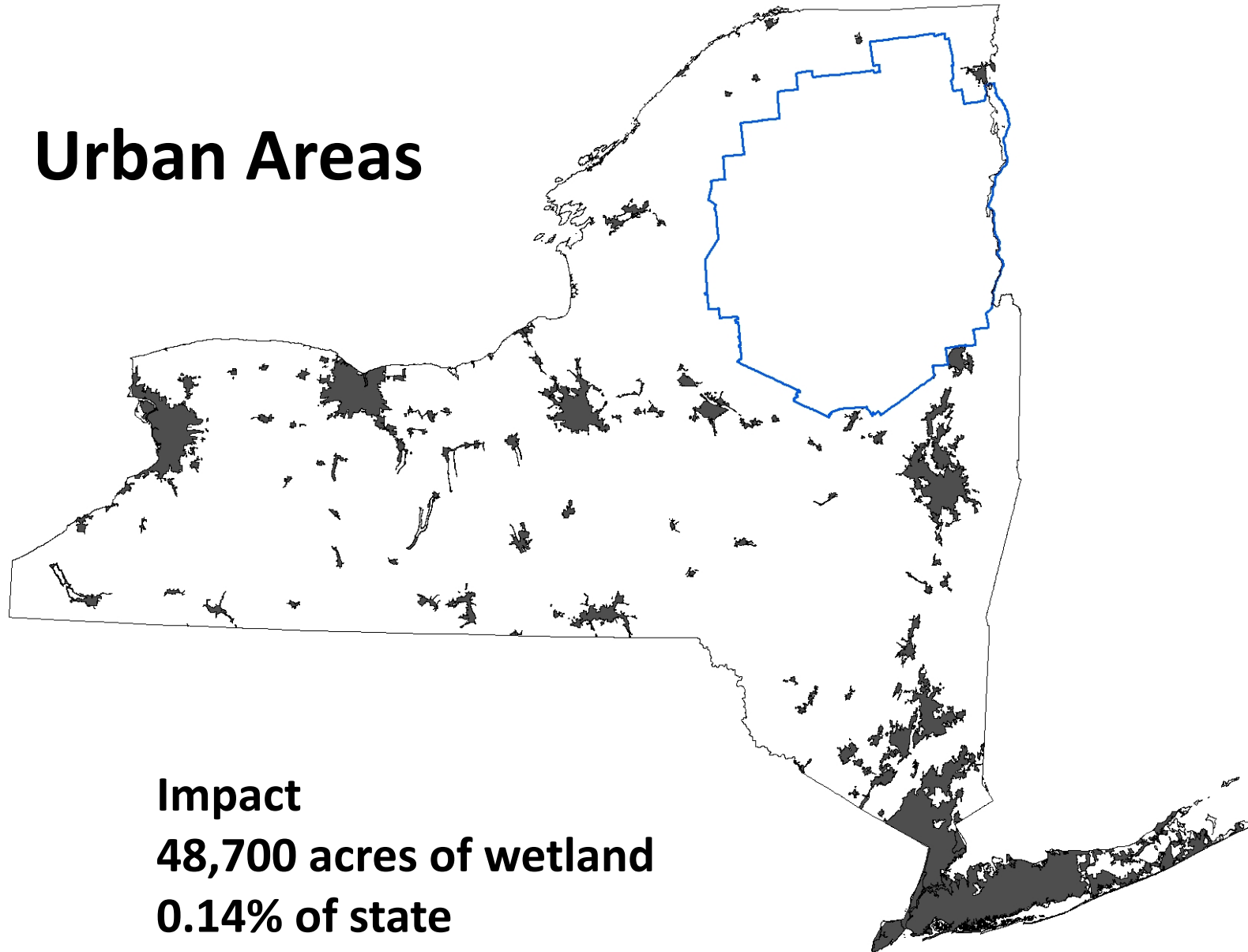
The purpose of this Advanced Notice of Proposed Rule Making ("ANPRM") is to solicit written stakeholder input which may inform the New York State Department of Environmental Conservation's ("DEC") development of any future proposed rulemaking(s), to amend Part 664. The ANPRM is arranged into eight sections that correspond to specific areas where DEC is seeking feedback. Each section contains a question, or series of questions, the answers to which may assist DEC staff in identifying key issues or concerns. In addition, Appendix A contains a draft of the regulatory language that the DEC is considering. DEC staff are seeking answers to the specific questions, as well as general input and suggestions regarding the proposed rulemaking in Appendix A.

# Consequential Provisions

- 1) **Urban areas**
- 2) **Rare plants**
- 3) **Previously designated as a wetland of Unusual Local Importance (ULI)**
- 4) **Wetlands in floodways**
- 5) **Previously mapped**
- 6) **Habitat for essential behavior of Endangered/threatened/special concern/species of greatest conservation need**
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## Urban Areas



**Impact**  
**48,700 acres of wetland**  
**0.14% of state**

- 1) Urban areas
- 2) Rare plants
- 3) Previously designated as a wetland of Unusual Local Importance (ULI)
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# Species of Greatest Conservation Need

(4) It contains habitat for an essential behavior of species listed in the New York State Wildlife Action Plan (Sept. 2015) as a species of greatest conservation need **where habitat loss has been identified by the Department as a high or moderate threat to New York populations.**



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# Watershed with significant flooding

HUC 12 watershed **with all of the following:**

- Runoff
- Human Risk
- Water storage area <5%
- Impervious Surface >2%
- Upstream, within 4 km, of urban area

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# Productive Vernal Pools

Species Groups

Geographic Area

Post on Website



# Species Groups

## Productive Vernal Pools

Common species – spotted salamander & wood frog

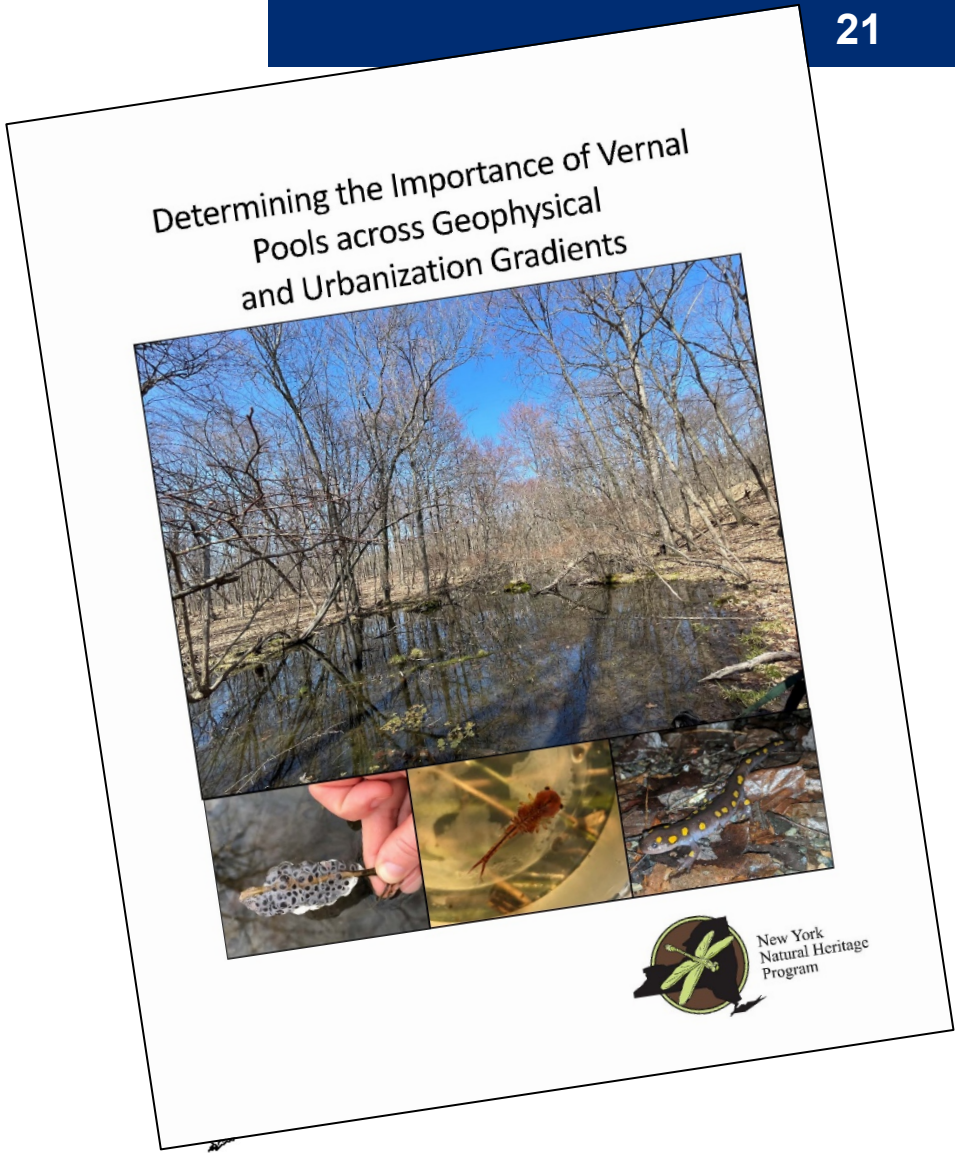
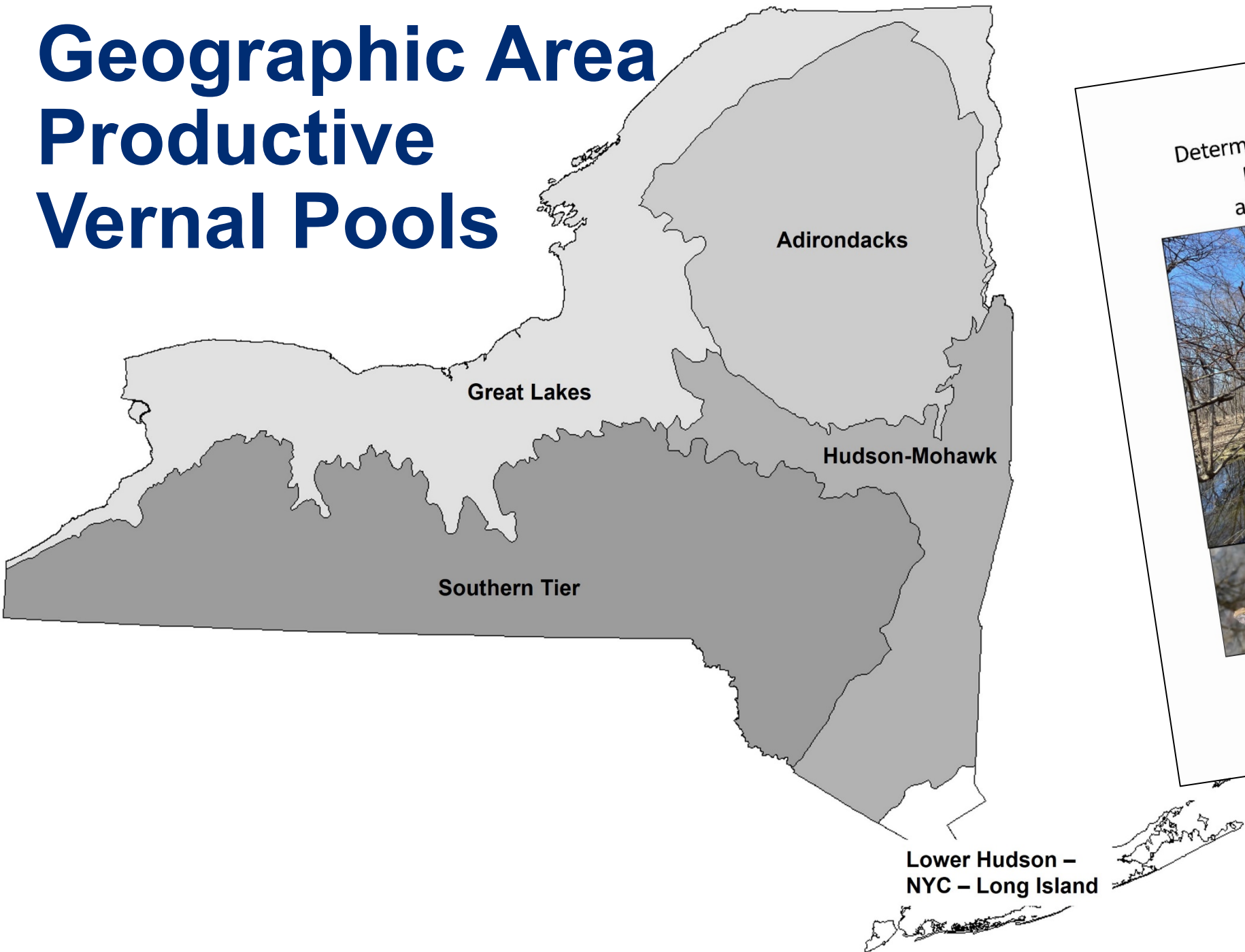
Special concern species – Jefferson salamander, blue-spotted salamander, and hybrids

Listed species & rare oddball – tiger salamander, marbled salamander



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# Geographic Area Productive Vernal Pools



# Productive Vernal Pools

Common species – spotted salamander & wood frog

- Hudson Mohawk – 55 or 30 egg masses
- Great Lakes – **Top 30%**
- Other areas – 10 or 15 egg masses

Special concern species – Jefferson salamander, blue-spotted salamander, and hybrids

- Lower Hudson, NYC, Hudson – 1 egg mass
- Great Lakes S. Hudson Mohawk – 20 egg masses

Listed species & rare oddball – tiger salamander, marbled salamander

- Anywhere – 1 egg mass



# Regulated Vernal Pools

The department shall create and maintain **a list of geographic coordinates for vernal pools known to the department** and that meet the criteria in subparagraphs (1) through (6) of paragraph (g) of this section. The department shall **publish updates to the productive vernal pool list in the Environmental Notice Bulletin.**

# Extending Adjacent Areas

300 feet for nutrient poor wetlands

black spruce-tamarack bog, coastal plain Atlantic white cedar swamp, coastal plain pond shore, coastal plain poor fen, dwarf shrub bog, highbush blueberry bog thicket, inland Atlantic white cedar swamp, inland poor fen, marl fen, medium fen, northern white cedar swamp, perched bog, pitch pine-blueberry peat swamp, red maple-tamarack peat swamp, rich graminoid fen, rich hemlock-hardwood peat swamp, rich shrub fen, rich sloping fen, seal level fen, sedge meadow



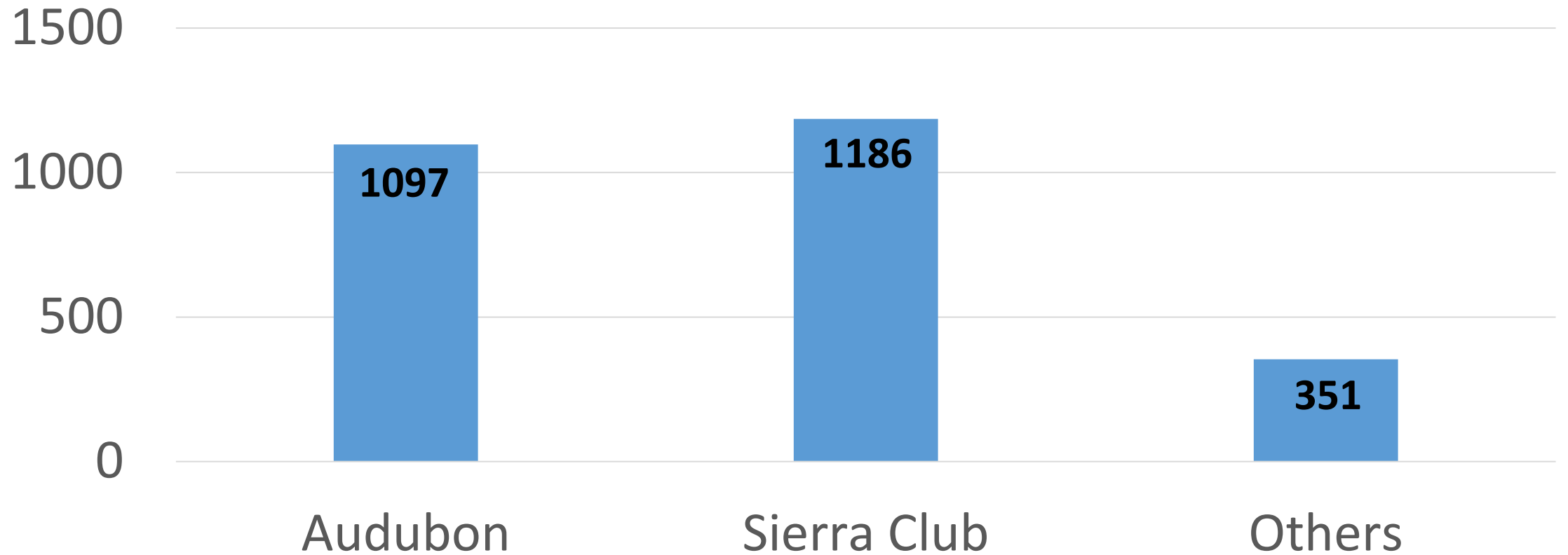


# Appeal of Jurisdictional Determinations

- 1) Initial consultation/delineation (field meeting to discuss)
- 2) Complete JD appeal application within 120 days from initial consultation
- 3) Acceptable basis of appeal:
  - Missing technical information
  - Incorrect application of regulatory criteria
  - Incorrect application of guidance
- 4) Department responds within 60 days

# What Did They Say?

# Who Commented on Advanced Notice



# Some Reoccurring Themes

- Concern DEC will be overwhelmed
- Questions
  - Clarifying (definitions, etc)
  - Implementation (data sets, etc.)
- JD process
- Vernal pools
  - Getting on the list
  - Egg mass counts and alternatives (fairy shrimp, etc.)
  - Extend adjacent area
- Projects in the pipeline



# An Experimental Exercise

## 2023 NYS Wetlands Forum



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### Options for Addressing Projects Already in the Development Pipeline When Article 24 Changes Take Effect

#### NYSDEC Roundtable/Q&A Discussion

#### NYS Wetlands Forum, 26 April 2023

**Goal:** Discuss reasonable criteria or milestones that DEC could use to determine which projects in the later stages of the development process should proceed with little or no consideration of new Article 24 jurisdiction when changes to Article 24 take effect in January 2025.

Please answer the following questions based on your experience:

A) Large Projects (e.g., commercial warehouse, 25 lot subdivision, etc.)

- 1) How long does it typically take to design a large project?
- 2) Once designed, how long does it typically take to go through all permitting necessary to begin construction?
- 3) Once construction begins, how long does it typically take to complete construction?

B) Medium Projects (e.g., strip mall, 5 lot subdivision)

- 1) How long does it typically take to design a medium sized project?
- 2) How long does it typically take to go through all permitting necessary to begin construction?

# An Experimental Exercise

## 2 Questions

How long does it take for small, medium, and large development projects to get through design, permitting, and construction?

What criteria/trigger for deciding which projects should proceed with little or no consideration of new Article 24 jurisdiction in January 2025?

# NYSWF Participants

## How Long to Complete a Project

	Large Projects			Medium Projects			Small Projects		
	Design	Permit	Construct	Design	Permit	Construct	Design	Permit	Construct
#Responses	75	78	78	76	79	79	73	77	75
Permit & Construct	42.3 months (3.5 years)			25.2 months (2.1 years)			16.5 months (1.4 years)		



# NYSWF Participants Appropriate Threshold

	SEQRA - Complete, FEIS, or Negative Declaration	>90% design plans	89%-50% design plans	SWPP Complete	JD Issued	Municipal Approval	Other
% Responses	39.7	16.4	35.6	11.0	34.2	9.6	21.9





# Proposal

**Projects meeting the following thresholds prior to 1 January 2025 will be allowed to continue without any change in Article 24 jurisdiction for the specified time period.**

# Projects With Mapped State Regulated Wetlands

Threshold	Scope of Project, based on UPA Major/Minor Part 621.4(j)	No change in Article 24 Jurisdiction until
Issued DEC Freshwater Wetlands Permit OR Letter from DEC notifying applicant of Complete Freshwater Wetlands Permit Application	Major or Minor	Permit Expiration



# Projects Without Mapped State Regulated Wetlands

Threshold	Scope of Project, based on UPA Major/Minor Part 621.4(j)	No change in Article 24 Jurisdiction until
FEIS (under Part 617) OR Site plan approval by municipality	Major	July 2028 (3.5 years)
	Minor	January 2027 (2 years)



# Timeline

2024

Mid June – Notice of Proposed Rule Making in State Register

Mid August – Hold public hearings

Early September – Comment Period Closes

Early December – Notice of Adoption;  
informational maps available to public

2025

January 1 – New regulations take effect



# Thank You

**Roy “JR” Jacobson**

**Head, Habitat Protection Section  
Albany, NY**

**[roy.jacobson@dec.ny.gov](mailto:roy.jacobson@dec.ny.gov)**

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