

# The Forum

NEW YORK STATE WETLANDS FORUM NEWSLETTER

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## **WETLAND MITIGATION BANKING IN NEW YORK STATE: SLOW START, UNCERTAIN FUTURE**

— Charlotte Brett

The New York State Wetlands Forum held a day-long Wetland Mitigation Banking Workshop at the NYSDEC's central office in Albany, NY on January 6. Wetland mitigation banking, the preferred federal method for compensatory wetland mitigation, has been in use nationally since the '80s and subject to federal guidance since 1995. With support from the National Research Council and Society of Wetlands Scientists, a prominent National Mitigation Banking Association whose annual conferences draw hundreds of participants, and a rapidly expanding number of mitigation banks across the country, wetland banking has proven its effectiveness at restoring, enhancing, creating, and preserving wetland ecosystems. In keeping with its mission, the Forum's goal for the January 6 meeting was to promote dialogue and education about mitigation banking in New York.

The meeting in January brought together over 100 participants from the public, private, and non-profit sectors. Presentations were given by agencies including the USACE, USEPA, USFWS, NYSDOT, and NYSDEC, as well as several bankers, consultants, and conservation organizations. Speakers addressed questions of "why" and "how-to," detailing the USACE and USEPA's 2008 Final Rule, components of a banking instrument, biological and financial aspects of mitigation banking, strategies for sizing service areas as well as monitoring and reporting, and case studies representing banking and other mitigation methodologies. (*Copies of the presentations can be viewed by members on the Forum's website; the user name is Wetlands4um and the password is Viewppts.*)

According to the Ecosystem Marketplace, approximately 440 banks were in existence nationwide by the end of 2008, with another 194 banks in the early stages of the approval process. These are not evenly distributed, however; some states are well ahead of others. As of July 2010, the National Mitigation Banking Association website provided information about 23 banks

in California and 21 banks in Florida; the author's independent research conducted in 2008 identified 30 banks in North Dakota and over 20 in Nebraska. In contrast, wetland mitigation banking is still in its infancy in New York. Barbara Beall, the Chazen Companies' Director of Ecological and Wetland Services, estimated that within the state there are currently less than 10 wetland banks in varying stages of development. Of these, only three are approved banks. The remainder comprises three banks under consideration or in planning, two abandoned banks, and one banking instrument that has been developed but not signed. This begs the question: why is New York off to such a slow start?

Perhaps a partial answer to that question came early in the January meeting. Tim Post – the NYSDEC's Wetland Program Manager and one of the morning speakers – indicated that the use of wetland banking for Article 24 wetlands (those under the jurisdiction of the DEC) is limited, citing 6NYCRR Part 663.5(g)(1)(i), "the mitigation must occur *on or in the immediate vicinity* of the site of the proposed project" (emphasis added). A flurry of audience questions followed, but a clear definition of what geographical area the "immediate vicinity" might entail remained unanswered.

Post ended his presentation with a slide entitled "Future," and two bullet points: (1) *Amend Part 663.5(g)(i) to allow mitigation banks in circumstances where there are no other viable options*, and (2) *Amend Mitigation Guidelines to include mitigation banks*. When contacted in late June for any status updates, Post responded that there was "not much new on the state front." Given the DEC's broad regulatory authority and influence, prospective bankers may be reluctant, unwilling, or unable to enter the market knowing that the pool of potential credit buyers is limited to those impacting only non-Article 24 wetlands. For now, the future of wetland banking in New York State remains uncertain.

## New York State Wetlands Forum

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### Mission:

The New York State Wetlands Forum is a non-advocacy corporation comprised of individuals and groups with diverse backgrounds, interests and viewpoints regarding wetlands and their science, use and management. Incorporated in 1994, the Forum is a 501(c)(3) not-for-profit organization. Its purpose is to improve communication among people interested in wetlands; call attention to and objectively discuss local, statewide, regional, national and global wetland issues as they relate to New York State; improve its members' knowledge and understanding of wetlands; and, make available information about wetlands to its members and the general public.

## MESSAGE FROM THE CHAIR

Hello to all 150 Members of the NYS Wetlands Forum, and Guests! I'd like to introduce myself. I'm the new Chair of the NYSWF Board of Governors, and will be serving in this position over the next year. As an Environmental Protection Specialist for the Federal Highway Administration (FHWA), I have the opportunity to work with a wide variety of Forum Members from the private, public and academic sectors. I look forward to bringing my energy and professional experience to the NYS Wetlands Forum.

My background is mostly related to wetland policy and includes positions with a private environmental engineering firm, the U.S. Army Corps of Engineers, the Army National Guard, and the Connecticut Department of Environmental Protection. Through my prior work experience, I have managed a state-level wetland regulatory program, managed the CT Army National Guard's environmental program, worked as a federal wetland regulator, and was a consultant for private infrastructure projects. At FHWA, I'm responsible for ensuring that the projects that we fund are designed and constructed in compliance with the National Environmental Policy Act.

My education is from the University of Connecticut, and SUNY Cobleskill. I am also active in local politics and serve as the Chairman of the Town of Nassau's Planning Board. I live in rural Rensselaer County with my husband and two young boys.

I hope that the coming year at the NYSWF is very active. We are committed to publishing The Forum newsletter quarterly (winter, spring, summer, fall), we will be hosting a substantial training course on the USACE's newly-published 1987 Delineation Manual "Supplement", and we are working on the annual conference which will be held in Spring 2011 in the Adirondacks.

Through these planned activities, plus others that we will be unrolling in the months to come, I am hoping that this organization becomes more effective at fostering communication between all of the wetland professionals in New York State. For example, we will be involving students more in the organization to increase their opportunities for networking, we will be increasing the "usability" of our website and opening a question/answer forum. Come join us - we need everyone involved in wetlands to take part in this great organization to keep communication lines open and to keep folks energized!

I look forward to regularly writing this column in The Forum, and please enjoy the articles that our Board of Governors, Members, and Guests have contributed. Cheers!

Melissa Toni, Chair



Melissa Toni

## WETLANDS FORUM PARTICIPATES IN CONFERENCE ON ADMINISTRATION AND ENFORCEMENT OF WETLANDS

On July 13, NYS Wetlands Forum Board Members Kevin Bliss and Joe McMullen spoke at a conference in Syracuse on the subject of "Administration and Enforcement of Wetlands." The conference was hosted by Lorman Education Services. Mr. McMullen's session topic, "Wetland Delineations and Descriptions for Permit Applications," provided an experienced consultant's views on State and Federal technical and procedural wetland permitting requirements. Mr. Bliss focused on the NYSDEC's role in regulating wetlands.

## RECENT WETLAND COURT DECISIONS

Over the past several months, there have been several cases across the United States related to the issuance of permits in wetland areas. A few of the cases are summarized below.

On June 2, 2010, the U.S. Court of Appeals for the Ninth Circuit upheld permits issued by the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service that cleared the way for the construction of a 678-acre business park in Redding, California. In 2008, the Butte Environmental Council sued the agencies and the City of Redding, alleging violations of the Clean Water Act and Endangered Species Act. The City had been issued permits that allowed for the destruction of seven acres of wetlands on the development site, including vernal pools, critical habitats for protected vernal pool fairy shrimp, tadpole shrimp and slender Orcutt grass. Prior to the issuance of the permits, questions about whether the site was the best alternative because of the destruction of the wetlands were addressed by the City in a supplemental environmental analysis. The Corps of Engineers determined the site was the “least environmentally damaging” of all alternatives and issued a permit under Section 404 of the Clean Water Act. In its suit, the Butte Environmental Council claimed both agencies acted arbitrarily and capriciously in concluding that the site the City selected to develop as a business park was the least environmentally damaging of the available alternatives. The Court of Appeals decision affirmed the district court ruling that both federal agencies adequately considered the project’s impacts on wetlands and critical habitat before granting the permits to the City of Redding. *Butte Environmental Council v. U.S. Army Corps of Engineers*, 9<sup>th</sup> Cir., No. 09-15363. 6/2/10.

On February 1, 2010, the South Carolina Supreme Court upheld the denial of a permit to fill 32 acres of wetlands near Murrells Inlet, South Carolina. In 2006, a developer, Spectre LLC, sought a land-disturbance permit under the South Carolina Department of Health and Environmental Control (SCDHEC) stormwater program. The SCDHEC denied the permit contending that the proposed filling of approximately 32 acres of isolated freshwater wetlands was inconsistent with South Carolina’s Coastal Zoned Management Plan (CZMP). Spectre appealed to the Administrative Law Court claiming that the isolated wetland was not subject to the requirements of the coastal management program. Its appeal also claimed

that the coastal management program was not a valid regulation proposed and approved by the State’s General Assembly and therefore SCDHEC did not have the authority to deny a permit based on it. The Administrative Law Court ruled the coastal management program policies did not apply, that the program was not enforceable as a regulation and that Spectre was entitled to the permit. In its decision, the Supreme Court found that the CZMP had been approved by the legislature and the governor and that there was no requirement for the plan to be promulgated as a regulation. *Spectre v. South Carolina Department of Health and Environmental Control*, S.C., No. 26764, 2/1/10.

On June 30, 2010, a federal judge with the U.S. District Court for the District of Columbia ruled that the U.S. Army Corps of Engineers violated the National Environmental Policy Act (NEPA) and the Clean Water Act in the issuance of a permit to fill wetlands in a Florida project without producing an environmental impact statement or considering any alternatives. In 2007, the Corps of Engineers issued a Section 404 dredge-and-fill permit for the construction of the Cypress Creek Town Center in a suburb of Tampa, Florida; the project involved the filling of wetlands near the intersection of two highways. The permit was issued after the Corps of Engineers conducted an environmental assessment and concluded that the project would not have any significant environmental impacts (even though the record stated that the Corps had determined that the project would fill wetlands and result in increases in runoff with high levels of eroded sediment) and therefore a lengthier environmental impact would not be needed. The Sierra Club, Clean Water Action, and Gulf Restoration Network sued the Corps of Engineers, arguing that the wetland destruction was unnecessary and unlawful. The federal judge remanded the permit to the Corps of Engineers with instructions to “file supplemental submissions addressing the exact parameters of appropriate relief.” In his opinion, the judge concluded that the case was part of a “disturbing pattern” by the Corps of Engineers in its adherence to the requirements of NEPA and the Clean Water Act. He quoted another member of the Court by stating the Corps “resorted to arbitrary and capricious meaning – manipulating models and changing definitions where necessary – to make this project seem compliant with [CWA] and [NEPA] when it is not.” *Sierra Club v. Van Antwerp*, D.D.C., No. 07-1756, 6/30/10.

## WETLAND DELINEATION SUPPLEMENT WORKSHOP

**NYSWF in conjunction with the USACE Announce: The USACE’s Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual September 15-17, Syracuse, NY Register by Sept 1 at: [www.wetlandsforum.org](http://www.wetlandsforum.org)**

The New York State Wetlands Forum and the U.S. Army Corps of Engineers will jointly present a training workshop on the *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region* on September 15-17, 2010 at the Comfort Inn, Syracuse, NY. Use of methodologies and data sheets in this document is now mandatory for all wetland delineations completed after March 31, 2010 within the region. The Corps of Engineers and Natural Resources Conservation Service soil scientists will conduct the workshop. The course is not designed for beginners. Previous wetland delineation experience, or familiarity with the 1987 Corps Wetland Delineation Manual is strongly suggested. Registration will be on a first-come, first served basis. The cut off date for registration is September 1. Consultants and agency staff are especially encouraged to attend, as Corps staff provide tips on how to organize your reports to facilitate rapid review.

The class will be located in Syracuse, NY and will be conducted over a period of three days. The workshop will include a mix of classroom and field instruction. Field sites will include sandy hydric soils, alluvial soils, mucks, and mineral soils with an emphasis on hydric soil indicators found in New York State.

The first day will focus on the need for the new supplement, advances in wetland science, regulatory and legal decisions affecting the extent of federal wetland jurisdiction, information required for a jurisdictional determination, vegetation sampling methods, hydrology indicators, and hydric soil indicators. The second day will be spent in the field, rain or shine. Group transportation will be provided to three or four study sites with a variety of wetland cover types, hydrology and soils. An evening Q & A session will be available for interested participants. The third day will present a wrap up of the training, and report requirements.

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Life enfolds you here. Already burnt, I feel the sun's heat penetrate my skin and pulse through my blood. I am not energized by this warmth, but sluggish and tired. I sit, then, protected against the blazing sun under the comfort of a shaded canopy of pine. In front of me lies a salt marsh, lush and green. The tide slowly floods the surface with cool nutrient laden water and I imagine fish swimming with the flow will soon breach the surface of the marsh to find areas of deeper standing water to feed or perhaps lay their eggs. As I watch the water slowly rise, a green heron wades quietly in a shallow pool poised to strike and ensnare an unsuspecting fish in its hard, solid bill. I carelessly shift my feet and a bright green preying mantis stops short on his blade of grass, startled. There is so much life here. Unless eyes are open to the marvel of this place, so much goes without much notice. Birds nest, insects breed, fish feed, and new life is born in this amazingly complex and wondrous place.

Considering this space, I sit, watching the birds dart across the sky. Still growing with the ebb and flow of the tides, this secluded area of coast was built so long ago from sediment brought by the sea. With heavy storm surges, severe winds, and daily tides sediments were scattered, dropped, and accumulated until able to support vegetation. Brought by winds and waves, seeds of *Spartina alterniflora* were deposited and took root. Here they grew, dense stands that stabilized the unsteady ground trapping more sediment and facilitating the further growth of the marsh. It is amazing how a plant, simple blades of marsh grass can change the course of history forever. This is one phenomenon we humans share with marsh grass—the ability to alter our world.

From deep beneath the sea, water transports organic material that will eventually move with the tide and be trapped within the stands of *Spartina*. Bacteria continue to work, as they have been for centuries, to break down these organic masses and create an essential layer of peat. Newly created, this layer elevates the marsh surface, reducing the amount of tidal inundation and allows a great diversity of plant life to establish. When the high tides come, water infiltrates the marsh and with it dumps considerable quantities of debris creating a wonderland for detritivores.

I can see where hundreds of years ago the vegetation and algae, brought by the tides, entwined to form heavy solid masses that when dropped on the surface has blocked sunlight and stunted or killed the plants below to form small depressions, which eventually

formed pools and pannes. Here, new species, both plant and animal, have colonized and taken advantage of this new opportunity. A higher diversity of plant life brings a greater diversity of animal life, all of which add to the complexity of this intriguing system.

The deep croak of the great blue heron awakens me from my dreamful cogitation. The noble long legged wader circles the sky above, his neck bent forming a backward “S.” He soars over the marsh once more before gliding into a nearby pool with the grace of an angel. He stands, still as a statue, exuding a powerful presence in this quiet place. The tide is at its highest point now and knowing there is more food to be found on the marsh, wader birds fly in from all directions. Brilliant white silhouettes of snowy egrets join the masses of blue-gray herons prodding the water with long bills looking for fish and shrimp. While I have sat, the clouds have rolled in and the sun is at rest behind the white and yellow haze. My break is over and I step back onto the sodden marsh, boots disappearing under cool water.

My trek begins from the upland edge, surrounded by shrubs and vines, and continues down through the marsh toward the creek edge where stands of *Spartina alterniflora* flourish. As I tread carefully amongst the grasses, I notice a visible change in vegetation. Though virtually undetectable by sight there is a gentle downward slope from upland to creek, just enough to reduce the influx of tide in higher regions. Here, near the upland, freshwater trickles down through from the wooded slope and dilutes saltwater from the rising tide. Plant life in this transition zone includes more freshwater species like slough grass, switchgrass, and seaside goldenrod. Walking further into the marsh I shift to an area that appears more uniform. Here, high tides inundate the surface with saline water and those tolerant of higher salinity levels survive. The uniform green grass is calming to my eye, but as I look closer I notice not only a single species but a mosaic of separate and distinct species. Saltmeadow grass, spike grass, black grass, and sea lavender all dominate the high marsh and create an intricate tapestry of interwoven threads. Every now and again I come across small pannes temporarily filled with tidal waters. Warmed by the sun, they will not stay long once the tide moves out, but still the edible common glasswort, seaside plantain, and blue-green algae abound providing food for the residents of the marsh and me. Before continuing, I snap off a piece of the green glasswort and enjoy its salty crunch.

Finally, I reach my destination where marsh meets the open water of the creek and find a dense stand of dark emerald green. Saltwater cordgrass, *S. alterniflora*, follows the creek in a narrow belt. I step carefully through the cordgrass, not clearly knowing where the edge of vegetation stops and the deep creek begins. Once at the edge, I lower my instrument and begin my daily monitoring of water quality. As I wait for the screen to stabilize I look back over the marsh I have just traversed. At first glance, this small world of salt marsh life looks simple and plain, but time reveals a complex ecosystems brimming with elaborate unions and interconnections forming a natural fractal of never ending and always evolving relationships. My relationship with this marsh will continue to grow, as I'll be back again tomorrow.

## WETLAND DELINEATION SUPPLEMENT WORKSHOP

[Cont'd. from page 3]

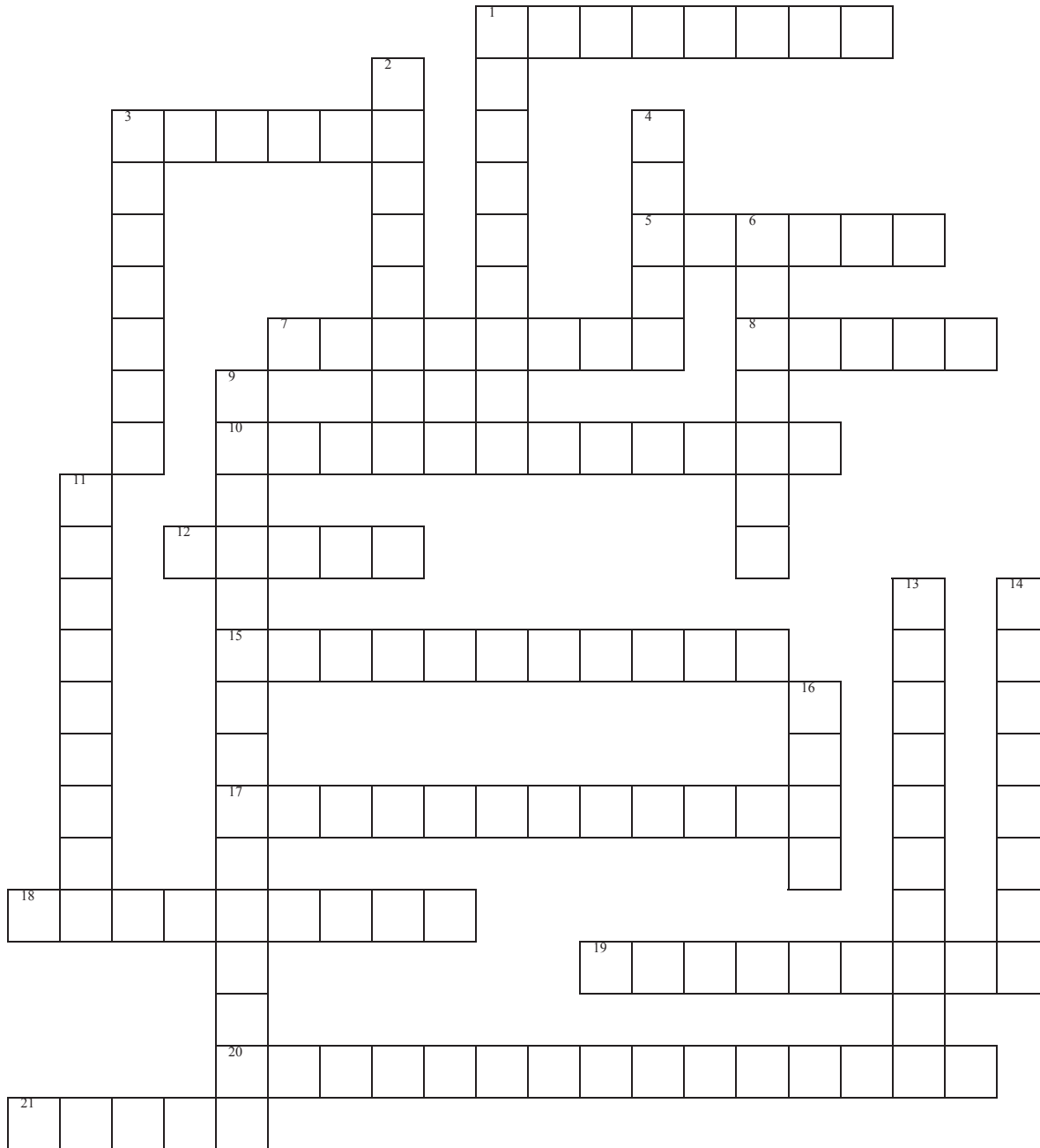
Documents to be discussed include:

U.S. Army Corps of Engineers, October 2009, Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, 179 pages. Available at: <http://www.usace.army.mil/CECW/Documents/cecwo/reg/trel09-19.pdf>

United States Department of Agriculture, Natural Resources Conservation Service. 2010. *Field Indicators of Hydric Soils in the United States*, Version 7.0. L.M. Vasilas, G.W. Hurt, and C.V. Noble (eds.). USDA, NRCS, in cooperation with the National Technical Committee for Hydric Soils. available from: <http://soils.usda.gov/use/hydric/>

United States Department of Agriculture, Natural Resources Conservation Service. 2010. *Field Indicators of Hydric Soils in the United States*, Version 7.0. L.M. Vasilas, G.W. Hurt, and C.V. Noble (eds.). USDA, NRCS, in cooperation with the National Technical Committee for Hydric Soils.— available from: <http://soils.usda.gov/use/hydric/>

## Ecology Crossword



### ACROSS

- 1 Measure of the salt concentration of water
- 3 Shallow, faster flowing section of a stream
- 5 Coarse, metamorphosed, foliated (laminated) rock
- 7 Organism that lives on or within a host
- 8 Classification category for a group of organisms
- 10 Space between granules of soil or sediment
- 12 Overflow of lands not normally covered by water
- 15 Lakes containing moderate quantities of nutrients
- 17 Degree to which larger substrate is buried in fine sediment
- 18 Direct or indirect measurements of some valued component or quality in a system
- 19 Animal that primarily eats fruit
- 20 Metric used to measure ability to attach to substrate
- 21 Portion of the environment that a species occupies

### DOWN

- 1 Relationship between two organisms that live in intimate contact with each other
- 2 Flow to ground water from the infiltration of surface water
- 3 Horizontal underground stem from which spring shoots, buds, and roots
- 4 Primitive plants, many microscopic
- 6 Where freshwater meets saltwater
- 9 Light emitted by chemical reactions within living things
- 11 Continual deposition of sediments
- 13 Fish that migrate between fresh and salt water
- 14 Initial set of observations
- 16 Small, capsule-like sac that encloses an organism in its resting or larval stage

## THE TIDE ROLLS IN: AN ARTICLE ON TIDAL WETLANDS

— Johanna E. Duffy

In light of the oil spill disaster currently wreaking havoc in the Gulf, it seemed fitting to visit the significance of tidal wetlands. In order to bring this issue to a New York State level, this article will focus on the benefits of tidal wetlands and their presence and regulation within the State. A tidal wetland is generally described as a salt marsh or mudflat found near the shore or coastline. These areas are dominated by a variety of grasses and other marsh plants that have adapted to the shifting tides and the presence of salt water. Such plant species, referred to as halophytes, adapt to the saline environment either through a salt tolerance or a salt avoidance. Plants that avoid the effects of high salt, even though they live in a saline environment, are often referred to as facultative halophytes rather than “true”, or obligatory, halophytes. In New York State (NYS), tidal wetlands are recognized along the Hudson River from the Troy Dam south to Staten Island, and surrounding the shoreline of Long Island, including Gardiners Island, Shelter Island, and Fishers Island.

Tidal wetlands are often noted as one of the most productive ecosystems. Values provided by these wetland areas include aesthetic, marine food production, wildlife habitat, flood and storm control, education and research, recreation, and sediment control. These ecosystems are categorized by the amount of water covering the area at high and low tidal events and the type of vegetation present. New York State describes tidal wetlands using specific categories and codes. These categories and codes are used to identify wetland areas on the Tidal Wetlands Inventory Maps, and often refer to specific ecological zones that exist within the wetlands. Tidal wetlands can be categorized as any of the following:

- **Coastal shoals, bars, and mudflats** – areas covered by tidal waters during high tide and exposed or covered with a maximum of one-foot of water during low tide; not vegetated
- **Littoral zone** – lands under tidal waters which are not included in any other category
- **Formerly connected** – tidal wetland zone where normal tidal flow is restricted by manmade causes
- **Vegetated coastal shoals, bars, and mudflats** – areas covered by tidal waters during high tide and exposed or covered with a maximum of one-foot of water during low tide; vegetated
- **Broad-leaf vegetation** – lands that receive a daily flushing from fresh tidal waters;

characterized by broad leaf emergent vegetation

- **Intertidal marsh** – area lying generally between the high and low tide elevations in saline waters
- **Fresh marsh** – area found in upper tidal limits of riverine system where significant amounts of fresh water inflow dominates the tidal zone
- **Graminoid vegetation** – includes all lands that receive periodic flushing from fresh water; generally at a higher elevation than the broad-leaf vegetation category; dominated by salt meadow grass
- **High marsh** – the upper most tidal zone; periodically flooded during spring and by storm events
- **Swamp shrub** – areas that receive periodic inundation from tidal fresh waters; dominated by shrubs
- **Swamp tree** – receives periodic inundation from tidal fresh waters; dominated by tree species
- **Fern marsh** – receives periodic inundation from tidal fresh waters; dominated by ferns

A portion of the state’s tidal wetlands are already mapped and included in the Tidal Wetlands Inventory Mapping. The southern portion of the Hudson River, which includes the Tappan Zee Bridge to New York City and its five Boroughs, was mapped in 1974. The NYS Department of Environmental Conservation (NYSDEC) is in the process of mapping tidal wetlands from the Tappan Zee Bridge north to the Troy Dam. This mapping effort was included as a goal of the Hudson River Estuary Management Plan, issued by Governor Pataki in 1996.

Through the completion and updating of the Tidal Wetland Inventory, it is hoped that the regulation of the State’s tidal wetlands will improve and that these ecosystems will be better protected and managed. Tidal wetlands are regulated by the NYSDEC under the Tidal Wetland Act included in Article 25 of the Environmental Conservation Law. This Act was passed by the NYS Legislature in 1973 in order to protect these areas from filling and dredging activities. Since the onset of the Tidal Wetlands Act, the loss of tidal wetland has shifted from human caused factors to primarily natural factors such as storm events. At the federal level, New York’s tidal wetlands are regulated by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act (1972) and Section 10 of the Rivers and Harbors Act (1899).

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## 2010 NYS WETLANDS FORUM CONFERENCE ANOTHER SUCCESS – GO BUFFALO!

Anne L. Secord

The 2010 New York State Wetlands Forum meeting in Buffalo was a success, judging by the comments on the survey forms and the infamous “anecdotal reports.” Most attendees liked the Buffalo location and the Millennium Hotel, citing the good quality of the facilities and convenient access from the interstate. We started off the meeting with a keynote address from an international neighbor, Mr. Ryan Archer, (Bird Studies Canada), who discussed the Marsh Monitoring Program. We filled out the remainder of Day one with 33 presentations, covering a wide variety of topics ranging from urban restoration along the Buffalo River to rayed bean and clubshell mussel surveys to nutrient dynamics in Lake Ontario coastal wetlands. The most popular sessions, in terms of participants, seemed to be stream management, vernal pools, wetland mapping/regulation and rare species. The morning of our second day was spent learning about the U.S. Army Corps of Engineers (Corps) Interim Regional Supplement and Indicator Plant List, as well as hearing regulatory updates from the Corps, U. S. Environmental Protection Agency and New York State Department of Environmental Conservation.

There were 158 participants this year, down from 187 that attended our meeting last year in Poughkeepsie and down from the record 241 participants who joined us in Waterloo in 2008. Considering the lackluster economy and travel budget restrictions for many of our members and other meeting participants, the Board is pleased that so many people were able to join us and give wetland aficionados in Western NY a chance to have the meeting closer to them.

Next year, quite a few conference attendees are interested in hearing more about the Regional Supplement, with strong interest also expressed in mitigation and the NYSDEC wetland mapping. We will plan on offering sessions on those topics. We are also planning to host a training workshop this fall on the Corps Regional Supplement – look for the announcement elsewhere in this newsletter.

We welcomed a few students this year from both the State Universities of Brockport and Fredonia, presenting in both platform and poster sessions. In upcoming years, we want to encourage our students and, as always, will offer a discounted student rate. Our field

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## UPCOMING CHANGES TO NATIONAL WETLANDS PLANT LIST

— Joseph M. McMullen

The wetland indicator plant list is undergoing a major revision. For those who did not attend the Wetlands Forum annual conference in April, where I made a presentation on the review process and current status, let me briefly review what is happening.

As most of you know, plants are assigned an indicator status category based on their fidelity or faithfulness to wetland or upland habitat. This assignment is based on a frequency of occurrence in a wetland or upland, *i.e.* how often you see a given species in a wetland or upland situation. The indicator categories are as follows.

OBL – Obligate wetland plants

FACW – Facultative wetland plants

FAC – Facultative plants

FACU – Facultative upland plants

UPL – Obligate upland plants

Plus (+) and minus (-) modifiers were also assigned to all facultative categories, with + indicating a slightly wetter fidelity and - indicating a slightly drier fidelity.

Our bible over the years for the plant status indicators was Buck Reed's 1988 "*National List of Plant Species that Occur in Wetlands: 1988 National Summary*" (Reed (1988)). It was the reference of indicator categories for the 1987 wetland delineation manual (Environmental Laboratory 1987) and is also the current reference in the Northeast and Northcentral Regional Supplement (U.S. Army Corps of Engineers 2009). The one exception in the regional supplement is that the + and - modifiers were eliminated.

Although Reed (1988) is our only formally accepted indicator plant list, it should also be noted that a major effort was expended in the early to mid 1990s to revise Reed (1988). This effort was spearheaded by Ralph Tiner of the U.S. Fish and Wildlife Service (USFWS), who was in charge of the list at the time. Unfortunately, after years of effort and publication in the Federal Register, this list (Tiner *et al.* 1995) was never formally accepted by all four of the federal agencies involved. Ralph told me once that approval fell apart because agreement could not be reached on four plant species.

In a Memorandum of Agreement in December 2006, authority of the wetland plant list was transferred from the USFWS to the Corps. Bob Lichvar of the Corps' Cold Regions Research & Engineering Laboratory is the Director of the National Wetlands Plant List. In September 2008, he authored a report on the Concepts and Procedures for Updating the National Wetland Plant List (Lichvar and

Minkin 2008). This procedure established a National Panel and Regional Panels of Corps, USFWS, NRCS, and USEPA personnel to review the indicator plant list. The first round of review was completed in April 2009 and the second round in February 2010. A review of the rankings by external academic botanists was also part of the process and was to be completed in May 2010. As a gauge of the potential changes, Bob recently told me that of the approximately 8,500 species on the draft version of the list, less than 10% had indicator status changes.

After these reviews, the list will be published in the Federal Register and opened up to public comment. Once it is published in the Federal Register, which according to Bob Lichvar is expected to be mid August 2010, votes can be cast and comments provided as to the recommended indicator status of a given species. This will be an on-line voting process accessed at the following web site: <https://rsgis.crrel.usace.army.mil/apex/f?p=703>.

Comments and votes will be collected and reviewed and a final updated National Wetland Plant List published. Bob feels that comments made along with votes are important; he is hopeful that the final list will be published in early 2011.

There will also be a challenge process to change the indicator status of a given species once the final list is published. This appeals process will have a specific sampling protocol that must be followed to challenge a ranking.

One last note, the new list will update the scientific nomenclature, which has undergone considerable change recently. Lists of synonyms and common names will be provided. The intent is to update the nomenclature on a regular basis in the future.

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## THE TIDE ROLLS IN: AN ARTICLE ON TIDAL WETLANDS

[Cont'd. from page 6]

Current management objectives for tidal wetlands in New York State include achieving a no net loss policy for these areas, continuing to improve wetland regulations, and maintaining restoration and enhancement activities. The events of the past several months in the Gulf serve to remind us that these fragile ecosystems exist, even in New York State, and that there are countless species and livelihoods that depend on the accessibility and quality of these areas.

## 2010 NYS WETLANDS FORUM CONFERENCE ANOTHER SUCCESS

[Cont'd. from page 6]

trips took folks to Iroquois National Wildlife Refuge, the Seneca Bluffs Site along the Buffalo River and the Niagara River Gorge.

We thanked Kevin Bliss, our chair for the last three years, for his hard work and welcomed Melissa Toni as the new chair. She is joined by Vice Chairs, Fran Reese and Mike Fishman, Treasurer Stephanie Wojtowicz and Secretary Kevin Bliss.

Survey respondents made suggestions for where to hold next year's meeting. Although a number of respondents suggested locales such as Lake George, the Finger Lakes, Catskill, and central New York, the most requested location was Lake Placid. The Board has decided that it is time to return to this beautiful Adirondack town, the site of our very popular 2007 annual meeting.

Lastly, we want to offer a big thanks to all our exhibitors and sponsors, who help make this annual meeting possible with their financial and professional support of the group. They include Bond, Schoeneck & King, PLLC, Stearns & Wheler-GHD, Inc., Terrestrial Environmental Specialists, Inc., The Chazen Companies, Applied Ecological Services, Inc., Barton & Loguidice, P.C., Environmental Design Partnership, LLP, Ernst Seeds, O'Brien & Gere Engineers, Inc., Pinelands Nursery and Upstate Wetlands Application.

As always, we hope to see you next year!



## **NYSWF MEMBERSHIP!**

The New York State Wetlands Forum needs you! This organization of 150 members consists of environmental planners, scientists, professors, land stewards, volunteers, policy makers, students, natural resource managers, lawyers, government staff, homebuilders, developers, land protection advocates, and many others! Please consider joining our group.

Your \$35.00 tax-deductible membership contribution will be pooled with contributions from individuals from throughout New York State to help the group remain an impartial, reliable source of information on wetland issues.

A non-advocacy organization, the New York State Wetlands Forum has addressed and will continue to provide coverage on issues such as:

- Supreme Court Rulings on Section 404 Jurisdiction
- Mitigation Programs- Banking, In-Lieu-Fees, Establishment, Restoration, Enhancement
- USACE 1987 Delineation Manual Supplement
- Changes in the Wetland Plant Indicator Status Document
- Changes in NY State Regulations
- Biological Resources: Hydrophytic Plants, Hydric Soils, Fauna

Membership contributions enable the New York State Wetlands Forum to hold multi-day annual conferences at a different location in NY every year, with a theme dependant on the regional location. The annual conferences feature multiple presentations with break-out sessions, several field trips, and great networking opportunities. We also hold other workshops throughout the year depending on the need and the topic. Past workshops have included Hydric Soils, Wetland Plant Identification, Mitigation Banking Workshop, and this year we will be hosting the USACE Wetland Delineation Manual Supplement Training.

Members specifically enjoy:

- An information-packed seasonal (Winter, Spring, Summer, Fall) newsletter, The Forum, that reviews and discusses late-breaking wetland topics, regulatory updates, and other useful items.
- An invitation and reduced registration for our very popular two-day annual conference.
- Announcements and reduced registration at other meetings, workshops, and field excursions in New York State.
- Opportunities to advance wetland knowledge in New York State by serving on our Board of Governors and/or participating on the Forum's committees.

Please visit our membership website at: <http://www.wetlandsforum.org/membership.htm> to join on-line!

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*A publication of*  
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