

THIS IS A COURTESY COPY OF THE WETLANDS ACT OF 1970, N.J.S.A. 13:9A-1 ET SEQ. THE OFFICIAL VERSION IS PUBLISHED IN THE NEW JERSEY STATUTES. IF THERE ARE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE STATUTE, THE OFFICIAL VERSION WILL GOVERN.

“Wetlands Act of 1970”

UPDATED THROUGH P.L. 2016, ch.32, and JR 3 of 2016

13:9A-1. Legislative intent; inventory and mapping of tidal wetlands; filing in office of county recording officer

a. The Legislature hereby finds and declares that one of the most vital and productive areas of our natural world is the so-called "estuarine zone," that area between the sea and the land; that this area protects the land from the force of the sea, moderates our weather, provides a home for water fowl and for 2/3 of all our fish and shellfish, and assists in absorbing sewage discharge by the rivers of the land; and that in order to promote the public safety, health and welfare, and to protect public and private property, wildlife, marine fisheries and the natural environment, it is necessary to preserve the ecological balance of this area and prevent its further deterioration and destruction by regulating the dredging, filling, removing or otherwise altering or polluting thereof, all to the extent and in the manner provided herein.

b. The Commissioner of Environmental Protection shall, within 2 years of the effective date of this act, make an inventory and maps of all tidal wetlands within the State. The boundaries of such wetlands shall generally define the areas that are at or below high water and shall be shown on suitable maps, which may be reproductions or aerial photographs. Each such map shall be filed in the office of the county recording officer of the county or counties in which the wetlands indicated thereon are located. Each wetland map shall bear a certificate of the commissioner to the effect that it is made and filed pursuant to this act. To be entitled to filing no wetlands map need meet the requirements of R.S. 47:1-6.

13:9A-2. Authority of commissioner to adopt, modify or repeal orders regulating, altering or polluting coastal wetlands; coastal wetlands defined

The Commissioner may from time to time, for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting, coastal wetlands. For the purposes of this act the term "coastal wetlands" shall mean any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey along the Delaware bay and Delaware river, Raritan bay, Barnegat bay, Sandy Hook bay, Shrewsbury river including Navesink river, Shark river, and the coastal inland waterways extending southerly from Manasquan Inlet to Cape May Harbor, or at any inlet, estuary or tributary waterway or any thereof, including those areas now or formerly connected to tidal waters whose surface is at or below an elevation of 1 foot above local extreme high water, and upon which may grow or is capable of growing some, but not necessarily all, of the following: Salt meadow grass (*Spartina patens*), spike grass

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(*Distichlis spicata*), black grass (*Juncus gerardi*), saltmarsh grass (*Spartina alterniflora*), saltworts (*Salicornia Europaea*, and *Salicornia bigelovii*), Sea Lavendar (*Limonium carolinianum*), saltmarsh bulrushes (*Scirpus robustus* and *Scirpus paludosus* var. *atlanticus*), sand spurrey (*Spergularia marina*), switch grass (*Panicum virgatum*), tall cordgrass (*Spartina pectinata*), hightide bush (*Iva frutescens* var. *oraria*), cattails (*Typha angustifolia*, and *Typha latifolia*), spike rush (*Eleocharis rostellata*), chairmaker's rush (*Scirpus americana*), bent grass (*Agrostis palustris*), and sweet grass (*Hierochloe odorata*). The term "coastal wetlands" shall not include any land or real property subject to the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to the provisions of P.L.1968, chapter 404, sections 1 through 84 (C. 13:17-1 through C. 13:17-86).

13:9A-3. Public hearing; notice to owner; recordation of orders

The commissioner shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the county in which the coastal wetlands to be affected are located, giving notice thereof to each owner having a recorded interest in such wetlands by mail at least 21 days prior thereto addressed to his address as shown in the municipal tax office records and by publication thereof at least twice in each of the 3 weeks next preceding the date of such hearing in a newspaper of general circulation in the municipality or municipalities in which such coastal wetlands are located.

Upon the adoption of any such order or any order amending, modifying or repealing the same, the commissioner shall cause a copy thereof, together with a plan of the lands affected, including reference to the filed wetlands map or maps on which the same are shown and a list of the owners of record of such lands, to be recorded in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment, and shall mail a copy of such order and plan to each owner of record of such lands affected thereby.

13:9A-4. Regulated activity; necessity of permit to conduct; application; notice; determination of issuance

a. For purposes of this section "regulated activity" includes but is not limited to draining, dredging, excavation or removal of soil, mud, sand, gravel, aggregate of any kind or depositing or dumping therein any rubbish or similar material or discharging therein liquid wastes, either directly or otherwise, and the erection of structures, drivings of pilings, or placing of obstructions, whether or not changing the tidal ebb and flow. "Regulated activity" shall not include continuance of commercial production of salt hay or other agricultural crops or activities conducted under section 7 of this act.

b. No regulated activity shall be conducted upon any wetland without a permit.

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c. Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland shall file an application for a permit with the commissioner, in such form and with such information as the commissioner may prescribe and shall provide notice to each electric or gas public utility in the State and to each owner of all real property as shown on the current tax duplicate, located in the State and within 200 feet in all directions of the property which is the subject of such application in the manner prescribed by section 7.1 of P.L.1975, c. 291 (C. 40:55D-12). Such application shall include a detailed description of the proposed work and a map showing the area of wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent land and known claimants of rights in or adjacent to the wetlands of whom the applicant has notice. All applications, with any maps and documents relating thereto, shall be open for inspection at the office of the Department of Environmental Protection.

d. In granting, denying or limiting any permit the commissioner shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shell fisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in section 1a. of this act.

13:9A-5. Jurisdiction of violations

The Superior Court shall have jurisdiction to restrain violations of orders issued pursuant to this act.

13:9A-6. Complaint by landowner affected by order; recordation of finding

Any person having a recorded interest in land affected by any such order or permit, may, within 90 days after receiving notice thereof, file a complaint in the Superior Court to determine whether such order or permit so restricts or otherwise affects the use of his property as to deprive him of the practical use thereof and is therefore an unreasonable exercise of the police power because the order or permit constitutes the equivalent of a taking without compensation. If the court finds the order or permit to be an unreasonable exercise of the police power, the court shall enter a finding that such order or permit shall not apply to the land of the plaintiff; provided, however, that such finding shall not affect any other land than that of the plaintiff. Any party to the suit may cause a copy of such finding to be recorded forthwith in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment.

The method provided in this section for the determination of the issue shall be exclusive, and such issue shall not be determined in any other proceeding.

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13:9A-7. Application of act on powers and duties of certain state departments or agencies

No action by the commissioner under this act shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the State Department of Environmental Protection, the Natural Resource Council and the State Mosquito Control Commission in said Department, the State Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of the Revised Statutes.

13:9A-8. Application of act to riparian lands

Nothing in this act or any permit issued hereunder shall affect the rights of the State in, or the obligations of a riparian owner with respect to, riparian lands.

13:9A-9 Violations; penalties.

9. a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

- (1) Issue an administrative enforcement order requiring any such person to comply in accordance with subsection b. of this section; or
 - (2) Bring a civil action in accordance with subsection c. of this section; or
 - (3) Levy a civil administrative penalty in accordance with subsection d. of this section;
- or
- (4) Bring an action for a civil penalty in accordance with subsection e. of this section; or
 - (5) Petition the Attorney General to bring a criminal action in accordance with subsection f. of this section.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies.

b. Whenever, on the basis of available information, the commissioner finds a person in violation of any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an administrative enforcement

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order: (1) specifying the provision or provisions of P.L.1970, c.272, or the rule, regulation, permit or order of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration to address any adverse effects upon a coastal wetland resulting from the violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the administrative enforcement order.

c. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto. Such relief may include, singly or in combination:

- (1) A temporary or permanent injunction;
- (2) Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;
- (3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects upon a coastal wetland resulting from any violation for which a civil action has been commenced and brought under this subsection;
- (4) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection. Recovery of damages and costs ordered under this subsection shall be paid to the State Treasurer;
- (5) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each violation continues shall constitute an additional, separate and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, duration and conduct; provided, however, that prior to the

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adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall include a reference to the section of the statute, regulation, order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final administrative enforcement order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final administrative enforcement order after the expiration of the 35-day period. Payment of the assessment is due when a final administrative enforcement order is issued or the notice becomes a final administrative enforcement order. The authority to levy a civil administrative order is in addition to all other enforcement provisions in P.L.1970, c.272, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until 90 days after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. A person who violates any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, or an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct

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offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999."

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day of violation, or by imprisonment, or both.

g. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto.

13:9A-10. Short title

This act may be cited as "The Wetlands Act of 1970."