

The Wetlands Stewardship Act

How Senate Bill 9 will protect nontidal wetlands





History

In 1972, the Clean Water Act was passed.

The CWA regulates pollution discharged into U.S. waters, sets water quality standards, and prevents filling and dredging of wetlands.

An aerial photograph of a winding river or stream. The water is a deep, dark blue, reflecting the sky. The banks are covered in dry, brown grass and numerous bare, thin trees. There are several small islands or peninsulas in the water, also covered in dry vegetation and bare trees. Patches of white snow are scattered across the landscape, particularly on the right bank. The overall scene is a natural, somewhat desolate wetland environment.

History

Tidal wetlands have been protected since the Delaware Wetlands Act was passed in 1973.

The law gave the state authority to regulate dredging, filling, and construction in marshes and areas regularly flooded by tides.



History

The Delaware Wetlands Act did not cover nontidal wetlands (also called freshwater wetlands).

Maryland and New Jersey acted in the late 1980s to strengthen wetland protection by including nontidal wetlands.

Since then, seven attempts to protect nontidal wetlands in Delaware have failed.

We are still the only state in the region without state level safeguards for freshwater wetlands.

History

There have been three major changes to wetlands regulations under the CWA since 2015.

The most recent left 75,000 acres of our nontidal wetlands unprotected.

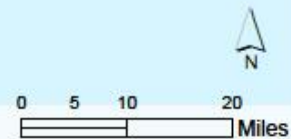


Delaware Tidal and Non-tidal Isolated Wetlands SWMP (2017)

Delaware freshwater wetland protection varies by county. In New Castle County, freshwater wetlands are protected by the Unified Development Code (UDC), at 100%. Kent and Sussex Counties use the federal definition of wetlands to determine which wetlands require state and federal permits to disturb. Freshwater wetlands that are not tidally influenced and are not contiguous with a water body (based on the Waters of the US definition), are not protected.

Isolated FW Wetlands

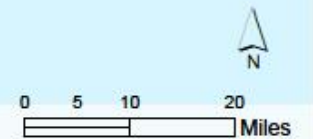
- Non-tidal
- Tidal
- Stream
- Open water
- County

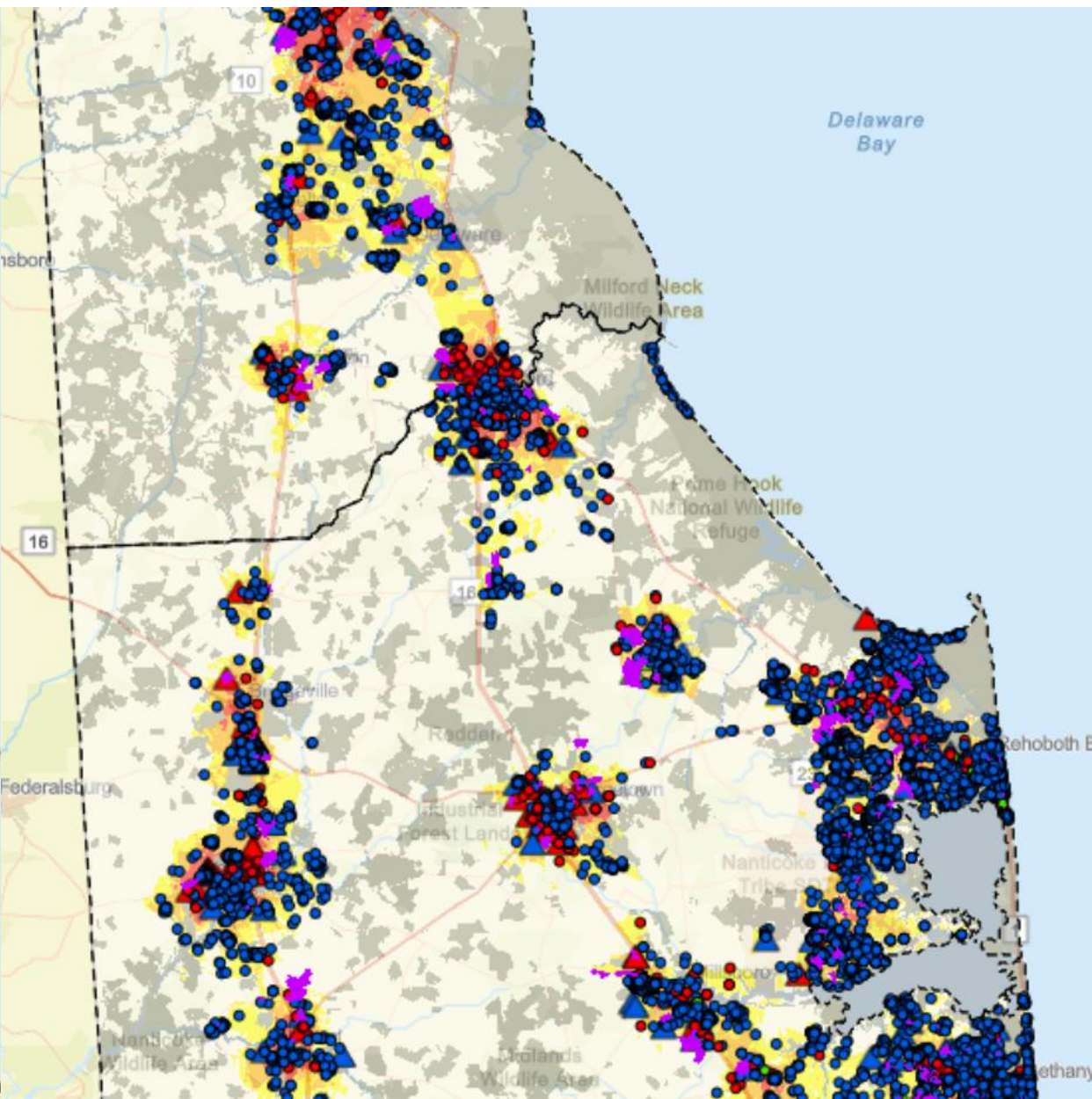
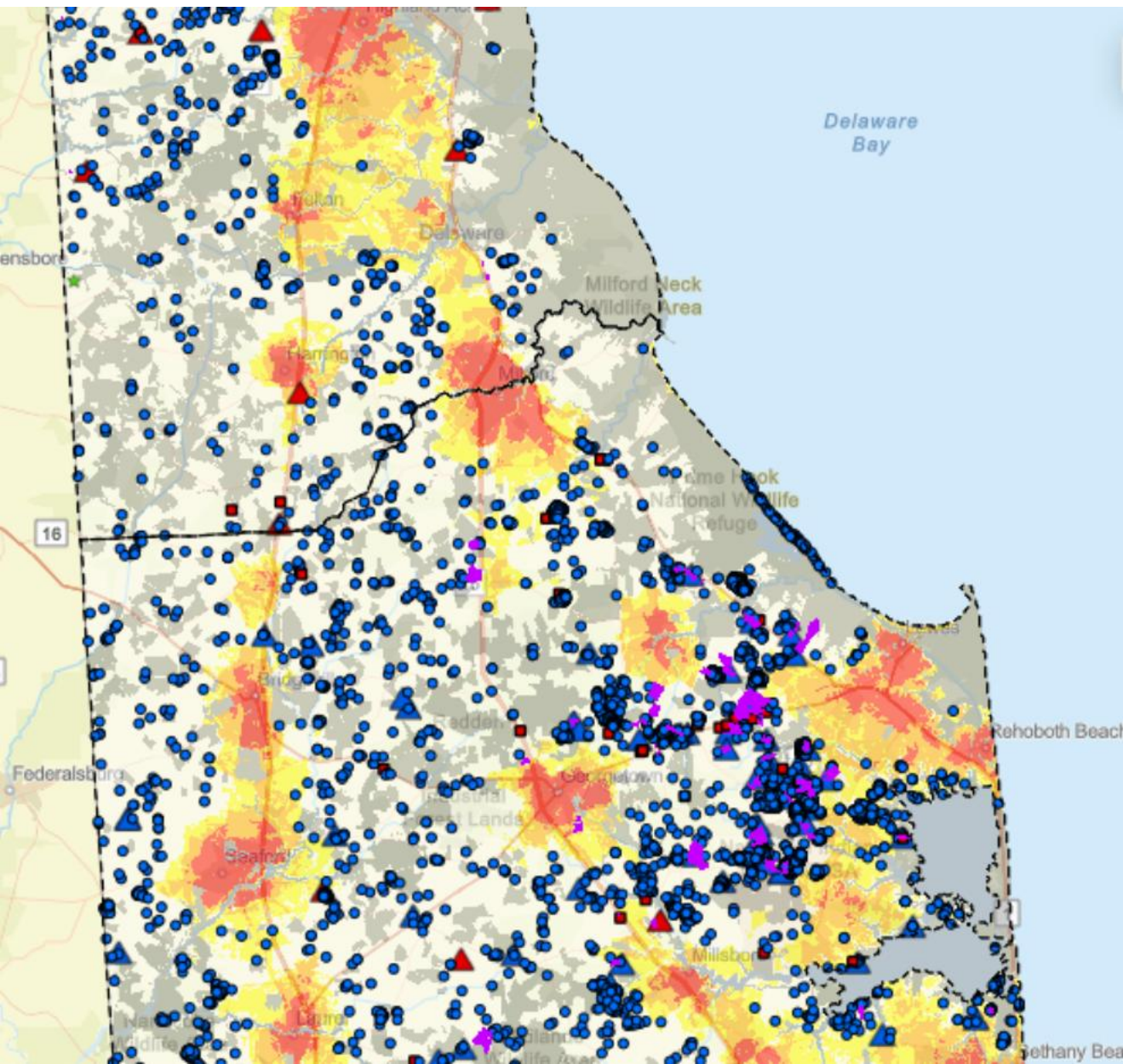


Delaware Tidal and Non-tidal Wetlands SWMP (2007)

Wetlands

- Non-tidal
- Tidal
- Stream
- Open water
- County





Why?

Our freshwater wetlands need protection for two major reasons:

- to shield Delaware from adverse changes in federal law
- to protect what remains and the invaluable ecosystem services they provide





Why?

- It's consistent with aims of the Wildlife Management Plan: protecting habitat
- It's consistent with aims of the Climate Action Plan: protecting resources that sequester carbon
- It's consistent with State Strategies for Policy and Spending
- Wetlands help manage stormwater
- Freshwater wetlands help ensure safe drinking water

History

Since 1988, there have been seven attempts to protect nontidal wetlands. None succeeded.



History

SJR2 required DNREC to identify resources needed a state nontidal wetlands permitting program (2021)

SCR86 required an update (2023)

SB290 (204)

A new bill, The Wetlands Stewardship Act (Senate Bill 9), will get a vote in the Senate tomorrow.





What SB9 Does

SB9 institutes a program for tidal and nontidal wetlands

Fills gaps in federal jurisdiction under the CWA

Requires permits for some activities, speeds wetland permitting processes

Applicant must prove whether a proposed activity is within tidal or nontidal wetlands



What SB9 Does

Permit considerations:

- Environmental impact
- Effect on nearby uses
- Comprehensive plans
- Job creation and economic effect
- Aesthetic effect

What SB9 Does

Protects Exceptional Value Wetlands

- Coastal Plain seasonal ponds, inner-dune depression meadows, peatland fens, Piedmont stream valley wetlands, bald cypress swamps, Atlantic white cedar swamps, or black ash seepage swamps
- High-function wetlands that maintain the highest rating of function, condition and health



What SB9 Does

Exempts from permitting:

- Farming
- Silviculture
- Conservation practices
- Hunting, fishing, trapping, and duck blinds





What SB9 Does

Exempts from permitting:

- wildlife nesting structures
- mosquito control activities
- construction of certain drainage features
- some foot bridges
- normal gardening and lawn and landscape maintenance

What SB9 Does

Conditionally exempts:

- Some activities that would be allowed under a nationwide permit issued by the USACE
- Work performed by a state, county, or municipal government or conservation district on some nontidal wetlands in the Delaware Atlantic Coastal Plain
- Nontidal wetlands equal to or less than a contiguous 0.50 acres, if they don't qualify as Exceptional Value



What SB9 Does

Establishes the Wetlands Regulatory Advisory Committee to help DNREC the initial regulations required under and to evaluate the permitting processes.

The Committee will later review DNREC's implementation of the initial regulations and provide a final report recommending legislative or regulatory improvements.



What SB9 Does

Nontidal and tidal wetlands would be determined by a new Delaware Wetland Screening Tool

The tool would help ensure the proper permitting procedures are used and would identify Exceptional Value Wetlands



What SB9 Does

General permits would be established for projects with little to no environmental impact.



Costs

\$1 million in general start-up costs

\$765,419 in recurring costs

First-year total to \$1.73 million

Cost be offset by \$250,000 in annual revenue






Why Might this Finally Pass?

Two-year collaboration of stakeholders

Led by Senator Stephanie Hansen

A photograph of a dense forest with many trees and thick undergrowth. The text is overlaid on the image.

Thank you
Questions?

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What Can You Do Now?

- 1. Wetlands – Comment to your state representative on SB9 - An Act To Amend Title 7 Of The Delaware Code Relating To The Protection Of Wetlands**
- 2. Become a forest advocate – visit sussexpreservationcoalition.org for more information, and/or email us at spcde.org@gmail.com. Mark your calendar for July 14 and sign up tonight to attend the meeting on July 14 meeting!**