

DFWMR FW 15-01

New York State Department of Environmental Conservation

Division of Fish, Wildlife and Marine Resources Freshwater Wetland Guidance Series

Issuing Authority: Patricia Riexinger
Director, Division of Fish, Wildlife & Marine Resources

Signature: _____

Title: Policy Memorandum FW15-01: Change to Portion of Policy FW 87-1 to Change the Expiration of Freshwater Wetlands Determinations and Delineations

Prior Guidance: Policy Memorandum FW 87-1:
CONFIRMATION OF FRESHWATER WETLANDS
DETERMINATIONS AND DELINEATIONS
Date Issued: August 19, 1987

Latest Date Revised: October 19, 2015

Originator: Tim Post, Wetland Program Manager, DFWMR Bureau of Habitat

*** NOTICE ***

This document has been developed to provide Department staff with guidance on how to ensure compliance with the statutory and regulatory requirements, including case law interpretations, and to provide consistent treatment of similar situations. This document may also be used by the public to gain technical guidance and insight regarding how Department staff may analyze an issue and factors in their consideration of particular facts and circumstances. This guidance document is not a fixed rule under the State Administrative Procedures Act subsection 102(2)(a)(I). Furthermore, nothing set forth herein prevents staff from varying from this guidance as the specific facts and circumstances may dictate, provided staff's actions comply with applicable statutory and regulatory requirements. This document does not create any enforceable rights for the benefit of any party.

I. Summary: This policy memorandum establishes a five (5) year time period within which determinations and surveyed delineations of freshwater wetlands will be considered fixed. This is a change from the three (3) year time period established in paragraph 10 of Policy Memorandum FW 87-1, and provides for consistent treatment of jurisdictional determinations and delineations by the Department and the United States Army Corps of Engineers (USACE). Implementation of this policy will provide greater certainty to the regulated public during the permitting process.

II. Policy: It is the policy of the Division of Fish, Wildlife and Marine Resources that field verified freshwater wetlands determinations and surveyed wetland boundary delineations conducted pursuant to ECL 24-0301(7) will be honored for a period of five (5) years, as long as the procedural requirements set forth in paragraphs 1 through 9 and 11 of Policy Memorandum

FW 87-1 are followed. After five years, determinations and delineations will be considered expired and subject to change until a new determination or delineation is conducted.

III. Purpose and Background: The purpose of this policy is to provide greater certainty to the regulated public by establishing a five (5) year delineation hold period during which determinations and delineations conducted and/or approved by DEC staff pursuant to ECL 24-0301(7) and the procedural requirements of Policy Memorandum FW87-1 will be considered fixed.

In 1987, Policy Memorandum FW 87-1 established a delineation hold period of three (3) years during which determinations and delineations would be considered fixed. At the time FW 87-1 was issued, the US Army Corps of Engineers (USACE) relied on the same three (3) year time period, however, the USACE has since increased the time period to five (5) years within which a wetland delineation may be considered valid. Extending the DEC delineation hold period from three (3) years to five (5) years will provide the public, specifically developers and landowners, with two additional years to rely on the delineation of the relevant wetland boundaries while they attempt to complete their projects without the potential for a change in the Department's determination. Increasing the delineation hold time period to five (5) years will facilitate the permit process by giving ample time for permittees to obtain a permit and begin construction. This change has the added benefit that DEC now provides the same time period to expiration of a jurisdictional determination as does the USACE for delineations of federally regulated wetlands, thereby providing greater certainty to the public. It will also reduce staff time needed to complete delineations because they will need to be done less frequently.

IV. Responsibility: The Freshwater Wetland Program Manager within the Bureau of Habitat, Division of Fish, Wildlife and Marine Resources, is responsible for maintaining and updating this policy, as needed. The Regional wetland biologists and Division of Environmental Permits are responsible for maintaining a record of the determinations and delineations of freshwater wetlands regulated by the state for five (5) years pursuant to this policy unless otherwise provided for in FW 87-1.

V. Procedure: This policy only applies to the time period within which the Department staff will consider a freshwater wetland determination or delineation fixed, and supersedes paragraph 10 of FW 87-1. All other procedures set forth in FW 87-1 are unchanged and remain valid.

VI. Related References: Policy Memorandum FW 87-1 dated August 19, 1987, and a Memorandum dated October 2, 1992 by Kyle N. Williams addressing Policy Memorandum FW 87-1: Time Periods for Freshwater Wetland Determination and Delineation "Hold" provide additional information that supports or otherwise clarifies the contents of the Policy. The USACE Regulatory Guidance Letters (RGLs), specifically RGL 05-02 and 90-06 regarding the expiration of wetlands jurisdictional determinations, provides details on the USACE's policy concerning its treatment of wetland determinations.