

# WETLAND CONSERVATION AND MANAGEMENT GUIDLINES FOR SOUTH DAKOTA STATE AGENCIES



**DEVELOPED BY  
SOUTH DAKOTA  
INTERAGENCY WETLANDS WORKING GROUP:**

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SD DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
SD DEPARTMENT OF GAME, FISH AND PARKS  
SD DEPARTMENT OF TRANSPORTATION**

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# **WETLAND CONSERVATION AND MANAGEMENT GUIDELINES FOR SOUTH DAKOTA STATE AGENCIES**

## **Preface**

The term “*WETLAND*” is sometimes viewed as synonymous with conflict and confusion in portions of South Dakota. To some, wetlands represent a nuisance with a confusing and frustrating array of regulations. To others, wetlands must be protected at all costs no matter whom this affects or how it effects them. To many, however, wetlands represent a valuable natural resource in biology, ecology, and hydrology, all intricately linked to private and public quality of life issues.

The leadership of South Dakota’s state natural resource agencies felt a need to develop a set of guidelines to address wetland issues. These agencies recognized a need to establish a consistent approach to wetland issues. A scientific survey of randomly selected citizens indicates that a majority (86.5%) believe that wetlands are important for a high quality of life. Nearly 82 percent believe that wetlands are important in preserving water quality and that they should be protected. However, many landowners are concerned about the flexibility to manage and utilize these areas while maintaining many of the functions and values of a wetland.

Early in 1998, the State of South Dakota received a grant from the federal Environmental Protection Agency (EPA) to develop a state wetland policy. Representatives from four state agencies: the Department of Agriculture, the Department of Environment and Natural Resources, the Department of Game, Fish and Parks, and the Department of Transportation formed the South Dakota Interagency Wetlands Working Group (IWWG). They developed a draft policy.

Recognizing the need for public comment and input, the IWWG conducted a series of 13 meetings held statewide in May and June of 1998. Over 200 people attended and more than 2,000 comments concerning the draft were submitted. The public appeared confused about the scope of this document. Some commenters felt the draft was a set of “wetland regulations”. This was not the intent. It was also felt the title of the document was misleading; so it was changed to a “strategy”. With this revision, the word “guidelines” has been inserted. Many other important issues and concerns were raised including: wetland definition and delineation; landowner rights; taxes; federal vs. state jurisdictional and enforcement responsibilities; promulgation of laws; wetland management; and, multiple use of wetlands. There were significant landowner concerns relative to private property rights. In no way does this guidance hinder or infringe upon private property rights. Furthermore, all the agencies have a responsibility to manage, protect, and preserve the natural resources of the state. Some of the comments received were beyond the jurisdiction of the State of South Dakota, or were not relevant to the draft document.

All comments received during the review process are available by contacting the State Department of Agriculture at 605-773-3623.

**This document explains wetland conservation and management guidelines for state agencies in South Dakota. This set of guidelines is designed to provide state natural resource agencies with an overall view of wetland issues for their use in providing financially and environmentally viable wetland conservation and management programs.** These programs should provide voluntary, incentive based options to landowners to maintain the multiple benefits wetlands provide to all South Dakota residents. It will help ensure that state government agencies involved with projects that affect wetlands will recognize and consider wetland functions and wetland concerns in their policy and program development. This document is not static. Sections may be added as new technology, studies or information is generated regarding South Dakota wetlands.

The following guidelines were used to help develop this document:

1. This guidance document is not a rule or a law and is not intended to become a rule or law.
2. This guidance document will not and cannot take precedence over federal wetland rules and regulations.
3. Wetlands are a valuable resource with multiple benefits.
4. Wetlands are a source of serious land management concerns to many landowners.
5. The rights of landowners and operators will be respected: their role in the stewardship of land is recognized and their ongoing cooperation is encouraged.
6. The most effective approach for use of this document is to establish and maintain open communication and to develop cooperative partnerships between the public, landowners, and all levels of government.
7. The public will continue to be informed of wetland issues.

## **Background**

1. The following definition appears in the Food, Agriculture, Conservation, and Trade Act of 1990 as amended in 1996, commonly known as the Food Security Act of 1990 and 1996. This definition is generally accepted by most federal agencies. In the interest of uniformity, it is recommended that the State of South Dakota also adopt this definition.

Definition of “Wetland”:

***“Land that has a predominance of hydric soils; is inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and under normal circumstances does support a prevalence of such vegetation.”***

Wetlands are dynamic ecosystems, and water levels and vegetation often fluctuate seasonally and annually. Open water may or may not be present and vegetation ranges from floating or submerged aquatic plants in open water to cattails, rushes, sedges, shrubs and willows along the edge of the wetland. Therefore, land that is wet does not necessarily qualify as a wetland, and conversely, not all wetlands are wet all the time. Flooded lands may contain wetlands but not all flooded lands are wetlands.

2. Much of the misunderstanding with wetlands began long ago at the federal level with inconsistent definitions and confusing jurisdictional questions. Confusion about wetlands is understandable. For years, one department of the federal government paid for wetland drainage while another paid to prevent it. Today, that confusion has lessened as a result of an agreement dated January, 1994, between the U.S. Department of Agriculture (USDA), U.S. Army Corps of Engineers (COE), the U.S. Fish and Wildlife Service (FWS) and the U.S. Environmental Protection Agency (EPA). That agreement clarified the regulatory roles of the various federal agencies and provided better consistency in how wetlands are delineated by federal agencies. As a result, the Natural Resources Conservation Service (NRCS) of the USDA now is the lead federal agency with regulatory authority over agricultural activities in wetlands. The COE retained regulatory authority for dredging and filling activities in all waters of the United States, including wetlands. The other federal agencies serve supporting roles.

Confusion also exists over federal wetland protection activities. The federal government uses various approaches to protect wetlands, including acquisition, economic incentives, and regulation. Acquisition involves purchasing wetlands in fee title or acquiring easements. This approach is also used by private conservation organizations. Economic incentives are available to private landowners to conserve wetlands. Under the federal tax code, landowners that donate wetlands to a

government agency or a qualified conservation organization can claim the value as a charitable deduction. In recent years, Congress has passed laws that create economic disincentives to wetland destruction. One example is the “Swampbuster” provision of the Food Security Act of 1985. It discourages conversion of wetlands to farmland by eliminating most farm program benefits for anyone who produces crops in wetlands converted (e.g. drained) after December 23, 1985 – the date the law was enacted.

3. Current federal regulatory guidance under the Clean Water Act recommends the following sequence for activities conducted in wetlands: 1) avoid impacts adversely affecting wetlands whenever possible, 2) if impacts to wetlands are unavoidable, then minimize impacts using best available technology, 3) mitigate or compensate for impacts made to wetlands – keeping in compliance with the “No-Net Loss” presidential order.

Section 404 of the Clean Water Act establishes the major federal program that regulates activities in wetlands. Under this law, the discharge of dredged or fill material into waters of the United States – including most wetlands – requires a permit from the U.S. Army Corps of Engineers. Failure to obtain a permit or to comply with the terms of the permit can result in civil and/or criminal penalties. The Corps issues a public notice of a permit application to inform citizens and government agencies, including EPA, of the proposed project and to solicit public comment. The Corps evaluates permit applications based upon two standards: regulations developed by EPA in conjunction with the Corps guidelines which set the environmental criteria for permitting projects in wetlands; and factors to determine if the project is in the public interest.

Under Section 401 of the Clean Water Act and South Dakota Codified Law, anyone proposing to conduct an activity that may result in a discharge of pollutants to waters of the state and that requires a federal license or permit for the activity must obtain a certification from the Department of Environment and Natural Resources. This certification process allows the state to protect water quality, including wetlands. The certification states that there is a reasonable assurance that the activity will not result in a violation of water quality standards and includes other applicable water quality controls, and may include conditions to protect waters of the state.

4. Occasionally, South Dakota state agencies are mistakenly blamed for wetland rules and the subsequent enforcement of federal wetland laws. Within, South Dakota State government, at least four agencies have varying responsibilities dealing with wetlands.

The South Dakota Department of Agriculture is responsible for the promotion, enhancement, and sustainability of South Dakota agriculture. To that end, the department works with landowners, the states’ 69 conservation districts, and other agencies and groups to maintain or improve the quality of the land. Soil and water quality are maintained or improved with implementation of a multitude of conservation practices available to landowners. Conservation programs are primarily

supported by the South Dakota Coordinated Soil & Water Conservation Fund. These funds are considered state funds and are used to leverage significant federal funds used on conservation activities in South Dakota.

The South Dakota Department of Game, Fish and Parks (SDGF&P) promotes conservation, restoration, and where appropriate, creation of wetland habitat as part of its public-and private-land wildlife habitat programs. As provided for in Section 404 of the Clean Water Act and related federal regulations, the U.S. Army Corps of Engineers is required to consult with SDGF&P to evaluate the potential adverse effects to fish and wildlife habitat resources that might result from a regulated dredging or filling activity. This department provides comments and recommendations to the Corps of Engineers regarding how adverse effects to aquatic habitat resources can be avoided, minimized, or mitigated.

The State Department of Environment and Natural Resources provides environmental and natural resource assessment and regulation that provides protection of public health, conservation of natural resources, and preservation of the environment. Within this department, the Watershed Protection Program works to improve and maintain the water quality of South Dakota's lakes, streams, wetlands, and groundwater in partnership with citizens. Many watershed projects use federal and state grants to improve and protect South Dakota's water quality.

The State Department of Transportation (DOT) deals with wetland issues as they plan and construct roads and highways, some of which affect wetland resources. Transportation officials have established the first wetland mitigation banking system in South Dakota to replace wetlands lost due to road construction. The department's wetland bank is established between SDGF&P, the Federal Highway Administration, the U.S. Fish and Wildlife Service, and DOT.

5. Most of South Dakota's wetlands are largely referred to as "prairie potholes" - natural depressions in the landscape, courtesy of retreating glaciers 12,000 years ago. Potholes vary in size from a fraction of an acre to hundreds of acres. Those Ice Age events left nearly 25 million depressions in a region of 300,000 square miles covering portions of five north central states and three Canadian provinces. In South Dakota, depressional wetlands are found, primarily, east and north of the Missouri River. Wetlands occur in the western portion of the state, but are less numerous.

Approximately 2.2 million acres of surface water cover eastern South Dakota. Three main types of wetlands occur in the state, ponds (palustrine), lakes (lacustrine), and rivers (riverine). Ponds, including marshes and sloughs, are generally small - less than 20 acres, and shallow - less than 6 feet deep. Within this group are the temporary, seasonal, and semi-permanent wetlands. Temporary wetlands hold water for brief periods during the growing season. The water table is usually well below the soil surface when water is not present. Seasonal wetlands usually hold water for extended periods, usually through June or later, during the growing season. When not ponded, the water table is usually at or near the ground surface. Semi-permanent

wetlands hold water throughout the year in most years, although they may dry up during prolonged droughts.

Lacustrine wetlands, sometimes referred to as the permanent wetlands, are the lakes, impoundments and deep-water habitats that cover nearly 372,000 acres of eastern South Dakota and include several large reservoirs of western South Dakota. Riverine wetlands are the drainage networks of streams and rivers that total 9,937 miles in South Dakota. Riverine wetlands cover approximately 69,000 acres in eastern South Dakota.

6. Wetlands play an integral part in the water cycle. Some wetlands allow surface water to percolate into the ground and help maintain groundwater levels. Wetlands also act as natural filters by capturing sediment, neutralizing some contaminants and purifying water, thus improving the water quality of neighboring rivers and lakes.

South Dakota wetlands can reduce overall flooding and contribute to soil and water conservation by storing riverbank overflows and upland surface runoff water. Trees and other wetland vegetation help slow the speed of floodwaters, lowering flood heights on primary waterways and reducing the water's erosive potential. Some groundwater used by farmers is partially recharged by wetlands. To a limited degree, surface water stored in man-made wetlands is also used for irrigation, livestock watering, and crop spraying. Wetlands provide a source of hay with yields twice as high as typical upland grass stands. However, these grasses are typically considered of poor quality and low value. Wetlands also help control the spread of salts into cropland, and trap snow in the winter.

Wetland plants including sedges, rushes and marsh grasses provide habitat for invertebrate and vertebrate food sources for birds and other wildlife, and spawning areas for fish.

A variety of wildlife including ducks, over 100 fish, 80 bird, 25 mammal, 17 amphibian, and 10 reptile species depend on South Dakota wetlands. They provide the most productive breeding habitat in North America for waterfowl and many other game and non-game wildlife species. Waterfowl use wetlands as resting sites during migration. Several species of wildlife rely solely on wetlands for their survival. Threatened and endangered birds such as piping plovers, least terns, and whooping cranes all find refuge in wetlands. Other rare or uncommon species use wetland habitat for survival. Wetlands provide a water source for all wildlife and a valuable winter cover for resident wildlife, particularly whitetail deer and pheasants. Altogether, wetlands are among the most productive natural ecosystems in the world.

Wetlands and associated habitats play a key role in supporting outdoor activities such as hunting, fishing, wildlife watching and photography, trapping, and guiding. Main fur-bearing species trapped in wetlands include mink, muskrats, raccoons, and beaver. South Dakota trappers and predator hunters recently took over \$500,000 in furs during a single season, some of these from wetlands. The estimated wholesale and

retail value of fathead minnows as baitfish harvested from South Dakota wetlands in 1996 exceeded \$2 million.

Wetlands provide opportunities for wildlife watching, nature photography, outdoor classrooms and laboratories for school children, college students, wildlife biologists, and other researchers interested in wetland ecosystems.

7. Wetlands are a cause of concern for some citizens of South Dakota. If a landowner wishes to drain a wet area on his property to improve access and farmability he risks losing farm program benefits on the entire farm.

Some South Dakota landowners feel they are being unfairly penalized when compared to landowners in neighboring states who are allowed farm program benefits even after wetland altering activities has occurred simply because they were implemented prior to December 23, 1985. Many landowners feel if they must maintain wetlands in South Dakota to be eligible for farm program benefits, then neighboring state's should have to restore or rehabilitate their lost wetlands as well, no matter the date of manipulation.

South Dakota landowners feel they are placed at a competitive disadvantage. Farming around wet areas increases the cost of production in a segment of the agricultural economy struggling to survive.

Another concern brought forward through public input was that of improperly sized or installed culverts for roads.



## **State Agency Guidelines**

1. South Dakota State government will promote awareness and understanding of the benefits and concerns of wetlands. Agencies will gather additional wetland information and share existing information in order to make informed decisions when projects or programs affecting wetlands arise. The Division of Resource Conservation and Forestry within the South Dakota Department of Agriculture will coordinate wetland information activities.
2. Each state natural resource agency will identify personnel who can respond to public inquiry concerning wetland questions and who can direct the public to the appropriate state or federal agency for further information.
3. South Dakota state government agencies will consult with each other when developing strategies for wetland management or enhancement and will consider wetland conservation in the strategies. The IWWG will serve as the focus and advisory group for state agencies.
4. South Dakota state government will encourage development of Best Management Practices for wetlands. The IWWG can assist in identifying contacts that can provide technical assistance in development of local priorities.
5. South Dakota state government will work toward ensuring that state government policies and programs encourage the maintenance of wetlands through cooperation with landowners in habitat enhancement and watershed protection programs administered by state natural resource agencies.
6. South Dakota state government will gather wetland use information and provide effective, economically feasible options for landowners to productively manage their wetland resource.
7. Technical assistance from State sources may be available from the South Dakota Department of Agriculture - Division of Resource Conservation and Forestry (605-773-3623), South Dakota Department of Environment and Natural Resources - Watershed Protection Program (605-773-4254), South Dakota Department of Game, Fish and Parks - Wildlife Division (605 773-3381), South Dakota Department of Transportation (605-773-3265), local Conservation Districts, South Dakota Planning and Development Districts, or South Dakota Water Development Districts.

For federal assistance, and information about incentive programs, landowners are encouraged to contact the Natural Resources Conservation Service for initial guidance. Additional federal assistance may be available from the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, or the U.S. Farm Service Agency.

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