

North Dakota State Wetland Program Summary



Photo Caption: Prairie Pothole Region in North Dakota

Photo credit: U.S. Fish and Wildlife Service

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Section A. Quick View

Description of North Dakota's Wetlands

More than 90 percent of the wetlands in the State are classified as natural basin wetlands, commonly called prairie potholes. The prairie potholes primarily contain persistent-emergent wetlands, variously called wet meadows, marshes, and fens. Other palustrine classes that exist but are not common in North Dakota are scrub-shrub wetlands and forested wetlands.

State Definition of Wetlands

Wetlands are defined in North Dakota's Administrative Code as "water bodies, including isolated ponds, sloughs, and marshes [that] are to be considered waters of the state and will be protected under [general water quality standards]. Definitions of wetland are not in the state's Century Code or Water Quality Rules.

Historic Wetland Loss/Gain in North Dakota

Original Wetland Acreage	Remaining Wetland Acreage	Acreage Lost	% Lost
4,927,500	2,490,000	2,437,500	49%

Source: US Fish and Wildlife Service (Dahl, 1989)

Primary State Wetlands Web Page

<https://www.ndhealth.gov/WQ/>

State Wetland Program Plan

North Dakota does not have a State Wetland Program Plan; however it does have a Statewide *Water Quality Monitoring Strategy* which includes plans for monitoring wetlands: <http://water.epa.gov/type/wetlands/upload/nd-wpp.pdf>

No Net Loss Goal

The state does not have a formal “no net loss” goal at this time. The state previously had a formal no net loss goal that was repealed in 1997.

State Resources for Wetland Work

Information to be added.

Innovative Features:

- North Dakota’s monitoring and assessment program

Models and Templates:

- *Wetland Mitigation Banking in North Dakota-Interagency Guidance for Mitigation Bank Sponsors* provides information addressing North Dakota’s wetland resources and describes methods for offsetting unavoidable losses that have proven effective throughout the State. Wetland banking has intrinsic value to facilitate and streamline project development. The document provides specific procedures, guidance and recommendations for establishing, operating and maintaining wetland banks in North Dakota. The document, based on collaboration among the participating agencies has been written to help resource/ permitting agencies, organizations and the general public to understand and implement mitigation banking.

Section B. North Dakota’s Regulatory Approaches

How are North Dakota’s Wetlands Regulated?

North Dakota regulates wetlands primarily through §401 water quality certification under the Clean Water Act (CWA). North Dakota Department of Health’s Division of Water Quality (DWQ) is the state’s primary permitting agency and is developing a bio assessment program with the goal to develop wetland-specific state water quality standards. The Office of the State Engineer oversees permitting for any drainage of basin that has a drainage area exceeding 80 acres. State and federal agencies coordinate regularly to discuss §404 permit applications that involve impacts to North Dakota’s aquatic resources. NDDOH, NDGFD, USFWS, the Corps, and SWC meet every two weeks to discuss current projects, permits, and wetland issues in the state. NDGFD and FWS also share information on wetland issues weekly.

The division of North Dakota’s wetland activities between multiple agencies and divisions can be summarized as follows:

1. **North Dakota Department of Health.** The North Dakota Department of Health (NDDOH) – Division of Water Quality (DWQ) conducts §401 certification from its office in Bismarck.
2. **North Dakota Game and Fish Department.** The North Dakota Game and Fish Department (NDGFD) acts as a commenting agency through the §404 process. Comments are submitted in biweekly meetings and through formal letters to the U.S. Army Corps of Engineers’ Bismarck office.
3. **Office of the State Engineer.** The Office of the State Engineer (OSE) oversees permitting for the draining of any water resource, including wetlands, and watershed projects that have an area greater than 80 acres. The Water Resource District Board may require conditional criteria for approval of a project. If the project is deemed to have statewide or inter-district significance, it must still undergo review by the District Water Board, which is required to conduct a hearing. It is also subject to “re-review” and informational hearings by the OSE. However, permits are rarely given this determination; typically, permits are granted if the applicant complies with the conditions set during the re-review hearings.

Wetland Delineation

Delineation Method	Yes	No	Detail
Use State's Own Delineation Method		X	
Use Corp '87 Manual Regional Supplement	X		The Corps conducts wetland delineations in North Dakota.
Other		X	

Evaluation Methodology

The state does not have its own evaluation methodology. The Corps conducts wetland evaluations in the state. The state requires in state law the use of Certified Soil Classifiers.

Exempted Activities

1. **Exemptions for North Dakota's 401 Program:** Standard 404 exemptions apply in North Dakota

2. **Exemptions for North Dakota's Drainage Program (Office of the State Engineer)**

A drainage permit under § 89-02-01-03 is not required for maintenance of a drain. Permit requirements do not apply to any drain constructed under the direct and comprehensive supervision of the federal or state agencies specified in this section. The agencies capable of providing supervision and analyzing downstream impacts are: the State Water Commission; the Army Corps of Engineers; the Natural Resources and Conservation Service, for projects constructed pursuant to the Watershed Protection and Flood Prevention Act; the Bureau of Reclamation, for projects that are part of the originally authorized Garrison Diversion Unit authorized in 1965; and the State Department of Transportation, for federal aid projects.

Special Provisions for Agriculture and Forestry

Comparable to federal provisions.

Penalties and Enforcement

Violations to state water quality standard rules are handled by the NDDOH or referred to the Corps and EPA as lead agencies for investigation and resolution. Complaints of violations to the state's water resource drainage laws may be reported to the applicable Water Resource District Board. Injunctions, criminal penalties, and civil penalties are available for enforcement under the state's drainage requirements. However, in practice, complaints are almost always immediately addressed and resolved without legal proceeding or fines. The maximum fine is \$25,000/day for discharge of water pollution into a Water of the State.

Permit Tracking

The North Dakota Office of the State Engineer has a comprehensive database of all drainage applications and permits. This database began in the late 1960's and includes all information found on the permit application. The SWC records all constructed water projects in the state that require permitting, and this includes the restoration of drained wetlands or the construction of new wetlands.

Permit Coverage (Statewide or Regional)

<i>North Dakota</i>	Yes	No
Regional		X
Statewide		X

Assumption of Section 404 Powers

Assumption Status	Yes	No	Detail
Assumed		X	
Working Toward Assumption		X	
Explored Assumption	X		Funding was the major factor in deciding not to pursue assumption in 1997.

Joint Permitting

None.

Special Area Management Plans and Advanced Identification Plans

None.

Mitigation Policy

North Dakota has not adopted regulations, policies, or legislation for wetland mitigation, deferring to the Corps for mitigation under CWA §401/404. North Dakota Department of Transportation (DOT) also has a mitigation program for their transportation projects.

Mitigation Measures

North Dakota defers to the Corps for mitigation under CWA §401/404.

Mitigation Database

North Dakota does not maintain state system for tracking mitigation. Mitigation is conducted by the Corps and tracked by the Corps using the RIBITS national database. ND DOT has its own mitigation database.

Section C. Monitoring and Assessment

Agency Responsible for Wetland Monitoring and Assessment

The North Dakota Department of Health coordinates its Monitoring and Assessment Program with the U.S. Department of Agriculture's National Resource Conservation Service (NRCS), North Dakota State University, and the U.S. Environmental Protection Agency. The DWQ also coordinates a bioassessment program to develop wetland-specific water quality standards for North Dakota and to conduct regional wetland quality assessments using a probabilistic sampling design.

Mapping/Inventory

North Dakota has "complete" National Wetland Inventory maps by the US Fish and Wildlife Service.

State Wetland Mapping Information Portal

The state has these maps available on the state's GIS Hub: <http://www.nd.gov/gis/>

Wetland Classification and Assessment

North Dakota uses the Cowardin classification system for classifying state wetlands. The state has no other formal classification or assessment tools. Annual waterfowl surveys in the spring include some wetland information as indices of water conditions.

Statewide Monitoring Plan

The North Dakota Department of Health's Division of Water Quality Surface Water Quality Management Plan has monitoring plan, entitled "*North Dakota's Water Quality Monitoring Strategy for Surface Waters 2008-2019*" which was last revised in January 2014: <http://water.epa.gov/type/wetlands/upload/nd-wpp.pdf>. This plan has a portion dedicated to wetland monitoring and assessment.

Overall Wetland Gain and Loss Tracking System

As part of North Dakota's *Water Quality Monitoring Strategy* (2008-2019), North Dakota is working to identify subwatersheds and conducted change analyses to determine the extent of wetland gains and losses in Souris River Basin.

North Dakota's wetland monitoring and assessment program has the following characteristics:

Level	None	Level 1	Level 2	Level 3
<i>North Dakota</i>		X	X (NDRAM)	X (As part of NWCA intensification)

Type	None	IBI	Condition	Functional
<i>North Dakota</i>		X (IPCI doe semi permanent and permanent wetlands and index of plant community integrity)	X (NDRAMX)	X (HGM; Collected HGM data on all 53 NWCA intensification sites)

Frequency	None	Project Specific	Ongoing
<i>North Dakota</i>		X	X (Through 2019; reliant on successive EPA grants)

National Wetland Condition Assessment (NWCA) Participation

NWCA Study Type	Yes	No
National Study	X	
State Intensification Study	X	

NWCA Intensification Detail: As a complement to the 2011 National Wetland Condition Assessment, North Dakota received a Region 8 Wetland Program Development Grant to conduct an intensification study within the state, as well as within the Prairie Pothole Region (PPR) of the state. The NWCA study, consequently, collected data from 11 NWCA sites and 43 intensification sites. Sampling was conducted by NDOH, ND State University, NRCS.

Section D. Wetland Water Quality Standards

North Dakota currently applies existing water quality standards to wetlands in the state. The DWQ coordinates a bioassessment program working to develop wetland-specific water quality standards for North Dakota.

Type	None	Use Existing WQ Standards	In Process	Adopted	Future Direction
Wetland-specific Designated Uses		√			The state is considering creating designated uses for wetlands
Narrative criteria in the standards to protect designated wetland uses		√			
Numeric criteria in the standards based on wetland type and location to protect the designated uses		√			
Anti-degradation policy includes wetlands		√			

To download the state's water quality standards, go to:

http://www.ndhealth.gov/wq/sw/Z6_WQ_Standards/B_WQ_Standards.htm

Section E: Voluntary Restoration and Protection

Type of Work	YES	NO	Description
Fund Wetland Restoration (may include easement agreements)	X		
Private Land Restoration	X*		*Only for Water Banks projects
Public Land Restoration	X		Natural Resources and NRDC

Technical Assistance	~		Minimal from NDF&G
Tax Incentives		X	
Other		X	

Description: North Dakota is in the process of revitalizing the state’s former “WaterBank” restoration program. The program has well-developed goals to protect wetlands and allows for restoration. The program is starting to work with 319 projects to coordinate efforts.

Effort	Nothing in the Works	Planning	In Progress	Complete
Program has a set of restoration goals	√			
Coordinate with relevant agencies that outline restoration/protection goals and strategies and timeframes	√			
Develop multi-agency body to coordinate restoration/ protection efforts	√			
Set restoration goals based on agency objectives and available information	√			

Additional Goals for Voluntary Restoration Projects:

Goal	Yes	No
No Net Loss	X	
Net Gain	X	
NPS	X	
TMDLs	X	
Habitat	X	
Coastal Protection	N/A	
Floodwater Storage	X	
Groundwater	X	

North Dakota landowner guides/handbooks to assist with voluntary restoration efforts:

None.

Section F. Innovative Education and Outreach

North Dakota does not conduct education or outreach related to wetlands. However, the North Dakota Fish and Game Department did publish an outreach publication that has been used by educators in the state:

- Habitats of North Dakota: Wetlands (2008) – Publication of the North Dakota Game and Fish Department
http://ndstudies.gov/sites/default/file/wetlands_web.pdf

Climate Change and Wetlands

North Dakota does not formally do climate change work and the wetland program is not working on climate change projects. However, the wetland program does work on water retention projects that involve wetland work. The state is

also looking at flood and drought management issues, some of which involve wetlands. North Dakota does not have a state climate change adaptation plan.

North Dakota’s climate has changed more dramatically than any other state. Its annual average temperature increased 0.26° F per decade during the last 130 years, the fastest increase in the nation.” (See [National Climate Assessment for Great Plains](#).) The North Dakota State Climate Office contributed to the Regional Climate Trends and Scenarios for U.S. National Climate Assessment – Climate of the U.S. Great Plains, released January 2013. In 2003, the State of North Dakota published its Integrated Planning Report and Environmental Impacts Statement for Environmental Resources,” which outlined various changes in climate scenarios (predicted for the future) for water resources. It also detailed changes in groundwater and flow regimes in watersheds, specifically for the Devils Lake Watershed: http://www.ndhealth.gov/WQ/DevilsLake/2003/DevilsLakeEIS/Volume_1_Abstract-Chapter_2.pdf. Additionally, while the State has not formally taken any action with regard to climate change, invasive species are a source of concern for the State. The North Dakota Game and Fish Department has developed a predictive model for aquatic nuisance species, called the ANS Trophic Cascade Model.

Section G. Integration Efforts

Entity/Program Area	Yes/No	Description of the Connection
NPDES/Stormwater	YES	BMPs are in place for stormwater that include wetlands
301	YES	There is a wetlands section in the integrated report; regional assessment and intensification project
303(d)	NO	
TMDL	YES	Watershed restoration work has wetland practices as part of TMDL plans
Climate Change/ Climate Resiliency	Not as CC	Specific to drought and flooding
Land Use Planning/watershed planning	YES	The state has a basin water quality planning process which is just starting to include wetlands as a factor for assessment as a requirement
Flood/Hazard Mitigation	YES	Devil’s Lake area is looking at watershed storage and has a voluntary program where can restore wetlands to store more water
Coastal Work	N/A	
Other (Specify)	MP	

State Wetland Program Development Continuum

Continuum Stage	Core Element 1: Regulation	Core Element 2: Monitoring & Assessment	Core Element 3: Wetland Water Quality Standards	Core Element 4: Voluntary Restoration
Mature Stage High	401 Certification Program	X (indicator, NWCA intensification, Level 1-3)		X WaterBanks Formal program, being strengthened
Initial Implementation Stage				
Development Stage				
Early Stage Low			X (No wetland- specific standards)	

Section J. State Wetland Program Contacts

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Section K. Useful Website Links for North Dakota

State Government Programs

1. Department of Health
 - a) Division of Water Quality
 - i. Groundwater Protection Program

<http://www.ndhealth.gov/WQ/GW/gw.htm>

- ii. Wastewater Program
<http://www.ndhealth.gov/WQ/WasteWater/WasteWaterProgram.htm>
- iii. Surface Water Quality Management Program
<http://www.ndhealth.gov/WQ/WasteWater/WasteWaterProgram.htm>
- iv. Storm Water Program
<http://www.ndhealth.gov/WQ/Storm/StormWaterHome.htm>
- v. Nonpoint Source Program
http://www.ndhealth.gov/WQ/SW/Z1_NPS/default.htm

2. Game & Fish Department

Fall Wetland Survey

<http://www.gf.nd.gov/news/fall-wetland-survey-conducted>

3. State Water Commission

<http://www.swc.state.nd.us/4dlink9/4dcgi/redirect/index.html>

4. Department of Agriculture

a) Waterbank Program

<http://www.nd.gov/ndda/program/waterbank-program>

5. Parks & Recreation Department

a) Natural Heritage Program

<http://www.parkrec.nd.gov/nature/heritage.html>

Federal Government Programs

1. USDA Natural Resources Conservation Service

Wetlands Reserve Program

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/nd/programs/easements/wetlands/>

Other Organization Wetland Programs

1. North Dakota Natural Resources Trust

<http://www.ndnrt.com/?id=1>