

# Executive Summary



Protecting and Restoring the Kidneys of the Great Lakes:  
An Assessment of Wetlands Programs in Michigan, Minnesota, Ohio and Wisconsin  
July 2009  
By Jane Reyer, Coral Wolf, and Michael Murray, Ph.D.



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Wetlands are a crucial component of the Great Lakes Ecosystem and surrounding region. In addition to providing habitat for fish, waterfowl and other wildlife, they produce a diverse array of other services such as protecting shorelines, stabilizing water supplies (through both floodwater storage and groundwater replenishment), and reducing chemical loads in polluted runoff (serving as the kidneys of the Great Lakes). These tangible benefits of wetlands provide valuable economic benefits to everyone.

Yet the Great Lakes region has lost over 50 percent of its wetlands, and some coastal areas of the Great Lakes have seen 95 percent declines. Despite federal and state wetlands protection programs and ongoing efforts at mitigating wetlands losses, it is not clear that we are meeting the no net loss goal for wetlands extent, and even less clear regarding wetland health.

This report examines the key aspects of wetland protection programs in four Great Lakes states (Michigan, Ohio, Wisconsin, and Minnesota). We assessed the level of protection as well as programs for restoration, and identify opportunities to improve these programs.

We focused on the following wetland program elements: condition assessment, permitting program/sequencing process; inventory and permit tracking; protection of isolated wetlands; protection against drainage, exemptions, enforcement, mitigation, restoration programs; and public notice and participation. Results of the assessment show a varying picture on strengths and weaknesses in state programs, with a number of areas for improvement.

### Key Findings

- All four states have a very high percentage of applications approved.
- While all states have developed wetland condition assessment programs, Ohio's is likely one of the most sophisticated programs in the country.

- Wetland inventories are still not complete in most of the states.
- Statutory and/or rulemaking restrictions and exemptions pose challenges to coverage of some isolated wetlands.
- Statutory gaps in coverage of drainage activities remain in Ohio and Wisconsin.
- Exemptions for agricultural, forestry, and some drainage activities remain problematic, and losses associated with these activities are generally not tracked.
- In spite of reasonable siting priority language in statutes or rules, mitigation sometimes occurs far removed from impact sites, and the quality of mitigation projects is not always regularly tracked.
- Restoration efforts have been increasing in recent years, and all states have some type of wetlands restoration or broader Great Lakes restoration strategy in place or development, and have made some efforts at identifying potentially restorable wetlands.
- Public notice and participation procedures vary, ranging from online notices and other announcements in Michigan and Ohio to more restricted announcements in Minnesota, to lack of pre-decision notices in Wisconsin.

At the same time, we identified approximately two dozen recommendations for key components that we believe can help strengthen state programs. Some of the key recommendations include the following:

- Ensure a strong commitment to sequencing principles (in particular for some wetlands - such as lower quality and/or isolated wetlands receiving less protection), and ensure either statutory changes for review time frames or provision of adequate staffing and resources to thoroughly process permit applications in a manner that protects wetland resources.

- Periodically conduct an independent assessment of wetland extent, which will help provide a more complete picture of wetland changes.
- Conduct an assessment on protection of isolated wetlands, and identify potential options (including statutory and/or rule changes) to improve protection of such wetlands.
- Periodically assess the quality of mitigation projects, as was recently done in Ohio, and ensure that programs include components such as reference wetlands, a priority for on-site or within subwatershed (and in-kind) mitigation, and requirements for monitoring, use of performance standards, and financial assurances.
- Revise statutes and/or regulations as necessary to facilitate the pursuit of projects undertaken for purely restoration/ecological purposes, and expand efforts in developing potentially restorable wetlands inventories, as well as developing a scheme to aid in prioritization regarding restoration activities.
- Expand work on condition assessment of wetlands (such as pursuing the types of more sophisticated tools in widespread use in Ohio), and periodically report on changes with time; improved tracking and reporting of all (including exempt) wetland activities is also needed.
- Examine the potential for wetlands protection and restoration programs to incorporate climate change considerations in implementation.
- Finally, the U.S. Congress should formally restore Clean Water Act protections for isolated wetlands and other waters left unprotected by Supreme Court decisions over the past decade, and both Congress and the state legislatures need to provide increased funding to ensure effective implementation of regulatory and voluntary wetland protection and restoration programs.



## Summary of Recommendations for Each State

### Michigan

- Maintain administration of the Section 404 program, and identify additional resources (and potential increased efficiencies) to ensure effective implementation of the program.
- Modify or eliminate the statutory exemption language for non-contiguous wetlands less than five acres in size to ensure better protection for small, isolated wetlands.
- Reexamine exemptions (including agricultural and forestry), and fully address limitations identified in the USEPA program review.
- Track and report exempt and illegal activities; to supplement these efforts, the state could periodically conduct inventory surveys to better gauge the overall impact of human activities on the state's wetlands.
- Expand efforts at wetland condition assessment, and also incorporate a process for prioritizing wetlands in current restoration efforts, including the broader MI Great Lakes Plan.
- Ensure adequate funding is available to fully staff wetlands-related program work, including to allow for adequate response to citizen complaints of illegal activities (and otherwise full implementation of the compliance and enforcement program) and adequate monitoring of mitigation projects.
- not allowing application of the exemption to areas within a certain distance of sensitive or high quality natural resources (e.g., Lake Superior)
- restricting *de minimis* exemptions allowed on a parcel (to prevent additional activities/wetlands loss through subdivision process).
- Track and report on illegal and exempt activities, and either support or carry out efforts such as the U.S. Fish and Wildlife Service sample analysis of wetland changes, to better gauge the overall impact of human activities on the state's wetlands.
- Eliminate application of the "timing law" to decisions involving wetland activities, to ensure adequate review and input on decisions.
- Ensure that sequencing is followed in practice (with clear consideration of avoid and minimize options).
- Increase mitigation ratios (in particular for out-of-kind and out-of-watershed projects), and build on the recent restoration initiative in northeastern Minnesota in identifying restoration and preservation opportunities (with appropriate ratios and locations) in the region.
- Maintain the current enforcement approach, whereby enforcement and conservation officers are part of the decision-making process for ordering wetland restoration over replacement.
- Increase opportunity for public input on wetland decisions, potentially through development of a publicly accessible database/listing of applications.

### Minnesota

- Reexamine *de minimis* exemptions, including:
  - considering limiting the total acreage of *de minimis* exemptions allowed within each of the major watersheds of the state

### Ohio

- Fill the statutory gap in coverage of drainage and excavation of wetlands, in particular given potentially increasing pressures in agricultural areas with increasing biofuels production and ongoing development pressures.

- Examine opportunities to increase protection of isolated wetlands, including in or near urban areas, where a lower categorization that is often inherent means less protection, and thus lower opportunities to maintain or even restore these broad, more heavily impacted areas.
- Ensure that sequencing is followed in practice in reviewing permit applications, with clear demonstration of alternatives analysis.
- Track and report exempt and illegal activities to help ensure a more accurate picture of wetlands trends, as would periodic surveys of wetland extent.
- Expand on the approach proposed in 2006 calling for a preference for mitigation within the same 14-digit HUC (or current 12-digit USGS HUC) watershed, however extending to include category 1 wetlands (rather than just category 2 and 3), given the importance of maintaining or restoring wetlands in some more heavily impacted areas
- Simplify permitting requirements for wetland restoration projects (to facilitate, for example, restoration of lower quality wetlands that happen to be classified as category 3 because of proximity to Lake Erie).

## Wisconsin

- Fill the statutory gap in coverage of drainage of isolated wetlands (in other than shoreland districts), in particular with potentially increasing pressures in agricultural areas with increasing biofuels production and ongoing development activities.
- Complete the wetlands inventory, providing additional resources as needed for this important task.
- Improve compliance and enforcement efforts, including enhancing WDNR resources to educate and

inform landowners and local governments about wetland presence, encouraging disclosure requirements on wetlands in local zoning permits and real estate transactions, providing uniform citation authority for conservation wardens, and legislative provision of additional resources, including for compliance monitoring and enforcement.

- Track and report exempt and illegal activities, to help ensure a more accurate picture of wetlands trends (as would periodic surveys of wetland extent).
- Consider statutory or rule changes indicating that mitigation be required as part of any wetland permit issued, to ensure that the otherwise relatively strong program is utilized more often; the mitigation program itself could be strengthened by prioritizing mitigation in the smaller of the compensation search area or the 12-digit HUC watershed of the impact location, as well as ensuring adequate resources for monitoring.
- Build on work in identifying potentially restorable/priority wetlands for restoration, in particular in the Great Lakes watershed, and incorporate an ongoing process into implementation plans for the draft Great Lakes Strategy.
- Consider statutory and rule changes necessary to ensure opportunity for public comment on applications for isolated wetland permits, as well as simplify the process for obtaining a public hearing.

## Summary

While there have been a number of improvements in wetland protection and restoration programs in the four states assessed here, implementation of recommendations contained in this report will lead to even greater progress as we continue working toward increased protection and restoration of these vital natural resources in our region.

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