



# Protecting Recreation

ISSUE BRIEF SERIES · CHALLENGES & SOLUTIONS · GREAT WATERS NEW JERSEY

The rivers, lakes, streams and landscapes of Northwest New Jersey are second to none. They sustain farms and vineyards; attract wild trout and weekend visitors; and leave us with unforgettable memories of the outdoors. Our main streets and property values also depend on these natural riches, while millions of New Jersey households rely on our region for clean, affordable drinking water.

Sadly, year after year, the danger of losing these precious waters, and the character of the natural lands around them, grows. The effects of over-development, flooding, and toxic chemicals increasingly cloud our lakes, choke our fish, and make waters unsafe for people and pets. And while local leaders have made great strides over the past few years to address these issues, only the New Jersey Department of Environmental Protection (NJDEP) can fill in the gaps in our local efforts and provide safeguards that work at a regional scale. But before we can put the tools of NJDEP to work, we need to first help them understand how to protect what we love—the many, nuanced ways we use our waters for recreation.

## Current protections don't hold water

The Clean Water Act calls for every state to identify the recreational uses of its waters.<sup>(1)</sup> Unfortunately, “identification” is as far as it goes in New Jersey. While the term “waters of exceptional recreational significance” is written into the state’s Surface Water Quality Standards—the chief guidebook NJDEP uses to monitor and protect waterways—the phrase hasn’t been formally defined. More importantly, the concept has not been incorporated into the Department’s policies and procedures. For example, waters with obvious “exceptional recreational significance” may not be considered in permitting decisions. In practice, this means that an industrial warehouse could be sited next to a cherished trout stream, or a factory farm upstream from a tubing launch that brings municipalities thousands of dollars a year in tourism revenue.

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This loophole also exposes official National Wild and Scenic Rivers to contamination. As waterways that require coordinated pollution control by state and federal agencies under federal law<sup>(2)</sup> NJDEP's lack of well-defined recreational protections also exposes the state to legal challenges.

## Our proposal: Ensure New Jersey's waters are protected for recreation

A simple set of policy fixes at the state level can fill in that gaps in our local protections and guarantee fishable, swimmable, economically viable waters for generations to come. To that end, we urge the NJDEP to amend its Surface Water Quality Standards to achieve the following goals:

- define “exceptional recreational significance” with clear criteria that honors the breadth of ways we use our waters.
- comply with the National Wild and Scenic Rivers Act.
- raise the level of protection on all pre-existing federal- and state-designated recreational waters, as well as rivers and tributaries flowing through public lands to “Outstanding National Resource Waters” (ONRW)<sup>(3)</sup> status, which demands the state's highest level of water quality.
- ensure that water quality criteria suitable for recreational uses are incorporated into the NJDEP's Integrated Water Quality Assessment<sup>(4)</sup>, into proposals for changes in anti-degradation standards, and are utilized in agency permitting decisions.

## The win for Northwest New Jersey: a web of safeguards protecting our most precious waters

If implemented, our proposal would ensure:

- the highest level of protection of water quality (a designation of Outstanding National Resource Waters - ONRW<sup>(5)</sup> for New Jersey's five National Wild and Scenic Rivers<sup>(6)</sup>—all waters of National Parks, Recreation Areas, and Wildlife Refuges and State Parks, Forests, and Wildlife Management Areas with land under public ownership;
- increased collaboration between the National Park Service, which protects Wild and Scenic rivers, and NJDEP on permitting decisions.
- the highest level of protection for Federal- and state-designated water trails and trails with water routes<sup>(7)</sup>, to ensure people can recreate safely, free of water contamination.
- the highest level of protection (or at least a C1 designation— the second-highest protection) for New Jersey's premier trout fishing waters, including critical Native Brook Trout habitat, and areas where the state invests in stocking trout waters.

- A pathway for communities to propose higher protections for additional waterways and surrounding lands, including waters especially where they can document consistent recreational use (both in and on the water), the presence of public access points, use of nearby public parks, and conserved lands.

## Notes:

1. (16 USC 1283(c))
2. The Clean Water Act indicates waters can be designated for recreation (40 CFR 132.2). New Jersey does not assess recreational usage, despite it being a designated use. New Jersey has designated use for recreation on all waters; however, there is no criteria to assess and determine the recreational usage of a water. By comparison, New Jersey indicates all waters have a designated use for natural biota, defines exceptional ecological and fisheries significance, and utilizes explicit habitat and fisheries assessment criteria for regular assessment.
3. New Jersey has utilized the “exceptional recreational significance” concept to designate waters as Outstanding National Resource Waters (ONRW) with waters with public land underlying the water (N.J.A.C. 7:9B-1.4). However, this has not been applied consistently. For example, the section of the Musconetcong River flowing through Allamuchy State Forest and Stephens State Park, which is wholly in State ownership, is designated as FW2 and Category One. Some tributaries to the Delaware River located wholly in the Delaware Water Gap National Recreation Area are classed as FW2 and Category Two or Category One. (visit XXXXXX for a map prepared by Trout Unlimited to view current designations across Northwest New Jersey).
4. Required per 33 CFR 1315(b)(1)(B-C)
5. The EPA indicates that National Wild and Scenic designation alone is sufficient for Tier III anti-degradation standards as Outstanding National Resource Water. The Wild and Scenic Rivers Act states that “The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Administrator, Environmental Protection Agency and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river” (16 USC 1283(c)).
6. The National Park Service, which manages many of the national Wild and Scenic Rivers, indicates that Outstanding National Resource Water (ONRW) designation is appropriate and useful for managing water quality. New Jersey has 5 national Wild and Scenic Rivers: Great Egg Harbor River, Lower Delaware River, Maurice River, Middle Delaware River, and Musconetcong River.
7. There are multiple federal and state recreational designations for waters:
  - State Wild and Scenic Rivers. New Jersey has had a policy of designating rivers for a State Wild and Scenic River System (NJSA 13:8-48 - 63). State law requires the prevention of incompatible river management and development and requires the State designate all state lands along a designated river as part of the New Jersey Natural Areas System. The Mullica River, from Lake Atsion to Barnegat Bay and Cedar Creek are State-designated Wild and Scenic Rivers (NJSA 13:8-63; N.J.A.C. 7:5D-8.1(9)(v)).
  - National Recreation Trails with water routes. The National Trail System Act of 1968 granted authority for the designation of National Recreation Trails to the Secretary of the Interior. The Act has a purpose to “to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation” and indicates that Recreation Trails are “trails in or reasonably accessible to urban areas.” For example, the Hackensack River Greenway is a land and water trail designated a National Recreation Trail.
  - National Water Trails. The National Park Service established a National Water Trail System in 2012, as a class of National Recreational Trail in Secretary’s Order 3319. The Order states that “The National Water Trail System shall be a distinctive system that connects Americans to the Nation’s waterways and strengthens the conservation and restoration of those waterways by becoming a catalyst for protecting and restoring the health of local waterways and surrounding lands... Water trails are recreational routes ... that provide high quality outdoor recreational opportunities.” The Musconetcong Watershed, including Lake Hopatcong, Lake Musconetcong, and most of the Musconetcong River was designated a National Water Trail in 2020.
  - State Trails and Water Trails. The 2009 NJ State Trail Plan Update indicates that “A water trail (blue trail, blueway) can be described as a stretch of river, a canal, a shoreline, or other waterway navigable by canoe or kayak that provides an educational, scenic, or physically challenging recreational experience” (p. 12). For example, Cedar Creek is a State Trail with a water route and the Wharton Water Trails are designated Water Trails (N.J.A.C. 7:5D-8.1). The prior 1996 State Trail Plan identified at least 6 rivers, including the Musconetcong and Rancocas, as eligible for State Water Trail designation.