



G.L.A.H. News

Great Lakes Aquatic Habitat

WETLAND EDITION 2004 VOLUME 12 ISSUE 1

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ADMINISTRATION HALTS MAJOR ROLLBACK, CONTINUES STEALTH ASSAULT ON CLEAN WATER

By: JULIE SIBBING, WETLAND POLICY SPECIALIST, NATIONAL WILDLIFE FEDERATION



Photo courtesy of Lake Michigan Federation - Joel Brammeier

In a move that was greeted with much celebration, the Bush Administration recently announced that it was abandoning a planned rulemaking that could have eliminated Clean Water Act protections for up to 60 percent of the nation's waters. While this decision was a big win for the conservation and environmental community, in reality, less formal policy changes by the administration had already accomplished a significant rollback in implementation of the Act.

When the U.S. Supreme Court ruled in January of 2001 that Clean Water Act protections do not extend to certain "isolated" wetlands and ponds, conservationists were quite concerned. The court's ruling in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (the SWANCC case) struck

down the Corps' policy of applying protection to "isolated," intrastate, non-navigable waters, based solely on the fact that the water body is used by migratory birds. Although quite narrow, the decision did create a new loophole in Clean Water Act coverage of the nation's beleaguered wetlands. This loophole would apply not only to dredge and fill permits, but to all provisions of the Act, including regulation of point source pollution discharges, regulations governing oil spill liability, etc.

Yet few predicted that this narrow loophole could be seized upon by developers, mining interests and industry-friendly officials in the Bush administration to mount an unprecedented attack on the types of waters that receive protection under the Clean Water Act. Calling off a plan to issue an explanation of the

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ADMINISTRATION HALTS MAJOR ROLLBACK, CONTINUES STEALTH ASSAULT ON CLEAN WATER



DIRECTOR'S NOTES



FOCUS ON WETLANDS

BY JILL RYAN

This edition of the *Great Lakes Aquatic Habitat News* is dedicated to wetland issues in the Great Lakes Basin. GLAHNF has decided to focus on different themes as a way to highlight issues of interest and importance to citizens and grassroots groups. Our first theme is C.P.R. for Wetlands (Conserve, Protect, and Restore): breathing new life into our sense of place.

We hope this edition of the newsletter as well as the other wetland resources we have pulled together in the packet of wetland information will be of use to you in your local work. For groups working to protect or restore wetlands, we hope this information will provide tools to help with your current wetland work. For groups working on river, lake, or shoreline issues, we hope these materials will prove useful in your work to educate others about the connection between water resources such as lakes, rivers, wetlands and ground water.

This is also a request for your assistance. This is the first theme project we have undertaken, so we need some feedback from you. Please take a few minutes after reviewing the materials to return the assessment form included in the wetland packet. This will help us to understand how useful you think the materials might be in your work and your ideas of how you may use them. We will follow-up with another assessment in late spring to determine whether you have had opportunities to utilize the resources.

Thank you for your continued efforts to protect our water resources throughout the Great Lakes Basin.

Jill M. Ryan

narrow ruling to field staff in the summer of 2002, high level political appointees within the administration decided to push for a broadening of the loophole.

In January of 2003, the U.S. EPA and Army Corps of Engineers published an "Advance Notice of Proposed Rulemaking," to solicit public comment on what types of waters should be removed from protection under the Clean Water Act. At the same, they also issued a guidance memo to their field staff, directing them to immediately cease protection of what the U.S. EPA estimates is about 20 million acres of wetlands and other waters. While the rule-making has now been abandoned, this damaging guidance memo remains in effect, needlessly putting critical wetlands, streams and other waters at risk of unlimited pollution and destruction.

The guidance memo is most notable for the fact that it provides very little real guidance to field staff trying to figure out what the Supreme Court's SWANCC decision means. It gives an unbalanced and confusing (now out of date) discussion of lower court decisions that confuses more than it

enlightens. It does give clear direction that all "isolated" waters are to be removed from protection, though it does not define "isolated." This clearly goes beyond the SWANCC ruling which only eliminated protection for some "isolated" waters. It even allows that some streams should no longer receive protection. Perhaps most damaging, the guidance requires field staff to gain approval from headquarters prior to protecting any water that might be considered "isolated." If staff decides not to enforce the Act, they do not have to justify their decision or even keep track of their action. To date, only a handful of cases have been elevated to headquarters, strongly signaling that reg-

ulators are taking the path of least resistance and failing to regulate waters that are still clearly protected by law.

The National Wildlife Federation is currently reviewing the results of a Freedom of Information Act request for decisions not to extend Clean Water Act protections in the St. Paul, Minnesota district of the Army Corps of Engineers. Although not yet one-third of the way through the more than 3,000 decisions not to regulate,



*Wetland pasture, Ontario, Canada
Credit: USDA Natural Resources
Conservation Service, Romy Myszk*

ADMINISTRATION HALTS MAJOR ROLLBACK, CONTINUES STEALTH ASSAULT ON CLEAN WATER



and only half of the decisions note the acreage involved, we have already counted more than 2,000 acres of waters impacted. In numerous decisions, large lakes were ruled "isolated" and outside the scope of the Clean Water Act. While it is highly unlikely that the lakes are in fact "isolated," even if they are, they are clearly navigable and support interstate recreation in the form of fishing and boating – factors that should still ensure protection under the Act.

While the guidance memo and resulting failures to implement the Act begin to add up to major damage to the aquatic system, it is not surprising that the formal rule changes were abandoned. The administration received an unprecedented 135,000 letters on the Notice of Rulemaking, with 99 percent opposing any weakening of the Act. States weighed in heavily in opposition, with 39 out of 42 opposing weakening of federal protections. This overwhelming opposition led 218 members of the House of Representatives (a majority), and 23 Senators to sign a letter to the President, asking him to abandon the rulemaking and rescind the guidance memo.

Another key voice came from the hunting and fishing community. A Hunter/Angler Campaign for Clean Water was launched in July at a 12-state summit in Chicago sponsored by The National Wildlife Federation, Prairie Rivers Network, Ducks Unlimited and Trout Unlimited. A second summit in Atlanta and outreach to other regions expanded and accelerated the campaign. These sportsmen and

sportswomen generated thousands of letters to the President, talked to the media, and met with their federal legislators. In the end, the President met with leaders of the hunting and fishing community before announcing that the rulemaking would be withdrawn.

With the rulemaking off the table, attention must now turn to ensuring that less formal policy decisions do not continue to undermine the Act. While withdrawal of the guidance memo will be a major focus, ensuring that the administration enforces the Clean Water Act to the full extent of the law in every region of the country must also be a major focus. Efforts are underway in several states to establish state-level protection, or to defend existing protection, for waters no longer protected under federal law. These efforts deserve strong support.

Ultimately however, the battles will continue until Congress passes the Clean Water Authority Restoration Act (H.R. 962 and S. 473). This bill would end the SWANCC loophole and prevent the current efforts to carve this narrow loophole into a major gap in the protection of our nation's waters. Until then, there is much work to be done to ensure protection for our nation's waters.

To learn how you can help and to follow the latest on the guidance and legislation: www.nwf.org/wetlands/ or <http://waterforwildlife.org>

GLAHNEWS:

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Visit us on the web at:
www.glahabitat.org, and
www.GreatLakesDirectory.org

Disclaimer:

The Great Lakes Aquatic Habitat News is intended to provide a forum for the free exchange of ideas among citizens and organizations working to protect aquatic habitats in the Great Lakes Basin. The interpretations and conclusions presented in this newsletter represent the opinions of the individual authors. They in no way represent the views of the Tip of the Mitt Watershed Council, the C.S. Mott Foundation, subscribers, donors, or any organization mentioned in this publication.

Great Lakes Aquatic Habitat Network & Fund 2003 Wetlands Grant Recipients



Since 1996, GLAHNF has been making small grants to grassroots community initiatives to protect local aquatic habitats. During each funding cycle, a portion of the available funding is dedicated to the GLAHNF theme. The current GLAHNF theme is wetlands. We are pleased to announce the following 12 outstanding projects, which were awarded GLAHNF funds in 2003 to assist with the preservation and restoration of wetlands in the Great Lakes Basin. To read summaries of these projects please visit www.glahnf.org/fundsum.html.

Earthology

Craig Minowa
RR1 Box 61B
Hinckley, MN 55037
Project Title: Waterfest: A Great Lakes Wetland Education and Recruitment Campaign
Grant Award: \$3000

Friends of the Salmon River

Patricia Podrazil
PO Box 111
Duluth, MN 55801-0111
Project Title: Protect Deer Creek Marsh, Selkirk Fen, the Salmon River and it's estuary
Grant Award: \$3,000

Friends of Sheldon Marsh

Patricia Krebs
408 Kiwanis Ave • Huron, OH 44839
Project Title: Legal Intervention Supporting Protection and Restoration of Sheldon Marsh
Grant Award: \$3000

Highway J Citizens Group

Gregory Ohm
4760 Pleasant Hill Rd
Richfield, WI 53076
Project Title: Grassroots Initiative to Stop An Environmentally-Destructive Road Expansion Project in Wisconsin
Grant Award: \$2,900

Lone Tree Council

Terry Miller
4649 David Ct.
Bay City, MI 48706
Project Title: The Beauty and Benefits of Saginaw Bay's Coastal Marshes: An Educational Outreach Program
Grant Award: \$2800

Minnesotans for Responsible Recreation

Jeff Brown
PO Box 111
Duluth, MN 55801-0111
Project Title: Empowering Citizens to Protect Wetlands from Off-Road Vehicle Damage
Grant Award: \$3,000

Residents for Environmental Action & Community Health

Diane Dickson
4525 Beaver Ave.
Fort Wayne, IN 46807
Project Title: Implementing More Effective and Less Toxic Methods of Controlling West Nile Virus
Grant Award: \$797

Save Lake Superior Association

Glenn Maxham
1902 St. Louis Avenue, Apt 319
Duluth, MN 55802
Project Title: Calling for Cessation of Wetland Destruction by MNDNR Resulting from Beaver Dam Removal
Grant Award: \$2500

Saving Wetlands and Trees in Chesterfield Township, Inc

Nancy Orweyler
PO Box 164
New Baltimore, MI 48047
Project Title: Protecting Chesterfield Township's Wetlands Through Action
Grant Award: \$3000

Shoreline Stewardship Association of Cloud Bay

Glen Dale
RR7
Thunder Bay, ONT P7C 5V5
Project Title: Cloud Bay Wetland Public Awareness & Long Term Protection Programme
Grant Award: \$3000

Taxpayers Against Airport Growth

Marilyn John
1061 Tuscola Lane
West Bend, WI 53095
Project Title: Grassroots Citizen Opposition to the City of West Bend Airport Expansion
Grant Award: \$2,700

Troy Wildlife & Wetlands Coalition

Lon Ullmann
5621 Willow Grove Dr
Troy, MI 48085
Project Title: Grassroots Activism to Protect Aquatic Habitats in the City of Troy, Michigan
Grant Award: \$2,000

Wetland Internet Resources



General Wetland Information Websites:

- U.S. Environmental Protection Agency: www.epa.gov/owow/wetlands
- U.S. Fish & Wildlife Service: www.nwi.fws.gov
- U.S. Department of Agriculture - Natural Resources Conservation Service: www.nrcs.usda.gov/programs
- U.S. Army Corps of Engineers: www.wes.army.mil/el/wetlands AND www.spk.usace.army.mil/cespk-co/regulatory/RW-bro.html
- Clean Water Network: www.cwn.org
- Ducks Unlimited: www.ducks.org/conservation/wetland_functions.asp
- National Wildlife Federation: www.nwf.org/wetlands/index.html
- Wetland Action: www.wetlandaction.org/importance.htm
- Sierra Club: www.sierraclub.org/wetlands
- Great Lakes Information Network: www.great-lakes.net/envt/air-land/wetlands.html
- Great Lakes Directory: www.greatlakesdirectory.org/wetlands/wetlands.htm

Illinois Wetlands Information Websites:

- Illinois Department of Natural Resources: <http://dnr.state.il.us/wetlands>
- Illinois Environmental Protection Agency: www.epa.state.il.us/water
- U.S. Army Corp of Engineers – Chicago District: www.lrc.usace.army.mil
- Lake Michigan Federation: www.lakemichigan.org
- Chicago Wilderness: www.chicagowilderness.org
- Sierra Club - Illinois Chapter: <http://illinois.sierraclub.org>
- Prairie Rivers Network: www.prairierivers.org

Indiana Wetlands Information Websites:

- Indiana Department of Environmental Management - Office of Water Management: www.in.gov/idem/water/planbr/401/index.html
- Indiana Department of Natural Resources - Division of Water: www.in.gov/dnr/water
- Indiana Wetlands: www.in.gov/wetlands
- U.S. Army Corp of Engineers – Chicago District: www.lrc.usace.army.mil
- U.S. Army Corp of Engineers – Detroit District: www.lre.usace.army.mil/index.cfm?chn_id=1081
- Save the Dunes Conservation Fund: www.savedunes.org

Michigan Wetlands Information Websites:

- Michigan Department of Environmental Quality: www.michigan.gov/deq
- U.S. Army Corp of Engineers – Detroit District: www.lre.usace.army.mil/index.cfm?chn_id=1081
- Michigan Sea Grant: www.miseagrant.org/wetlands
- Michigan Wetland Action Coalition: www.michiganwetlands.org

Minnesota Wetlands Information Websites:

- Minnesota Department of Natural Resources: www.dnr.state.mn.us/ecological_services/wetlands/index.html
- Minnesota Board of Soil and Water Resources: www.bwsr.state.mn.us/wetlands/index.html
- Nature Conservancy Minnesota Chapter: <http://nature.org/wherework/northamerica/states/Minnesota/>
- U.S. Army Corp of Engineers – St. Paul District: www.mvp.usace.army.mil
- Minnesota Land Trust: www.mnland.org/
- Minnesota Environmental Partnership: www.mepartnership.org
- Environmental Association for Great Lakes Education: www.eagle-ecosource.org

New York State Wetlands Information Websites:

- New York State Department of Environmental Conservation (Freshwater Wetlands Program): www.dec.state.ny.us/website/dfwmr/habitat/fwwprog.htm
- New York State's Adirondack Park Agency: www.apa.state.ny.us/Documents/Flyers/Wetlands_Flyer.pdf
- U.S. Department of Agriculture - Natural Resources Conservation Service - New York Wetlands Reserve Program: www.nrcs.usda.gov/programs/wrp/states/ny.html
- U.S. Army Corp of Engineers – New York District: www.nan.usace.army.mil/index.htm
- Riverkeeper: http://riverkeeper.org/campaign.php/watershed/we_are_doing/488
- Niagara Frontier Wildlife Habitat Council: www.nfwhc.org/wetlands.htm
- Environmental Advocates of New York: www.eany.org

Ohio Wetlands Information Websites:

- Ohio Department of Natural Resources: www.dnr.state.oh.us/wetlands
- Ohio Environmental Protection Agency - Division of Surface Water: www.epa.state.oh.us/dsw

- U.S. Army Corp of Engineers – Buffalo District: www.lrb.usace.army.mil
- Sierra Club – Ohio Chapter: <http://ohio.sierraclub.org>
- The Ohio Environmental Council: www.theoec.org

Ontario Wetlands Information Websites:

- Ministry of Municipal Affairs – Provincial Policy Statement: www.mah.gov.on.ca
- Ontario E-Laws: www.e-laws.gov.on.ca
- Environment Canada - Ontario Region - Great Lakes Wetlands Conservation Action Plan: www.on.ec.gc.ca/wildlife/wetlands/glwcap-e.cfm
- Ontario Stewardship: www.ontariostewardship.org
- Ontario Land Trust Alliance: www.ontariolandtrustalliance.org
- Ontario Nature: www.ontarionature.org

Pennsylvania Wetlands Information Websites:

- Pennsylvania Department of Environmental Protection: www.dep.state.pa.us/dep/deputate/watermgt/wc/subjects/wwec/general/wetlands/wetlands.htm
- Pennsylvania Department of Conservation and Natural Resources: www.dcnr.state.pa.us/wlhabitat/aquatic/wetlands.htm
- U.S. Army Corp of Engineers – Pennsylvania Association of Conservation Districts: www.pacd.org
- Pennsylvania Waterfowl Association: <http://pwfa.com>
- Pennsylvania Game Commission: www.pgc.state.pa.us
- Pennsylvania Organization for Watersheds and Rivers: www.pawatersheds.org

Wisconsin Wetlands Information Websites:

- Wisconsin Coastal Management Program: www.doa.state.wi.us/dhir/boir/coastal
- Wisconsin Department of Natural Resources: www.dnr.state.wi.us/org/water/fhp/wetlands/index.shtml
- U.S. Army Corp of Engineers – St. Paul District: www.mvp.usace.army.mil
- U.S. Army Corp of Engineers - Rock Island District: www.mvr.usace.army.mil
- Wisconsin Waterfowl Association: www.wisducks.org
- Wisconsin Wetlands Association: www.wiscwetlands.org



PROTECTING ILLINOIS WETLANDS

By: JOEL BRAMMEIER



Wetlands form the backbone of Illinois' aquatic ecosystems, and support over 70% of the state's threatened or endangered mammals, reptiles, and birds for at least part of their

life cycle. Surprisingly, even wetland complexes in the highly industrialized Lake Calumet region support nesting populations of the Illinois endangered black-crowned night heron. The Chicago area holds nearly 100,000 acres of wetlands—a greater percentage than in any other part of Illinois. Besides enhancing the quality of life for the millions of people who live in the region, these wetlands help form the basis for the \$600 million outdoor recreation industry in Illinois, funded by income from hunting, bird watching, and other outdoor activities.

The current statewide wetlands picture pales in comparison to what was once here. Illinois' original cache of valuable wetland habitat has been reduced by over 90% since before human settlement. With the exception of Illinois Beach State Park, the vast majority of wetlands within the Great Lakes Basin have been filled and developed. This dwindling supply means that, in addition to restoring wetland habitats, Illinois needs regulation to protect everything it has left.

The estimate of wetlands left unprotected after the U.S. Supreme Court case *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers* in Illinois hovers around 150,000 acres, with over one thousand wetlands having been destroyed since 2001. In the Chicago area alone, a Sierra Club report uncovered that the U.S. Army Corps of Engineers (Corps) received 261 wetland destruction permit applications in the first year after the court's decision to which it gave a ruling of "no jurisdiction," meaning the developer had no federal regulations to follow during construction. Many developers are specifically requesting the "no jurisdiction" ruling on their applications.

As a fix to this problem, Illinois grassroots organizations including the Sierra Club, Illinois Environmental Council, and many others have been working tirelessly to encourage the adoption of state legislation to protect these so-called "isolated wetlands." After a first attempt to pass legislation in 2002, the Illinois House of Representatives passed the Wetland Protection Act (HB 422) in May 2003. Primary changes to state law under the Act would include:

Wetland activity not covered under Corps rules would require a permit from the Illinois Department of Natural Resources (DNR).

This means that wetlands stripped of protection by new federal guidance would have some level of protection. It also exempts wetlands covered by the federal program from any state regulation. Highest quality wetlands would receive the most protection. Smaller wetlands will receive less protection under the Act.

Local wetland protection programs retain their authority. Several Chicago-area counties (DuPage, Lake, and Kane) already have progressive wetland protection ordinances in place. This bill would allow that authority to continue and would not require state permits for activities in those counties. A benefit of the bill is the incorporation of a process to align standards among the counties of northeastern Illinois.

Most farming activities are exempt. All lands converted to cropland prior to 1986 are exempted from the Act, and most day-to-day agricultural practices are exempt. Unless farmland contains an unusually high-quality wetland, any wetland not covered by the agricultural exemption will receive the lowest tier of state protection. A number of exemptions are in place for mining and utility activities as well.

A multi-stakeholder board will be formed to advise state agencies on implementation. This board will include representatives from business, labor, and local government.

Fees associated with the program will be capped. Fee amounts will be established by the Illinois Pollution Control Board in a manner that makes the program self sustaining but will not create more income than needed to run the program.

The bill clearly makes a number of concessions to

interests that promote the destruction of wetlands. However, strong support has developed for the Wetland Protection Act in both chambers of the Illinois General Assembly. Having passed the House, the bill is heading to the Senate in January 2004 with a bipartisan coalition of 15 senators having already signed on. As a product of many stakeholders with widely varying priorities, the Wetland Protection Act will not return the lost 90% of Illinois wetlands to their former level of biodiversity. But it offers an excellent opportunity to reverse the impact of federal guidance that allows destruction of these habitats.

The Illinois Environmental Council and Illinois chapter of the Sierra Club made contributions to this report.



Big Marsh near Lake Calumet, Chicago, Illinois.
Credit: Victor Crivello



AN ENCOURAGING VICTORY IN THE CONTINUING STRUGGLE FOR INDIANA'S WETLANDS

BY: SANDRA L. WILMORE

In a victory for the Indiana Department of Environmental Management (IDEM) and the environmental organizations supporting state wetlands regulation, the Indiana Supreme Court ruled in September 2003 that IDEM has authority to regulate so-called "isolated wetlands."

IDEM declared in April of 2001 that discharges to waters no longer regulated under federal permits would no longer be exempt from the state's National Pollutant Discharge Elimination System (NPDES) permit requirement. IDEM announced the use of the NPDES as an interim regulatory process in response to the January 2001 U. S. Supreme Court decision in Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers. Prior to the SWANCC decision that removed certain "isolated" bodies of water from federal jurisdiction, IDEM regulated these wetlands under section 401 of the federal Clean Water Act.

In July 2001, the Allen County developer Twin Eagle LLC challenged IDEM's authority to regulate water quality and wetlands through its NPDES permitting process. Twin Eagle sought a declaratory judgment to prevent IDEM from enforcing state environmental laws affecting their proposed residential development. Twin Eagle's development plans called for filling in most of the 14.75 acres of wetlands that the US Army Corps of Engineers determined were not subject to regulation under the Clean Water Act. Twin Eagle argued that IDEM could not regulate filling activities of certain "private ponds" and "isolated wetlands". A Marion County Superior Court ruled in favor of the developer, and IDEM appealed the decision to the Indiana Supreme Court.

In June of 2002, Save the Dunes Conservation Fund and several other environmental organizations filed a "friend of the Court" brief on behalf of the IDEM in the Indiana Supreme Court case Indiana Department of Environmental Management v. Twin Eagle LLC, 2003 Ind. The Great Lakes Aquatic Habitat Network and Fund (GLAHNF) provided funding to hire an attorney for filing the amicus brief. Organizations included in the brief were the Cedar Creek Wildlife Project, Hoosier Environmental Council, Indiana Division of the Izaak Walton League of America, National Wildlife Federation, and Save the Dunes Conservation Fund and Council.

The Indiana Supreme Court's ruling in Indiana Department of Environmental Management v. Twin Eagle LLC, 2003 favored IDEM on all counts, including three substantive issues. The Court held that IDEM may regulate "waters of the State" that are not "waters of the United States" and that IDEM may regulate discharges to wetlands and private ponds. Finally, the Court ruled that IDEM has the regulatory authority to impose the NPDES permit requirement on discharges of dredge or fill material no longer regulated as "waters of the United States". The ruling regarding private ponds is particularly important, since Indiana statute excludes private ponds from regulation unless the discharge from the pond causes or threatens to cause water pollution. The Court held that whether the Twin Eagle project involves ponds that meet this condition must be determined by IDEM.

Although Indiana environmental groups rejoice in the Indiana Supreme Court's decision in this case, the prospect for final adoption of protective state wetland rules has nonetheless worsened. Governor O'Bannon's veto of weak wetlands legislation last year was recently overridden by both chambers of the General Assembly. Indiana environmental groups are proposing amendments for inclusion in a trailer bill, but there is little hope for substantial improvement.

Regardless of the legislative outcome, Save the Dunes Conservation Fund will continue to work with other environmental groups on establishing and maintaining strong wetlands protection for the state.



Wetland within Indiana Dunes National Lakeshore
Credit: Illinois- Indiana Sea Grant, photo by David Riecks



DEVELOPING NEW YORK'S WETLANDS: THE CONTINUING BATTLE BETWEEN DEVELOPERS AND CONSERVATIONISTS

BY KAREN DE VITO

According to New York State law, the New York State Department of Environmental Conservation (DEC) has the authority to regulate both tidal and freshwater wetlands. For wetlands that fall within the definition of a regulated wetland in New York, any landowner or developer interested in developing in or around certain wetlands must first apply for a permit with the DEC. In order to facilitate public notice and comment on permit applications, the DEC posts all applications on the on-line Environmental Notice Bulletin (ENB). The ENB is published on-line every Wednesday and lists permit applicants by region. Each week there are numerous permit applications ranging from Title V air permits, to mined land reclamation permits, and freshwater wetland permits to excavate and fill in navigable waters permits. Although the effectiveness of the ENB has been questioned by a number of environmental groups across New York State, it does in fact provide a record of the trend in increased development in and around New York State's wetlands.

Take for example the number of wetland permits that have been applied for on the November 12, 2003 edition of the ENB. Out of the 24 applicants listed on the ENB, 16 of them proposed to alter either a tidal or freshwater wetland to some degree. The proposed projects range from the construction of two-story single-family homes within the regulated adjacent area of a freshwater wetland, to the construction of a highway interchange within the 100-foot adjacent area. The fact that the number of applicants applying for a wetland permit comprises more than half of the total applicants is quite significant, especially when attempting to quantify the environmental consequences of human activity within New York State.

A comparison of the November 12, 2003 edition of the ENB against the same weekly edition in previous years, paints another interesting, if not alarming picture. The November 13, 2002 edition of the ENB showed 32 permit applicants, with 15 of them applying for some type of wetlands permit. That number represents slightly less than half the total and is less than the percentage from 2003. In the November 14, 2001 edition of the ENB, the percentage of applicants applying for a wetland permit compared to total applicants was again slightly less than half (11/24). The numbers for the November 12, 2003 edition of the ENB alone are enough to show that development of wetlands and their buffers constitute a substantial portion of all of the permit applications reviewed by the DEC, even though there are at least 10 permit programs run by the department. By reviewing the applicants for a similar week over the past three years, it is also noteworthy that during the current year, the number of total applicants has increased, as well as the percentage of wetlands applications compared to all other types of applications.



Wooded Wetland - Citizens for a Green North Tonawanda

Although these numbers are revealing, they do not represent the total impact development has had on New York State's wetlands. If the DEC does not act as the lead agency for the environmental review process, then often the town board does, and many proposed developments may become reality under those circumstances as well. A prime example is the proposal to rezone a 36-acre tract that includes wetlands to make way for a housing/retail complex in Chili, NY. Local residents near the 36-acre parcel assert that the development would destroy a natural resource, eliminate a buffer between houses and neighboring shopping plaza, and worsen a flooding problem in the area.

Disagreement over the characteristics of the area - whether or not the wetlands are isolated and what the actual size of the wetland is (larger or smaller than 12.4 acres) has also brought into question which agencies have jurisdiction over the wetland and the potential to develop it. Additionally, the potential Clean Water Act rollbacks occurring as a result of the Solid Waste Agency of Northern Cook County (SWANNC) court decision may mean less protection for the wetlands at the federal level. Many of New York's wetlands and small streams are intermittent, with 5,075 miles of New York's 52,337 total stream mileage classified as intermittent. These streams are the water bodies most at risk of losing federal protection.

In response to federal interpretation of the SWANNC decision, a new wetlands bill, A.7905 /S.4480, was introduced during the 2003 legislative session. The bill, among other things, would lower the threshold of wetlands protected under state law from 12.4 acres to one acre. The bill remained in the Environmental Conservation Committees of both the Senate and Assembly at the end of the 2003 session.



Pennsylvania Update

LAKE ERIE-ALLEGHENY EARTH FORCE; SERVING AS HUB COORDINATOR IS ANNETTE MARSHALL, OSB
6270 E. LAKE ROAD ERIE • PA 16511
(814) 899-2572 • (814) 899-0253 (FAX)
ANNETTEMARSHALL@ADELPHIA.NET • WWW.EARTHFORCE.ORG



Annette Marshall

VOLUNTEERS WORK TO PRESERVE PENNSYLVANIA WETLANDS

By SUSAN A. SMITH

Each spring, volunteers from the Presque Isle Audubon Society in Erie, PA slog through wetlands, bogs, fens, vernal ponds, marshlands, swamps and quagmire at the David M.

Roderick Wildlife Reserve on the northern border of Pennsylvania and Ohio. Arriving at 5am with heavy, waterproof boots, insect repellent, Global Positioning Systems (GPS), and binoculars, these Audubon grassroots volunteers set up scientific point counts for long-term monitoring of the Roderick Reserve through Audubon's Important Bird Areas (IBA) program.

Roderick was selected as an area of critical importance to the welfare of bird species suffering population declines. An IBA designation can help generate the impetus needed to protect threatened bird habitats, or it can result in enhanced management for an already protected site. Nearly 70 percent of Pennsylvania's threatened or endangered species use wetland habitats at some point in their lives. Sixty-five percent of the birds on Pennsylvania's list of endangered species or species of special concern are wetland birds. Volunteer efforts provide scientists and wildlife agencies data so they can create a quality habitat for rare or endangered species.

The spring of 2003 presented many boot challenging days and the sounds of aquatic insects, amphibians and wetland birds in the rain swollen Roderick acreage as the volunteers collected important data to understand species distribution, abundance, and changes in site avian community composition.

The IBA wetland and habitat survey remains applicable across seasons, is not rigid in its application, yet still remains robust in its ability to document gross changes in bird abundance and composition over time. Dedicated volunteers able to identify birds by sight and call are imperative to the success of monitoring wetland birds such as herons, bitterns, waterfowl, and songbirds. In Pennsylvania, about 49% of mammals, 60% of birds, 59% of reptiles, and 100% of amphibians are dependent on wetlands, streams and riparian zones at least partially (Brooks and Croonquist 1990).

The Pennsylvania Game Commission (PGC) owns and protects the Roderick Reserve, a 1,131-acre tract of seasonal wetlands, two miles of undeveloped lake bluffs, open fields and pastures, and surrounding forest located on the southern shore of Lake Erie in Pennsylvania. Acquired from USX Corporation, Roderick contains the longest, uninhabited stretch of scenic bluffs remaining on the southern Lake Erie shoreline. It is a major stopover for migrating woodcock and waterfowl, and habitat for an abundance of native birds and mammals. The wetlands support a variety of native aquatic plants and insects and amphibians such as wood frogs and spotted salamanders.

The PGC land management program at Roderick has the support of conservation groups as diverse as the Audubon Pennsylvania, the Ruffed Grouse Society, Ducks Unlimited, the Northwest Pennsylvania Duck Hunters and the National Wild Turkey Federation who have a keen interest in the wetland habitat which makes up 49% of Roderick and maintaining a healthy biodiversity.

Data collected by the Audubon volunteers is shared with wildlife managers to preserve and protect the state's wetlands and to be used for educational outreach programs. The dedicated Roderick volunteers and partners realize that protecting wetlands results in a multitude of benefits including flood and storm protection, erosion and sedimentation control, water quality maintenance and improvement, groundwater recharge and discharge, fish and wildlife habitat and food, nutrient production and cycling, preserved open space and recreation, and increased education, research, and biological diversity.





CHANGES...THE RANGE OF PROPOSED IMPROVEMENTS TO MICHIGAN'S WETLAND PROTECTION PROGRAM

By CHRIS GRUBB

In 1984 Michigan became the first state, and is currently one of only two states, authorized to administer the Section 404 (wetlands protection) permitting program of the Clean Water Act. To maintain authority for the Section 404 Program, a state must show that its program is at least as protective as the federal Section 404 Program. In early 1998 the U.S. Environmental Protection Agency (EPA) began an informal but comprehensive review of Michigan's Section 404 Program because a number of relevant state and federal statutes had changed since 1984. A body of Michigan judicial and administrative opinions had developed relevant to the program; and, they had received many complaints about the administration of the program. The results of this review were presented to the Michigan Department of Environmental Quality (MDEQ) and published in the Federal Register for public review and comment in March, 2003. MDEQ has responded by proposing to take the following actions to address the concerns raised in EPA's review:

Administrative Actions

Isolated wetlands greater than five acres are protected by Michigan's Wetland Protection law, but in counties having less than 100,000 people MDEQ needs to conduct an inventory process to gain jurisdiction. This inventory process is underway and the department proposes to complete the inventory by 2006. Isolated wetlands less than five acres in size are only protected if the department finds the protection of the area is essential to the preservation of the natural resources of the state.

The agency will also work with EPA to ensure that permit conditions required by EPA's administrative rules are incorporated into the permits they issue. Federally listed threatened and endangered species will also be taken into closer consideration by working with EPA and U.S. Fish and Wildlife Service to improve screening for permit applications that may impact these species. MDEQ has also agreed to issue public notice for any Proposal for Decision that would have more impact on natural resources than the permit application, and to develop a procedure to notify adjacent states of permit applications that would impact waters of those states.

Revised Rules for Inland Lakes & Streams (Part 301) and Wetlands (Part 303)

Under Part 301, MDEQ will seek to revise administrative rules to limit the definition of the exemption for drain "maintenance and improvement" to be consistent with the federal definition. The agency will seek to revise administrative rules

to consider cumulative impacts when new minor permit categories are established, limit the term of permits to five years, authorize modification of permits and add grounds for revocation of permits, and require staff to consider impacts to threatened and endangered species during the review process. Under Part 303, the agency will seek to revise administrative rules to incorporate several of the issues above, amend the evaluation of feasible and prudent alternatives to comply with federal regulation, and clarify the exemption for road maintenance.

Legislative Actions

Legislatively, the MDEQ will be seeking several amendments to Part 303 to ensure consistency with Section 404 of the federal Clean Water Act. The agency will seek to clarify the wetland inventory process to gain jurisdiction over all wetlands that are larger than five acres and not connected to other wetlands. Also, MDEQ will be looking to alter exemptions for agricultural and forestry activities, agricultural drainage, drain maintenance, certain utilities, and iron and copper mining tailings basins.

Issuance of Opinions by Attorney General

As new administrative rules are adopted, MDEQ will seek to provide written opinion from the Michigan Attorney General addressing the applicability of the new rules to pending permit applications and contested cases. The Department of the Attorney General has also agreed to provide a final statement indicating Michigan's legal authority to continue administering the Section 404 Program.

Revising the Section 404 Program Memorandum of Agreement

The current Memorandum of Agreement (MOA) between EPA and MDEQ is out of date, and will need to be revised. The updated MOA will reflect changes in enforcement procedures, and will clarify that any permit issued because MDEQ exceeded the 90-day limit for permit review will be a state-only (not federal) permit. MDEQ has also requested that a MOA between the agency and the Army Corps of Engineers be modified to clearly define the Corps' jurisdiction for wetlands occurring on Native American lands.

Conclusion

Michigan has long been seen as a leader in wetland protection. Due to changes in both state and federal law in the 1990s, Michigan must make some positive changes to regain its mantle of wetland leader. Given the importance of wetlands, and Michigan's place in the center of the Great Lakes, it is important that citizens work with the MDEQ to bring about these changes.



NEW OHIO WETLAND PROTECTION OPPORTUNITIES SURFACE

By: MOLLY FLANAGAN

In the coming year, there are several exciting opportunities regarding Ohio's wetland regulations. They include: the establishment of an electronic clearinghouse for wetland mitigation information, a review of Clean Water Act policy on wetland permit applications by the Ohio Environmental Protection Agency (OEPA), and a new version of Ohio's biocriteria for categorizing wetlands.

Grassroots groups can lend their voice and ideas to the shape of these state policies, and can work together to continue to improve our ability to fight locally to protect and restore wetlands.

Mitigation Clearinghouse

OEPA has announced plans to establish an electronic clearinghouse for mitigation projects. The purpose of the clearinghouse will be to exchange information between applicants that are seeking projects for mitigation as part of their 401 Water Quality Certification or Isolated Wetland Permit and individuals who have a property or projects that are available for mitigation.

This clearinghouse could provide a unique opportunity for grassroots groups in Ohio to pick worthwhile restoration projects in their own watersheds to list in the clearinghouse. This would allow watershed organizations to focus mitigation projects in the watershed where the wetland destruction is taking place by offering developers specific mitigation projects within their watershed, rather than in some far-off part of the state. This could prevent mitigation efforts from going towards mitigation banks in other portions of the state where they do nothing to offset the damage done by a particular wetland fill in a particular watershed.

401 Certifications

In January 2001, the Supreme Court ruled in *Solid Waste Agencies of Northern Cook County v. US Army Corps of Engineers* that the Clean Water Act did not extend to isolated wetlands solely on the basis that they provide habitat for migratory birds or endangered species. This ruling meant that federal permits were no longer required in order to discharge wastes into isolated waters. In July 2001, following that court ruling, Ohio's legislature adopted a new state law that set up an Isolated Wetland Permitting Program. The Isolated Wetland Permit Process is similar to, but weaker than Ohio's permitting program for jurisdictional wetlands. The isolated wetland permitting process contains weaker mitigation requirements than the jurisdictional process.

Following a three-year rulemaking committee that could not reach agreement, the Director of OEPA said his agency would continue to review the state's regulations on "wetland and stream fill permits", also known as "Water Quality Certifications under section 401 of the Clean Water Act". Under current rules,

the developer is supposed to show that the wetland destruction cannot be avoided. However, in practice, the OEPA has only disapproved one such application in the past three years, and most projects are approved along with some requirement to do a "mitigation" project.

Grassroots groups can play a role with local media or during public comment periods to explain that, once paved over or culverted, the important hydrologic and ecological functions of these water bodies are lost, yet the state's policies for reviewing the applications are weak on two basic points: the poor review of the construction project for alternative locations or designs, and the approval of "mitigation" projects that do not truly compensate for the lost habitat and functions.

Wetland Field Assessment Methods and Biocriteria

Field biologists and botanists with OEPA's Division of Surface Water have finished conducting studies of wetlands in Ohio and will be developing new field surveys based on their findings. The field survey is used to identify characteristics such as plants and amphibians in a wetland to determine its category. Under Ohio's rules, wetlands are divided into three categories with a Category 1 wetland being the lowest quality and a Category 3 wetland being the highest quality.

Local watershed groups can participate in a couple of ways. One way would be to take advantage of the training classes on the new field methods so they are able to actually categorize wetlands and better understand and protect wetlands in their own watersheds. Another opportunity for local groups may come with public hearings or informational sessions on the new assessment methods and related biocriteria.

Local Action

Even under OEPA's existing wetland program there are several things that grassroots groups can do to protect and restore wetlands in their watersheds. Groups can get involved by getting on Ohio's mailing list for public notices of proposed 401 certifications in their region and by submitting comments to Ohio EPA and speaking out at a public hearing, or building a relationship with a local reporter or politician.

It is important to push for permit denials. The Friends of Sheldon's Marsh achieved victory in this arena when the Ohio EPA denied a 401 Water Quality Certification permit for Barnes Nursery.

The OEC is actively engaged in protecting and restoring Ohio's wetlands. In 2004, we will continue to work on the local, regional, state and federal levels to protect and restore Ohio's valuable water resources. Please feel free to contact Molly Flanagan (molly@theoec.org) or Keith Dimoff (keith@theoec.org) or at (614) 487-7506 if you have any questions or would like any more information on Ohio's wetlands.

Wisconsin Update

WISCONSIN WETLANDS ASSOCIATION

WISCONSIN WETLANDS ASSOCIATION; SERVING AS HUB COORDINATOR IS BECKY ABEL
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Becky Abel

TWO MAJOR PURCHASES TO PROTECT WATERWAYS IN WISCONSIN

BY DEREK STROHL

Wisconsin's largest private land purchase for conservation and an unlikely corporate buy-out have protected the Chequamegon Bay watershed on Lake Superior and the headwaters of the Wolf River, which flows to Lake Winnebago and on to Lake Michigan.

The Nature Conservancy (TNC) turned over purchase rights of 21,322 acres of land to the Bad River Band of Lake Superior Tribe of Chippewa Indians, whose original reservation boundaries included the land. TNC and the Bad River Band have signed a Memorandum of Understanding regarding the future management of the land. Bad River Tribal Council Chairman Eugene Bigboy said of the transfer, "The heart and soul of any reservation, aside from its people, is its land. This purchase enables the Band to get back precious land that was once thought lost forever."

The lands included in this transaction are composed of multiple parcels ranging in size from 20 to 3,500 acres and covered mostly by forests and wetlands. They are connected through a network of streams and rivers to the watershed that empties into the Kakagon/Bad River Sloughs and the Chequamegon Bay. The Sloughs play a key role in providing clean water to the Chequamegon Bay, helping to keep the bay healthy and highly sought after by anglers, boaters, bird watchers, and other nature enthusiasts.

Many acres of corporate-owned forest land in the United States have changed hands over the past five years. In Wisconsin alone, more than 90 percent of corporate-owned forestlands have been sold or re-sold since 1997.

On the other side of Wisconsin's Great Lakes Basin, the headwaters of the beautiful Wolf River have been protected from a zinc-copper mine that has been in the planning and permitting process on and off since 1969. The new owners will withdraw any mining applications.

The Sokaogan Chippewa Community Mole Lake Band, the Forest County Potawatomi Community, and the Mole Lake tribe have purchased the mining project land from the mining applicant, Nicolet Minerals Company (NMC). This victory is being hailed as the result of a unified effort on the part of the tribes, sporting groups, and other rural residents who have historically been at odds with one another.



Chequamegon Bay on Lake Superior, Credit: Ted Cline

"This purchase protects the Wolf River, the wetlands and the groundwater of Northern Wisconsin," Gus Frank, Chairman of the Forest County Potawatomi Community stated. "We all depend on the waters and natural resources of the Northwoods - for recreation, to bring tourists to our State, and, for the Tribes, to sustain our traditions. We're proud to be a part of

protecting this area for future generations."

Both tribes have vehemently opposed the mining proposals at the site for years. Under those proposals, the mine would affect water and increase sediment in Swamp Creek, which flows into Rice Lake on the Mole Lake reservation, just west of the proposed mine site. The Potawatomi reservation is also nearby, to the northeast.

The tribes said the problems with the current mine proposal are numerous. For example, both the mine and a tailings dump would contain perpetually toxic wastes. The mine and the 16 million tons of wastes in the dump would be never-ending sources of groundwater contamination. In addition, the mine waste dump would eventually fail, potentially releasing massive amounts of additional contamination.

**Text for this article graciously provided by The Nature Conservancy-Wisconsin Chapter and Debra McNutt and Zoltan Grossman of the Midwest Treaty Network.*

Please see page 15 for the status on isolated wetland protection in Wisconsin.



ENDING THE DOUBLE STANDARDS FOR PROTECTING ONTARIO WETLANDS

By: LINDA PIM

A great blue heron or a least bittern loves a wetland and, in Ontario, doesn't care if it is classed as a Provincially Significant Wetland or not. But the Provincial Policy Statement (PPS) under the province's Planning Act sets up a double set of double standards for wetland protection, which should be removed.

The first double standard in the PPS is one that divides Ontario into the area on the Canadian Shield (the granitic Precambrian Shield) and the area south and east of the Shield. Roughly speaking, the latter area, with its deeper soils, is the part of Ontario that is under the more intense development pressure – it's entirely in the south. The PPS says that development is not permitted in Provincially Significant Wetlands (PSWs) south and east of the Shield. A wetland is classed as a PSW by the Ontario Ministry of Natural Resources as a result of a detailed scoring using a point system – a large, biologically diverse wetland gets more points, enough to make it a PSW, than does a small cattail marsh.

The rest of the wetlands south and east of the Shield are the responsibility of the municipality to identify and possibly protect as either regionally or locally significant in their Official Plans (municipal land use plans). But since the PPS protects only the provincially significant ones, developers may challenge municipal protection of "merely" a locally significant wetland as going beyond provincial policy and therefore conflicting with that policy. The position of the Federation of Ontario Naturalists (FON) is that all wetlands are ecologically significant and that no development should be permitted in any of them.

The second double standard is worse – on the Canadian Shield, even Provincially Significant Wetlands are not protected. The PPS states that development may be permitted in PSWs on the Shield "if it has been demonstrated that there will be no negative impacts on the natural features or the ecological functions for which the [wetland] is identified." In other words, if an environmental impact statement prepared by a developer's consultant concludes that part of a wetland can be filled in to create a golf course without jeopardizing the wetland's features and functions – and if the developer can convince a municipality or a hearing officer at the Ontario Municipal Board (OMB) of the correctness of this position – then the wetland can be developed.

FON's position is that Ontario wetlands on the Canadian Shield should be treated identically to those south and east of the Shield – no development should be permitted in any of them.



Coastal Wetland - Ontario Nature - M.J. Thomson

A further wrinkle in the Provincial Policy Statement is that in making their land use decisions, municipalities and the OMB need only "have regard for" the PPS – in other words, they could simply read it and put it back on the shelf. FON and many other habitat conservation groups want the Planning Act to state that planning decisions need to "be consistent with" the PPS.

The election of a new Ontario government in October 2003 has provided an excellent opportunity to press for "greening" of land use planning legislation and policy. Ontario wetland activists should urge Minister of Municipal Affairs John Gerretsen (e-mail: mininfo@mah.gov.on.ca) to get the government to amend the Planning Act to the "be consistent with" wording noted above, and to amend the Provincial Policy Statement to treat all wetlands throughout Ontario as significant and therefore deserving protection.

Although Ontario Municipal Board decisions on specific wetlands are not precedent-setting, one OMB decision stands out in its support for protecting all wetlands. In an August 2001 ruling, the OMB refused permission for expansion of a restaurant parking lot in the Town of Newmarket (in the Lake Huron watershed, north of Toronto) into what had been evaluated as "merely" a Locally Significant Wetland. The town's Official Plan goes beyond provincial policy (that protects only PSWs) in stating that "Development within evaluated wetlands shall be prohibited." As the OMB hearing officer wrote, "A wetland is a wetland is a wetland. The Board finds that a 'Locally Significant Wetland' should wherever possible be preserved, maintained and enhanced in its natural state...The Board finds that it is not in the public interest nor does it represent good planning to destroy this locally significant wetland and seriously and permanently damage the environment." Since the restaurateur did not seek to appeal the OMB decision in the courts, it stands as an excellent testament to wetland protection.



WETLAND RESTORATION ON THE NORTH SHORE OF LAKE SUPERIOR

BY: JENNIFER TAHTINEN



Historically, wetlands were spread across Minnesota, dotting the landscape. Minnesota, like other states, has lost a large portion of its original wetlands, and with them, the beauty, biodiversity and functions they provided. However, one of Minnesota's most coveted and beautiful areas, the North Shore of Lake Superior, was never blessed with an abundance of wetlands. The landscape was never conducive to the formation of wetlands-due to a combination of bedrock topography, very thin topsoil and the effects of large waves from the lake.

Therefore, the wetlands that do exist along the Shore are especially significant and serve extremely important functions. Wetlands have important functions in cleaning water as it moves through the hydrologic cycle, and wetlands that exist close to Lake Superior would be especially valuable in this way. Groups in Minnesota are working to protect and restore the wetlands along Lake Superior before it is too late. Groups such as the Sugarloaf Interpretive Center Association, the North Shore Watershed Watch, Save Lake Superior Association, the Lake Superior Alliance, and Minnesotans for Responsible Recreation are defending wetlands, restoring them and trying to halt their destruction.

Recognizing the rarity of North Shore wetlands, the Sugarloaf Cove Interpretive Center is restoring a wetland on Lake Superior. The wetland was used as a pulpwood landing operation for Consolidated Papers in the past, and had been covered in gravel to make it suitable for trucks and buildings. After the landing was shut down, no wetland vegetation could grow because the area had been decimated, and no wetland characteristics were present.

The Minnesota Department of Natural Resources received a grant from the Environmental Protection Agency to restore the area to its original functions. The project began in 1998, and was extensive. First, cores were drilled into the ground to determine whether or not a wetland existed in that region, and if so, what types of plants it supported. They found that the wetlands in the area were present, but were discontinuous and spattered across the landscape. It was

concluded that the wetlands were probably a sedge-matt or shrub-carr wetland, surrounded by a dynamic forested upland. The forest was probably mostly conifers such as black spruce and balsam fir.

The next step was the excavation of the site. A half-acre area was excavated, down to a buried peat layer that was most likely the level at which the wetlands existed. After excavation, native seeds and seedlings were planted at the site with the help of volunteers from across the state. Survival of the seedlings will depend on many factors, including moisture conditions, competition from other plants, and browsing by deer and rabbits. Nurturing of the young plants will continue for many years.



Wetland Landscape - USFWS

The emphasis and priority should be placed on protecting existing wetlands that are still serving their original functions, and across most of Minnesota, it is still possible to save at least some of them. However, in an area like the North Shore that is under extreme development pressure, there just aren't a large number of naturally occurring wetlands. Did Sugarloaf successfully restore a wetland to its

original function and value? It is doubtful that wetlands restoration projects ever recover the wetlands value completely because so many immeasurable factors are involved in the creation of habitats and ecosystems. The debate is ongoing on whether or not restoration is a worthwhile endeavor, but along the North Shore of Lake Superior, where many of the few original wetlands have been lost to development, there may be no other option.

Sugarloaf is hoping to expand their restoration project into the identification, protection, and restoration of wetlands along the North Shore. The efforts to restore Lake Superior's wetlands will be an ongoing struggle between developers, citizens, grassroots groups and government agencies. With resources and cooperation between grassroots groups and citizens, hopefully the North Shore will be home to many wetlands in the future.

Please see page 15 for the status on isolated wetland protection in Minnesota.

Minnesota Update Continued



PROTECTING ISOLATED WETLANDS IN MINNESOTA

BY: JAN GOLDMAN-CARTER

Minnesota has its own state wetlands law independent of its Clean Water Act (CWA) 401 certification authority. Ostensibly, Minnesota's Wetlands Conservation Act (WCA) regulates the full range of wetlands in the state, including "isolated" wetlands. However, WCA and its regulations exempt a number of activities that often occur in so-called "isolated" wetlands. These exemptions were put in place at least in part because the U.S. Army Corps of Engineers (Corps) was requiring a CWA § 404 permit for these activities in wetlands, including "isolated" wetlands. After the January 2001 U. S. Supreme Court decision in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers* decision, the Corps is no longer regulating these activities in "isolated" wetlands, and Minnesota cannot, leaving a gap in regulation of so-called "isolated" wetlands.

Minnesota's Board of Soil and Water Resources (BWSR), which administers WCA, has conducted its own analysis of post-SWANCC regulatory gaps and concluded that absent federal CWA jurisdiction, many of Minnesota's small, seasonal wetlands will be left unregulated, particularly in the Prairie Pothole Region and other regions of the state with the greatest historical wetland losses. These wetland losses will be even more pronounced if intermittent streams and their adjacent wetlands are assumed to no longer qualify as waters of the United States. In 2001, BWSR presented an informal proposal to modify its exemptions and close this regulatory gap. The proposal was tabled in light of resistance from regulated interests.

In addition to WCA's exemptions, WCA program effectiveness is limited by political and resource constraints. First, WCA is administered by local government units with state agency oversight. Many of these local governmental units lack the staff expertise and resources to conduct careful permit review and impose sufficiently protective permit conditions. Second, the state's budget crisis has severely cut funding for wetland and stream permitting programs at both the state and the local level. *Governing Magazine* (May 2002).

Gov. Tim Pawlenty has been vocal about his support for protecting wetlands. In April of 2003, at the governor's request, Minnesota's three agencies with the most direct jurisdiction over wetlands (BWSR, Department of Natural Resources, Pollution Control Agency) submitted 13 pages of comments on the proposed rule making on the Clean Water Act Regulatory Definition of "Waters of the United States." Docket ID No. OW-2002-0050; 68 FR 1991-1997. The comments in general ask that the federal government not abandon the protection of isolated wetlands, and that federal rules acknowledge the specific, limited reach of the Supreme Court's SWANCC decision.

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ISOLATED WETLAND PROTECTION IN WISCONSIN

In Wisconsin, the January 2001 U. S. Supreme Court decision in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers (Corps)* triggered a flurry of activity. Legislators quickly drafted a very simple bill that states that dredge-and-fill projects in non-federal wetlands are still subject to Wisconsin's water quality certification process. The Corps sent "non-jurisdiction" letters to the applicants of wetland projects affecting more than 99 hectares, stating in effect, "Your wetland is an isolated wetland, over which the Corps no longer has jurisdiction." We lost more wetlands in those four months than we usually do in a year.

Then-Governor Scott McCallum, several legislators, 57 of our 72 counties, and a coalition of more than 70 conservation organizations representing more than 400,000 Wisconsin citizens demanded protection for our isolated wetlands. Wisconsin Wetlands Association spearheaded the campaign by hiring a lobbyist and printing and distributing thousands of postcards that citizens sent to their lawmakers and to the Governor.

The campaign succeeded, as Wisconsin Act 6 was signed on May 7, 2001, four months after the SWANCC decision. This bill simply grants the Wisconsin Department of Natural Resources (DNR) authority to apply its water quality certification standards to non-jurisdictional projects. The bill gives the DNR enforcement power, specifies the use of the 1987 Manual in delineating wetlands, and includes exemptions similar to the 404 program. This bill maintained the status quo for wetland protection. The bill's only compromise is the requirement that the DNR review a permit within 30 days and issue a decision within 120 days of receipt of the complete application.

Our candid discussions with the builders community not only helped us to win this landmark bill; it also has won us a long-term working relationship with new partners, as we have since co-sponsored a wetland restoration workshop with the Wisconsin Builders Association. The moral of the story, never repeated enough: invite all stakeholders to the table.



GREAT LAKES AQUATIC HABITAT NETWORK AND FUND SPRING 2004 GRANT CYCLE

Deadline March 31, 2004

The deadline for the Great Lakes Aquatic Habitat Network and Fund's spring grant cycle is March 31, 2004. To receive a current Request for Proposals (RFP), please visit our website at www.glahabitat.org or contact Alicia Edwards at Alicia@watershedcouncil.org or (231) 347-1181 ext 107. The goal of the grants program is to provide financial support to advocacy activities that strengthen the role of citizens working locally to protect and restore shorelines, inland lakes, rivers, wetlands, and other aquatic habitats in the Great Lakes Basin.

A portion of the available funding will be dedicated to the current GLAHNF theme. The current GLAHNF theme is wetlands.

As always, if you would like to discuss ideas for a proposal or need assistance in completing your application, please contact Jill Ryan at (231) 347-1181 ext 106, your local Network Hub Coordinator, or an Advisory Panel Member *(please refer to the RFP for contact information)*.

GLAHNF's program is changing to serve you better. Please look for more information about the change and a new RFP for the fall funding cycle this summer!

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