



"VARIETY IN HUNTING AND FISHING"

NORTH DAKOTA GAME AND FISH DEPARTMENT

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April 14, 2003

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Water Docket
Environmental Protection Agency
Mailcode4101T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention: Docket ID No. OW-2002-0050

Dear EPA:

The North Dakota Game & Fish Department (Department) has reviewed the Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States". The Department has numerous concerns regarding the definition of "Waters of the United States" due to North Dakota possessing numerous wetlands within the Prairie Pothole Region of the Central Flyway.

In 1972, Congress passed the Clean Water Act "to restore and maintain the chemical, physical and biological integrity" of the water of the United States. At that time, "waters of the United States" were not clearly defined. We believe the intent was to include all "water of the United States" including "isolated" wetlands. Section 404 has played an integral part in protecting and enhancing these waters and will continue to do so if the program's jurisdiction and original intent is maintained through this process.

As stated, North Dakota resides within the Prairie Pothole Region which on average produces 50% of the total duck production in the United States. The majority of production occurs in temporary and seasonal wetlands which are considered "isolated" wetlands. However, due in large part to agricultural draining and filling, North Dakota's wetland base has been reduced by approximately 49% from 4.9 million acres of wetlands to 2.5 million acres, which in turn has greatly reduced the production potential for waterfowl in North Dakota.

Wetlands potentially impacted by the proposed rule making also provide considerable habitat for numerous other resident and migratory species. For example, ringneck pheasants, whitetail deer, shorebirds, furbearers and amphibians all rely on this habitat for cover and/or food.

The loss of wetlands would have additional negative impacts. Wetlands serve to improve water quality by reducing the delivery of sediments and contaminants to our nation's waterways. Headwater areas of perennial, intermittent and temporary tributaries to navigable waters provide many of these same benefits but are also important watershed components providing distinctive riparian and aquatic habitat.

Wetlands provide considerable flood control by storing significant amounts of runoff in our nation's watersheds. Programs are currently underway to restore wetlands in the Devils Lake and Red River drainages. Wetland drainage is known to have contributed to the recent flooding problems in these basins.

With respect to the definition of adjacent wetlands, an intricate hydrological relationship or "significant nexus" exists when assessing "adjacency" between wetlands and navigable waterways. Geographically isolated wetlands are not necessarily hydrologically isolated as there may be surface and groundwater interactions. These interactions also provide some of the necessary mechanisms for water quality maintenance. Therefore, it is the Department's recommendation the Corps of Engineers (COE) and Environmental Protection Agency (EPA) assert the broadest possible Federal jurisdiction when defining adjacent "waters of the United States".

The Department also recommends the determination and regulation of jurisdictional waters remain at the District level and not be elevated to Corps of Engineers Headquarters. Hydrological connectivity and ultimately jurisdiction is best determined by regulatory personnel most familiar with the regions hydrological characteristics, that being COE personnel in the state and district offices.

To maintain our nations "no-net-loss of wetlands" objective, it is imperative the EPA and COE provide the broadest jurisdiction when considering "waters of the United States" in order to restore and maintain the chemical, physical, and biological integrity of our nation's water.

Sincerely,



Dean Hildebrand

Director

North Dakota Game & Fish Department

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