

South Carolina Department of Natural Resources



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The following comments are in response to the Advanced Notice of Proposed Rulemaking (ANPRM) on the Clean Water Act Regulatory Definition of "Waters of the United States" issued by the U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) and published in the Federal Register on January 15, 2003.

The Corps and EPA are soliciting early comments on issues associated with the scope of waters that are subject to the Clean Water Act, in light of the U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC). More specifically, this ANPRM requests additional information on the extent of resource impacts to isolated wetlands and the affects this ANPRM may have on the functions and values of wetlands and other water bodies. This ANPRM also solicits input on what factors should be considered in determining whether a water is or is not isolated for jurisdictional purposes.

As the state agency mandated to protect, conserve and manage the states natural resources, the South Carolina Department of Natural Resources is very concerned with the potential natural resource implications of the subject ANPRM. Our state contains an abundance of wetland resources, representing a significant percentage of the total wetlands found in the southeastern region. According to information compiled using National Wetlands Inventory data, our department estimates that 429,800 acres of the states total wetlands would be considered isolated and potentially left without federal protection following the SWANCC decision. This is of particular concern in the rapidly developing coastal region of our state, where the majority of isolated wetland systems occur (301,000 acres). A large percentage of the states isolated wetlands are concentrated in several coastal counties under intense development pressure. Our state has sustained considerable wetland losses over time and without federal protection and oversight stands to lose significant additional acreages of important isolated wetlands. One of the more

unique isolated wetland habitats, Carolina bays, has sustained significant impacts. Of the approximately 4,000 Carolina bays present in South Carolina, no more than 400 to 500 bays larger than two acres in size remain in a largely undisturbed state (Bennett and Nelson 1991). The Charleston Corps District estimates that as of September 2002, approximately 1,000 acres of wetlands have been ruled non-jurisdictional and no longer regulated under the federal Section 404 permitting program. State and federal permitting agencies are receiving numerous requests to revisit previously permitted projects involving isolated wetlands. Developers are having properties redelineated and requesting that wetlands ruled isolated and non-jurisdictional be approved for fill. In many cases, these requests involve wetland areas previously protected as mitigation. This creates a dangerous precedent with the potential for significant cumulative impacts to isolated wetland resources.

Isolated wetland systems provide a number of important ecological functions, including habitat for a variety of wildlife species. Many species of amphibians depend on the alternating wet and dry cycles characteristic of small, isolated wetlands for successful reproduction. An abundance of small, isolated wetlands produces large numbers of juveniles necessary to maintain populations and that aid in the dispersal and recolonization of suitable habitats (Semlitsch 2000). Amphibians are an important component of the vertebrate food chain. Because of their high productivity and fluctuating water levels, which result in seasonal concentrations of prey organisms, isolated wetlands are important forage areas for a variety of wildlife, particularly birds (Moler and Franz 1987). In the state of South Carolina, some forty species of amphibians depend on isolated wetlands for survival, including a number of state and federally protected species.

Isolated wetlands also provide a number of important hydrological and water quality maintenance functions by storing water, filtering pollutants, abating floodwaters, and by recharging groundwater supplies. Depressional wetlands store precipitation that serves as an important water source for fish and wildlife, particularly during dry seasons and drought. Retained waters are released slowly, reducing the potential for flooding downstream and contributing to stream flow essential in supporting important aquatic ecosystems. Isolated wetlands also make significant contributions to local and regional water supplies via groundwater transport to underlying aquifers (Stone and Lindley Stone 1994). A number of water quality functions are performed by isolated wetlands, including the removal of pollutants, the retention and recycling of nutrients, and the trapping of sediments. These functions are vital in protecting water quality in downstream water bodies and wetlands, especially in the coastal plain where many isolated wetland systems are integrally connected to productive estuaries.

The South Carolina landscape is interspersed with a variety of different wetland types, including an abundance of isolated wetland systems. This network of different wetland types operates as a holistic or integrated system, providing a number of important functions and values within a watershed or ecoregion (Tiner 1998). While some wetlands may lack a clear connection to surface waters, the majority of wetlands in South Carolina are connected hydrologically via groundwater to other wetlands and adjoining rivers and

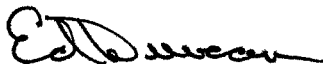
streams. The protection of isolated systems is vital in maintaining the integrity of these adjoining water bodies. Maintenance of a balanced and functioning ecosystem requires the protection of a mosaic of different wetland types and sizes, including isolated wetlands. The significant loss of isolated wetlands likely to occur with the removal of federal jurisdiction will have significant and irrevocable impacts on the health of entire ecosystems.

The state of South Carolina currently has no wetland protection regulations and/or programs in place to address isolated and headwater wetlands and relies heavily on the federal permitting program to protect these resources. In the absence of federal jurisdiction, the state must rely on other state programs to manage these wetland resources. In most cases, these programs lack clear permitting rules or guidelines and are largely inadequate in managing and protecting all wetland resources. The states authority to regulate isolated wetlands under programs administered by the South Carolina Department of Health and Environmental Control has been challenged in the courts by development interests and faces an uncertain future.

In the state of South Carolina, isolated wetlands in most cases are integrally connected to one another and to downstream water bodies both hydrologically and ecologically. This being the case, we find it difficult to define a truly isolated wetland system. These wetlands represent a subset of a complex of wetlands all working together within a watershed to provide a number of important functions and values. These wetlands do not function independently from other "waters of the United States" and significant impacts to these wetland systems on a landscape scale affect the overall quality of entire aquatic ecosystems. For these reasons, we consider isolated wetlands to be important "waters of the United States" worthy of full protection under the Clean Water Act (CWA).

We ask that the above comments be taken into consideration in the development of future regulations regarding the definition of waters subject to the CWA.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Duncan". The signature is fluid and cursive, with a large initial "R" and "E".

Robert E. Duncan
Environmental Programs Director

References Cited

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