

Bob Ellis <EllisB@dgif.state.va.us> To: Group Ow-Docket@EPA
04/15/2003 04:14 PM cc:
Subject: Comments on Federal Register Vol 68 No. 10

Please accept this email as The Virginia Department of Game and Inland Fisheries comments on the Clean Water Act Regulatory Definition. We will send hard copy in the mail today. Thank You

April 15, 2003

Water Docket, Environmental Protection Agency
Mailcode 4101T
1200 Pennsylvania Ave., NW.
Washington DC 20460
Attention Docket ID No. OW-2002-0050

To whom it may concern,

The Virginia Department of Game and Inland Fisheries (VDGIF) is writing in reference to the "Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States" as published in Federal Register, Vol. 68, NO. 10 published on January 15th, 2003. The VDGIF is charged with managing the Commonwealth's wildlife resources and inland fish populations for the public good. As you are aware, wetlands play a vital role in the life histories of many species of fish and wildlife. Rules that reduce the protection of wetlands could have large impacts on our native fish and wildlife populations.

We understand that the Solid Waste Agency of Northern Cook County (SWANCC) decision by the United States Supreme Court removed isolated wetlands from protection based on the Migratory Bird Rule. We strongly feel that protection of isolated wetlands needs to be maintained utilizing 33 CFR 328.3 (a)(3)(i)-(iii).

Isolated wetlands in Virginia are known by a variety of names and occur in several regions of our state. Carolina Bays are typically located in the Eastern portion of Virginia and are depressional areas that collect runoff from surrounding lands. Poquoson wetlands are another type of geographically isolated wetland, found predominately in the Southeastern Virginia. Sinkhole wetlands, typically found in the mountains, but also located throughout Virginia, are areas formed by the dissolution of minerals underlying a site, which then subsides and intersects the groundwater table. These sites are typically not connected to navigable waters and would lose section 404 protections if 33 CFR 328.3 (a)(3)(i)-(iii) is precluded from Clean Water Act (CWA) section 404 regulations. These wetlands provide nesting, brood rearing and wintering habitat for a variety of neo-tropical migrant bird species including Swainson's Warbler (*Limnothlypis swainsonii*), and Hooded Warbler (*Wilsonia citrina*). American Woodcock (*Scolopax minor*), an important game species in Virginia, utilizes these sites for winter foraging and

cover. A number of game species not typically associated with wetlands, including white-tailed deer (*Odocoileus virginianus*), wild turkey (*Meleagris gallopavo*), gray squirrels (*Sciurus carolinensis*), and particularly Black Bear (*Ursus americanus*), are found using these sites during certain times of the year. A number of these areas are currently farmed wetlands that provide wintering habitat for a range of migratory water bird species including ducks and geese. Although normally small, these sites have a tremendous diversity of amphibian populations. These amphibians typically use these areas for all phases of their life cycles.

A wide variety of wildlife species utilize isolated and headwater wetland habitats. The VDGIF feels that the loss of any of these habitats will be permanently detrimental to wildlife populations in Virginia.

Virginia is a vacation destination for a large number of foreign and interstate travelers. Many of these travelers visit our Commonwealth to enjoy our many natural areas. Although specific numbers are unavailable, a great deal of these individuals utilize isolated wetlands in Virginia for the purpose of bird watching, hunting, fishing, or other forms of outdoor recreation. Eco-tourism (wildlife watching, hunting and fishing) is big business in Virginia. The 2001 National Survey of Fishing, Hunting and Wildlife-Associated Recreation published by the U.S. Fish and Wildlife Service indicated that over \$1,897,217,000 was spent on these pursuits in Virginia in 2001.

In a recent study by The Virginia Institute of Marine Science, researchers utilizing Geographical Information Systems (GIS) and looking at National Wetland Inventory (NWI) maps determined that up to 43% or 515,450 acres of Virginia's wetlands could become unregulated by the federal government if isolated and headwater wetlands were removed from the 404 regulations. According to this study, approximately 8% or 93,000 acres are considered isolated wetlands in Virginia. (<http://ccrm.vims.edu/publications.html>) The potential loss of these sites if they do indeed become unregulated could be catastrophic to Virginia's wildlife.

The Commonwealth of Virginia passed a wetland protection law in 2000 that does regulate all wetlands in Virginia. The law regulates the filling, draining, excavation or destruction of wetlands without a permit from the Virginia Department of Environmental Quality. However, it is problematic to have inconsistencies in federal and state law when dealing with issues as contentious as wetlands. The regulated community is often unaware of differences and the acquisition of additional permits can be burdensome to the citizens of our Commonwealth.

Thank you for consideration of these comments.

Sincerely,

William L. Woodfin, Jr.
Director