

Weakening the Clean Water Act: What it Means for Michigan

Waters at Risk due to SWANCC and Rapanos Supreme Court Decisions and Agency Guidance

- Michigan has lost 50% of its wetlands since the 1780s. Some southern and coastal Michigan counties have lost as much as 75 percent of their wetlands.
- More than 930,000 acres of Michigan wetlands and >26,000 lakes and ponds could be considered so-called "isolated" waters no
 longer extended Clean Water Act protection in the wake of the SWANCC Supreme Court decision and subsequent agency guidance.
- Wetlands destruction continues in Michigan despite the many benefits these wetlands provide. Wetlands improve water quality and provide wildlife habitat, flood control, groundwater recharge, and recreational opportunities. Michigan has reported \$10,000 per acre per year as the estimated economic value of these "wetlands services."
- Wetlands and streams store water, acting as sponges during flood periods, and flow reserves
 during drought. For example, the Upper Mississippi River basin has suffered two 500-year
 floods in 15 years (1993 and 2008). A study has shown that wetlands lost in the Upper Mississippi River basin had the capacity to store the flood waters of the devastating 1993 Midwest
 flooding.
- Michigan has over 51,000 miles of streams. Almost half of these streams do not flow year round. These smaller streams are now at risk of losing Clean Water Act protections. As of July 2009, EPA reports that over 1.4 million Michiganders receive some of their drinking water from areas containing these smaller streams.



Wildlife, Hunting, and Fishing Impacts

• In 2006, 4.2 million people spent over \$5.1 billion in Michigan on fishing, hunting, and wildlife-associated activities, many of which depend on clean and healthy aquatic habitat.



- Deer hunters spend approximately \$500 million per year in Michigan. Cedar swamp wetlands are critical to white-tailed deer in northern Michigan.
- More than 6 million ducks migrate annually through the Great Lakes region. Wetlands in the Great Lakes region provide good nesting and brood-rearing habitat for mallards, wood ducks, blue-winged teal, black ducks, and Canadian geese. More than half the mallards harvested in Michigan each year originate in the Great Lakes region, and Michigan-raised mallards are recovered in more than 25 other states. Reductions in the quantity and quality of wetland habitat have resulted in reductions in wildlife populations.
- The breeding population of mallards in Michigan has decreased by 67% in the last decade. Recent research conducted by Ducks Unlimited indicates that the loss of wetlands is the primary factor in this decline.
- Duck hunting in Michigan is being harmed by the rollback of Clean Water Act protections. The Prairie Pothole Region (also known as "the Duck Factory"), an enormous geographic area west of Michigan, supports a globally significant population of breeding waterfowl, and it is at risk. Leg bands attached to ducks raised in the "Duck Factory" have been recovered in Michigan. Ducks Unlimited has attached bands to certain ducks in their nesting grounds in the Prairie Potholes and later observed the ducks in Michigan. These nesting grounds are no longer being protected by the Clean Water Act. Unless these protections for wetlands duck habitat are restored, the duck population—and duck hunting—in Michigan will suffer.



• Ninety percent of fish caught by American recreational anglers need wetlands for shelter, food supply, spawning, and nursery areas. The annual economic value of sport fishing in Michigan exceeds \$2 billion. Several popular Michigan sport fish species—including bluegill, large and smallmouth bass, yellow perch, and northern pike—spend part or all of their lives in wetlands. In addition, alewife and other forage fish use Michigan's wetland areas. Elimination of wetlands hosting forage species could ultimately reduce sport fish available to Michigan anglers.

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Wildlife, Hunting, and Fishing Impacts, cont'd.

- Michigan's Lake St. Clair supports one of the largest sport fisheries in the world, with an estimated direct
 value to the regional economy of over \$30 million annually. Macomb County's Anchor Bay watershed and
 its wetland and tributary streams support the outstanding fish and waterfowl habitat of Lake St. Clair.
- 50% of Michigan's threatened or endangered species need healthy, fully functional wetlands to complete their life cycle. Several of these plants and animals inhabit Michigan's "isolated" wetlands. Mitchell's Satyr butterfly, a rare Michigan butterfly, is found only in prairie fens.



No Jurisdiction, Less Enforcement

- From July 2006 until early 2008, the *Rapanos* decision and guidance negatively affected more than 500 Clean Water Act enforcement cases nationally. About 40 of these compromised enforcement actions occurred in EPA Region 5, covering Michigan and other Great Lakes states. One EPA Region 5 official emailed: "Rapanos is now requiring extensive upfront work in all our cases before we even inspect."
- At least 163 polluting facilities are located on at-risk Michigan streams and have their pollution limited by Clean Water Act permits that now may not be necessary.
- Michigan waters are currently at risk of losing Clean Water Act protections, including an Ingham County lake that is
- hydrologically connected to Lake Michigan.

Restoring Clean Water Act Protections will Streamline the Permitting Process

• The SWANCC and Rapanos decisions and guidance have added uncertainty and burdensome fact-finding and paperwork requirements to the Clean Water Act permitting process. The Corps of Engineers acknowledged in its 2011 budget justification that the complexity of these decisions "continues to increase the time it takes to provide landowners with decisions."

State Protections in Michigan



Michigan is one of only two states to assume the Clean Water Act dredge and fill permitting program from the Corps and EPA. As a result, Michigan has independent state authority to protect wetlands, lakes, and streams. However, Michigan law exempts many lakes, ponds, and "non-contiguous" wetlands less than 5 acres in size. Michigan law also includes broad exemptions for agriculture, silviculture, ranching, iron and copper processing, drainage ditches, and oil and gas pipelines. Significantly, Michigan's budget crisis has led to very significant cutbacks in Michigan's water permitting programs in 2008 and 2009.

Michigan joined over 30 states in asking the Supreme Court in *Rapanos* to uphold broad legal protections for small tributaries and their adjacent wetlands. Michigan's Macomb County, the site of certain wetlands at issue in *Rapanos*, similarly petitioned the Court. Macomb County has directed substantial county resources to the protection of Lake St. Clair and its tributaries, recognizing that their protection is critical to the County's economic future.



The Administration Must Restore Clean Water Protections for the Nation's Waters

For almost a decade, Congress has failed to enact legislation restoring the historic scope of the Clean Water Act. To protect the Nation's waters, EPA and the Corps of Engineers should revise their definition of "Waters of the United States" to restore and clarify Clean Water Act protections, including for so-called "isolated wetlands," in a manner consistent with both law and science. A successful rulemaking will restore and clarify protections for millions of wetland acres and stream miles, and will place these restored protections on a much more secure legal and scientific foundation.



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