



NO NET LOSS NEWS NO NET LOSS NEWS NO NET LOSS NEWS NO NET LOSS NEWS

WETLAND LOSS IS SLOWING IN U.S.

— By Brid Nowlan —

We enter the new millenium with mixed news for wetland conservation in the United States. The latest report on wetland status shows that wetland loss is continuing, but slowing; new rules on discharge to wetlands, to fill the gap left by the "Tulloch loophole", have been issued; and a Supreme Court decision places "isolated wetlands" at grave risk.

The latest Status and Trends of Wetlands, 1986 to 1997 has been released by the US Fish and Wildlife Service (USFWS). It reports that wetland loss is now occurring at a rate of 58,500 acres, an 80% reduction compared to the previous decade. Forested and emergent wetlands showed the highest losses. Most freshwater wetlands were lost to urban development (30%), followed by agriculture (26%), silviculture (23%) and rural development (21%). The agency reports that it is still committed to reaching the goal of "no net loss" of wetlands, but conservationists clearly still have a lot of work to do if we are not to reach that goal simply because there are no wetlands left to convert to some other land use. The wetlands report can be found at: <http://wetlands.fws.gov/bha/SandT/SandTReport.html>.

A court case some years ago successfully challenged the ability of federal agencies to regulate ditching and drainage. Dubbed the "Tulloch loophole" after the court case, this decision opened thousands of acres of wetlands, especially in America's Southeast, to drainage and subsequent development. A new rule has been issued to clarify the types of activities that would likely result in a "discharge of material" and so require a federal permit. This new rule also defines "incidental fallback" that would not be regulated. More informa-

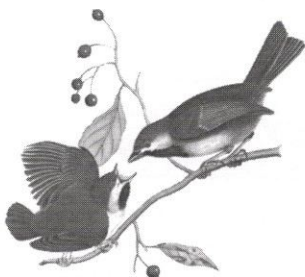
tion is available at: <http://www.epa.gov/owow/wetlands/dredgedmat/tullochf.html>.

The US Supreme Court, in a 5 to 4 decision (opinion by Rehnquist; dissent by Stevens), has overturned the "Migratory Bird Rule" used by the Army Corps to regulate isolated wetlands that provided habitat for migratory birds. The Army Corps had found that since migratory birds cross state boundaries (as do both birders and waterfowl hunters), areas used by migratory birds can be regulated by federal agencies through the Commerce Clause. The Supreme Court decided that federal agencies could not regulate the waterway in this case, because the area in question was not a "navigable" waterway, nor was it adjacent to such a waterway. The case concerned a landfill proposed for a disused quarry. The Army Corps became involved because ponds in the quarry were used by migratory birds, even though those ponds were not considered wetlands. Unfortunately, this decision is likely to

be disastrous for the prairie potholes, vernal pools and other so-called "isolated wetlands". We are still waiting for the Army Corps' response to find out exactly what this will mean for our wetlands in Washington State. The full court decision can be found at: <http://www.supremecourtus.gov/opinions/00pdf/99-1178.pdf>.

These changes in rules resulting from federal court cases show the importance of local ordinances for protecting wetlands. In Washington State we are fortunate to have many dedicated wetland activists who have worked to craft effective critical-areas ordinances which protect wetlands. Because of your work we were less affected by the "Tulloch loophole" than many other states. But, as the Status and Trends report shows, we still need your help to stem the continuing losses of wetlands.

For more information on wetlands, call Brid Nowlan or Christi Norman at 206-524-4570, email bridn@seanet.com.



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