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Resolution 2003-01-04 Regarding the U.S. Supreme Court Decision in Solid Waste Agency of Northern Cook County v. U.S. Army Corps Engineers

Association of Fish and Wildlife Agencies

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Resolution 2003-01-04

REGARDING THE U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY v. U.S. ARMY CORPS ENGINEERS

WHEREAS, the Clean Water Act has greatly improved water quality and significantly reduced net losses of wetlands, thereby enabling a recovery of many commercial, subsistence and recreational fisheries and ensuring wintering, breeding and migratory habitat for migratory waterfowl and numerous other species of fish and wildlife; and

WHEREAS, the U.S. Supreme Court's decision in Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC) held only that Clean Water Act protections do not extend to certain "isolated," non-navigable, wholly intrastate waters based solely on their use by migratory birds; and

WHEREAS, the U.S. Environmental Protection Agency (EPA) and Army Corps of Engineers (CORPS) have announced their intention to pursue changes to Clean Water Act rules that could go well beyond the narrow holding of the SWANCC decision; and

WHEREAS, the contemplated changes to rules governing federal Clean Water Act jurisdiction threatens to eliminate the protection of some of the most important migratory and breeding habitats for waterfowl, including the prairie potholes, playa lakes, rainwater basins, Carolina bays, et., as well as many headwater streams that support salmonid spawning and serve as thermal refuges and habitat to numerous species of aquatic wildlife; and

WHEREAS, state and federal conservation agencies have invested heavily in the restoration and enhancement of many of these same types of wetlands and stream systems through the North American Wetlands Conservation Act and many other state and federal laws and programs to benefit fish and wildlife species; and

WHEREAS, most state agencies do not currently have adequate and timely access to information on EPA and Corps decisions that do not extend Clean Water Act jurisdiction to waters in their state and therefore are unable to track impacts occurring to wetlands and streams and the fish and wildlife resources that depend upon them.

NOW, THEREFORE, BE IT RESOLVED, that the President of the United States demonstrate leadership on this difficult jurisdictional issue by directing agencies of the Executive Branch to interpret the SWANCC decision in as narrow a fashion as is legally defensible to ensure strong federal baseline protections to all waters of the United States.

BE IT FURTHER RESOLVED, that Congress takes action to fully restore wetland protection to the provisions of the Clean Water Act.

BE IT FURTHER RESOLVED, that the EPA and the Corps abandon plans to pursue changes to Clean Water Act Rules that would remove from protection categories of waters that provide for fish, wildlife, habitat and public health benefits.

BE IT FURTHER RESOLVED, that the U.S. EPA and Army Corps of Engineers make the results of all negative jurisdictional determinations immediately available to state agencies and the public.