

# North Country Notes



*The Newsletter of the Laughing Whitefish Bird Alliance (\*New Name\*)*

Marquette and Alger Counties, Michigan

November 2023

## From My Perch

By Jeff Towner, Chairperson, Laughing Whitefish Bird Alliance

In our spring newsletter I wrote about the Board of Directors voting unanimously to eventually drop the name “Audubon” from our chapter name, due to acknowledgement of the racism of John James Audubon. Since the spring I have taken part in a working group of Great Lakes chapters whose purpose is to try to come up with a new name that chapters can agree on. It is hoped that a common name will help to maintain inter-chapter cohesion that has historically been accorded from sharing the name Audubon. As a result of those discussions and suggestions of several different names, momentum coalesced around the name “bird alliance”. This name clearly conveys what we are all about, i.e. birds, and the fact that we wish to maintain a strong alliance among chapters for the benefit of birds and birders. At our October 16 meeting the Board of Directors voted unanimously to adopt the name Laughing Whitefish Bird Alliance. That will be our official name going forward. I hope you like it.

Shifting gears, on May 25<sup>th</sup> of this year the Supreme Court of the United States issued their opinion in the case of *Sackett et ux v. Environmental Protection Agency et al.*, i.e. “the Sackett case” [21-454 Sackett v. EPA \(05/25/2023\)](https://www.supremecourt.gov/opinions/21-454/servlet/SupremeCourtOpinionDocument?idDoc=21-454) ([supremecourt.gov](https://www.supremecourt.gov)). In my view this is one of the most environmentally destructive opinions to come down from the Supreme Court in a long time. I wanted to read the opinion and comment on it because I don’t think there has been enough discussion among the birding community, the

environmental community more generally, or the general public about the enormous impacts this decision will inevitably have on birds, other wildlife, and wetland habitats. This is the fourth case dealing with federal regulation of activities affecting wetlands taken up by the Supreme Court. These cases have all attempted to deal with the definitions of “waters of the United States”, “navigable waters of the United States”, and which wetlands are properly considered to be “adjacent” to waters of the United States. These are somewhat arcane terms and issues but stay with me.

The majority opinion was delivered by Justice Alito and concurred in by Justices Roberts, Thomas, Gorsuch, and Barrett. Three minority opinions were filed, all concurring with the majority opinion on the question of whether the Sacketts should prevail but dissenting with portions of it. Justice Kavanaugh wrote an opinion that disagreed with the opinion on what should be considered “waters of the United States”, including many adjacent wetlands. The opinion and remand to the Ninth Circuit Court covers the many laws, amendments, and decisions of the courts over the years, starting with the various Rivers and Harbors Acts first passed by Congress in 1890, as well as the Clean Water Act of 1972 and its various amendments.

The court paints a very draconian picture of the burdens imposed on citizens and corporations about being regulated for wetlands development projects, including the

costs, time delays, possible denial of permits, and possibility of legal action for violations of the law. One example: “By the EPA’s own admission, nearly all waters and wetlands are potentially susceptible to regulation under this test, putting a staggering array of landowners at risk of criminal prosecution for such mundane activities as moving dirt.” That is an overdrawn and misleading statement. The justices go on at length to discuss, in their view, the ridiculous interpretation of what wetlands require a permit to fill from the Corps of Engineers regulatory program, which is overseen by the EPA. These are the same arguments that have been made for decades by the private property rights movement and organizations like the Mountain States Legal Foundation. Mountain States is the group that produced Ronald Reagan’s Secretary of the Interior, James Watt. In addition to taking a wrecking ball to the Department of the Interior, Watt was later indicted on 18 counts of felony perjury and obstruction of justice for making false statements before a federal grand jury investigating influence peddling at HUD and sentenced to five years’ probation. Other actors in the radical private property rights movement include the Koch Brothers’-funded Heritage Foundation.

I lived through these ongoing controversies as a federal employee from 1980 to 2014. I was with the Corps of Engineers program as assistant chief of the Environmental Analysis Branch for Detroit District, chief of the Regulatory Program for Chicago District, and chief of the Enforcement Section for the Alaska District. If you can, try to imagine yourself as a staff biologist whose job it is to go into the field and determine whether or not the Corps has jurisdiction to require a permit for a proposed wetland fill project, or whether a wetland has been illegally filled after it is buried in dirt and rocks. Then try to imagine carrying out these duties with the constantly changing court opinions and

resulting changes that the Corps and EPA are forced to make in their regulations and guidance to staff. Layer on that the implications of having your determination being legally challenged by disgruntled property owners like the Sacketts, and the enormous changes that can occur if a court finds against the government as has been done in this case. Also consider the fact that the vast majority of permits for wetlands development are approved as long as adequate mitigation is provided, and so “progress” as developers define it is not significantly hindered. It is certainly false to say that the program puts “...a staggering array of landowners at risk of criminal prosecution for such mundane activities as moving dirt.” That is simply not the case; only a tiny minority of those who violate Section 404 of the Clean Water Act by illegally filling wetlands are ever prosecuted.

I have not seen any estimates of the acreage of wetlands that will no longer be protected under the Clean Water Act by this decision, but suffice to say we are talking about many, many acres at risk. There are laws in some states that will continue to protect wetlands to some degree, including in Michigan, but it is certain that with weakened federal regulations many wetlands will be put at risk. This Earthjustice website [Wetlands Most in Danger After the U.S. Supreme Court’s Sackett v. EPA Ruling - Earthjustice](#) provides an analysis of the risks to wetlands under the various state wetlands protections. The Clean Water Act provides the states with the option of writing their own laws and adopting the federal permitting program. Fortunately for us Michigan is one of only three states who have done so, so there is a level of protection for wetlands here that many states do not have.

The words in Supreme Court opinions have enormous consequences. This court seems bent on turning back the clock on gains made over decades and substituting their own

radical opinions and judgements for agency expertise and an overall highly credible track record established over five decades. The bottom line of the majority opinion, which now becomes part of the controlling case law, is that only wetlands that have a continuous surface water connection to navigable waters will need to have a permit before they are filled, i.e., destroyed, for development. This is the most radical interpretation I have seen over the half-century of litigation on this subject since the passage of the Clean Water Act in 1972. The implications are devastating for our native birds, which are already under pressure from many other environmental stressors. It also points up for me the enormous power to affect our lives and our natural resources that is given to men and women who have no relevant expertise to go along with their lifetime appointments. These justices seem to be saying in other words the case law that has been put in place over decades all the way back to the late 19<sup>th</sup> century, and the decades of professional application of the laws passed by Congress and the preceding case law is all wrong; our judgement is different and our judgement is correct.

Unfortunately, the attack on our environmental laws and regulations is not limited to wetlands. This past May the Supreme Court announced that they will be taking up the case of Loper Bright Enterprises v. Raimondo case. This case

challenges a 1984 landmark decision by the Court in the Chevron v. Natural Resources Defense Council. That decision found that courts ordinarily should defer to federal agency policies, since agencies like the EPA typically have greater expertise in their areas of responsibility than courts do. If Chevron is struck down we can anticipate that many other legal challenges will be made against environmental and other regulations, and judges will be making rulings in areas where they likely have little to no expertise. Of course, courts can request expert witness testimony, but then they should rely on it, not ignore it. I have to conclude that at least some of the justices agreed to take up the Loper case because they are ready and willing to continue to overturn decades of established environmental case law.

It has almost become a cliché to say that elections matter, including the fact that presidents appoint justices to the Supreme Court when vacancies occur, but radical opinions like the one in the Sackett case bring the message home that who we elect can have enormous consequences. The wetlands that will be lost as a result of the Sackett opinion, and the bird habitats and generations of birds along with them are not coming back; they will be lost forever. No doubt this ruling is not the end of the story; more litigation over wetlands regulation, along with more wasted time and resources can be expected.



Our beautiful irreplaceable wetlands deserve to be protected for wildlife and posterity.  
Peshekee Grade. Marquette County

# Update on the Peregrine Falcon Box in Ishpeming

Thom Skelding

A Peregrine falcon for the Cliff Shaft Mine Museum was approved this year by the museum's board of directors. The Peregrine box was constructed by three Ishpeming high school woodshop students and directed by shop teacher Andrew Hensley. They worked off a CAD design. Computer-aided design, commonly known as CAD, helps designers and engineers visualize a product's construction, before fabricating it. The design was provided by retired MTU professor, Phil Quenzi. This same design was used for several nest boxes that have been installed in the Houghton/Hancock area. One of those nest boxes was taken over by a Great-horned owl last spring!

The new box will be installed near the top of C-Shaft, the tallest of the three headframes (see photo), 174 feet high, and will be installed with a southern exposure. NMU and cable have provided the ability to have transmitters on roof, so a webcam and sound could be added later. The area has a large population of pigeons that would provide a steady food source for Peregrine falcons.



Figure 1 Falcon Box in the Wood shop



Figure 2 Cliffs C-Shaft in Ishpeming

Hopefully, the nest box will be in place soon. It would become the second man-made falcon nest box in Marquette County, the other is an active nest box on top of the new MGH hospital. When the Presque Isle coal fired power plant was torn down recently, the nest on one of the smokestacks went with it. This nest had many successful broods of chicks, usually 1 to 4 in an average nest over the years.

Cliffs Shaft Mine Museum is a 15-acre property located in the city of Ishpeming. The property and buildings were donated with the understanding that a museum would be established; the museum opened in 1999. It has been listed on the National Register of Historic Places since 1992. It also has had a Michigan Historical Marker designation since 1973. The property is a well-maintained historical example of underground mining on the Marquette Range. This particular mine has a noteworthy history as it was the longest operating mine at 100 years and was the largest producer of hard hematite ore in underground mines of the Marquette Range, closing in 1967.

## Partnering for Wood Ducks

Sam Offringa President, Lake Superior State University Student Chapter of Ducks Unlimited  
and Jeff Towner, Chairman, Laughing Whitefish Bird Alliance

An opportunity presented itself last year and several partners jumped in to seize it. Moosewood Nature Center in Marquette let it be known they had twenty Wood Duck (*Aix sponsa*) nest boxes available to donate. The Laughing Whitefish Bird Alliance (previously the Laughing Whitefish Audubon Society) sought a partner organization who could take possession of and emplace the nest boxes. The Lake Superior State University student chapter of Ducks Unlimited stepped up. The National Audubon Society with the endorsement of Audubon Great Lakes in Chicago provided a collaborative grant to cover expenses. The DU student chapter, through their contacts with Ducks Unlimited Michigan, obtained metal mounting poles donated by the Chippewa County Road Commission, and a member of the student chapter provided storage space for the boxes and poles. This winter members of the student chapter will install the nest boxes in suitable habitat near Sault Sainte Marie, and they will monitor and clean the boxes. If Wood Duck pairs occupy the boxes, it is hoped the broods they raise will augment the population and provide birders and waterfowl hunters with enjoyment of this beautiful species for years to come.

Male and Female Wood Ducks  
Photo by Beth Olson



## Mural Going up at Moosewood Nature Center

Matt Betts



Artist Matt Betts in front of the new mural, still in progress.

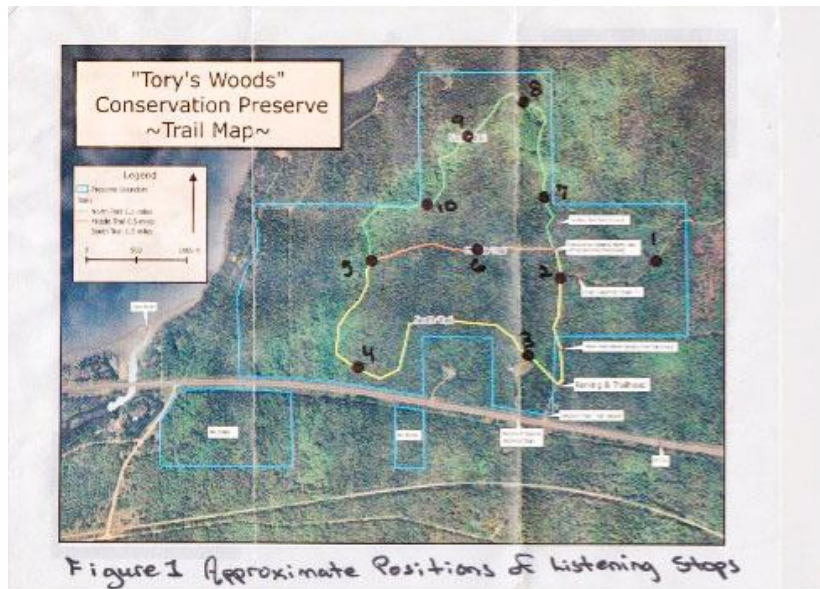
If you've passed by Moosewood Nature Center on Presque Isle lately, you may have noticed that a mural has been taking shape on an exterior wall there. This mural is being painted by local artist Matt Betts and will depict examples of some of the wild bird species found on the grounds of the nature center throughout the year. Materials for this mural were paid for by the National Audubon Society's Collaborative Grant which is intended to foster collaboration between organizations in working toward conservation goals.

## 2023 Breeding Bird Survey of Tory's Woods

Cathy Waller

Laughing Whitefish was contacted by the Upper Peninsula Land Conservancy (UPLC) to see if there were birders available to conduct a breeding bird survey at Tory Woods, on the east corner of Marquette County off M-28. Cathy Waller and Beth Olson volunteered and conducted the 4th breeding bird survey for these woods. The first was conducted in 2017. The most recent was conducted by Scott Hickman on June 16, 2019. We did our survey on June 20, 2023.

We arrived at Tory's Woods just before 6AM. There was an amazing amount of bird (and frog) song happening during our first half hour of censusing. Dawn chorus at its best! We saw or heard 30 bird species in the space of our first 40 minutes.



The birds of Tory's Woods were surveyed by using the transect – listening stop method. This method entails recording all birds seen or heard while slowly walking transects (routes) through the area being studied. Researchers using this method also pause for 10 minutes at listening stops located along the transects and similarly record all birds seen or heard. Almost all the birds recorded by this method are detected auditorily, so it is primarily a survey of singing males. Figure 1 indicates the estimated positions of the transect (route) and listening stops used during this survey. We tried to get as close as possible to the 10 listening stops used in the 2019 survey but were unfamiliar with the trails and Tory's Woods.

Stops 3, 4 and 5 travel through a very wet area of the South Trail with a couple 20-inch mud holes. Beth almost got lost in one of the deep mud holes; we were forewarned and equipped with high boots. The trail from Stop 9 is very rocky and tricky to walk on. We didn't realize we had passed Stop 10 until we got to the intersection of the North Trail and the Middle Trail. There is quite a bit of traffic noise especially at the first four survey legs. The closer we got to Lake Superior, the easier it was to hear the birds; but it was also getting later in the morning. The activity died down significantly.

This is the 4<sup>th</sup> year that a breeding bird survey has been done in this location. There may not be enough data collected to determine and assess trends in population change. Ruffed grouse, Swanson's thrush and sandhill crane were heard or found for all three of the previous years but we didn't see or hear any of them during our count. The 2023 survey added 7 new species to the possible breeding bird species list for Tory's Woods: ruby-throated hummingbird, alder flycatcher, chipping sparrow, pine warbler, mourning warbler, rose-breasted grosbeak, and indigo bunting. The indigo bunting was heard by the parking area just as we were leaving.

The results of this year's survey indicate that Tory's Woods is continuing to provide habitat for a healthy diversity of breeding birds. Tory's Woods is especially important in providing nesting habitat for the 13 conifer-dependent species. Scott Hickman noted in his previous report that this site's trails and openings (such as those created by its wetlands and roads) may be of use to many of the birds nesting in Tory's Woods. Thirty-nine species of birds were encountered during this survey:

- Ruby-throated Hummingbird
- Common Loon
- Yellow-bellied Sapsucker
- Pileated Woodpecker
- Woodpecker sp.
- Eastern Wood-Pewee
- Alder Flycatcher
- Red-eyed Vireo
- Blue Jay
- American Crow
- Black-capped Chickadee
- Golden-crowned Kinglet
- Red-breasted Nuthatch
- Brown Creeper
- Winter Wren
- Hermit Thrush
- American Robin
- Cedar Waxwing
- Purple Finch
- Pine Siskin
- American Goldfinch
- Chipping Sparrow
- White-throated Sparrow
- Ovenbird
- Black-and-white Warbler
- Nashville Warbler
- Mourning Warbler
- Common Yellowthroat
- American Redstart
- Cape May Warbler
- Northern Parula
- Magnolia Warbler
- Blackburnian Warbler
- Chestnut-sided Warbler
- Pine Warbler
- Yellow-rumped Warbler
- Black-throated Green Warbler
- Rose-breasted Grosbeak
- Indigo Bunting



Nashville Warbler, the most common warbler in the survey area. Photo by Steve Waller

No federal or state endangered or threatened species were encountered. But the mourning warbler is considered a tipping point species on the decline.

## LWBA Avian Research and/or Conservation Grant Application Period Open

In 2014 the Laughing Whitefish Audubon Society instituted an Avian Research Grant of \$500, available to individuals or non-profit organizations for birding research done in the Upper Peninsula. The grant has funded research on the Seney National Wildlife Refuge, Yellow Dog Plains, Peninsula Point (Stonington Peninsula) and recently on the Keweenaw Peninsula. In 2016 the group expanded the grant to include conservation projects that will improve birding habitat or populations. Again, the work should take place in the Upper Peninsula.

Amy Munes was our 2023 grant recipient. She used the money to fund her study of the factors influencing common loon genetics. Common loon (*Gavia immer*) breeding success has decreased in recent years leading to population declines. A 2014 Audubon report projected loons to be extirpated from the U.S. by 2080. Amy's research examined biological and environmental factors at a genetic level by measuring the telomeres lengths in loon blood cells. Telomere lengths act as indicators of longevity. When telomeres degrade to a certain point, cells no longer replicate, organs start to fail. The organism deteriorates quickly and eventually dies. Deterioration is largely influenced by age and exacerbated by oxidative stress levels throughout their lives, especially early while they are still developing. By measuring blood telomere degradation over several years, she learned how stress from sibling competition may influence telomere lengths. She also explored how stress from methylmercury contamination influences blood telomeres of individuals and their offspring, factors that potentially influence survival of common loons across the Upper Peninsula.

We would like to encourage applications for this year's grant. All applications must be received by January 31, 2024, and the guidelines are posted on the Laughing Whitefish Bird Alliance web page under the tab marked "Grant".

The application process is quite simple. If you know of an individual or an organization that might be able to use this grant, please have them check out the information on the webpage – or contact an LWBA board member. THANKS!!

## Christmas Bird Count Dates

*by Cathy Waller*

National Audubon Society's Christmas Bird Count (CBC) takes place this year from December 14, 2023, through January 5, 2024. Participation is free! Audubon is following the Centers for Disease Control guidance which advises that there is very little risk of COVID transmission outdoors and is instructing compilers to follow current CDC guidelines for their area for the Christmas Bird Count. To arrange to participate, contact compilers by email in advance of count day following the information.

### **Saturday, December 16, 2023 (Saturday) - Marquette**

The compiler is Melinda Stamp at [mstamp@mstamp.net](mailto:mstamp@mstamp.net) or 906-869-2489.

*Meet outdoors at 8:00 a.m. in the parking lot at Mattson Lower Harbor Park in Marquette. This meeting is optional, but please make sure to contact Melinda prior to the count if you are not planning to be there. **All participants must contact compiler in advance for planning purposes.** Feeder counters are especially encouraged to participate. Information about the count will be distributed on the UPBirders.org email list. To subscribe, send a message to [birdnet-subscribe@upbirders.org](mailto:birdnet-subscribe@upbirders.org) and you will receive a confirmation reply.*

### **Sunday, December 17, 2023-AuTrain Count**

The compiler is Scott Hickman at [suboscine@gmail.com](mailto:suboscine@gmail.com) or 906-892-8603.

*We will not be meeting at the start of this count at a central location. Each group will be meeting independently to census its preassigned section of the circle according to its own schedule. All communication for this count*



is done via email, so please contact the compiler by email at least two weeks before the count if you intend to participate. Potential participants should also know that most of the count circle is not accessible by car and is typically snow-covered on the day of the count.

If we hear of any other CBCs, we will put them on the LWBA website.

## **LWBA Programs January 10, 2024 – April 10, 2024**

*(Programs are held at Peter White Public Library, 217 N Front Street, Marquette)*

- **January 10, 2024 (Wed) 7:00 p.m. TBA**

**LOCATION:** Peter White Library, Heritage Room, 3<sup>rd</sup> Floor

**PRESENTERS:** Gary Palmer and Skye Haas

*Skye and Gary both have extensive experience at Whitefish Point involved with counting waterbirds, counting raptors, being involved with various programs there and numerous hours just casually birding this gem of a hotspot. They are going to share with us some of their insight to the Point, talk about rarities and experiences they've had there along with fantastic photos of great birds. If you've never experienced Whitefish Point and are wondering what all the hubbub is about, come learn from 2 birders that have spent much time there.*

- **February 14, 2024 (Wed) 7:00 p.m. TBA**

**LOCATION:** Peter White Library, George Shiras Room, 3<sup>rd</sup> Floor

**PRESENTER:** TBA

- **March 13, 2024 (Wed) 7:00 p.m. TBA (from one of their many travel adventures)**

**LOCATION:** Peter White Library, George Shiras Room, 3<sup>rd</sup> Floor

**PRESENTERS:** Mark & Joanie Hubinger

*Mark and Joanie have been birding since they were first married 45 plus years ago. They have been involved in volunteering at Whitefish Point, where Mark was a past board member in the early 90's, to leading bird-walks at Santa Ana NWR in southern Texas in recent years. Their birding travels have taken them to several countries around the world, where they've enjoyed the culture, food and people in addition to their passion for nature, with emphasis on birding!*

- **April 10, 2024 (Wed) 6:30 p.m. "Spring Tune-Up"**

**LOCATION:** Peter White Library, Heritage Room, 3<sup>rd</sup> Floor

**PRESENTER:** Gary Palmer, LWAS board member

Join us for a refresher on the birds returning to the north woods this spring! Gary will be presenting an overview of many of the migrants that can be found throughout the Upper Peninsula as they travel back to breeding grounds. From Golden Eagles and Northern Goshawks to Blackburnian Warblers and Indigo Buntings, we'll look at the stunning diversity visible at this special time of year and tips to help identify them in the field.

THERE ARE NO PROGRAMS FROM MAY-AUGUST.

## **Annual Sandhill Crane Count on Saturday, April 13, 2024**

Save the date for the Annual Midwest Crane Count on Saturday, April 13, 2024, 6:30 to 8:30 a.m. EST. Each year in mid-April, over 1,600 volunteers travel to their local wetlands and favorite birding locations to participate in the Crane Count. This annual survey of Sandhill and Whooping Cranes spans over 120 counties in six states of the upper Midwest.

To participate in the Crane Count, you first need to contact your County Coordinator to be assigned a site and receive additional instructions. Cathy Waller ([cathy@upwallers.net](mailto:cathy@upwallers.net)) is the Marquette County Coordinator. Jude Holloway ([906kayaker@gmail.com](mailto:906kayaker@gmail.com)) is the Alger County Coordinator. To see the list of coordinators in the UP: <https://savingcranes.org/education/annual-midwest-crane-count/>

## Laughing Whitefish Bird Alliance Membership Form

*Dues support the newsletter, programs, & local birding activities. Donations are tax-deductible.*

Your name (or gift-recipient's name): \_\_\_\_\_

Street: \_\_\_\_\_

City, State and Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

*(E-mail addresses are not given to other groups or commercial entities)*

Annual Membership fees (please check one)

Gift membership - \$15     Regular(family) membership - \$15    OR     Student - \$5.00

*How would you like to receive your newsletter?*

E-mail    or     Postal service

*Are you also a member of the Michigan Audubon Society?*

YES    or     NO

Additional donations:

\$\_\_\_\_\_ General Expenses for club projects

\$\_\_\_\_\_ Research/Conservation Grant to fund birding research/conservation in the UP

FOR GIFT MEMBERSHIPS please supply your name and the recipient will be notified of your gift: DONOR  
NAME: \_\_\_\_\_

**Mail this form, along with your check (payable to LWBA) to:**  
***Cathy Waller, 201 County Road KB, Marquette, MI 49855***

c/o Beth Olson  
5 Arrowhead Dr.  
Marquette, MI 49855

