

## Fact Sheet: Redefinition of “Waters of the United States”

On November 20, 2025, the Environmental Protection Agency and the Army Corps of Engineers published a proposed rule to further narrow the scope of waters and wetlands protected by the Clean Water Act. The Proposed Rule can be found [here](#) and more information about it is [here](#).

**EPA and the Corps are accepting comments on the proposed rule through January 5, 2026. Comments can be uploaded [here](#).**

### The Background of the Polluted Water Rule

- In 2023, the Supreme Court handed down its decision in *Sackett v. EPA*, which narrowed the scope of the Clean Water Act for wetlands. After *Sackett*, only those wetlands with a “continuous surface connection” with a “relatively permanent” body of water connected to “traditional interstate navigable waters” were protected within the jurisdiction of the United States.
- *Sackett* eliminated vital protections for millions of acres of wetlands throughout the Southeast and nationwide.
- Part of the rationale for *Sackett* was an assumption that states would “fill the gap” where federal protection ended by enacting state-specific protections. However, the opposite has been true in places. For example, the North Carolina General Assembly passed a law that eliminated a state gap-filler and decreed that only those wetlands that met the federal test would receive state protection going forward.

### Proposed Redefinition of “Waters of the United States”: The Lowlights

- The proposed rule limits the scope of the Clean Water Act even more than *Sackett*. Estimates by the agencies themselves suggest that this rule, in combination with *Sackett*, **would remove federal protection for approximately 80% of wetlands nationwide, leaving them vulnerable to being filled, developed, and polluted.** This devastating loss of wetlands will adversely impact biodiversity, flood control, and water quality throughout the Southeast.
- This rule proposes several key changes to EPA/Corps regulations:
  1. The rule proposes to narrow the definition of “relatively permanent.” Lakes, rivers, and streams would have to be standing or flow year-round or at least during the wet season to be “relatively permanent.”
  2. The rule proposes to narrow the definition of “continuous surface connection.” Wetlands would have to directly touch a traditional navigable water, relatively permanent tributary, or impoundments and hold surface water at least during the wet season to have a “continuous surface connection.”

3. The rule does not define “wet season” despite relying heavily on the concept, creating tremendous uncertainty as to what constitutes the wet season in a particular area.
4. The rule would exclude any portion of a wetland or wetland complex that does not have surface water throughout the wet season, even if the rest of the wetland does.
5. Interstate waters (waters that cross state lines) would no longer be automatically protected—they must also be a traditional navigable water, relatively permanent tributary, or adjacent wetland.
6. The rule would redefine “tributary” to require that the tributary itself and the entire connection between the tributary and the downstream traditional navigable water have relatively permanent flow (meaning, again, standing or continuously flowing at least during the wet season)
7. Jurisdiction over mosaic wetlands would be determined on a wetland-by-wetland basis as opposed to looking at the wetland complex as a whole.
8. The rule proposes or expands critical exclusions from Clean Water Act protections, including prior converted cropland, groundwater, and ditches.

### **What are the Impacts?**

- **Bottom line: The harm that the rule will cause to communities and the environment far outweighs any purported benefits. Moreover, this rule is not backed by science.**
- **Loss of wetlands:** The rule proposed to further curb the extent of waters covered by the Clean Water Act beyond the damage inflicted by the Sackett decision, and it will likely result in over 80% of the country’s wetlands and many streams falling outside of federal protection. A loss of wetlands equals a loss of the crucial ecosystem services they provide, including water filtration, wildlife habitat, flood prevention, and groundwater rechargers.
- **Water quality:** Wetlands are the kidneys of watersheds and filter pollution that would otherwise wind up downstream. Without wetlands, this pollution threatens water quality and drinking water.
- **Exacerbating flooding:**
  - Wetlands are one of the greatest natural infrastructures to prevent flooding. One acre of wetlands can store over one million gallons of water. Without protection, wetlands can be destroyed and communities left to face the consequences.
  - The Southeast in particular has seen an increase in flooding with the impacts of climate change, including “sunny day” flooding on the coast. A loss of wetlands will only make this flooding worse and more expensive to recover from.

- **Threats to fisheries and wildlife:**

- Wetlands serve as vital nurseries for important fish and crustacean species. These species are responsible for the generation of billions of dollars and thousands of jobs in the Southeast's commercial and recreational fishing industries. Losing wetlands would only negatively impact these species and the industry that surrounds them.
- Countless species in the Southeast rely on wetlands for their survival, including many who are threatened or endangered. This rule puts these species at risk by clearing the way to destroy the habitat these species call home.