



## Comments on EPA's Proposed Waters of the U.S. Rule

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Wisconsin Wetlands Association is a 501(c)(3) organization dedicated to the protection, restoration, and enjoyment of Wisconsin's wetlands and associated ecosystems. This year we celebrate our 50<sup>th</sup> anniversary. Our work is science-based, and is focused on improving wetland policies, practices, understanding, and acceptance.

While we have long-supported state and federal efforts to improve the administrative efficiency of state and federal wetland laws, we have also long-advocated for solutions that achieve this goal without harming wetlands and other waters.

We do not support the proposed changes to the definition of Waters of the U.S. as currently proposed because it leaves millions of acres of wetlands and streams vulnerable to development and will irreversibly harm downstream waters and communities. To do so is inconsistent with the purpose and intent of the Clean Water Act to protect and restore the chemical, physical, and biological integrity of the nation's waters.

We acknowledge that the process of determining whether or when destruction of a particular ephemeral wetland or stream will have a significant adverse impact on downstream waters is inherently complex; however, the science on how those waters positively contribute *in aggregate* to the integrity and health of downstream waters is definitive.

In the preamble to the proposed rule we see this complexity acknowledged, but not addressed. Rather than proposing a clearer and more definitive approach to evaluating site or landscape-specific considerations, the proposed rule categorically excludes these waters as non-jurisdictional. This approach is neither legally nor scientifically defensible.

The decision to narrow the definition of jurisdictional wetlands to only those "adjacent" (essentially only those wetlands physically touching or connected with direct surface water flow) to traditional navigable waters) is particularly staggering in scope.

Here are just two examples of the types of wetlands that will be definitively *not* eligible for federal protection in Wisconsin:

- 1) **1 million acres of geographically isolated wetlands**, including but not limited to:
  - springs and seeps which receive groundwater and discharge it to downstream waters;
  - ephemeral ponds which capture, store, and infiltrate rain and snowmelt and keep Wisconsin's trout streams running continuously, clear, and cold;
  - other "depressional" wetlands in forests and fields.

Ephemeral wetlands provide a host of functions and services that affect downstream waters including but not limited to surface water detention, stream flow maintenance, sediment retention, nutrient transformation, and fish and wildlife habitat.

As acknowledged by EPA's Science Advisory Board in its 2015 synthesis of the literature on the connections between headwater streams, wetlands and downstream waters, it is often the *absence* of continual and direct surface flow that contributes to downstream waterway health.

2) **Wetlands in historic but “disconnected” floodplains** - Situations where wetlands or other waters have been physically disconnected from a waterway or floodplain due to incision, mass wasting, or other factors are abundant across Wisconsin. Wetlands disconnected from adjacent streams by berms, dikes, or levees are also common.

There is strong agreement among natural resource professionals that these situations represent degraded conditions that contribute to or even cause existing stream and river impairments. It is also generally understood that these impairments are often reversible with the installation of simple, proven restoration practices. Even without restoration or repair, in most cases, these “perched” wetlands still contribute water to streams and help maintain stream health through unidirectional sub-surface flow.

**Combined, these scenarios represent millions of acres of wetlands in Wisconsin and the upper Midwest that will receive no protection under the federal Clean Water Act.**

Factor in the additional proposed removal of protections for many classes of headwater streams and it becomes difficult to see how Wisconsin's waters, which are already extensively impaired, will see anything but further decline.

We are unaware of any credible, peer-reviewed literature that would so diminish the importance of these classes of wetlands and streams in providing clean water. We are therefore concerned that the proposed rule strongly favors administrative certainty and efficiency over protecting the nation's waters.

We also reject the portrayal of Wisconsin in the administration's economic analysis of this rule as a state where our legislature is “likely” to provide regulatory coverage of waters that are no longer considered Waters of the U.S. A simple analysis of the last 10 years of wetland policies enacted and proposed in Wisconsin shows the state has moved towards decreasing rather than adding regulatory protections.

For these reasons we ask that you rescind this proposal and work to reinstate and fully implement the 2015 rule that was so meticulously rooted in credible science and so strongly supported by the nation's experts in aquatic health.