STATE OF WASHINGTON

January 2, 2026

Administrator Lee Zeldin
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Assistant Secretary Adam Telle
Department of the Army
108 Army Pentagon
Washington, DC 20310-0104

RE: Comments on the Updated Definition of "Waters of the U.S." Docket Number EPA-HQ-OW-2025-0322

Dear Administrator Lee Zeldin and Assistant Secretary Adam Telle:

Thank you for the opportunity to comment on the proposed Rule, Updated Definition of "Waters of the United States." The implications of the proposed Rule changes are of critical concern to Washington State. Washingtonians expect and are entitled to clean water for agriculture, industry, residential use (including drinking water), and recreation (including clean, cool water for fishing and swimming). For the reasons discussed in this letter, we cannot support the definition of Waters of the United States (WOTUS) as proposed in the draft Rule. The proposed definition fails to meet the goals of the Clean Water Act and if adopted, would not adequately protect Washington's water quality, putting our people, fish, wildlife and economy at risk. We recommend maintaining the existing definition of WOTUS. This proposed Rule is unnecessary and will cause regulatory confusion and other unintended consequences.

Streams and wetlands play a key role in maintaining and improving Washington's water quality. Clean water is critical to the functional health of Washington's agricultural, shellfish, fishery, and recreational industries, which are all critical cornerstones of Washington's economy. Washington's annual agriculture production value is $12.8 billion, including more than $20 billion in food and agricultural exports.[1]

[1] WSDA 2025. Washington State Agricultural Competitiveness and Business Viability Study https://agr.wa.gov/departments/directors-office/agricultural-competitiveness-and-business-viability-study.

Agricultural processing is linked to over 170,000 jobs and produces an annual revenue in excess of $21 billion.[2] Washington is a leading U.S. producer of shellfish, an industry reliant on clean water, with annual sales of nearly $150 million.[3]

Commercial and sport fishing, with a combined value of more than $2.4 billion, are linked to 16,000 jobs and $540 million in personal income.[4] Annual fishing license revenue in Washington generates almost $24 million, with over one million people fishing Washington's waters every year.[5] Under the proposed definition of WOTUS, many waters in our state and across the nation would no longer be protected under the Clean Water Act. These waters include many adjacent wetlands and intermittent and ephemeral waters. Withdrawing federal protection would significantly compromise the physical, chemical and biological integrity of entire waterbodies throughout Washington State.

Washington's salmon depend on healthy wetlands adjacent to tributaries and estuarine wetlands to survive and thrive. Washington has invested heavily in restoring and protecting salmon habitat because environmental protection works in tandem with economic support. To date, Washington has invested $2.1 billion to restore and protect salmon habitat and address threats to salmon, with $600 million in the last four years alone. Every $1 million invested in salmon habitat restoration supports up to 32 local jobs and generates $2.2 – $3.4 million in economic activity.[6] However, the Rule as proposed will result in degraded water quality in Washington's tributaries, rivers and estuaries, further threatening salmon.

Washington upholds treaty-reserved fishing rights for Indian Tribes by implementing restoration projects to ensure salmon are present and available for harvest. Washington respects the treaty rights of Tribes and reminds the Agencies that the federal government also has trust responsibilities to Tribes. The Agencies' actions should not be allowed to jeopardize the species so culturally, economically and historically important to Tribes and Washington's residents.

Insufficient Time to Analyze Effects

Washington is troubled by the limited time provided the states to analyze and evaluate the effects of this significant Rule, changing what waters are protected under the Clean Water Act. In addition, the Rule contains so many questions posed by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers, collectively the Agencies, that it is hard to determine what the state is evaluating. To expect states, Tribes and residents to respond so

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[2] Washington State Department of commerce 2025. Industry Snapshot Agriculture Innovation in Washington State
[3] Washington Sea Grant. 2015.Shellfish aquaculture in Washington State: final report to Washington Legislature https://wsg.washington.edu/wordpress/wp-content/uploads/Shellfish-Aquaculture-Washington-State.pdf
[4] WDFW 2011. Fish, wildlife and Washington's economy; https://rco.wa.gov/state-awards-grants-for-projects-to-recovery-salmon-habitat/
[5] WDFW 2022. Fishing, Hunting, and Wildlife Associated Recreation in Washington Fishing, Hunting, and Wildlife-Associated Recreation in Washington
[6] GSRO 2024, State of Salmon in Watersheds State of Salmon in Watersheds Executive Summary 2024

quickly is objectionable. Forty-five days, with three major holidays within that period, is an unreasonable timeframe for states to assess effects and costs of a rule that significantly changes which waters are protected under the Clean Water Act. The limited coordination with states prior to the proposed Rule being developed and the unreasonably short comment period runs afoul of cooperative federalism.

Proposal Places Resources at Risk

A significant number of waterbodies would lose federal protection under the proposed definition of WOTUS. The proposal would result in approximately 92% of wetland area and 95% of individual wetlands losing federal protection.[7]

As noted in the Regulatory Impact Assessment (RIA), nearly 90% of wetlands mapped on the National Wetlands Inventory would be non-jurisdictional under the proposed Rule. The RIA notes that streams affected will be underestimated since the National Hydrography Dataset does not sufficiently map intermittent and ephemeral streams accurately.

The Rule change places water quality at risk because it would result in streams having non-jurisdictional reaches. The proposal ignores the problem that unregulated discharges in the non-jurisdictional reach would pollute downstream jurisdictional waters. Our region's imperiled salmon are already at risk due to poor water quality. Further degradation in Washington's salmon streams and wetlands would compound this peril. Additionally, in our coastal areas, the potential for upstream pollution to flow into estuaries is particularly concerning for the shellfish industry that needs clean water to be viable and prosper.

The proposed changes could put the biological integrity of Washington's waters at risk. Washington is home to numerous species that are protected as Threatened or Endangered under the Endangered Species Act (ESA). For example, salmon, steelhead, and bull trout are dependent on intermittent and ephemeral habitats for feeding and refuge. They access these habitats when they are connected and utilize food and habitat resources delivered by seasonal streams to perennial habitats. Intermittent streams are among the most important sources of wood, water, sediment, and nutrients for sustaining salmon and salmon habitat. Direct impacts to salmon from this rule change will also have cascading impacts for 140 other species that depend on salmon, including federally Endangered Southern Resident Killer Whales. Other ESA-listed species that depend on ephemeral habitats include the Oregon spotted frog which utilizes ephemeral habitats to lay eggs and requires connective hydrology for juveniles to migrate to perennial steams. When this process is interrupted, the viability of this frog species is reduced, and human intervention is necessary to keep populations viable.

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[7] MAPPING DESTRUCTION: USING GIS MODELING TO SHOW THE DISASTROUS IMPACTS OF SACKETT V. EPA ON AMERICA'S WETLANDS; Natural Resources Defense Council; accessed at https://www.nrdc.org/sites/default/files/2025-03/Wetlands_Report_R_25-03-B_05_locked.pdf

The proposed changes would also result in loss of protection of critical habitat for 30% (3 of 10) of Washington's federally listed Endangered and Threatened plant species. Protection of key habitat for three recently delisted plant species (Bradshaw's lomatium, Nelson's checkermallow, and water howelia) would also be lost under the proposed changes, thereby jeopardizing the success of past recovery efforts that led to them being delisted. Numerous state Endangered and Threatened plants and state Endangered and Threatened wetland ecosystem types such as bogs, vernal pools, and wet prairies would be at risk as a result of the proposed changes.

Attempts by the Agencies to achieve simplicity with the proposed changes belies the complexity of aquatic systems, their connections both above and below ground, and their ecosystem services to the residents of Washington State. The Agencies' approach sacrifices the protection of large numbers of water bodies, including wetlands, for the sake of simplistic, unscientific expediency. This approach will complicate permitting through inconsistent decisions that would likely be indefensible, leading to legal challenges and permitting delays. We assert that the "clear and understandable" goal for the proposed definition of WOTUS will result in degraded water quality for downstream, traditionally navigable waters. We support continued improvements in the permitting process while maintaining protections for our nation's waters. These goals are not mutually exclusive. Streamlining permit processes does not need to come at the expense of water quality.

Changes are not Scientifically Based

The Agencies erred in ignoring their own science on how waters, including wetlands and streams, are connected downstream to traditionally navigable waters.[8] The Clean Water Act emphasizes developing and using science in its implementation. The Agencies did not give sufficient scientific rationale to support their drastic change in the definition of what waters and wetlands are WOTUS. Allowing unchecked pollution of upstream reaches and wetlands will directly degrade water quality in streams and rivers and threaten Washington's natural resource industries. The Agencies also ignore the ecological reality that wetlands exist along a continuum of hydrologic regimes and artificially separating a wetland into jurisdictional and non-jurisdictional areas contradicts the science behind the U.S. Army Corps of Engineers' own wetland delineation methods and undermines their ease of implementation. For this reason alone, the Agencies should include the entirety of adjacent wetlands connected to jurisdictional waters as WOTUS.

All Clean Water Act Goals Should Be Met

In the preamble of the proposed Rule, the Agencies explain at length how the proposal meets the goals of Section 101(b) of the Clean Water Act regarding states' rights. However, the preamble

[8] U.S. EPA (2015). Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence. (EPA/600/R-14/475F). U.S. Environmental Protection Agency, Washington, DC. https://assessments.epa.gov/risk/document/&deid%3D296414

spends little time on how the Rule will meet the first and primary goal of the Clean Water Act, Section 101(a). Section 101(a) articulates that the Clean Water Act's purpose is to "restore and maintain the chemical, physical and biological integrity of the nation's waters." This should be the priority when implementing the Clean Water Act. All the goals of the Clean Water Act must be met.

Importantly, state and federal waters are not mutually exclusive. The Clean Water Act does not divide waters by federal or state jurisdiction. It simply specifies which waters are federally protected. Thus, cooperative federalism does not mean that the Agencies can abdicate their responsibilities to protect the nations' waters to individual states. It means that the protection of the nation's water is a shared responsibility between the states and the federal government.

In this case, maintaining strong federal protection across state boundaries prevents upstream pollution from flowing to downstream states. States that do not protect more than the federal minimum would pass pollution and resultant cleanup costs to downstream states. Additionally, under the new definition, waters crossing state lines would no longer be jurisdictional, with consequent adverse impacts on water quality, flood protection, and increased costs and economic losses in downstream states.

Consistency with Supreme Court Decisions

The Proposed Rule goes beyond Supreme Court precedent set in *Rapanos* and *Sackett*. In regard to adjacent wetlands, the Court did not hold that only long-term ponded areas in adjacent wetlands should be jurisdictional. It also did not require that less than the entirety of a delineated wetland should be protected as an adjacent wetland. Thus, no support exists for the Agencies' proposal to partially regulate wetlands, no matter their full delineated scope.

Similarly, the Agencies' focus on persistent surface water goes beyond what the Supreme Court requires, which is only a "continuous surface connection."[9] But *Sackett* did not specify the nature of this "surface" connection or what constitutes continuity, and the *Rapanos* plurality opinion emphasized only a "physical connection."[10] Requiring "persistent surface water" adds requirements that are not supported by the Supreme Court's case law.

Finally, the Agencies identify an alternative to limit the definition of "relatively permanent" waters to only perennial waters. This approach would completely discount the term "relatively." It would also depart from the *Rapanos* plurality's conclusion that the "relatively permanent" requirement "do[es] not necessarily exclude *seasonal* rivers, which contain continuous flow

[9] *Sackett v. EPA*, 598 U.S. 651, 678 (2023) (acknowledging "that temporary interruptions in surface connection may sometimes occur because of phenomena like low tides or dry spells").
[10] *Rapanos v. United States*, 547 U.S. 715, 747, 755 (2006).

during some months of the year but no flow during dry months."[11] We do not support this interpretation of the Supreme Court's cases.

Local Governments Will Pay More

Allowing pollutants to flow unchecked into state and federal waters jeopardizes water quality downstream, forcing local governments to invest in engineered solutions to clean water and increasing costs for their residents. When upstream wetlands are lost, increased flooding and more frequent extreme weather events drive up recovery costs and infrastructure losses. Rolling back federal protection of wetlands will increase the costs of maintaining local and state infrastructure because wetlands help store and reduce damage from flood waters – including the record-setting floods currently occurring in parts of Washington. A study on the economics of wetlands and flooding notes that the cost to society was $1,840 for each hectare of wetland lost between 2001 and 2016 annually, rising to more than $8,000 in developed areas.[12]

Our coastal communities will be placed at greater flood risk if streams and wetlands are filled and lose their capacity to hold and release surface flows. Similarly if estuarine wetlands were to be considered non-jurisdictional, communities would be at greater risk of storm surges and increased coastal erosion when those wetlands are filled.

Impacts to Industry

As noted, natural resource industries such as shellfish aquaculture rely on clean water. The proposed Rule will decrease water quality and increase closures of shellfish beds, lowering revenues for shellfish farmers.

Environmental restoration, including wetland mitigation banking, is a growing industry in Washington and is a $3.5 billion industry supporting 53,000 jobs nationally.[13] This Rule threatens the innovation and market-driven efficiencies provided by the banking industry that are benefiting property owners through flood mitigation and improved water quality. While impacts will still occur, mitigation will not be required for waters that are no longer WOTUS in states that rely solely on the Clean Water Act for protection of their waters. This reduction in the available market will significantly affect the financial viability of wetland mitigation banks, particularly for states without a regulatory program to protect waters independently from federal laws. This may lead to stranded assets for banks that invested in the industry under the existing Rule. The regulatory uncertainty will also undermine future investments.

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[11] *Id.* at 732 n.5.
[12] Taylor, C. A. and Druckenmiller, H. (2022). Wetlands, Flooding, and the Clean Water Act. *American Economic Review*, *112*(4), 1334–1363. https://www.aeaweb.org/articles?id=10.1257/aer.20210497
[13] BenDor TK, Kwon J, Lester TW (2023) Assessing the size and growth of the US wetland and stream compensatory mitigation industry. PLoS ONE 18(9): e0285139. https://doi.org/10.1371/journal.pone.0285139

Implementation Issues

The proposed Rule will result in increased costs due to the need for additional data collection to determine relatively permanent flows and delineation of jurisdictional areas. Contrary to the stated goal of making the Rule clear and durable, it will generate more confusion as landowners will be unable to simply tell if a water is relatively permanent. Delineating the extent of jurisdiction within an adjacent wetland will demand greater amounts of information to determine what parts of the wetland have relatively permanent surface ponding. The EPA's response that the wetland delineation manual can be used is unsatisfying, because the manual does not identify a methodology for determining the boundary of relatively permanent surface ponding. This implementation issue would be reduced if the Agencies included the entirety of an adjacent wetland as jurisdictional, as the wetland delineation manual and regional supplements are well known and have been used for decades. Developing a new delineation method, however, will almost certainly increase costs for applicants and the Agencies.

Additionally, determining if a tributary has relatively permanent flows will require the collection of data at multiple time events during the "wet season" to demonstrate that the flows are continuous under the proposed Rule. The need for this additional data and analysis will result in longer permitting times and increased costs for applicants and agencies.

Regulatory Impact Analysis

The Agencies' Regulatory Impact Analysis (RIA) is wholly inadequate. The environmental benefits of protecting wetlands and streams were not quantified in dollar amounts, even though economic indicators exist that the Agencies could have used.[14] A large majority of Americans say clean water, especially drinking water, is very important to them. Protecting wetlands is critical to maintain their water purification functions and support clean drinking water, which is a national priority.

The forgone benefits of the loss of wetlands can be estimated in different ways. One way is through the costs of building treatment systems to replace the water purification functions wetlands provide. Another cost would be the loss of flood protection and the increased costs in recovery efforts and flood insurance premiums due to the loss of wetland storage and subsequent flooding. Washington is beginning to recover from record-setting flooding due to atmospheric river systems that are increasing in frequence, strength and duration. As a result, we are deeply concerned about the threat of additional wetland losses. Economic benefits of wetlands and streams can also be estimated using fishing and hunting license revenues, commercial shellfish production revenue, and commercial fishing revenues –all of which rely on clean water.

[14] Brander, L.M., Florax, R.J.G.M. & Vermaat, J.E. The Empirics of Wetland Valuation: A Comprehensive Summary and a Meta-Analysis of the Literature. *Environ Resource Econ* **33**, 223–250 (2006). https://doi.org/10.1007/s10640-005-3104-4

The approaches for estimating value are not mutually exclusive but additive. Estimating the value of wetlands will almost always undervalue them due to the multiple benefits they provide. Focusing only on reduced permitting costs severely underestimates the costs that Americans will incur due to this proposal. This approach values short-term savings over long-term economic losses resulting from the loss of our nation's waters. Again, we encourage the Agencies to meet the primary goal of the Clean Water Act to protect and maintain the chemical, physical and biological integrity of our nation's waters and not sacrifice that goal for political expediency. As we've learned in Washington, restoring ecosystem services is more expensive and time consuming than protecting existing functioning of natural systems.

Conclusion

Washington does not support the propped Rule because it doesn't adequately protect the nation's waters. The Agencies are attempting to apply "states' rights" as a justification for abdicating their responsibilities to protect the physical, chemical and biological integrity of the nation's waters. This proposal compromises the protection of clean water by instituting an overly simplistic and scientifically indefensible approach to regulation. We fear the proposed Rule with a simplistic definition of WOTUS will actually result in more landowner confusion and increased complexity in assessing which waters are protected under the Clean Water Act. By abandoning protection of some of the most valuable, highly functioning ecosystems in Washington, the Agencies are putting people, fish, wildlife, and our economy at risk.

Washington does not support the WOTUS definition Rule as proposed, and we urge that the Agencies retain the existing definition of WOTUS consistent with current practice.

Sincerely,

Casey D. Sixkiller, Director
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Megan Duffy, Director
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Kelly Susewind, Director
Department of Fish & Wildlife

Larry Epstein, Director
Puget Sound Partnership

Dave Upthgrove, Commissioner of Public Lands
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