



INSPIRING AMERICANS TO PROTECT WILDLIFE FOR OUR CHILDREN'S FUTURE.

Fact Sheet

PROTECTING AMERICA'S WATERS



Restore Clean Water Protections

Protect Clean Water for People and Wildlife

What happened to the Clean Water Act?

Twenty million acres of wetlands and two million miles of streams are losing Clean Water Act protections in the wake of Supreme Court decisions in 2001 (*SWANCC*) and 2006 (*Rapanos*) and subsequent Army Corps of Engineers and Environmental Protection Agency guidance. The confusion and uncertainty created by these decisions are also fueling wasteful additional paperwork and litigation and undermining the enforcement of clean water safeguards. **We urge the Administration to act quickly to restore Clean Water Act protections for wetlands, streams, lakes, and headwaters that are vulnerable to pollution and destruction under the Supreme Court's decisions.**

How Agency action will restore long-standing Clean Water Act protections:

Final Agency Field Guidance: After a decade of congressional inaction, the Environmental Protection Agency and the Army Corps of Engineers took an important first step in April 2011 to clarify which waters are protected as “waters of the United States.” The Agencies issued draft guidance and gathered about 230,000 comments on the guidance over the 90-day comment period. Once finalized, this guidance will help field staff and the regulated community apply the Supreme Court decisions to specific water bodies. It will immediately replace a flawed 2008 guidance that instructs field staff to be less protective than the law allows. Conservationists, public health officials, and county officials, among others spoke up in strong support for clean water, safe communities, and healthy fish and wildlife habitat.

Waters of the United States Rulemaking: EPA and the Corps must act soon to take the next important step to clarify and restore clean water protections by proposing and then finalizing a binding agency rule. Such a rule will revise their long-standing definition of “waters of the United States” and address the *SWANCC* and *Rapanos* decisions and comments received on the draft guidance. Supreme Court justices, industry lobbyists, and conservationists alike recognize the need for this action.

A successful rulemaking will ultimately result in a final rule defining “waters of the United States,” based on a well-documented administrative record that reflects **a broad spectrum of public input and a strong scientific foundation** for restoring protections for many of the wetlands, lakes, and streams protected prior to the 2001 *SWANCC* decision. The comment period on the proposed rule will be followed by months of deliberation and synthesis of public input (including regulated community input) before the final rule is published and becomes effective. **A successful final rule will strengthen the Act's legal and scientific foundation and provide greater long-term certainty and protection.**

We must restore protections for the Nation's wetlands and streams to ensure clean water, safe communities, and healthy habitat.



What's at Stake?

Recent storms, floods, wildfires, and droughts offer one clear lesson: we must protect our natural water supplies and essential water resources. Healthy streams and wetlands are vital to healthy communities and habitat, they:

- **Naturally filter and replenish our drinking water supplies.** EPA estimates that more than 117 million Americans receive their drinking water from public water systems supplied in whole or in part by streams most at risk of losing Clean Water Act protections.
- **Support diverse and abundant fish and wildlife.** An estimated 20 million acres of so-called “isolated” wetlands – including prairie potholes across the Dakotas, Minnesota, Montana, and Iowa – are losing Clean Water Act protection. Wetlands are the lifeblood of healthy duck populations, providing essential nesting, migratory, and wintering habitat. Small non-navigable streams provide critical spawning and rearing habitat for many fish species, including trout and salmon.
- **Support local hunting, fishing, birdwatching, and boating industries.** The American Sportfishing Association estimates angling generates \$125 billion in annual economic activity and supports more than 1 million jobs. According to the Fish and Wildlife Service, duck hunting alone generates \$2.3 billion for the economy every year and supports 27,000 private sector jobs.
- **Absorb flood waters and protect coastlines during heavy storms and hurricanes.** Wetlands and intermittently flowing streams naturally absorb flood waters, moderating peak flood stages and reducing flood damage. **A 1% loss of a watershed's wetlands can increase total flood volume by almost 7%.** Recent flooding in Illinois and Iowa underscores the need for wetland protection. These two states have lost over 85% of their wetlands.



These waters are now at risk of pollution and destruction absent congressional or administrative action. In a February 2010 *New York Times* article, EPA staff estimated that “more than 1,500 major pollution investigations have been discontinued or shelved in the last four years” due to the *SWANCC* and *Rapanos* decisions. One EPA official described the situation as “a huge step backward. When companies figure out the cops can't operate, they start remembering how much cheaper it is to just dump stuff in a nearby creek.” **The legal confusion is also adding burdensome fact-finding and paperwork to the permitting process.** According to the Army Corps of Engineers 2011 budget justification document, “[t]he complexity of the Supreme Court Decisions related to Clean Water Act jurisdiction also continues to increase the time it takes to provide landowners with decisions.”

The Administration Must Restore Clean Water Protections for the Nation's Waters

The draft guidance, once finalized, is a critical first step in restoring longstanding Clean Water Act protections to many streams, wetlands, and other waters. The Administration indicates that it will take the next step and issue a rulemaking, which will provide further protection and clarification. This new rulemaking will entail a public, transparent process with additional opportunities for stakeholder involvement. This next step will reinforce the Clean Water Act's legal and scientific foundation, and will provide greater long term protection for streams, wetlands, and other waters.



By actively supporting final guidance and rulemaking, Americans can help to protect clean water, healthy communities and wildlife habitat.

For more information contact:

Jan Goldman-Carter • goldmancarterj@nwf.org • 202-797-6894 • www.nwf.org/waters