

Focus on: Waters of the United States



Why it matters

Under the new federal rule:

- About 29% of state wetlands will lose federal Clean Water Act protection.
- In the Thorp area in Kittitas County, for instance, 6,617 acres of wetlands will lose federal protection.
- When oil and other toxic pollutants spill to waters outside federal jurisdiction, states can no longer rely on federal response funding or resources.

Special accommodations

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-7585, or visit ecology.wa.gov/accessibility. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Federal rollbacks means protecting water quality in most wetlands and other waters falls to state

In June 2020, the U.S. Army Corps of Engineers (Corps) and U.S. Environmental Protection Agency (EPA) enacted a new rule redefining which water bodies qualify as “waters of the United States,” and are subject to federal Clean Water Act protection. This rollback means thousands of wetlands, streams that flow only intermittently in response to rainfall, and other waters have lost federal protection. The new rule also means EPA and the U.S. Coast Guard no longer offer resources or financial support to states responding to toxic spills to waters now outside of federal jurisdiction.

Under the new rule, about 29% of wetlands and 14% of streams in Washington will lose federal protection – but are still protected by the state Water Pollution Control, Shoreline Management, and Growth Management acts, and other state environmental regulations. While projects affecting non-federal wetlands and waters may no longer need Clean Water Act permits, they must meet state laws. Ecology estimates needing to issue at least 300 more state administrative orders annually to ensure development does not damage water quality in these areas.

New rule eliminates streamlined review process

The new federal rule creates an unprecedented workload for both Ecology and project proponents seeking timely, effective decisions. It also removes a well-established process, in which Ecology and the Corps worked closely to evaluate projects in a streamlined fashion under Clean Water Act Section 404. When projects fell outside federal purview, we issued a handful of administrative orders annually to address wetland impacts and identify mitigation requirements. For projects meeting state requirements, the Corps issued many permits without our review. Now, Ecology will need to review projects that previously would have received a streamlined Nationwide Permit.

Why Wetlands Matter

Wetlands are critical to the overall health of state waters. They help absorb the impacts of floods, provide erosion control, filter and clean stormwater runoff, and recharge our underground sources of drinking water. Wetlands also offer essential habitat for birds and other wildlife. Wetlands are so important that we work extremely hard to make sure we don't lose wetland acres or the functions they provide.

More likely than not, there is a wetland near where you live, work, or play. According to a 1990 report to Congress, wetlands cover approximately 938,000 acres in Washington, about 2% of the state's total land area.

Since the 1780s, Washington has lost 31% of its wetland areas, from 1.35 million acres to 938,000 acres.



Photos: Mallard Flock – Brent M., Creative Commons; Great blue heron – Anya Adora, Creative Commons; and Long Beach – Rick Mraz, Ecology

Workload challenges

Currently, we have 8.6 FTEs reviewing projects impacting wetlands. These staff members also issue state administrative orders for projects affecting waters outside federal jurisdiction. Under the former rule where the Corps had jurisdiction and used the Section 404 streamlined process, each staff person processed about 51 projects a year.

During the next four years, however, the number of projects that will need to request administrative orders from Ecology is expected to climb dramatically: from about a dozen to 300 annually. Issuing administrative orders for each project is not a viable long-term solution. The approach cannot meet the needs of developers, infrastructure projects, and other activities requiring environmental reviews.

Potential solution

To protect all state waters and wetlands, we need a streamlined review pathway to ensure projects do not violate state law. Ultimately, a state permitting program similar to the Corps' Nationwide Permit program, would provide the best structure and streamlining options while ensuring projects meet state laws.

However, until Washington can establish such a permitting program, issuing administrative orders is Ecology's only tool to deal with the waters federal agencies no longer regulate. To process 300 individual administrative orders annually, we need an additional 6.0 FTEs for fiscal years 2022 through 2024. This approach would be intended to get the state through the next three years while we work with stakeholders to develop a fee-supported permitting program.

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These intertidal wetlands on the Long Beach peninsula are vital habitat for migrating birds and other animals. New federal rules no longer protect these wetlands.