

Focus on: Waters of the United States



Why it matters

Under the 2020 federal rule:

- About 29% of state wetlands lost federal Clean Water Act protection.
- In the Thorp area in Kittitas County, for instance, 6,617 acres of wetlands lost 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 www.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 2020 rollbacks mean protecting water quality in most wetlands, other waters fall to state

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

Under the 2020 rule, about 29% of wetlands and 14% of streams in Washington lost 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 U.S. Clean Water Act permits, they must meet state laws. To protect state water quality, Ecology estimates needing to issue approximately 24 new state administrative orders (AOs) the first quarter of 2021 and an additional 50 AOs during the next three quarters of 2021.

2020 rule eliminates streamlined review process

The 2020 federal rule increases the workload for both Ecology and project proponents seeking timely decisions. It also removes a well-established process where Ecology and the Corps worked closely to evaluate projects in a streamlined fashion resulting in the Corps issuing many permits without our review. When projects fell outside federal purview, we issued a handful of AOs annually to address wetland impacts and identify mitigation requirements. Under the 2020 federal rule, Ecology will need to review projects that once 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 do not 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 six direct FTEs reviewing projects impacting wetlands. These staff members also issue state AOs for projects affecting waters outside federal jurisdiction. Before the 2020 rule, where the Corps had jurisdiction and used the Section 404 streamlined process, each staff person processed about 28 projects a year.

During the next four years, however, the number of projects that will need to request AOs from Ecology is expected to climb considerably: from about seven to around 70 annually. To protect waters and wetlands that federal agencies no longer regulate, we will need to issue individual AOs for each project so they do not violate state law. We will work with private and public sector developers to help ensure their projects comply with state water quality protection regulations.

Gov. Inslee's budget proposal errata

Gov. Jay Inslee's revised budget proposal for 2021-23 includes \$321,000 and 2.9 new FTEs per year to process an estimated 70 AOs annually. On Jan. 20, 2021, the President issued an executive order to re-examine the federal rule defining waters of the United States. However, until the 2020 rule is revoked or replaced, Ecology will need to continue to issue AOs for wetlands and waters no longer federally protected.

Contact information

Lauren Driscoll, wetlands section manager
(360) 584-5107
lauren.driscoll@ecy.wa.gov



These intertidal wetlands on the Long Beach peninsula are vital habitat for migrating birds and other animals. Federal 2020 rules no longer protect these wetlands.