Western Division American Fisheries Society

January 5, 2026

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

Mr. Adam Telle
Assistant Secretary, Army for Civil Works
U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314

Re: Revised Definition of "Waters of the United States" (Docket ID: EPA-HQ-OW-2025-0322)

Dear Administrator Zeldin and Assistant Secretary Telle:

On behalf of the Western Division of the American Fisheries Society, we submit this information for the record. The mission of the Western Division of the American Fisheries Society is to: 1) improve the conservation and sustainability of unique fishery resources and aquatic ecosystems in western North America and the Pacific Islands by advancing fisheries and aquatic science and promoting the development of fisheries professionals, and 2) serving as an effective bridge between the Society and Chapters within the Western Division, promoting communication among and support of the Chapters and membership, and being the American Fisheries Society's representative to the public in western North America and the Pacific Islands. Our 1,900+ members represent a holistic array of fisheries experts who are employed in academia, government agencies, industry, private consulting, and nongovernmental organizations. We are submitting comments on the following proposed rule changes: 1) the clarification that groundwater is not a water of the U.S., and 2) the definitions of "wet season", "relatively permanent", and "continuous surface connection".

Groundwater

The proposed changes do not follow the best available science pertaining to aquatic systems and fisheries. The proposed new WOTUS rule (https://www.epa.gov/system/files/documents/2025-11/public_factsheet_wotus_nprm.pdf) is problematic in not recognizing that groundwater and subsurface connections are integral to the functioning of connected waterbodies. This will result in the loss of regulation and protection of waters that affect other waters of the U.S. Sulliván et al. (2025) emphasize how headwater habitats, including non-perennial streams and wetlands, provide adequate and cold flow downstream for fish, wildlife, and plants. Water moving subsurface naturally is insulated from solar radiation to stay colder during summer and warmer during winter, which native biota depend on to avoid imperilment (Colvin et al. 2019; Sulliván et

al. 2025). The role of groundwater is similar to that of blood vessels in the properly functioning human-circulatory system that provide proper flow, temperature, and the ability to filter toxins out of the body. In essence, the headwaters are the "heart" of watersheds, whereas the perennial surface waters downstream are part of the arterial system and the subsurface waters are part of the venial system, in providing cold, filtered waters back to surface waters.

Impacts to headwaters affect downstream aquatic systems and fisheries. Subsurface waters provide nursery habitats for aquatic invertebrates that serve as fish prey when they mature and enter surface waters. In addition, groundwater is important for the spawning success of salmonids and other fishes as hyporheic (shallow-subsurface) flow keeps eggs oxygenated and takes away their metabolic wastes. As a result, subsurface flow, which also includes the deeper groundwaters (Modica 1999), is integral to the fisheries industry of the U.S., notably Atlantic and Pacific salmonids that are often imperiled from habitat and other damage (Hughes and Vadas 2021; Sulliván et al. 2025).

Wet season

The term "wet season" is not defined in the proposed rule; however, it is the basis for determining the terms "relatively permanent" and "continuous surface connection". The text of the proposed changes indicate that the wet season is "…when average monthly precipitation exceeds average monthly evapotranspiration. As proposed, surface hydrology would be required to be continuous throughout the entirety of the wet season." However, year to year and within-year variation may lead to circumstances when continuous surface hydrology is not continuous for periods of time. The language as written suggests the potential for a water to be excluded as a water of the U.S. if this occurs. In addition, the proposed changes suggest the "wet season" will be based on "…predictable seasonal precipitation patterns year after year." How will actual precipitation patterns be incorporated into determinations and what will occur when seasonal precipitation occurs outside of predicted patterns and a water loses its "continuous surface connection" as a result? Because the term "wet season" is not defined, it adds little clarity to whether a water is "relatively permanent" and whether a "continuous surface connection" exists. A definition for "wet season" should be added that includes the description of the process that will determine how the wet season will be established for a water and how variability in precipitation will be incorporated.

Relatively permanent

The proposed rule states: "… surface hydrology would be required to be continuous throughout the entirety of the wet season. The temporal component for wet season is intended to be an extended period where there is continuous surface hydrology resulting from predictable seasonal precipitation patterns year after year." However, precipitation is variable from one year to the next and as written, one day without surface flow could result in a water no longer being a water of the U.S. Do the agencies then posit that one day without wet season flow makes a water no longer jurisdictional? In addition, the proposed rule states: "…not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought," or "seasonal rivers, which contain continuous flow during some months of the year but no flow during dry months." This statement appears to be in conflict with the first quote of this paragraph. Given that "wet season" is a vague term as proposed, it is not clear what waters or under what conditions, waters will be considered permanent. Further description should be added in the

definition of relatively permanent and language that clearly states when a water is considered "relatively permanent" and when it is not. This should include the role of the presence of obligate wetland plants in the absence of standing or flowing water, how regional and geological variation are considered, and how annual variation in precipitation can change the status of a water.

Continuous surface connection

The two-pronged approach "…that requires both (1) abutment of a jurisdictional water; and (2) having surface water at least during the wet season.", has the potential to exclude waters such as wetlands, lakes, and ponds within floodplains from federal jurisdiction despite having the same effects to waters of the U.S. as others that meet both requirements. For example, is a water that has surface water during the wet season, but is separated from a jurisdictional water by 1 foot of dry land inhabited by dry land vegetation species, not a water of the U.S.? This water could otherwise have the same effects to a jurisdictional water (because of the subsurface connection that exists) and in either case an unregulated sewage discharge would have the same negative effects to the water quality of a jurisdictional water. In addition, the removal of "non-adjacent" waters from federal protection may have negative effects on wildlife that depend on them for breeding, foraging, and other activities key to survival. As a result, the function of the water should be considered as part of any connection to a jurisdictional water. In addition, clarity should be provided for what is considered "abutment" to a jurisdictional water. Additional language should be added regarding how the "wet season" is defined and how it will be used to include or exclude waters as jurisdictional.

In addition to being vague and potentially excluding waters that have meaningful effects on jurisdictional waters, we believe that the proposed new WOTUS rule is incompatible with the federal Endangered Species Act and Federal Tribal Treaty Trust obligations and negatively affects state and tribal programs for salmonid and other coldwater-fish recovery. Protection of fish, wildlife, plants, and their habitats is integral to natural-resource enjoyment by Americans (WMI and TRCP 2009). Because the outcomes of these rules affect all, we ask the agencies to reconsider the proposed WOTUS changes. Science-based rules that effectively protect groundwater and subsurface connections as well as recognize when hydrologic connections exist will benefit all waters of the U.S., ensuring clean water for our citizenry as well as fish and wildlife nationwide (Hughes et al. 2023). Better WOTUS protection is good for business, citizens, and the environment. Thank you for your consideration.

Sincerely,

Tim Copeland
President, Western Division American Fisheries Society

Michelle McGree
President, Montana Chapter American Fisheries Society

Cory Sipher
President, Oregon Chapter American Fisheries Society

References

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