Department of Defense
Department of the Army
Corps of Engineers
Washington, D.C.

U.S. Environmental Protection Agency
Washington, D.C.

Re: Docket ID No. EPA–HQ–OW-2025-0322
Updated Definition of "Waters of the U.S."

Dear EPA and Army Officials:

The Carolina Wetlands Association appreciates the opportunity to provide comments on the November 20, 2025, proposed rulemaking "Updated Definition of Waters of the United States," by the United States Department of the Army Corps of Engineers ("Corps") and the U.S. Environmental Protection Agency ("EPA") (together, the "Agencies"). The Association's mission is to promote the restoration and enjoyment of North and South Carolina's wetlands and associated ecosystems through science-based programs, education and advocacy. We urge the Agencies to refrain from finalizing the proposed rule, as the proposed revised definition of "waters of the United States" would remove federal water protections with potentially catastrophic ramifications for the health, welfare, economic well-being, and environment of communities and industries throughout the nation.

The bedrock of the regulations should be the goal of the Federal Water Pollution Control Act (also known as the Clean Water Act) to restore and maintain the chemical, physical, and biological integrity of waters of the United States. The proposed rule falls far short of advancing this goal, by choosing to regulate far fewer waters than those authorized by Congress and judicial decisions.

The proposed rule is deeply flawed. The agencies should undertake a more scientific approach that reflects the complexity of water systems and extends jurisdiction commensurate with the text of the Clean Water Act and Supreme Court precedent.

Value of Wetlands

The Carolinas have significant water resources that would be harmed by adoption of the proposed rule. The wetlands and tributaries that would be removed from Clean Water Act jurisdiction are critical to the physical, chemical, and biological integrity of waters of the U.S.:

- Wetlands absorb floodwaters (up to 1.5 million gallons per acre of wetlands, according to the National Oceanic and Atmospheric Administration (NOAA) during severe rain events and hurricanes and thus protect communities by reducing downstream flooding. Flood-related issues will be most problematic in rapidly growing coastal areas in the Carolinas (including Brunswick, New Hanover, and Pender Counties in North Carolina and Jasper, Horry, and Berkeley Counties in South Carolina).

- Wetlands protect water quality by filtering pollutants and assimilating nutrients, reducing water purification costs and improving water quality for household use, industrial processes, and wildlife.

- Wetlands help regulate water supply by slowly releasing runoff after storm events, recharging both groundwater and surface water sources. Dependable water supplies are essential, especially as demand increases in the future due to population growth in the southeast and to the construction of data centers. Data centers are having a significant and growing impact on water supply, especially in regions like North Carolina and South Carolina where demand is increasing but supplies are finite and weather-sensitive. (https://www.eesi.org/articles/view/data-centers-and-water-consumption).

- Seventy-five (75) % of endangered, threatened, and rare species in the Carolinas rely on wetlands; the loss of wetlands across the United States will increase threats to these legally protected species.

- Heavy storm events connect many wetlands that would lose jurisdiction under the proposed rule to downstream waters because levees, dikes, berms, or other obstructions separate them from regulated waters, particularly in developed or developing watersheds. Pollutants discharged to these wetlands would flow directly to those waters if the proposed rule is adopted.

- Wetlands remove pollutants that contribute to hypoxic dead zones in Carolina estuaries. In 2003 North Carolina's Neuse River experienced some of the world's worst-ever dead zones, killing 3.1 million fish. *Annual Report of Fish Kill Events 2003, North Carolina Division of Water Quality.* Removal of protections for wetlands that are adjacent to tributaries, and those not directly connected to tributaries, will increase concentrations of nutrients (such as nitrate and phosphorus) that can fuel those algal blooms that lead to dead zones and fish kills.

By providing a multitude of benefits, healthy wetlands mean healthy communities by reducing flooding and protecting water quality, biological diversity, and increased resilience.

The Federal Responsibility to Protect the Nation's Waters

The proposed rule states that the overall objective of the Clean Water Act is to "restore and maintain the quality of the Nation's waters while respecting State and Tribal Authority over their own land and water resources." This is incorrect. As cited above, Section 101(a) of the Act reads "The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," which is far broader and more inclusive than the proposed rule's misstatement of the objective. The thinking behind the proposed rule's cramped interpretation of the Act's objective permeates the proposed changes that would remove massive numbers of streams and wetlands from the Act's jurisdiction and thereby eliminate protections required in accordance with legal and scientific principles.

The federal government's role in clean water began in the 1940s by encouraging States to protect waters, with the federal government's role increasing over time with additional legislation as State action continued to be insufficient to address the problems. This culminated in passage of the Clean Water Act of 1972. The Act provided for federal regulation of the nation's waters and eliminating the discharge of pollutants into them, while providing States and Tribes the option to assume responsibility for regulating wastewater discharges; it was later amended to extend that option to discharges of dredged and fill material. This framework respects the principles of federalism while ensuring that the federal government serves as a backstop in States that choose not to assume permitting programs. Effective federal-State partnerships were the objective of the Clean Water Act, as reflected in this construction.

The Clean Water Act and the Supreme Court both cite the rights and responsibilities of States to manage the waters within their borders, and many States have done so; nearly all have accepted delegation of authority to implement their own National Pollutant Discharge Elimination System (NPDES) programs under section 402 of the Act, and several have assumed Section 404 authority. Some have adopted regulatory protections for waters and wetlands that are more stringent than federal protections under the Clean Water Act.. The fact that some States have chosen not to exercise those rights or to assume those responsibilities necessitates a stronger federal role to ensure a minimum uniform level of protections within those States, within neighboring States that share waters with those States, and throughout the nation. The proposed rulemaking would undermine this framework and harm both those States that have chosen to exercise the rights to manage and protect their own waters and those who have chosen not to do so.

The proposed rule acknowledges "that States and Tribes that seek to cover waters no longer jurisdictional under this proposed rule may incur new costs and administrative burdens. Such obligations are inherent in the exercise of the States' and Tribes' authority that Congress

embedded in the Clean Water Act." They are not inherent. Instead, they are unilateral additions to the burdens such States and Tribes have rightfully assumed under the Clean Water Act..

For massive areas of wetlands and millions of miles of streams, States and Tribes would no longer have that choice of relying upon the federal government to regulate discharges to these waters. Instead, they would have to choose either to ignore their responsibilities and leave these waters open to pollution and destruction, or to channel limited state taxpayer funds to administer programs to protect them, including for the significant field and legal resources these programs entail. The option of leaving these waters unprotected places States in the position of abdicating their responsibilities under the Clean Water Act. A GIS study estimates that an area up to 90 million acres of wetlands (84% of remaining wetlands) and 8 million miles of streams in the United States could be left without federal protections under extreme rulemakings such as the Agencies' current proposed rule. (Natural Resources Defense Council, 2025, Mapping Destruction: Using GIS Modeling to Show the Disastrous Impacts of Sackett v. EPA on America's Wetlands*)*. Variability in State protections creates hotspots of risk across the U.S. (Gould 2024, 10.1126/science.adp3222)

The proposed rulemaking would also adversely affect States that have chosen to exercise their rights and assume the responsibilities envisioned in the Clean Water Act, undercutting the ideal of the federal-State partnership. States that have taken a role in regulating Section 402 and/or 404 discharges through program assumption, joint permit processing, or Section 401 certification, for instance, would be harmed by the proposed rules, either by having to implement new State programs or by incurring environmental damage to their waters.

States with more stringent water protections than required under the proposed rule would be at a disadvantage in the competition for development investment, since States that leave newly non-jurisdictional streams and wetlands open to destruction would be offering a lower-regulation business environment. This would entice developers to site projects in waters that have been protected since 1972, in direct contravention to what the Clean Water Act is intended to accomplish. For example, siting of new data centers would be influenced by the lack of any regulatory requirement to avoid, minimize and compensate for wetlands filled.

Because fewer waterbodies and wetlands will be protected under the proposed rule and fewer losses will be required to be mitigated for, the proposed rule would abandon the goal of "no net loss of wetlands" established by President George H. W. Bush, as well as the primary objective of the Clean Water Act signed into law by President Nixon.

Transboundary Impacts

The proposed rule would also harm the responsible States that protect their waters by subjecting them to pollution from upstream States that do not. The destruction of wetlands in upstream States means that more unregulated pollutants and flood waters will now be carried to downstream neighbors. These pollutants include nutrients that cause immense damage in waters throughout the U.S. by causing algal blooms, depleted oxygen, dead zones and fish kills, which result in significant economic as well as environmental damages. Runoff from sites developed in the affected waters may also carry pollutants such as toxins, sediment, oil and grease, and metals.

Downstream States and Tribes will also incur increased flooding as these unregulated upstream wetlands are filled. Flooding imposes ever-increasing costs on downstream landowners and communities, and harms both those directly affected by flood damages as well as those incurring spiraling property insurance costs. As floodwaters recede, they also carry pollutants, including plastics, household and industrial chemicals, and coal ash into receiving waters.

Additional Burden on Dischargers to Jurisdictional Waters

The proposed rule would also result in stricter effluent limits for dischargers to waters remaining jurisdictional. As discharges to unregulated waters cause downstream violations of water quality standards, additional reductions in loadings from industrial and municipal sources will be necessitated. The costs of more stringent NPDES permit limits will burden dischargers to those waters.

States and Tribes that administer their own NPDES programs would also have to undertake complex analyses of whether discharges of industrial and municipal pollution into newly unregulated waters would make the downstream point of connection to regulated waters a point source. This would be burdensome and litigious.

Therefore, States that leave these waters open to pollution or destruction would financially benefit from this proposed rule. States that stand up and take on the responsibilities with which they are entrusted by Congress would suffer. Taxpayers in responsible states would bear costs that those living in irresponsible States would not, fracturing the basis of federal-State partnerships – the opposite of what the Clean Water Act envisions.

The proposed rule would also create pressures on States that are now protecting these waters to reduce or eliminate those protections in order to level the playing field in the competition for economic development. Rather than inspire States to fill gaps left by a less inclusive definition of waters of the United States, the proposed rule could therefore inspire the opposite reaction.

Thus, the proposed rule would provide incentives and disincentives that undermine the goal of the Clean Water Act to restore and maintain the chemical, physical, and biological integrity of waters of the United States.

Hydrologic definitions

The proposed rule crimps the definitions of "continuous surface connection," "relatively permanent," and "tributary;"and in doing so would eliminate millions of miles of streams and millions of acres of wetlands from Clean Water Act protection. The Supreme Court's decision in Sackett v. EPA, 598 U.S. 651 (2023) interpreted "waters of the United States" as encompassing "only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic[al] features' that are described in ordinary parlance as streams, oceans, rivers, and lakes" and wetlands that have a "continuous surface connection" to such waters. But the proposed rule defines "relatively permanent" to mean "continuously flowing year-round or at least during the wet season." The proposed rule's requirement that tributaries meet this definition, and that the "continuous surface connection" between the wetland and the water contain "surface water at least during the wet season" neglects the conjunctive "or" in this formulation and instead interprets the term "continuously flowing" as a requirement of, instead of an alternative to, "relatively permanent." This is grammatically and logically flawed. "Relatively permanent" applies to geographic features with functional contributions to downstream waters, not narrowly to flow regime for a particular time interval.

Instead of treating these terms as being separate conditions as specified by the conjunctive "or," the proposed rule instead blends these terms to create a standard that derives from–and focuses exclusively on–the "continuously flowing" descriptor. Yet it does not actually propose using "relatively permanent" as meaning continuously flowing, which would eliminate jurisdiction over a majority of stream miles, including major rivers in the Western U.S. In describing an alternative approach, the proposed rule does posit jurisdiction over tributaries as including only those that are continuously flowing, a clearly unsound option. Yet that alternative proposed rule logically derives from the erroneous reading that the Court's term "relatively permanent" applies not just to functionally connected geographical features, but also narrowly to the flow regime of tributaries and wetlands.

Inappropriate to Require Wet Season Continuous Flow

It is inappropriate to apply this standard in such a way that the physical connection that brings waters and wetlands within the Act's jurisdiction requires a continuous flow regime in the wet season, as does the proposed rule. Tributaries and wetlands should instead be evaluated considering their impact on the physical, chemical and biological integrity of downstream waters. The wet season criterion is predicated upon an assumption that precipitation patterns are always regular and predictable when, in reality, they are erratic and unpredictable, and becoming more so over time. There is a correlation between the wet season and impacts on waters, but there are tributaries and wetlands that do not meet the wet season standard yet have an equal or greater magnitude of impact on downstream waters.

A rational implementation of the Clean Water Act would base jurisdiction on geographic features and functional connections to downstream waters that are broader than wet season hydrology, as well as consideration of trends that are likely to change and affect future flows. Using the geographical features cited in the Sackett decision along with broader functional connections is a more accurate way to identify relatively permanent surface bodies of water than is the proposed rule's reliance on continuity of flow during the wet season.

The EPA has developed cost-effective rapid assessment methods that are far better tools to evaluate the relatively permanent connection of tributaries to receiving waters than relying solely on continuous flow in the wet season. (Rapid Bioassessment Protocols For Use in Streams and Wadeable Rivers: Periphyton, Benthic Macroinvertebrates, and Fish Second Edition, July, 1999)

In the preamble to the proposed rule, "the agencies acknowledge that the Sackett decision did not specifically address the reference to seasonal waters in the Rapanos plurality" and that "surface hydrology may not always exactly overlap with the wet season, for example in regions exhibiting a time lag or delay in demonstration of surface hydrology due to various factors." Therefore, the final rules should not rely upon a single arbitrary limit of continuous flow duration during the wet season. Instead it should be based on structural and more inclusive functional connections. (U.S. EPA, Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (Final Report). (U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-14/475F, 2015. https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=296414). The wet season standard is too narrow to identify functional connections because it fails to adequately address effects on the physical, chemical and biological integrity of receiving waters.

Stream Duration and Assessment Methods (SDAMs), when evaluated with multiple other sources of reported information and observational data, help with making accurate flow determinations. However, they need far more development and testing before SDAM scores are relied upon as heavily as does the wet season standard in the proposed rule. Using SDAMs as a primary tool is unwise. Regional single-indicator SDAMs' accuracy is as low as 73% and multiple-indicator accuracy drops as low as 53%. Snow persistence has a major effect on the results. Instead methods that use geographical and inclusive functional connections are more accurate and replicable.

The proposed rule states that SDAMs are "regionally specific, publicly available and a time- and cost-effective alternative to prolonged hydrologic sampling methods." These benefits do not negate the fact that they and similar tools are less accurate – as acknowledged in the proposed rule's text: "Ultimately, multiple indicators, data points and sources of information may be used to determine if the potential tributary has relatively permanent flow using the weight of

evidence." While continuous flow in the wet season provides a "bright line," it is arbitrary, difficult to determine, and does not correlate well with the legally and scientifically appropriate extent of jurisdiction of the Clean Water Act.

The impracticality of reliance on SDAMs is evidenced by the proposed rule's nearly impossible requirement to identify the line in a wetland where the wet season ends – perhaps that thin line where surface water is present on one side for one day less than the other side in a typical year.

Most saliently, SDAM's are limited to hydrological connections, while stream rapid assessment methods include other indicators that consider biological and chemical connections, providing a robust analysis of Clean Water Act connections. They also consider year-long functional information that the tightly constricted timeframe of the wet season does not.

Importance of Hydrologic Variability

The proposed rule cites use of the U.S. Fish and Wildlife Service's National Wetlands Inventory (NWI) to inform jurisdictional determinations; however, the NWI does not rely upon the wet season for wetland classification. The proposed rule also suggests an alternative regulation based upon the NWI's use of the growing season. However, the alternative that is proposed requires surface water **at least** during the growing season, which is vastly different from the NWI's reliance on the presence of water for part of the growing season for identification and classification. The proposed alternative would eliminate vast areas that are identified as wetlands by the NWI.

The proposed rule states that "The agencies acknowledge that landowners often know when surface hydrology is occurring in waterbodies on their land, and such visual observations and other local knowledge and records would be helpful when identifying the occurrence and duration of surface hydrology." Such observations are subjective and unscientific, cannot be relied upon to correlate to the wet season, and should not be used in making jurisdictional determinations. Nor can landowners be expected to identify the timeframe when precipitation exceeds evaporation in a typical year. More violations of the Clean Water Act will occur because landowners make erroneous jurisdictional calls. Also, developers have no incentive to report observations that would confirm jurisdiction; reliance on the landowners' own reporting would incentivize under-identification of jurisdiction.

Over time the nature of the wet season will change for tributaries and wetlands. With upstream development, including in newly unregulated wetlands, fill and impervious surfaces will increase run-off. Climate change will continue to affect precipitation patterns, including by changing the timing and duration of flows in streams. The Center for Climate and Energy reports, "Extreme precipitation events have increased in frequency and intensity in the U.S. and across many regions of the world since the 1950s. These events are defined as instances in which the amount

of rain or snow experienced in a location substantially exceeds what is normal. In the contiguous United States, annual precipitation has increased at a rate of 0.2 inches per decade since 1901, with extreme precipitation events outpacing this trend. Scientists expect these trends to continue as the planet warms." (Center for Climate and Energy Solutions https://www.c2es.org/content/extreme-precipitation-and-climate-change/) It is inappropriate to impose a static and rigid wet season continuous flow test when the frequency and timing of heavy precipitation events have always been unpredictable and are becoming more so over time.

Evapotranspiration rates will change with the amount of sunlight, humidity levels, vegetation patterns, temperature and wind patterns. The specter of waters shifting in and out of jurisdiction over time is untenable and would detract from the clarity and predictability that the Agencies claim to be the goal of the rulemaking.

The proposed rule states that the wetlands that would remain jurisdictional "are most likely to provide certain hydrological and ecological connections such as recharge of base flow and valuable wildlife habitat." "Most likely" is a vague and unscientifically constrained way to determine legal and scientific limits. Many other wetlands provide base flow and other benefits beyond those that fall under the category "most likely."

Make American Healthy Again

The proposed rule undercuts the objectives of the Make America Healthy Again movement. Wetlands immobilize and/or remove toxic pesticides, heavy metals, oil and grease, per-and polyfluoroalkyl substances ("PFAS" or "forever chemicals"), and other toxins. The proposed rule would compromise this function for the many wetlands and streams that would be opened up for unregulated destruction. The resulting flow regime modifications would have adverse effects on downstream water supplies and human health, including that of children facing a higher risk of health problems from such contaminants.

The health effects of forever chemicals are becoming increasingly recognized and the proposed rule would result in more of them flowing downstream. A study by RTI International found that forever chemical concentrations in North Carolina's French Broad River exceeded drinking water limits after Hurricane Helene, with 11 different PFAS present. (https://www.rti.org/impact/french-broad-river-hurricane-helene-contamination). Hurricane Helene did not occur in the wet season, similar to many other large streamflow events. Dr. Hans Paerl, Kenan Professor Emeritus of Marine and Environmental Sciences at the University of North Carolina – Chapel Hill, commented on the increasing number of severe rainfall events affecting the quality of coastal waters in North Carolina: "when those events occur, they are putting a lot of nutrients and contaminants into our waterways that arrive at our sounds and estuaries and even in the coastal zone." Paerl indicates that creating, restoring and

protecting North Carolina's wetlands can help the state fend against damaging climate events. (Hans Paerl Talks About the Impacts of More Extreme Rainfall Events (e.g. Hurricane Helene) on Downstream Water Quality and Safety, Studying PFAS and Contaminants of Concern in the French Broad River after Hurricane Helene, https://www.rti /impact/french-broad-river-hurricane-helene-contamination). The downstream impacts of these nutrients and contaminants will often stem from streams that are not continuously flowing in the wet season.

Forever chemicals are a major concern to the populace of the Carolinas and any new federal regulations that respond to this growing health threat would not apply to discharges into the waters removed by this rulemaking. Also, loss of wetlands will result in more PFAS flowing downstream, contaminating water supplies.

The Proposed Rule is Arbitrary

The Agencies's proposed rule and their actions in developing and attempting to justify it are arbitrary and capricious in several respects.

In positing the extreme alternative of regulating only those waters flowing continuously all year long, the proposed rule states that such an interpretation of the Rapanos decision would "render the vast majority of wetlands non-jurisdictional, which the agencies believe is not the best reading of the Clean Water Act." Yet the preferred alternative may very well do just that; the proposed rule presents no information to conclude otherwise and it may very well render the vast majority of wetlands and tributaries that remain in the contiguous States non-jurisdictional.

Second, in proposing to curtail regulation of permafrost wetlands, the Agencies cite Executive Order 14153 ("Unleashing Alaska's Extraordinary Resource Potential," January 20, 2025). Yet executive orders cannot extinguish the obligations and authorities created by legislation enacted by Congress. By attempting to use an executive order to justify failing to protect the nation's waters as required by the Clean Water Act, the Agencies are acting arbitrarily and capriciously.

Third, the Agencies must apply the term "indistinguishable" in describing jurisdictional wetlands in a way that comports with the way the Supreme Court defined the term in Sackett and in a way that reflects the real world. The Sackett Court held that a wetland is "indistinguishable from waters of the United States" when it "has a continuous surface connection with that water." In the real world, wetlands are characterized by emergent vegetation that makes them clearly discernible from other waters; the Court clearly did not intend to eliminate jurisdiction over all wetlands that have emergent vegetation. "Indistinguishable" in this context is thus best interpreted as meaning that there is no barrier that permanently severs flow between a wetland and a water of the U.S. Such a barrier provides a demarcation where one side is clearly distinguishable from the other. The terms abutting, adjacent, and touching should be interpreted

to incorporate this interpretation that jurisdiction is severed only by the presence of a barrier that permanently interrupts flow. By doing otherwise and ignoring both the words of the Supreme Court and physical reality, the Agencies are again acting arbitrarily and capriciously.

Further, it is arbitrary and capricious to categorically eliminate all swales, gullies and washes from jurisdiction. They lack beds and banks but have other recognizable geographic features, such as landscape depressions and sloping sides, that enable them to carry higher flows than sheet flow across level terrain. While they are not included in the Sackett phrase "described in ordinary parlance as streams, oceans, rivers and lakes," neither are ponds, which have features that distinguish them from lakes. Swales, gullies and washes have the same kind of functional relationship to streams as do ponds to lakes. The Sackett decision text should not be read as scientifically limiting; otherwise, all ponds would be excluded. Swales, gullies and washes should be included or excluded only using the same indicators as other tributaries and wetlands.

Finally, jurisdiction should not be extinguished in or by artificial conveyances such as ditches, pipes, culverts, tunnels or dams. Even those that are not constructed in waterways alter natural hydrology. Their characteristics, while differing from those of natural tributaries, replace those that would otherwise exist in a natural state. They can be manipulated in such a way to eliminate what otherwise would remain as jurisdictional waters, as well as to remove jurisdiction of waters below their point of discharge to other waters.

For example, the outflows of the Great Dismal Swamp in North Carolina and Virginia are all through ditches: to Shingle Creek from Jericho Ditch at the northwestern corner of the study area; to Deep Creek from Portsmouth Ditch and from the Dismal Swamp Canal at the northeastern corner; and to the Pasquotank River from various ditches and the Dismal Swamp Canal at the southeastern corner. Ultimately flows reach the Chesapeake Bay and Albemarle Sound, regardless of whether or not the flow carried by each individual ditch is continuous during the wet season.

The number and design of artificial conveyances affect the flow in each, while leaving the overall flow contribution to reaches further downstream unchanged. For example, a single ditch may flow continuously during the wet season but constructing a second ditch nearby might result in neither ditch meeting the wet season standard. The regulatory framework should not encourage the use of artificial conveyances to evade jurisdiction, and the proposed rule is arbitary and capricious to the extent that it does so.

Mosaic Wetlands

A huge acreage of wetlands in Alaska would be affected by the way that mosaic and permafrost wetlands are treated in the proposed rule, which is particularly flawed now that melting

permafrost is radically changing surface connections. That melting is having significant effects on downstream waters. Science Magazine reports "The Salmon River, in remote northwestern Alaska…. has become a symbol of Arctic climate change—and its waters are no longer clear or pure. Beginning in 2019, the river turned orange and yellow, reminiscent of acidic runoff from mining waste. It's not just the color that's troubling. The river and many of its tributaries are now laced with toxic metals, leached from thawing permafrost, at levels that can harm aquatic life… In 2024, scientists reported that at least 75 streams—including the Salmon—recently turned orange in the Brooks Range, the mountain chain that stretches east to west across northern Alaska." (Science, September 2025, https://www.science.org/content/article/thawing-permafrost-turning-arctic-rivers-orange-spelling-trouble-fish)

Mosaic wetlands, including many in the Carolinas, have complex hydrologic connections and the proposed rule introduces the potential for erroneous jurisdictional calls. It also imposes a major administrative burden on State, Tribal and federal regulators that would need to make many more difficult jurisdictional determinations.

Clean Water Act jurisdiction should not be eliminated for any wetland, including permafrost wetlands, on the basis of high potential for agricultural or any other use that would harm or destroy them.

Regulatory Impact Analysis

The Regulatory Impact Analysis states, without evidence or other justification, that "Potential changes in ecosystem services are likely to be small, infrequent, and dispersed over wide geographic areas, thereby limiting the significance of these impacts on these business sectors." This totally ignores the downstream economic impacts of increased flooding, more hypoxia, poor water quality, damages to fish and wildlife, and adverse effects on water-based recreational income.

The increased hypoxia would be manifested by more and longer-lasting dead zones and fish kills in waters of vital economic importance, and this would inflict harm on communities with economies tied to commercial and recreational fisheries. Floods have had enormous economic damage in the Carolinas, for example, Hurricanes Florence (2018) and Matthew (2016) impacted the Coastal Plain region of both NC and SC resulting in damages valued at $17 billion (https://www.wect.com/2018/10/31/damage-caused-by-hurricane-florence-now-estimated-billion/) and $607 million (https://www.weather.gov/ilm/matthew) respectively.

It is critical that the Regulatory Impact Analysis be amended to evaluate and acknowledge the costs that landowners, communities, and States and Tribes downstream of affected waters will incur. States and Tribes that expend resources for programs to protect their waters would also

bear the financial burdens imposed by upstream States and Tribes that do not protect unregulated waters. Those States and Tribes that take on their "responsibilities" as denoted in the text of the Clean Water Act would also suffer economically as developers take advantage of the lack of regulation in other States for siting new or expanded facilities. The economic losses to those States and Tribes should be projected in the Regulatory Impact Analysis..

The diminishing and extinction of species that would result from the proposed rule would have significant economic consequences that should also be addressed by the Regulatory Impact Analysis.

The proposed rule would require the Corps of Engineers to overhaul its general permit program. The Corps establishes general permits for discharges with minor individual and cumulative impacts on waters of the U.S. The vast majority of discharges are covered by these permits with very little regulatory burden or delay. The analyses of minor cumulative impacts that are required for general permits would need to be reevaluated because of the increase in pollution levels that would result from the proposed rule.

The Regulatory Impact Analysis should also include the costs of changes in NPDES effluent limits that would be required because of increased pollutant loadings flowing from unregulated waters into regulated waters. Those changes would shift the regulatory burden from those discharging into unregulated waters to those discharging into waters that remain jurisdictional.

As polluters discharge into waters severed from Clean Water Act protections, the potential for nuisance lawsuits increases. An advantage of nationwide standards for waters within jurisdiction of the Clean Water Act has been the reduction of such costly litigation. That would be lost for waters removed from the Clean Water Act by the proposed rule.

Private mitigation bankers and in-lieu fee programs have invested enormous equity in developing wetland and stream compensatory mitigation credits. The rulemaking would cause many of these credits to be worthless. The state of North Carolina runs the largest compensatory mitigation program in the country, with 81,795 acres of conservation easements within the program. In 2024, the available and unassigned In-Lieu Fee state inventory included 9,947 acres of wetland credits (8,470 for NCDOT and 1,477 for other projects) with costs ranging from $76,838 to $157,232 per credit depending on service area. (See NCDEQ 2024_2025 Division of Mitigation Services Annual Report, https://edocs.deq.nc.gov/MitigationServices/DocView.aspx?id=7303&dbid=0&repo=MitigationServices). These costs should be included in the Regulatory Impact Analysis, for all of the U.S.

The Regulatory Impact Analysis should be redone to reflect the true financial burdens, including but not limited to those described above, that the proposed rule would impose.

In sum, Carolina Wetlands Association urges the Agencies not to finalize the proposed rule and its revised definition of "waters of the United States" that would drastically weaken federal clean water protections that safeguard all Americans' health, well-being, economic livelihood, and environment.

Respectfully Submitted,

Rick Savage

Executive Director
Carolina Wetlands Association