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Waters of the United States/Clean Water Act: Trout Unlimited Comments on U.S. EPA Supplemental Proposed Rule

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Trout Unlimited ("TU") submitted October 9th comments addressing the United States Environmental Protection Agency's:

Supplemental Notice of Proposed Rulemaking, Updated Definition of "Waters of the United States" ("Supplemental Proposed Rule").

See Docket No. EPA-HQ-OW-2025-0322; 91 Fed. Reg. 57,284 (Sept. 9, 2026).

EPA and the U.S. Army Corps of Engineers (collectively, "EPA") describe the Supplemental Proposed Rule as:

... collecting input on additional regulatory language for defining "waters of the United States" ("WOTUS") to be considered alongside the 2025 proposed rule.

The Supplemental Proposed Rule would supplement the regulatory text in the November 20, 2025 Notice of Proposed Rulemaking, which proposes to revise the regulations defining the scope of waters federally covered under the Clean Water Act. See 90 Fed. Reg. 52498 (Nov. 20, 2025) ("2025 Proposed Rule").

The definition of WOTUS is arguably one of the most critical jurisdictional terms in the Clean Water Act. Its importance is magnified since it is relevant to both National Pollutant Discharge Elimination System ("NPDES") permitting and non-NPDES programs such as:

- Section 404 of the Clean Water Act wetland permits.
- Section 311 oil/hazardous substance release requirements.
- Clean Water Act Spill Prevention Control and Countermeasure regulations.

As a result, the definition of WOTUS has been and continues to be the subject of frequent litigation, legislative oversight, rulemakings, and public policy debates since the enactment of the modern version of the Clean Water Act in 1972.

EPA states that in regard to the 2025 Proposed Rule that it received approximately 220,000 public comments. The federal agencies state that they are now seeking additional input on the regulatory text for the following definitions:

- Relatively permanent.
- Continuous surface connection.

- Perennial.

TU notes by way of introduction in its October 9th comments:

- Its previous comments on the 2025 Proposed Rule indicated that further narrowing was not necessary and that the proposal went beyond what Sackett required.
- The 2025 Proposed Rule disregarded the importance of non-perennial waters and wetlands to functioning watersheds.
- The 2025 Proposed Rule was poorly suited to the hydrologic realities of regions such as the arid West.
- The 2025 Proposed Rule fails to account for:
 - Sustained seasonal flows.
 - Unique hydrologic conditions of the arid West.
 - Human-caused changes in flow that can alter whether historically perennial waters continue to flow year-round.
- Would further narrow federal protections beyond the 2025 Proposed Rule.
- Neither Rapanos nor Sackett require that EPA equate “relatively permanent” with perennial flow, establish a 30-day dry-period threshold, or require perennial surface water in wetlands.

Key sections of the comments include:

- The United States Supreme Court did not equate “relatively permanent” with perennial flow.
- The proposed 30-day and 5-year thresholds lack a demonstrated legal or scientific basis.
- A perennial flow standard would have significant consequences for coldwater fisheries, especially in the arid West.
- The proposal does not adequately address human-caused changes in flow permanence.
- A perennial surface water standard would significantly reduce protections for wetlands.
- The supplemental alternatives would substantially reduce jurisdiction despite significant uncertainty about their consequences.
- The supplemental alternatives could undermine restoration investments and reliance interests.

A copy of the TU comments can be found [here](#).