

The American Fisheries Society • American Institute of Biological Sciences • Association for the Sciences of Limnology and Oceanography • Coastal and Estuarine Research Federation • Ecological Society of America • Freshwater Mollusk Conservation Society • International Association for Great Lakes Research • North American Lake Management Society • Phycological Society of America • Society for Ecological Restoration • Society for Freshwater Science • Society of Wetland Scientists

December 12, 2017

The Honorable Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
Office of Policy Regulatory Reform  
Mail Code 1803A  
1200 Pennsylvania Ave NW  
Washington, DC 20460

The Honorable Ryan Fisher  
Acting Assistant Secretary of the Army for  
Civil Works  
Office of the Assistant Secretary of the Army  
for Civil Works  
Department of the Army  
104 Army Pentagon  
Washington, DC 20310-0104

Re: Docket ID No. EPA-HQ-OW-2017-0644; FRL-9970-57-OW; Definition of “Waters of the United States” - Addition of an Applicability Date to 2015 Clean Water Rule

Dear Administrator Pruitt and Mr. Fisher:

On behalf of our nearly 200,000 members, the undersigned science societies respectfully submit the following comments in response to your solicitation regarding the proposed rule, Definition of “Waters of the United States” - Addition of an Applicability Date to 2015 Clean Water Rule, EPA-HQ-OW-2017-0644, published in the Federal Register on November 22, 2017. The undersigned societies are science-based organizations with diverse areas of expertise in the ecological, hydrologic and biological sciences. Our members work in the private sector, academia, and various tribal, state and federal agencies. We support wetland and aquatic resource research, education, restoration and sustainable management, and foster sound science. Thus, we promote science-based policy-making for the benefit of aquatic resources and the goods and services these resources supply in support of the health and economy of local communities.

**We strongly oppose the proposed rule, Definition of “Waters of the United States” - Addition of an Applicability Date to 2015 Clean Water Rule.** The Clean Water Rule became effective on August 28, 2015, and the proposal to add an “applicability date” would effectively suspend the Clean Water Rule for two years from the date of final action on the proposal. In *Clean Air Council v. Pruitt*, the U.S. Court of Appeals for the D.C. Circuit recently stated that an order delaying a rule’s effective date is “tantamount to amending or revoking a rule.” 862 F.3d 1, 6 (D.C. Cir. 2017). Thus, the EPA and Army Corps of Engineers’ most recent proposal is an attempt to amend the Clean Water Rule. Accordingly, we renew our earlier objections to the agencies’ proposed rulemakings<sup>1</sup>: **any agency action concerning “Waters of the United States” (WOTUS)—including the effective suspension of the Clean Water Rule—must be supported by peer-reviewed science and a valid economic analysis.** The proposed rule to add an “applicability date” to the Clean Water Rule currently lacks any such support.

We fully support the definition of WOTUS in the 2015 Clean Water Rule, which was overwhelmingly supported by peer-reviewed science, underwent an extensive stakeholder process, and provides greater certainty, consistency, clarity, and stability of regulation than previous WOTUS definitions. We oppose<sup>2</sup> the proposed rule to rescind the definition of WOTUS as promulgated in the 2015 Clean Water Rule because the proposed rule to rescind is unsupported by the peer-reviewed science, and because the critical analysis that supported the 2015 Clean Water Rule has not been subjected to rigorous independent peer review, has not undergone a robust public comment process, and poses a significant threat to the integrity and security of our drinking water, public health, fisheries and wildlife habitat. Further, we vehemently object<sup>3</sup> to a definition of WOTUS based on Justice Antonin Scalia’s plurality opinion in *Rapanos v. United States*, 547 U.S. 715 (2006), which would make it impossible to achieve the objective of the Clean Water Act and is unreasonable in light of the scientific literature and current knowledge. The agencies should reaffirm the existing 2015 Clean Water Rule, or develop a WOTUS definition and associated revised rule that is as scientifically, legally, economically and ecologically robust as the 2015 Clean Water Rule.

**We support the 2015 Clean Water Rule’s definition of WOTUS, and we urge the EPA and the Army Corps of Engineers not to add an “applicability date” to the Clean Water Rule as**

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<sup>1</sup> See comments submitted by the undersigned societies on November 20, 2017, regarding the proposed rule, Definition of “Waters of the United States” - Pre-proposal Outreach Comments, EPA-HQ-OW-2017-0480, and comments submitted by the undersigned societies on September 21, 2017, regarding the proposed rule, Definition of “Waters of the United States” - Recodification of Pre-existing Rules, EPA-HQ-OW-2017-0203.

<sup>2</sup> We incorporate by reference the comments submitted by the undersigned societies on September 21, 2017, regarding the proposed rule, Definition of “Waters of the United States” - Recodification of Pre-existing Rules, EPA-HQ-OW-2017-0203.

<sup>3</sup> We incorporate by reference the comments submitted by the undersigned societies on November 20, 2017, regarding the proposed rule, Definition of “Waters of the United States” - Pre-proposal Outreach Comments, EPA-HQ-OW-2017-0480.

**proposed in the most recent rulemaking.** Such agency action effectively amends the Clean Water Rule and thus, must be supported by peer-reviewed science and a valid economic analysis.

Sincerely,



Douglas J. Austen, Executive Director  
American Fisheries Society



Robert R. Twilley, President  
Coastal and Estuarine Research Federation



Robert Gropp, Ph.D., Co-Executive Director  
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Heidi Dunn, President  
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Bethanie Walder, Executive Director  
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Frank X. Browne, President  
North American Lake Management Society



Colden Baxter, President  
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