



Overview

The 2023 Supreme Court decision in [Sackett v. EPA](#) rolled back federal protections for wetlands and intermittent waterways. Now only streams that flow year-round, or are continuous, are protected under the federal [Clean Water Act \(CWA\)](#). In 2025, the U.S. EPA and Army Corps of Engineers [proposed new rules](#) for protection of “waters of the United States” (WOTUS): wetlands can only be protected if they abut jurisdictional water and have surface water at least during the wet season.

These rollbacks provide opportunities for states to define wetlands, establish water quality standards, and oversee permitting. There are myriad opportunities to ensure the long-term health of “[nature’s kidneys](#).”

KEY POINTS

- Wetlands — one of the world’s most productive ecosystems, with a global value of \$39 trillion — cover just 6% of the Earth’s surface and are declining. ([Ramsar](#))
- Wetlands are the most effective nature-based tool to improve water quality, minimize flood damage, and adapt to a changing climate, with a \$100 billion annual benefit to the U.S. ([Ducks Unlimited](#))
- 40% of all species live or breed in wetlands, and half of all federally threatened species are wetland-dependent. ([U.S. Fish & Wildlife Service](#))
- Approximately 46-95% of U.S. commercial fishery landings and 80-85% of recreational fishery landings are dependent upon coastal wetlands and estuaries. ([U.S. Fish & Wildlife Service](#))

Policy Options

Define Wetlands as WOTS

States can include wetlands in the “waters of the state” (WOTS) definition so that wetlands are included in state permitting and water quality standards.

- [New Mexico SB 21 \(Enacted 2025\)](#): Protects surface waters no longer covered by federal law.
- [New York S. 9479 \(Passed 2026\)](#): Would broadly define tidal wetlands as a wetland type of state significance.

Determine and Permit Activities on Wetlands

Most wetlands are no longer covered by the CWA and are subject to destruction without a state [Section 404](#) dredge and fill permitting program.

- [Virginia HB 2181/SB 1074 \(Enacted 2023\)](#): Establishes state permitting for virtually all relevant state waters, including non-tidal wetlands.
- [Oregon HB 2238 \(Enacted 2023\)](#): Allows the state to charge wetland permitting fees.
- A state can apply to the federal government to administer its own individual and general dredge and fill permit program, such as in [New Jersey](#).

Monitor and Assess Wetlands

Monitoring and assessment (M&A) of wetlands can track ecological health, water filtering, and flood control to help guide conservation priorities and ensure regulatory compliance.

- The EPA has [three tiers for M&A](#): (1) GIS data, (2) rapid assessments, and (3) intensive site assessments. [Montana](#) is an example of a state that uses tier 3 M&A, or intensive site assessments.
- [Utah HB 0509 \(Enacted 2026\)](#): Requires a comprehensive study and assessment of wetland status.





Protect Wetlands From Development

Protecting wetlands from development can include: (1) incentives to retire or release development or water rights; (2) establishing “no net loss” and/or “net gain” standards for wetlands; or (3) requiring buffers, zoning, or natural shore armoring.

- **[Nevada AB 104 \(Enacted 2025\)](#)**: Establishes the Voluntary Water Rights Retirement Program to purchase and retire water rights.
- **[Delaware SB 9 \(Enacted 2026\)](#)**: Requires no net loss of wetland acreage or function.
- **[California AB 2875 \(Enacted 2024\)](#)**: Requires long-term gain and no net loss of wetlands.

Require Mitigation

Mitigation to avoid, minimize, replace, or compensate can occur through mitigation banks (**[Florida SB 492 \(Enacted 2025\)](#)** and **[Pennsylvania HB 2296 \(Introduced 2026\)](#)**); in-lieu fee programs (**[Illinois HB 3596 \(Introduced 2026\)](#)**); or conservation banking for areas with listed species (**[California SB 1148 \(Enacted 2013\)](#)**).

Additional Actions States Can Take

- **Explore federal funding** sources for wetlands, including [EPA Wetland Program Development Grants](#); [U.S. Fish and Wildlife Service Wetland Funding and Technical Assistance](#); and [FEMA Flood Mitigation Assistance](#).
- **Require interagency coordination** and all state agencies to consider impacts on wetlands.
- **Incorporate wetlands protection** into climate adaptation efforts, as well as policies on water, groundwater, habitat, and infrastructure.
- **Implement voluntary programs** with incentives, conservation easements, and state funding and authorization (**[South Dakota SB 222 \(Enacted 2026\)](#)**).
- **Fund education, outreach, and technical assistance** to landowners and the public.
- **Require agencies to set water and wetland quality standards** (**[Washington SSB 5517 \(Enacted 1994\)](#)**).
- **Authorize and fund wetland and coastal protection plans** — such as in [Delaware](#) and [North Carolina](#) — that are developed by state agencies.

Resources

- [Wetland Program Plans Handbook](#) | National Association of State Wetland Managers (NAWM)
- [Status and Trends Report on State Wetland Programs in the U.S.](#) | NAWM
- [Filling the Gaps: Strategies for States/Tribes for Protection of Non-WOTUS Waters](#) | Environmental Law Institute

