

REDEFINING NAVIGABLE WATERS: THE NEXT FRONTIER OF THE WOTUS SAGA

The chart below summarizes the changes made by the new navigable waters rule from the 2015 Clean Water Rule.

Type of Water Feature	2015 Clean Water Rule	2020 Navigable Waters Rule
Traditional Navigable Waters	Jurisdictional; no change from prior regulation	Jurisdictional; now includes Territorial Seas
Interstate Waters	Jurisdictional; no change from prior regulation	Removed as a separate category; only jurisdictional if they fit within another category
Territorial Seas	Jurisdictional; no change from prior regulation	Removed as a separate category, included in the definition of traditional navigable waters
Impoundments of Jurisdictional Waters	Jurisdictional; no change from prior regulation	Jurisdictional; however, this has narrowed so that there are fewer types of impoundments that are jurisdictional
Tributaries	Jurisdictional; this rule provided the first definition of what constitutes a tributary as a water with bed/banks and an ordinary high-water mark that contributes flow to a traditional navigable water, interstate water, or territorial sea. The 2015 Clean Water Rule also established that tributaries could be natural, man-altered, or man-made with no minimum sufficient flow necessary to qualify.	Jurisdictional; defined as “a rivers, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a traditional navigable water or territorial sea in a typical year either directly or indirectly through jurisdictional waters”; Excludes ephemeral waters.
Adjacent Wetlands/Waters	Expanded the definition of “adjacent” and specified that waters within 100 feet of a jurisdictional waters, within a 100-year floodplain to a maximum of 1,500 feet of the ordinary high water mark; or within 1,500 feet of the high tide line are all adjacent waters by rule; specified that the entirety of a water body is “adjacent” if all or part of the water is bordering, contiguous or neighboring	Adjacent wetlands are jurisdictional if they are adjacent to: (1) a traditional navigable water; (2) jurisdictional drainages; (3) jurisdictional lakes and ponds; or (4) impoundments of otherwise jurisdictional waters; redefines “adjacent” to mean waters that have a direct hydrological surface intermittent or perennial flow in a “typical” year. Ephemeral surface connections are no longer sufficient.

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"Isolated" or "Other" Waters	Jurisdictional by rule; defined to include: (1) waters within 100-year floodplain of a traditional navigable water, interstate water, or territorial sea; (2) waters within 4,000 feet of a traditional navigable water, interstate water, territorial sea, impoundment, or tributary; and (3) special resource waters that are "similarly situated" in terms of function and value provided within a specific watershed; also included isolated waters based on a case-by-case analysis	No longer a separate category; isolated waters are only jurisdictional if they fit within another category
Ditches/Constructed Channels	Not an individual category, but considered jurisdictional; could be exempt if applicant could prove that it was not a traditional navigable water or tributary and no significant nexus	New Category: defined as "an artificial channel used to convey water"; only jurisdictional if they are a traditional navigable water or meet the requirements of a tributary constructed in a natural tributary or adjacent wetland
Lakes and Ponds (Natural and/or Artificial)	Considered jurisdictional where the lake/pond: (1) met the definition of "adjacent"; (2) constituted an impoundment; and (3) had a significant nexus to a traditional navigable waterway	New category; Jurisdictional if they fall into one or more of the following: (1) it is itself a traditional navigable water; (2) a lake or pond that directly or indirectly contributes perennial or intermittent flow to a traditional navigable water in a "typical" year; (3) it is flooded by other waters of the U.S. in a "typical" year