

What is considered a WOTUS under the new rule?ⁱ

Category	Definitions	Changes from 2015 Rule or Prior to 2015	Other Notes
Traditional Navigable Waters (TNWs)	<ul style="list-style-type: none"> • (a)(1) Definition remains. This states that waters currently used, used in the past, or susceptible for use in interstate commerce are considered WOTUS. 	<ul style="list-style-type: none"> • Now incorporates the territorial seas. This was previously its own category. • No definitional changes from previous rules. • Meaning does not change. 	
Tributaries to TNWs	<ul style="list-style-type: none"> • “Tributary” regulatory definition does not change. • “Typical Year” definition is a normal range of precipitation over a 30-year period for a geographic region. • If the tributary is altered or relocated, then it is jurisdictional if it satisfies the tributary definition. 	<ul style="list-style-type: none"> • “Typical Year” definition. • Excludes ephemeral flow (This was in the 2015 rule). • Does not include ordinary high-water mark. • Significant nexus text is eliminated. 	<ul style="list-style-type: none"> • Tributary is jurisdictional if it flows through an artificial break (i.e.- culvert or dam) or a natural break (i.e.- boulder field, debris pile) if the break conveys perennial or intermittent flow to a tributary or jurisdictional water at the downstream end of the break. • Not jurisdictional if perennial or intermittent flow does not reach a TNW. <p><i>*Agencies seek comment on definitions for perennial and intermittent flows, snow pack, and typical year.</i></p>

Ditches	<ul style="list-style-type: none"> Artificial channels used to convey water. Jurisdictional when: <ol style="list-style-type: none"> 1) Meets TNW definition 2) Constructed in water that meets the definition of a tributary. 3) Constructed in a wetland and meets the definition of an adjacent wetland and has elements of a tributary. 	<ul style="list-style-type: none"> Separates ditches into its own category. 	<p><i>*Agencies seek comment on whether this category should be separate. In addition, they seek comment on how to implement this on the ground, including what information would be used to determine if a ditch is jurisdictional or not.</i></p>
Lakes and Ponds	<ul style="list-style-type: none"> Jurisdictional if: <ol style="list-style-type: none"> 1) It is a TNW. 2) It contributes perennial or intermittent flow to a TNW (directly or indirectly through another WOTUS or water feature). 3) It is flooded by a WOTUS in a typical year. 		<p><i>*Agencies seek comment on whether this should be a separate category.</i></p>
Impoundments	<ul style="list-style-type: none"> Jurisdictional if: <ol style="list-style-type: none"> 1) Impound otherwise jurisdictional water (retain jurisdiction). 	<ul style="list-style-type: none"> No change from 2015 rule. 	<p><i>*Agencies seek comment on whether to retain this category or whether it is covered under other categories.</i></p>
Adjacent Wetlands	<ul style="list-style-type: none"> No change to the existing regulatory definition of wetlands. Jurisdictional if has a direct hydrologic surface connection to a WOTUS. 	<ul style="list-style-type: none"> No distance thresholds that existed in the 2015 rule. No significant nexus evaluation. 	

	<ul style="list-style-type: none"> • If a wetland is separated by other features, it is not considered adjacent. • Abut is defined as touching at a point or side, it can occur from inundation, or via perennial or intermittent flow. 	<ul style="list-style-type: none"> • Does not consider ecologic factors. 	
Interstate Waters	<ul style="list-style-type: none"> • Not a separate category under this rule. 	<ul style="list-style-type: none"> • In 2015 these waters were a separate category. 	

FACT SHEET

What is excluded under the new rule?

Category	Definitions	Changes from 2015 rule or Prior to 2015	Other Notes
Overall principle: If it is not listed as a WOTUS then it is not jurisdictional.			
Groundwater	No change from 2015 rule.	No change.	
Ephemeral Features and Diffuse Stormwater Run-Off	<ul style="list-style-type: none"> • Not WOTUS. • Directional sheet flow over uplands is excluded. 	<ul style="list-style-type: none"> • 2015 rule did not have an exclusion for ephemeral features. • Prior to 2015 determination required a case-specific significant nexus test. 	<ul style="list-style-type: none"> • This definition adds the sheet-flow exclusion.
Ditches	<ul style="list-style-type: none"> • All are excluded except TNWs, former tributaries, or adjacent wetlands. • Excludes: <ol style="list-style-type: none"> 1) Entirely man-made ditches except tidal ditches and canals. 2) Ditches constructed in upland. 	<ul style="list-style-type: none"> • This rule excludes more. 	<i>*Agencies seek comment on exclusion of all ditches constructed in upland.</i>

<p>Prior Converted Cropland (PCC)</p>	<ul style="list-style-type: none"> • Any area prior to Dec. 23, 1985 that was drained or otherwise manipulated to make production of an agricultural product possible. • If the area is abandoned and reverts to a wetland then it can be jurisdictional. • No longer a PCC if not used for or in support of agricultural purposes at least once in the immediately preceding 5 years. 		<p><i>*Agencies seek comment on the definition of abandonment and change of use. They also seek comment on what is considered an agricultural purpose.</i></p> <ul style="list-style-type: none"> • There is no disincentive for conservation programs.
<p>Artificially Irrigated Areas</p>	<ul style="list-style-type: none"> • Excludes irrigated areas that revert to upland if irrigation ceases. • Specifically includes cranberry and rice growing activities in the exclusion. • Only applies to areas that are directly artificially irrigated. 		
<p>Water-Filled Depressions in Upland</p>	<ul style="list-style-type: none"> • Those depressions created incidental to mining or construction activity are excluded. • Pits excavated in upland for purposes of extracting fill, sand, gravel are excluded. • Not considered WOTUS if abandoned. 		

Stormwater Control Features	<ul style="list-style-type: none"> Excludes features excavated or constructed in upland. 	<ul style="list-style-type: none"> This is similar to the 2015 rule. 	<p><i>*Agencies also request comment on whether MS4s (municipal separate storm sewer systems) which are subject to permit requirements should be excluded in all cases.</i></p>
Waste-Water Recycling Structures	<ul style="list-style-type: none"> Excludes features constructed in upland. Clarifies the practice that waters and water features used for water reuse and recycling would not be jurisdictional when constructed in upland. 		
Waste Treatment Systems	<ul style="list-style-type: none"> Definition: Includes components designed for pollutant removal from wastewater prior to discharge. All components use for waste-water activities are included. If abandoned or ceases to serve for waste treatment exclusion may no longer apply. 	<ul style="list-style-type: none"> 2015 rule did not have a definition. 	

Additional Notes on Exclusions:

If a water may convey perennial or intermittent flow to a downstream jurisdictional water or serve as a connection for upstream/downstream tributaries, but it is not itself a WOTUS, then this does not sever the jurisdiction of the upstream water.

¹For a more detailed discussion of the rule, please reference EPA and the Army Corps' webinar available here: <https://youtu.be/ZZ6kFJasDhg>