

### Importance of Isolated Wetlands

Some of Washington's wetlands are isolated, unlike the majority which are commonly associated with or are part of larger water bodies such as streams, rivers, and lakes. Isolated wetlands form in low-lying areas supplied by precipitation, runoff from the surrounding watershed, or groundwater. They can be seasonally or permanently wet. These isolated wetlands perform many of the same important functions as do other wetlands, including:

- Recharging streams and aquifers.
- Storing flood waters.
- Filtering pollutants from water.
- Providing habitat for a host of plants and animals.

Many wildlife species, including amphibians and waterfowl, rely particularly on isolated wetlands for breeding and foraging. As described below, the state of Washington regulates activities that affect waters of the state, which include these isolated wetlands.

### U.S. Supreme Court decisions affected isolated wetlands protection under the Clean Water Act

Under the federal Clean Water Act (CWA), a permit is required to dispose of dredged or fill material in the nation's waters, including wetlands. Authorized by Section 404 of the CWA, this permit program is administered by the U.S. Army Corps of Engineers (Corps). Under the Corps' Migratory Bird Rule, the nation's waters included intrastate waters that are or would be used as habitat by migratory birds that cross state lines.

A 2001 U.S. Supreme Court decision (*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, the "SWANCC decision"), however, invalidated the Migratory Bird Rule and held that CWA jurisdiction does not include isolated, intrastate, non-navigable waters that may serve as habitat for migratory birds.

While the court did not specifically define the term "isolated," the Corps generally considers isolated wetlands as those without sufficient hydrologic connection with, or location next to, a navigable water (such as a river, lake, or marine water).

### MORE INFORMATION

#### Guidance and updates

Ecology's Isolated Wetlands Information:

[www.ecy.wa.gov/programs/sea/wetlands/isolated.html](http://www.ecy.wa.gov/programs/sea/wetlands/isolated.html)

EPA's Updates and Background Information on the Scope of "Waters of the United States" protected under the CWA:

[www.epa.gov/owow/wetlands/guidance/CWAwaters.html](http://www.epa.gov/owow/wetlands/guidance/CWAwaters.html).

#### U.S. Supreme Court citations

2001 *SWANCC* decision:  
531 U.S. 159.

2006 *Rapanos* decision:  
547 U.S. 715.

Links to these decisions can be found on the Ecology and EPA web pages listed above.

#### Contact information

Office of Regulatory Assistance  
(360) 407-7037 or  
1-800-917-0043

#### Special accommodations

To ask about the availability of this document in a version for the visually impaired, call the Shorelands and Environmental Assistance Program at 360-407-6600.

Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

After the SWANCC decision, there was confusion about which wetlands were covered under the CWA. The U.S. Supreme Court provided little clarity in their 2006 “Rapanos decision” (*Rapanos v. United States*). Therefore, in 2008, the Corps and the U.S. Environmental Protection Agency (EPA) issued joint guidance describing how they determine which wetlands are covered under the CWA based on the two decisions. (See the side bar on page one for citations and links.)

### **Changes in federal regulation resulting from the court decisions**

In the joint guidance the agencies clarified that the Corps still requires a permit for activities affecting wetlands connected to navigable water bodies, including isolated wetlands that have an interstate commerce connection, such as recreational or industrial use.

However, landowners do not need a Corps permit to place fill in, or otherwise affect, those wetlands whose only interstate commerce connection is providing migratory bird habitat. Landowners may, however, need state or local government permits to affect these “isolated” wetlands. In addition, the Corps and EPA policies regarding isolated wetlands are evolving, so future court or administrative decisions may alter the current federal guidance.

### **State regulatory authority unaffected by Supreme Court decisions**

The U.S. Supreme Court rulings did not change Washington State’s laws or regulatory authority to protect wetlands, including isolated ones. The state Clean Water Act, Chapter 90.48 RCW, prohibits pollution (including fill material) from getting into “waters of the state,” which include all marine waters, streams, rivers, lakes, ponds, springs, wetlands, storm drains, ditches, groundwater, and even snow banks. Any project involving filling or otherwise altering a wetland—even if the wetland is deemed isolated—needs to follow state regulations.

### **Federal and state regulatory process**

It can be difficult to determine whether a wetland is “isolated” (i.e., a wetland lacking the necessary connection to interstate commerce AND to a federal navigable water body). To ensure compliance with state and federal regulations, landowners wanting to undertake an activity that would impact a wetland should:

- Contact the Corps to request a formal jurisdictional determination to see whether the wetland falls under the Corps’ regulatory authority (<http://www.nws.usace.army.mil/>).
- Contact Ecology about the request to the Corps for the jurisdictional determination or when proposing activities in wetlands in general (<http://www.ecy.wa.gov/programs/sea/wetlands/contacts.htm>).

If the Corps determines that a wetland (isolated or not) is within its jurisdiction, the landowner needs to submit a Joint Aquatic Resource Permit Application (JARPA, [epermitting.wa.gov](http://www.ecy.wa.gov/programs/sea/wetlands/contacts.htm)) to the Corps and Ecology before starting any work that may affect wetlands. If the Corps determines that a wetland is isolated and not within its jurisdiction, landowners need to obtain authorization from Ecology for proposed wetland impacts. If approved, Ecology will issue an Administrative Order (AO).

To seek an AO from Ecology, an applicant should complete an Isolated Wetlands Information Sheet (available at [www.ecy.wa.gov/programs/sea/wetlands/isolated.html](http://www.ecy.wa.gov/programs/sea/wetlands/isolated.html)). This information can augment the information provided in a JARPA and will expedite review of your project. Submit the information to:

Ecology's Federal Permit Coordinator  
WA Department of Ecology  
SEA Program HQ  
P.O. Box 47600  
Olympia, WA 98504-7600  
360-407-6068  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

### **Local regulatory process**

Additionally, applicants should be aware that work affecting isolated wetlands may also be regulated by local jurisdictions (usually under a local government's Critical Areas Ordinance). Therefore, projects that impact isolated wetlands also will typically require approval from the applicable city or county (see the Municipal Research and Services Center web page for a list of city and county profiles with contact information: <http://www.mrsc.org/research.aspx>).

### **More Information**

The following two interagency documents provide more information on the wetland regulatory process and guidance on mitigation:

- Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance (<http://www.ecy.wa.gov/biblio/0606011a.html>).
- Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (<http://www.ecy.wa.gov/biblio/0606011b.html>).