



# Weakening the Clean Water Act: What it Means for Iowa

## What happened to the Clean Water Act?

Millions of acres of wetlands and thousands of miles of streams are losing Clean Water Act (CWA) protections in the wake of Supreme Court decisions in 2001 (*SWANCC*) and 2006 (*Rapanos*) and subsequent Corps of Engineers and EPA guidance.

**Without intervention from Congress or the Administration to restore Clean Water Act protections for waters that were protected prior to 2001, these waters will continue to be polluted and destroyed.**

Recent storms, floods, wildfires, and droughts offer one clear lesson: we must protect our natural water supplies and water infrastructure. Healthy streams and wetlands are vital, they:

- Naturally filter and replenish our drinking water supplies
- Absorb flood waters and protect coastlines during heavy storms and hurricanes
- Recharge and release precious water supplies during times of drought
- Support diverse and abundant fish and wildlife
- Support local hunting, fishing, birdwatching, and boating industries
- Offer refuge and recreation close to home for people and wildlife alike.

These waters are all the more important in the face of climate change which will drastically alter the water cycle, leading to increased occurrences of flooding and drought, as well as sea level rise and increased storm intensity.

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## Waters at Risk due to *SWANCC* and *Rapanos* Supreme Court Decisions and Agency Guidance

- **Iowa has lost as much as 95% of its wetlands since the 1780s.** Only about 422,000 acres remain.
- As much as 72% of Iowa's remaining prairie pothole wetlands may be considered "isolated" and no longer protected by the Clean Water Act after *SWANCC* and subsequent agency guidance.
- Wetlands destruction continues in Iowa despite the many benefits these wetlands provide. Wetlands improve water quality and provide wildlife habitat, flood control, and recreational opportunities. **An economic analysis of Illinois River wetland restoration estimated that restoring 1 acre of wetlands provides a net benefit of \$740 in benefits annually.**
- Wetlands and streams store water, acting as sponges during flood periods, and flow reserves during drought. The Upper Mississippi River basin has suffered two 500-year floods in 15 years (1993 and 2008). A study has shown that wetlands lost in the Upper Mississippi River basin had the capacity to store the flood waters of the devastating 1993 Midwest flooding.
- Iowa has an estimated 71,665 miles of rivers and streams. Over 60% do not flow year round. These streams and their adjacent wetlands now may not be protected by the Clean Water Act.
- EPA says that over 667,000 Iowans receive some of their drinking water from areas containing these smaller streams.



Iowa Sunset, USFWS

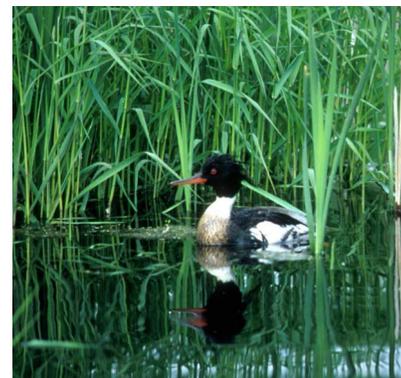
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## Wildlife, Hunting, and Fishing Impacts

- **In 2006, over \$1 billion was spent in Iowa on fishing, hunting, and wildlife-associated activities.**
- More than half of Iowa's endangered species are dependent upon or associated with wetlands.
- Ninety percent of fish caught by American recreational anglers need wetlands for shelter, food supply, spawning, and nursery areas. Wetlands are essential spawning grounds for fish and provide the insect and smaller fish that serve as food for many larger game fish.

## Wildlife, Hunting, and Fishing Impacts, contd.

- **Duck hunting in Iowa is being harmed by the rollback of Clean Water Act protections.** The Prairie Pothole Region (also known as “the Duck Factory”), supports a globally significant population of breeding waterfowl, and it is at risk. Ducks Unlimited attached bands to certain ducks in their nesting ground in the Dakotas—wetlands surrounded by grasslands—and later observed the ducks in Iowa. These nesting grounds are no longer protected by the Clean Water Act. In addition, Iowa is centrally located along one of the most important migration routes in North America. The loss of federal protection for pothole wetlands in Iowa threatens the duck population—and duck hunting—in Iowa and throughout the Mississippi Flyway.



Red-breasted merganser, Desoto National Wildlife Refuge, Iowa, USFWS

## No Jurisdiction, Less Enforcement

- From July 2006 until early 2008, the *Rapanos* decision and guidance negatively affected more than 500 Clean Water Act enforcement cases nationally. **Forty-eight of these compromised enforcement actions occurred in EPA Region 7 covering Iowa, Missouri, Kansas, and Nebraska.**
- At least 513 polluting facilities are located on at-risk streams in Iowa. Their pollution is presently limited by Clean Water Act permits, but these permits may no longer be necessary.

## Restoring Protections Streamlines Clean Water Act Permitting

The *SWANCC* and *Rapanos* decisions and guidance have added uncertainty and burdensome fact-finding and paper work requirements to the Clean Water Act permitting process. According to the Army Corps of Engineers 2011 budget justification document, “[t]he complexity of the Supreme Court Decisions related to Clean Water Act jurisdiction also continues to increase the time it takes to provide landowners with decisions.”

## State Protections in Iowa

According to the Iowa Department of Natural Resources' 2003 *SWANCC* rulemaking comments, “[t]here are no effective state wetland protection programs in Iowa.” **Iowa has no independent state permitting program that regulates dredge and fill discharges in so-called isolated wetlands or in most headwater streams.** The DNR has Clean Water Act §401 water quality certification authority over the state's wetlands and other surface waters where Clean Water Act permits are required, but this authority evaporates with respect to any and all waters, including wetlands, no longer recognized as CWA “waters of the United States” by the Corps and EPA.

**Iowa joined more than 30 states in asking the Supreme Court to uphold Clean Water Act protections for small tributaries and their adjacent wetlands.**



Richard Seeley

## The Administration Must Restore Clean Water Protections for the Nation's Waters

For almost a decade, Congress has failed to enact legislation restoring the historic scope of the Clean Water Act. **To protect the Nation's waters, EPA and the Corps of Engineers should revise their definition of “Waters of the United States” to restore and clarify Clean Water Act protections, including for so-called “isolated wetlands,” in a manner consistent with both law and science.** A successful rulemaking will restore and clarify protections for millions of wetland acres and stream miles, and will place these restored protections on a much more secure legal and scientific foundation.



**For more information contact:**

Jan Goldman-Carter  
Wetlands and Water Resources Counsel  
[www.nwf.org/waters](http://www.nwf.org/waters)

[goldmancarterj@nwf.org](mailto:goldmancarterj@nwf.org)  
202-797-6894

National Wildlife Federation • National Advocacy Center • 901 E Street NW, Suite 400 • Washington, DC 20004