



Comments on Waters of the US Definition Docket ID No. EPA-HQ-OW-2018-0149

To: OW-Docket@EPA.gov April 6, 2019

Friends of Accotink Creek welcomes the opportunity to provide comments on the revised definition of "Waters of the United States" as published in the Federal Register on February 14, 2019. With a watershed of 52 square miles, most of which is within Fairfax County (12 percent of which is within Fort Belvoir Military Reservation), it is the second largest watershed in Fairfax County. The creek runs through a system of vegetated corridors, many of which are on public lands, eventually discharging into the Potomac River. The watershed is heavily developed, with impervious cover exceeding 25%. The effects of development and associated untreated stormwater runoff are clearly visible in the creek and its tributaries (e.g., bank erosion and sediment deposition, loss of stabilizing riparian and floodplain vegetation) and Fairfax County has rated the creek and its tributaries as in poor or very poor when considering IBI, habitat fish taxa and percent impervious surface. In May 2018 USEPA approved sediment and chloride TMDL for Accotink Creek to address aquatic life use impairments resulting from sediment and chloride.

Friends of Accotink Creek are committed to protecting, promoting and restoring the water quality, natural habitat, and ecological well-being of the Accotink Creek watershed, which includes the recognition of the importance headwater areas, vernal pools and wetlands with and without surface connections in contributing to the health of streams and the surrounding ecological communities. With this focus, we offer the following comments.

1. We understand that the USEPA and the USACE also acknowledges the importance of headwater areas in maintaining the quality of the nation's waters but that the definition of Waters of the US is restricting the scope of waters subject to federal regulation under the Clean Water Act (CWA) to traditional navigable waters, tributaries that contribute perennial or intermittent flow, certain ditches, certain lakes and ponds; impoundments of otherwise jurisdictional waters; and wetlands adjacent to jurisdictional waters; preserving the traditional sovereignty of States over their own land and water resources. As headwater areas, vernal pools, adjacent wetlands without surface connections and non-adjacent wetlands without surface connections are important to the overall protection of and ecological integrity of the nation's waters, in particular those waters proposed to be regulated under the Waters of the US definition, we request that tools and funding be established to assist States, Tribes and other entities with jurisdiction over water resources outside Waters of the US, to recognize the importance of these areas, and to develop regulatory programs to assist in preserving, minimizing and mitigating impacts, in an effort to maintaining the integrity of the nation's waters in the holistic manner that will be required to ensure the quality of our water's into the future.
2. Interstate Waters-Being located within the Chesapeake Bay watershed, whose waters are affected by multiple jurisdictions, we do not support the removal of interstate waters as a separate category under Waters of the US. We believe this category is still important to preserving the quality of those waters located within more than one state, or between states and tribes, that do not fall under the proposed Waters of the US definition so as to prevent a decision by one state from affecting surface waters in another, and to provide a regulatory means to address such an incident should this occur.
3. Tributary Definition-We believe that the definition should include perennial and intermittent flow as defined in the proposed rule. We do not believe that less than intermittent flow within a portion of a channel breaks jurisdiction of upstream perennial or intermittent flow, as this has a potential to occur in certain portions of the US, such as areas with karst topography. We are also concerned with the proposed treatment of natural and man-made breaks regarding jurisdictional status of upstream waters, including whether these features can convey perennial or intermittent flow to downstream jurisdictional waters. If waters protected under the Clean Water Act are located upstream and downstream of such a break, and the purpose of the Clean Water Act is to preserve the integrity of the nation's waters, it is illogical not to regulate activities within this so called "break" which have the potential to adversely affect the jurisdictional perennial and intermittent waters flowing through them. We also believe that to truly make the proposed definition understandable to the public then a set of tools accessed through an interactive mapping program needs to be established which links to site/region specific information important for identifying perennial and intermittent stream regimes; including "typical year," USGS blueline streams, etc. While information is available in many locations it is incredibly important to have one localized source of information if the goal is to "increase the predictability and consistency by increasing clarity." In addition to on-line tools, which should always be the first step in assessing jurisdiction, a set of simple field-based tools should also be developed to that can be consistently implemented with basic training to field verify a determination made on the basis of desktop review. Incorporating the lateral jurisdictional limit of a tributary as ordinary high water mark into the definition of tributary will increase clarity of application.
4. Wetlands Definition-The requirement for a direct hydrologic surface connection to a jurisdictional water during a typical year to establish adjacency does not appear to address wetlands that were adjacent and hydrologically connected to navigable waters, and are still adjacent to these waters but which have been altered by past activities such as dikes or berms. Some consideration should be given to formerly connected wetlands.

We thank you for consideration of these comments.

Primary Conservator
Friends of Accotink Creek