

**EXISTING WOTUS RULE, APRIL 2014 WOTUS PROPOSED RULE,
and MAY 2015 WOTUS FINAL RULE COMPARISON CHART**

EXISTING LAW	APRIL 2014	MAY 2015	COMMENTS
Categories of Waters included in WOTUS definition			
<p>7 categories:</p> <p>(1) Traditional navigable waters;</p> <p>(2) All interstate waters including interstate wetlands;</p> <p>(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:</p> <p>(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or</p> <p>(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or</p> <p>(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;</p> <p>(4) impoundments</p> <p>(5) Tributaries of waters identified in categories 1-4;</p> <p>(6) The territorial sea;</p> <p>(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in categories 1-6</p>	<p>7 Categories:</p> <p>(1) traditional navigable waters (TNWs);</p> <p>(2) interstate waters, including interstate wetlands;</p> <p>(3) territorial seas;</p> <p>(4) impoundments;</p> <p>(5) tributaries of waters in categories 1-4;</p> <p>(6) all waters, including wetlands, adjacent to a water identified in categories 1-5; and</p> <p>(7) enumerated regional features with a significant nexus</p>	<p>8 Categories:</p> <p>(1) traditional navigable waters (TNWs);</p> <p>(2) interstate waters, including interstate wetlands;</p> <p>(3) territorial seas;</p> <p>(4) impoundments;</p> <p>(5) tributaries of waters in categories 1-3;</p> <p>(6) all waters adjacent to a water identified in categories 1-5, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;</p> <p>(7) enumerated regional features with a significant nexus; and</p> <p>(8) waters in the 100-year floodplain/4,000 feet of a water of the U.S. with a significant nexus.</p>	<p>Additional category 8 expands scope of waters included within definition of “waters of the US”</p> <p>No longer includes tributaries of impoundments</p> <p>Much broader scope of what is considered adjacent than in existing rule – 2014 rule expanded to all waters (not just wetlands adjacent), 2015 further expanded to specifically identify included waters</p> <p>Existing rule did not contain significant nexus categories</p>

WOTUS Exclusions			
Applies to all categories of waters	Applies to all categories of waters	Does not apply exclusion to any waters within categories 1-3	Limits exclusions to only categories 4-8. If located in categories 1-3, exclusion does not apply
Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition)	Waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act	Waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act	No longer specifically removes cooling ponds from exclusion as in existing rule
Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.	Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.	Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.	Same
N/A	Ditches excavated <i>wholly in uplands, drain only uplands</i> , and have less than <i>perennial</i> flow	Ditches with <i>ephemeral</i> flow that are not a relocated tributary or excavated in a tributary Ditches with <i>intermittent</i> flow that are not a relocated tributary, excavated in a tributary, or drain wetlands	Deletion of references to uplands resolves some concerns about applicability in South Florida where there are no uplands distinguishes between ditches with ephemeral and intermittent flow – potential confusion as to whether flow is perennial, ephemeral, or intermittent;

			ditches excavated in a tributary or that are a relocated tributary are considered WOTUS; any ditches with perennial flow are considered WOTUS
N/A	Ditches that do not <i>contribute flow</i> , either directly or through another water, to a water identified in categories 1-4	Ditches that do not <i>flow</i> , either directly or through another water, into a water identified in categories 1-3	More waters are included under revised description because the word “contribute” is deleted and limits to only categories 1-3 – revised language excludes ditches that flow into an impoundment from WOTUS definition
N/A	Artificially irrigated areas that would revert to <i>upland</i> should application of irrigation water to area cease	Artificially irrigated areas that would revert to <i>dry land</i> should application of water to that area cease	Replacement of upland with dry land is an improvement, but <i>concern remains that artificially irrigated areas not in dry lands would be considered WOTUS</i> ; No definition of dry land is provided, but preamble refers to areas of the geographic landscape that are not water features such as streams, rivers, wetlands, lakes, ponds, and the like - <i>Concern with demonstrating area would be dry land</i>
N/A	Artificial lakes or ponds created <i>by excavating and/or diking</i> dry land and <i>used exclusively</i> for such purposes as stock watering, irrigation, settling basins or rice growing	Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, <i>fields flooded</i> for rice growing, <i>log cleaning ponds, or cooling ponds</i>	Removes requirement that lake or pond be created by excavation and/or diking; Removes exclusivity of use requirement; Same concerns regarding requirement of construction in

			dry land as with artificially irrigated areas above
N/A	Artificial reflecting pools or swimming pools created <i>by excavating and/or diking</i> dry land	Artificial reflecting pools or swimming pools created in dry land	Removes requirement that pools be created by excavation and/or diking Same concerns with dry land requirement as raised with artificially irrigated areas above
N/A	Small ornamental waters <i>created by excavating and/or diking</i> dry land <i>for primarily aesthetic reasons</i>	Small ornamental waters created in dry land	Removes requirements that waters be created by excavating and/or diking and for primarily aesthetic purposes; Same concerns with dry land requirement as raised with artificially irrigated areas above
N/A	Water-filled depressions created incidental to construction activity	Water-filled depressions created in dry land incidental to <i>mining or</i> construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water	Additional clarification; Same concerns with dry land requirement as raised with artificially irrigated areas above
N/A	Groundwater, including groundwater drained through subsurface drainage systems	Groundwater, including groundwater drained through subsurface drainage systems	SAME.
N/A	Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways	Gullies and rills of non-wetland swales	Note - Erosional features (gullies, rills, etc.) are not excluded where they exhibit bed, banks and OHWM
N/A	N/A	Puddles	Additional exclusion from WOTUS definition
N/A	N/A	Stormwater control features constructed to convey, treat, or store stormwater that	Additional exclusion from WOTUS definition

		are created in dry land.	<p>Preamble states that a key element of the exclusion is whether the feature conveys, treats, or stores stormwater. Certain features, such as curbs and gutters, may be features of stormwater collection systems “but have never been considered ‘waters of the U.S.’”</p> <p>Same concerns with dry land requirement as raised with artificially irrigated areas above</p>
N/A		Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling	<p>Additional exclusion from WOTUS definition</p> <p>Same concerns with dry land requirement as raised with artificially irrigated areas above</p>
Definitions			
The term adjacent means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes, and the like are “adjacent wetlands.”	Adjacent. The term adjacent means bordering, contiguous, or neighboring. Waters, <i>including wetlands</i> , separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are “adjacent waters”	Adjacent. The term adjacent means bordering, contiguous, or neighboring <i>a water identified in [categories 1-5]</i> , including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the. <i>For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in [categories 1-5]. Adjacent water shall include all waters that connect segments of a water identified in [categories 1-5] and are</i>	<p>Expands scope of adjacent from existing rules to include all waters, not just wetlands.</p> <p>2015 rule limits adjacent to only bordering, contiguous or neighboring category 1-5 waters.</p> <p>Many steps involved with determining whether adjacent because must first apply neighboring definition to determine if adjacent – may lead to confusion</p>

		<p><i>bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 USC 1344(f)) are not adjacent.</i></p>	<p>Includes wetlands within OHWM of pond or lake</p> <p>Not limited to waters located laterally to a category 1-5 water – concern the alternative could arguably include waters located vertically/underneath, and therefore include some form of groundwater</p> <p>Preamble notes that waters in which normal farming, ranching, and silviculture activities occur may still be determined to have a significant nexus on a case specific basis under sections (a)(8) and (a)(9). That these waters can be jurisdictional on a case-by-case basis is not consistent with the rule’s “adjacent” definition.</p>
N/A	<p>Neighboring. The term neighboring, for purposes of the term adjacent in this section, includes waters located within the riparian area or floodplain of a water identified in [categories 1-5], or waters with a shallow subsurface hydrologic connection or confined surface hydrologic connection to such a jurisdictional water.</p>	<p>Neighboring. The term neighboring means:</p> <ul style="list-style-type: none"> a) All waters located within <i>100 ft of the OHWM</i> of a water identified in categories 1-5 b) All waters located within the <i>100 year floodplain</i> of a water identified in categories 1-5 and not more than <i>1,500 feet from the OHWM</i>. c) All waters located within <i>1,500</i> 	<p>Defines floodplain to mean 100 year floodplain and removes references to riparian area</p> <p>Deletes reference to shallow subsurface or confined hydrologic connection to jurisdictional water, which was a concern for implicating groundwater was included under prior language.</p> <p>Difficult to measure OHWM</p>

		<p><i>feet of the high tide line</i> of a water identified in categories 1 or 3 and all waters within 1,500 feet of the OHWM of the Great lakes.</p> <p>If portion of any water is located within these areas, the entire water is considered neighboring.</p>	and 100 year floodplain – expansive range
N/A	Floodplain	DELETED DEFINITIONS	
N/A	Riparian	DELETED DEFINITIONS	
N/A	<p>Tributary. The term tributary means a water physically characterized by the presence of a bed and banks and OHWM, as defined at 33 CFR 328.3(e), which contributes flow, either directly or through another water, to a water identified in [categories 1-4]. In addition, wetlands, lakes, and ponds are tributaries (even if they lack a bed and banks or OHWM) if they contribute flow, either directly or through another water to a water identified in [categories 1-3]. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more man-made breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands <i>at the head of</i> or along the run of a stream, debris piles, boulder fields or a</p>	<p>Tributary or tributaries. The terms tributary and tributaries each mean a water that contributes flow, either directly or through another water (including an impoundment identified in [category 4]) to a water identified in [categories 1-3] that is characterized by the presence of the physical indicators of a bed and banks and an OHWM. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an OHWM, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals and ditches not excluded. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more man-made breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields or a</p>	<p>Mostly unchanged, just reorganized.</p> <p>No longer includes waters that flow directly or through impoundments</p> <p>Does not account for frequency and duration of flow – focuses on physical characteristics</p> <p>Maintains tributary status regardless of breaks of any length</p>

	stream that flows underground) so long as a bed and banks and an OHWM can be identified upstream of the break. A tributary, including wetlands, can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, lakes, ponds, impoundments, canals, and ditches not excluded.	stream that flows underground) so long as a bed and banks and an OHWM can be identified upstream of the break. A <i>water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the US that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in [categories 1-3].</i>	
The term wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.	Wetlands. The term wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.	SAME	Same
N/A	Significant Nexus. The term significant nexus means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region (i.e. the watershed that drains to the nearest water identified in [categories 1-3]), significantly affects the chemical, physical, or biological integrity of a water identified in [categories 1-3]. For an effect to be significant, it must be more than speculative	Significant Nexus. The term significant nexus means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region significantly affects the chemical, physical, or biological integrity of a water identified in [categories 1-3]. The term ‘in the region’ means the watershed that drains to the nearest water identified in [categories 1-3]. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when the function alike	*Note – category 7 specifically identifies 5 subcategories of waters (prairie potholes, Carolina bays and Delmarva bays, pocosins, Western vernal pools, and Texas coastal prairie wetlands) that are “similarly situated” by rule and should be considered together when determining whether one has a significant nexus. Concern that a significant nexus

	<p>or insubstantial. Other waters, <i>including wetlands</i>, are similarly situated when they perform similar functions and are located sufficiently close <i>together or sufficiently close to a water of the US so that they can be evaluated as a single landscape unit with regard to their effect on the chemical, physical, or biological integrity of a water identified in [categories 1-3]</i></p>	<p>and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water's effect on downstream [category 1-3]waters shall be assessed by evaluating the aquatic functions identified in paragraphs (a) through (i) of this paragraph. A water has a significant nexus when <i>any single function or combination</i> of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in [categories 1-3]. Functions relevant to the significant nexus evaluation are the following:</p> <ul style="list-style-type: none"> (a) Sediment trapping (b) Nutrient recycling (c) Pollutant trapping, transformation, filtering, and transport (d) Retention and attenuation of flood waters (e) Runoff storage (f) Contribution of flow (g) Export of organic matter (h) Export of food resources, and (i) Provision of life cycle dependant habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in [categories 1-3] 	<p>can be found if only one of the 9 relevant functions is present.</p> <p>Low standard of interpretation of significant nexus</p>
N/A	N/A	Ordinary High Water Mark. The term	Term can be ambiguous and

		<p>OHWM means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.</p>	<p>applied inconsistently.</p> <p>Physical indicators may occur wherever water flows across, regardless of frequency or duration</p> <p>Allows agency to rely on prior existence of physical indicators and assert jurisdiction, regardless of whether still present</p>
N/A	N/A	<p>High Tide Line. The term High tide line means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.</p>	<p>May fluctuate with season, assume highest tide</p>