



Massachusetts Association of Conservation Commissions

protecting wetlands, open space and biological diversity through education and advocacy

Filed by email to ow-docket@epa.gov on October 28, 2014

October 28, 2014

Ms. Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Water Docket, Mail Code 2822T
1200 Pennsylvania Ave. NW
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OW-2011-0880

Dear Administrator McCarthy:

These are the comments of the Massachusetts Association of Conservation Commissions (MACC) on the Proposed Rule for the Definition of “Waters of the United States” under the Clean Water Act, issued by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Army Corps). 79 Fed. Reg. 76, 22188 (April 21, 2014).

The MACC is a nonprofit organization, established in 1961 and incorporated in 1978, dedicated to supporting the 351 municipal conservation commissions in Massachusetts and protecting natural resources throughout Massachusetts. We represent more than 2,000 conservation commissioners charged with protecting the natural resources of their communities under the Conservation Commission Act (G.L. c.40, §8c) and with administering and enforcing the Massachusetts Wetlands Protection Act (G.L. c.131, §40). We seek to promote strong, workable, science-based laws, regulations, and policies that protect wetlands, other water resources, and open space. We appreciate the opportunity to comment on the proposed rule.

We are pleased with the fundamental approach in the development of the proposed rule: the use of the best science, compiled in the Science Advisory Board (SAB) report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*. We strongly support this approach of “science first.” We firmly believe that the protections provided to all tributaries and wetlands adjacent or with a significant nexus to Waters of the U.S. under the Clean Water Act (CWA) are appropriate and consistent with the state of the science regarding their connectivity to downstream waters and consistent with the mandate of the CWA. By so defining the array of waters and wetlands that by definition are Waters of the U.S., the proposed rule should eliminate many of the uncertainties that have existed since the 2006 decision by the Supreme Court in *Rapanos v. U.S.*

We also believe the proposed rule should go further and include by definition all intermittent and most (if not all) ephemeral streams and their adjacent wetlands. The SAB report provides ample evidence and support for including those waters. It is clear that even temporarily connected streams and wetlands can have a disproportionately large influence on the integrity of downstream waters.

The importance of ephemeral, intermittent, and perennial streams is discussed at length in the proposed rule's preamble as well as the SAB report, but the seasonality and annual variability of hydrologic connectivity are not explicitly recognized in the proposed rule itself. Though hydrologic connectivity can vary within and between years, its significance in establishing a connection to downstream waters is not diminished by this natural variability. We recommend language that recognizes this variability, not only for streams but for all waters.

Additionally, we strongly support the use of wetland-dependent wildlife as indicators of biological connectivity for determining the jurisdictional status of other waters. Wetland-dependent species often depend on multiple wetland and other aquatic habitats and the presence or absence of these organisms can be used to indicate ecological connectivity and functional relationships between "other waters" and jurisdictional waters.

We commend the EPA and the Army Corps for the proposed rule. As proposed, it will reduce ambiguity, increase clarity and predictability, and aid in protecting the environment. With the revisions suggested above, the proposed rule would further narrow remaining gaps in jurisdictional coverage and improve the protection of our Nation's waters.

We urge EPA and the Army Corps to move forward quickly to revise the rule as suggested in this letter and issue it in final form after the close of the comment period.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene B. Benson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Eugene B. Benson
Executive Director
Email: eugene.benson@maccweb.org

Cc: MACC Board of Directors