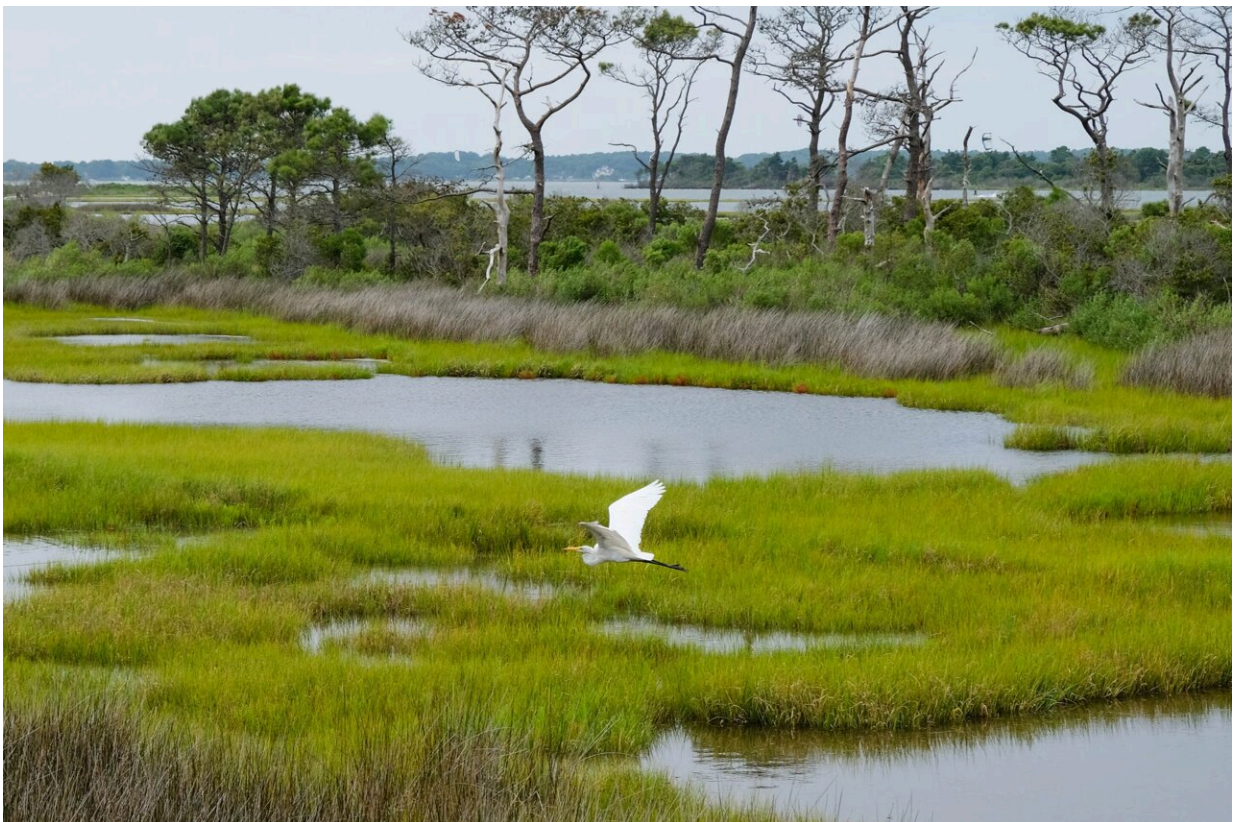


After Clean Water Act ruling, states that want to protect affected wetlands need millions

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Earlier in 2023, the U.S. Supreme Court stripped federal oversight from millions of acres of wetlands long protected under the Clean Water Act.

Now, erecting safeguards to ensure those waters are not polluted, drained or filled in by developers falls to the states.

They're finding that it's not easy.

"States and tribes already didn't have enough funding to support the programs they have, and now they are being put in a position where they need to step up," said Marla Stelk, executive director of the National Association of Wetland Managers, a nonprofit group that represents state and tribal regulators.

Wetlands play a crucial role in filtering pollution and nutrient runoff. They also absorb stormwater, help to recharge aquifers and provide essential habitat for many species. When [wetland areas](#) are lost, water managers say, communities may suffer from flooding, become more vulnerable to droughts or require expensive treatment plants to make water safe to drink.

In some states, the loss of federal rules means that many waters are now largely unregulated. Some lawmakers, mostly in Democratic-led states, are looking to craft rules to replace the lost Clean Water Act protections, but they expect a years-long process just to get [new regulations](#) on the books.

Other states have had strong rules in place even without the federal coverage. But now they can no longer rely on federal partners such as the U.S. Environmental Protection Agency to help enforce those standards. Regulators in those states are asking lawmakers for millions of dollars to hire more staff to process permits and monitor water quality.

Meanwhile, some conservative states view the rollback as an opportunity for developers and industry. Soon after the [court decision](#), North Carolina passed a law eliminating all state protections that exceeded the

federal standard. Environmental advocates say other business-friendly states are unlikely to enact their own protections, and fear that some will follow North Carolina's lead by cutting existing rules.

"It ought to help with regard to costs and predictability," said Ray Starling, president of the NC Chamber Legal Institute, the legal strategy arm of the business advocacy group, in a June interview with Stateline. "The Supreme Court knew that this would end up yielding quite a bit more jurisdiction to the states. We would argue that's actually good."

State leaders say they remain unclear on exactly which waters have lost federal oversight following the Supreme Court decision and a subsequent EPA rule based on it. Officials expect plenty of litigation as they attempt to make sense of murky legal definitions from the feds. Some fear that developers may take advantage of the confusion, using states' uncertainty as implicit permission to bulldoze wetlands.

"Every state's risk has increased," said Julian Gonzalez, senior legislative counsel for policy and legislation at Earthjustice, an environmental law group. "The whole point of the Clean Water Act was to ensure that there's not a patchwork of regulations. Even when EPA had full jurisdiction, there were tons of enforcement issues all across the country. This is only going to exacerbate them."

Staffing shortfalls

In May, the Supreme Court ruled that the Clean Water Act does not cover wetlands that lack a continuous surface connection to a larger body of water, which excludes many waters that connect underground. The court also narrowed the law to exclude from protection "ephemeral" streams that flow only seasonally.

Of the nation's 118 million acres of wetlands, more than half could lose

federal protection under the new definition, Earthjustice estimated. The EPA in August issued a new rule revising its regulation known as the "waters of the United States" rule to meet the court's limitations.

"We still don't know how [courts] are fully going to interpret what constitutes a surface connection, but we're still assuming that at least 50% of [Washington's] wetlands are no longer jurisdictional [under the Clean Water Act]," said Lauren Driscoll, manager of the wetlands program with the Washington State Department of Ecology.

With the feds bowing out, Driscoll's agency may have to process an additional 50 to 100 permits a year, up from the 12 or so it currently handles. The agency is currently enforcing state wetland standards using a customized administrative order for each permit. Regulators are asking state lawmakers to enact a dedicated permit program that would create a standardized application process.

The agency also is seeking 10 more staffers to process permits, and three more temporary workers to help develop the new program. Once established, the permit program will cost about \$2.2 million per year to administer, Driscoll said.

In California, regulators say they'll also need more funding and staff to enforce state wetlands laws. For waters that are losing federal protection, states such as California will lose access to environmental analyses, expertise and staff capacity from federal partners such as the U.S. Army Corps of Engineers.

"We are anticipating no longer having support from the [U.S.] Army Corps of Engineers for things we've relied on them to do on the technical side" in waters that are no longer protected as waters of the United States, said Karen Mogus, deputy director of the Division of Water Quality within the State Water Resources Control Board.

"We have protections in place, we have state authority, but we are certainly seeking additional resources to cover the gap that we have estimated is going to be opened up."

While the agency's specific funding request remains confidential, Mogus said, the loss of federal support could delay the issuance of permits. Regulators also might have to set up a state version of a federal pollution discharge program that covers wastewater plants and other industries.

A few states already have passed laws that are broader than the federal standard, with well-established permit programs to uphold them. In Minnesota, for instance, [state officials](#) say their efforts will be largely unaffected by the court decision. But they acknowledge that other states may be hard-pressed to enact protections such as Minnesota's 1991 Wetland Conservation Act.

"It would be very difficult to even consider doing something like that today," said Dave Weirens, assistant director for programs and policy with the Minnesota Board of Water and Soil Resources. "Democrats and Republicans found it easier to find common cause to solve problems than they do today."

Last year, New York lawmakers passed a measure to expand the wetlands covered by state regulators, in part because of the pending Supreme Court case. Officials with the state Department of Environmental Conservation did not grant an interview about that effort, but supplied a statement saying the expansion would protect an additional 1 million acres of wetlands.

Making investments

Other states are working to put firmer protections on the books. In New Mexico, officials already had been working prior to the ruling to

establish a surface water permitting program.

While the state currently has standards to protect wetlands, it's enforcing them via administrative orders rather than a well-defined program.

Agency officials have been coordinating with counterparts in Washington state, which is also using administrative orders, even as both states work toward a more defined program.

"We'd like to get away from boutique permits, these individual one-off permits and standardize this," said John Rhoderick, director of the Water Protection Division within the state Environment Department. "Each permit is an adventure to say the least."

Rhoderick said it will take about five years to get the state program fully established, requiring an additional 35 to 40 staff members and \$5 million to \$6 million per year. He said state lawmakers have been supportive of that effort, and he anticipates they will empower his agency to begin a rulemaking process late next year.

Colorado is among the [states](#) without strong wetlands protections. Gov. Jared Polis, a Democrat, has proposed \$600,000 in his budget request as an "initial investment" toward developing a program, spokesperson Katherine Jones said in an email. The governor's office declined an interview request seeking more details on that proposed program.

Developers in the state say they're monitoring the process, while environmental advocates say they're working with officials to craft laws that will restore protections for Colorado's waters.

"We are fully intent, both advocates and the government, to get a program in place that will at a minimum return us to where we were at [with federal oversight]," said Ean Tafoya, Colorado state director with GreenLatinos, an environmental justice organization. "What's frustrating

is that we could have been taking these steps a few years ago."

While Polis' budget request may help to kick-start a rulemaking process, Tafoya said, establishing a full regulatory program will cost millions of dollars. While specific bill language hasn't been released, he said he expects lawmakers to consider legislation that would direct the state Water Quality Control Division to establish standards by a certain date.

Illinois activists also are pushing for legislative action.

"Wetlands are one of the few natural tools we have to filter our nutrient pollution, and they have the capacity to hold water, which helps mitigate flooding," said Eliot Clay, land use programs director with the Illinois Environmental Council. "They are going to help us get through some of the worst impacts of climate change."

At present, Clay said, the state's wetlands protections are vague, and the state Department of Natural Resources is understaffed. But he believes Democratic Gov. JB Pritzker is interested in bolstering the state's standards, and advocates expect to see a bill in the legislature next year.

Pritzker's office did not respond to a request for comment.

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