



## America's Commitment to Clean Water Act:

*Restoring America's waters and wetlands  
while protecting property rights and agriculture*

### What happened to the Clean Water Act?

Millions of acres of wetlands and thousands of miles of streams are losing Clean Water Act protections in the wake of Supreme Court decisions in 2001 (*SWANCC*) and 2006 (*Rapanos*) and subsequent Corps of Engineers and EPA guidance. The confusion and uncertainty created by these decisions are also causing wasteful permitting delays and litigation. **As a coalition of America's leading sportsmen and conservation organizations representing millions of members, we urge Congress to act quickly in 2010 to restore Clean Water Act protections for wetlands, streams, lakes, and headwaters that are vulnerable to pollution and destruction under the Supreme Court's decisions.**

### How America's Commitment to Clean Water Act restores long-standing protections:

*America's Commitment to Clean Water Act* (H.R. 5088) is new legislation that will restore long-standing Clean Water Act protections for streams, lakes, wetlands, and other important waters jeopardized by the 2001 and 2006 Supreme Court decisions. It achieves this fundamental goal while being more tailored, specific, and responsive to critics' concerns than legislation introduced in previous Congresses. **The new bill includes:**

- **Statements that reinforce its simple goal:** To restore Clean Water Act protections to waters that were protected prior to the Supreme Court's *SWANCC* decision.
- **A more specific definition of "waters of the United States" that closely follows the definition the Environmental Protection Agency (EPA) and Army Corps of Engineers have successfully used for decades.** This definition does not include any reference to "activities affecting" such waters that appeared in previous bills.
- **New statutory exemptions for prior converted cropland (wetlands drained for crop production) and certain waste treatment systems.** The new exemption for prior converted cropland adds to existing exemptions in the law for common farming practices, including plowing, seeding and cultivating.
- **Direct references to Congress's long-standing constitutional authority** to achieve the Clean Water Act's fundamental goal of maintaining and restoring the chemical, physical, and biological integrity of the nation's waters.



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**The new legislation also deletes the term "navigable" from the Clean Water Act to clarify that congressional intent was to improve water quality rather than sustain navigation.** This change is essential to remedy the Supreme Court's decisions, which undermine the effectiveness and enforceability of the Act by giving greater meaning to the term than Congress intended. Congress recognized then as now that small streams and wetlands play a vital role by filtering the water that eventually flows into larger rivers and lakes. If "non-navigable" headwaters are allowed to be polluted, water quality in navigable downstream waters will suffer. The term "navigable" confuses rather than clarifies which waters are covered by the Clean Water Act.

## What's at Stake?

Recent storms, floods, wildfires, and droughts offer one clear lesson: we must protect our natural water supplies and essential water resources. Healthy streams and wetlands are vital to healthy communities and habitat, they:



- **Naturally filter and replenish our drinking water supplies.** EPA estimates that more than 117 million Americans receive their drinking water from public water systems supplied in whole or in part by streams most at risk of losing Clean Water Act protections.
- **Support diverse and abundant fish and wildlife.** Up to 20 million acres of “isolated” wetlands – including prairie potholes across the Dakotas, Minnesota, Montana, and Iowa – are losing Clean Water Act protection. Wetlands are the lifeblood of healthy duck populations, providing essential nesting, migratory, and wintering habitat. Small non-navigable streams provide critical spawning and rearing habitat for many fish species, including trout and salmon.
- **Support local hunting, fishing, birdwatching, and boating industries.** According to the Fish and Wildlife Service, 1.3 million waterfowl hunters generated \$2.3 billion in economic activity in 2006. The National Marine Manufacturers Association states that recreational boating alone had a total economic value of \$100 billion in 2007 for everything from manufacturing to spending at dockside restaurants.
- **Absorb flood waters and protect coastlines during heavy storms and hurricanes.**

**These waters are now at risk of pollution and destruction absent congressional action.** In a February 2010 *New York Times* article, EPA staff estimated that “more than 1,500 major pollution investigations have been discontinued or shelved in the last four years” due to the *SWANCC* and *Rapanos* decisions. One EPA official described the situation as “a huge step backward. When companies figure out the cops can’t operate, they start remembering how much cheaper it is to just dump stuff in a nearby creek.” **The legal confusion is also causing unnecessary permitting delays.** 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.”

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## House Action is Essential

The House of Representatives must act now to protect drinking water supplies, critical fish and wildlife habitat, and our economy by passing America’s Commitment to Clean Water Act.

The Senate Environment and Public Works Committee passed very similar legislation last June. Now it is time for the House to lead. **Our organizations support passage of America’s Commitment to Clean Water Act (H.R. 5088) this year.**



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