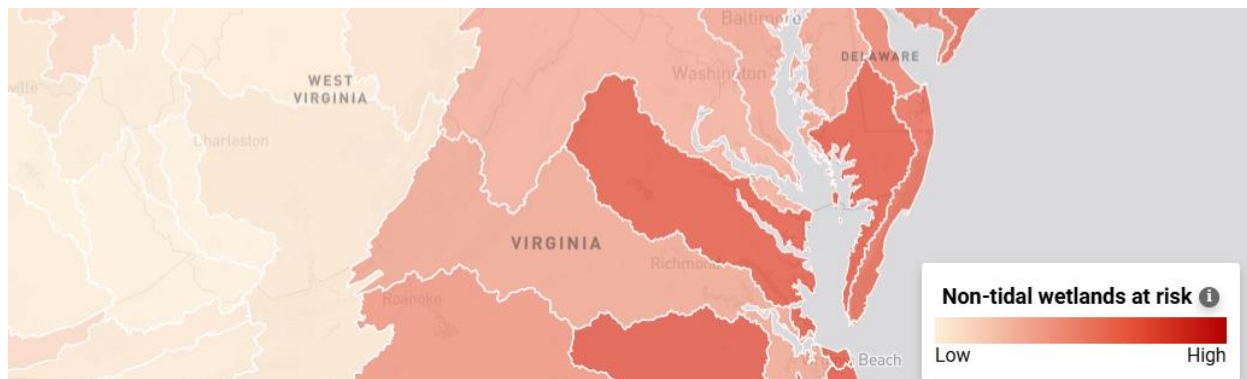


Virginia's strong state wetlands protections must be maintained in the wake of a recent US Supreme Court decision.

In 2023, the majority opinion by the Supreme Court in *Sackett v. EPA* drastically scaled back federal protections for America's wetlands, potentially threatening the communities and ecosystems that depend on them for critical habitat and flood protection. Prior to the decision, courts had upheld that wetlands that are connected to federal waterways, including those connected below the surface, should be protected. In *Sackett*, the Supreme Court opinion states that wetlands must have "a continuous surface connection" to federal waters, an approach that is not grounded in science and establishes tremendous uncertainty as to how this will be interpreted from a regulatory perspective in the long-term.

Environmental Defense Fund's [first-of-its-kind analysis](#) presents a range of potential impacts, reflecting the subjective language in the Court's opinion, but estimates that up to 938,000 acres of wetlands in Virginia no longer benefit from federal policy protections. Virginians care about these critical resources, which clean our water, manage flooding, and provide habitat for fish and wildlife. Although state protections remain for now, these resources could be at risk from influence from special interests.



Wetlands potentially at risk of losing federal protections in a scenario in which those that flood seasonally or more often would be protected by federal law. **Source:** <https://doi.org/10.1126/science.adp3222>.

Why are wetlands important?

- **Clean Water:** Wetlands act as natural filters, reducing pollutants downstream that could impact people and natural ecosystems.
- **Fish and wildlife conservation:** Wetlands are home to 40% of the world's species, with nearly 7,000 species of plants alone living in U.S. wetlands. They are also economically critical, providing homes for 75% of commercially harvested fish and shellfish species.
- **Flood risk reduction:** Wetlands help protect communities from flooding, our nation's costliest natural disaster. When wetlands are damaged, that reduces our ability to manage flooding, as one acre alone of

wetlands can store as much as 1.5 million gallons of floodwater.

- **Carbon sequestration:** Wetlands are one of the most efficient ecosystems for sequestering and storing carbon. Losing wetlands releases large amounts of carbon that took hundreds of years to accumulate.

Virginia wetlands at risk

Virginia already had robust state wetlands established by the Tidal Wetlands Act of 1972 and the Virginia Nontidal Wetlands Act prior to the Supreme Court decision, but the same cannot be said for many other states. Virginia has relatively strong wetlands laws that protect both tidal and

non-tidal wetlands in the state, but that doesn't mean that the Commonwealth's wetlands aren't at risk.

The U.S. Supreme Court's decision has sown confusion for regulators and landowners alike and is passing the burden and costs of management onto state governments. While the Commonwealth still maintains jurisdiction over non-tidal wetlands, the Supreme Court's decision reduced federal involvement in jurisdictional determinations and shifted more responsibility to states. Virginia's Department of Environmental Quality (VDEQ) previously relied on the U.S. Army Corps of Engineers to make wetlands determinations but must now rely on private Wetlands Delineators to make these determinations – adding uncertainty, costs, and potential delays to the permitting process.



According to EDF's analysis, up to 938,000 acres of non-tidal wetlands in the state may no longer be federally protected and may have to rely on private determinations for conservation.

What's at stake?

Virginia's approximately 1 million acres of wetlands are a vital part of the state's natural landscape. They serve as a haven for fish and wildlife, aid flood risk reduction, store carbon and are a source of recreation for many Virginians across the Commonwealth.

These impacts on wetland protections have been led by a small but vocal minority of interest groups. Polling shows that there is strong public support in Virginia and across the nation for wetlands and the tremendous public benefits they provide.

EDF Action polling in 2021 found that 74% of respondents (and 82% of coastal voters) said protecting Virginia's coastal areas, beaches, and wetlands should be a top priority for state lawmakers.

How Environmental Defense Fund is working to protect wetlands

EDF is working together with scientists, advocates and policymakers to better quantify, communicate and protect the value and breadth of benefits that wetlands provide, particularly for wildlife habitat and flood risk reduction. EDF's analysis of the impact that the *Sackett v. EPA* decision may have on federal wetlands protections quantifies the wetland acres now at risk identifies what research is needed to better understand the impacts.

Through outreach and education, EDF will engage and mobilize public support for wetlands conservation and policy protection and provide policy recommendations for state and federal leaders ready to heed the public's call for action to conserve vital wetlands and preserve a safe, sustainable future for our communities and people.

Learn more at edf.org/wetlands

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