Machine Learning Predicts Which Rivers, Streams, and Wetlands the Clean Water Act Regulates

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Summary

Research questions

• Which waters are jurisdictional under Clean Water Act rules?

Approach

- Train deep learning model ("WOTUS-ML") on jurisdictional decisions
- 34 input layers
- Predict probability jurisdictional, separately by rule
- Apply to 4 million+ points across US

Summary

• Model accuracy

- All AJDs: 79% accuracy
- Over half of sites: 90% accuracy
- A fourth of sites: 95% accuracy

• Results

- Stream miles: NWPR v. Rapanos deregulates 19 pp.
- Wetland acres: NWPR v. Rapanos deregulates 24 pp.
- NWPR v. *Rapanos* drinking water sources deregulated: 30%
- PJDs: 40-50 pp. jurisdictional
- ACE districts matter

What is New Here

This paper: First national estimate of legally-binding CWA jurisdiction

Three regulatory regimes:

- 1. 1986/88 Regulatory Definition + Rapanos v. United States, 2006 ("Rapanos")
- 2. Clean Water Rule, 2015 ("CWR" or "Obama rule")
- 3. Navigable Waters Protection Rule, 2020 ("NWPR" or "Trump rule")
- 4. (Aug 29, 2023: Sackett rule)

Summary: Potential Uses?

• Government?

- o EPA
- o ACE
- State agencies (e.g., CA Water Boards)

• Non-government?

- Developers/landowners
- Organizations: TU, ACWA, NAWM, ...
- o Courts
- Industry associations
- Real estate websites
- Regulatory advisory firms

How Can You Learn More?

 Science article: https://www.science.org/doi/ 10.1126/science.adi3794



• Interactive map: https://simondgreenhill.github.io/ wotus-map/ • Explainer video: https://www.youtube.com/ watch?v=Jkhz5gVUo2w





Questions for NAWM

- How can we make this research and tool useful?
- What important questions can this type of work can help answer?

Overview

- Motivation
- Data and Methods
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The Clean Water Act (1972) protects the "Waters of the United States"

Section 404: dredge or fill material

Law targets pollution, Section 404 affects land use



Examples

Definitely WOTUS



Navigable waters and their tributaries



Ambiguous

Ephemeral streams



Isolated wetlands

Definitely not WOTUS



Artificial ponds in uplands / drylands

Most roadside ditches





Stormwater runoff

Lakes & ponds with surface flow to navigable waters





Wetlands abutting navigable waters

Problem: No one knows exactly which waters are protected



Mapping and the Navigable Waters Protection Rule

On January 23, 2020, the U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) fulfilled yet another promise of President Trump by finalizing the Navigable Waters Protection Rule to define "waters of the United States" (WOTUS). For the first time, the agencies are streamlining the definition so that it includes four simple categories of jurisdictional waters, provides clear exclusions for many water features that traditionally have not been

EXISTING TOOLS CANNOT ACCURATELY MAP THE SCOPE OF CLEAN WATER ACT JURISDICTION

- Due to existing data and mapping initiations, it is not possible to accurately determine the full scope of waters that are "in" or "out" under any WOTUS definition.
- When the Navigable Waters Protection Rule was proposed, some claimed that 51% of the
 nation's wetlands and more than 18% of the nation's streams would lose CWA protection.
- These estimates are highly unreliable and are based on stream and wetland datasets that were
 not created for regulatory purposes and which have significant limitations.
- Purported statistics of jurisdictional changes are unreliable and inherently inaccurate, in part because:
 - \circ $\;$ there are currently no comprehensive datasets through which the agencies can depict

IT IS THE CONSISTENT POSITION OF THE AGENCIES THAT NO MAPS EXIST THAT IDENTIFY THE SCOPE OF "WOTUS"

- It has been the consistent position of the agencies that the NHD and the NWI do not represent the scope of waters subject to CWA jurisdiction.
- Of note, the agencies did not use these maps to estimate changes in jurisdiction when the 2003 SWANCC Guidance was issued, when the 2008 Rapanos Guidance was issued, or when the 2015 Rule was promulgated.
- As the agencies promulgated the 2015 Rule, EPA stated at the time that they "do not have maps depicting waters of the United States under either present regulatory standards or those

• Congress did not define WOTUS

- Depends on rules, interpretation by EPA, ACE
- How do rules change CWA coverage?
 - AWWA: NWPR eliminates CWA protection for 51% of U.S. wetlands and 18% of U.S. streams
 - "This puts drinking water for millions of Americans at risk of contamination from unregulated pollution."

- Southern Environmental Law Center

Source:

https://www.epa.gov/sites/default/files/2020-01/documents/nwpr_fact_sheet_-_ mapping.pdf

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Overview: Use deep learning to recreate Army Corps decision problem about what is jurisdictional ("WOTUS")



Data: Approved Jurisdictional Determinations (AJDs)



- 155,000 AJDs from Aug 2015 May 2022
- AJDs are requested by developers who think waters on their land may be jurisdictional
- Pool AJDs across rules for model training

Rule	Rapanos	CWR	NWPR	Total
# AJDs	84,314	7,900	62,934	155,148

Data: Input layers

National Agricultural Imagery Program (NAIP)

National Hydrography Dataset (NHD)



National Wetlands Inventory (NWI)



gridded National Soil Survey (gNATSGO)



Data: Input layers



Data: Training, validation, and test sets are split geographically

AJDs with overlapping image footprints are placed in the same split to avoid leakage

Method: WOTUS-ML uses a ResNet-18 neural network architecture

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Accuracy: WOTUS-ML predicts AJD outcomes with **79% accuracy**

	True fraction WOTUS	WOTUS-ML score > 0.5	Accuracy	N (test set)
All AJDs	0.35	0.29	<mark>0.79</mark>	15,970
Rapanos	0.41	0.37	0.78	8,198
NWPR	0.26	0.15	0.79	6,299

USACE field visit	0.46	0.38	0.74	7,198
USACE no field visit	0.26	0.21	<mark>0.82</mark>	8,772

Accuracy: Nearly unbiased estimate of jurisdiction

Accuracy: WOTUS-ML has potential as decision support tool

Percent of AJDs with High Accuracy

Accuracy: WOTUS-ML can save resources

- Section 404 permit costs \$5,000 to \$39,000 (EPA 2022)
 Out of pocket costs; economic costs larger?
 - No estimates for AJD cost?
- Imagine: use WOTUS-ML for cases with 95% accuracy
 Would save \$209mn to \$1.6bn over our sample

Application: Applying WOTUS-ML to

4 million randomly sampled points across the U.S.
 Sampled 50 points in each of 0.1 x 0.1 degree grid cells

2. 3,000 points around **Sackett property** on Priest Lake, ID

3. 6,200 points along **navigable waters**

- Regulated under every WOTUS rule
- Test model's out-of-sample performance
- 4. 101,000 Preliminary Jurisdictional Determinations (PJDs)

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Rapanos

NWPR

Many points change jurisdiction, *Rapanos* v. NWPR

Result: WOTUS-ML says all navigable waterways regulated

	Share predicted to be WOTUS				
Rivers and streams	Rapanos	NWPR			
All	0.67	0.46			
Navigable	<mark>1.00</mark>	<mark>1.00</mark>			
Perennial	0.83	0.67			
Intermittent or ephemeral	0.55	0.30			

Result: NWPR deregulates 19% of rivers/streams

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NWPR deregulates 608,000 stream miles

Equal to all streams/rivers in CA, FL, IL, NY, OH, PA, TX, combined

Result: NWPR deregulates 24% of wetlands

Wetlands	Rapanos	NWPR
All	<mark>0.52</mark>	<mark>0.27</mark>
Emergent	0.47	0.20
Forested	0.59	0.32
Adjacent or abutting	0.88	0.57
Isolated	0.39	0.14

NWPR deregulates 32 million wetland acres

Equals 14% of wetland area in US at time of European settlement

\$482bn in present flood mitigation value (Taylor & Druckenmiller 2023)

\$406bn in land value (Nolte 2020)

NAIP image

Rapanos

NWPR

B Isolated wetlands (Prairie Potholes), North Dakota

NAIP image

Rapanos

NWPR

C Mississippi River, Louisiana

NAIP image

Rapanos

NWPR

D Ephemeral streams, Utah/Nevada/Arizona

Result: Feature Importance Analysis Helps Open Black Box of ML

Result: NWPR Deregulates Drinking Water Sources

- Take locations of all identified US drinking water intakes
 - What share of streams, wetlands in same subwatershed (HUC12) lose jurisdiction between *Rapanos* and NWPR?
 - Answer: 30%

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Conclusion: First National Estimate of Legally-Binding CWA Regulation

Political debates: what <u>should be</u> regulated. This paper: what <u>is</u> regulated.

Results:

- NWPR (v. *Rapanos*) deregulated 19pp of stream miles, 24pp of all wetland acres
- Hundreds of billions of \$ in flood mitigation, land value
- PJDs: only 40-50% jurisdictional
- ACE districts evaluate sites differently
- 30% of drinking water sources deregulated

Potential users: EPA? Developers? ACE? White House?

Machine learning for **regulatory implementation problems**

Questions for NAWM

- How can we make this research and tool useful?
- What important questions can this type of work can help answer?

How Can You Learn More?

 Science article: https://www.science.org/doi/ 10.1126/science.adi3794

• Interactive map: https://simondgreenhill.github.io/ wotus-map/ • Explainer video: https://www.youtube.com/ watch?v=Jkhz5gVUo2w

API?

Accuracy: Similar for streams and wetlands (by Cowardin)

	True fraction WOTUS	WOTUS-ML score > 0.5	Accuracy	N (test set)	
All rivers and streams	0.43	0.31	<mark>0.78</mark>	4,353	
Wetlands	0.38	0.28	<mark>0.77</mark>	8,203	
Uplands	0.00	0.17	0.83	2,529	
Estuaries	0.99	0.94	0.94	304	
Lakes	0.39	0.30	0.81	352	

Accuracy: By Cowardin category, Rapanos vs. NWPR

Rapanos

NWPR

	True fraction WOTUS	WOTUS-ML score > 0.5	Accuracy	True fraction WOTUS	WOTUS-ML score > 0.5	Accuracy
All rivers and streams	0.67	0.54	0.80	0.30	0.15	0.77
Wetlands	0.47	0.36	0.76	0.26	0.16	0.80
Uplands	0.00	0.19	0.81	0.00	0.09	0.91
Estuaries	1.00	0.96	0.96	0.88	0.79	0.73
Lakes	0.59	0.49	0.77	0.10	0.05	0.90

Data: AJD geographical distribution

All rules

NWPR

Data: Types of water resources (Cowardin codes)

Table S1: Categorization of Nine Hydrological (Cowardin) Codes

Cowardin code	Description
	A wetland, spring, stream, river, pond or lake that only
1. Streams, ephemeral	exists for a short period
2. Streams, intermittent	Intermittent, Riverine; Streambed, Intermittent, Riverine
	Upper Perennial, Riverine; Lower Perennial, Riverine;
3. Streams, perennial and other	Unknown Perennial, Riverine
	Emergent, Palustrine; Persistent, Emergent, Palustrine;
4. Wetland, emergent	Nonpersistent, Emergent, Palustrine
	Forested, Palustrine; Broad-Leaved Deciduous, Forested,
	Palustrine; Needle-Leaved Evergreen, Forested,
5. Wetland, forested	Palustrine; Needle-Leaved Deciduous, Forested,
	Palustrine; Broad-Leaved Evergreen, Forested, Palustrine;
	Indeterminate Deciduous, Forested, Palustrine
6. Wetland, other	All other palustrine
7. Estuaries	Estuarine
8. Uplands	Uplands
9. Other	Marine, lacustrine, riparian

Data: Types of water resources (Resource types)

	Rapanos	CWR	NWPR
			(b)(3) Ephemeral
1 Enhamoral			feature, including an
1. Ephemerai			ephemeral stream,
			swale, gully, rill, or pool
2 Isolatod	Isolated (interstate or		
z. isolateu	intrastate) waters		(b)(1)
3. Non-RPW that	Non-RPW that flows		
flows directly or	directly or indirectly into		
		(b)(1), (b)(2),	(b)(2), (b)(4), (b)(5),
		(b)(3)(i),	(b)(6), (b)(7), (b)(8),
4. Other non-		(b)(3)(ii),	(b)(9), (b)(10), (b)(11),
jurisdictional		(b)(3)(iii),	(b)(12), the review area
		(b)(4)(v), (b)(5),	is comprised entirely of
		(b)(7), (b)(4)(iii),	dry land
5. Other		(a)(4), (a)(7),	(a)(3)
6. RPW that flows	Relatively Permanent		
directly or indirectly	Water that flows directly or		
into TNW	indirectly into Traditional	(a)(5)	(a)(2)
7. TNW	Traditional Navigable Water	(a)(1), (a)(2)	(a)(1)
8. Uplands	Uplands	Uplands	(b)(7)
	Wetlands Directly Abutting		
	RPW that flows directly or		
	indirectly into TNW;		
9. Wetlands	Wetland Adjacent to Non-		
ajacent/abutting	RPW that flows directly or		
regulated waters	indirectly into TNW;		
	Wetlands Adjacent but not		
	Directly Abutting RPW that		
	flows directly or indirectly	(a)(6)	(a)(4)

Results: Histograms of WOTUS-ML confidence scores

E NWPR, AJD Test Set

B Rapanos, Four Million Prediction Points

D CWR, Four Million Prediction Points

F NWPR, Four Million Prediction Points

Results: Left and right tail accuracy on AJD test set

Results: Change in WOTUS-ML score, *Rapanos* vs. NWPR

Changing regulation, NWPR - Rapanos

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Results: Nationwide WOTUS-ML scores under CWR

A CWR WOTUS-ML Scores

B CWR TO NWPR change

Results: Stream miles and wetland acres regulated, by rule

Table S6: Regulated Stream Miles and Wetland Acres, by State. Total stream miles in (2) is from NHD stream and river flowline features. Total wetland acres in (3) is from NWI. Regulation rates in (4), (5), (6), and (7) are from WOTUS-ML, applied to the subset of four million prediction points that are within 10 meters of NHD or NWI features. The difference in column (6) is measured in stream miles, and in column (9) in wetland acres. Positive entries in (6) are associated with perennial streams, see SM section A.4.

			Stream miles regulated		Wetland acres regulated			
	Total	Total			Difference	Differen		Difference
	Stream	Wetland	Rapanos	NWPR	, NWPR -	Rapanos	NWPR	, NWPR -
State	miles	Acres	(%)	(%)	Rapanos	(%)	(%)	Rapanos
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
All National	3,154,480	119,825,268			-608,006			-32,283,607
Alabama	72,650	4,043,348	0.85	0.87	1,700	0.89	0.77	-491,306
Arizona	139,281	262,281	0.14	0.02	-16,146	0.29	0.06	-60,826
Arkansas	78,496	2,558,428	0.81	0.68	-10,373	0.84	0.60	-605,140
California	173,028	2,789,804	0.65	0.30	-59,814	0.65	0.19	-1,266,757
Colorado	93,255	1,522,952	0.56	0.13	-40,069	0.41	0.11	-466,165
Connecticut	5,215	304,750	1.00	1.00	0	1.00	1.00	-465
Delaware	2,234	290,940	1.00	1.00	0	0.96	0.93	-9,836
Florida	22,385	12,681,770	0.99	0.85	-3,290	0.92	0.46	-5,905,090
Georgia	64,833	6,396,737	0.96	0.95	-464	0.94	0.69	-1,602,436
Idaho	94,753	1,119,249	0.75	0.40	-33,251	0.53	0.19	-379,767
Illinois	67,074	1,271,986	0.78	0.76	-1,203	0.76	0.66	-129,289
Indiana	24,066	1,008,100	0.79	0.84	1,013	0.65	0.39	-266,726
lowa	67,717	1,014,174	0.59	0.75	10,927	0.57	0.45	-114,820
Kansas	118,236	1,349,856	0.89	0.30	-70,578	0.61	0.16	-604,816
Kentucky	45,616	430,781	0.33	0.76	19,489	0.70	0.67	-12,767
Louisiana	43,096	8,092,819	0.81	0.83	848	0.90	0.83	-545,539
Maine '	24,974	2,569,961	0.54	0.60	1,348	0.67	0.64	-64,926
Maryland	10,263	863,198	1.00	0.99	-41	0.88	0.78	-86,631
Massachusetts	7,273	775,106	1.00	1.00	0	1.00	0.99	-10,407
Michigan	47,861	7,712,081	0.86	0.77	-4,387	0.69	0.18	-3,928,642
Minnesota	60,103	9,973,334	0.24	0.30	4,002	0.38	0.05	-3,371,408
Mississippi	77,386	4,534,181	0.57	0.60	2,007	0.80	0.67	-611,212
Missouri	95,347	1,388,966	0.71	0.56	-14,952	0.70	0.50	-280,342
Montana	166,847	1,589,844	0.58	0.20	-62,897	0.39	0.14	-403,248
Nebraska	72,506	549,755	0.61	0.53	-5,819	0.21	0.10	-59,029
Nevada	143,616	1,003,174	0.29	0.05	-35,181	0.51	0.07	-436,858
New Hampshire	9,374	384,706	0.98	1.00	180	0.98	0.96	-4,787
New Jersey	7,128	1,019,092	0.99	0.98	-40	0.93	0.91	-11,619
New Mexico	109,260	383,873	0.31	0.03	-30,655	0.38	0.05	-129,145
New York	48,756	2,651,158	0.93	0.94	370	0.86	0.56	-794,487
North Carolina	56,673	4,679,517	1.00	0.98	-1,139	1.00	0.90	-458,473
North Dakota	59,514	2,442,160	0.69	0.42	-16,095	0.34	0.07	-675,173
Ohio	54,736	715,219	0.85	0.88	1,725	0.77	0.49	-200,695
Oklahoma	75,615	1,274,713	0.94	0.43	-38,624	0.81	0.35	-580,106
Oregon	102,984	1,803,096	0.78	0.34	-45,550	0.71	0.20	-912,971
Pennsylvania	51 477	588 835	0.96	0.89	-3 588	0.94	0.70	-139 091

			Stream miles regulated			Wetland	l acres i	regulated
	Total	Total			Difference			Difference
	Stream	Wetland	Rapanos	NWPR	, NWPR -	Rapanos	NWPR	, NWPR -
State	miles	Acres	(%)	(%)	Rapanos	(%)	(%)	Rapanos
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Rhode Island	978	86,061	1.00	1.00	0	1.00	1.00	0
South Carolina	29,372	4,238,935	0.99	0.94	-1,478	0.97	0.68	-1,196,502
South Dakota	96,965	3,529,693	0.62	0.30	-31,587	0.26	0.13	-451,539
Tennessee	59,244	1,148,777	0.56	0.76	11,937	0.63	0.64	7,796
Texas	176,194	5,551,483	0.77	0.37	-70,753	0.65	0.40	-1,404,799
Utah	82,724	624,397	0.47	0.10	-30,866	0.49	0.09	-249,501
Vermont	7,100	287,628	0.99	0.99	0	0.93	0.85	-23,496
Virginia	49,280	1,682,396	0.99	0.98	-672	0.85	0.81	-70,360
Washington	68,964	1,297,395	0.62	0.26	-24,424	0.69	0.22	-610,242
West Virginia	30,572	81,858	0.50	0.79	8,817	0.58	0.59	470
Wisconsin	53,370	7,610,528	0.46	0.63	8,705	0.47	0.17	-2,306,962
Wyoming	106,082	1,646,169	0.35	0.09	-27,142	0.27	0.05	-357,483