



# Bob Brown

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# Massachusetts Wetlands Protection Act

- Any bank, any freshwater wetland, any coastal wetland, any beach, any dune, any flat, any marsh, or any swamp bordering on the ocean, any estuary, any creek, any river, any stream, any pond or any lake
- Land under any of the water bodies listed above
- Land subject to tidal action
- Land subject to coastal storm flowage
- Land subject to flooding
- Riverfront area

# Scope

Discharge from a point source into Waters of the US

EPA in the final rule maintains an interpretation of section 401 consistent with Justice Thomas's dissenting opinion in *PUD No. 1 of Jefferson County v. Washington Department of Ecology*

WQC “must address water quality concerns from the discharge itself, not the proposed activity as a whole”

The final rule does *not* “address minimum flow issues.”

Rather than drawing a bright line on the types of conditions that exceed the scope of certification, EPA recognized that “there may be unique project-specific facts or circumstances, including the nature of the discharge and applicable water quality standards and related designated uses, that must inform whether a particular condition is within the scope of certification, as defined in this final rule.”

# From Maui to Cape Cod



